

Lawsuits Change Campus Responses to Suicidal Students

Students may die to protect colleges from lawsuits. That's one scenario if defensive college policies keep students from seeking the help they need.

Recent court decisions or settlements suggest the law may be catching up to good sense: Schools should do what they can to save students' lives.

Hunter College, part of CUNY, recently changed its policy and paid \$65,000 to a student who was locked out of her dorm room after a suicide attempt. A Pennsylvania jury decided Allegheny College was not liable for the self-inflicted death of a depressed football player.

Taken together, these may help reverse the trend toward colleges distancing themselves from students at risk. Regardless of legal outcomes, the result that matters most is better suicide prevention policies and resources. (See *WIHE* November 2004 for Jed Foundation suggestions.)

Suicide is the third leading cause of death among young adults and second among college students. An estimated 1,100 college students per year take their own lives. Only car accidents kill more of them.

Better medication and treatment have actually increased suicide rates on campus, as more students with mental illness manage to stay in school. More students than ever come to college already taking psychiatric medicines.

Tempting as it is to blame academic stress, young adults not in college are twice as likely to kill themselves. Among other reasons, they have more access to guns. They're also at much higher risk of homicide. Kicking suicidal students off campus may not make them any safer.

Women ages 15-24 attempt suicide twice as often as men that age, often by overdosing on drugs. Young men more often shoot or hang themselves or jump, making them three or four times as likely to succeed in killing themselves.

Some colleges treat suicide threats as disciplinary violations and force the students to leave school. Some respond the same way to eating disorders and cutting, which are far more common among women.

"This policy can compound the problems of the students affected. It sends a message they have failed. It isolates them from their peers," attorney **Karen Bower** of the Bazelon Center for Mental Health Law in Washington DC told *WIHE*. It may also deter students or their friends from getting help.

Students as adults

Half a century ago, you had to be 21 to vote and colleges served *in loco parentis*. A sea change in the 1960s and 1970s led to the view of college students as adults. The Family Educational Rights and Privacy Act (FERPA) of 1974 provided that parental rights to educational records transfer to the student at age 18 or on entering college.

For the last quarter of the 20th century, schools and the law generally treated students as adults responsible for their actions. Only in a "special relationship"—generally custodial—is one adult liable for another's safety.

That guided the 2000 Iowa Supreme Court ruling in *Jain v. Iowa*. University of Iowa freshman Sanjay Jain had quickly run into academic and personal trouble in 1994. Smoking pot in his off-campus dorm room won him disciplinary probation and assignment to drug and alcohol education. Citing privacy issues, the school did not tell his parents.

Sanjay told his parents that school was going well. After he was found moving a moped into his room to kill himself with the fumes, he talked with the RAs and promised to go for counseling. Later he sneaked the bike back into his room. After a late-night drinking binge, he turned on loud music and the moped and passed out. He was found too late to save.

His parents sued, saying they should have been told he was in danger. In 2000 the highest state court ruled that the RA and her supervisor had no legal duty to inform the parents.

A duty of care

By that time cracks began to appear in the notion that students were autonomous adults. An amendment to FERPA in 1998 let schools notify parents of drug or alcohol violations. Another exception lets schools notify anyone appropriate in health or safety emergencies.

MIT student 19-year-old Elizabeth Shin set herself fatally on fire in her dormitory room in 2000. Her parents and sister had visited the previous day and saw no danger signs. They had no idea she had threatened suicide and seen a university psychiatrist. Two years later they sued, saying they should have been told.

Should parents be told when their adult children are at risk? Shin and Sanjay let their families think all was well. Some mental health professionals fear students wouldn't seek counseling or be honest with their counselors unless it was confidential.

Colleges across the nation followed the Shin case, which might set important legal precedent. Other lawsuits charged schools with failure to protect their students. MIT sophomore Julie Carpenter had complained of a male student stalking her. He was removed from the dorm but allowed to reapply for the next semester. After getting the news in April 2001 that he might be back, she swallowed cyanide and died. Her parents sued.

At Ferrum College in Virginia, freshman Michael Frentzel told his girlfriend he would hang himself. He locked himself in his room with self-inflicted bruises. A few days later he hanged himself with his belt. A lawsuit said Ferrum should have foreseen and prevented his death.

Judges in the MIT and Ferrum cases ruled that colleges might indeed have a "special relationship" that gave them a duty of care toward students known to be in danger. Out-of-court settlements followed with no details disclosed.

Colleges on the defensive

Universities were in a bind. The more they knew about a student's suicide risk, the higher their legal duty to prevent it. Yet thoughts of suicide are very common among college students. One in 10 has considered it. Of those, one in six attempts it and too many succeed.



