

PRACTICES AND CONSIDERATIONS FOR ADDRESSING ISSUES RELATING TO STUDENTS WITH PSYCHIATRIC DISABILITIES IN MENTAL CRISIS

Overview

Attending college can be a stressful time for students. In addition to coping with academic pressure, some students have to deal with the difficult tasks of separation and individuation from their family while others may have to attend to numerous work and family responsibilities. In this context many college students experience the first onset of mental health and substance abuse problems, or experience an exacerbation of their symptoms. Given the uniqueness of college students, there is a need to proactively address the possible individual needs of affected students for academic modifications, accommodations, medical leave, safety, and to prevent risk to others – especially after the student experiences a significant personal crisis -- attempts to commit suicide, or threatens to harm others.

Based on the increasing recognition of child mental health issues, the use of improved psychotropic medications, and other early interventions the number of students facing mental health problems entering college has increased significantly. For example, in a survey of 274 institutions, 88 % of counseling center directors reported an increase in “severe” psychological problems over the previous 5 years including learning disabilities, self-injury incidents, eating disorders, substance abuse, and sexual assaults. Moreover, it should be no surprise to anyone working for a post-secondary institution that the past several years have seen a dramatic increase in the number of young and older adults returning from military service diagnosed with various mental illnesses who enter colleges and universities to either start or complete a post-secondary education.

Consequently, colleges and universities should encourage students who disclose personal difficulties to seek counseling when they feel depressed or overwhelmed, or when they express mental health needs. It is a welcome benefit that students have access to counseling services that are confidential and free of charge. Moreover, consistent with a sensible policy of facilitating campus mental health services and academic accommodations when necessary, institutions should engage in the proactive development of appropriate emergency procedures to address the needs of students facing a sudden mental crisis -- especially in view of the increasing rates of student suicides and widely reported increasing rates of student-related campus violence.

The need to develop fair and reliable emergency determination procedures is underscored by the fact that the Americans with Disabilities Act and the Fair Housing Act protect students from unfair or unfounded decisions and/or treatment after a student experiences a mental crisis. These laws prohibit discrimination on the basis of disability, having a history of a disability, for being perceived as having a disability, and protect confidentiality and privacy. Therefore, exclusion from a program, course, campus social life, campus housing, or an unreasonable release of confidential information, will invariably be met with scrutiny by the student and Federal agencies acting on discrimination reports. Moreover, an

institution may also face potential liability if it mishandles a trending State-law based requirement to report to State authorities when school officials or a school-based licensed mental health professional makes an unsupported or erroneous determination that the student is a “clear and present danger, or has a developmental or intellectual disability.”

Institutions will therefore inevitably engage in an urgent interactive evaluation process to determine whether a student poses a “direct threat” that cannot be safely accommodated or whether a student is “otherwise qualified” to remain on campus attending classes with mental health support and reasonable modifications. Additionally, schools may also be required by State law to report to authorities when a student is deemed a “clear and present danger.” However, these processes may be reconcilable into one step-by-step procedure that may assist the school to make a professional and informed determination in its best interest and effectively discharge its obligations under applicable law. Conversely, how do we legally define ADA direct threat, otherwise qualified, and clear and present danger policies into a reconcilable course of action that keeps everything consistent with the civil rights of an individual and the safety of others? In making a concerted effort to do this, we are at the crux of reaching a compromise between safety and a person’s civil rights. This can be achieved if the focus is on the best interest of the student.

Hence, a policy should be implemented to guide anyone observing threatening behavior to report objective evidence to establish a strong foundation to support a determination of a clear and present danger. Further, to avoid the plethora of problems that possible mislabeling might cause to a student facing a mental crisis, the first step must be to convene a committee of qualified individuals to make educated determinations before an outright suspension, dismissal, and the clear and present danger reporting requirement violates someone’s rights on several potential fronts: E.g., the right to remain in school with reasonable accommodations, the right not to be discriminated against based on disability or stereotype, the right of confidentiality, or creating a history that will inevitably become one more obstacle to future employment -- not unlike a criminal conviction.

Yet we can hardly overcome the concerns that if an individual is consistently and repeatedly threatening themselves or a third party, that we ignore such warning signs. Many mass shooters left ample evidence spelling out their intentions -- at times in great detail. If someone had paid closer attention, and given a clearly defined reporting policy that takes due process into account, perhaps such tragedies might have been avoided. *It is possible that the ADA’s due process-like evaluation standards open an opportunity to better understand individuals that make inflammatory statements and who might have the wherewithal to carry them out.* However, recoiling in fear of some presupposed liability will invariably create real and harmful damage -- not just to a student but also to an institution.

There is a balanced means to protect individual rights while allowing for dangerous individuals to be thwarted in their attempts to harm themselves or others. This is the reason that strongly justifies the need to bring together a committee of appropriate professionals to formulate a potential threat reporting

framework that is consistent with the ADA's mission to ensure equal opportunity to education, participation in campus activities, and to foster universal inclusion rather than exclusion.

The following practices and/or observations are provided to aid administration officials to enter the process of developing a set of procedures to make decisions consistent with applicable laws.

