

PROMPT AND EQUITABLE:
A CRITICAL STUDY OF SEXUAL VIOLENCE POLICIES AND PROCEDURES
AT UNIVERSITY OF NORTH CAROLINA SYSTEM INSTITUTIONS

A Dissertation
by
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Abstract

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The United States federal government has issued specific guidance to colleges and universities regarding the institution's ability to address sexual violence cases in a prompt and equitable manner. I conducted this parallel convergent study with the 16 University of North Carolina higher education institutions utilizing an online survey, interviews, and document reviews to determine how each institution interprets and implements the prompt and equitable standard. The research questions used to guide this study were (a) how do the UNC constituent institutional policies and procedures reference *prompt* and *equitable*, (b) how do the primary sexual violence adjudicating individuals at UNC institutions define *prompt* and *equitable*, and (c) how do they implement this standard in their policies and procedures. This parallel convergent study allows for an investigation that addressed not only what a policy is, but also why it exists and how it works. The data were categorized under the headings of *prompt* and *equitable*. Under each of these themes, subcategories were developed through open coding. Finally, the data sets were presented as “a side-by-side

comparison for merged data analysis” through a “discussion or in a summary table so that they can be easily compared” (Creswell and Clark, 2011, p. 223).

Major findings from the study include the need for institutions to specifically identify and follow a timeframe for addressing sexual violence cases, to compare and define the rights afforded to the complainant and the respondent, and to constantly review and improve the institutional policies surrounding incidents of sexual violence. The implications of this study show that universities should create and follow a seamless policy for addressing sexual violence, that policy makers collaborate with practitioners to create a policy that meets the specific needs of the students and institution in an appropriate way, and that university administrators continually review and revise their institution’s policy to ensure that incidents of sexual violence are being addressed properly. The results indicate that the conversations about adjudicating sexual violence are not ceasing and that this foundational research can be utilized as the basis of future research regarding how sexual violence cases are adjudicated.

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Dedication

To Emily, Noah, and Cooper for everything you did to help me stay positive and push me towards this milestone.

Table of Contents

Abstract.....	iv
Acknowledgements.....	vi
Dedication.....	vii
List of Tables	xi
List of Figures.....	xii
Chapter 1: An Introduction.....	1
Definition of the Issue.....	8
Purpose Statement of Research.....	10
Research Questions.....	11
Methodology.....	11
Meaning of Study to the Researcher.....	13
Definition of Terms.....	15
Constituent Institution.....	15
Complainant.....	15
Deliberate indifference.....	16
Due Process.....	16
Federal funding.....	16
Forcible sex offenses.....	16
Institution.....	16
Respondent.....	16
Sexual harassment.....	16
Sexual violence.....	17
Standard of proof.....	17
Title IX.....	17
Summary.....	17
Chapter 2: Literature Review.....	19
Rape Law Reform.....	19
Prompt and Equitable Standards.....	22
Prompt.....	23
Equity.....	26
Guidance.....	30
Federal Guidance.....	31
Title IX of the Education Amendments of 1972.....	31
Family Educational Rights and Privacy Act (FERPA) of 1974.....	32
Crime Awareness and Campus Security Act of 1990.....	33
2001 Revised Sexual Harassment Guidance.....	34
2011 Dear Colleague Letter on Sexual Violence (DCL).....	35

North Carolina Guidance	42
UNC system guidance.....	44
Gap in Research	47
Conceptual Framework.....	49
Summary	52
Chapter 3: Methodology	53
Overview of Methodology	53
Research Paradigm and Research Design.....	55
Research Questions	57
Role of Researcher	57
Data Collection Instruments	58
Data Collection Procedures.....	60
Participant Selection	61
Data Analysis	62
Ethical Considerations	65
Validity	65
Summary	67
Chapter 4: Findings.....	68
Institutional Demographics.....	69
Procedural overview	72
Prompt.....	74
Case Resolution Timeline	74
Role of the University.....	76
Rights during the disciplinary process.....	77
Adjudicating bodies	79
Attorneys.....	80
Appeals	81
Equitable	82
Role of the University.....	83
Rights during the disciplinary process.....	85
Adjudicating body.....	90
Attorneys.....	92
Appeals	94
Summary	95
Chapter 5: Analysis.....	96
Literature Links.....	96
Prompt.....	97
Equitable	99
Additional Emerging Themes	103
Purpose and goals of the disciplinary process	103
Need for Clarity	108
Constantly improving.....	111
Addressing the Gaps	117
Limitations	119
Revisiting the Conceptual Framework.....	121

Implications.....	122
Future Research	125
Conclusion	127
References.....	131
Appendix A: Prompt and Equitable Implications by Policy.....	145
Appendix B: Population (FTE) per UNC Constituent Institution	147
Appendix C: Initial Procedural Baseline Survey Instrument.....	148
Appendix D: Interview Questions	159
Vita.....	160

List of Tables

Table 1 Incidents of sexual violence reported at public NC higher education institutions.....	5
Table 2 Institutional Involvement.....	70
Table 3 Characteristics of Responding Institutions.....	70
Table 4 Title of Participant.....	71
Table 5 Oversight of Student Conduct.....	71
Table 6 Time Frames.....	75
Table 7 Resolution Timelines.....	75
Table 8 Persons involved in the investigation of reported sexual misconduct.....	80
Table 9 Rights afforded.....	86
Table 10 Case presentation.....	88
Table 11 Complainant written statements.....	89
Table 12 Attorney participation.....	92
Table 13 Appeal opportunity.....	94

List of Figures

Figure 1	Intersection of Conceptual Framework.....	50
Figure 2	Example of Data Analysis.....	64
Figure 3	General Flow of Adjudication of Sexual Misconduct Cases.....	73

Chapter 1: An Introduction

Incidents of sexual violence occur on college and university campuses across the nation. About 20% of undergraduate women experience attempted or completed sexual assault during their time since entering college (Center for Disease Control and Prevention [CDC], 2012). When these incidents occur, the victim/survivor, or complainant, can report incidents of sexual misconduct and violence through multiple venues. The complainant could report the incident to the police in order to initiate criminal proceedings, which would then allow the legal system to determine whether to proceed with criminal charges against the respondent. The Department of Education's Office for Civil Rights requires that when a college or university knows about an incident of sexual violence, they must respond in some manner to those allegations. If a respondent is a student within the University of North Carolina (UNC) system, these cases could also be reported to the respondent's constituent institution. The complainant could choose to proceed with either criminal proceedings or university disciplinary process, with both, or with neither.

The process of adjudicating incidents of sexual violence continues to be a major concern facing colleges and universities in the United States, and there are several new acts of legislation (e.g., Violence Against Women and Campus SaVE Acts) and guidance documents (e.g., 2011 Dear Colleague Letter, Violence Against Women Reauthorization Act of 2013) emphasizing the importance of taking action towards sexual assaults on college campuses. In addressing these incidents, institutions are required to provide similar

provisions (i.e., witnesses, evidence, and access to information) for both the complainant(s) and the respondent(s) in order to provide equity throughout a timely adjudication process.

The purpose of this study was to review how colleges and universities adjudicate sexual violence cases in a prompt and equitable manner. Unfortunately, multiple allegations of sexual violence may be reported around the same time and an adjudicating office may not have the capability to resolve one incident before adjudicating another. These cases can often overlap with one another and with the additional responsibilities of the office adjudicating these cases. This adjudication process at a minimum should involve interim measures (e.g., no contact directives and modification of class schedules), some level of an investigation, and a resolution (Office for Civil Rights [OCR], 2011). Students, as well as other involved parties, are looking for guidance in addressing their concerns and issues of safety. In order for the policy addressing sexual violence to be “successfully implemented” universities need to adopt the practices for adjudicating mandated by OCR sexual violence cases and incorporate them into the campus culture and understanding (Suspitsyna, 2010, p. 580). The longer a case remains unresolved, the more opportunity there is for cases to overlap for the office, the more time for recollection regarding the incident by all parties to fade or be forgotten, and the more time for creating a potentially hostile environment by not addressing a possible perpetrator of sexual violence. A case may go unresolved if the incident goes unreported because students “lack confidence in the policy and do not trust its ability to provide them any support” (Thomas, 2004, p. 153).

The current study focused on the prompt and equitable standards addressed by the Office for Civil Rights. Specifically, in this study I focused on the University of North Carolina (UNC) system’s interpretation and implementation of a “prompt and equitable

resolution of student...sex discrimination complaints.” Interpretations of the federal, state, and local guidance surrounding sexual violence is “situated and contextualised (sic)” within the university culture and conversations between lead administrators in the adjudication process (Maguire, Ball, & Braun, 2013, p. 328). The focus on sex discrimination was limited to incidents of alleged sexual violence as defined within this study.

It is important to know that acts of sexual violence are not confined to the university campuses, per the Campus Security Initiative, and can occur anywhere, both on and off campus (UNC, 2013a). As a comparison, if the University of North Carolina (UNC) university system were a city, it would be North Carolina’s third largest with 285,000 people, superseded only by Charlotte (population 775,202) and Raleigh (population 423,179). The UNC system has a responsibility to ensure a safe educational environment, which includes adhering to federal and state guidance.

Additional federal guidance was provided to the public following the reemphasis of the university’s role in addressing incidents of sexual violence outlined by the *2011 Dear Colleague Letter*. In January 2014, the Office of the Vice President published *Rape and sexual assault: A renewed call to action* in order to explore “new frontiers” in addressing sexual assaults and “to make our campuses safer” (White House Council on Women and Girls, 2014, p. 5). This call to action came as a response to increased reporting of sexual assaults within the collegiate environment.

The Centers for Disease Control (CDC) reported that female college students aged 18-24 are at the highest risk of being sexually assaulted (Black et al., 2011). One factor contributing to high risk is the introduction of students to a new environment where the majority of the population are at the height of their sexual exploration. This new

environment, combined with potential consumption of alcohol and/or drugs, increases the potential for incidents of sexual violence (Krebs, Lindquist, Warner, Fisher, & Martin, 2007). According to a 2012 national study, for the overall population, 18.3% of females and 1.4% of males reported being raped at some point in their lives. Of those reporting, 37.4% indicated an incident of rape occurring between the ages of 18-24, the age of traditional college students (CDC, 2012). Additionally, about 20% of females and males had experienced attempted or completed sexual assaults since entering college (CDC, 2012; Krebs et al., 2007). The prevalence of sexual violence is a concern to university administrators as they seek to provide a safe educational environment.

In an effort to be transparent about the safety of a college or university campus, each campus is required to submit the number of particular incidents, including forcible sex offenses, each year as defined by the Clery Act¹. College campuses have reported almost 4,800 forcible sex offenses in 2012 as defined by the Clery Act (Office of Postsecondary Education, n.d.; Ward & Mann, 2011, p. 1). The increase in reported sex offenses of 14% from the 2011 statistics and 45% from the 2009 statistics demonstrate why there is a growing concern about incidents of sexual violence. North Carolina campuses reported 62 incidents in 2010 and then almost a 31% increase to 81 in 2012 (See Table 1). It is important to note that an increase in reporting does not necessarily relate to an increase in incidents.

¹ Congress enacted the *Crime Awareness and Campus Security Act of 1990*, which amended the *Higher Education Act of 1965*, and was subsequently amended in 1992, 1998, & 2000, requiring higher education institutions receiving federal financial assistance to disclose campus crime statistics and security information. The 1998 amendment renamed the *Crime Awareness and Campus Security Act of 1990* the *Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act*; known as *Clery*.

The Department of Education (ED) is committed to ensuring that students have a safe environment where they can “benefit fully from their schools’ education programs and activities” (OCR, 2011, p. 19). The ED’s emphasis comes from Title IX of the Education Amendments of 1972, which state, “No person in the United States shall, on the basis of sex, be excluded from participation, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (OCR, 1998, para. 2).

Table 1

Incidents of sexual violence reported at public NC higher education institutions

Location	2010	2011	2012
On-Campus	56	56	72
Non-Campus	4	0	4
Public	2	2	5
Total	62	58	81

Note. Non-Campus buildings refer to buildings that were operated, but not owned, by the university. Public refers to locations that are neither owned nor operated by the university.

One area of discrimination based on sex includes acts of sexual violence. In an effort to emphasize the university’s role in addressing reports of sexual violence, the ED’s Office for Civil Rights (OCR) published a “significant guidance document” on sexual violence, the *2011 Dear Colleague Letter (DCL)* (OCR, 2011, p. 1). The Office for Civil Rights requires that universities that receive federal financial assistance must:

- a. Disseminate a notice of nondiscrimination;
- b. Designate at least one employee to coordinate efforts to comply with and carry out responsibilities under Title IX; and

- c. Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints (OCR, 2011, p. 6)

The focus of the current study was on the implementation of the prompt and equitable standards as indicated in (c), listed above.

Regardless of the assistance offered, colleges and universities are required by the Office for Civil Rights to continue to address sexual violence and the nuances which surround such cases, including the context of the incident. Even with the guidance offered through the Office for Civil Rights and the Violence Against Women's 2013 Reauthorization Act, institutional representatives, including the UNC system schools, engage in conversations at the Association of Student Conduct Administrators (ASCA) National Conference, through the ASCA listserv, and through NC state-wide meetings on the specifics of adjudicating sexual violence cases. Due to the number of questions and concerns ASCA received from its membership about how to adjudicate sexual violence cases, ASCA felt the issue was of such concern that a *Sexual Misconduct and Title IX Communities in Practice* workgroup was formed in 2013 (ASCA, 2013). This workgroup was created to provide resources and information, investigate best practices, and provide training and workshops on the federal guidance (ASCA, n.d.). With the continued reports of institutions inappropriately addressing sexual misconduct, this study will provide the foundations in which the *Sexual Misconduct and Title IX Communities in Practice* could utilize in order to conduct additional research.

In order to address OCR standards and expectations of colleges and universities, OCR has periodically published topical guidance. These publications, called *Dear Colleague Letters (DCL)*, and have been issued, according to the ED archive, since 1994. On April 4,

2011, the ED's Office for Civil Rights published a *DCL* to address incidents of sexual violence, including guidance on the prompt and equitable standards provided by Title IX. The 2011 *DCL* mentions that the following components are reviewed in order to ensure a prompt and equitable resolution in cases of sexual violence:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint; and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

(Office for Civil Rights, 2001c, p. 20; OCR, 2011, p. 9)

On the surface, these requirements appear to set the framework for adjudicating sexual violence cases; however, they fail to provide specific guidance on how they are to be implemented within campus policies and procedures. For example, the fourth bullet indicates a “reasonably prompt timeframe” but does not indicate what would be considered reasonable nor the major stages. These criteria do not address any steps of how a complaint shall be resolved, only that there are major stages, notification must be given, and preventive measures should be taken.

There is a lack of clarity about what is considered *prompt*, why *prompt* is described in this way, and how the “application of procedures to complaints” complies with OCR’s equitability requirement. This lack of clarity in addressing allegations of sexual violence is problematic because of the impact on the individuals involved, whether they be respondents or complainants, and in the university’s attempt to ensure a safe campus community. Since 2011’s *Dear Colleague Letter* and OCR’s concern for how institutions are adjudicating sexual violence cases, there have been no studies published describing how institutions are interpreting the prompt and equitable OCR requirements. Institutions have been focused on modifying their own policies and procedures to meet OCR’s requirements and have not taken the time to fully review what other institutions are doing because of the pressure being placed on them by the public, media sources, and the federal guidance itself. The current study addresses this gap in research.

Definition of the Issue

There are some guidance documents that seek to ensure that if an incident of sexual violence occurs, it can be addressed through the least restrictive means. *Least restrictive* means that during the investigation and hearing stages of adjudication, when a finding has not yet been determined, interim measures may be applied that does not infringe upon the complainant’s nor the respondent’s educational opportunity.

The focus on the prompt and equitable standards guiding this study stemmed from the basis of Title IX stating that no person should be denied benefits or be subject to discrimination within the educational environment. The victim should know that his/her allegations will be investigated within a reasonable time frame from an objective standpoint (OCR, 2011). A prompt resolution is important because researchers have shown that the

reasons why victim/survivors do not pursue prosecution is the amount of time it takes to have these cases adjudicated in court or through the university procedures and because of the re-victimization that occurs from telling and retelling the events of the incident (Patterson, Greeson, & Campbell, 2009). This re-victimization occurs because many college and university adjudication processes have emphasized due process for the accused more than for the complainant. Furthermore, the re-victimization continues by students having to retell the “most horrific experiences” of one’s life to an individual or panel of strangers, whether comprised of students, faculty, and/or staff (Lewis, Schuster, Sokolow, & Swinton, 2014, p. 7).

Establishing equity within the process is necessary because incidents of sexual violence involve a power differential between the respondent and complainant. This disparity can continue traumatizing the student by reliving the initial incident and may impact whether an individual is willing to report the incident. With incidents of sexual violence being the most underreported categories, OCR’s emphasis on a prompt and equitable resolution is meant to ensure that when individuals report sexual violence, their concerns will be heard and investigated (Rennison, 2002). The Office for Civil Rights’ guidance is meant to assist with establishing equity between parties in the adjudication process in order for an administrator or hearing board to have the best opportunity to review the facts of the case and render an outcome. Although this shift “may sound or feel victim-centered,” it is because the majority of the due process standards considered only “the rights and situation of the accused” (Lewis et al., 2014, p. 4).

The Office for Civil Rights holds universities accountable through guiding documents, investigations, and implementation of sanctions, including possible loss of

federal financial assistance. Additionally, OCR encourages any individual who believes a university is not providing adequate assistance in addressing and preventing sexual violence on its campus to contact the federal government directly. The Office for Civil Rights' reporting and accountability helps ensure that more cases will be reported at the institutional level, more action will take place to hold individuals responsible, and the number of incidents will be ultimately reduced. If policies addressing sexual violence can be implemented effectively, even though the long-term goal is to decrease the number of incidents, "a short-term effect is very frequently an increase in harassment cases that are reported, as a consequence of raised awareness" (Pyke, 1996; Robertson, Dyer, & Campbell, 1988; Thomas, 2004, p. 146; Williams, Lam, & Shively, 1992).

Policies can have an impact on social constructions and change, just as societal influences impact policy development (Dror, 1968; Evan, 1965). When universities consistently address incidents of sexual violence through their policies, university constituents will trust the process and the outcomes. This consistency and certainty will hopefully decrease future incidents. As described above, OCR identified concerns with university processes and sexual violence, has implemented guidance to address these concerns, and is continually receiving feedback on these policies for further review, as evidenced by the government's continued involvement in sexual violence policy development over the past three years.

Purpose Statement of Research

The purpose of this study was to explore how universities within the UNC system interpret and apply the Office for Civil Rights' prompt and equitable standards through an examination of Federal guidance, North Carolina (NC) law, UNC system policy, individual

campus policy, and through surveys and interviews with university professionals assigned to adjudicate sexual violence cases. This study sought to determine what policies and procedures were being utilized at the institutional level to fulfill the OCR standard and to identify gaps between OCR's policy and institutional practice. By addressing the following research questions, I hope this study informs UNC constituent institutions about the ways in which the principles of *prompt* and *equitable* are interpreted and applied, and the potential impact of the policy implementation on the resolution for all parties involved in cases of sexual violence within the collegiate environment.

Research Questions

Since the federal mandates from OCR focus on an institution's ability to address sexual misconduct in a prompt and equitable manner, I utilized these concepts as the guiding principles for my research question:

1. How do the UNC constituent institutions' policies and procedures reference *prompt* and *equitable*?
2. How do the primary sexual violence adjudicating individuals at UNC institutions define *prompt* and *equitable*?
3. How do they implement these standards in their policies and procedures?

Methodology

This study utilized a convergent parallel mixed-method policy analysis through a critical lens. The convergent parallel design was being utilized because it provided a simultaneous comparison of the staff's perception of the policy and procedures (through interviews), the implementation of the policy and procedure (through a survey), and the documented policy and procedures (Creswell & Clark, 2011). The critical lens asked that we

“reconsider our existing understandings of knowledge, power, and spaces of empowerment” (De Saxe, 2012, p. 183) and investigate how the interpretation of policy impacts procedures. Fairclough (1989) examines “how language contributes to the domination of some people by others” (p.1) and notes that this power can “exists in various modalities, including the concrete and unmistakable modality of physical force” (p. 3). This struggle for equity is only magnified when the governing laws and policies that are seemingly neutral reinforce the biases of the society in which they are held (Vago, 2012).

Cases of sexual violence can involve various perpetrator and victim roles, although a male perpetrator and female victim/survivor (male/female) constitutes the most common scenario (Black et al., 2011, p. 24). I will use the male/female perspective as I progress through the study, remembering that individuals of any sex may be perpetrators or victims, in any combination.

The participants were selected from each of the 16 University of North Carolina higher education institutions. Ten individuals chose to participate in the survey with eight of those participating in the follow-up interview. Although there are multiple individuals at each institution with knowledge of the process of adjudicating sexual misconduct cases, it was important that individuals with the most knowledge of the process participate in this study. This person may have different titles or be housed in different offices depending on the institution. Most participants are housed in the Student Conduct offices.

In order to examine the criterion of equity in the student conduct process, I needed to review the data gathered in this study through the lens of both the complainant and the respondent. Including these lenses in this critical policy analysis framework allowed me to view the policies and their implementation from multiple perspectives in order to bring to

light inconsistencies between policy and practice. The critical analysis also helped frame the interview and survey questions on whether equitable rights are afforded to the complainant and the respondent. Investigation of the promptness criterion was likewise guided by a critical lens, but I also examined OCR's own operating procedures and explanations in order to provide context for individual institution's sexual violence adjudication processes.

Through the triangulation of the guidance documents, formal policies, and the interviews and surveys of the participants, this research addressed what the policies are and how they are enacted and interpreted through the UNC higher education system.

Meaning of Study to the Researcher

As an Assistant Director in the Office of Student Conduct at Appalachian State University, I have addressed incidents of sexual violence through informal and formal resolutions. I worked with respondents and complainants, their parents, attorneys, witnesses, and support individuals. Through these conversations and preparations, I have had to support and explain the university processes while simultaneously building rapport with individuals so that they are comfortable explaining their case/situation. As the North Carolina coordinator for ASCA, I have also worked with public, private, and community colleges in identifying common trends in conduct violations and policy implementation within North Carolina and how to address them through federal, state, and local standards.

I have seen students come forward on another's behalf or come forward to share their own stories and choose not to proceed with any university or police facilitated options. Complainants and respondents who comes forward or proceeded through the university conduct process have expressed the anxiety and stress that have come with trying to prove their cases and the mental anguish and toil they have suffered (Collier, 1995; Gutek & Koss,

1993; Thomas, 2004). Some students have proceeded with the conduct process while taking time away from the university because navigating the conduct process alongside university coursework was too much to bear.

My concerns for a prompt and equitable resolution include multiple constituents due to the layers of involvement within the process. One layer involves how university administrators and board members express the mental and sometimes physical impact these cases have on their professional and personal lives. The university and the designees in the adjudicating process all have to consider the possibilities of lawsuits that may stem from these cases. These lawsuits may involve suing the university or the individuals who acted on behalf of the university. These threatened and actual lawsuits create a burden on individual relationships between those involved and those who think they know what happened (very similar to the perceptions of the sexual misconduct cases themselves).

Another layer within these cases is that the majority of incidents of sexual misconduct occur between acquaintances, not strangers. This connection between the complainants and respondents can include their continued feelings or emotions for one another, their common friend group or social circle, and their concern about one another's emotional stability. This form of complexity complicates the conversation about available options and empowerment of students in the process because, although outsiders may see the situation as simply being about right or wrong, the individuals involved consider the situation through the multiple lenses of moral judgement and of emotion, often at the same time. As the researcher and as one who is actively involved in the adjudication process, I need to take the various layers into consideration when I am reviewing the overall process.

