

Chapter 6:

Legal-Ethical Issues in College Mental Health Karen Bower, J.D. and Victor Schwartz, M.D.

This chapter addresses the legal and ethical issues relevant to college mental health, including confidentiality, student rights, discrimination, and liability, with practical application to leaves of absences, accommodations, disciplinary action, mandatory assessments, and screening.

Introduction

The legal and ethical principles that frame the management of mental health services on university campuses present campus clinicians and administrators with multiple challenges. In the following discussion we will present a theoretical framework that explicates the sources of these challenges and seeming conflicts. We will then analyze the statutory and case law around these issues. And finally, we will make some general recommendations to those managing these challenging issues.

Conceptual framework

The statutory, case law and ethical principles relevant to university mental health can be generally grouped into two overarching categories. On the one hand, there is strong support for the privacy and autonomy of the individual student. In line with this is the idea (supported by legislation such as the Americans with Disabilities Act (ADA)) that universities should make every effort to support the ability and right of a student with disabilities, including mental illness, to attend and succeed in college. On the other hand, there has been an increase in attention to community safety and an increased sensitivity to parental expectations of involvement with their children. Administrators and clinicians have felt increasing pressure to anticipate and prevent tragic outcomes, even when this might mean taking steps that might limit student autonomy and privacy.

Privacy /autonomy

An expectation of privacy is a fundamental ethical standard in a free society (S. Warren, L. Brandeis, *The Right to Privacy*, Harvard Law Review, Vol. 4, No.5, Dec. 1890). Beyond this, the concept of *confidentiality* in the mental health setting is absolute bedrock upon which the therapeutic relationship must rest (see, for example, R. Slovenko, G. Usdin, *Psychotherapy, Confidentiality and Privileged Communication*, CC Thomas, Springfield, 1966). Creating an environment where students feel that it is safe to seek help is essential. The practice of psychotherapy is founded on the notion that people will feel safe in sharing personal and at times embarrassing information. This can only occur when the student has confidence that being in mental health treatment and what transpires in therapy will not be shared with others. This expectation and the fear of its breach are immediate and intense in small and self-contained communities such as universities where many members have personal interconnections.

It would not be surprising that many students coming to college mental health services (CMHS's) for help might worry about whether clinicians are sharing information with college personnel outside of the service and wonder under what conditions their parents might be contacted by the service or the university. If the CMHS has not succeeded in establishing a fundamental relationship of *trust* with

the student body, its effectiveness in engaging students in need of help and in achieving good clinical outcomes will be severely undermined. Arenson, Karen, Worried Colleges Step Up Efforts Over Suicide, NYTimes, 12/2/04. It is also important to note that students come to university to promote their future success. So it is not a simple matter to confide in the people on whom one's future may rest that one is having a serious problem. Again, the establishment of trust is a crucial and at the same time fragile matter.

Campus safety/Parental involvement

Although college students are young adults and in almost all cases are also legally adults, parents typically remain highly involved in their lives and university careers. (The reasons for this are complex and will be taken up in greater detail in Chapter 9). Accordingly, there may be an expectation by parents that information about their college-attending child ought to be available to them, particularly in circumstances where a student is struggling with academic, personal or emotional problems. Many parents assume that they should be part of whatever discussion or plan may ensue in the course of addressing this concern. While there are many situations where parents can be involved in these discussions, there are also legal and ethical constraints that need to be weighed. These will be addressed in detail later in the chapter.

Paralleling parents' concerns about their children's lives while in college, there has developed a sense among university administrators that students are in regular and consistent need of supervision and oversight. This trend has been heightened dramatically subsequent to recent campus tragedies and several well publicized lawsuits involving universities (Appelbaum, P., Law and Psychiatry: "Depressed? Get Out": Dealing with Suicidal Students on College Campuses, Psychiatric Services, 57:914-6, July 2006). University administrators have felt growing pressure to safeguard their campuses from tragedies, mishaps, and resultant lawsuits.

Certainly, universities can be expected to take sensible (and often legally mandated) steps to protect their campus communities. Fire and building safety codes and conformity with basic law enforcement and security practices must be in place and, should untoward events occur, universities should strive to reduce the likelihood of reoccurrence. Nevertheless, there is a sentiment among parents and university personnel that universities ought to do more to safeguard their communities. Moreover, as discussed later in the chapter, certain elements of law (i.e. Virginia law re: parental notification, Responsibility to Contact Parent of Student at Imminent Risk of Suicide, Va. Code Ann. § 23-9.2:3(C), and threat assessment teams) highlight affirmative steps colleges should take to safeguard their students and communities.

Conflicting incentives and players

These conflicting trends are not surprising. Every society or community must consider how it balances the sometimes conflicting values of individual rights (including the right to be different, strange or troubling to others) against the need for order, structure and even some degree of conformity, so that the community can function effectively and people are able to live with each other in safety and comfort. Colleges are special communities in two important ways. First, many of the members of these communities are young people who have never before lived independently and continue to have close, quasi-dependent ties to parents. College may be their first major experience at trying their adult wings

and parent-child roles may be in a period of redefinition. Second, as noted above, students are living in these communities because they are pursuing a specific series of goals: to become educated and acquire tools for ongoing success in life.

On the one hand, students want to maintain the greatest latitude of freedom, privacy and independence for their participation in university life. Their families want university faculty and administrators to maintain communities are most conducive to free, interesting and exploratory discourse and thought. University therapists and students want to create systems that allow them the greatest sense of privacy so that therapeutic work can be done. Clinicians don't want policies that erode privacy and discourage students from seeking or receiving treatment. Everyone wants our university communities to be safe.

Statutory and case law may be seen as a broad attempt to find balance among these varied considerations and principles. The law here is best viewed as a dynamic system that is working to set and maintain this balance. Yet, while the law may provide outer boundaries beyond which actions would be unlawful or unethical, it often does not provide clear answers for the resolution of mental health crises on college campuses.

In the following discussion of the specifics of statutory and case law it would be helpful to keep this framework in mind. In reading this chapter, it may be useful to consider the ethical principle or problem the law or case is addressing and how the various concerns find balance within the system as a whole. We will first lay out the details of the laws and conclude with recommendations and suggestions for practice.

Legal Framework

Confidentiality

In colleges and universities, the circumstances under which mental health information and records can be disclosed is governed by professional licensing standards and ethics, state law, and federal law. More than one law can apply to any given situation, so individuals in possession of confidential information are obliged to comply with the most restrictive among these requirements. Generally speaking, state laws afford the greatest protection and therefore, will be broadly applicable. **Both state and federal laws allow disclosure of mental health information when there is a specific danger to self or others.**

It is important to remember that in the education context, **privacy is critical**. In this regard, the education context is no different than any other setting involving mental health treatment. Students are often fearful that they will be denied jobs, housing or educational or social opportunities if they disclose their mental illness. To encourage students to seek treatment, schools must ensure confidentiality. **Failure to adequately protect mental health information can result in negative consequences for students, can erode confidence in university health care clinics and counseling centers, and may discourage students from using available services and getting needed treatment.**

Limitations on confidentiality, e.g., regarding danger, duty to warn, etc., are not unique to the campus mental health setting and are negotiated daily within all mental health service contexts. These

limitations may be a disincentive to seeking treatment. Schools have recognized that “[i]f students believe that college staff may notify their parents or seek to hospitalize them if they disclose their mental problems or suicidal thoughts, they may decline to provide important information about their mental health history, they may entirely avoid seeking help for their problems, or, if they do make an effort to get help, they may not be fully honest.” Amici Curie American Council on Education, American Association of Collegiate registrars and Admissions Officers, American Association of Community Colleges, American Association of State Colleges and Universities, Association of American Universities, National Association of Independent Colleges and Universities, National Association of State Universities and Land-Grant Colleges, and National Association of Student Personnel Administrators in support of Petition for Relief Under G.L.C. 231, § 118 (First Paragraph) by MIT Administrators Arnold Henderson and Nina Davis-Millis. Key to developing a successful therapeutic relationship is an understanding by any consumer of the scope and limitations of the privacy considerations guiding the therapeutic interaction.

When disclosure is necessary, it is always preferable to obtain consent to a voluntary disclosure of confidential information. Schools can ask students upon matriculation and upon becoming a client of the counseling center to voluntarily identify individuals whom the school can contact in case of an emergency. Colorado wrote this option into law, as a pilot program allowing schools to offer students the opportunity to complete a consent form designating a contact person who the school can contact if the school believes the student is considering suicide or may be a danger to him or herself. Colorado Higher Education Student Suicide Prevention Act, Colorado Revised Statutes, § 23-20-101 (June 2, 2006). The University of North Carolina at Chapel Hill is researching use of psychiatric advance directives in the college setting to address this and similar matters. See, http://www.miwatch.org/2008/09/helping_college_students_pads.html

1. State law

Since state confidentiality laws address the treatment of mental health information and records wherever they are maintained, they are applicable to both clinicians and school personnel generally. State laws governing health records provide for confidentiality but vary from state to state in their terms, scope, requirements, and application. The following discussion therefore addresses state law confidentiality principles generally. Schools should seek legal counsel for state specific information.

