

**Mental Health and the College Student:
Recent Developments in Law and Policy Relating to Student Wellness**

**Stetson University College of Law
Center for Excellence in Higher Education Law and Policy
February 19, 2008**

**Nancy Tribbensee
General Counsel for the Arizona University System**

- I. Educate the campus regarding communication with and about distressed and distressing students (See attached NACUAnote on FERPA and Campus Safety)
- II. Campus priorities regarding student threats and suicide:
 - a. Protect the safety of individual students, the campus and the community
 - b. Avoid stereotyping or stigmatizing individuals or groups; we have a duty to protect the rights of individuals as well as to respond to community concerns
 - c. Focus on communication models rather than potential liability
- III. Legal Issues
 - a. If a student attempts or completes suicide or threatens or harms others, an ensuing lawsuit may allege:
 - i. Failure to recognize a student at risk
 - ii. Failure to treat properly
 - iii. Failure to refer appropriately
 - iv. Failure to follow-up after referral or hospitalization
 - v. Failure to notify parents or others of suicidal or threatening tendencies, statements or previous attempts at harm
 - vi. Failure to maintain student in appropriate custody/care (e.g., while waiting for parents or other help to arrive)
 - vii. Breach of confidentiality, violation of privacy
 - viii. Failure to provide prevention programming
 - ix. Breach of contract
 - x. Failure to provide appropriate accommodation
 - xi. Disability discrimination
 - xii. Breach of duty to warn
 - b. Office of Civil Rights (OCR) guidance on involuntary dismissal of students who threaten self-harm or harm to others (reviewing complaints from students who have been dismissed students and who allege disability discrimination)
 - i. Nothing in § 504 prevents educational institutions from addressing the dangers posed by an individual who represents a “direct threat,” even if that person has a disability
 - ii. Disciplinary and other adverse actions can’t be a pretext or excuse for discrimination

- iii. To rise to the level of direct threat, need a high probability of substantial harm (not speculative or remote risk)
 - 1. Need an individualized and objective assessment based on most current medical knowledge or best available objective information
 - 2. Assessment must determine:
 - a. probability that the potentially threatening injury will occur
 - b. whether reasonable modifications of policies, practices or procedures could mitigate the risk
 - 3. Due process, based on observed conduct, statements not speculation regarding disability
 - 4. Interim action is OK if student gets a minimal hearing soon after the action is taken and full due process later
 - 5. Need appropriate grievance procedures
- iv. Guidance: Document individualized assessment and provide due process
- c. Recent case law on suicide (summary)
 - i. Courts are reluctant to hold third parties (such as higher education institutions) responsible for preventing suicide unless the party:
 - 1. actually causes the suicide [*Wallace v. Broyles*, 961 S.W.2d 712 (Ark. 1998) (denied university's motion for summary judgment in case alleging university caused suicide of football player by providing Darvocet without adequate warnings of side effects)] or
 - 2. has a duty to prevent the suicide (may arise if the third party has a special relationship, such as that of custodial care, to the victim)
 - ii. Courts may be more inclined to impose a duty on colleges and universities to share information with parents and families if that information might help to prevent a suicide
 - iii. Check state and local laws (*e.g.*, individual privacy rights and duty to warn)
- d. *Carrier v. Lake Pend Oreille School District*, 142 Idaho 804, 134 P.3d 655 (2006)
 - i. In April 2000, a high school student wrote an essay in which he disclosed past suicidal ideation and the reasoning behind his decision not to kill himself
 - ii. The teacher responded with support for his decision and an admonition to contact her or someone else if those thoughts returned, but did not notify parents or others
 - iii. In November, the student committed suicide
 - iv. Idaho statute (I.C. §33-512B) provides that teachers have a duty to warn if they have knowledge of the direct evidence of a student's suicidal tendencies