Through the examination of sexual misconduct policies and procedures, I facilitated a more in-depth understanding of current UNC system practice, its connections to federal and system policy, and its potential impact on parties involved in the process. This research explored current policies and procedures along with its alignment with federal, state, and system guidance. This research set the groundwork for future research in determining best practices of adjudicating sexual violence cases by critically examining current practices in one state system compared to the provided guidance. This research assists with providing credibility and reasoning behind UNC constituent institutional processes so that individuals (e.g., students, faculty, and staff) will feel confident in utilizing these processes, should an incident of sexual violence occur (Thomas, 2004). If confidence in the policy and procedures is established, and individuals know that institutions will address these issues promptly and equitably, then the university campus may become a safer environment for faculty, staff, and students.

Definition of Terms

Gary Pavela's presentation at the national Association for Student Judicial Administrators conference (now known as ASCA), reminds us that "no definition is going to be without controversy" (Pearson, 2001, p. 225). I say this to acknowledge there are multiple understandings of the terms, but for this study the terms are defined as the following:

Constituent Institution – Constituent institutions are public institutions within the University of North Carolina multi-campus system.

Complainant – is the individual bringing forth the allegation, either through a formal allegation/charge or in informal informative conversation. This person has also been referred to in some codes of conduct as the victim or the survivor.

Deliberate indifference – “a stringent standard of fault, requiring proof that [the] . . . actor disregarded a known or obvious consequence of his/her action” (Kappeler, 2006, p. 177).

Due Process – more clearly noted as substantive due process, this is the due processes clauses of the 5th and 14th Amendments guaranteeing that appropriate and just procedures, or processes, be used whenever the government is punishing a person or otherwise taking away a person’s life, freedom or property (Stanford University, n.d.).

Federal funding – is specifically talking about the Department of Education funding for educational programs and activities which “may include, but are not limited to: admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and employment” (OCR, 1998, para. 5).

Forcible sex offenses – is defined as “any sexual act directed against another person, forcibly and/or against that person’s will; or not forcibly or against the person’s will where the victim is incapable of giving consent” (Ward & Mann, 2011, p. 37).

Institution – even though this could also be used for K-12 settings, the context within this study will be on post-secondary institutions which receive federal funding.

Respondent – has also been referred to, in some codes of conduct, as the alleged. This is the individual that the complainant, listed above, has indicated committed the alleged harassment.

Sexual harassment – “sexual harassment is unwelcome conduct of a sexual nature” including “unwelcomed sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature” which may “deny or limit, on the basis of

sex, the student's ability to participate in or to receive benefits, services, or opportunities" within an institution's program (OCR, 2001c, p. 2).

Sexual violence – Sexual violence “refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion” (OCR, 2011, p. 1).

Standard of proof – “Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt ‘beyond a reasonable doubt.’ The majority of civil lawsuits require proof ‘by a preponderance of the evidence’ (50 percent plus), but in some the standard is higher and requires ‘clear and convincing’ proof” (Pearson, 2001 p. 225) – this standard is set by each individual institution.

Title IX – “Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance” (OCR, 2011, p. 1). Even though Title IX addresses areas surrounding sexual discrimination regarding other institutional programs (i.e., athletics), for the purpose of this study I will only focus on Title IX as it relates to sexual harassment (and other relevant provisions).

Summary

Chapter 1 has provided a general outline of the purpose of the study, research questions, methodology, significance of the research, and definitions of applicable terms. Chapters 2 and 3 establish the context and framework for my research. Specifically, Chapter

2 provides an overview of three fields of literature that pertain to the study's exploration of the prompt and equitable standards: rape law reform, prompt and equitable standards, and federal, state, and local guidance documents. Following the overview, I discuss gaps in the literature and I propose a conceptual framework for addressing these gaps. Chapter 3 presents the critical theory methodology utilized, the rationale for this methodology, and descriptions of data collection, participant selection, and data analysis. Chapter 4 presents the findings and explanations provided by the participants through their survey and interview responses coupled with an examination of their sexual misconduct policies. Chapter 5 includes an analysis of these findings in Chapter 4, limitations of the current study, and revisiting of the conceptual framework on which the study was conducted. Chapter 5 will also examine the implications and suggestions for future research.

Chapter 2: Literature Review

This chapter provides an overview of the three fields of literature that guide this policy study on adjudicating sexual assault cases *promptly* and *equitably* through university hearing processes. The first field of literature provides historical context on rape policies. The second field of literature describes how notions of handling cases *promptly* and *equitably* have been viewed over time and discusses the current implications of adjudicating campus sexual violence cases. The third field of literature explains the governing documents that set the framework from which UNC system institutions develop policies and procedures. These governing documents include federal guidance, North Carolina legislation, and UNC system policy. Finally, this chapter provides an overview of current research and gaps in the research on the adjudication of sexual violence cases.

Rape Law Reform

The first field of literature provides foundational knowledge on how rape and sexual violence have been addressed over the years in North Carolina. This field of literature demonstrates a shift from the viewpoint that rape is a crime against property to the viewpoint that rape is a crime of violence against a person (*State of North Carolina v. Roscoe Artis*, 1989).

Like many other laws, rape laws have changed over time. Initially, crimes of sexual violence, including rape, were not defined as personal crimes, but rather property crimes. Brownmiller (1975) explains that early accounts of sexual assaults of women were considered crimes “against the male estate” (p. 17) where the woman was considered

property of her husband, father, or closest male relative (Pistono, 1988, p. 269). The act of sexual assault was not seen as “damage to her body, but damage done to his goods, to his property” (p. 269). The focus was more on protecting a husband’s lifestyle and property than it was on viewing the woman/victim involved as a person in society.

As time passed, new laws against sexual assault became apparent within legislative language. The previous *raptus*, in Roman law, became known as *rapina* indicating a “crime against property” and began to create some distinct difference in a crime against property and “crimes of violence against the person” (Pistono, 1988, p. 272). This separation of crimes against property and people assisted the transformation of rape laws within the United States, such as rape being gender neutral in some states.

Even though women in society were beginning to view women as people instead of as property there were still inequalities between men and women (Vago, 2012). In the late 1970s states began to modify rape laws to incorporate “a series of graded offenses” leading to more specific allegations against perpetrators including, but not limited to, first/second degree rape, first/second degree sexual offense, and sexual battery (Page, 2010, p. 4). Page (2010) mentions how many states, not yet including North Carolina, are rewriting their definitions of rape into “gender-neutral language” in order to recognize the “existence of male victims and female perpetrators” (p. 4).

North Carolina’s General Statutes (NCGS) on sexual assault were separated in 1979 into first and second degree rape, first and second degree sexual offense, and spousal sexual offense. It is important to note that, even with the change in NC rape laws, societal influences still impact the “objective, rational, dispassionate, and consistent” nature in which these laws are applied (Vago, 2012, p. 66). In NCGS §14-27.2 (First-degree rape), the

legislation refers to the act of “vaginal intercourse,” whereas NCGS §14-27.4 (First-degree sexual offense) describes an incident when a “person engages in a sexual act” but does not limit the act only to vaginal intercourse. This language precludes NC law from addressing other acts of force and sexual contact or intercourse as rape. For example, forced anal sex or oral sex would not be considered “rape” under NCGS, but may be considered a sexual offense. Additionally, per the NCGS definition of rape, a male cannot be raped but he can be a victim of a sexual offense. Each statute under the Criminal Law (Chapter 14) Offenses against the person (Subchapter 03) on rape and other sex offenses (Article 7A) of the NCGS §14-27.2 (First-degree rape), §14-27.3 (Second-degree rape), §14-27.4 (First-degree sexual offense), and §14-27.5 (Second-degree sexual offense) specify that to qualify as a violation of the North Carolina General Statutes (NCGS), the act(s) has to be “with another person by force and against the will of the other person.” Even with the inclusion of force by a person towards another person, failure to include both men and women as possible victims and perpetrators for all offenses persists.

The legal clause stipulating that rape occurs “by force and against the will” of another person refers to consent for actions by a person towards a person, as described above in the NCGS. Consent has been and continues to be a major factor in determining whether an act of sexual violence has been committed. The understanding of what constitutes consent is vital in the application of these cases. Case law does not require there to be actual “physical resistance,” force, or a threat directed towards an individual in order for a lack of consent to be demonstrated. Rather, causing “fear, fright, or duress” would also suffice as force (*State of North Carolina v. Gary Overman*, 1967; *State of North Carolina v. Rosco Hall*, 1977). This leaves a question for adjudicating bodies on whether, when looking at the entirety of the

incident, the men and women involved in an alleged incident have equal ability to create an atmosphere of force.

Even the language surrounding rape and sexual violence continually changes as indicated in the changes in the law. As described earlier in the history of rape law reform, women and men have not been viewed as equals nor have their roles as victims been viewed in the same way. For example, under the NCGS, a man cannot be a victim of rape because it is limited only to “vaginal intercourse” (NCGS §14-27.2). By this definition, a man cannot be a victim of rape, but can be a victim of a lesser sexual offense because it is not limited to vaginal intercourse (NCGS §14-27.4). Additionally, by this definition, other forms of sex, like oral sex, would not be included in the definition of rape.

Just as the rape laws have changed over time, so does the understanding, interpretation, and application of these laws. The following section describes how *prompt* and *equitable* have been viewed over time. University administrators understanding these interpretations and applications assist in describing the current implications on the adjudication of campus sexual violence cases.

Prompt and Equitable Standards

The second field of literature considered in this chapter concerns changes in understanding and language relative to the prompt and equitable standards. This section describes the concepts behind *prompt* and *equitable* as provided in OCR guidance. Thomas (2004) states that it is time to “challenge universities to earn the right to claim they are ‘working towards equal opportunity’ by matching words and deeds, and demonstrating a practical rather than merely rhetorical commitment to the elimination of harassment” (p. 158). There are many understandings of how *prompt* and *equitable* are represented and how

the understanding and implementation of these terms into the campus adjudication practice evolves over time.

Prompt. Promptness in addressing incidents of sexual violence is only applicable once an institution has been made aware that an incident has taken place (OCR, 2001, p. 20). At that point, the institution is placed on a metaphorical clock to investigate and resolve the incident in question. In 2011, the Department of Education published a *Dear Colleague Letter* which offers guidance on resolving these cases after notification. As they do with many other portions of the *2011 Dear Colleague Letter*, the Office for Civil Rights offers limited guidance on what they consider to be a prompt time frame. This lack of specificity should not necessarily be considered negative, since the guidance must be flexible enough to accommodate a wide range of institutions and circumstances. The Office for Civil Rights mentions that institutions should have designated “time frames for all major stages of the procedures” (OCR, 2000, 2008a; OCR, 2011, p. 12). The major stages include an investigation, an outcome, and (if applicable) an appeal (p. 12). A 60 calendar day window to conduct an investigation is the only timeframe provided by OCR (OCR, 2005b, p. 3; OCR, 2011, p. 12). Understanding that these are guidelines, not requirements, the OCR takes into consideration potential delays for justifiable causes including, but not limited to, police gathering evidence, institutional breaks (e.g., winter/summer), the number of complainants and/or respondents involved, or the occurrence of multiple incidents by the same individual, and affirms that “every effort” should be made “to report a finding within sixty days” (OCR, 2005b, p. 3; OCR, 2011, p. 12).

An example from Eastern Michigan University illustrates, in part, the concern for addressing incidents of sexual violence in a prompt timeframe. In 2006, Laura Dickinson

was raped and murdered in her residence hall room by a fellow student, but during the investigation the university stated that there was “no reason to suspect foul play” (Goldman, 2007, para 3). Although the university had evidence to suspect otherwise at the discovery of the body, it took 10 weeks for the university to provide notice to the university population (para. 12). Given that an investigation by the university did not commence until ten weeks after the incident, the Office for Civil Rights found that the university not only exceeded a reasonable timeframe, but also failed to adequately inform the university community of risk, in one situation actually persuading the community that they were not at risk even though the perpetrator had not yet been apprehended. By stating that no foul play occurred while a perpetrator was still at large, Eastern Michigan failed to take steps to prevent reoccurrence of sexual violence, creating the potential for additional assaults (OCR, 2004a). In a contrasting example, at Bates College (2005), OCR considered the actions by a dean to be *prompt*, given that he completed an investigation and issued an outcome in just over a 10 week period.

The sixty day timeline allowed by OCR becomes a point of confusion when looking at the prior two examples which alludes to a 70 day (10 week) window in each case. The timeline mandated by OCR also lacks clarity about how to count university breaks (fall, winter, spring, summer) which can significantly increase the time between reporting and resolution. For example, if an incident occurs in early March, is reported in late March, is investigated and ready to be brought to resolution by late May (which may be summer break for some campuses), then the case may not be adjudicated until August when both the complainant and respondent return to campus. This constitutes an estimated 150 days from the university’s first knowledge of an incident, which is 90 days longer than the OCR recommended timeline.

The Office for Civil Rights also emphasizes that policies and procedures cannot be *prompt* or *equitable* if individuals do not “know a policy exists, how it works, and how to file a complaint” (OCR, 2001, p. 20). Students, faculty, and staff should be informed of how to initiate the reporting process (OCR, 2001a; OCR, 2003a; Violence Against Women Act (VAWA), 2013). As policies and timelines are being called into question, it would serve a university well to keep a “detailed timeline” as to how a university’s investigation and case resolution evolves (OCR, 2003a, p. 6). Some cases may appear to be simple when first reported, but when the university investigates the alleged incident, it may uncover numerous discrepancies in both the respondent’s and complainant’s stories (e.g., time of incident, witnesses, location). Additionally, cases become more complex when they involve multiple complainants or respondents or when the complainant and/or the respondents no longer want to work with one another. Each of these scenarios could potentially interfere with a prompt resolution.

Promptness does not pertain only to the obligation of the institution; it could also involve an obligation of timeliness on the part of the reporting party. The Office for Civil Rights has established an internal standard to only investigate complaints that are less than 180 days old, due to limited availability of information (OCR, 2003c, p. 3). This estimated six (6) month time period is what OCR considers to be timely notification. Although institutions are not required to have a statute of limitations on reporting, OCR uses this 180 day standard unless a complainant can show “good cause” and “could not reasonably be expected to know the act was discriminatory,” was unable to file a complaint due to incapacitation, filed a complaint after an “internal grievance with a recipient of federal

financial assistance” (e.g., public institutions), or was subject to “unique circumstances generated by OCR’s action” (OCR, 2010a, Section 107).

The promptness factor allows for a point of closure with the complainant, the respondent, and the university, even when the case may not be resolved in the manner all parties believe is fair or equitable. As OCR continues to review individual institutional policies and procedures, institutions can look to prior OCR investigations, resolutions, and case processing manuals located on the U.S. Department of Education’s website for guidance.

Equity. The National Center for Higher Education Risk Management states that “equity encompasses fairness, justice and most precisely, fairness under the circumstances” (Lewis, Schuster, Sokolow, & Swinton, 2014, p. 4), but there may be conflict over “how the sides envision a fair distribution” of their rights (Stone, 2012, p. 39). When there is a debate on equity, there is also the underlying conflict on the social policy, the tailoring to an individual’s specific needs, and of fair process (Stone, 2012). The social constructs surrounding equity continually create debates on whether all individuals are being treated fairly. Some individuals perceived equality and equity as the same term. However, as illustrated below, equality is one way to equity, but not the only way (Lewis et al., 2014, p. 4).

Two of the most memorable civil rights cases involving equity focused on how whites and people of color should have separate but equal opportunities. There are two landmark cases involving the *separate but equal* standard are *Plessy v. Ferguson* (1896) and *Brown v. Board of Education of Topeka* (1954). *Plessy v. Ferguson* establishes the *separate but equal* doctrine in keeping races separate on railroad cars. In *Brown v. Board of*

Education (1954), the courts admonished that they could not “turn the clock back” but that the courts must consider the “full development” and “present place in American life throughout the Nation” as it addresses equality. Separation “generates a feeling of inferiority as to [African American’s] status in the community that may affect their hearts and minds in a way unlike ever to be undone and that the separation was considered unequal” (Brown v. Board of Education of Topeka, 1954). Although these cases addressed race, issues concerning civil rights and purported inferiority expand beyond the original racial implications to include gender inequities, as can be seen in writings as early as the nation’s founding documents as identified below.

The Declaration of Independence itself contained, or according to some people still contains, some paradoxes. For example, the Declaration of Independence states that “all *men* are created equal,” (emphasis added) but in practice inequities appeared between genders (Stone, 2012, p. 43). The gender inequities came to the forefront of U.S. society several times including in the 1920’s by allowing women the right to vote and again in 1972 when Title IX was developed out of conversations and controversy stemming from the Civil Rights Act of 1964, the Equal Pay Act of 1963, and the Equal Rights Amendment of 1972, coupled with the reauthorization of the Higher Education Reauthorization Act to incorporate guidance over the rights of women, now considered a protected class. Title IX of the Education Amendment of 1972 states that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (OCR, 1998, para. 2). To combat some of the inequities between genders within education, the federal

government implemented Title IX legislation in 1972 and provided specific requirements for equity in education including opportunity, scholarship, athletics, and rights.

In higher education sexual violence cases, the notion of rights of both the complainant(s) and respondent(s) becomes a point of contention because each party wants to ensure equal rights. The U.S. Constitution mentions in the 5th and 14th Amendments that individuals should not be “deprived of life, liberty or property without due process of law.” This deprivation can include the denial of educational opportunities as afforded by Title IX. Foundationally, due process allows for student(s) to know the allegations against them and to be afforded the right to speak on their own behalf (Kaplin & Lee, 2007, p. 464). Additionally, depending on whether there are concurrent criminal charges, more due process is provided. In some states (i.e., North Carolina) due process allows for attorney participation during the disciplinary hearing process (NC House Bill 74, Section 6.c, 2013). However, due process as it relates to the deprivation of life, liberty or property can also apply to victims of sexual violence. Even in cases such as *Gomes v. University of Maine System* 365 F.Supp.2d 6 (2005), in which the courts emphasized that the disciplinary process “was not ideal and could have been better,” the institution still met the “minimal requirements” in that the student was “advised of the charges...informed of the nature of the evidence...given an opportunity to be heard” and the case was only adjudicated on “the basis of substantial evidence” (Pavela, November 7, 2013, p. 4).

The three-pronged “minimal requirements” of due process as described above, along with the *2011 Dear Colleague Letter*, are ambiguous, under the guise of institutional flexibility, in designing individual institutional processes. Numerous questions continue to surround even these three requirements: Who is advised of charges? Who provides

evidence? Who is gathering the evidence? Who is allowed to be heard or to present information? Who is receiving the information and rendering a decision? These are questions asked by complainants and respondents, to ensure that they have the opportunity to be heard.

Public institutions should minimally be affording due process, and some, including Shippensburg University and Appalachian State University, have also included a component of *fundamental* fairness in their student disciplinary processes. In *Ruane v. Shippensburg University* 871 A.2d 859, the court affirmed that the institution's disciplinary process provided "due process comporting with basic principle of fundamental fairness." This fairness has been defined as utilizing processes and outcomes which are not arbitrary or capricious and which are aligned with the processes outlined in the handbook provided at the given institutions (*Fellheimer v. Middlebury College*, 1994). The Office for Civil Rights stated in the 2001 guidance that in order to determine whether procedures and outcomes were arbitrary or capricious it would investigate cases from a "subjective and objective perspective" (OCR, 2001c, p. 5). Subjectivity is meant to consider the perspective of the subject (complainant or respondent) of the offense (O'Riordan, 2003, p. 19). The objective perspective asks that an incident be viewed from the point of view of an ordinary person or a reasonable person "in the [victim's] position" to determine whether an incident should be considered sexual violence (OCR, 2001c, p. 30; O'Riordan, 2003, p. 19).

In its 2001 *Revised Sexual Harassment Guidance* and the 2011 *Dear Colleague Letter on Sexual Violence*, the Office for Civil Rights provides guidance on how institutions can have a process that allows for students' to receive due process, fairness, and equity. The requirements mentioned previously describe OCR's prompt and equitable standards. The

aforementioned requirements address both parties, namely, the complainant(s) and the respondent(s). This emphasis is to ensure that during any updated guidance, including the January 2014 report by the White House, the resources and procedures are consistent regardless of role (e.g., respondent or complainant). Ultimately, the perception of fairness or equity will be either more or less fair or “look equal or unequal” depending on the lens (e.g., respondent, complainant, attorney, friend, parent, or administrator) through which one is viewing the policy (Stone, 2012, p. 41).

Through continued investigations of incidents of sexual violence by the Office for Civil Rights, guidance documents have been produced to assist with policy development. The following section explains the governing documents that set the framework for which UNC system institutions develop policies and procedures.

Guidance

The third field of literature relevant to my research concerns the federal, state, and local guidance provided for Title IX regarding how UNC system institutions should be addressing these incidents. There are three major sources guidance applicable to the UNC system institutions: federal guidance, North Carolina legislation, and UNC system policy. Reviewing all three levels of guidance is important because it is through the constraints of these “multiple sets of policy prescriptions” that we are able to review how the policies intersect with one another (Braun, Maguire, & Ball, 2010). According to researchers, laws “are important instruments of change” (Vago, 2012, p. 315). The changes introduced by the guidance documents can be found in Appendix A, which provides a brief summation of how the following policies address the prompt and equitable standards in adjudicating sexual

violence cases. Understanding each policy and reviewing its connections to these standards, assist institutions in setting the framework for individual institutional policy.

Federal Guidance. The following section discusses the foundational documents that outline the steps the federal government has taken to inform institutions of their obligations regarding the ability to address incidents of sexual violence. These documents include the *Title IX of the Education Amendments of 1972*, the *Family Educational Rights and Privacy Act of 1974* (FERPA), the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990* (Clery Act), the *2001 Revised Sexual Harassment Guidance*, and the *2011 Dear Colleague Letter on Sexual Violence*. These documents provide guidance for sexual violence cases including purpose (Title IX), privacy (FERPA), reporting (CLERY), and policy and procedures.

Title IX of the Education Amendments of 1972. Regulated by the Department of Education’s Office for Civil Rights (OCR) and its “12 enforcement offices” dispersed throughout the nation, Title IX states that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (OCR, 1998, para 2). One of OCR’s purposes is to ensure that institutions are complying with this federal provision and preventing “unfair treatment or discrimination because of race, color, national origin, disability, age, *sex (gender)*, or religion (emphasis added)” (OCR, 2010a). While Title IX covers a multitude of areas, including athletics and organizations, the stipulation “on the basis of sex,” is the section that informs the present research relating to sexual violence. Organizations, such as the Association of Title IX Administrators (ATIXA), have been created to assist institutions in fulfilling Title IX

obligations because institutions have been “scrambling to update policies, implement training, and understand the Office for Civil Rights’ (OCR) expectations” for prevention and implementation (ATIXA, n.d.).