Most state statutes broadly define protected mental health information to encompass identifying information about clients, oral communications made to therapists or others, and written records. Depending on the jurisdiction, confidential information shared with a mental health treatment provider may be disclosed without the patient’s consent only in very limited situations. The legal precedent for a mental health professional’s disclosure of confidential information lies in the duty to protect or warn which was established by the California Supreme Court’s decision in *Tarasoff v. Regents of the University of California*, 17 Cal.3d 425 (1976). In *Tarasoff*, a University of California student told his psychologist that he intended to kill an unnamed but readily identifiable woman. The psychologist believed the patient met the commitment standard and informed police, who detained him briefly, but did not inform the intended victim. The patient subsequently killed the woman. Her parents sued the psychologist for failing to warn them or their daughter about the impending danger. The California Supreme Court rejected the psychologist’s claim that he owed no duty to the woman because she was

not his patient, holding that “when a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger. The discharge of this duty may require the therapist to take one or more of various steps, depending upon the nature of the case. Thus it may call for him to warn the intended victim or others likely to apprise the victim of the danger, to notify police, or to take whatever other steps are reasonably necessary under the circumstances.”

Since the Tarasoff ruling, most states have created, through case law or statute, a duty of mental health professionals to protect or warn third parties of a serious risk of injury. (Tarasoff at Twenty-Five, Paul B. Herbert, JD, MD, and Kathryn A. Young, JD, *J Am Acad Psychiatry Law* 30:275–81, 2002. See also, Restatement Third of Torts, section 41 and internal citations for discussion of the duty owed to third parties). Generally speaking, privacy may be breached and confidential information shared without consent when the treatment professional believes there is a substantial and imminent risk that his or her failure to disclose information will result in serious physical harm to others. In those circumstances, a mental health professional may disclose confidential information as part of a duty to protect or warn the intended victim of harm. (Tarasoff at Twenty-Five, Paul B. Herbert, JD, MD, and Kathryn A. Young, JD, *J Am Acad Psychiatry Law*, 30:275-81, 2002). However, this exception to confidentiality is very limited and narrowly proscribes the individuals with whom confidential information may be shared.

Most state statutes provide for disclosure of confidential information without consent on an emergency basis to law enforcement officers and emergency medical personnel when the patient presents a serious risk of violence to self or others. These statutes often do not allow disclosure to a parent or other relative or to individuals such as a school dean or administrator unless they are individuals who can prevent a specific threat of violence. For example, the California Confidentiality of Medical Information Act includes a list of parties to whom information may be disclosed for safety reasons. Ann. Cal. Civ. Code § 56.10(a) and (c)(1)(West 2007). There are protections and limitations for disclosure even when authorized by law. Ann. Cal. Civ. Code § 56.104 (West 2007).

New York’s Mental Hygiene law allows nonconsensual disclosure of mental health information to an endangered individual and a law enforcement agency when a treating psychiatrist or psychologist has determined that a patient or client presents a serious and imminent danger to that individual. N.Y. MENTAL HYG. LAW § 33.13(c) (McKinney 2008). Texas limits disclosure of confidential information to judicial or administrative proceedings and without consent to, among others, medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others. Texas Health and Safety Code § 611.004 (2) and (7). Virginia recently passed a law requiring state colleges to notify a parent of a dependent student who receives mental health treatment at the school’s counseling center when there exists a substantial likelihood that the student will cause serious physical harm to himself or others, unless the student’s treatment provider, in the exercise of his professional judgment, indicates that notification would be reasonably likely to cause substantial harm to the student or another person. Va. Code Ann. § 23-9.2:3(C)(2009).

Confidential information that has been disclosed by mental health treatment providers in a health and safety emergency retain their protection as mental health records. State laws prohibit re-disclosure of confidential information except to the extent that re-disclosure is consistent with the initial purpose

for which disclosure was authorized. Therefore, **school personnel who receive confidential mental health information in an emergency situation must take precautions to safeguard privacy of the information except as necessary to respond to the emergency.** State laws generally require a treatment provider to record nonconsensual disclosures. Most state statutes provide for damages, fines or imprisonment for privacy violations.

Given the differences among state statutes, it is important to consult with counsel for state specific information.

2. Federal Law

In addition to the state law protections afforded to mental health information, the sharing of student information is also governed by federal law - primarily the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The Department of Education has issued implementing regulations, which can be found in the United States Code of Federal Regulations at 34 C.F.R. Part 99, see also http://www.gpo.gov/nara/cfr/waisidx_00/34cfr99_00.html. FERPA applies to colleges and universities that receive federal funds under any program administered by the Secretary of Education. 20 USC 1232g(a)(1). “Receipt of federal funds” is broadly interpreted, and includes receipt of grants, or contracts and the enrollment of students who receive federal financial aid, Pell grants, or guaranteed student loans. See 20 U.S.C. § 1232g; 34 CFR §99.1(c). Some schools, including those that do not receive any federal funds, or that have university hospitals, may also be governed by the Health Insurance Portability and Accountability Act (HIPAA). Each of these laws is addressed below.

a. Family Education Rights and Privacy Act (FERPA)

FERPA governs disclosure of student educational records and information contained in those records, and establishes when such records and information may be disclosed. **FERPA has limited applicability to clinical personnel since, as discussed below, they are subject to strict standards under licensing and ethical codes and state law. Its protections primarily apply to non-clinical personnel.** FERPA prohibits disclosure of educational records and information contained in those records without consent. **FERPA has several enumerated exceptions which allow-- but do not require-- disclosure of student information without consent to specific categories of individuals.**

Education records protected by FERPA are broadly defined as: records, files, documents, and other materials that: a) contain information directly related to a student; and b) are maintained by an educational agency or institution. 20 U.S.C. § 1232g(a)(4)(A); 34 CFR § 99.3. A record is “directly related” to a student if it identifies the student on its face, or if the student’s identity can be deduced from the demographic, descriptive or other information, either alone or in combination with other publicly available information. This definition is broad enough to encompass virtually all records maintained by a college or university, including transcripts, academic records, exams, financial aid records, disciplinary records, housing contracts, disability services records, email messages and handwritten notes.

FERPA allows students to inspect and review their education records for accuracy, provides a procedure for challenging the accuracy of education records, and prevents personally identifiable

information from being disclosed to third parties without consent. If a student requests his or her educational record, it must be provided within 45 days. 34 C.F.R. § 99.10.

The definition of education records specifically excludes personal notes created solely for an individual's personal use that are not accessible or shared with others, law enforcement records for a law enforcement purpose, certain employment records, and treatment records. 20 U.S.C. § 1232g(a)(4)(B). "Treatment records" are defined as "records that are a) made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity, b) made, maintained or used only in connection with treatment, and c) disclosed only to individuals providing treatment." 20 U.S.C. 1232g(a)(4)(B)(iv). Progress notes by a physician, social worker, psychiatrist or psychologist are treatment records. Records detailing a student's health including mental illness or disability that are created or maintained by school officials who are not treatment providers—including teachers, deans, administrators, and resident advisors, or are used for purposes other than treatment, are education records and thus are governed by FERPA. 20 U.S.C. § 1232g(a)(4). Note that since these records contain information about a student's mental health, they may also be governed by state mental health law and, in limited circumstances, by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). **A school must comply with the state or federal law with the strictest requirements.**

It is important to note that FERPA's protections apply to oral and written disclosure of information contained in education records. Observations by school personnel other than mental health personnel (faculty, student affairs directors, deans, resident advisors) are not educational records, and are not governed by FERPA. University administrators can disclose their observations to others without consent. (Statement of Leroy Rooker regarding Disclosure of Information from Education Records to Parents of Students Attending Postsecondary Institutions, <http://www.ed.gov/policy/gen/guid/fpc/hottopics/ht-parents-postsecstudents.html>. See also, Letter to Montgomery County Public Schools (MD) re: Law Enforcement Unit Records (February 15, 2006) (on file with the Family Educational Rights and Privacy Act Online Library). <http://www.ed.gov/policy/gen/guid/fpc/ferpa/library/montcounty0215.html>). However, any *written* notes that contain personal observations are education records protected by FERPA and can only be disclosed by consent or pursuant to one of the FERPA exceptions.

The FERPA exceptions that allow disclosure without consent include:

- **Directory information** Directory information includes information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. 34 C.F.R. § 99.3 (2006). Examples of directory information include the student's name, address, phone number, e-mail address, photograph, date of birth, field of study, sports participation, awards received, and other schools attended, among other examples. 20 U.S.C. § 1232g(b)(1); see also *id.* § 1232g(a)(5)(A). If a college or university wishes to designate certain classes of information as "directory information" that will be released without the student's consent, it must first afford the student an opportunity to opt out and prevent the release of directory information. 34 C.F.R. § 99.37 (2006).
- **Legitimate Educational Interest** Under this exception to consent, a school official may release non-directory information and education records to another school official within the same educational institution who has a "legitimate educational interest" in the

material, *Id.* § 1232g(b)(1)(A). If a school does disclose records under this exception, it must define and give notice to its students of who qualifies as a “school official” and what constitutes a “legitimate educational interest.” *Id.* **However, since FERPA does not require a postsecondary school to make education records available to anyone other than an eligible student, a school can determine that certain records cannot be shared without consent even when a legitimate educational purpose exists.** Letter from Leroy S. Rooker, Director, Family Policy Compliance Office, to David Cope, Assistant Professor, Mathematics Department, University of North Alabama (Nov. 2, 2004) (on file with the Family Educational Rights and Privacy Act Online Library), <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/copeuna.html>.