Karen Bower

Mandatory counseling has had apparent success at the University of Illinois. Since 1984, students threatening or attempting suicide must attend at least four counseling sessions to stay in school. Most did and stayed alive. The suicide rate dropped in half.

Counseling was no guarantee, perhaps especially if coerced. Elizabeth Shin had seen a psychiatrist and died anyway. Moreover, her mental health record was evidence that MIT knew she was in danger. Some schools protected themselves by cutting their ties with students at known risk of suicide.

Cornell University NY junior Anne Giedinghagen was depressed and anorexic. After she mentioned suicide to her therapist, the university told her to get well or get out. She responded strategically by pretending to get well ("When Colleges Go on Suicide Watch," *Time*, May 22, 2006).

Hunter College, part of the City University of New York, didn't even offer a choice to the 19-year-old who took a handful of Tylenol, then saved her own life by calling 911. When she returned from the hospital, she found the lock to her room had been changed. Under the school's automatic eviction policy, she was allowed to collect her belongings only under supervision.

Columbia University NY sent bipolar freshman Nicole Thompson for a quick interview with a university psychologist, after she talked to friends about hurting herself. She was honest with him and felt jilted when she learned his goal was to decide whether the school should let her stay. At home on mandatory leave, she felt worse and wound up in a hospital.

New York University put Sue Shaller on mandated leave after she signed into a hospital for depression. Though her doctor recommended she return to school, NYU sent her home to her family. Her readmission last year was contingent on regular visits to the counseling center, and she did not receive credit for the interrupted coursework.

Jordan Nott at George Washington University DC didn't try to kill himself, but he considered it after the death of a close friend. He checked himself into a hospital for depression. The school sent him home for violating its code of conduct, leading the *Washington Post* to ask "Since when does being sick constitute a disciplinary problem?" (March 13, 2006). He sued for violation of his human and civil rights and the Fair Housing Act.

Students' civil rights

"If you live by risk management, you die by risk management," Gary Pavela told the *Chronicle of Higher Education* (May 19, 2006). Director of judicial programs at the University of Maryland at College Park, he wrote *Questions and Answers on College Suicide: A Law and Policy Perspective* (College Administration Publications, 2006).

In overreacting to the risk of legal liability, he argued, colleges find themselves in trouble with the education department's Office for Civil Rights.

Students who kill themselves almost invariably have mental health conditions such as clinical depression, a disability under the Americans with Disabilities Act.

In 2004 the OCR considered a complaint from a former Bluffton University OH student that the school had ex-

pelled her after she cut herself and took an overdose of pills. Hospitalization led to diagnosis of her bipolar disorder. The school had no written policy and officials did not consult her counselor, who recommended she stay in school. She got no hearing or chance to appeal.

Colleges can act to prevent a direct threat but must still give notice and a hearing, the OCR ruled in a letter. The burden is on the school to show the student poses a direct threat to self or others. The threat must be imminent, not a generalized concern.

"Due process requires a college to adhere to procedures to ensure that students with disabilities are not subject to adverse action on the basis of unfounded fear, prejudice or stereotypes," the letter said.

Law and ethics converge

Reform of college policies and practices is the most important result of these lawsuits, complaints and settlements. Bluffton University not only reimbursed the ousted student's fees but made policy changes to avoid treating other students the same way.

In late August 2006 Hunter College announced that it was abandoning its automatic eviction policy as part of a settlement that also paid the evicted student \$65,000.

On September 1, MIT and the Carpenters released a joint statement. The chancellor reported increased mental health resources, made mental health services more effective, introduced suicide prevention initiatives and trained college officers in identify-

ing and responding to students at risk. Julie Carpenter's parents added that they were pleased MIT had made these changes.

"We should be concerned about the success of our students and not about avoiding liability," Bower told *WIHE*. So far no court has found a school liable for failure to prevent suicide. If that happened it would be for medical malpractice, if a therapist knew of a suicide risk and failed to follow best practices to prevent it.

She hopes recent cases will lead schools to take a second look at suicide policies that involve disciplinary measures or mandatory withdrawal. She said colleges should:

- *Treat self-harm thoughts and actions as an issue of mental health, not discipline.* Encourage students and their friends to seek help without fear of punishment.
- *Permit leave of absence as a reasonable accommodation for students who request it.* "I think administrators should not second-guess the therapist and the student," she said.
- *Preserve confidentiality.* Create a firewall between administration and the counseling center. Even before a crisis occurs, have every student list whom to contact in case of a crisis; use that list to base decisions about notifying parents.

"Do what's necessary to help students succeed without unnecessarily interrupting their education," Bower said. The Bazelon Center is now drafting a document listing best practices to guide colleges and universities. Stay tuned. ▣

—SGC

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