Family Educational Rights and Privacy Act (FERPA) of 1974. FERPA is a federal law that “protects the privacy student educational records” of any student of an institution who receives federal financial assistance (20 U.S.C. § 1232g; 34 CFR Part 99). Many records including student conduct records are identified by FERPA as “educational records” and can therefore not normally be released without the student’s consent. However, there are several provisions under FERPA that allow for disclosure of certain information without consent. Specifically, in addition to general “directory’ information,” an institution may “non-consensually disclose personally identifiable information from educational records” (Family Policy Compliance Office, 2011, pp. 4)

- to the victim of an alleged perpetrator of a crime of violence or a non-forcible sex offense concerning the final results of a disciplinary hearing with respect to the alleged crime; and
- to any third party the final results of a disciplinary proceeding related to a crime of violence or non-forcible sex offense if the student who is the alleged perpetrator is found to have violated the school’s rules or policies. The disclosure of the final results only includes: the name of the alleged perpetrator, the violation committed, and any sanction imposed against the alleged perpetrator. The disclosure must not include the name of any other student, including a victim or witness, without the written consent of that other student. (Family Policy Compliance Office, 2011, pp. 4-5)

Only information pertaining to the perpetrator and the outcomes of disciplinary processes can be released. The complainant/victim is notified by the adjudicating body in order to ensure they are aware of the outcome of the student conduct process, as some may choose or be allowed to be present for the outcome. This allows for both the complainant and respondent to both know the resolution and determine whether either will take additional action (e.g., withdraw from school, re-enroll in school, appeal if applicable).

Crime Awareness and Campus Security Act of 1990. This act amended the *Higher Education Act of 1965* and required institutions who receive any form of Title IV federal assistance to:

- Collect, classify and count crime reports and crime statistics,
- Issue timely campus alerts,
- Publish an annual security report,
- Submit crime statistics to the Department of Education (ED), and
- Disclose fire safety information. (Ward & Mann, 2011, pp. 5-7)

In 1998, the *Crime Awareness and Campus Security Act of 1990* was renamed the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)* “in memory of a student who was slain in her dorm room in 1986” (Ward & Mann, 2011, p. 1).

The Clery Act requires reporting of certain crimes and disciplinary incidents occurring at institutions that receive federal financial assistance. Current and prospective students and their parents or guardians can use the reports to make informed decisions about the safety of individual institutions based on criminal and disciplinary actions and outcomes.

Unfortunately, institutions may report Clery statistics differently based on institutional interpretations of the Clery Act making meaningful comparisons among campuses difficult.

For example, the Office of Post-Secondary Education reported that in 2012 Elizabeth City State University had a student population of 2,878, while the University of North Carolina at Chapel Hill had a student population of 29,278. Despite the tenfold difference in population, each institution reported 19 drug violations. It seems unlikely that an institution 10 times larger than another within the same system would have an equal number of drug violations. This discrepancy suggests that even when there is a federal mandate for reporting, it is important that there be standardization in the application of federal policies and procedures to ensure that institutions are equally adhering to the federal guidance.

2001 Revised Sexual Harassment Guidance. The OCR's *2001 Revised Sexual Harassment Guidance* is a reaffirmation of Title IX and the guidance offered originally in 1997. This 2001 guidance was offered to replace its predecessor and to "provide colleges and universities with a detailed blueprint for complying with their (colleges and universities) Title IX responsibilities regarding peer sexual harassment" (OCR, 2001c, p. i). As the Education Department continues to invest in educational institutions across the U.S., it also places a great deal of responsibility on the teachers and administrators who work within these settings. One of the fundamental claims from the ED's guidance is how "the good judgment and common sense of teachers and school administrators are important elements of a response that meets the requirements of Title IX" (OCR, 2001c, p. ii). Unfortunately, as illustrated below, the decisions made by these same teachers and administrators can negatively impact the students they are trying to protect. It is one thing to say that educational institutions will take "immediate and appropriate corrective action" to protect a student from a hostile environment and harassment when it "knows or should have known" that such behavior has taken place; it is another thing for these institutions to put this

commitment into practice (OCR, 2011, p. 2 & p. 4). The *2001 Revised Sexual Harassment Guidance* states that an institution should not, on the basis of sex:

- Treat one student differently from another in determining whether the student satisfies any requirement or condition for the provision of any aid, benefit, or service;
- Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
- Deny any student any such aid, benefit, or service;
- Subject students to separate or different rules of behavior, sanctions, or other treatment;
- Aid or perpetuate discrimination against a student by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students; and
- Otherwise limit any student in the enjoyment of any right, privilege, advantage, or opportunity. (p. 4)

This guidance was provided in order to assist institutions in understanding its Title IX obligations and to ensure that the application of these rights, benefits, aids, or services were applied to all students equitably. Just as each institution has had to change over time to incorporate the change in the collegiate environment, operation, and implementation. The guidance has also changed.

2011 Dear Colleague Letter on Sexual Violence (DCL). On April 4, 2011, OCR issued a Dear Colleague Letter concerning sexual violence. The Office for Civil Rights took the next step in providing assistance by issuing this “first-of-its-kind policy guidance...to ensure that schools and colleges fully understand their Title IX obligations relating to sexual

violence,” (OCR, 2011, p. 8). The guidance offered in the 2011 letter reiterated and clarified points from the previous 2001 Revised Sexual Harassment Guidance as it applies to “all school districts,” not just post-secondary education (p. 3). Part of the ED’s concern, in writing this letter, was the National Institute of Justice statistic that 20% of “women are victims of completed or attempted sexual assaults while in college” (OCR, 2011, p. 2). In all prior documents, the ED focused on limiting, and hopefully eliminating, a hostile environment in the educational setting. However, the statistics on such incidents, including forcible sexual offenses, continue to rise, to a reported 4,800 cases in 2012 (Office of Postsecondary Education, n.d.).

Vice-President Joe Biden reiterated the federal government’s commitment to and support of OCR’s efforts in his address about the *DCL* stating, “We’re taking new steps to help our nation’s schools, universities and colleges end the cycle of sexual violence on campus” (Office of the Vice President, 2011, para. 3). The assistance that the 2011 *DCL* offers includes:

- Preventing assault and sexual violence from occurring,
- Ensuring it gets identified and reported,
- Explaining the responsibility of institutions to respond to any incident of sexual violence swiftly and effectively,
- Presenting types of remedies that could be implemented for the victim and/or community, and
- Notifying students, faculty, and staff about anti-harassment policies.

Addressing allegations of sexual violence, whether at the school or OCR level, can be very demanding. The demand comes from a number of sources, including the potential for

re-victimization of the complainant, the sensitive nature of the topic, the need to balance the rights of multiple parties, the requirement to impartially investigate allegations, and the protection of the greater community. The Office for Civil Rights has tried to alleviate this burden by offering guidance, through the *DCL*, on how institutions should be addressing and preventing incidents of sexual violence.

The *DCL* states that institutions are “required to publish a notice of nondiscrimination and to adopt and publish grievance procedures” (OCR, 2011, p. 4). This notice and these procedures allow for *all* students to be informed about what types of behaviors are prohibited and how to report incidents of discrimination should they occur. Along with these procedures, OCR requires institutions to designate an individual to serve as the Title IX coordinator and to make his/her name and contact information available in these publications. The Title IX coordinator will be responsible for oversight in the adoption of grievance procedures, training within the university community (faculty, staff, and students), and maintenance of accurate records regarding Title IX allegations (p. 7). Complainants and respondents should each have access to the Title IX coordinator in order to report inequities or concerns about how their case(s) are being conducted.

The *DCL* continues by outlining the institution’s responsibility in responding to Title IX complaints in a timely manner. Once an institution “knows, or reasonably should know” about harassment, regardless of whether it occurred on or off campus; it is required to take action (OCR, 2011, p. 4). However, there may be differences within institutional policies and procedures on how an institution has received *knowledge* of an alleged incident. While some colleges such as the Berkley School of Music require a written statement detailing the alleged harassment, others like Boston University state that the institution has knowledge

upon the receipt of either written or verbal notice of possible harassment (OCR, 2000; OCR, 2004a). The Office for Civil Rights indicates that although it may be beneficial to have a statement in writing, requiring a complainant/victim to write a statement before an institution addresses the incident may discourage victims from seeking assistance (OCR, 2004a). The action an institution will take should be outlined within the aforementioned procedures. At a minimum, the institution should protect the complainant, assess the risk to the greater community, “promptly and equitably” investigate the allegation, and then take appropriate actions as defined by the institution’s policy and procedure (p. 10).

The policy should be designed to create a prompt, effective, and impartial way of investigating the allegations (OCR, 2010a; OCR, 2011). Through this investigation, the institution should determine whether it has enough information to move forward with formal allegations against a student. The Office for Civil Rights clarified in a resolution with South College (2001) that although “a written report is required to document an investigation,” (p. 3) OCR does not require the institution to provide a copy of the investigation report to the complainant or respondent. Providing the investigative report prior to the hearing may allow either opposing party to view one another’s statement and attempt to counter each other’s statement with falsified information.

It is important to clarify that institutional policies and procedures are not equivalent to federal, state, or local criminal law (Appalachian State University, 2013). Since the institutional process is not a criminal process, there is “considerable latitude in developing their procedures” (OCR, 2003b, p. 3). Although institutional policy may address criminal law violations, they also address community standards (Appalachian State University, 2013; Vanderbilt University, n.d.). Additionally, criminal proceedings utilize the beyond a

reasonable doubt standard of proof, whereas OCR states that institutions should use the preponderance of the evidence standard that mirrors a civil case (OCR, 2011). The preponderance standard is a “more likely than not” standard which can also be seen as proving a case by the weight of 50+% (Appalachian State University, 2013, p. 20; Vanderbilt University, n.d., p. 4).

While investigating and resolving a case, the institution has a responsibility to protect the complainant from the respondent. If formal charges are brought against a student, the procedures set in place to adjudicate the case should be *equitable*. The university should provide the same accommodations for both the respondent and the complainant (OCR, 2000, 2001a, 2003a, 2004a, 2008b, 2009). Both parties should be notified of the official charges and kept informed of the progress of the university procedures. Additionally, if one party is permitted to review information beforehand, to have support people present at a hearing (e.g., parents, friends, attorney, etc.), or to provide character witnesses/statements, the same rights should be afforded to the other party. Every effort should be made by the institution to show that the rights of each individual are *equitable*, even during the hearing process (OCR, 2011).

The Office for Civil Rights does not mandate a step-by-step procedure for addressing allegations (OCR, 2003b, 2011). The ability of the institution to address individual acts of sexual violence may be limited by the complainant’s request to remain confidential (OCR, 2011). A complainant may only want to tell his/her story, without moving forward with either the criminal or university disciplinary processes, but s/he should be informed of how to proceed in case s/he changes his/her mind (OCR, 2008b). However, if the complainant chooses to move forward, there is no prescribed method the institution is mandated to use to adjudicate the case (OCR, 2011; Stone, 2012).

Some institutions may refer all sexual assault cases to an interpersonal violence hearing board while other institutions may utilize an individual in this capacity. Even though some institutions may incorporate mediation as part of that adjudication process, OCR mentions that this is not an appropriate way to resolve matters of sexual violence, even with the permission of the complainant (OCR, 2011). Although it is not formally addressed in the *DCL*, restorative justice or restorative conflict resolution incorporates some mediation aspects, such as actively involving “victims and offenders in repairing (to the degree possible) the emotional and material harm caused,” (Office of Victims of Crime, 2000, para 2). The complainant is not required, under Title IX, to participate in the adjudication process, regardless of method, even though not participating may limit the action by the institution. Even when a complainant chooses to participate in the adjudication process, OCR “strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing” due to the potential for re-victimization (OCR, 2011, p. 12).

Following the hearing, whether administrative or before a board, OCR does not require an option for appeal (OCR, 2011). However, a university is encouraged to follow through with how its processes are outlined, and if an appeal is allowed for the respondent then it should also be available for the complainant (OCR, 2000, 2001a). When reviewing procedural due process, it is important to note that the amount of due process provided should relate to the amount of potential loss of privileges (Kaplin & Lee, 2007, p. 464). For example, more due process should be provided for those facing suspension or expulsion as opposed to those facing reprimand. This does not mean that there should be separate

policies, only that the loss of privilege and due process should be considered when reviewing the policies and procedures.

Following the resolution of the case, “in order for a grievance procedure to be equitable,” the university should disclose the outcome to both parties (OCR, 2008a, p. 6). Based on the Federal Educational Rights and Privacy Act (FERPA) and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (CLERY), a responsible finding could result in the disclosure of the violation and outcome to the respondent and complainant. This disclosure, though normally considered a protected educational record in cases not involving sexual violence, would “not constitute a violation of FERPA” as required under CLERY (OCR, 2011, p. 14).

Although the *2011 Dear Colleague Letter* has provided the majority of the current framework for adjudicating sexual violence cases on college campuses, it was not the end of the federal guidance legislation on sexual violence. The Violence Against Women Reauthorization Act of 2013 amended Section 304, known as *The Campus SaVE Act* (Seghetti & Bjelopera, 2012). The Campus SaVE act requires institutions to:

- provide a policy on sexual violence prevention,
- have procedures that institutions will follow once an incident has been reported including educational programs, potential sanctions, procedures for victims to follow, and
- follow procedures for disciplinary action. (Seghetti & Bjelopera, 2012)

Additionally, in a letter from the Office of the Press Secretary in January 2014, the White House published a *Renewed Call to Action* creating a task force to “lead an interagency effort

to address campus rape and sexual assault” (2014, para 3). This task force should provide within ninety (90) days of the memorandum dated January 22, 2014:

examples of instructions, policies, and protocols for institutions, including: rape and sexual assault policies; prevention programs; crisis intervention and advocacy services; complaint and grievance procedures; investigation protocols; adjudicatory procedures; disciplinary sanctions; and training and orientation modules for students, staff, and faculty. (para 4, section 3)

This continued and constant emphasis indicates that although federal guidance has been offered, there is still more that can be done to address and adjudicate sexual violence cases on college campuses.

Guidance to institutions for adjudicating sexual violence cases stems from multiple sources. Along with the federal government, the state of North Carolina and the University of North Carolina system offer guidelines for addressing sexual violence cases on college campuses. The following section describes the guidance provided by the state of North Carolina through their general statutes.

North Carolina Guidance. The state of North Carolina (NC) does not contain specific language or guidance within its policy other than the general statutes of addressing sexual offenses or rape. As previously mentioned, these statutes are limited in their scope as compared to the definitions of rape in other states (e.g., rapes only occur with vaginal penetration; therefore a man cannot be raped – NCGS § 14.27.2). The NC Department of Justice (NCDOJ) provides links to additional resources including the North Carolina Coalition Against Sexual Assault, Rape Victims Assistance Programs, and the North Carolina Victim Assistance Network.

Although NC offers various resources for rape and sexual assault victims through the North Carolina Coalition Against Sexual Assault, the state government does not offer any resources (e.g., counseling and education) to the perpetrators of these crimes. Resources for accused individuals are offered only through the guidance of legal counsel, which in some cases may be provided by the court system only after charges have already been filed, an initial court appearance has taken place, and formal request to a judge by the respondent has been made. However, for incidents involving UNC system students NC Governor Pat McCrory signed into legislation on August 23, 2013, House Bill 74 allowing certain rights to students.

[A]ny student enrolled at a constituent institution who is accused of a violation of the disciplinary or conduct rules of the constituent institution shall have the right to be represented, at the student's expense, by a licensed attorney or non-attorney advocate who may fully participate during any disciplinary procedure or other procedure adopted and used by the constituent institution regarding the alleged violation. (NC HB 74, 2013, p. 7, lines 17-21)

The two exceptions in this legislation pertain to academic integrity violations or violations presented to a board “fully staffed by students to address such violations” (line 25). Many of the constituent institutions previously allowed attorneys to be present during hearings, including those “fully staffed by students,” but the attorneys were only allowed to sit as observers to the process and to advise the student and not to speak on the student’s behalf (Grasgreen, 2013, para 7). The question that arose out of this legislation concerns the equity in the hearing process. If a sexual violence case goes before a board that is “fully staffed by students,” then the respondent and complainant have the opportunity, per House Bill 74, to

have an attorney fully participate in the hearing proceedings. However, the question of equity comes to bear on this scenario when one party has the financial resources to provide an attorney and the other does not. How then does an institution create equity in a situation where financial resources become the pivotal factor in equitable resources? Does the institution have an obligation to provide legal counsel to the other party who is unable to afford this processes?

With limited guidance from the NC legislation, the UNC General Administration has provided guidance for the constituent institutions to follow to allow for some uniformity. UNC guidance takes into consideration policies provided by both the federal and state governments. However, the guidance listed below still allows for processes and procedures to be tailored for each constituent institution.

UNC system guidance. The UNC General Administration and Board of Governors provide a policy manual, adopted in November 2002 and amended in August 2013, intended to guide the individual *Codes of Conduct* and the constituent institutions. Chapter 700.4 in the UNC Policy Manual directly addresses *Student Conduct and Discipline*. Specifically, 700.4.1 focuses on the “minimum substantive and procedural standards for student disciplinary procedures” in order to “establish legally supportable, fair, effective and efficient procedures” for guiding the student disciplinary process (University of North Carolina [UNC], 2013, p. 1). Beyond the previous requirements by OCR, failure to comply with the UNC system policy may allow for a previously resolved case to be appealed and reopened, requiring the complainant, respondent, and university officials to undergo the adjudication process for the same case again. These procedures include notice of violations, an opportunity for a hearing, and to meet the substantive minimum of having “sufficient

evidence supporting the decision” (p. 2, 4) and without the sanction(s) being “arbitrary or capricious” (p.1). Similar to the recent Campus SaVE Act of 2013, UNC policy states that institutions should provide the policy to all students, listing prohibited behaviors, and possible sanctions or a range of sanctions (e.g., letter of concern through suspension) for policy violations (p. 1).

The UNC system policy Chapter 700.4.1 provides procedural requirements, several of which assist with setting the platform for a prompt and equitable resolution including:

Prompt:

- an investigation and possible accusations within “a reasonable period of time” and
- whether to refer a case to a hearing officer or board with appropriate notice; which is defined as at least 5 days notice for incidents with minimum possible sanction below suspension and at least 10 days notice for incidents with a minimum possible sanction of suspension or expulsion

Equitable:

- the right to have a hearing,
- the right to have board members recuse themselves if there is a conflict of interest or bias in the case,
- the right to have access to a list of and to present witnesses or documents, and
- the right to have at least one level of administrative appeal (p. 1-4)

Understanding that these are the minimum procedural standards that must be afforded, the institution can choose to have more procedural requirements, but they cannot exclude the minimum UNC policy guidance. There are, however, special cases that allow for additional obligations on behalf of the university including:

- cases with multiple students in the same incident, permitting them to have their cases heard jointly or separately. A respondent or complainant may not want to have a joint hearing because of building tensions surrounding an incident or concerns about a person’s honesty or integrity (e.g., too honest or not honest), where having a joint hearing may have an adverse effect on his/her own outcome.
- cases of sexual misconduct, allowing the “same opportunities to have others present” (p. 4-5). This corresponds with the OCR guidance in having equitable resources and rights for both the complainant and respondent. If one party is allowed to have a support person present, then the same should be afforded to the opposing party(ies).
- for victims of a crime of violence, notification of the results including the “name of the student assailant, the violation charged or committed, the essential findings supporting the conclusion that the violation was committed, the sanction if any is imposed, the duration of the sanction and the date the sanction was imposed” (p. 4-5). Similar to *FERPA*, the reporting of outcomes allows the complainant and respondent to make informed decisions on any additional actions (e.g., withdraw from school, re-enroll in school, appeal if applicable).

These procedural standards provide the framework for UNC institutions to structure their policies and procedures in a semi-uniform fashion. The institutions still have the autonomy to decide how these guidelines are constructed and conveyed within their own policies.

In addition to the UNC Policy Chapter 700.4.1, Chapter 700.4.2, adopted in February 2010 due to recommendations of the *UNC Study Commission to Review Student Codes of Conduct Relating to Hate Crimes*, addresses “mandatory provisions” or language that each institution should publish within the individual institution’s policy (UNC, 2013b, p. 7). This

language is provided so that “each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth” (p. 7). These protections come in the form of policies addressing prohibited conduct, which may also include a violation of “federal, state, or local law,” while upholding an individual’s First Amendment rights and providing an educational environment “in which the rights, dignity, worth, and freedom of each member of the academic community are respected” (p. 7-8). These rights, afforded by the federal government, are imposed to protect against various forms of sex discrimination. The UNC policy 700.4.2 also includes specific language regarding harassment that is unwelcomed, severe, pervasive, objectively offensive, and that interferes with or denies one’s academic pursuits as also protected by Title IX (p. 8).

The UNC General Administration established a Campus Security Initiative in June 2013 to review policies and procedures that will help “promote a safe environment on our campuses and ensure that the rights of individuals are respected” (UNC, 2013a, para 2). The Campus Security Initiative is charged with focusing on “campus and system-level policies, procedures, and practices” for incidents involving “offenses against persons,” including sexual violence. Since its inception in 2013, there has been no guidance provided from this committee to the constituent institutions.

Gap in Research

Although some research on sexual violence and rape exists, the focus has not been on campus policy. Thomas (2004) indicates how this lack of research “has long indicated the need for a systematic evaluation” of the impact and implementation of sexual violence policies (p. 146). Researchers have studied alcohol and drug facilitated incidents of sexual violence (Krebs et al., 2007), as well as acceptance of rape myths (Burt & Albin, 1981;

Lonsway & Fitzgerald, 1995), and have gathered data on prevalence (Black et al., 2011). However, none of these studies examine the processes of adjudicating these cases as advised by the Office for Civil Rights.

In 2002, Karjane, Fisher, and Cullen looked at the processes and the availability of resources to the complainant and respondent, but did not examine specific rights for the parties within the process. Karjane et al.'s research focused on whether a policy is in place that discusses prevention, process for reporting, who is trained to respond, what discourages/encourages victims to report, and investigating incidents. They did not review promptness of procedures and how incidents are adjudicated, including specific procedural rights provided to the complainant and respondent.

The most detailed research to date relating to the procedures and resources available to the complainant and respondent was Penney, Tucker, and Lowery's (2000) National Baseline Study (NBS) conducted in 1997 in which they reviewed "the ability of educational institutions' disciplinary processes to address allegations of sexual assault adequately and fairly" (p. 2). This national study examined the rights and procedures provided to both the complainant and respondent throughout the adjudication process of sexual violence cases. The NBS explained that campuses could benefit greatly from "a study of practices used by colleges and universities to adjudicate sexual assault cases" being completed every "five to seven years" (p. 17). Although this study did not address the idea of a prompt resolution or what this may look like in a disciplinary process, it did address equity through the direction of fairness.

The Violence Against Women Act (VAWA) of 1994, introduced by Senators Joseph Biden and Barbara Boxer, focused on responses and attitudes towards violence against

women (Seghetti & Bjelopera, 2012, p. 1). Since the original 1994 installation, the Act has been reauthorized several times including the most recent version in 2013. The 2013 reauthorization of VAWA specifically addresses the requirement for notifying students about statistics on violations, providing definitions, designating an adjudication processes with potential sanctions, and even mentioning how the “accuser and the accused are entitled to the same opportunities,” but it does not convey specifics about how this should be conducted (Violence Against Women Act of 2013, Sec. 304).

The White House provided a document, *Not Alone*, which provided a timeline for additional research to be conducted. Some of the anticipated areas of research include developing a “promising policy language” for adjudicating sexual violence cases, developing “training program for campus officials involved in investigating and adjudicating sexual assault cases,” and “assessing models for investigating and adjudicating campus sexual assault cases” (White House Task Force to Protect Students from Sexual Assault, 2014, pp. 12-14). This was the first attempt at offering additional guidance and research since the initial April 2011 *Dear Colleague Letter*. The focus of this study was to examine UNC constituent institutions’ policies and procedures for addressing incidents of sexual violence in a prompt and equitable manner.