- **Health or Safety Emergency** FERPA permits disclosure without consent to appropriate persons in connection with an emergency when information is necessary to protect the health or safety of the student or other persons. *Id.* § 1232g(b)(1)(I); 34 C.F.R. 99.31(a)(10) and 99.36. Appropriate persons typically include law enforcement officials, public health officials, trained medical personnel and a student’s parents. 34 CFR § 99.36(a) (December 9, 2008). Schools may disclose information to such third parties if there is an articulable and significant threat to the health or safety of the student or others. 34 CFR § 99.36(c). The U.S. Department of Education has interpreted the health and safety emergency exception to allow disclosure only if the school has determined, in a specific case that there is immediate need to disclose information in order to avert or diffuse a serious threat to the safety or health of the student or other individuals. (Letter from Leroy S. Rooker, Director, Family Policy Compliance Office, to Melanie Baise, Associate University Counsel, The University of New Mexico (Nov. 29, 2004) (on file with the Family Educational Rights and Privacy Act Online Library), <http://www.ed.gov/policy/gen/guid/fpco/ferpa/library/baiseunmslc.html>). Further, any release must be narrowly tailored, and be made only to parties who can address the specific emergency in question. FPCO Guidance on “Recent Amendments to FERPA Relating to Anti-Terrorism Activities (April 12, 2002). The health and safety exception is “limited to the period of the emergency and generally will not allow for a blanket release of personally identifiable information from a student’s education records.” *Id.*

- **Parents of Dependents** Disclosure of education records to parents of students who have been declared dependant for federal tax purposes is permitted without consent. 20 U.S.C. § 1232g(b)(1)(H). Schools can determine if a student is a dependent by asking students to submit redacted copies of their parents’ tax returns, or one of the model forms created by the Department of Education. <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/modelform.html> or <http://www.ed.gov/policy/gen/guid/fpco/ferpa/safeschools/modelform2.html> (including a consent section for students who are not dependent).

- **Judicial Order or Subpoena** Release of records without consent is allowed in order to comply with a judicial order or lawfully issued subpoena. *Id.* § 1232g(b)(1)(J).

- Other exceptions to the FERPA privacy rule permit school officials to share education records in certain circumstances with: officials of another school for purposes related to enrollment or transfer; authorized representatives of the Comptroller General of the United

States, the Attorney General of the United States, the United States Secretary of Education, or state and local educational authorities; in connection with the student's financial aid; organizations conducting certain studies for the educational institution; accrediting organizations to carry out their accrediting functions; or the student him or herself. Id. § 1232g(b)(1)(B-G). Further, FERPA allows disclosing information to parents without a student's consent if the student has violated any Federal, State or local Law, or any school rule or policy governing the possession or use of alcohol or a controlled substance, if the student is under age 21 and the use or possession constitutes a disciplinary violation. Id. § 1232g(i). 99.31(a)(15). It also allows a school to disclose results of disciplinary proceeding for a crime of violence or non-forcible sex offense to a victim or others if the crime violated schools rules or policies. Id. § 1232g(b)(6).

A school that discloses information pursuant to one of the enumerated exceptions must inform the recipient that the **information may not be re-disclosed** unless the recipient obtains consent or the subsequent disclosure falls within one of the FERPA exceptions. Id. § 1232g(b)(4)(B). Before a FERPA disclosure is made, state mental health privacy law protections must be considered. **A school should comply with the state or federal law with strictest requirements.**

Schools must record all requests for access and all disclosures and re-disclosures of personally identifiable information, and the basis for the release (ie the recipient's legitimate educational interest). Id. § 1232g(b)(4)(A), 34 CFR § 99.32. Schools must also, upon request, provide a copy of the released records to the student and an opportunity to challenge the content. 34 C.F.R. § 99.34(a). Similarly, if a school discloses information under the health or safety emergency exception, schools must record the articulable and significant threat to health or safety that formed the basis for disclosure and the parties to whom information was disclosed. 34 CFR § 99.32(a)(5).

While **there is no cause of action against school personnel for violation of FERPA (i.e., individual clinicians or administrators cannot be sued for FERPA violations)**, students may file a complaint with the Department of Education Office of Family Policy Compliance against a school that violates the FERPA requirements. Sanctions may include loss of federal financial assistance. Students may also file complaints with the state Department of Higher Education. **Even though a disclosure may be permissible under FERPA, it may violate a state re-disclosure law or other privacy law.** While it may be time consuming to obtain consent, when mental health information is at issue **it is always preferable to obtain consent to a disclosure of confidential information, and as discussed above, it is potentially legally risky not to do so.**

b. Health Insurance Portability and Accountability Act ("HIPAA")

In the majority of cases, the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936 (codified as amended at 45 C.F.R. §§ 160, 164 (1996)), will not apply to the records maintained at postsecondary institutions. HIPAA was enacted to provide national standards for privacy and access to identifiable health information, and to standardize the communication of electronic health information between health insurers and health care providers such as: hospitals, health care clinics, physicians' offices, pharmacies, clinical social workers, psychologists, nurses, and any person or organization that furnishes, bills, or is paid for health care in the normal course of business. As such, most communication in campus settings is outside the domain of HIPAA. 45 C.F.R. § 164.501.

HIPAA applies only to “covered entities”-health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with certain “covered transactions.” A HIPAA covered transaction is “the transmission of information ... to carry out financial or administrative activities related to health care.” HIPAA specifically enumerates 11 HIPAA transactions such as processing health claims, billing third-party payers, transmitting encounter information, payment and remittance advice, health plan eligibility, and premium payments. 45 CFR § 160.103.

Schools may be “covered entities” under HIPAA if they have a health program or clinic and staff that transmit health information in electronic form in connection with health care billing, payment and remittance advice, claims or encounter information. While many schools do provide health care services, if they do not engage in the enumerated transactions in electronic form, they are not covered entities.

However, even if a school that receives federal funds is a covered entity, education records and medical and mental health records are *specifically exempted* from the definition of protected health information in the HIPAA privacy rule.. 45 C.F.R. §§ 160.103, 164.501. However, since the reasoning for exclusion of treatment records from HIPAA protections in the postsecondary school context is questionable, the regulations are legally vulnerable. See HIPAA Privacy Rule preamble,; 65 Fed. Reg. at 82483.

Note however, that treatment records of hospitals affiliated with universities are not FERPA education records (directly related to a student and maintained by an educational institution or party acting for the institution) and are therefore governed by the HIPAA Privacy rule.

Like FERPA, HIPAA has exceptions to comply with law enforcement and to uphold other laws, such as those addressing public health, child abuse or neglect, domestic violence, criminal investigations, and judicial or administrative proceedings. 45 C.F.R. 164.512. The HIPAA privacy rule has an emergency exception, which allows disclosure of protected health information without consent to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, and disclosure is to a person reasonably able to prevent or lessen the threat, such as the target of the threat. 45 CFR § 164.512(j). Such disclosure must be consistent with applicable state law, as discussed above. **A school must comply with the state or federal law with the most strict requirements.**

HIPAA does not give people the right to sue. Instead, someone aggrieved by violation of HIPAA may file a written complaint with the Department of Health and Human Services Office for Civil Rights, which has the authority to impose civil and criminal penalties if they find a violation of the law.

Other laws also apply to certain student health records, such as substance abuse records. Section 543 of the Public Health Service Act, 42 U.S.C. 290dd-2, and its implementing regulation, 42 CFR Part 2, establish confidentiality requirements for patient records that are maintained in connection with the performance of any federally-assisted specialized alcohol or drug abuse program. Publically operated schools are also subject to any protections for privacy that may exist in state constitutions.

As described above, **in most cases the mental health treatment records of a university counseling center will be exempt from federal law (ie. they are excluded from the definition of**

education records under FERPA and the definition of protected health information under HIPAA). Instead, a counseling center’s mental health treatment records are primarily governed by state law, and professional licensing requirements, and codes of ethics.

3. Licensing and Professional Ethics

In addition to legal duties to protect confidentiality, treatment providers have an ethical obligation not to disclose confidential information. The American Psychiatric Association, American Psychological Association, National Association of Social Workers, American Counseling Association, American School Counselor Association (ASCA), and American Medical Association, among others, all have codes of ethics that prohibit disclosure of confidential information except in limited circumstances.

For example,, the American Medical Association’s code of ethics holds as a central tenet that a physician shall safeguard patient confidences and privacy within the constraints of the law, The Principles of Medical Ethics § 10.01 (Am. Med. Ass’n 2001). It also provides that, “[w]hen a patient threatens to inflict serious physical harm to another person or to him or herself and there is a reasonable probability that the patient may carry out the threat, the physician should take reasonable precautions for the protection of the intended victim, which may include notification of law enforcement authorities.” Code of Medical Ethics: Current Opinions § E-5.05 (Am. Med. Ass’n 2007) However, the Code stresses that when disclosure is necessary, only the minimal amount of information required by law should be divulged. *Id.* See also, The Principles of Medical Ethics: With Annotations Especially Applicable To Psychiatry § 4.2 (Am. Psychiatric Ass’n 2008)), Ethical Principles And Code Of Conduct § 4.05 (Am. Psychological Ass’n 2003), National Association of Social Workers, Code of Ethics, 1.07(c).