Practices and Considerations:

- Institutions have the authority and general duty of care to take appropriate measures to prevent and eliminate harmful misconduct regardless of whether a student has a disability. A split among the courts regarding such a "duty of care" toward students will not prevent emotional harm to a student, a depressed student body, an apprehensive faculty morale, and the potential legal consequences that will invariably arise after a student (or faculty or employee) experiences a consequential mental crisis.
- An institution may take urgent measures to dismiss or withdraw a student posing a direct threat or who threatens to harm himself. However, a school must afford Due Process: OCR letters and court cases on direct threat emphasize that a student must have a reasonable opportunity to be heard and respond before a final decision to suspend or dismiss has been made.
- Convene a balanced committee of school officials, faculty, disability services staff, licensed professionals, and the student if appropriate or representative(s) for the student if the student is unable to attend the meeting (e.g., a student who was hospitalized or arrested), the student's family- if appropriate, and the student's psychiatrist or other licensed professional to make a legally defensible and appropriate determination based on objective evidence, current medical knowledge, and professional recommendations and input from all concerned.
- The evaluation should presume that a student in mental crisis is "otherwise qualified" to be capable of safely staying enrolled and may not be automatically removed because they are alleged as dangerous to themselves or others.
- Imposing compulsory temporary or total withdrawal after an incident and without due process will vitiate ADA-504 – regardless of "clear and present danger" State reporting obligations.
- Avoid imposing risk and safety disciplinary procedures that fail to document high probability of a substantial self-harm or Direct Threat while basing decisions on a slightly increased, speculative, remote risk, or on unfounded fears and stigma associated with mental illness.
- Ensure voluntary cooperation and do not merely penalize a student by imposing student conduct codes for experiencing a mental crisis. Offer help instead. Imposing a conduct code is not a best practice.

- Removals, compulsory withdrawals, or any disciplinary policies should be consistent with safety and code of conduct rules applicable to all students; e.g., when a student knowingly refuses to cooperate with the evaluation process.
- Privacy and confidentiality must be maintained by institutions and their mental health and disability services departments and licensed counseling professionals consistent with applicable HIPAA, FERPA, and State licensing board regulations- e.g., a student should not be presented with a "counseling waiver" that will release information to administrators or entities unrelated to the provision of student mental health services.
- Blanket administrative approaches with rigid pre-established outcomes should be discarded in favor of individualized assessments of risk and reasonable modifications- e.g., a student should not be required to see an on-campus therapist or counselor if she has been released by a psychiatrist or an appropriate licensed professional to return to school.
- Critically review reported actions that indicate significant safety or code of conduct violations; i.e., evidence should be "objective" not "subjective." Reviewing Social Media postings known to be from the student would be advisable but should be conducted by an impartial reviewer acting consistent with any applicable social media related privacy laws.
- Evaluation of threats or attempts to commit suicide and Direct Threat determinations must exclude stereotypes or unfounded fears; i.e., a student who attempts suicide may not necessarily be automatically disqualified from returning to a college routine.
- Assessments must include consultation with qualified healthcare professionals to assist in determining the risk of substantial harm to self or others. Current medical knowledge will be key.
- Institutions must determine whether there is a reasonable way to accommodate the student to decrease the safety risk and/or to ensure compliance with a code of conduct; e.g., if a student is a safety concern only when residing in dorms, then a reasonable accommodation might be removal from campus housing only.
- OCR may decide that students posing safety risks or who are unable to follow school policies are no longer "otherwise qualified" thus removable from campus outright or excludable from certain programs.

Example: Woodbury University -- OCR determined that the university did not violate Section 504 when it barred a student from staying in her dorm during Christmas/New Year intersession after she harmed herself during Thanksgiving vacation. OCR found that there were reasonable conduct-based grounds for the University to believe that the student would be a direct threat to her health and safety if she remained in the dorm during intersession.

- Understand a diagnosed psychiatric or emotional disorder. This knowledge will drastically improve ultimate acceptance and the availability of accommodation alternatives.
- Focus on providing support and accommodations so students can stay on campus and succeed with appropriate support and positive reinforcement from peer groups, friends, a social life, and academic course work.
- Modify inflexible policies – e.g., waive deadlines by which students must withdraw to still receive tuition refunds, allow part-time course loads, or permit leaves of absence with appropriate accommodations and/or non-penalty withdrawals.
- Institutions are advised to abandon mandatory medical leave policies, because DOJ and DOE see them as suspect and as “perceived” as disability discrimination.
- Consider allowing the student to remain on-campus: suicide statistics indicate that there may be factors protective and/or positive about the campus environment for students facing mental health issues. Research data indicates that college students commit suicide at rates of half of those of their same-age, non-college-going peers.
- Ensure a “good faith” individualized assessment to determine whether the student remains otherwise qualified with accommodations and on-site / off-site mental health support;
- Enable students facing a mental crisis to succeed in college. Providers should ensure that specific accommodations regarding academics, independent living, and social and vocational counseling are implemented consistent with the ADA general obligation that students with disabilities be treated “inclusively” to participate in academic programs.

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