

New York Times
April 19, 2007

Laws Limit Options When a Student Is Mentally Ill

By [TAMAR LEWIN](#)

Federal privacy and antidiscrimination laws restrict how universities can deal with students who have mental health problems.

For the most part, universities cannot tell parents about their children's problems without the student's consent. They cannot release any information in a student's medical record without consent. And they cannot put students on involuntary medical leave, just because they develop a serious mental illness.

Nor is knowing when to worry about student behavior, and what action to take, always so clear.

"They can't really kick someone out because they're writing papers about weird topics, even if they seem withdrawn and hostile," said Dr. Richard Kadison, chief of mental health services at [Harvard University](#). "Most state laws are pretty clear: you can only bring students to hospitals if there is imminent risk to themselves or someone else, so universities are in a bit of a bind that way."

But, he said, some schools do mandate limited amounts of treatment in certain circumstances.

"At the [University of Missouri](#), if someone makes a suicide attempt, they mandate four counseling sessions, for example," said Dr. Kadison, an author of "College of the Overwhelmed: The Campus Mental Health Crisis and What To Do About It."

Universities can find themselves in a double bind. On the one hand, they may be liable if they fail to prevent a suicide or murder. After the death in 2000 of Elizabeth H. Shin, a student at the [Massachusetts Institute of Technology](#) who had written several suicide notes and used the

university counseling service before setting herself on fire, the Massachusetts Superior Court allowed her parents, who had not been told of her deterioration, to sue administrators for \$27.7 million. The case was settled for an undisclosed amount.

On the other hand, universities may be held liable if they do take action to remove a potentially suicidal student. In August, the [City University of New York](#) agreed to pay \$65,000 to a student who sued after being barred from her dormitory room at [Hunter College](#) because she was hospitalized after a suicide attempt.

Also last year, [George Washington University](#) reached a confidential settlement in a case charging that it had violated antidiscrimination laws by suspending Jordan Nott, a student who had sought hospitalization for depression.

“This is a very, very difficult and gray area, when you take action to remove the student from the campus environment, versus when you encourage the student to use the resources available on campus,” said Ada Meloy, director of legal and regulatory affairs at the American Council on Education. “In an emergency, you can share certain information, but it’s not clear what’s an emergency.”

Ms. Meloy estimated that situations complicated enough to involve a university’s lawyers arise, on average, about twice a semester at large universities.

While shootings like the one at [Virginia Tech](#) are extremely rare, suicides, threats and serious mental-health problems are not. Last year, the American College Health Association’s National College Health Assessment, covering nearly 95,000 students at 117 campuses, found that 9 percent of students had seriously considered suicide in the previous year, and 1 in 100 had attempted it.

So mental health experts emphasize that, whatever a college’s concerns about liability, the goal of campus policies should be to maximize the likelihood that those who need mental-health treatment will get it.

“What we really need to do is encourage students to seek mental health treatment if they need it, to remove any barriers to their getting help, destigmatize it, and make it safe, so they know there won’t be negative consequences,” said Karen Bower, a lawyer at the Bazelon Center for Mental Health Law in Washington, who represented Mr. Nott.

With the Virginia Tech killings, many universities are planning to remind faculty members of their protocols. “We’re actually going to go ahead and have the counseling service here do a session for all our instructors and faculty on what to look for, what the procedures are, and what the counseling center can do,” said Shannon Miller, chairwoman of the English department at [Temple University](#).

At Harvard, Dr. Kadison said, dormitory resident assistants watch for signs of trouble, and are usually the first to become aware of worrisome behavior — and to call a dean.

“The dean might insist that they get an evaluation to make sure they’re healthy enough to live in a dorm,” he said. “If it’s not thought that they’re in any immediate danger, they can take or not take the recommendation.”

Last month, Virginia passed a law, the first in the nation, prohibiting public colleges and universities from expelling or punishing students solely for attempting suicide or seeking mental-health treatment for suicidal thoughts.

“In one sense, the new law doesn’t cover new territory, because discrimination against people with mental health problems is already prohibited,” said Dana L. Fleming, a lawyer in Manchester, N.H., who is an expert on education law. “But in another sense, it’s ground-breaking since it’s the first time we’ve seen states focus on student suicides and come up with some code of conduct for schools.”

College counseling services nationwide are seeing more use.

“We’re seeing more students in our service consistently every year,” said Alejandro Martinez, director for counseling and psychological services at [Stanford University](#), which sees about 10 percent of the student body each year. “Certainly more students are experiencing mental illness, including depression.

“But there’s also been a cultural shift,” Mr. Martinez said, “in that more students are willing to get help.”

College officials say that a growing number of students arrive on campus with a history of mental-health problems and a prescription for psychotropic drugs. But screening for such problems would be illegal, admissions officers say.

“We’re restricted by the disabilities act from asking,” said Rick Shaw, Stanford’s admissions director. “We do ask a question, as most institutions do, about whether a student has been suspended or expelled from school, and if they have been, we ask them to write an explanation of it.”

Federal laws also restrict what universities can reveal. Generally, the Family Educational Rights and Privacy Act, Ferpa, passed in 1974, makes it illegal to disclose a student’s records to family members without the student’s authorization.

“Colleges can disclose a student’s private records if they believe there’s a health and safety emergency, but that health and safety exception hasn’t been much tested in the courts, so it’s left to be figured out case by case,” Ms. Fleming said.

And the Health Insurance Portability and Accountability Act prohibits the release of medical records. “The interaction of all these laws does not make things easy,” she said.