Conceptual Framework

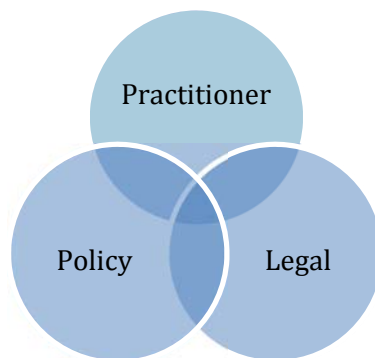
Policy, as defined by James Anderson (2006), is “a relatively stable, purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern” (p. 6). This definition assumes that policy has been tested over time and found to be stable with purpose. What is lacking is an explanation of how this stability and purpose have been established. In OCR’s policy (2001; 2011) on addressing sexual harassment and

violence, there are foundational aspects to the prompt and equitable standards as described later, but the OCR policy lacks an explanation of step-by-step procedures ensuring accurate implementation of this standard. To be understood, a policy must be broken down into “a number of different regular events and stages” including dynamics, implementation, and impact (Heck, 2004, p. 55). For the policy on addressing sexual violence on college or university campuses, the first two stages (e.g., dynamics and implementation) are represented in the review of literature.

The conceptual framework for this critical policy analysis study incorporated both the legal and the practitioner’s lens as they interact with policy. Figure 1 illustrates the intersection between the legal lens, the practitioner’s lens, and the policy.

Figure 1

Intersection of Conceptual Framework



The legal framework focused on the Federal policy and guidance as well as the local (North Carolina) laws and UNC policies. The practitioner’s lens incorporated the day-to-day process of addressing and adjudicating cases, specifically those involving alleged sexual assault. This incorporation of theory (guidance) and practice into policy development assist university administrators in explaining the “dynamics of policy interactions (e.g., conflicts,

participants, strategies for attaining goals, mobilization of support, formal legislation)” within the scope of addressing sexual assaults (Heck, 2004, p. 55).

It is possible that the interpretation and implementation of policies guiding the adjudication of sexual violence cases may skew support more in favor of either the complainant or the respondent instead of providing the equity intended by the authors of the guidance (Lewis et al., 2014; Stone, 2012, p. 57). The current study sought to examine not only the policies and procedures, but also how they are interpreted and implemented. The intersection of guidance (e.g., federal, state, system, institutional) and practice set the stage for future policy development and implementation (Heck, 2004, p. 58). This framework can be utilized to examine other policies, including but not limited to those relating to sexual violence, since policies at UNC constituent institutions are constantly under review and evolving due to the changing society.

This framework seeks to uncover how the policy meets the changing social demands being placed upon it (Anderson, 2006, p. 7). The feedback received from the policy implementation leads to changes in how future policies are developed. Policies serve as “sources of information and meaning” about how “individuals understand their rights and responsibilities” as members of society (McDonnell, 2009, pp. 66-67). Ultimately, this policy change comes from grounding educational policies “in broader institutional contexts, that pay attention to informal norms and behaviors as well as to formal institutions, and that understand the causal processes that constrain change or provide opportunities and critical junctures for new policies to emerge” (McDonnell, 2009, p. 68).

The present study investigated the sensitive topic of adjudicating sexual violence cases through campus procedures. The study addressed the gap in knowledge about how

institutions are focusing on the changing landscape surrounding sexual violence on college campuses and goes beyond what the formal rules of guidance state to what the “informal practices can covertly exclude” (Stone, 2012, p. 44).

Summary

Chapter 2 has provided an overview of the relevant literature including aspects of prompt and equitable as well as guiding documents from the federal, state, and local levels. Chapter 2 has also presented the context for the present study through identifying the gaps in the literature and this study’s conceptual framework. Chapter 3 will discuss the methodology and convergent parallel design guiding this study.

Chapter 3: Methodology

The purpose of this study was to analyze and interpret current processes and procedures, as they relate to OCR's prompt and equitable standards, which the UNC university system uses when addressing sexual misconduct cases (Penney, Tucker, & Lowery, 2000). The review of literature on the evolution of policy and relevant guidance provides the framework for analyzing the current practice of addressing sexual misconduct cases within the collegiate setting. This chapter provides a methodological overview of this study, including the paradigm guiding this research, an explanation of the instruments utilized in collecting the data, the participants involved, and the methods of data analysis.

Overview of Methodology

This study employed a critical theory methodological approach. Usher (1996) describes critical practice as “the detecting and unmasking of...practices that limit human freedom, justice, and democracy” (p. 22). Glesne (2011) explains that critical theory research provides a critique of “historical and structural conditions of oppression and seeks transformation of those conditions” (p. 9). Investigations of these conditions of oppression help us uncover distortions that have shaped our realities. In order to reveal these distortions, critical theorists focus on spoken and written language in order to reveal “what can and cannot be said, who can speak with the blessings of authority and who must listen, whose social constructions are valid and whose are erroneous and unimportant” (Kinchelov & McLaren, 2000, p. 284). This language or discourse was analyzed by looking at the relationship “between thought and action, theory and practice” (Glesne, 2011, p. 10). The

discourse or texts for this study consisted of participant interviews, federal guidance, North Carolina law, UNC system policy, and institutional policy.

Critical theory addresses women's rights and their mistreatment by examining the relationships between theory and practice (Maguire, 1996). Critical theory was utilized as a framework for this research because of the power dynamics inherent within the process of adjudicating sexual misconduct cases and because of the focus on achieving equity for all parties (Maguire, 1996). Critical theory is applicable to variations of sexual violence constructs (male/female, male/male, female/female, female/male) because all cases include a power dynamic. This study also used critical theory as a way to analyze policies for adjudicating sexual violence cases. Fairclough (1989) describes *critical* as "the special sense of aiming to show up connections which may be hidden from people – such as connections between language, power and ideology" (p. 5). The discourses in this research included written responses, written documents from the UNC campuses, written federal, state, and UNC system guidance, and verbal responses from the participant interviews.

With the power dynamic at play in critical research, it is important to understand the relationship between the researcher and the participants (Bloom, 1998). In particular, researchers need to reflect on "their own roles as researchers" along with "their histories, values, and assumptions in relationship to the research" (Glesne, 2011, p. 11). Understanding the purpose and roles of the researcher and participants can establish a level of respect and rapport for each other's work in the field. Critical theory also allowed for critical reflexivity on the actions, interactions, power, and authority surrounding sexual violence policies on college campuses and its impact (Glesne, 2011). The reflective practice

was used to encourage deeper understanding to *why* and *how* we, as practitioners, interpret and develop policies addressing sexual violence.

Research Paradigm and Research Design

A convergent parallel design was utilized for this study. This allowed data obtained through different means, namely, through surveys, interviews, and policy documents, to be triangulated so as to produce coherent results about a single phenomenon (Creswell & Clark, 2011; Morse, 1991). To understand this design, one must explore the meanings of both convergent and parallel. In this context, *parallel* means that the quantitative and qualitative methods are independent of one another (i.e., the results of one does not determine the results of the other). A *convergent* approach allowed the qualitative data to illuminate the quantitative results, and vice versa, when the two sets of results are compared to one another (Jick, 1979). This parallel convergent approach allows for an investigation that addresses not only written policy, but also why it exists and how it works. According to Patton (1990), the “intent in using this design is to bring together the differing strengths and non-overlapping weaknesses of quantitative methods with those of qualitative methods” (Creswell and Clark, 2011, p. 77). Jick (1979) encourages the mixing of quantitative and qualitative methods by describing them as “complementary rather than as rival camps” (p. 602).

Following Fairclough (1989), the present study was conducted in three stages: understanding the guiding policy, examining written institutional policy, and understanding how the written institutional policy is interpreted and implemented into practice (Fairclough, 1989, p. 26). This research required me to:

- Analyze how *prompt* and *equitable* are addressed in guiding policies through the examination of the *2011 DCL* and UNC system policy,

- Determine how *prompt* and *equitable* are translated into institutional policies through the examination of individual university policies and Codes of Conduct,
- Investigate how *prompt* and *equitable* are interpreted by institutional actors charged with implementing the policy.

This critique examined how sexual misconduct policies work by identifying preexisting themes (*prompt* and *equitable*) that appear throughout the guidance, institutional policy, and implementation of those policies.

Using a convergent parallel design to evaluate the prompt and equitable standards, I obtained quantitative results combined with follow up interviews with participants “to help explain those results in more depth” (Creswell, 2009, p. 121). This mixed-method design was most suitable for this study because it allowed me “to obtain different but complementary data on the same topic” (Morse, 1991, p. 122). Additionally, the convergent design was used because there was “equal value for collecting and analyzing both quantitative and qualitative data to understand the problem” of adjudicating sexual violence cases (Creswell & Clark, 2011, p. 77).

Expanding the qualitative data with the quantitative analysis added “depth and breadth” to address the multitude of questions that could not be investigated by utilizing only one method (Borman, Clarke, Cotner, & Lee, 2006, p. 129). This parallel design was utilized when comparing the written university policies and guidance with the survey and interview responses. When examining sexual violence policies, it was important not only to know the policies and procedures, but also why they are and how they are implemented.

Research Questions

The following research questions guided this study:

1. How do the UNC constituent institutions' policies and procedures reference *prompt* and *equitable*?
2. How do the primary sexual violence adjudicating individuals at UNC institutions define *prompt* and *equitable*?
3. How do they implement these standards in their policies and procedures?

Role of Researcher

My role as researcher was to analyze the data gathered through the interviews, surveys, and document reviews through a critical lens while examining how the implementation of these procedures apply to the parties involved. Glesne (2011) states that the critical researcher “critiques historical and structural conditions of oppression” (p. 9) and “challenges the system in which the oppression resides” (p. 10). Through my analysis of institutional policies and procedures, I had to critique the adjudication of sexual misconduct cases, in order to ensure that the prompt and equitable standards of adjudication are being met.

As the researcher, I also served as a peer and colleague to the participants because I hold a position within Student Conduct at one of the UNC constituent institutions. As a fellow conduct review officer, our interactions can be more in-depth because we use similar vocabulary in our professional positions and review similar literature regarding guidance. Even though we work at different institutions, our positions do not entail that we compete against one another, and sharing information about our work does not detract from any of the

institution's success, as it might in the case of an office such as recruitment or admissions, for whom the sharing of strategies could be detrimental.

As a male in the field of student development, I am in the minority relative to my female counterparts, but I believe that the understanding of responsibilities student conduct professionals have and their mutual respect counterbalances any gender bias that may exist. My gender also served as a limitation due to the nature of the topic and given that, as mentioned previously, most perpetrators are male. Being a male was not necessarily an inherent limitation on my ability to conduct research on this topic. I needed to be conscious of the possibility that, participants may anticipate that I may empathize with a male respondent more than a female complainant, and they may be cautious about how they respond to questions.

Data Collection Instruments

This study incorporated two instruments that assisted with the convergent parallel design methodology. The first instrument was a baseline survey provided for quantitative analysis. The second instrument was a set of interview questions addressing the qualitative component of the mixed methodology. Utilizing both of these instruments helped address the multiple lenses through which policy is viewed.

The quantitative survey is based on the National Baseline Study survey developed by the Association for Student Judicial Affairs' (now ASCA) Inter-Association Task Force addressing "the ability of educational institutions' disciplinary processes to address allegations of sexual assault adequately and fairly" (Penney, Tucker, & Lowery, 2000). This survey was used with the written permission of Dr. John Wesley Lowery, co-chair for the National Baseline Study. The survey questions were validated by the Inter-Association Task

Force, which consisted of members from the following associations:

- Association of College and University Housing Officers – International (ACUHO-I),
- American College Personnel Association, Commission XV (ACPA),
- National Association of Student Personnel Administrators (NASPA),
- National Association of Women in Education (NAWE),
- National Interfraternity Council (NIC),
- International Association of Campus Law Enforcement Administrators (IACLEA),
and
- Southern Association of College Student Affairs (SACSA).

The survey was provided electronically (e.g., web-based) to the primary administrator responsible for oversight of adjudicating sexual violence cases at each of the 16 higher education UNC institutions through an email link. The survey was designed through Select Survey provided by the Institutional Review Board at Appalachian State University. The survey was not anonymous due to the necessity of cross-referencing survey responses with written institutional policy and follow-up phone/Skype interviews.

The interview questions were related to the prompt and equitable standards addressed previously by OCR. The interview questions were separated into three sections. The first section contained baseline questions on the institution’s policy, its development, and its availability to students. The second section focused on the prompt standard and on timeframes associated with “major portions” of the process (OCR, 2011, p. 9). The last section was designed to inquire about the equitable rights of both the complainant and the respondent, referenced through the 2011 *DCL* and NC regulations on attorneys.

Data Collection Procedures

After I had received the responses to the written questionnaire, I contacted the primary administrator responsible for oversight of adjudicating sexual violence cases at each of the 16 higher education UNC institutions. If these individuals were willing to participate in the study, I emailed each of them an informed consent waiver. I then scheduled a Skype or phone interview with each of them within one month of the waiver being returned, and sent each an email containing a blank copy of the initial procedural baseline survey and a confirmation of the date, time, and method of the interview.

Prior to the interview (Appendix D), I collected the consent waiver, initial procedural baseline survey (Appendix C) from the participant, and a link to the university's policy and procedures for addressing sexual violence. The interview consisted of a series of additional questions relating to the prompt and equitable standards (see Appendix D), along with any necessary follow-up questions to clarify their written responses and to inquire about connections between the survey and the institutions written policies and procedures. Participants were informed that if, following the initial review of the interview and materials, there were additional questions, follow-up interviews would be conducted. The interviews were audio recorded and transcribed so they could be coded for themes.

In addition to conducting the written survey and the interviews, I reviewed documents used by each institution for the adjudication process including, but not limited to, the Codes of Student Conduct, student handbooks, and university policy manuals. The written policies were reviewed via the institution's website or provided as standard operating procedures (SOP) by the participant. To summarize, the data collection phase of this study consisted of the following steps:

1. Provided agreement to participant;
2. Obtained a signed informed consent form from participant by due date;
3. Sent the link to the online survey to the participants on July 11, 2014;
4. Sent follow-up emails for survey participation every two weeks (August 1, 2014 and August 15, 2014). Survey closed on August 29, 2014.
5. Downloaded the official institutional policies for adjudicating sexual violence cases through the student disciplinary, or similar relevant, process(es) from the institution's website; and
6. Collected survey data through a secured network for the researcher.

All responses were considered even if the surveys or interviews were incomplete, since participants were permitted to omit answers to the survey and interview questions.

Participant Selection

An initial phone call was made during the Summer 2014 semester to the director of each UNC institution's Office of Student Conduct, or similar office (e.g., Office of Student Rights and Responsibilities), to identify the individual who would serve as the participant for the study. After identifying the potential participants, I phoned them in order to confirm their credentials as they related to the study, to seek their participation in the study, and to review the confidentiality protocols associated with this study.

The participants for this research consisted of the Director of Student Conduct or their designee, or other applicable offices adjudicating sexual assault cases (e.g., ECU's Office of Student Rights and Responsibilities, UNC's Equal Opportunity/ADA Office), from each of the 16 baccalaureate degree granting UNC system institutions (See Appendix B). The 17th UNC system school was not included in this study because it is a residential high school.

The included institutions consisted of 4 large institutions (enrollment of 20,000 or more), 5 mid-sized institutions (enrollment of 10,000-19,999), and 7 small institutions (enrollment of less than 10,000). Five of the UNC institutions qualify as a Historically Black College or University (HBCU).

Data Analysis

The data (quantitative survey responses, qualitative interview responses, and written or oral policy implementation) were analyzed using different but complementary methods. The quantitative data (e.g., initial survey responses) were analyzed by the frequency of responses and cross tabulations. These frequencies and cross tabulations allowed for analysis of commonality of various practices to identify any trends in practice based on institutional size.

The review of the qualitative data (e.g., interviews and official institutional policies) consisted of analyzing and coding responses and instances relating to the prompt and equitable standards. The coding also involved identifying themes that are interrelated throughout the policies, interview responses, and the quantifiable survey responses (Creswell & Clark, 2011). The coding and themes from the policies, interview responses, and survey data were compared to the federal and state guidance to determine congruency and relationships between each other.

Each portion of the quantitative and qualitative data was important in understanding the implementation of the sexual violence policies. Understanding the individual responses and perceptions was important because “organisations (sic) do not make changes – individuals do” (Maguire, Ball, & Braun, 2013, p. 335). Beyond the individual, policy implementation becomes complex involving “interpretation and translation” from the

overarching guidance, into individual institutional written policies (Maguire, Ball, & Braun, 2013, p.335; Thomas, 2004; Vago, 2012). Regarding promptness, all time frames, however brief, and the process surrounded those time frames, were recorded in a timeline by institution and compared with the other institutions within the study. These time frames were then be compared with the OCR and UNC policy standards. The information relating to equity was coded based on the rights of the respondent, the complainant, and the role of the university within the entirety of the process. Just as the OCR and UNC policies need to both be reviewed, other individual institutional policies may also need to be assessed because Stone (2012) reminds us of the ability of joining multiple policies to create one cohesive policy (e.g., a university may have an overarching University policy as well as a Code of Student Conduct governing its process).

Both the quantitative and qualitative data were analyzed with the remaining constituent UNC institutions involved in the study and analyzed for common themes. Themes were compared to the OCR standards, current OCR resolutions, and recent sexual violence case law assessing additional reasoning for concerns within the policy design. *Prompt* and *equitable* are the overarching guiding categories. Within each category were themes that emerged along with explanations and connections with and between the survey, policies, and interviews. These themes consisted of those concepts identified by the research instruments (e.g., survey and interviews) and the official institutional policies. Figure 2 illustrates the coding structure in which this analysis was constructed.

Figure 2

Example of Data Analysis

Prompt	Equitable
Theme 1	Theme 1
- Survey	- Survey
- Policy	- Policy
- Interviews	- Interviews
Theme 2	Theme 2
- Survey	- Survey
- Policy	- Policy
- Interviews	- Interviews

The data analysis for this convergent mixed methods design was conducted through the following steps:

1. Collected survey (Appendix C) and conducted phone interviews (Appendix D) concurrently.
2. Analyzed the survey data by frequencies and cross-tabulations in order to analyze the differences between institutions. Identified responses and code under the prompt and equitable themes.
3. Through rereading my notes and recordings of phone interviews, coded the texts initially under the prompt and equitable themes.
4. Analyzed the policy documents by each institution and code under the prompt and equitable themes. (Steps 2-4 may be completed concurrently.)
5. Following the initial coding process (Step 3), reviewed the survey and interview codes identifying any subcategories that have emerged.
6. Merged the data analysis from Steps 5 into one.
7. Compared the merged results with research questions (Creswell & Clark, 2011).

Creswell and Clark (2011) suggest that the data set can be presented as “a side-by-side comparison for merged data analysis” through a “discussion or in a summary table so that they can be easily compared” (p. 223). The data were presented under the prompt and equity headings through the merging of the survey responses, interview responses, and policy analysis.

Ethical Considerations

Approval through the Appalachian State University Institutional Review Board (IRB) was sought and received before the research took place. All participants were fully informed of the purpose and nature of the research and of their right to withdraw from the research at any time. Although I, as the researcher, know the identity of the participating institutions and individuals, in all documents I use a pseudonym for each institution and participant (e.g., Institution A, Participant A, etc.). These pseudonyms were used throughout the transcription, analysis, and presentation of the results.

Validity

According to Stratton (1997), “there is no guarantee that such reliability is possible, given that researchers are likely to differ in their ‘motivational factors, expectations, familiarity, avoidance of discomfort’” (p.116). Therefore it has to be accepted that the interpretations of the data in this report are subjective and another researcher may interpret the data differently. Patton (2002) states that the triangulation of data sources (e.g., guidance and policy documents) and perspectives, or interpretations, of the same data set (e.g., procedures) can offer validity to the study. Thus in order to enhance the validity of the study, triangulation was used to identify trends of the adjudication process. The relationship between the participants and the researcher also helped alleviate the discomfort, guardedness,

or defensiveness that may normally be felt by a professional who is being questioned about how s/he adjudicates sexual violence cases. This professional relationship and understanding of positions increased the trustworthiness of the responses and reliability of the information provided.

In addition to triangulation, another way to increase validity is to use “member checking to determine the accuracy of the qualitative findings” by taking portions back to the participants to determine whether the perceptions of the results are accurate (Creswell, 2009, p. 191). Following the analysis, a selection of the participants received the results from Chapter 4 and were invited to provide feedback regarding the accuracy of the information. This feedback was then incorporated in the findings and analysis chapters where appropriate.

My professional position in Student Conduct added to the validity of the study. The relationship between the participants and the researcher also helped alleviate the discomfort, guardedness, or defensiveness that may normally be felt by a professional who is being questioned about how s/he adjudicates sexual violence cases. This professional relationship and understanding of positions increased the trustworthiness of the responses and reliability of the information provided.

In conclusion, continued efforts were made to ensure the trustworthiness of the data and analysis in this study. Themes were compared through triangulation and analysis of the guidance documents, institutional policy, and through the transcription of participant interviews. The data collection and analysis were conducted with the understanding of the researcher’s and participant’s experiences in addressing sexual violence cases.

Summary

This chapter has reviewed the methodology used within this study of the adjudication of sexual violence cases by reviewing policy (theory) and procedures (practice) through the critical lens. Through this methodology, the research questions were examined, critically analyzed, and brought to light underlying themes and reasoning for the current state of practice.

Chapter 4: Findings

The purpose of this study was to discover how colleges and universities adjudicate sexual violence cases in a prompt and equitable manner, through an examination of the institutions' policies and procedures. This examination was conducted by means of an online survey, follow-up interviews, and a review of each participating institution's published policy on sexual violence. The following research questions guided the study:

1. How do the UNC constituent institutions' policies and procedures reference *prompt* and *equitable*?
2. How do the primary sexual violence adjudicating individuals at UNC institutions define *prompt* and *equitable*?
3. How do they implement these standards in their policies and procedures?

This chapter provides an overview of the institutional demographics, the participants in this study, the general procedures for adjudicating sexual misconduct cases, and the results of the study as they relate to the concepts of *prompt* and *equitable*. The results are separated under the two main headings of *prompt* and *equitable*. Under each of these headings, data was divided into the themes that impact the prompt and equitable resolution in the adjudication of sexual misconduct cases within the university disciplinary proceedings. These included case resolution timelines, the role of the university, the rights of the respondent and complainant, the nature and roles of the adjudicating body, the role, if any, of attorneys, and the appeals process. These themes were identified through the survey and interview responses as well as the examination of institutional policy.

Finally, this chapter provides emergent themes that developed from the interviews that have not been addressed in other areas of the chapter.

Institutional Demographics

The parallel convergent design of my study (Creswell, 2011) was grounded in the survey responses, the follow-up interviews with participants who responded to the research request, and my review of each university's institutional sexual misconduct policy for students. The University of North Carolina system is comprised of seventeen campuses, sixteen higher education institutions, and one residential high school. Ten of the sixteen UNC system higher education institutions completed the online survey for a return rate of 62.5%. Eight of the ten participants (80%) who completed the survey continued on to the interview portion of the study. The breakdown in institutional size of the universities that completed the survey included 30% classified as large institutions, 40% as medium-sized institutions, and 30% as small institutions. Of the participating institutions, 20% were classified as Historically Black Colleges or Universities (HBCUs). Table 2 displays the institutional demographics and how they will be referenced throughout the remainder of this dissertation.

Participants had the option to identify additional information about their institutional type. These types are intended to help clarify the variety of institutions within the UNC system. Table 3 shows the distribution of participants by the institution type in which they are employed.