Family members may be appropriate individuals to whom confidential information can be released in an emergency situation, however, treatment providers must exercise professional judgment and consider whether disclosure to family members will exacerbate the problem or damage the therapeutic relationship.

Several Codes also include an ethical obligation for mental health treatment providers to inform their clients of the nature and limits of confidentiality, and the circumstances in which confidentiality will be breached. See e.g., National Association of Social Workers § 1.07(e); Ethical Principles and Code Of Conduct § 4.02 (Am. Psychological Ass’n 2006).

It is appropriate for counselors to assist a student in seeking a leave or accommodations, at the students’ request. But, it is a breach of professional ethics for a therapist to have a “dual relationship” with a client, simultaneously acting as a treatment provider to a student and a decision-maker for the university. A counselor cannot provide treatment services to the student and simultaneously use information gathered in treating the student to make an administrative determination on behalf of the university. When a counselor is in a treatment relationship with a student, participating as a decision-maker on behalf of the university to determine, for example, whether the student should be placed on an involuntary leave of absence presents a conflict of interest and is unethical. Of course, in a situation in which the student may present significant danger to self or others, the therapist is obligated to take necessary steps to protect the student and the community (more on this later).

Recommendations:

Policies should be developed so as not to discourage students from seeking treatment, e.g. forcing students to take a medical leave solely on the basis of seeking treatment for suicidal thoughts or attempts.

Confidentiality is critical. Efforts to relax confidentiality and mandate parental notification are likely to have an unintended deleterious impact on the care of college students.

State and federal law and codes of ethics allow disclosure to appropriate persons in connection with an emergency. Perceived impediments to information-sharing seem to be the result of limited or misunderstanding of FERPA and other relevant laws and regulations. The applicable laws actually provide an adequate framework for thoughtful clinical decision-making.

As described above, schools should ask students to identify individuals whom they wish to be contacted in case of a medical or psychiatric emergency.

Student Mental Health Services need to be clear with students and families when they are not in a treatment relationship but are acting as an agent of the university, e.g. when doing assessments about whether a student may reenter the University after a medical leave.

A school should comply with the state or federal law with the strictest requirements.

B. Liability for Suicide

As noted earlier, in recent years, schools have felt growing pressure to disclose student information to family members or others. Such pressure has been fueled in part by exaggerated fears of potential liability for failure to prevent suicide. Appelbaum, P, “Depressed? Get out!”: Dealing with Suicidal Students on College Campuses, *Psychiatric Services*, 57(7), 914–916.

Although there is fear of liability for failure to prevent suicide on college campuses, to date, no court has found a school liable for failure to prevent suicide. Cases involving failure to prevent suicide are governed by state tort law. In order to have liability for the negligent failure to protect, there must be a duty, a breach of that duty which results in a foreseeable harm, and causation. Historically, suicide was seen as an intentional intervening act, which broke the chain of causation and prevented liability. See discussion in Jain v. State, 617 N.W.2d 293 (Iowa 2000). Further, the general rule is that there is no duty to prevent harm to third parties, except where there is a special relationship between the parties and the harm is reasonably foreseeable. *Id.*; Restatement (Second) of Torts § 314, at 116 (1965) (where one person depends on others for protection and is deprived of opportunity for self protection). Such a special relationship giving rise to a duty to protect is usually found in custodial settings such as a jails or psychiatric hospitals. The Restatement (Second) of Torts § 315, 319, 320 (1965).

For years, the leading case involving failure to prevent suicide in an educational setting was Jain v. State, 617 N.W.2d 293 (Iowa 2000). In that case, student Sanjay Jain admitted to the resident

assistant (RA) that he was planning to kill himself by inhaling exhaust fumes from his moped. After speaking with the RA, he agreed to remove his moped from his room and assured the RA that he would seek counseling. Jain refused the RA's request to speak with his family. Several weeks later, Jain killed himself in the manner he had previously described. Jain's father brought suit against the University of Iowa, claiming that the University's knowledge of Jain's mental condition created a special relationship and the university failed to exercise reasonable care in exercising its duty to protect his son by informing his parents of his suicide attempt.

The Iowa Supreme Court disagreed, finding that:

it is undisputed that the RA appropriately intervened in an emotionally-charged situation, offered Jain support and encouragement, and referred him to counseling. [The RA] likewise counseled Jain to talk things over with his parents, seek professional help, and call her [the RA] anytime, even when she was not at work. She sought Jain's permission to contact his parents but he refused. In short, no action by university personnel prevented Jain from taking advantage of the help and encouragement being offered, nor did they do anything to prevent him from seeking help on his own accord. 617 N.W.2d 293. The court reasoned that the University did not increase Jain's risk of harm, and refused to find that a special relationship existed which gave rise to duty to notify his parents.

Since the Jain case, several recent high profile court decisions have caused schools concern that a special relationship and duty to prevent suicide could be extended to postsecondary schools. See *The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury*, Peter Lake and Nancy Tribbensee, *Stetson Law Review*, Vol. 32, No. 1, 2002.

In *Schieszler v. Ferrum College*, 236 F. Supp 2d. 602 (W.D. Va. 2002) student Michael Frentzel committed suicide by hanging. After an argument with his girlfriend, Frentzel sent her a note indicating that he would hang himself. She shared the note with the resident assistant (RA) and campus police, who responded to Frentzel's room. Frentzel had bruises on his head, which he admitted were self-inflicted. The Dean of Students was advised, and asked Frentzel to sign a statement that he would not harm himself. Although there appeared to be an imminent probability that Frentzel would harm himself, neither the RA nor the dean referred Frentzel for counseling or assessment. Days later, Frentzel wrote additional notes telling his former girlfriend he loved her and stating "only God can save me now." She reported this to the Dean and RA, who prevented her from going to Frentzel's room. They did not take any affirmative steps to ensure Frentzel's immediate safety. When the Dean and RA ultimately went to Frentzel's room, he had already committed suicide.

The family of Michael Frentzel sued Ferrum, alleging that the school knew or should have known that Frentzel was likely to harm himself if not properly supervised, and negligently failed to take adequate precautions to insure that he did not hurt himself. In refusing to dismiss the case as a matter of law, and allowing it to proceed to trial, the Virginia federal court found that a special relationship may exist because of the particular circumstances of the case. Specifically, the court was persuaded that the school's failure to take steps to aid Frentzel - by ensuring he was supervised or by contacting his guardian, while preventing his girlfriend from returning to his room - *may* have been a proximate cause of injury. It acknowledged that "[w]hile it is unlikely that Virginia would conclude that a special

relationship exists as a matter of law between colleges and universities and their students,” a jury might find that a special relationship existed *on the particular facts alleged in this case*.

It is significant that **the court did not find as a matter of law that there was a special relationship between schools and students. Nor did the court find that the school was liable.** Rather, the court found that based on the record before it, it could not say that Frentzel’s suicide was not foreseeable or the school’s conduct was not a proximate cause, and therefore allowed the case to proceed to trial. Thereafter, the case was settled.

Three years later, the reasoning of Ferrum was followed by the Massachusetts Superior Court in Shin v. MIT, 19 Mass L.Rptr. 570, 2005 WL 1869101 (Mass. Super. June 27, 2005). In that case, student Elizabeth Shin had a history of mental health problems and suicidal ideation for which she received treatment from the school counselor. Despite treatment, she continued to experience suicidal ideation. The dorm housemaster received numerous reports of Shin’s self-injurious behavior which she reported to the Dean. The Dean also met with Shin several times to discuss her mental health and received reports from professors and graduate resident tutors of concerns for Shin’s safety. On April 8, 2000 in response to a suicide threat, campus police brought Shin to the mental health center, where she spoke with an on-call psychiatrist who determined that she was not acutely suicidal. On April 10, other students related to the housemaster that Shin had made suicide threats, which she relayed to the Dean. Later that day, the Dean attended a multidisciplinary group including deans and mental health treatment providers which discussed Shin’s case. Following the meeting, one of the psychiatrists made an appointment for Shin for an outpatient program the following day, and notified Shin of the appointment and his availability. However, neither the housemaster nor the Dean made any effort to have Shin evaluated by a mental health professional to determine if she was an imminent risk of injury or to otherwise supervise her or notify her family. Shin died that night either as the result of an accident or suicide.

Shin’s family sued for failure to prevent her suicide. The Superior Court dismissed all claims against the institution, as well as some of the claims against individual administrators and staff members. However, in refusing to dismiss claims against the Dean and housemaster, the court found that they had a “special relationship” and a duty to exercise reasonable care to protect Shin from harm because they were aware of her mental health problems, and could reasonably foresee that she would hurt herself without proper supervision. Accordingly, the court found that they, “failed to secure [her] short term safety in response to her suicide plan in the morning hours of April 10. By not formulating and enacting an immediate plan to respond to [her] escalating threats to commit suicide,” there was a genuine issue of fact as to whether the administrators were negligent. *Id.* at *14. The court did not find that MIT was liable. In fact, the Court refused to find as a matter of law that the administrators owed Shin a duty. Instead, the Court ruled that there existed a genuine issue of material fact whether the administrators were grossly negligent and whether their negligence was the proximate cause of Shin’s death. As such, the case against the administrators was not dismissed and was allowed to proceed toward trial. The case settled shortly thereafter.

