

## Student suicides raise concerns about potential counselor liability

**Question:** I am employed at a university counseling center and am concerned that I may be left out to dry by the administration if a student dies by suicide. One of my colleagues was sued when a student client died by suicide and the school basically shifted the blame to that counselor. Do you have any suggestions for dealing with this real potential problem for those of us who work in this setting?

**Answer:** Suicide is now the second-leading cause of death among college-age students (see [nimh.nih.gov/health/statistics/suicide.shtml](http://nimh.nih.gov/health/statistics/suicide.shtml)). Counselors who work in counseling centers at colleges and universities may find themselves between the proverbial rock and a hard place when working with undergraduate or graduate students at risk of suicide. Several recent lawsuits targeting renowned universities highlight the competing considerations involved in managing issues presented by students who are suicidal.

One case that attracted national attention this year was *Mental Health & Wellness Coalition v. Stanford*. A nonprofit group called Disability Rights Advocates is attempting to obtain class-action certification in this lawsuit, originally filed in May (see [dralegal.org/case/mental-health-wellness-coalition-v-stanford/#files](http://dralegal.org/case/mental-health-wellness-coalition-v-stanford/#files)). The complaint in this case against Stanford sets forth various situations in which students allegedly were pressured into taking leaves of absence when they sought help or treatment for suicidal ideation or threats. Several of the plaintiffs claim that their off-campus psychiatrists' recommendations were disregarded and that school officials blamed them for

disrupting the lives of other students (see [nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html](http://nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html)). The lawsuit is based on alleged violations of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Fair Housing Act and other comparable state laws. Counselors who work in university counseling centers may wish to follow this case as it proceeds.

Another recent lawsuit with a decidedly different theory was filed by the father of a doctoral student at Massachusetts Institute of Technology (MIT). The student, Han Nguyen, sought assistance for what he described as test-taking or study skills deficits that led to poor grades, and he was referred to various services at the university. He rejected an offer of continued mental health services through the school, stating that he had his own health care providers and wished to separate treatment from his academic skills issues. He denied any suicidal ideation at the time. MIT accorded the student certain accommodations and endorsed him for a research assistant position. Following a telephone conversation with one of his professors regarding communication problems with his research supervisor, Nguyen jumped to his death from the laboratory building on campus where he had been working.

Nguyen's father filed a lawsuit against MIT and several individuals, including faculty members, the dean of support services and his research adviser. The suit (*Nguyen v. Massachusetts Institute of Technology & Others*) alleged that MIT and the individual defendants were negligent in not preventing Nguyen's suicide. The Supreme Judicial Court of Massachusetts upheld the lower

court's grant of summary judgment and ordered dismissal of the case, stressing that the defendants appropriately upheld this adult student's rights of self-determination and privacy.

In a lengthy written decision, the Massachusetts Supreme Judicial Court acknowledged that there is generally no duty to prevent another person from killing themselves. However, the court excepted situations in which a "special relationship" exists, such as the custodial relationship integral to settings such as hospitals and jails. The court left open the potential for liability on the part of universities when the institution has actual knowledge of a student's suicide attempt that occurred shortly before matriculation or while the student was enrolled, or when there is knowledge of a student's stated plan or intention to attempt suicide.

The court also differentiated "nonclinicians" (such as deans, faculty members and others) from clinicians, stating that the former should not be expected to discern suicidal tendencies. According to the court, nonclinicians would have a limited duty to initiate the institution's suicide protocol. Where such protocol does not exist, the nonclinician would have a duty to notify appropriate personnel to help obtain care. If the student declined care, the duty would be fulfilled by reaching out to the student's emergency contact. Counselors providing services to students through university and college counseling centers normally would be considered clinicians.

In recent years, numerous other colleges and universities have been the targets of litigation on the basis of student suicides and suicide attempts. Notably, George

Washington University, Hamilton College and the University of Pennsylvania are among those that have been defendants in suicide-related lawsuits.

One conclusion we can draw from recent suicide cases involving schools and universities is that counselors and their institutions are vulnerable to lawsuits relating to client suicide and other attempted self-harm. However, liability will not be imposed in all contexts and in all jurisdictions. Counselors should thoroughly read and understand applicable school or other institutional policies. They should also observe the policies unless they have a reasonable basis to conclude, after consultation with colleagues, supervisors and legal counsel, that the policies or other mandates are likely to harm the client or others.

Counselors should learn the exceptions to the Family Educational Rights and Privacy Act (FERPA). For example, if a student has posed a serious and imminent risk of self-harm, exceptions exist to permit notification of the student's parents. However, counselors should be able to use their best clinical judgment to decide if such notification is appropriate, especially in cases in which the student has articulated that the parents are a major factor in the student's ongoing mental health issues. If counselors do not agree with deans or university administrators, they should clearly detail to the administration, in writing, the reasons underlying their opinions. They should also thoroughly document their decision-making process and work with university administration and legal counsel to develop *workable* policies before an untoward incident leads to a lawsuit. ♦

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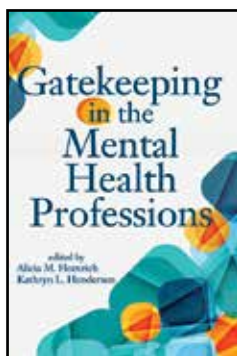
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