Table 2

Institutional Involvement

	Institution Size	Survey	Interview
Institution A	Large	X	X
Institution B	Large	X	X
Institution C	Large	X	X
Institution D	Medium	X	X
Institution E	Medium	X	X
Institution F	Medium	X	X
Institution G	Medium	X	
Institution H	Small	X	X
Institution I	Small	X	
Institution J	Small	X	X

Note. Each Institution has a corresponding participant (e.g., Institution A/Participant A)

Table 3

Characteristics of Responding Institutions

Institution Type	Frequency
2 year	1
4 year	9
Graduate	4
Public	8
Residential	4
Commuter	2

Information was also gathered about the participating individual from each institution, including their title (Table 4), number of years in current position, and whether they were responsible for oversight of the student conduct process at their respective institutions (Table 5). The mean number of years the participant had been in their current position was four years (averaged to nearest whole number).

Table 4

Title of Participant

Title	Frequency
Associate Director of Student Conduct	4
Director of Student Conduct	2
Assistant Dean of Students	1
Associate Dean of Students	1
Dean of Students	1
Deputy Title IX Coordinator	1

Table 5

Oversight of Student Conduct

Responsible for oversight of the conduct process	Frequency
Yes	7
No	3

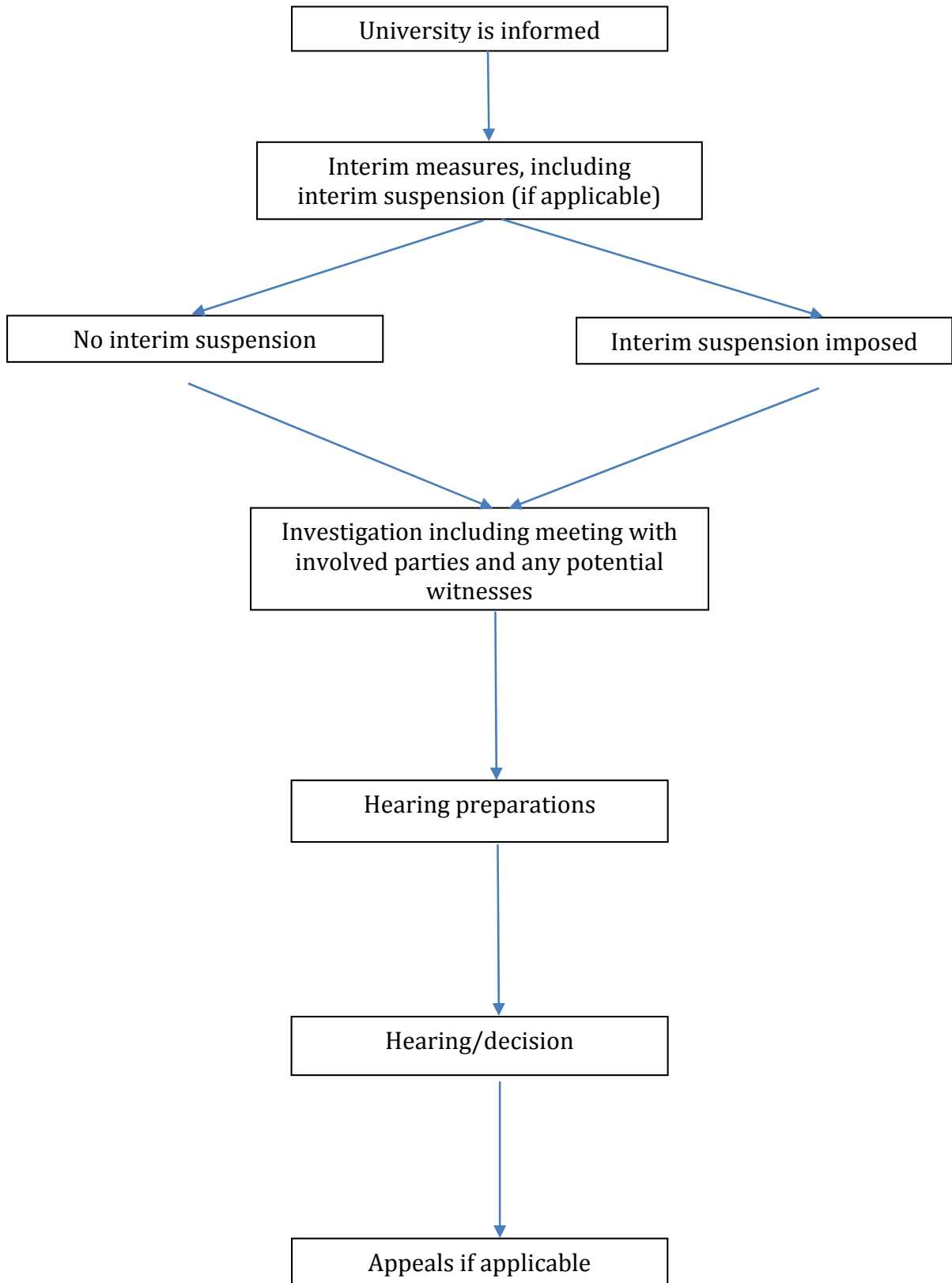
In order for universities to address sexual misconduct cases in a prompt and equitable manner, they must educate students about campus policies (OCR, 2000). These policies guide respondents and complainants about how their case(s) should be addressed as well as provide an understanding of their rights throughout the process. Having knowledge and understanding of these policies can help respondents and complainants determine whether their case(s) are being addressed in a prompt and equitable manner according to the standards referenced by their respective institutions. The participants indicated in their survey responses that students' knowledge of their policies come through the Code of Student Conduct (mail-outs or website), First-Year student orientation, online modules, active programming with offices and divisions around campus (e.g., presentations with university housing and athletics), and multiple passive programming (e.g., flyers, posters, and door hangers) efforts.

Although institutions may publicize policies, it is more important to do so in a manner that is easy to locate (OCR, 2004b, 2008b). Moreover, the policies should contain accurate information as it relates to the university's procedures and its references to overarching federal and state guidance (OCR, 2005c). The following is a brief overview of the process for addressing sexual misconduct.

Procedural overview

This section presents a generic overview of the structure for university disciplinary proceedings. It is not intended to be a template of best practice; rather, it is intended to provide context to help the reader better understand the prompt and equitable sections below. To begin the process, the university must first be made aware of an alleged incident. This may occur through a variety of means including notification by local or university law enforcement, by a complainant, or by a third party. The university then needs to determine appropriate next steps. These may involve speaking with the complainant, applying immediate interim measures of safety (including interim suspension of the respondent), or deciding whether to proceed through the university disciplinary process. Figure 3 provides a general flow for addressing sexual misconduct cases.

Figure 3



In a given case, a university would need to determine whether, and to what extent, an investigation was necessary. The university might also want to speak with involved parties including the complainant, the respondent, and any witnesses to the alleged violation, before settling on a formal course of action. If the university chooses to proceed through its disciplinary proceedings, the university would need to determine the adjudicating body that would hear the case, affording rights to the involved parties as specified in the policies and procedures. These rights may cover what can occur during the hearing, who can participate (e.g., advocates, attorneys, support persons, witnesses, etc.), and what happens after the hearing (e.g., notification of outcomes or appeals). The following section presents data gathered through this study as it relates to the goal of a prompt and equitable resolution.

Prompt

The Department of Education's Office for Civil Rights addresses the issue of promptness eighteen times within the nineteen page *2011 Dear Colleague Letter* to colleges and universities. The institution's obligation to be *prompt* in addressing sexual misconduct applies not only to case resolutions, but also to initial responses and to any major stages leading up to a case resolution. The following subsections describe the areas identified in this study that address issues of promptness within UNC system institutions' policies.

Case Resolution Timeline. The timeframe in which an incident of sexual misconduct can be addressed varies based on factors that include the institutional type and size, the available resources for conducting an investigation, and complexity of the case. Within these constraints, the Office for Civil Rights has strongly encouraged institutions to have "designated and reasonably prompt timeframes for the major stages of the complaint process" (OCR, 2000, p. 2; OCR, 2001a, p. 2; OCR, 2004a, p. 3). Two-thirds of respondents

in this study indicated that their institution has designated time frames for major portions of the adjudication process of sexual misconduct cases (Table 6).

Table 6

Time Frames

Designated Time Frames	Frequency
Yes	6
No	3

Note: Participants could choose to not answer the question

The Office for Civil Rights also suggests that institutions resolve sexual misconduct within 60 days (OCR, 2011). Table 7 illustrates the self-reported timelines that UNC institutions meet when resolving sexual misconduct cases.

Table 7

Resolution Timelines

Resolution Timeline	Frequency
Less than 60 days	4
60 days	1
More than 60 days	1

Note: Participants could choose to not answer the question

Additionally, Institutions E and J stated that they begin a preliminary investigation within one day of the initial report. Only Institution D identified a statute of limitations for filing a report, which was 180 days. This 180 day time frame mirrors OCR’s standard, as described in the Morgan State University’s resolution letter (2003c) which states that “OCR, generally, will not investigate a complaint of discrimination that is more than 180 days old” (p.3).

Although there were some set time frames listed in individual institutional policies, the actual time frames for resolutions varied. Participants A, B, C, and F expressed a desire to complete more of the resolutions in a timeframe shorter than that of the 60 day OCR

guidance. Participant B stated that they would “love for it to be shorter but understanding how complicated those investigations could get, . . . adjudicating in a shorter time span is not always realistic.” However, six of ten participants expressed that outside constituents are not considering extenuating circumstances when examining a school’s ability to resolve a case in a timely manner.

The majority of participants expressed the importance of ensuring that each case’s timeline is determined on an individual basis depending on the circumstances surrounding the incident. Participant D indicated that having a set timeframe for all sexual misconduct cases would “push an institution to try to meet a deadline and maybe not be as thorough with their process.” Participant B stated that there are “unknown factors that people outside the system may not know or be able to realize that can make meeting that time more difficult.” Participant D cautioned that processing a case for the sake of meeting a deadline, regardless of the extenuating circumstances, negates the educational mission of the disciplinary process of working with the student(s) as opposed merely processing the case.

Participant A stated that regardless of the time frame, the university should continue to “keep parties informed of what is going on” as it relates to progress of the resolution process. Informing both parties allows the complainant and respondent to promptly respond to new information and updates in the development of the investigation and case review. This practice of continuing to update the students is one aspect of the university’s role in the adjudication process. The following section identifies other aspects of the university’s role as they relate to prompt resolution.

Role of the University. The university becomes involved once the institution has received notification of a possible incident of sexual misconduct involving one of its

students. The institution may choose to make contact with the complainant before any additional actions are taken. This can be done for a variety of reasons, including but not limited to:

1. The complainant wishes to remain anonymous, which can limit the institution's ability to adjudicate the case;
2. The complainant only wants to inform someone of the incident, but not pursue adjudication through the university system; or
3. The complainant is choosing to pursue the matter solely through the legal system.

Although the university can proceed without the complainant's consent, the university typically serves as a facilitator in the process and assists the involved parties in understanding potential next steps.

Participant D stated that each incident should be addressed on a case-by-case basis, even as it relates to the timeframe associated with the adjudication process. Participant D explained that when an institution has to take into account the schedules of the students involved, the board members, and the investigator(s), the process is "at their mercy a little bit" and there should be a "good faith effort" in completing the processes in a timely manner. Although the university may be at the mercy of others' schedules, Participant E stated that "we should be hands-on in the process and we should make it our business to be fair, impartial, and swift but not rushing to judgment in cases." To help institutions be *prompt* yet not rushing to a conclusion or resolution, student rights have been identified by institutions for responding to allegations of sexual misconduct.

Rights during the disciplinary process. The complainant and respondent are each afforded rights throughout the university disciplinary processes. These rights will be

explained in more detail under the equitable section. The due process rights as indicated by the UNC System Policy 700.4.1 are:

1. Notice should be given when addressing cases through the university disciplinary system,
2. There should be an opportunity for a hearing, and
3. The decision reached should be neither arbitrary nor capricious.

The UNC System policy 700.4.1 (2013) also states that complying with these minimum standards will provide due process for students going through the university's disciplinary process. However, as it relates to a prompt resolution, Participant A indicated that a consultant reviewing the university's processes stated the institution provided "too much due process" that complicated the system, expanding "the timeline of the case resolution date." Institution D expressed similar concerns and provided an example of how their policy does not limit the number of witnesses that can be invited to participate in the hearing. Participant D went on to state that the university has "to balance the efficiency and effectiveness of the process because someone can bring as many witnesses as they want to," but the institution must determine how much is relevant to the case.

Ultimately, UNC system institutions are only required to abide by the aforementioned due process rights in order to be in compliance. Although seven of the ten participants indicated that their processes are intended to be educational, Participant D stated that they do so by providing additional rights to the complainant and respondent (e.g., the right to provide opening and closing statements, the right to question material, etc.). Participant B expressed concerns that too many additional rights beyond basic due process, although well-intentioned, may extend the timeline of process and delay a prompt resolution of the incident.

Another component of the process that can determine the timeline is the formulation of the adjudication body for sexual misconduct cases.

Adjudicating bodies. The structure of individual(s) or boards charged with adjudicating sexual misconduct cases should be reviewed when examining an institution's ability to resolve sexual misconduct cases in a prompt and equitable manner. The structure of the adjudicating body can affect the promptness of case resolutions depending on the schedules of those involved in the adjudication. Each UNC institution has the ability to construct its adjudicating body based on the institution's environment and resources. Beyond scheduling difficulties, the composition of the adjudication body can also create barriers for students who may face re-victimization through the telling and retelling of their experience. For example, Participants B and D both indicated that it may be easier for students to share their information with a single member hearing board as opposed to a board comprised of multiple members. Table 8 illustrates the adjudication bodies available to resolve sexual misconduct cases at the UNC institutions who participated in this study.

Additionally, participants were asked to indicate whether their sexual misconduct hearings were formal or informal processes. Eighty percent of participants indicated that their processes were formal, and 30% indicated that it was possible to have informal processes. Since institutions may offer both informal and formal processes, the total is more than 100%.

Table 8

Persons involved in the investigation of reported sexual misconduct

Adjudication body	Frequency
Chief Student Affairs Administrator	2
Student Conduct Board	0
Administrative Board	2
Faculty Conduct Board	1
Student/Faculty Board	0
Dean of Students	4
Student/Staff Conduct Board	0
Student/Faculty/Staff Conduct Board	3
Special Hearing Board	2
Hearing Officer	7

Note. Totals will equal more than 10 because institutions could chose more than one answer.

Participants B, D, and H indicated they would prefer a single member hearing panel or administrative hearing board in order to assist with the time frame for adjudication. They stated that scheduling a board was already complicated by accounting for the schedules of the respondent, the complainant, and any advisors. The process of scheduling becomes more complicated when trying to couple these schedules with four or five board members. Regardless of the nature of the adjudicating body, the involvement of other individuals, like attorneys, may also impact the promptness of resolving sexual misconduct cases.

Attorneys. Based on the North Carolina General Statute §116-40.11, passed on July 26, 2013, attorneys are allowed to represent students in university disciplinary proceedings that do not involve academic integrity violations or are not heard by a conduct board fully comprised of students. Attorneys may also be present during meetings with complainants and respondents. As a result of an attorney’s schedule, it may be hard to find a time that meets the attorney’s availability, and the length of the individual meetings may be extended because of an attorney’s questioning. For example, Institution E modified its policy based on

attorney participation to allow an extra day to respond to the university's meeting request in case the parties involved would like to arrange for legal counsel. The same can also be said of the extension of the hearing processes. As for scheduling the hearings, Participant D stated that the schedules of the complainant and respondent would be the priority.

Additionally, Participants A and C indicated that some attorneys do not understand the university system and have a difficult time transitioning from the court processes to the university disciplinary system. To assist with this transition, Institutions C and D require that attorneys complete a certification form indicating that the attorney has read and understands the respective institution's policy. The attorney may still have questions, but Participant D indicated that this requirement puts the responsibility of knowing the university processes back onto the attorney who chooses to participate in the process. Although NCGS mandates the opportunity for attorney involvement, there are no mandates for allowing appeal opportunities.

Appeals. The Office for Civil Rights recommends, but does not require, that schools provide an appeals process, so OCR does not incorporate any potential appeals within the defined 60 day time frame for resolving a case. If an appeal process is provided, however, an institution should define the structure of the appeal process. For example, Participant E questioned the university's own appeal procedures, which do not define how many levels of appeal could be made, and Participant E wondered where the appeal process would end because they "haven't identified a cutoff point at this point." Institutions C and D identified one level of appeal listed in their policy that could be utilized by the respondent and complainant.

When looking at the promptness for a final resolution post appeal, Participants C and E stated that their policies do not identify a timeline in which the decision on the appeal has to be made. Participant E added that this does not mean that it can take “three years to render a decision.” Participant C agreed and mentioned that the institution would “reference the *Dear Colleague Letter*” and “resolve this as quickly as possible.” Throughout all of the policies, the lack of clarity about who can appeal, when someone can appeal, and when the right to appeal expires leaves room for uncertainty about when the process is formally concluded.

Although resolving sexual misconduct cases in a prompt manner is important, it is not the only factor that institutions must take into consideration. Providing equity within the process is another priority mandated by the Office for Civil Rights. Some areas that overlap between the prompt and equitable sections involve the role of the university, adjudicating bodies, attorneys and appeals. However, the students’ rights during the disciplinary process emerge as an additional category.

Equitable

The Department of Education’s Office for Civil Rights addresses the issue of equity sixteen times throughout the *2011 Dear Colleague Letter* to colleges and universities. The Office for Civil Rights states that processes “cannot be equitable unless they are impartial” (p. 12). Impartiality can be viewed as not taking sides on behalf of either the complainant or the respondent, while ensuring that both parties have similar rights throughout the process. Additionally, impartiality can be seen when looking at the role of the university and the rights during the disciplinary process listed below.

Role of the University. As mentioned previously, public universities have the obligation to provide due process to the respondent and complainant of any case, including sexual misconduct cases. In addition to due process, Participants B, C, D, E, and F mentioned that one of the main goals of the disciplinary process is to educate individuals about their behaviors. Participants D and F added that some of the additional goals of the disciplinary process are to provide students an opportunity to learn, to protect the health and welfare of the University community, to help the student clarify his/her values, and to help students consider the consequences of their behavior prior to making decisions. These core values of the disciplinary processes are not meant to change when addressing sexual misconduct allegations. Participant F stated that “if we are moving away from the education of our core values then we are stepping into a bad place.”

Another common theme brought up about the university’s role is why universities are addressing sexual misconduct allegations, rather than having them addressed through the legal system. Participant F stated that “there’s an idea that we should be handling these cases in a way that our courts have never been able to successfully adjudicate.” Participants C, D and J emphasized that the university should be involved because it is “our responsibility to ensure a safe learning environment for everybody and sexual misconduct violates that expectation” and the disciplinary process is “intended to provide opportunities for people to learn and to protect the interests of the university as well as the health and welfare of the university community.” Participant C went on to state that within the legal system, these types of cases are “difficult cases to prosecute; prosecutors don’t take them on because the failure rate is too high for them,” but that the university can still provide accommodations to the victim, including no contact orders, altered class schedules, parking and room changes,

safety plans, and support. Regardless of the case's difficulty, Participant B stated that at a minimum the university should "fully investigate what happened, provide a well-established and well-promoted, for the lack of a better term, process" through which people can file complaints and "determine how the university needs to move forward" while educating individuals on their behavior and determining whether there is a threat to campus.

The other main role of the university that was consistently identified involved the university as a facilitator in a fair and *equitable* process (OCR, 2001c; OCR, 2011). All of the participants identified the obligation of the institutions to remain neutral through the adjudication process. It is not the role of the institution to favor one side but to offer equitable resources and support for all parties involved. This process can become somewhat convoluted when institutional policy, UNC system policy, and NC law each have components that guide an institution's processes. Participants B, C, and D expressed concerns about equity and fairness given that the UNC system policy 700.4.1 requires a "university official to present the case." Participant C stated that it did not seem fair for students who do not work with the process on a day-to-day basis to have to defend themselves opposite a university official who is involved in the disciplinary process on a daily basis. Participants B, E, H, and J mentioned that the reason for having a university official present the case is that it is the university's responsibility to provide information about an incident if the university official reasonably believes that it may be a violation of the institution's policies. Additionally, these professionals explained that it is not the intent of the policy to pit the university against a respondent. Rather, the purpose is to allow an employee of the university to provide information regarding why the university is pursuing such allegations under its Code of Student Conduct. Participant C stated that in order to

reduce the “university-versus-student” mentality, they would conduct the investigation, submit a report to the adjudicating body and identify another individual within the university, but not in Student Conduct, to present the case to the adjudicating panel.

Participants E and H shared that the university should provide support to both the respondent and complainant throughout the process. Participant A described this role as being “completely neutral” and said that the institution “should be very mindful of the fact that there are two people going through the process.” Participants A and J reiterated how “we should understand that we need to let the process carry itself out to render the decision because only then can we say that this decision was made using a fair and equitable process.” Participants A and J emphasized how this allows for consistency while allowing the same due process across all sexual misconduct cases. In order to help assess the equity of the process further, the next section examines the rights of the parties involved.

Rights during the disciplinary process. Prior to the *2011 Dear Colleague Letter*, all of the student disciplinary processes were primarily focused on the rights of the respondent. Gary Pavela, a former faculty member for the Federal Judicial Center in Washington, D.C., expressed concern that disciplinary processes would swing the pendulum from a respondent-focused system to a complainant-focused system, when in all actuality they should fall somewhere in between (G. Pavela, personal communication, February 27, 2012). The imbalance exists because institutions are struggling between how many and which rights should be afforded to involved parties. Participant J expressed concern about this pendulum swing because it “appears that we tend to place more favor on what the complainant thinks even if the evidence doesn’t support that.” Table 9 shows the rights afforded to the complainant or respondent within the participating UNC system institutions.

Table 9

Rights Afforded

Rights Provided to...	Number of Universities that afford this right to the:	
	Respondent	Complainant
Written notice of charges	10	9
A hearing with an impartial third party/parties	10	10
Opportunity to not incriminate self if facing off-campus charges	7	7
Opportunity to bring witnesses	10	10
Opportunity to face his or her accuser	7	NA
Opportunity to be represented by an attorney	10	10
Opportunity to bring a counselor to the hearing	7	7
Opportunity to tape the proceedings	2	2
Opportunity to directly question the other party	2	2
Opportunity to indirectly (through a third party) question the other party	8	7
Opportunity to question the complainant's witnesses	9	9
Opportunity to discuss his/her past relationship with the complainant	6	6
Opportunity to discuss the respondent's prior sexual history	0	10
Opportunity to discuss the respondent's sexual orientation	0	0
Opportunity to bring character witnesses	8	6

The data indicate that the majority of the specified rights are offered to both the complainant and the respondent. The three sections showing discrepancies between the rights of the complainant and those of the respondent involve indirect questioning, having the opportunity to discuss prior sexual history, and having the opportunity to provide character witnesses.

Participant A mentioned that although the rights are the same for both parties, these rights are not explicitly stated in their policy. However, in Participant A's policy, there are sections labeled *Respondent Rights*, *Respondent Responsibilities*, *Complainant Rights*, and *Complainant Responsibilities*, but the rights for the respondent appear, in the written policy, to outweigh the rights of the complainant. Conversely, Participant E stated that some rights

are implemented in the process, yet not defined in the university's policy (e.g., the right to face your accuser). All of the interviewed participants indicated that both the respondent and complainant should have the same rights; however, those rights may be worded differently or omitted because it would not be practical based on whether they are the respondent or complainant. For example, prohibiting disclosure of prior disciplinary records is more appropriate to emphasize when talking to the respondent rather than the complainant. Institution H has two sentences briefly identifying rights of the respondent, but no information regarding complainant's rights.

Participant D stressed that there is a difference between "equitable and equal rights" and that there are at least two perspectives from which these are viewed (e.g., the Respondent's and Complainant's). Participant D added that the more rights the parties are afforded, the more complicated the situation will become. The provision of rights may also become more complicated in cases involving multiple respondents and/or multiple complainants.