Significantly, in both Ferrum and Shin, in the wake of a suicide threat, the school administrative personnel did not take adequate preventive measures to refer the students for evaluation, to otherwise supervise the students, or to notify family members.

In the most recent reported case involving potential liability for failure to prevent suicide, Mahoney v. Allegheny College, No. AD 892-2003 (Pa. Commw. Ct. Dec. 22, 2005), the PA state court rejected the reasoning of Ferrum and Shin and declined to find liability. Charles Mahoney had a history of depression for which he received counseling and medication. He had frequent suicidal ideation and resisted the school counselor's requests to contact his parents. On February 11, he expressed his suicidal thoughts to a counselor who assessed his safety and determined that he was not an immediate threat. She considered contacting his parents, but did not feel that doing so would be beneficial. Later that day, he killed himself.

Mahoney's family sued, claiming that Allegheny College breached a duty to prevent his suicide and breached a duty to notify his parents. In deciding that there was no special relationship and no duty had been breached, the Mahoney court found the Jain case factually and legally persuasive. The Mahoney court specifically rejected the decisions in Shin and Ferrum as "neither precedential, nor persuasive" and factually distinctive. The court reasoned that any finding of a special relationship "is subjective in nature ... and is in effect an attenuated and unarticulated form of 'in loco parentis.'":

Clearly the increasing incidents of suicide on campuses throughout the United States is cause for grave concern. ...However, incurring or creating a new duty of care in such cases is not the answer. Nevertheless, 'failure' to create a duty is not an invitation to avoid action. We believe the 'University' has a responsibility to adopt prevention programs and protocols regarding students self-inflicted injury and suicide that address risk management from a humanistic and therapeutic as compared to just a liability or risk avoiding perspective. In our view, the likelihood of a liability determination (even where a duty is established) is remote, when the issue of proximate causation (to be liable the university's act/omissions would have to be shown to be substantial) is considered. By way of illustration, even as to the issues of the lesser duty of notification of parents/others, there is always the possibility that such may make matters worse and increase the pressure on the student to commit the act. Rather than create an ill-defined duty of due care the University and mental health community have a more realistic duty to make strides towards prevention. In that regard, the University must not do less than it ought, unless it does all that it can. Mahoney, supra. at 25.

The Mahoney court's opinion cautions against finding a special relationship and corresponding duty to prevent suicide, and instead encourages suicide prevention, referral and assessment. In addition, The Court's reasoning suggests that schools that implement suicide prevention best practices are unlikely to be found liable for failure to prevent suicide.

As the court cautions, fear of liability should not overshadow logic, confidentiality principles, and sound clinical judgment. Yet, unfortunately, schools have acknowledged that fear of liability may color their reactions to students with mental illness such that administrators take actions that are not in the best interest of students and that conflict with the judgment of the student's treating mental-health professionals. For example, administrators may second-guess the judgment of mental-health experts and substitute their own judgment, by forcing "students who appear to be at risk to be hospitalized or to withdraw from the university, even though such steps may be contrary to, and disrupt or terminate altogether, any treatment the student may be have been receiving." Brief of Amici Curiae Brown University, Cornell University, Dartmouth College, Emory University, Rice University, Stanford University, the University of Chicago, and the University of Southern California in Support of Petition

for Relief Under G.L. c. 231, § 118 (First Paragraph) by MIT Administrators Arnold Henderson and Nina Davis-Millis. In addition, schools say they may be less likely to admit students with potential mental health problems (a form of unlawful discrimination), and may be more inclined to dismiss students who threaten suicide, even if such separation would disrupt the student's treatment or make it more difficult for the student to receive treatment and thereby increase the risk of suicide. *Id.* Fear, stereotypes and prejudice about individuals with mental illness, and fear of liability have prompted some schools to take punitive actions against students who express self-injury or exhibit serious mental illness in violation of anti-discrimination laws—even when these students appropriately seek out help. See *Nott v The George Washington University, et al*, Civil Case No 05-8503, Superior Court of the District of Columbia (2005); *Doe v. Hunter*, 04-CV-6740; *Doe v. Hunter Coll.*, No. 04 Civ. 6470 (S.D.N.Y. Sept. 23, 2005). Such actions on the part of universities constitute discrimination and are illegal under the Americans with Disabilities Act. Appelbaum, P. S. (2006). Law & Psychiatry: “Depressed? Get out!”: Dealing with Suicidal Students on College Campuses, *Psychiatric Services*, 57(7), 914–916.

Recommendations:

Schools that implement responsible suicide prevention best practices are unlikely to be found liable for failure to prevent suicide.

The best interests of the student and sound clinical judgment, not fear of liability, should govern school policies and practices.

School personnel should have adequate suicide prevention training and access to consultation with mental health experts.

C. Discrimination

The Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act of 1973 (“Section 504” or “Rehab Act”) both prohibit discrimination against individuals with disabilities by colleges and universities. Section 504 of the Rehabilitation Act provides that “no otherwise qualified individual with a disability in the United States . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Section 504 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. § 794 *et seq.* (“Section 504”).

Title II of the ADA extends the prohibition of discrimination to services of all state and local government entities, including state colleges and universities, whether or not they receive federal financial assistance. Title II can be found at 42 U.S.C. §§ 12131-34. It provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132 (1990). Title III of the ADA similarly prohibits discrimination “on the basis of a disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation,” such as private schools and colleges. 42 U.S.C. §12182(a). Title III can be found in the United States Code at 42 U.S.C. §§ 12181-12189. In all relevant respects, the ADA and Rehab Act impose identical requirements. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir.2003) (“[U]nless one of the subtle

distinctions [between the two acts] is pertinent to a particular case, we treat claims under the two statutes identically.”)

In the educational setting, the prohibition on discrimination extends to academics, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular or post secondary aid, benefits or services. 34 CFR 104.43. Other federal or state anti-discrimination laws may provide further protections. For example, the Fair Housing Act prohibits discrimination in the terms, conditions, or privileges of housing and the provision of services or facilities in connection with such housing because of disability.

These anti-discrimination laws broadly prohibit the denial of participation, the provision of unequal benefits, and the use of criteria or methods of administration that discriminate and actions that have the effect of excluding people with disabilities. 34 C.F.R. §104.4. Section 504 requires reasonable accommodations when an “otherwise qualified” disabled student “would otherwise be denied meaningful access to a university.” 29 U.S.C. § 794(a); 34 C.F.R. § 104.12. Similarly, the ADA specifically includes as discrimination the failure to make reasonable modifications in policies, practices, or procedures to accommodate a disabled individual, unless the school can demonstrate that making such modifications would fundamentally alter the nature of the services. 42 U.S.C. § 12182(b)(2)(A)(ii). Reasonable accommodations are discussed in more detail below.

Section 504 also requires that all schools that receive federal funds designate a compliance officer and “adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints.” 34 CFR §104.7.

The United States Department of Justice is the agency charged with interpreting portions of the ADA relevant to education, and has issued implementing regulations, which can be found in the United States Code of Federal Regulations at 28 C.F.R. Parts 35 and 36 (for Titles II and III respectively). The Office for Civil Rights (OCR) of the U.S. Department of Education (DOE) enforces both Title II of the ADA and Section 504 with respect to the rights of college students. DOE also issued implementing regulations for Section 504 which can be found at 34 C.F.R. Part 104.

Who is a Person with a Disability?

The Americans with Disabilities Act was intended to have broad coverage. 42 U.S.C. § 12102(4)(A). Consistent with this intent, the ADA defines “disability” as: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (2) a history or record of such an impairment; or (3) being regarded as having such an impairment. A person can meet the last requirement by showing that he or she was subjected to an action prohibited by the ADA based on an actual or perceived impairment, whether or not it limits or is perceived to limit a major life activity.” 42 U.S.C. § 12102(2).

Major life activities include functions such as “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.” 42 U.S.C. sec. 12102(2). “Major life activities” also include the “operation of major bodily functions,” such as functions of the “immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.” *Id.*

The ADA makes clear that, “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis,” 42 U.S.C. § 12102(4)(A), and a determination of whether an impairment is substantially limiting must be consistent with the findings and purposes of the ADA. 42 U.S.C. § 12102(4)(B). The test is not a demanding standard but rather one that ensures “appropriately broad coverage under this Act,” *id.*, and specifically rejects a requirement that the impairment “prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” 12101(b)(4). Impairments that are episodic or in remission meet the definition of disability if they would be substantially limiting when active. 42 § 12102(4)(D). Finally, the ADA requires that the determination of whether an individual has a disability is to be made without taking into account the ameliorative effects on an individual’s impairment of any reasonable accommodations or mitigating measures such as medication, medical equipment, supplies, or appliances. 42 U.S.C. § 12102(4)(E). Mental or psychological impairments such as emotional or mental illness are protected disabilities. 29 C.F.R. §1630.2(h) (2001).

