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Mental health policies a legal 'Catch-22' for schools

Excluding students with mental health problems results in warnings, suits.

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SCHOOLS IMPLEMENTING policies that exclude students from campus who suffer from mental health problems are facing legal action, as well as warnings from the U.S. Department of Education.

Lawsuits filed against several schools in multiple jurisdictions, and complaints filed with the U.S. Department of Education's Office of Civil Rights, allege discrimination under the Americans With Disabilities Act. The ADA applies to schools through Section 504 of the Rehabilitation Act of 1973.

The actions are placing schools in a "Catch-22" situation in which they can be held liable no matter what they do, said Peter Lake, a professor of law at Stetson University College of Law in Gulfport, Fla., who co-authored the law treatise, *The Rights and Responsibilities of the Modern University*.

"Institutions feel squeezed," Lake said.

The Bazelon Center for Mental Health Law in Washington, a nonprofit organization that aims to protect the civil rights of those with mental disabilities, has filed three lawsuits on behalf of students who claim their schools illegally forced them out. The suits have been filed against Hunter College at the City University of New York, George Washington University in Washington and, most recently, against the Ethel Walker School, a boarding school in Simsbury, Conn.

Close to settlement

The action against the boarding school alleges that the Ethel Walker School's decision to prevent the student from returning after hospitalization was not based on an "individualized assessment." C.D. v. The Ethel Walker School Inc., No. 305CV0852 AWT (D. Conn.).

Helen Kemp of Hartford, Conn.'s Robinson & Cole, the lawyer for the Ethel Walker School, said the school disagrees with many of the allegations in the complaint. She said the suit is close to settlement, and an agreement should be official within the next month.

The complaint against George Washington University alleged that following a student's voluntary hospitalization for suicidal thoughts, he received a letter from the school placing him on interim suspension for "endangering behavior," without allowing him due process through a hearing. *Nott v.*

George Washington University, No. 05-8503 (D.C. Super. Ct.).

Tracy Schiaro, a spokeswoman for George Washington University, said the school cannot discuss the specifics of the case. But the school implemented the policy "based on [the student's] best interest, which is evidenced by the fact that he is still alive today," she said. The terms of the settlement were kept confidential.

The suit against Hunter College alleged that an unnamed student was locked out of her dorm room following hospitalization for a mental health illness.

The suit was filed in 2004 and settled for \$65,000 in August 2006. Doe v.

Hunter College of the City University New York, No. 04 CV 6740 (S.D.N.Y.).

Since the settlement, the City University of New York has withdrawn its automatic-exclusion policy and reviews each situation case by case, said Michael Arena, spokesman for the City University of New York.

Removal policies became more prevalent following the suicide of a student at Massachusetts Institute of Technology (MIT) in 2000. Parents of the student filed a suit alleging that the school, and the school counselor treating the student, were liable for not informing her parents on the seriousness of the student's condition. The case settled in 2006. Shin v. M.I.T., No. 02-0403 (Middlesex Co., Mass., Super. Ct.).

The case resonated with parents and schools across the country. "Parents were thinking, 'That could have been us,' " said David DeLuca of Murphy, Hesse, Toomey & Lehane in Quincy, Mass., the attorney for the parents of the MIT student.

In the last 18 months, the U.S. Department of Education's Office of Civil Rights has resolved three complaints filed against colleges for excluding students after learning of a mental health condition.

The colleges are Marietta College in Marietta, Ohio; Bluffton University in Bluffton, Ohio; and DeSales University in Center Valley, Pa.

In each case, the Office of Civil Rights required the schools to change their policies or face the withholding of federal funding under Section 504 of the Rehabilitation Act. The schools agreed to develop grievance procedures with due process standards when a student alleges disability discrimination, said Jim Bradshaw at the U.S. Department of Education.

A spokesman for Marietta College, Tom Perry, said the school has complied with all directives from the Department of Education.

Eric Fulcomer, dean of students at Bluffton University, said, "[w]e feel that the school has gotten to a better place because of it. We worked with the Office of Civil Rights to develop a policy for emergency removal."

Thomas Traud Jr. of Traud Law Offices in Allentown, Pa., an attorney for DeSales University, said that the "Department of Education felt that there wasn't enough publication of disability policy, so we fixed that."