In order to provide equity, universities need to consider all aspects of sexual misconduct cases, including who is able to present the case (Table 10) and the level of involvement of other parties, including witnesses and investigators. Participants were provided a selected list or could indicate whether another individual could serve in this capacity. Participants also identified an attorney or non-attorney advocate, a university official (including university police, women's center, and residence life staff), and the Title IX Coordinator as other individuals who could present the case for the complainant.

Table 10

Case Presentation

Who presents the case?	For Respondent	For Complainant
Complainant/Victim	NA	5
Respondent	8	NA
Conduct/Judicial Affairs Officer	1	3
Student Advocate/Counselor	3	3
Campus Police	1	3
Institutions Legal Counsel	0	0
Faculty Member	0	0

Participant H not only presents the case information to the “chair and the panel members” but also sits with the panel during their private deliberations. Participant C appreciated the guidance provided by the *Dear Colleague Letter* (OCR, 2011) relating to equitable rights between the respondent and complainant because it helps create balance. For example, Participant C stated that although they thought the “victim could stay in and have access to everything that the respondent did, the *Dear Colleague Letter* gave us grounds to do so.”

Five of the nine institutions responded that they require the complainant to provide a written statement about the sexual misconduct before proceeding with formal on-campus charges. All institutions allow a written statement from the complainant even if it is not required. As with the concern about the adjudication body, a requirement to write the story down can be revictimizing to the complainant, due to the strain of telling and retelling the account. Although OCR does not require a written statement, it can be provided on behalf of the complainant by a third party, such as an individual to whom the complainant had previously told their account of the incident (Table 11).

Table 11

Complainant written statements

Who provides the complainant’s written statement	Frequency
Complainant	6
Campus Police/Security	5
Local Police	4
Rape Crisis Personnel	1
Institution’s Legal Counsel	1
Conduct/Judicial Affairs Officer	3
Investigator	3

Note. Institutions could chose to provide more than one answer.

Nine out of ten institutions reported that they do not expect the complainant to provide any additional information other than the initial statement (one institution declined to answer the question).

Several participants indicated the level of support provided to the respondent and the complainant as a concern. Participant H stated that there is a “survivor’s packet” provided through the counseling center for both the respondent and complainant, while Participants B, D, and F indicated that they have support resources available only for the complainant. Participant B stated that the respondents “get shafted from resources, time, and attention” and that Participant B has “been pretty vocal” about these concerns. Participant B expressed seeing “firsthand that it is a very stressful time for somebody whether they’re responsible or not responsible to be accused of such a thing.” Participant F reiterated this concern by stating that the institution hired a victim’s advocate but the individual only works with the complainants and “will not represent or support an alleged perpetrator.” The concern was also addressed by Participant F about how this support is instituted when there is a “same-sex situation where both of them believes the other is the perpetrator” and that they are the victim.

In reviewing the core value of safety for the university community, there are times at which all of the UNC institutions may implement interim measures requiring a student to be temporarily removed from campus pending the disciplinary process (e.g., interim suspension). Participant J indicated that Institution J “automatically issues an interim suspension” for students accused of sexual assault “pending the investigation and the findings of the investigation,” although it is not written directly in their policy. However, Institution D’s policy on interim suspension is more selective, indicating that interim suspension would only be imposed when the behaviors are dangerous to the university community or property, impact normal university functions, or impede the lawful activities of others. Participant J stated it would give respondents “...if possible, enough chance to come back if they are found not in violation.” Participant J went on to explain that the respondent may “get an incomplete and have another semester to play catch-up.” This impacts only the respondent, while the complainant would not have similar sanctions placed on him or her. This potential inequity can be extended if the resolution of the case is prolonged, leading to the respondent being removed for an extended period of time while the complainant continues enrollment. Participant D believed that “we have been very intentional in looking at all of our rights on both sides to make sure there is equity there.” The balance between offering enough rights and too many rights, and offering rights to the complainant and to the respondent is constantly changing.

Adjudicating body. Regardless of the adjudicating body, those resolving cases should be trained to handle such cases in order to ensure that the parties are being treated in an equitable manner, both during the hearing and the deliberations. All ten institutions indicated that they provided special training to those conducting resolutions regarding sexual

misconduct; however, the structure and facilitator of the training was not provided in the context of this research. Institution D's policy indicates that the make-up of those able to sit as board members are deans, faculty members, senior-level administrators, and student development professionals. Student involvement within these processes come under some criticism by both students and administrators. Among the responding UNC system institutions, none use hearing boards comprised only of students to review sexual misconduct cases, although students are utilized for 30% of the hearing procedures within the UNC system for adjudicating sexual misconduct cases (e.g., faculty/staff/student boards, etc.) as described in Table 8. While institutions value the opinions and perspectives of students in the adjudication process, many feel that the emotional cost to the student panel members sitting on these boards outweighs the benefits of their participation.

Although only 20% of the institutions have administrative hearing boards, Participant C indicated that they like this option because they "don't want to have to put our boards through that process because I think it's tough on the respondent and the victim, and it's tough on the boards who hear the case." Although Institution C's policy states that sexual misconduct cases may go to an administrative hearing, Participant C indicated that all sexual misconduct cases will do so, because very few, if any, get resolved through a mutual agreement or informal process between the respondent and complainant. Participants B and H, whose institutions currently use a hearing board, indicated that they would like for their procedures to consider, "much like another institution has, a single hearing panel, person, or officer to adjudicate those cases and not drag the respondents and complainants through the retelling of their story in front of four strangers in addition to everyone else that's in the room" due to the fear of revictimization. Institution J's administrator is the Dean of

Students, who reviews the information and determines a finding. Besides the formal process being offered, Institutions A, D, and E also provide informal resolution processes in their policies. Participants D and E reiterated that very few cases are resolved this way because a student would have to accept responsibility for the allegations for this to take place, and this is not normally the case.

Attorneys. As mentioned previously, the North Carolina legislation passed a law in fall 2013 allowing attorneys to fully represent students, at their own expense, in campus disciplinary procedures, other than those dealing with academic integrity violations, as long as the adjudicating bodies did not involve a hearing panel comprised of all students.

Although all of the UNC institutions already allowed attorneys to be present within the disciplinary proceedings, prior to 2013, they did not allow the attorneys to “fully represent” the student (N.C. Gen. Stat. §116-40.11). Participant D stated that “attorneys are nothing new; it is the role they’re playing in the process that is different.” Institutions B and D previously allowed attorneys to be present in their processes. However, attorneys did not have active roles; they were merely observers of the process. Table 12 shows the rights of the complainant and the respondent to have attorneys attend the hearing.

Table 12

Attorney participation

Can an attorney be present	For the Complainant	For the Respondent
Yes	9	10
No	1	0

Nearly all of the institutions have incorporated attorneys into their processes. However, one institution does not provide the opportunity for the complainant to have an attorney present,

although they do allow the respondent to have one present. The NCGS only requires that the respondent have this right but is silent regarding any such rights for the complainant.

The status of allowing an attorney to fully represent a student has not yet been clarified by the legal system or the UNC system. Institutions C and D allow an attorney to be afforded the same participation rights as the student as long as they do not provide testimony. However, at Institution E the board will ask questions of the student, but the student may defer the question to their attorney for a response. Participant F indicated the university's policy allow for the attorneys to ask questions because the student does not have to speak. Participant B clarified that attorney participation is the same "as the student will participate." This clarification would limit the attorney from participating at all if the student decides to not attend the hearing. Institution H allows attorneys to participate on behalf of the complainant and respondent, but there is no specific language in their policies regarding the level of participation. Participant H indicated that this lack of language allows for flexibility to include the attorney participation.

Several participants raised the question of how equity can be achieved when attorneys are involved. Participant C stated that their institution does not offer too many rights but the UNC system does, referring to attorney involvement. This participant continued to describe how the involvement of the attorney in the process is a mistake and stated that it minimizes the educational goal intended by the disciplinary process. Participant F questioned how to create equity if one party can afford an attorney and the other cannot. Additionally, Participant F wanted to know whether the university's General Counsel should have a role in sexual misconduct hearings. The university is not required to provide attorneys for those

participating, but if one party has an attorney participating, then Participant C stated they would inform the other party in order to assist with equity in the process.

Participants A and D mentioned that they will put their General Counsel “on notice” or allow them to be included as an advisor when another attorney is choosing to participate in the process. This is done in case the participating attorney begins to disrupt or delay the university disciplinary process. Others, like Participant C, stated that “our counsel has no presence in our process.” Regardless of the attorney involvement in the process, there will come a time that the initial portion of the case will conclude, leaving only possible appeals.

Appeals. Although OCR “recommends that schools provide an appeals process” it does not mandate that they do so (OCR, 2011, p. 12). Table 13 indicates whether an institution allows the complainant or respondent the opportunity to appeal the decision.

Table 13

Appeal opportunity

Opportunity to Appeal decision	Complainant	Respondent
Yes	8	10
No	1	0

The Office for Civil Rights states that if an institution allows for an appeal, they must do so for both parties involved in the disciplinary process (OCR, 2011). Table 13 displays one omitted answer for the complainant’s opportunity to appeal and one in which the respondent would have the opportunity to appeal but the complainant would not.

Although all of the institutions provide a right to appeal, they do not all provide the same rights within the appeal process. In addition to the level of appeals, Institution B does not currently identify grounds for which the complainant could appeal, but Participant B believes the “complainant would be provided the same level of opportunity to appeal” as the

respondent. The UNC system policy requires that appeals must be reviewed on the basis of 1) a violation of due process; or 2) a material deviation from Substantive and Procedural Standards adopted by the Board of Governors (UNC, 2013b). Institution F allows for a student to also appeal if the student believes the sanction is too severe. Participant F indicated that in order to go below a minimum sanction defined in their Code, there has to be “something extremely out of the ordinary” and since that is not normally the case, many do not succeed on the appeal.

Additionally, within the rights to appeal, Participants E, F, and J expressed that their appeal procedures do not clarify whether the complainant or respondent had the same grounds of appeal. Institution J’s policy allows additional grounds for appeal beyond the UNC system to include discrimination based on protected classes and an appeal based on new or supporting evidence.

Summary

Chapter 4 has presented the findings and explanations provided by the participants through their survey and interview responses coupled with an examination of their sexual misconduct policies. Chapter 5 provides an analysis of these findings while connecting it to the literature, limitations of the current study, and revisiting of the conceptual framework on which the study was conducted. Chapter 5 also examines implications and suggestions for future research.

Chapter 5: Analysis

The goal of this study was to examine how universities referenced, defined, and interpreted the prompt and equitable standards provided by the Office for Civil Rights. Examining this information through a practitioner's lens and legal lens, as related to the guidance documents, provides insight to university administrators to the complications of formulating a policy. The following chapter provides an analysis of the findings reported in Chapter 4.

This chapter is organized into six sections. First, I analyze findings related to the literature reviewed in Chapter 2. Second, I provide a review of how these findings address the gaps in research identified in Chapter 2. Third, I address the limitations of the research. Fourth, I review what worked within the current conceptual framework and provide suggestions for changes to this framework that may be helpful for future research. Fifth, I provide a statement on future implications for various interest groups. Finally, I provide areas of future research in light of the current findings and limitations.

Literature Links

This study sought to understand how UNC system institutions' sexual misconduct policies address and define *prompt* and *equitable*, and how the institutions apply these standards in their policies and procedures. This section briefly summarizes the findings as they relate to Chapter 4, the literature identified in Chapter 2, and the three major research questions for this study.

Three research questions guided this study:

1. How do the UNC constituent institutions' policies and procedures reference *prompt* and *equitable*?
2. How do the primary sexual violence adjudicating individuals at UNC institutions define *prompt* and *equitable*?
3. How do they implement these standards in their policies and procedures?

The following subsections take each of these research questions in turn and address the prompt and equitable standards.

Prompt. Institutions do not use the specific term *prompt*. Some institutions provide time frames for certain portions of the adjudication process, which allows the complainant or respondent to understand how long it may take his/her case to be resolved. The majority of institutions do not identify time frames for each major portion of the case resolution, or the adjudication process as a whole, as addressed in Chapter 2 (OCR, 2011). Similarly, since timelines are not commonly listed; the 60 calendar day reference for investigation is also missing from the policies. This lack of specificity regarding time frames has positive and negative implications.

On the one hand, the university can continue to address an allegation without fear that someone, including an attorney, is micromanaging the process by counting the days from the time the institution receives a complaint or report to the time a resolution is achieved. This allows the university to ensure it is addressing the incident in the most appropriate way, even if it takes longer than originally expected. On the other hand, not having a specified timeline limits the accountability of the university to complete its process in a prompt manner. It also does not offer comfort to the complainant or respondent who are both awaiting a resolution.

Although the timeframe references are not necessarily identified in each institution's Code of Conduct, the majority of the adjudicating professionals reported that they are aware of the typical timeline for the resolution of their sexual misconduct cases (see Table 7). For example, Participant C, who works at an institution that currently has an administrative process, expressed confidence in being able to meet a prompt timeline because of the access to the adjudicating officer's schedule. In contrast, many of the other institutions are at the mercy of the availability of multiple individuals across campus who comprise the adjudicating body. The participants expressed the importance of resolving these cases promptly because, with the increased awareness of sexual misconduct on both national and institutional levels, there has been an increase in reporting of such incidents, a phenomenon which is also congruent with national Clery data (Kingkade, 2014). Without continued attention to promptly resolving these cases, the participants expressed concern for managing not only these cases, but also their remaining caseload. With new cases coming in, the participants need to continue to work all cases to resolution in a timely manner. Failing to do so could result in creating an unsafe or hostile environment on their campuses.

An understanding of promptness in the resolution process depended upon each participant's personal view and experiences. This was displayed in how the participants identified what was a reasonable timeframe. One participant was working towards having the process take less than 30 days, whereas another expressed the view that 60 days is appropriate, and that it is a struggle to even meet that timeline. Although institutional timelines are fluid, the participants were aware of OCR's 60-day guidance along with UNC's 700.4.1 mandate for notice regarding minor and serious violations, 5 days and 10 days respectively (UNC, 2013b).

The literature illustrates how the federal, state, and UNC policies lack specifics on how to gain and maintain prompt resolutions (OCR, 2003b; OCR, 2011). Additionally, the literature identifies how the policy concerning sexual misconduct, whether from a legal or educational lens, has been modified and addressed over time. As universities continue to address sexual misconduct cases and as individual states become more involved in introducing additional legislation surrounding such incidents, the adjudicating bodies will need to continue to assess their policies and procedures in order to determine how their respective institutions can resolve cases in a prompt manner.

Equitable. In order to address the equitable standard, many institutions provided sections on equity in their Code of Conduct outlining the rights of both the complainant and respondent. There were several Codes of Conduct, however, that provided sections only for the respondent, with no clarification of the rights of the complainant. Although the UNC policy and state statutes focus primarily on the respondent, the federal guidance, which supersedes the others, specifically indicates that similar rights must be afforded to both parties (OCR, 1999, 2001b, 2004b, 2011). When an institution fails to provide guidance on the rights of the respondent and complainant, it opens itself up to an administrator's discretion on what should be afforded on an individual case basis. This discretion leaves the institution and administrator(s) liable for the application of the standards independently and potentially without consistency.

Federal guidance does not mandate all the rights that should be afforded, nor does it dictate how they should be implemented (OCR, 2001a, 2003b, 2005a, 2011). This flexibility allows each institution to determine how it can adjudicate these cases, given the campus climate and resources. The underlying theme throughout all of the institutional policies is

that the process for adjudicating any case is to be *fair* (Lewis, Schuster, & Sokolow, 2014). This fairness is demonstrated by the institution's willingness and ability to list its procedures and guiding principles in order to ensure that the student is informed of the process.

The participants expressed that a university's willingness to share information about the process and rights are indicative of the transparency they would like to have between the respondent, the complainant, and the process itself. Several participants expressed concern about legislators who are unfamiliar with the process making new regulations without fully understanding the impact of such regulations on the disciplinary process. One of these regulations concerns the inclusion of attorneys as representation. The results indicated that this representation was implemented because legislators wanted to ensure that respondents were being treated equitably by the institution. The participants indicated that they do not see how legislators accounted for cases where students bring allegations against other students regardless of whether they could afford an attorney. The view of the participants in my study was that some legislation, policies, or guidance does not result in an equitable process, although it strives to do so.

Throughout this study, participants indicated that the university, as indicated by UNC policy 700.4.1, should remain objective when adjudicating incidents. This is a difficult task when the universities are required by federal and system guidance to address, in some manner, incidents of sexual misconduct. Although the university works to ensure it is addressing incidents in an unbiased manner, the participants expressed concern that the students involved may feel as though the university is working against them. This may be true, at times, for both the respondent and the complainant. The respondents may feel as though the university is against them and want them removed from the institution. Although

the majority of rights and procedures indicated in the institutional policies were directed to the respondent, the respondent does not have as many resources of support available at many of the institutions.

The participants indicated that while there are number of resources (e.g., counseling and victim advocates) available to the complainant, the policies lack language regarding what rights are afforded to the respondent. These rights extend to what available interim measures can be taken to decrease the potential for a continued hostile environment where the complainant and respondent are at a higher risk of interacting with one another (OCR, 2003c, 2003d, 2011). When complainants lack the information about available options, it may appear that the university's focus is on the respondent. At a time when students are progressing through developmental stages way to adulthood, respondents may perceive it as unfair that they lack the support and assistance in processing the sexual misconduct allegations brought against them, especially when the complainant appears to receive a higher level institutional support. Although this is not the case for all incidents, the university's ability to remain objective, while ensuring equity on behalf of those involved, becomes increasingly complex. For their part, the complainants may feel as though the university is trying to protect itself and is not doing enough to protect them.

Several participants indicated that adjudicating incidents of sexual misconduct is a lose-lose-lose scenario because at the end of the process neither the complainant, the respondent, nor the adjudication body feels as though the process meets its educational purpose. Participant B stated that due to all of the tension surrounding incidents of sexual violence, "nobody wins" when these cases are adjudicated. This is not necessarily linked to the specific result of the adjudication process, but to the fact that these cases are some of the

most severe cases that university conduct professionals address and the process for adjudicating these cases takes an emotional toll on all involved. Although the initial goal of the university disciplinary process is to be educational, the complexity of these cases, along with the required mandates and scrutiny, has made them more about maintaining balance and the university making it through the adjudication process and less about the education of the students in the process (Association for Student Conduct Administration, n.d.; Department of Justice, n.d.). The perceived sacrifice of educational opportunity for procedural due process is an unintended consequence of a system which appears to shift its focus from holistically addressing a student about decisions made to processing a case for the sake of a timeline and protocol.

These unintended consequences have been seen over time in relation to incidents of sexual violence. For example, the university is a community, and when someone is accused of sexual misconduct, students tend to share this information with one another. Information is shared on social media, and sometimes stories are printed in the school's newspaper. This labeling of students as perpetrators in the disciplinary process, prior to the adjudication of the facts, lends itself to someone being labeled as responsible for a behavior prior to a case being resolved. The university, in attempting to fulfill its educational mission, works to not only address the incident, but also educate the student(s) involved. Failing to follow-through with the educational component does not address the student in a holistic manner. Remembering that there are people involved in these processes allows the student development professional to address some of the unintended consequences before they arise. This can also be addressed through the university's knowledge of pending policy and legislative changes.

As universities continue to strive for equity, they must stay informed about changing state statutes and language regarding incidents of sexual misconduct, university disciplinary proceedings, federal guidance, and local UNC policy. They must also balance how these various requirements intersect and affect one another. Further, each university must be able to articulate the impact of new legislation on the policy to its various constituencies. The process of forming policy and informing the community is the foundation of equity because it allows all the parties involved to know the parameters in which they are permitted to work and the procedures by which their cases will be resolved.

Additional Emerging Themes

Three additional themes emerged from the data. They involved the need for a) understanding the purpose and goals of the university disciplinary processes, b) clarifying the policies and procedures used in addressing sexual misconduct, and c) improving the policies and processes for adjudicating sexual misconduct. Each of these are discussed in more detail below.

Purpose and goals of the disciplinary process. The guiding principles behind the university disciplinary process and the legal system are fundamentally different. The differing goals of the university disciplinary process and the Department of Justice create tension for those involved in addressing incidents of sexual misconduct because each realm has different rules and possible outcomes guiding their processes. For example, the Association for Student Conduct Administrators' (ASCA) goals for the disciplinary process focus on "student growth and development and the preservation of the educational environment" (ASCA, n.d., para. 3), while the Department of Justice identifies its purpose to "enforce the law and defend the interest of the United States according to the law" and to

“seek just punishment for those guilty of unlawful behavior” (Department of Justice, n.d.).

Participants B, C, D, E, and F emphasized this point by explaining how the university disciplinary process should not only address concerns for the safety of the university community but also provide an opportunity for the members of that community to learn. The courts have reiterated the differences between the legal and university disciplinary processes in the *General Order on the Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education* (1968), as referenced by ASCA, stating:

The discipline of students in the educational community is, in all but the case of irrevocable expulsion, a part of the teaching process. In the case of irrevocable expulsion for misconduct, the process is not punitive or deterrent in the criminal law sense, but the process is rather the determination that the student is unqualified to continue as a member of the educational community. Even then, the disciplinary process is not equivalent to the criminal law processes of federal and state criminal law. For, while the expelled student may suffer damaging effects, sometimes irreparable, to his educational, social, and economic future, he or she may not be imprisoned, fined, disenfranchised, or subjected to probationary supervision. The attempted analogy of student discipline to criminal proceedings against adults and juveniles is not sound.

(ASCA, n.d., para 3)

The university disciplinary process is not intended to place continual and long term requirements on a student whose case has been adjudicated, but rather to assist the student in

changing behaviors that would otherwise adversely affect the university community, as well as the community at large.

Even though sexual misconduct cases are some of the most complex cases that university disciplinary systems address, the goals of the process for all cases should remain the same. All of the institutions provide a range of sanctions when adjudicating cases, from reprimand to expulsion. For example, Institutions B, C, and D identified additional educational sanctions that may be issued if a student is found responsible given that the sanction will “affect their future behavior and invoke change in future decision-making.”

Participants in this study expressed concern that the educational component of the student conduct process may be diminished as a result of increased participation by attorneys. Prior to the implementation of N.C. Gen. Stat. §116-40.11, several UNC system institutions allowed attorneys to be present during the disciplinary process, but the attorneys did not necessarily have a speaking role. The exception would be that they could inform their client not to speak. Other than this caveat, the attorney remained an observer to the process. This allowed an attorney to hear and observe any information being presented during the adjudication process, in case that information might be relevant for future court proceedings. However, since North Carolina passed the N.C. Gen. Stat. §116-40.11, attorneys are now afforded the opportunity to “fully represent” a student going through the university disciplinary process. As mentioned earlier, North Carolina has not yet defined “fully represent” and has therefore the phrase is open to interpretation.

Participants indicated that this full representation becomes problematic for the prompt and equitable standards. With this clause included, issues arise regarding prompt resolution mirroring those of the judicial structure, including requests for continuations based on

conflicting schedules with the lawyer's limited availability, extended line of questioning mirroring a criminal case, and the attorney's lack of familiarity with the differences between the two systems. The equitable standard becomes problematic because there may be differences in who can afford an attorney, and the caliber of attorney. In the summer of 2014, the UNC system schools gathered student conduct administrators in order to identify best practices, one of which included defining the involvement of attorneys in sexual misconduct cases. This resulted in allowing attorneys to participate in the same manner that the student can participate provided that the attorney does not provide testimony.