In general, students who have a mental illness that substantially limits one or more major life activities such as sleeping, working, learning, speaking, caring for themselves, reading, or concentrating, or who have a history of such a problem, will be protected by the Americans with Disabilities Act (ADA) even if their symptoms are controlled by medications or some other form of treatment.

When is a Student Qualified?

The ADA protects “qualified” individuals with disabilities from discrimination. A “qualified individual” under the ADA is “an individual with a disability who, with or without reasonable modifications to rules, policies or practices . . . meets the essential eligibility requirements for . . . participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131(2). The Department of Education implementing regulations define a “qualified” handicapped person, as one who “meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity.” 34 CFR part 104.3(l).

In the education context, a student is qualified if he or she meets the essential eligibility requirements for admission to a school. Thus, as long as a student meets the academic and technical criteria for admission to the university, and for continued matriculation as a student, the student is qualified. The technical standards include essential provisions, such as paying tuition. There is some debate regarding whether a school can consider a student with a disability not qualified if he or she poses a “direct threat” to his or her own health or safety. Under Titles II and III, a “direct threat” is defined as “a significant risk to the health or safety of others. . . .” 28 C.F.R. Pt. 35, App. A, § 35.104, [42 U.S.C. § 12182\(b\)\(3\)](#). See *Hargrave v. Vermont*, 340 F.3d 27, 35-36 (2nd Cir 2003); *Celano v. Marriott Intern., Inc.*, Slip Copy, 2008 WL 239306 (N.D.Cal., 2008).

To rise to the level of a direct threat, there must be a significant risk to health or safety that entails a high probability of substantial harm, not just a slightly increased, speculative, or remote risk. In determining whether a student presents a direct threat, a school must make an individualized and objective assessment of the student's ability to participate safely in the school’s program, based on the best available evidence. The assessment must consider the duration of the risk, the nature and severity of the potential harm, the probability that the potential harm will actually occur, the imminence of potential harm, and whether reasonable modifications to policies, practices, or procedures will

sufficiently mitigate the risk to an acceptable level. *School Bd. of Nassau County v. Arline*, 480 U.S. 282 & n.7 (1987); *Hargrave*, 340 F.3d at 36, quoting *Albertson's, Inc. v. Kirkingburg*, 527 U.S. 555, 569 (1999). See also 29 C.F.R. 1630.2(r). A student may not be denied participation based upon fear, speculation and stereotype about his perceived disability. 42 U.S.C.A. § 12102(2)(c).

D. Application

1. Dismissals/ Involuntary Leaves of Absence

Schools hope to create a caring supportive campus community that enables students to remain in school and succeed. However, whether out of misunderstanding about the correlation between mental illness and dangerousness, fear of people with mental illness, or in response to liability concerns, schools have at times adopted intrusive or harsh leave policies that limit participation or even exclude people with mental illness from campus. These policies tend to isolate students from their community and the supports they need during a time of difficulty or crisis. More broadly, these policies may have the unintended effect of discouraging students from seeking help out of fear that doing so may jeopardize their academic careers.

In two recent cases, students challenged the imposition of involuntary leaves of absence as discriminatory under the ADA and Section 504. In *Doe v. Hunter College*, a student with a history of depression voluntarily admitted herself to the hospital after ingesting several Tylenol. A few days later, she was discharged from the hospital and medically cleared to return to school with a follow-up treatment plan in place. Upon arrival at her dorm room, she learned that the locks had been changed pursuant to a school policy that provided that students who attempted to harm themselves would be evicted from the residence hall for at least one semester, and had to be evaluated by the school psychologist prior to returning. Doe was also mandated to receive counseling. Doe sued, challenging the zero tolerance policy – a blanket policy that required every student who was hospitalized or engaged in self-injurious thoughts or actions to take a leave of absence from the residence hall of a predetermined length. The District Court found that the school had not conducted an individualized assessment and Doe may have been able to demonstrate that she could have safely lived in the residence hall. <http://www.bazelon.org/pdf/Doe-v-hunter-Order-denying-motion-to-dismiss.pdf> at pg. 22. The case thereafter settled for a significant sum, and Hunter withdrew their automatic eviction policy.

In *Nott v. GWU*, No. 05-8603 (D.C. Super. Ct. 2005), student Jordan Nott sought treatment for depression through the university's counseling center. Thereafter, he voluntarily admitted himself to the university hospital for suicidal ideation. Shortly after his admission, he received a letter from the residence hall director stating that he could not return to his dorm room until he had been cleared by the counseling center. The following day, he received a letter from Student Judicial Services charging him with violation of the school code of conduct that prohibited "endangering behavior." He was suspended, pending a disciplinary hearing, barred from his dorm room and campus, and threatened with arrest for trespassing if he entered campus. Rather than face disciplinary charges, Nott withdrew, and sued alleging violation of the ADA, Section 504 and the Fair Housing Act, and other state law claims. Specifically, Nott challenged his placement on involuntary leave and the use of disciplinary procedures to address mental health issues. GWU was widely criticized for its conduct. The case was settled and GWU thereafter adopted new involuntary mental health leave policies.

<http://gwired.gwu.edu/osjs/merlin-cgi/p/downloadFile/d/18264/n/off/other/1/name/2008-2009CodeofStudentConductpdf/>

The U.S. Department of Education, Office for Civil Rights, has issued letters of decision finding ADA violations in several similar cases. See OCR letter to Marietta College (Complaint # 15-04-2060, 3/18/05); OCR letter to DeSales Univ. (OCR Complaint # 03-04-2041, 2/17/05), OCR letter to Bluffton Univ. (OCR Complaint # 15-04-2042 12/2/04), and OCR letter to Woodbury Univ. (OCR Complaint # 09-00-2079, (6/29/01), available on the Bazelon Center's website at <http://www.bazelon.org/issues/education/StudentsandMentalHealth.htm#2>.

The decisions counsel that **an involuntary leave of absence should only be used in those rare situations where it is determined that a student cannot remain safely at school even with accommodations and other supports.** A student may be placed on leave (or removed from a dormitory) only if he or she poses a "direct threat" to the health or safety of others (see above discussion on the ADA). In a complaint against DeSales University, involving a student who was evicted from university housing after posting information about suicide on his dorm door and engaged in self-cutting, OCR stated that:

In a direct threat situation, a college needs to make an individualized determination of the student's ability to safely participate in the college's program, based on reasonable medical judgment relying on the most current medical knowledge or the best available objective evidence." OCR letter to DeSales Univ., supra.

In determining whether a student constitutes a direct threat, the assessment must consider the duration of the risk, the nature and severity of the potential harm, the probability that the potential harm will actually occur, the imminence of potential harm, and whether reasonable modifications to policies, practices, or procedures will sufficiently mitigate the risk to an acceptable level. OCR letter Marietta College, supra.; OCR letter to National University (OCR Complaint # 09-99-2014, 3/23/00). Schools must consider less restrictive alternatives to leave (such as leave from housing) that would allow a student to safely remain in school before placing a student on involuntary leave of absence.

Numerous OCR decisions hold that a school should provide due process protections before students are placed on leave. Those protections include notifying the student that the school is considering placing the student on involuntary leave and providing the student an opportunity to submit and respond to any evidence. The student should also have an opportunity to appeal an adverse decision. OCR letter to Marietta College, supra. OCR letter to Guilford College (Complaint # M-02-2003, 3/6/03); OCR letter to DeSales Univ., supra. Provision of such process will help ensure that students with disabilities are not placed on leave on the basis of unfounded fear, prejudice, or stereotypes. In rare cases, where safety is of immediate concern, **a college may immediately impose a leave as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided, and a final decision with full due process (including a hearing and the right to appeal) is promptly offered.** OCR letter to DeSales Univ. If a student does present a direct threat and treatment is necessary to reduce the threat to an acceptable level, a school may require the student to participate in counseling as a condition of remaining in school or returning from leave. However, the student and mental health treatment provider-- not administration-- should determine the duration of treatment and scope of issues addressed. Requiring treatment to stay in school or as a condition of

return to school for students whose conduct does not rise to level of direct threat violates disability law.

OCR decisions state that the same type of individualized assessment required to place a student on leave is required to determine the student's ability to return. If a student was placed on leave because he or she constituted a direct threat, the school can require that the student demonstrate that she or she is no longer a direct threat. Schools can require documentation that a student is taking steps to reduce the threat to an acceptable level. OCR letter to DeSales Univ., supra. A school may not insist on an open ended or unlimited access to medical records or treatment providers. OCR letter to Woodbury University (Complaint # 09-00-2079, 6/29/01).

OCR has also stated that a school cannot require as a condition of return that the illness be cured or that disability-related behavior no longer occur, unless it is a direct threat and cannot be mitigated. Nor can a school require an assurance that a student's direct threat behavior will not recur. The school must "make a fair, stereotype-free assessment based on reasonably reliable information from objective sources such as knowledgeable medical professionals." OCR letter to Skagit Valley College (Complaint # 10-92-2080 4/21/93); OCR letter to DeSales Univ., supra.