- v. The court held that the essay described past feelings but did not indicate a present or future intent to commit suicide, and so did not find that the teacher had breached a duty to warn
- e. *Shin v. M.I.T.*, 2005 WL 1869101 (Mass. Super.)
 - i. Facts
 1. Sophomore student with an apparent history of psychiatric problems (prior to enrollment at M.I.T.)
 2. Series of incidents while at M. I.T., including hospitalization for overdose of Tylenol with codeine (parents notified)
 3. Counseling by M.I.T.
 4. Continued increasing threats of self-harm
 5. “Deans and Psychs” met to staff the case
 6. Student died of burns sustained in residence hall room
 7. Suicide or accident?
 - ii. Parents sued university, M.I.T. medical professionals, and M. I.T. administrators
 - iii. Decision re Motions for Summary Judgment:
 1. Relied on *Schieszler* special duty argument (see below)
 2. Denied individual defendants’ motions for summary judgment on the issues of gross negligence, negligence and wrongful death, saying plaintiff raised an issue of fact as to whether “by not formulating an immediate plan to respond to [the student’s] escalating threats to commit suicide” the M.I. T. employees breached duty and caused suicide
 - iv. Settlement included statement that the student’s death was likely an accident.
 - v. Guidance
 1. Reports in the press can be misleading
 2. Suicide attempts and high risk behavior (e.g., fire in residence hall) can put other students at risk
- f. *Nott v. George Washington University*, No. 05-8503, D.C. Superior Court.
 - i. Facts:
 1. Several months following suicide of friend, 20 year old student sought treatment for depression and suicidal ideation (without any suicide threat or attempt)
 2. Information disclosed to administrators
 3. Student removed from campus on an interim basis as a substantial and immediate threat to himself or others
 4. University offered the student a hearing on the interim suspension or the ability to voluntarily withdraw and take a brief leave of absence (after completing recommended treatment and clearance by the counseling center, he would be allowed to return)
 5. Student did not ask for a hearing, he voluntarily withdrew, complete 2 courses from home, then permanently withdrew
 6. Student sued

- ii. Allegations: Student alleges his rights were violated under ADA, Section 504, and Fair Housing Amendments Act of 1988, violation of privacy, infliction of emotional distress, and other federal and local laws
- g. *Mahoney v. Allegheny College*, Cause No. AD 892-2003 (2005)
 - i. Facts
 - 1. Junior student with some history of depression
 - 2. Disclosed suicidal thoughts to girlfriend
 - 3. Sought counseling and medication
 - 4. Hospitalized, parents notified
 - 5. Apparently stabilized, returned to college
 - 6. Distress continued, but no overt attempt at self-harm
 - 7. Student hung himself in off-campus fraternity house
 - 8. Family moved for summary judgment, alleging breach of duty of care, duty to notify parents, failure to involuntarily hospitalize, failure to require leave of absence, and breach of contract
 - ii. Decision:
 - 1. Considered importance of therapist- patient privilege and student privacy
 - 2. Considered problems with involuntary withdrawal policies and disability discrimination
 - 3. Relied on *Jain* to find “no ‘special relationship’ or ‘reasonably foreseeable’ events that would justify creating a duty to prevent suicide or notify parents
 - iii. Guidance: Court encouraged efforts at prevention (rather than search for a legal duty or blame)
- h. *Schieszler v. Ferrum College*, 236 F.Supp.2d 602 (W.D. Va. 2002)
 - i. Facts
 - 1. Freshman student, argument with girlfriend
 - 2. Police and residential life aware of note to girlfriend threatening suicide and of suicide attempt
 - 3. Student signed an agreement not to hurt himself
 - 4. He hung himself in his residence hall room
 - 5. Representatives of the estate sued college
 - 6. Alleged college had a duty to prevent the suicide
 - ii. Decision
 - 1. Court suggested that a special relationship (creating a duty) could arise from the facts of this case
 - 2. Denied college’s motion to dismiss
 - iii. Settlement
 - iv. Guidance: Behavioral contracts
 - 1. Don’t rely on agreements made by student
 - 2. Even if entered in good faith, subject to change in mental state
- i. *Jain v. State of Iowa*, 617 N.W.2d 293 (Iowa 2000)

- i. Facts
 - 1. Freshman student, fall semester
 - 2. Some reported problems with alcohol
 - 3. University aware of threats to harm self
 - 4. Residential Life staff worked with student
 - 5. He promised to talk to his family
 - 6. Declined referral to counseling
 - 7. Did not talk to his family
 - 8. Brought moped into suite (with 3 other students)
 - 9. Died of asphyxiation
 - 10. Father sued, alleged failure of school to notify family was negligent
 - 11. University policy permitted parental notification but only by Dean of Students (who was not aware of issue with this student)
- ii. Decision
 - 1. Policy and federal law (FERPA) that PERMITTED notification did not create a duty to notify
 - 2. University not found to be negligent
- iii. Guidance:
 - 1. "Counseling" by non-counselors
 - a. Not adequately trained
 - b. No legal duty of confidentiality (problems can arise if promise is made to keep the conversation confidential)
 - c. May keep student from seeking professional assistance
 - 2. Risk posed to other students by suicide