If the university allows for the attorney to speak in the place of the student, this can defeat the educational goals of the disciplinary process. For example, often in sexual misconduct cases, there are only two individuals who have first-hand knowledge of what occurred during the incident in question, and each of them is likely to bring different interpretations of those events. For this reason, Participants B and C questioned what the students would learn if they are not allowed to address the sexual misconduct allegations, but instead, an attorney addresses them.

The participants indicated that since this is now a state law, it is a conversation that needs to be addressed on a system level. Shortly after the passing of this legislation in North Carolina, legislators in Virginia attempted to pass a similar provision. ASCA (n.d.) expressed concern to the Virginia politicians and the law did not pass. In January 2015, a student conduct professional from the state of North Dakota shared that state legislation is not only allowing attorneys to represent students, but is also having all cases reviewed by an external court to determine if the student's constitutional rights were violated and whether the decision was arbitrary or capricious. As indicated previously, this involvement and

mixing of the legal system within the higher education system does not meet the goals of the disciplinary process. Based on conversations with other student conduct professionals, this trend seems to have appeared because of the fear that universities are limiting a student's rights. Additionally, it is concerning that individuals who are unfamiliar with the purpose and roles of the university disciplinary process (e.g., legislators) are passing legislation fundamentally impacting the processes without insight of the professionals who are involved on a day-to-day basis.

The participants did not express the view that attorneys should be completely excluded from participating in the disciplinary process. In fact, Participant F expressed how they understood the concern of a *university vs. student* scenario and the concept of equity and fairness in this capacity. Participant C reiterated this point stating that it would not be fair for a student to compete with a seasoned professional. However, Participants C and F went on to say that the process is not intended to stack the odds in anyone's favor, but to provide an opportunity for each individual involved to share their experience and have the cases adjudicated within the university's standard of proof in a fair and equitable manner.

In order to ensure equity, the disciplinary process should be informed by goals set forth and identified in the policy. These goals may be modified through an annual review, but they provide the foundational support for policy development. Developing the policy around a consistent set of goals provides equity in allowing the institution to address every allegation, sexual misconduct or others, in a similar way through similar foundational principles. Participant F stated, "if we are moving away from the education of our core values then we are stepping into a bad place," a place of inequity, inconsistency, and of risk of liability for the university and its employees. It is not enough to identify the purpose and

goals of the disciplinary process; institutions need to state them within a policy, and in a clear manner. Otherwise, a university risks violating the student's due process rights as guaranteed by the Fifth Amendment of the U.S. Bill of Rights.

Need for Clarity. Within any sexual misconduct policy, there are numerous procedural components. A clear policy offers an opportunity to anticipate questions about the process even before they are asked. Within this study, there were several points participants identified as needing clarity.

The first point of clarity relates to the standards for addressing sexual misconduct and the language of those violations. Participant D noted that institutions may have multiple sexual misconduct policies for different groups within the institution. For example, Institution D has one sexual misconduct policy for adjudicating incidents when a student is the respondent and a different policy for addressing incidents when an employee is the respondent. Although there may be some differences due to employment law, Participant D believed that the institution should use the same language when defining potential violations and have similar standards for addressing incidents of sexual misconduct, whether the complainant and respondent are students or employees. The Office for Civil Rights does not specify whether institutions should have separate policies; however, it does mention that such policies should not conflict with one another (OCR, 2011). These similarities would be helpful when institutions look at providing outreach to the campus communities on how to report and address sexual misconduct allegations, as well as providing congruent standards for all members of the university community. Further, having consistency between student and employee policies on sexual misconduct would better address the fact that some individuals are simultaneously students and employees at the same institution.

The second point which needs clarity involves the prompt standard for adjudicating sexual misconduct cases. The 2011 *Dear Colleague Letter* indicates that a typical investigation should take “60 calendar days” (OCR, 2011, p. 12). However, throughout the participating UNC institutions’ policies, there were few clarifications about whether the mandate refers to calendar days or business days. For example, while Institution F’s policy does not stipulate the type of day, Participant F was inclined to think that it was calendar day. Institution D, however, defines “day” as a business day. These two understandings of *day* takes a potential 2 month (calendar) time limit and extends it to a 3-month time limit (business). If an institution does not provide clear guidance, the understanding of *day* can be left to interpretation. This interpretation can increase tensions when an institution’s perspective and a complainant’s or respondent’s interpretation of timeline differ.

The third concern involves the investigative process, including who conducts investigations and what roles different individuals play within an investigation. Clarity in defining the investigative process helps create a more efficient process at all stages. It is imperative that investigators conduct themselves in an objective manner when they are gathering information (OCR, 2011). For example, Participant B described how their institution utilizes an investigative team approach. Participant B liked this approach because more than one individual hears the information being presented. The investigative team consists of members from Human Resources, a Title IX coordinator, and student conduct professionals. However, Participant B expressed concern about how individuals from different offices and with different philosophies might approach an investigation. Furthermore, Participant B expressed concern about how the investigative teams sometimes struggle with identifying who would serve as the lead investigator. In order to avoid such

problems, each individual's role in the process should be identified prior to the individuals or the group meeting with any constituents. When the individuals who are supposed to be experts in the process disagree, outside constituents lose trust in the process.

The fourth point of clarity involves appeals. The Office for Civil Rights' (2011) encourages institutions to provide appeal; however, the UNC system policy requires at least one level of appeal. Although it was easy for participants to provide an opportunity for a complainant or respondent to appeal, none of the participants could indicate whether these appeals would happen concurrently or independently and to what extent. Moreover, although the policies for each institution provided context for appeals, they did not identify how many levels of appeal would be provided or whether each party would be informed of the appeal and be able to provide a counter-argument. For example, if the respondent was found responsible and then appealed, participants were not certain whether the complainant would know the information presented in the appeal and would want to argue for the original decision. This uncertainty continues if the appeal is granted and a new outcome is determined. In such a case, would the complainant then have an opportunity to appeal the new decision? If so, how are these nuances defined and addressed in the policy to ensure that a resolution is completed in a prompt manner?

The last point regards the university's role in implementation of its policy. For example, Institution J's policy identifies a committee whose role is to assist the Student Conduct Office with addressing sexual misconduct allegations, but according to Participant J, the committee is not fulfilling that purpose. The Office for Civil Rights cautions that even if the policy and procedures in place may not be ideal, an institution should continue to follow its process. Participant E reiterated the importance of following the institutional process and

trusting that the outcome determined is the appropriate one. Universities should not work to obtain a certain outcome for a specific case or type of cases; doing so would violate the integrity of the process.

Constantly improving. The third theme that emerged from this research concerns the need for university disciplinary systems to constantly improve its processes. All of the participants expressed the belief that there is always an opportunity to make the policy and procedures better. For example, Participant C was confident in Institution C's procedures because they allow those with the most knowledge of the policy to adjudicate the cases in a prompt and equitable manner. However, Participant C was also concerned that there will inevitably be an incident that the policy has not considered or addressed and that may require an adjustment of the current policies and practices. The policy for adjudicating sexual misconduct cases should continue to change as institutions gain more experience and as new guidance is provided. As this study was being conducted, two participants indicated that their policies were just revised; one participant indicated that their institution was currently in the process of updating the policies, and one indicated that policies are reviewed every two years. The review and revision of policies and procedures assists institutions in addressing new and developing concerns and guidance and allows the institution to consistently learn from their experiences from one year to the next.

Participant J emphasized that an institution can have a great policy but unless there are adequate personnel and resources, the process becomes strained and ineffective. This concern about resources echoes a concern raised by Participant D, who noted that with the increased emphasis at Institution D on education and outreach about sexual misconduct, the numbers of reported incidents are increasing. Just as the volume of cases can strain staff and

their resources, so can the complexity of the cases. Rarely are sexual misconduct cases simple, where the complainant and respondent agree to the determined outcome. For example, Participant B was aware of only one sexual misconduct case at Institution B where this kind of resolution was achieved. Sexual misconduct cases become complex due to numerous factors, including but not limited to, the lack of witnesses to the alleged incident, the possible involvement of alcohol or drugs, the amount of time that passed between the incident and reporting, and the differences in information and perception presented by complainant and respondent.

As institutions continue to review sexual misconduct cases and struggle with how to resolve them in a prompt and equitable manner, it is also important for them to continually survey the political, cultural, and environmental landscape for factors that may impact the policy and procedures. Participant A stressed the importance of being aware of what is being mentioned in media and professional news outlets as it relates to sexual misconduct on college campuses, whether from the viewpoint of the respondent, complainant, or a third party. Often, these resources can present a one-sided argument, whereas the university should be providing an objective process, considering the viewpoint of all those involved. It is also important that the university administrator who formulates the Student Conduct policies does not take all things as fact or truth, but continues to review their policies as it relates to best practice for their institution. Participants B, C, D, E, and F indicated that they review their policies every year, while Participant A stated that the review process occurs every two years. Participant E indicated that the institution reviews the code each year to make sure that everything makes sense because of how much can change from one year to the next. Ultimately, there is no single policy that will fit the climate and needs of all types

of institutions, even if they are under the same university system. This is why the institution needs to construct policies and procedures that are consistent with the institutional population, campus, and environment.

As institutions continue to review their policies and to determine what works for their campuses, they can, and sometimes should, change those policies. Participant B would like to institute a process with a single hearing panel member who would adjudicate sexual misconduct cases without subjecting the complainant and respondent to a process that requires the telling and retelling of their story in front of four or more strangers. Participant D is also interested in a single member administrative hearing board, but expressed concern about how this would meet the mandates provided by the UNC system policy. Although Participants B and D would like a single member panel, Participant H preferred to include the Title IX coordinator and an additional third party trained to adjudicate sexual misconduct cases. So even within the UNC system, there are differences of opinion about what might work the best.

Ultimately, each institution should determine which form of adjudicating body would be most appropriate for its institution. The board set-up must take into consideration the need to provide a prompt and equitable resolution as well as the comfort level and knowledge of the individual(s) adjudicating. Although a single administrative hearing could allow for a more prompt resolution, participants expressed concerns about who would serve in this capacity. The level, content, and extent of training and whether past or current experiences might create a perception of bias. There may also be a conflict of interest as it relates to equity if the Title IX Coordinator or Deputy Coordinator were to serve in this role. This is because the Title IX officers are, by definition of Title IX, intended to ensure that no one is

discriminated against based on sex. Title IX offices should be places individuals can go to talk about resources, and it could negatively impact the perception or role of the office if the Title IX Coordinator also served as the adjudicating officer. If respondents or complainants feel as though the office is going to adjudicate their case, they may be less likely to speak with them, file a report, or speak to one of the Title IX investigators.

Participant H noted an area of change that would benefit Institution H and possibly other institutions that utilize hearing boards or panels. If the university is going to adjudicate sexual misconduct cases through a hearing board or panel, the pool for potential hearing board members should be enlarged, so that there is more flexibility in selecting board members without having to continually select the same members. Selecting the same board members leads to board member fatigue, which may result in less availability or more turnover, and which would extend the time frame for adjudicating these cases. If the university can minimize the burnout or fatigue of board members, they will be less likely to become jaded and more likely to remain objective. Having a larger pool of potential board members also ensures a prompt resolution.

However, having a larger selection of potential board members is only beneficial if they are properly trained to adjudicate sexual misconduct cases. Participants B, F, and H emphasized the importance of having specific training to assist board members in understanding the complexities of sexual misconduct cases and to develop strategies for adjudicating these cases in an equitable manner. Selecting board members to fulfill a quota or to establish a quorum may adversely affect the purpose and mission of the board and create liability for an institution. This liability can come in the form of creating a hostile environment due to inappropriate questioning, revictimization due to reiteration of certain

lines of questioning, or distrust in the process if a board member's body language or speech displays a lack of empathy or interest in the case.

Whether determining the context of policy and procedures or the make-up of the board, each institution must, as Participant D stated, always examine the rights of the complainant and respondent. These rights can be extended to what is available prior to the case being adjudicated, during adjudication, and post adjudication. Participant F's concern was that Institution F offers on-campus resources only for a complainant, while a respondent must go off campus to obtain similar support (e.g., counseling, advocacy, etc.). This can also be monetary inequity, since the complainant's resources are paid for through tuition and fees, while the respondent's resources must be paid in addition to university tuition and fees. Whether the respondent could afford these resources, the balance of support would continue to tilt towards the complainant. In light of these possible inequities, Participant H encouraged institutions to review and change their policies so that they become more *equitable* in responding to sexual misconduct cases.

This review of the policies offers the institutions the opportunity to constantly improve every aspect of the process, including sanctioning, in the case of a respondent being found responsible for a violation. Participant B indicated that in looking at the purpose of the disciplinary process as it relates to sanctioning, the university doesn't have a good program in place for students that addresses concerns around sexual misconduct (e.g., understanding consent, appropriate interpersonal relationships, etc.). Failing to have programs in place for students who are remaining at the institution, does not address the overall issue or concern that led to the allegations of sexual misconduct in the beginning, thus leaving more of an opportunity for additional incidents to occur with the same respondent. Having an

appropriate educational program for respondents found responsible would not eliminate the potential for repeated offenses, but it does indicate the severity with which an institution views the allegation, the importance of addressing the incident, and the impact with the larger university community while emphasizing the institution's educational purpose. As institutions strive to continually move forward within the ever-changing university environment, university administrators need to review their policies to ensure they are meeting the needs of the students involved, the campus climate, and the educational needs of the students.

There is increased reporting and adjudication of sexual misconduct incidents on college campuses due to continued media and national attention. This attention has created hypersensitivity for the adjudicating body regarding every aspect of the adjudication process because of the increased litigation brought by the complainant, the respondent, or both. Due to this hypersensitivity, practitioners are challenged to think of the adjudication process in new ways and through different perspectives, from the complainant's or respondent's point-of-view. However, rethinking the process is meant to improve the prompt resolution and equitable rights within the process and not to be overly critical to the point where the process becomes more complicated. University policy makers and Student Conduct practitioners need to continually improve how they are adjudicating incidents of sexual misconduct by thinking about the policy and its impact on those involved, evaluating the policy each year for improvements, and engaging in conversation on the local and national level to understand best practices in the field. Through this reflection and improvement, it is important for the practitioner to incorporate the educational mission of the university within the disciplinary process.

Addressing the Gaps

This study addresses the gaps in research identified in Chapter 2. Specifically, previous research focused on how alcohol or drug use can contribute to incidents of sexual misconduct, how to prevent, report and investigate incidents of sexual misconduct, and the procedures to address sexual misconduct at various types of institutional (e.g., large public institutions or HBCUs). In contrast, this study sought to review and examine the policies and procedures for addressing incidents of sexual misconduct within the public universities in one state. While prior studies were conducted by individuals who are not serving in a role associated with the university disciplinary process, this study was conducted by a student conduct professional who works with these policies and procedures on a daily basis. As a practitioner in this field, I understand the different nuances that the participants shared about their adjudication processes. This understanding allowed me to delve into the deeper questions about the procedures and rights and build a quick rapport with participants.

This study incorporated aspects of the 1996-97 National Baseline Survey, although federal, state, and local regulations have changed and new guidance documents have been issued since that study was first introduced. This study incorporated the new guidance and its impact on the university disciplinary proceedings and the students involved in the process.

The development of new guidance has not ceased, even as this study comes to a close. In April 2014, the federal government emphasized research related to addressing sexual misconduct on college campuses. In June 2014, the leadership of ASCA went to Washington, DC to meet with members of the Department of Education's OCR, White House, and college presidential associations to discuss how to adequately address Title IX concerns on college campuses. These efforts facilitate collaboration between those who are

working on sexual misconduct cases on a day-to-day basis and those who are implementing laws regarding the adjudication process. One research participant, a university Title IX coordinator who previously worked for OCR, expressed how different it is to be working on the institutional level as reports are coming in, as opposed to working from the oversight perspective of OCR. The differences in perspectives is what the ASCA leadership intends to clarify through this collaboration. They hope to assist by providing input and vetting new guidance with the OCR.

In the time since I collected data for this study, there were multiple articles concerning sexual misconduct on college campuses including the University of Virginia, Florida State University, and James Madison University. The national conversations about campus sexual assaults are ongoing and have led to increased traffic on websites such as NotAlone.gov and NoMore.org, as well as to the proliferation of articles in media sites including the *New York Times*, *Time Magazine*, and *U.S. News and World Report*. The conversations regarding sexual misconduct on college campuses are far from over. As the majority of news highlight the university's handling of sexual misconduct cases, the impact on the students involved, and the appropriateness of actions taken. In addition, several media outlets highlight how many institutions are under or have been under investigation by OCR without referencing which ones were found to be not in violation of OCR's guidelines.

This study updated information from the previous 1996-97 baseline survey with current literature and guidance. This research incorporated components of the current climate as it relates to the adjudication of sexual assaults on college campuses. This study also addressed the gap in research related to the procedural standards for adjudicating sexual misconduct cases.

Limitations

There were several limitations to this study. First, although this study received a 62.5% response rate on the survey and a 50% overall response rate through the follow-up interviews, the researcher would prefer a higher response rate. The participation level was affected partly by a second limitation, the sensitivity of the topic. Representatives of several institutions who chose not to participate expressed concerns about possible repercussions. Two individuals indicated that they had to contact their institution's general counsel and inquire whether they could participate. Additionally, one institution initially chose to participate, but after a review of the survey by the school's Title IX coordinator, it declined to participate.

Individuals declining to participate in this study was expected, especially given the amount of national attention this topic has had since the 2011 *Dear Colleague Letter* on sexual violence provided by OCR. Since the publication of this guidance, websites such as NotAlone.gov were created to provide resources for students and institutions in addressing sexual misconduct incidents. However, along with these resources is a database of how many schools are under investigation for a possible Title IX violation. The underlying fear of becoming part of the statistics has also kept some of the potential participants silent for fear of information being misconstrued or misinterpreted. Even with these limitations, this study provides an in-depth review of one university system, which can be replicated across other systems.

The third limitation is that I sought to interview only one individual who oversees the process of adjudicating sexual misconduct cases on each of the participating campuses. Though one individual may oversee the process, many other individuals are involved. These

individuals may include board members, complainants, respondents, witnesses, appellate officers, or supervisors. The inclusion of these individuals within the study could assist in providing a more holistic perspective from various viewpoints of those involved in the process. The use of a single individual per institution, the one with the most knowledge of the policy and procedures, was intended to provide a baseline that could later be expanded.

The fourth limitation identified in this study was timing. Although the survey and the majority of the interviews were conducted in the summer, which is typically a slower time period for student conduct professionals, it is also the time many take leave or are working on administrative tasks. One of the administrative tasks which may have resulted in different answers if conducted at a different time of year is the review of the policies at the respective institutions. For example, Participant B stated that if I was to interview them in a few weeks, some of their answers would be different because the new policy for 2014-2015 would “probably be approved by then.” Addressing some of these limitations may yield different results in future studies. Individual institutions could assess what timing would fit its policy and procedural development timeline and conduct this study according to that timeline.

The last limitation is that the findings of this study are not necessarily generalizable to other state institutions because each state has its own laws and system policies regarding sexual misconduct. In addition, some schools work as independent institutions not connected to a system of schools, while those connected to a larger system also have to work with a guiding policy which informs their institution’s procedures. This study could, however, be replicated in various regions or states, taking into account the varying state laws, guiding documents or system policies, and campus climates. This process of self-assessment may

help identify the best practices for each institution while also lending itself to the larger body of knowledge on the topic of adjudicating sexual misconduct cases.

Revisiting the Conceptual Framework

The conceptual framework for this study incorporated the intersection of the practitioner's and legal lens and analyzed how these lenses intersect with policy. The intersectionality involved in the conceptual framework is essential in the analysis. First, being a practitioner in the field, my experience in adjudicating sexual misconduct cases and my involvement in the conversation with our national organization's Title IX community assisted me in understanding the language and processes utilized by peers and peer institutions. Which proved beneficial in quickly developing follow-up questions for the participants. However, being a practitioner can also be a disadvantage. This disadvantage comes in the form of making assumptions about one's understanding of policy. When looking at understanding the principle of prompt and equitable adjudication, the practitioner must remember that those going through the process may not, and normally do not, fully understand all aspects of the policy. Policies, regardless of how user friendly the language may be, will still need to be explained in detail in order for those who are participating to fully understand their rights in the process.

Second, with so much responsibility being placed on an individual and an institution, it is important to view this type of study through a legal lens. Sexual misconduct cases involve a lot of emotions, especially when the outcome is viewed as unfavorable. At that point, every aspect of the adjudication process is scrutinized. The legal lens allows for Student Conduct professionals to view the process in a way to protect the integrity of the process and the liability of the institution, as well as personal liability. A common concern

among student conduct professionals is being vulnerable to a lawsuit for any reason and at any time. Knowing the potential for a lawsuit, the university administrators should develop a policy that addresses the issues of a prompt and equitable resolution.

Implications

There are several implications relating to universities, policy makers, adjudicating administrators, and the general population as they relate to the prompt and equitable standards provided by OCR. As a professional in this field, I make the following recommendations to universities, policy makers, and adjudicating administrators.

Universities should take the following actions pertaining to *prompt* and *equitable*:

Prompt

- a. Create a seamless policy that meets the goals of the disciplinary process and incorporates federal, state, and system guidance.
- b. Create a policy that is detailed enough to cover the many nuances of sexual misconduct cases, but not so much that it clutters the process. For example, a policy should be easily transferable to a case with multiple respondents and/or complainants without having to create multiple policies.

Equitable

- a. Develop a policy utilizing common language as opposed to more legalistic terms in order to assist the involved parties in understanding their rights. If there are cases in which these specialized terms are used, the policy should consider defining these terms.
- b. Provide a logical progression through the process as well as an anticipated timeline. Additionally, provide and display a logical progression through the

process. The reader can become confused when a policy jumps around to different points in the process. However, if the policy displays a chronological flow, the reader can more easily follow the process from reporting to resolution.

- c. Provide equitable resources to those involved, including counseling and support.

I further recommend that policy makers take the following actions pertaining to *prompt* and *equitable*:

Prompt

- a. Ensure that the details regarding timeline and procedures are extensive enough to cover the complexity of a sexual misconduct case while facilitating a prompt resolution. A timeline that is too narrow forces an institution to rush through the major portions of the case in order to meet a deadline, thus minimizing the rights of the parties involved. An extended timeline does not provide the perception of a prompt resolution, thus minimizing the trust that the parties are willing to place in the process itself. For example, the institution should identify the major stages of adjudication (e.g., filing a report, investigation, hearing, appeal) and the time frames associated with them.
 - i. 180 days to file a report based on OCR processing manual (OCR, 2010b),
 - ii. 60 days to conduct an investigation based on the *2011 Dear Colleague Letter*,
 - iii. 10 days to provide notification of a hearing per the UNC system policy, and
 - iv. 14 days to file an appeal (there are no current guidance on timeline for appeal).

Equitable

- a. Create a policy that is clear and understandable to the various constituents involved. Cases often involve multiple people within the university, advocates and support individuals, as well as the students. Each individual will come to this process with his/her own understanding and experiences, so the policy should be developed to assist anyone interacting with it at any point in the process.
- b. Review policies continually because the creation of these policies must not consist of an isolated instance of creating a policy, but must involve a constant, ongoing process of review in order to ensure that every policy addressing sexual misconduct is up-to-date with guidance as well as with the current university environment.
- c. Think through the position of both the respondent and complainant to ensure the policy provides equitable rights to both parties.