Leaves of absence, even voluntary leaves, separate the student from structure, friends and social and professional support systems. Unless a student on leave presents a significant risk to the health or safety of others, there is no reason to prohibit the student from maintaining contact with friends and associates on campus or from attending campus events. Restrictions to a student's interactions may be limited only as needed to ensure safety. These individually tailored policies ensure that if students are limited, it will only be due to dangerousness, not discrimination.

For more information on helpful interventions for students in crisis see chapter 9 and the Supporting Students, A Model Policy for Colleges and Universities, The Judge David L. Bazelon Center for Mental Health Law, available at <http://www.bazelon.org/pdf/SupportingStudents.pdf>; Student Mental Health and the Law, The Jed Foundation, available at <http://www.jedfoundation.org/programs/legal-resource>; Law and Policy Reports.

2. Reasonable Accommodations

Reasonable accommodations are modifications to policies, procedures, and rules that are designed to provide students who have disabilities with an equal opportunity to meet academic and technical standards so that they remain and succeed in school. Schools must modify academic and other requirements as necessary to ensure that they do not discriminate or have the effect of discriminating, on the basis of handicap. However, **a school need not make changes that would fundamentally alter their operations, alter the essential nature of their program, waive essential academic and technical requirements or standards, or cause them undue financial burden.** ADA Title III Technical Assistance Manual § III-4.3600.

When a student informs a school that he/she has a disability and requests a reasonable accommodation, the school must engage in an interactive process with the student to determine what accommodations are needed. An accommodation cannot be denied on the grounds that a student did not meet an artificial deadline or did not report to a specific individual. In requesting accommodations, there are no special words that a student must use, or particular form that the request must take. Id.; OCR letter to Guilford College, supra. A school may request information regarding the nature of the

disability and how it affects the student's ability to participate in and benefit from the academic program and shape the accommodation.

In addition to accommodations such as extended time to take examinations, students may request reduced course loads, to drop courses; to change roommates or rooms; a private environment or alternate location in which to take exams; that absences be excused; postponement of assignments and exams; classes online or work from home; provision of an aide or helper in the student's room; retroactive withdrawal for students whose disability prevented an earlier request for leave and pro-rated financial reimbursement. For a list of additional accommodations, see **Campus Mental Health: Know Your Rights!** available at <http://www.bazelon.org/121/YourMind-YourRights.pdf>.

Schools should offer liberal voluntary leave policies for students with disabilities and remove existing barriers to taking a voluntary leave of absence. For example, taking a leave of absence can cause financial hardship; students may have to repay student loans and may not have funds to complete their education. If the need for a leave of absence arises after the drop/add period, taking a leave of absence may adversely affect their grade point average and academic transcript. Many students receive health care through the school and will lose needed health insurance and mental health treatment if they take a leave of absence. Schools might provide tuition reimbursement and tuition insurance. Schools may allow students to withdraw from courses or receive an incomplete rather than a failing grade if they need a leave of absence. Schools can also offer a retroactive withdrawal to students who can demonstrate that academic difficulties were the result of mental disability and that they were unable to request a leave during the term as a consequence of their disability. Schools can work with insurers community mental health treatment providers to ensure that students who take a leave of absence have access to mental health services, and can provide funds for uncovered treatment or prescriptions.

Students are also concerned with social stigma associated with taking a leave. To combat stigma, schools can raise awareness about mental health issues, support peer-run groups that support students with depression or other mental illnesses, and ensure that their policies promote help-seeking behavior. It is important that schools remove barriers that discourage students from taking needed voluntary leaves of absence. For more information about reducing stigma see Active Minds, <http://www.activeminds.org/index.php>; Community Integration Tools, The College Experience: Tips for Reducing Stress and Getting the Accommodations You Need, UPenn Collaborative on Community Integration, <http://www.upennrrtc.org/var/tool/file/26-CollegeFS.pdf>.; How Not to Respond to Virginia Tech, Karen Bower, Inside Higher Ed, 5/1/07

3. Mandatory assessments and treatment

In those rare circumstances where a school reasonably believes that a student constitutes a direct threat, the school may require the student to undergo an assessment by a mental health professional. An assessment from the student's mental health treatment provider should be sufficient. OCR letter to Skagit, supra. It is important that the assessment be objective, and conducted by an individual without a conflict of interest. If assessments are conducted by the counseling center, it presents a potential conflict of interest. It must be clear whether the mental health provider conducting the assessment is serving the student or administration as the client. In addition, if the counseling center is involved in determining whether students will be placed on involuntary leave, students may be discouraged from using campus mental health services. Conversely, it could erode confidence in the campus counseling center if

students get the impression that the 'tough cases' get sent off campus. Whoever conducts the assessment, it is essential that the assessor keeps the student's best interest as a primary concern.

If a student undergoes a mandatory assessment, the contours of the assessment and information that will be shared with the school should be clear from the outset, and no more than necessary should be shared. If the counseling center conducts the assessment, it should be clear what information will be shared with the student's treatment provider. Students who refuse to undergo a mental health assessment can only be placed on involuntary leave if they meet the direct threat standard discussed above and are provided due process protections.

Some schools have adopted policies that mandate treatment as a condition of continued enrollment, including for students who express suicidal ideation or engage in self-injury. In addition to being an ADA violation if the student is not a "direct threat," this practice raises a myriad of ethical and legal concerns. Legally, a state can mandate inpatient or outpatient treatment only if an individual presents an imminent threat of significant physical harm to themselves or others. Individuals who do not pose an imminent threat can choose whether or not they wish to pursue treatment. State mandated treatment also requires due process protections. Schools that mandate treatment rely on a much lower standard. They do not require that students be an imminent danger to themselves or others or even that students be actively suicidal. Nor do they often afford any due process protections. Such coercive policies will discourage students from seeking help due to the fear that they may lose their autonomy or that they will be suspended or expelled if they continue to experience self-injurious thoughts or behaviors. Moreover, treatment that is involuntary is less likely to be successful as students may not be truthful with their treatment providers, and may not establish an effective therapeutic relationship.

4. Discipline/Safety

Some schools have recently adopted zero-tolerance policies as part of their disciplinary process. These schools interpret prohibitions against endangering behavior to include students who express self-injurious *thoughts* or behaviors. **Inevitably, these policies punish students for help-seeking behavior and encourage students to be secretive about their problems.** While schools may believe that they are acting in the best interests of the students or the university community, disciplinary action for such thoughts or actions discourages students from seeking help and therefore actually increases the risk of harm. Counseling Crisis, Rob Capriccioso, *Inside Higher Ed.*, 3/13/06, [http://www.insidehighered.com/layout/set/dialog/news/2006/03/13/counseling.Students overwhelmingly report a feeling of betrayal when schools take disciplinary action against students who have admitted that they have self-injurious thoughts](http://www.insidehighered.com/layout/set/dialog/news/2006/03/13/counseling.Students%20overwhelmingly%20report%20a%20feeling%20of%20betrayal%20when%20schools%20take%20disciplinary%20action%20against%20students%20who%20have%20admitted%20that%20they%20have%20self-injurious%20thoughts). GWU Suit Prompts Questions Of Liability, Susan Kinzie, *Washington Post*, Friday, March 10, 2006; Reliving the Past Flashback Sends Student Home, Stephen Di Benedetto, *The Daily Eastern News*, 10/6/07; Worried Colleges Step Up Efforts Over Suicide, Karen Arenson, *The New York Times*, 12/3/04. Removing the student from a dorm or the school also isolates students from their community and social and professional supports at a time of crisis and increases the amount of stress and distress experienced by students when they are vulnerable.

Under the ADA, disciplinary rules must be non-discriminatory, must be applied in a non-discriminatory manner, and may not be imposed based on unfounded fear, prejudice, or stereotypes. Nonetheless, many schools address mental health issues (suicidal ideation, self-injury, bulimia) by disciplining the student under the theory that the school is not responding based on a diagnosis of mental illness, but based on conduct, regardless of its cause. Such actions violate the ADA. This conduct

represents symptoms of depression and overwhelmingly occurs because of mental disability. Disability discrimination includes not only discrimination based on an impairment itself but also discrimination based on the effects of an impairment, on the person himself or others. *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 143 (2d Cir. 1995), *Gambini v. Total Renal Care, Inc.*, 486 F.3d 1087 (9th Cir. 2007).

In recognition of this problem and in the wake of the *Nott v. GWU* case, Virginia passed a law requiring all public colleges to implement procedures for identifying and addressing the needs of students exhibiting suicidal tendencies or behavior. The law required that the policies ensure that “no student is penalized or expelled for attempting to commit suicide, or seeking mental health treatment for suicidal thoughts or behaviors.” Code of Virginia, Policies addressing suicidal students, § 23-9.2:8 (2007).

In general, when disciplinary action is imposed on students, a student’s disability should be considered as a mitigating factor in determining whether to impose a penalty as part of providing a reasonable accommodation. **This means that a student’s psychiatric condition should be weighed as a factor in determining what penalty, if any, should be imposed.** This is especially true (and schools can waive disciplinary action altogether) when, as a result of treatment or other interventions, the student is likely to comply with the code of conduct in the future. See OCR letter to San Diego Community College (Complaint # 09-98-2154, 12/30/99). Where a student raises his/her disability in a disciplinary proceeding, and the student’s disability is related to the disciplinary infraction, schools can conduct the proceedings in an alternate forum that includes personnel familiar with disability issues and does not include other students on the conduct board to address privacy considerations. Woodbury, *supra*. The student should be able to decide whether to proceed in the disciplinary or alternate forum. Disciplinary proceedings should be halted if a student takes a voluntary leave for mental health reasons.

Some schools have used behavioral contracts to address mental health issues. Generally, a behavioral contract is a document that lists various conditions with which a student must comply. Often it specifies consequences for violation. Behavioral contracts can take the form of post-hospitalization plans. To the extent that these behavioral contracts impose conditions on students with mental illness not imposed on non-disabled students, they are discriminatory. OCR Complaint 05-04-2094 (University of Southern Indiana, 9/43/04). Additionally, they pose the same legal and ethical problems presented by mandatory assessment and treatment discussed above.

5. Student support committees/threat assessment

Many schools have developed behavioral intervention or threat assessment committees. The Department of Education has encouraged schools to have such committees (“The Department encourages schools to implement a threat assessment program, including the establishment of a threat assessment team that utilizes the expertise of representatives from law enforcement agencies in the community”). Federal Register / Vol. 73, No. 237 / Tuesday, December 9, 2008 / Rules and Regulations at 74839. See also <http://www.ed.gov/admins/lead/safety/edpicks.jhtml?src=ln>.

While school-wide multi-disciplinary committees, may be helpful in addressing the needs of students with mental illness, threat assessment committees should focus on addressing actual threats of violence, not mental health issues. Using “threat assessment” committees to address mental health issues equates mental illness with violence and stigmatizes those who may come to the attention of the

committee for support. It also sends the message that the school is concerned with “how can we protect ourselves from you” instead of “how can we provide support to you.”

In contrast, student support committees (and behavioral intervention committees) can be valuable when used to support students who might be exhibiting academic or social difficulty. Such committees may include representatives from student life, residential housing, student judicial services, and disability services. Committees can include treatment providers from the counseling center, however it is important that counselors act as consultants and provide general advice for responding to students in distress. Counselors can receive collateral information about clients but cannot breach student confidences, including acknowledging that a particular student is receiving counseling. Committees can intervene with the student in distress and offer supportive services, refer students to counseling or academic advising, or recommend accommodations before the student fails or requires a leave of absence. Student support committees might meet weekly to share information, and discuss the status of students who might be in distress. Behavioral intervention committees can intervene with the student in distress. A committee that monitors students to impose disciplinary action rather than provide supportive services to help students succeed can create a campus climate where students are discouraged from seeking counseling.

For more information on student support teams see Student Mental Health and the Law, The Jed Foundation, available at <http://www.jedfoundation.org/programs/legal-resource>.

6. Parental Communication/Notification

College students are young adults, and as discussed above, information about them is governed by confidentiality rules. While school administrators can communicate their personal observations to parents, they are not required to do so. Pursuant to FERPA, a school cannot release information from the student’s educational record to parents without the student’s consent unless the parents claim the student as a dependent for tax purposes, there is a health or safety emergency or, in certain circumstances, where the student violates a law regarding alcohol or substance abuse (see FERPA discussion above). Mental health information enjoys even greater protection.

It is always preferable to obtain consent to a disclosure of information. School administrators and counselors may want to encourage parents and students to communicate with each other. Since release of a student’s information to parents may exacerbate situations, school administrators should judge each situation on a case by case basis and may want to consult with school counselors about specific situations. Students may not know that if insurance is used to pay for counseling services, that they have sought counseling will appear on insurance statements or bills related to their care.

7. Screening

School administrators recently have considered screening students for mental illness. Some have discussed asking potential applicants if they have a mental health history. Some have suggested monitoring social networking sites like Facebook for indications of self-injurious impulses or behavior. See e.g., Calvin College Expels Student Accused of Writing Derogatory Facebook Message, Nate Reens, *The Grand Rapids Times*, 2/12/09; College Applicants, Beware: Your Facebook Page Is Showing, John Hechinger, *Wall Street Journal*, 9/18/08. Others are concerned that increased screening and suicide prevention efforts will subject schools to liability if a student later commits suicide.

As an initial matter, screening postsecondary school applicants for mental illness is impermissible. A post secondary institution “may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation”. 34 CFR 104.42 (b)(4) and (c). Institutions may only invite applicants for admission to indicate whether and to what extent they are handicapped provided if they clearly state that “the information requested is intended for use solely in connection with [affirmative action efforts to benefit people with disabilities]; and the information is requested on a voluntary basis, that it will be kept confidential, that refusal to provide the information will not subject the applicant to any adverse treatment.” 34 CFR 104.42(c).

In addition, large scale mandatory screening programs have several specific drawbacks. First, **affixing diagnoses without offering treatment is unhelpful and can harm individuals by labeling them.** Second, screening programs are time and cost intensive. School’s limited resources are better be used to provide outreach and actual supports and services to students. Finally, mandatory screening is intrusive and a violation of privacy.

Evaluation and assessment of mental health needs within the context of overall healthcare, in accordance with healthcare privacy protections and informed consent, can serve to inform the student of risk factors and of the array of treatment and support options available to them.

Rather than screening large populations for whom immediate service might not even be available, schools would be better served by making outreach and suicide prevention a priority. Students with mental health problems need ready access to counseling and other support systems without long delays and without fear of repercussions. Schools can take actions to encourage students to seek counseling and mental health treatment through campus services or other available avenues.

An interesting approach has been developed by the American Foundation for Suicide Prevention (AFSP). In collaboration with Emory University, in Atlanta, and the University of North Carolina (UNC), Chapel Hill AFSP has created a web-based interactive screening program that aims to identify high-risk students and encourage them to get treatment. It is voluntary and confidential and provides referral to students who participate. All students are invited to participate. Interested students can anonymously visit a secure Website, and complete the online questionnaire based on the diagnostic criteria from the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*. A clinician reviews the responses and invites students with more serious problems to come for an in-person evaluation. Students can also have anonymous follow-up conversations with the clinician via a "dialogue" feature. Eighty five percent of students who completed the screening questionnaire were experiencing significant psychological problems and were not receiving any form of treatment. The online, anonymous dialogues played a key role in encouraging help-seeking. Students used the dialogue to address concerns about confidentiality, costs, parental notification, and possible sanctions for disclosing self-injury. AFSP has reported that student who used the dialogue feature “were three times more likely than others to come for an evaluation and to enter treatment.” http://www.afsp.org/index.cfm?page_id=05967029-BC0C-603D-5A32D68043B9D7A8; Garlow SJ, Rosenberg J, Moore JD, Haas AP, Koestner B, Hendin H and Nemeroff CB (2008) Depression, desperation, and suicidal ideation in college students: results from the American Foundation for Suicide Prevention College Screening Project at Emory University. *Depression Anxiety*, 25(6):482-488.

Colleges can also integrate information about mental health issues and services into student orientation and other aspects of campus life. Equally important, schools can provide training so that faculty, staff and students know what supports and services are available, how to make referrals, and how to access those supports and services. Schools can encourage the formation of peer-run groups on campus to support students with depression and other mental illnesses, and can ensure that emergency psychiatric services are available at all times, either on campus or in the community. Schools should embrace the “no wrong door” concept and provide access and referral to students wherever they are. Mental health programs need to reach out to people who demonstrate a need for services to engage them and keep them engaged.

Recommendations:

Case law suggests that schools that implement suicide prevention practices are unlikely to be found liable for failure to prevent suicide. Schools should offer liberal voluntary leave policies for students who feel that they would benefit from time off and remove barriers to taking a voluntary leave of absence.

While schools may believe that they are acting in the best interests of the students or the university community, use of disciplinary action for self-injurious thoughts or acts discourages students from seeking help and actually increases the risk of harm.

Rather than screening large populations for whom immediate service might not be available, schools would be better served by making outreach, training and suicide prevention a priority.

Schools need to encourage student support groups and activity as students are frequently aware of problems well before the administration.

Counselors should reach out to students in distress.

Conclusion

In this chapter, we have attempted to explicate the law relevant to college mental health in some detail while at the same time being clear and straightforward enough to make these, at times, complex issues accessible to the broadest range of readers. We have also tried to highlight the ethical principles underlying these laws.

In the midst of a clinical crisis or legal debate about these complex issues it is often difficult to remember that colleges and universities are unique communities that are established to facilitate the education, maturation and growth of the young women and men who attend them. (And as noted above, students, parents, university administrators and faculty are all working toward the ultimate success of the student). For learning and growth to occur, colleges must strive to establish a balance between safety, predictability, structure and conformity versus personal freedom and experimentation with ideas and values. (This is actually no different from the challenge that every parent confronts in raising a child). Too much oversight or control can squelch creativity, enthusiasm, and free thought; too little supervision and security can result in chaos and unmanageable anxiety. We have tried to suggest that the trends in legislation and case law applicable to college mental health are mostly attempts to express, put into practice, and ultimately balance these subtle and lofty principles.

With these considerations in mind, we hope that our readers would recognize these laws not as anxiety provoking problems to be dealt with or worked around. Rather, they should be seen as outer boundaries and general signposts for decision-making. In almost all situations, there is ample space within these boundaries for thoughtful common sense and good clinical judgment.