I also recommend that adjudicating administrators take the following actions pertaining to *prompt* and *equitable*:

Prompt

- a. Provide an anticipated timeline in the notification of the disciplinary process to assist participants in knowing how long the adjudication process may take.
- b. Follow the processes determined by the university and work to assist with instituting best practices in adjudicating sexual misconduct cases. The implications of an administrator not following procedures can lead to lawsuits, which can address an administrator within his/her role at the university, but which

on some occasions may also hold an administrator personally liable beyond his/her position and role at the institution.

Equitable

- a. Follow the processes determined by the university and work to assist with instituting best practices in adjudicating sexual misconduct cases.

The last recommendation ultimately applies to the general public or bystanders, not only to the institution and its officials. The public concerns about sexual misconduct on college campuses are not subsiding. Rather, there have been more conversation and more publications about sexual misconduct on U.S. college campuses in the four years since the *2011 Dear Colleague Letter* was released than there had ever been previously.

Individuals should be aware of the cultural climate surrounding them as they continue to make decisions that will impact their own lives as well as the lives of others. With continued heightened attention to sexual misconduct cases, universities and university administrators are coming under closer scrutiny on how these cases are adjudicated, the length of time for resolution, the impact on the individual students, and the ability of the university's process to remain objective and unbiased.

Future Research

Future research would include a team of student conduct and Title IX professionals with various experience levels and educational backgrounds. For example, there would be new and seasoned professionals as well as those who possess master's degrees, juris doctorates, and doctorates of philosophy or education, so that the perspectives of all these team members would contribute to the analysis. With this, the conceptual framework would

allow for individuals to provide their area of expertise when analyzing the information holistically.

Another area for future research would include a larger population. This could be accomplished with support of the national organization for conduct professionals, ASCA, and their research community. In addition to the study conducted with ASCA, a collaboration between ASCA and OCR could be established in order to have each one assist with informing the development of future policies and implementation.

Since processes and procedures are constantly changing and new legislation passed, it would be appropriate to replicate the study every five to seven years. This replication could be conducted in conjunction with the annual national conference, Gehring Institutes (supported by ASCA), or through online surveys and interviews. Additionally, the replicated study may also include universities who did not previously participate or institutions who are newly established.

Another area of future research includes the separation of *prompt* and *equitable* into different studies. For example, since several institutions indicated concern that there were campus resources for complainants, but not respondents, a study could be conducted on available resources. This study could also examine the impact on behavior towards the learning outcomes and goals of the disciplinary process.

An additional area of future research involves separating the adjudication process into individual components in order to examine them in more detail. Examples of these individual components would include examining the content of training individuals go through in order to adjudicate sexual misconduct cases, training and experience of investigators, an examination of adjudication board types, and an examination of definitions

and policy violations listed within institutional policies. These additional studies would contribute to the national body of knowledge and future policy development on a school, system, and/or national level.

My final recommendation for future research that would be important for adjudicating sexual misconduct cases should focus on the sanctions as they relate to the educational mission of the university disciplinary processes. As a member of the university community and Student Conduct practitioner, it is important to remember the focal point the university disciplinary process as defined by ASCA: “the student conduct process holds students accountable to campus policies, preserves safe campus environments, and ultimately, educates” (ASCA, n.d., para 7). Participants expressed concern that there are measures in place to adjudicate cases of sexual misconduct, but there is a lack of focus on educational sanctions for students found responsible to assist them in transitioning back into the university community, as well as the community at large. Additional research should be conducted to determine effective sanctions to assist students in processing through their involvement in an incident of sexual misconduct and how to utilize what they have learned to transition back into the university community.

Conclusion

The foundations of this study were laid in 2011 when the Department of Education issued a *Dear Colleague Letter* to colleges and universities addressing how allegations of sexual violence should be addressed through campus policies and procedures in a prompt and equitable manner. The conversations on the local, state, and national levels centered around developing policies and procedures that meet federal standards for resolving these cases promptly and equitably, discovering what are other institutions’ processes, and determining if

one's own processes should be modified. When I connected the previous 1996-97 National Baseline Study on Sexual Violence to these conversations, I knew that it was time to infuse this prior research into the current state of affairs and to help Student Conduct professionals who work with sexual violence cases review and improve their institutions' policies and procedures.

This convergent parallel study was viewed through the practitioner and legal lenses aiming to uncover how the written policy and implemented procedures addresses the Office for Civil Rights' notion of prompt and equitable. I used a survey, interviews, and document reviews with open coding under the themes of prompt and equitable to conduct this policy analysis. Following the review, examination, and documentation of the findings, member checking (Creswell et al., 2011) was conducted in order to increase trustworthiness in the study.

Adjudicating sexual misconduct cases on college campuses is a process under close scrutiny by the media, state and federal governments, university administrators, complainants, respondents, and advocates. Higher education administrators need to be informed of possibly ways cases of sexual misconduct can be adjudicated in order to ensure that their institution is utilizing the best method for their respective campuses. Adjudicating these cases require knowledge of federal, state, and local laws and policy and how these policy collectively impact individual campuses. The adjudicating administrators bring in their own experiences and knowledge of the university environment and campus community to help them navigate what policies and procedures will best assist their students in a prompt and equitable resolution to sexual misconduct cases. The results of this study provides

additional insight into how other UNC system institutions are adjudicating these cases and helps the administrator develop best practices for their institution.

This study also serves as a reminder of the importance of infusing education within the university's disciplinary process. Although this is not where educating our students on sexual conduct and misconduct should begin, it should not be discarded due to the nature of the case or the fear of legal repercussions. Educating students about sexual conduct does not, and should not, start with the higher education institution, although it may be reemphasized there through first-year orientation, educational programs, Codes of Conduct, and the disciplinary process (if needed). Although some of the participants are finding it difficult to do so, they have continued to stress that education should always be a fundamental aspect of the resolution process. This education not only assists students who must leave the university, but also those who remain, and more so for those who graduate. Each of the students, complainant or respondent, who go through the adjudication process, will still be interacting with their respective communities. We, as student development professionals, should strive to be an intricate part of this transitional and educational time in the student's life.

I encourage my peers and colleagues to continue our work in Student Conduct and to not lose sight of the purpose of our positions. Other individuals like legislators, attorneys, and even higher level administrators will continue to weigh in on our processes, often times providing their perspectives on how issues should be conducted. It is important to remember that we should listen and reflect on their input and apply what would benefit the process and students. Even as the numbers of sexual violence cases reported to our offices increase, we should not be afraid to stand up for what we, as experts in the field, know should be the

purpose and function of our offices and the disciplinary process. We should also be willing to build relationships with and provide education to these professionals about our offices and the educational mission behind our adjudication processes.

As we move forward, we should continue to adjudicate these cases in ways that offer prompt resolution, while ensuring a safe campus environment. We should also ensure the rights of complainants and respondents are equitable while working toward this prompt resolution. As professionals in this field, we should carefully fuse these two components within our policies and procedures so that constituents involved in our disciplinary process will trust and rely on the processes that adjudicate sexual violence cases on our campuses.

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Appendix A: Prompt and Equitable Implications by Policy

Policy	Prompt	Equity
Title IX of the Education Amendments of 1972		No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.
FERPA		Protects the privacy of student educational records with the exception of “the final results of a disciplinary proceeding” to a victim of a crime of violence
Clery	Universities should classify crime reports/statistics, issues timely campus alerts, and publish annual security reports	
2001 Revised Sexual Harassment Guidance	University’s immediate corrective action when it “knows or should have known” that an act of sexual violence may have occurred.	<p>University’s appropriate corrective action when it “knows or should have known” that an act of sexual violence may have occurred.</p> <p>Universities should not treat students differently in providing aid, benefits, or service.</p> <p>Universities should not subject students to separate rules of behavior, sanctions, or treatment.</p>

2011 Dear Colleague Letter	<p>University to take action when it “knows, or reasonably should know about harassment, regardless of whether it occurred on or off campus.”</p> <p>Offers a general timeline of “60 calendar days” to complete the investigation following the complaint.</p>	<p>Publish a notice of nondiscrimination</p> <p>Take appropriate action as defined by the institution’s policy.</p> <p>Every effort should be made to show that the rights of each individual are <i>equitable</i>.</p> <p>Parties are not required to participate in adjudication procedures.</p>
NC General Statutes		<p>Rape only includes vaginal intercourse (NCGS §14-27.2 & 14-27.3)</p> <p>Sex offenses involves “sex acts” without limiting to vaginal intercourse (NCGS §14-27.4 & 14-27.5)</p> <p>House Bill 74 (2013) allows for licensed attorneys to “fully participate” in resolutions not involving a full student panel.</p>
UNC Policy 700.4.1	<p>Investigation and accusations should be made within a “reasonable time frame.”</p> <p>Appropriate notice for hearing (10 calendar days where the minimum sanction is suspension or expulsion; 5 calendar days for all others).</p>	<p>Ability to have a hearing.</p> <p>Right to remove board members due to conflict of interest.</p> <p>Right to witness list and documents.</p> <p>Right for “at least one level of administrative appeal.”</p> <p>Right to have case heard separately from other involved students.</p> <p>Right to have the “same opportunities to have others present” (i.e., support).</p>

Appendix B: Population (FTE) per UNC Constituent Institution

Institution	Student Population
Appalachian State University	17,838
East Carolina University	26,887
Elizabeth City State University*	2,421
Fayetteville State University*	6,179
North Carolina A&T State University*	10,561
North Carolina Central University*	8,093
North Carolina State University	34,009
UNC Asheville	3,784
UNC Chapel Hill	29,127
UNC Charlotte	26,571
UNC Greensboro	18,074
UNC Pembroke	6,222
UNC School of the Arts	797
UNC Wilmington	13,937
Western Carolina University	10,107
Winston-Salem State University*	5,399

*Denotes an Historically Black College or University (HBCU)

Note. The population represents the Fall 2013 enrollment by residency for institutions retrieved from <http://www.northcarolina.edu/about/facts.htm>.

Appendix C: Initial Procedural Baseline Survey Instrument

Modified from:
Association of Student Conduct Administrators
National Study on Campus Sexual Assault:
Adjudication of Sexual Assault Cases

The individual who has the most knowledge of the way in which sexual violence cases are adjudicated on your campus should complete this survey. I am only seeking information about the adjudication of sexual violence cases in campus conduct systems (not in the criminal justice system).

Sexual violence – “Sexual violence, as that term is used in this letter [*DCL*], refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion” (“OCR,” 2011, p. 1).

**A skip pattern will be used through an electronic format

Demographic Information

1. What is the professional title of the person completing the survey: _____
2. Number of years in your current position: _____
3. Institutional Type (please select all that apply):

2 year	Public
4 year	Residential
Graduate	Commuter

4. a. Approximate number of full-time undergraduate students enrolled:

Total:	
Males:	
Females:	

- b. Approximate number of full-time graduate students enrolled:

Total:	
Males:	
Females:	

5. Are you responsible for oversight of the conduct system on your campus?

Yes No

Please describe your role in the adjudication process at your institution, particularly in adjudication of sexual violence cases (open ended):

6. What is the total number of incidents of sexual violence reported to the conduct office for the following academic years?

2010-2011		2011-2012		2012-2013	
By Strangers:		By Strangers:		By Strangers:	
By Acquaintances:		By Acquaintances:		By Acquaintances:	

7. What is the total number of sexual violence cases adjudicated in your conduct system for academic years:

2010-2011:	
2011-2012:	
2012-2013:	

8. Of sexual violence cases that have been adjudicated on your campus, how many have resulted in the accused student being found responsible for violating your code of conduct for the following academic years?

2010-2011:	
2011-2012:	
2012-2013:	

Protocol for Dealing with Reported Sexual Violence

9. What are the sources through which, or from whom, a student can seek information about the conduct process if considering making a complaint? (Please select all that apply).
- | | |
|--------------------------|---------------------------|
| Student Handbook | Campus Advocate/Counselor |
| Conduct/Judicial Officer | Women's Center |
| Health Service | Residential Life Staff |
| Other (#1)_____ | Other (#2)_____ |
10. a. If a student from your institution alleges that she or he was sexually assaulted by another of your students, can she or he bring formal disciplinary charges against the accused student through an on-campus conduct process?
Yes No
- b. If no to 10a; are other options available to the person bringing the sexual assault charge?_____
- c. If yes to 10a; what individual or group could adjudicate the case? Please select all alternatives available on your campus:
- | | |
|-----------------------------|-------------------------------------|
| VP or VC of Student Affairs | Dean of Students |
| Student Conduct Board | Student/Staff Conduct board |
| Administrative Board | Student/Faculty/Staff Conduct board |
| Faculty Conduct Board | Special Hearing Board |
| Student/Faculty Board | Hearing Officer |
11. a. Is there an on-campus statute of limitations on filing a charge in a sexual violence case?
Yes No
- b. If yes, what is the limit?
12. a. Does your code of conduct contain language specifically prohibiting sexual violence?
Yes No
- b. If no, please indicate the section of your code that would be used to charge a student with a sexual assault, e.g., rape, assault, harassment, disorderly conduct, etc.?
13. Is it institutional policy to encourage an alleged victim of a sexual assault to report the incident to the local police?
Yes No

14. a. Does an institutional administrator facilitate contact between the alleged victim who is reporting an assault and the local authorities?
Yes No
- b. If yes, please note the title of the institutional administrator who would assist the victim in making a report to local authorities:
15. If charges are being filed on campus and with local authorities, do you hold your on-campus proceedings prior to any criminal or civil proceedings?
Yes No
Explain: _____
- Comments: _____

Investigation/Evidence

16. a. Is the complainant required to provide a written statement about the sexual assault before formal charges can be filed on campus?
Yes No
- b. If yes to 16a; who writes or documents the report? (Please select all that apply)
- | | |
|-----------------------------|----------------------------------|
| Complainant | Campus Police/Security |
| Local Police | Rape Crisis Personnel |
| Institution's Legal Counsel | Conduct/Judicial Affairs Officer |
| Investigator | Other: _____ |
- c. Is the complainant expected to provide any evidence (witness, rape kit data, etc.) other than a statement that she or he was assaulted prior to the filing of formal charges on campus?
Yes No
- d. If yes to 16c, please explain the type of evidence required?
17. Is the complainant permitted to provide a written statement about the alleged assault?
Yes No
18. a. Who would be involved in the investigation of an alleged sexual assault on your campus? (Please select all that apply):
- | | |
|----------------------------------|-----------------------------|
| Campus Police/Security | Campus Medical Staff |
| Conduct/Judicial Affairs Officer | Off-campus medical Staff |
| Local Police | Institution's Legal Counsel |
| Chief Student Affairs Officer | Other: _____ |

b. Would evidence from those identified in item 18a. be permitted in a campus conduct hearing?

Involved	Yes	No	Not Applicable
Campus Police/Security			
Campus Medical Staff			
Conduct/Judicial Affairs Officer			
Off-campus Medical Staff			
Local Police			
Institution's Legal Counsel			
Chief Student Affairs Officer			
Other			

c. If no to any persons listed in 18b, please briefly explain:

19. What standard of proof is used to determine if the respondent is responsible for a code violation?
 Beyond a reasonable doubt
 Clear and convincing evidence
 Preponderance of the evidence
 Other

Hearing Cases

20. a. Is any special training provided to the person or persons who adjudicates sexual violence cases on campus?
 Yes No

b. If yes to 20, please briefly describe:

21. a. Do you have a set of procedures for adjudication of sexual violence cases that is different from the procedures used to adjudicate other kinds of cases?
 Yes No

b. If yes, please describe how these procedures differ from those used to adjudicate other kinds of cases:

- c. How would you describe the type of hearing process used to adjudicate sexual violence cases? (Please select all that apply)
 Informal Hearing
 Formal Hearing
 Other

22. Who presents the case for the complainant? (Please select all that apply)
- | | | |
|-----------------------------|----------------------------------|----------------|
| Complainant/Victim | Campus Police | Faculty Member |
| Staff Member | Student Advocate/Counselor | Other |
| Institution's Legal Counsel | Conduct/Judicial Affairs Officer | |

23. Who presents the case for the respondent? (Please select all that apply)
- | | | |
|-------------------------|----------------------------------|----------------|
| Respondent | Campus Police | Faculty Member |
| Staff Member | Student Counselor | Other |
| Student's Legal Counsel | Conduct/Judicial Affairs Officer | |

24. Do you provide the Respondent with any of the following? (Please select all that apply)

- Written notice of charges
- Opportunity to face his or her accuser
- A hearing with an impartial third party/parties
- Right to not incriminate self if facing off-campus charge
- Opportunity to bring witnesses
- Option of being actively represented by an attorney
- Opportunity to bring a counselor to the hearing
- Opportunity to tape record the proceedings
- Opportunity to directly question the complainant
- Opportunity to indirectly (through a third party) question the complainant
- Opportunity to question the complainant's witnesses
- Opportunity to discuss his/her past relationship with the complainant
- Opportunity to discuss the complainant's prior sexual history
- Opportunity to discuss the complainant's sexual orientation
- Opportunity to bring character witnesses

Comments: _____

25. Do you provide the complainant with any of the following? (Please select all that apply)

- Written notice of charges
- A hearing with an impartial third party/parties
- Opportunity to not incriminate self if facing off-campus charges
- Opportunity to bring witnesses
- Opportunity to sit where she or he cannot see the respondent during the hearing
- Opportunity to wait in an area separate from the respondent
- Opportunity to be represented by an attorney
- Opportunity to bring a counselor to the hearing
- Opportunity to tape the proceedings
- Opportunity to directly question the respondent
- Opportunity to indirectly (through a third party) question the respondent
- Opportunity to question the respondent's witnesses

Opportunity to discuss his/her past relationship with the respondent
Opportunity to discuss the respondent's prior sexual history
Opportunity to discuss the respondent's sexual orientation
Opportunity to bring character witnesses

Comments: _____

26. a. Is the respondent permitted to remain silent at the hearing?
Yes No
- b. If yes to 26, does the respondent's silence carry an inference of guilt?
Yes No
27. a. Does your institution's legal counsel attend sexual violence hearings?
Yes No
- b. If yes, what role does your legal counsel play in the hearing?
28. a. Is the complainant permitted to have a victim's advocate attend the hearing?
Yes No
- b. If yes, who may serve as the advocate and what role does she or he play in the hearing?
29. a. Is the respondent permitted to have an advocate attend the hearing?
Yes No
- b. If yes, who may serve as the advocate and what role does she or he serve during the hearing?
30. a. Is the respondent permitted to have an attorney attend the hearing?
Yes No
- b. If yes, what role may the attorney play in the hearing?
31. a. Is the complainant permitted to have an attorney attend the hearing?
Yes No
- b. If yes, what role may the attorney play in the hearing?
32. a. Are sexual violence hearings open to members of the campus community?
Yes No
- b. If yes, please explain: _____

33. a. Are sexual violence hearings open to campus media?
Yes No
- b. If yes, please explain: _____
34. Are the hearing deliberations public or private?
Public Private
35. a. Does your institution have preset sanctions for sexual violence offenses?
Yes No Not applicable
- b. If yes to 35a, please describe: _____
- c. Are preset sanctions applied if the accused is found responsible for committing a sexual violence?
Yes No
- d. If yes to c, please explain: _____
36. Is the respondent/complainant permitted to tape the proceedings or to access the institution's recording of the proceedings if one is made? (Please check all that apply)
Respondent may tape
Respondent may have a copy of the institution's tape
Respondent has access to the institution's tape (but cannot have copy)
Complainant may tape
Complainant may have a copy of the institution's tape
Complainant has access to the institution's tape (but cannot have copy)
Other: _____
37. Are there any modifications to the rights of the respondent you would make? Please explain.
38. Are there any modifications to the rights of the complainant you would make? Please explain.
39. Please estimate the percentage of sexual violence cases heard on your campus in the past three years in which alcohol or other drugs (impairment) of either or both the accuser and/or the accused was a factor:
2010-2011 = _____%
2011-2012 = _____%
2012-2013 = _____%

40. If the complainant was using alcohol or other drugs at the time of the incident, is she or he provided with immunity from being charged with a violation of the institution's code of conduct?

Yes No

Comments: _____

After the Hearing

41. Who is notified of the outcome? (Please check all that apply)
- | | |
|-------------------------------|----------------------------------|
| Chancellor/President | Respondent |
| Chief Student Affairs Officer | Conduct/Judicial Affairs Officer |
| Institution's Legal Counsel | Complainant |
| Campus Community | Other |
42. How is notice of the outcome shared with the respondent?
- Not Provided
Verbal Only
Verbally then in writing
In Writing Only
43. a. How is the notice of the outcome shared with the complainant?
- Not Provided
Verbal Only
Verbally then in writing
In Writing Only
- b. When notice is shared with the complainant, is she or he informed of the obligation to keep the information confidential?
- Yes No
44. a. May the respondent appeal the outcome of the hearing?
- Yes No
- b. If yes to 42a, how long does the respondent have to appeal?
- c. If yes to 42a, to whom is the appeal made?
- d. If yes to 42a, on what grounds may the appeal be based?

45. a. May the complainant appeal the outcome of the hearing?
Yes No
- b. If yes to 43a, how long does the complainant have to appeal?
- c. If yes to 43a, to whom is the appeal made?
- d. If yes to 43a, on what grounds may the appeal be based?
46. Is anyone allowed to disclose information following the resolution (e.g., complainant, respondent, or university)? Please explain.

Prompt and Equitable Survey Questions

Baseline Questions:

47. When was the policy relating to sexual violence last updated?
48. Is this policy available to all students?
49. If so, how is it conveyed to them?

Prompt Standard Questions:

50. Does your institution have designated time frames for major stages of the complaint process for sexual violence cases (e.g., reporting, investigation, hearing, appeal, notifications)?
51. If so, what are those time frames?
52. If there are no standard time frames, what is the average time frame in which major portions have, or could be, conducted?
53. Why were these time frames established?
54. What is the average time from receiving a report to resolution (i.e., final appeal)?
55. Are there a statute of limitations for reporting an incident of sexual violence?

Equitable Standard Questions:

56. What rights are provided to the complainant of sexual violence?

57. What rights are provided to the respondent of sexual violence?
58. Who determines the rights of the complainant/respondent prior to a hearing process?
59. Who determines the rights of the complainant/respondent during the hearing process?

Appendix D: Interview Questions

1. From your experiences, what do you think is an appropriate time frame for adjudicating sexual violence cases? Please explain.
2. What do you think of the time frames set forth by your institution?
3. What do you think of the time frames set forth by the federal government's 2011 Dear Colleague Letter?
4. What is your perception of the equity in rights of the complainant(s) and respondent(s) within sexual violence cases?
5. Do you feel your institution offers enough rights? Please explain.
6. Do you feel your institution offers too many rights? Please explain.
7. What do you feel is the role of the institution in adjudicating sexual violence cases?
8. If you could change something about your institution's policy, what would it be? Why?
9. If you could change something about your institution's procedures, what would it be? Why?

Vita

Joshua David Elrod was raised in Caldwell County, North Carolina by his mother, Katrina Lynn Hedrick. In high school and college, Dr. Elrod was raised by Mr. Robert Winkler, his foster parent and martial arts instructor. Dr. Elrod attended Caldwell County Schools throughout his elementary and secondary educational years. He was a 1998 graduate of South Caldwell High School and a 2003 graduate with a Bachelor of Science in Mathematics from Gardner-Webb University. Following his Bachelor's degree, Dr. Elrod was inspired by to pursue his Master's degree by a former supervisor, now the president of Barton College, Dr. Douglas Searcy. In May 2007, Dr. Elrod graduated with a Master of Arts in Higher Education Administration from Appalachian State University. He earned his Doctor of Education in Educational Leadership from Appalachian State University in August 2015.

Dr. Elrod currently works as a Director of Student Conduct and South Regional Coordinator for the Association of Student Conduct Administrators. He currently resides in western North Carolina with his wife, Emily, and son, Noah.