



College Students In Crisis



*Preventing Campus Suicides and
Protecting Civil Rights*

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COLLEGE STUDENTS IN CRISIS: Preventing Campus Suicides and Protecting Civil Rights

I. INTRODUCTION

On an October night in 2004, Jordan Nott, a sophomore at George Washington University (GWU), asked two friends to take him to the hospital.¹ Nott, who had recently lost a roommate to suicide, was depressed and concerned about the effects of an anti-depressant that he had been prescribed.² Nott voluntarily admitted himself into the psychiatric unit but doctors quickly cleared him for release.³ Before leaving, GWU informed Nott that under its “psychological distress policy” he was not permitted to return to campus.⁴ They also informed him that he was suspended for violating the colleges’ residential life guidelines, which prohibited actions that are “endangering to self or others.”⁵ While GWU granted Nott a hearing to review the suspension, he was asked to withdraw and told that he could be expelled if he went ahead with the hearing.⁶ Nott subsequently withdrew from GWU.⁷

Later that year, Jane Doe, a junior at Hunter College, took 20 Tylenol P.M. pills to quell her depression and anxiety.⁸ After realizing she had taken too much, she called 9-1-1 and voluntarily admitted herself into the hospital.⁹ When the hospital determined that she was not a threat to herself or others, she was released.¹⁰ Doe returned to her dorm to find that the locks had been changed.¹¹ Hunter explained that she had violated the housing contract by harming herself.¹²

Both Jordan Nott and Jane Doe filed lawsuits against their respective colleges, which challenged their involuntary removals. Their complaints alleged that the colleges excluded them on the basis of perceived or existing mental disabilities.¹³ They claimed that the exclusions violated various provisions of the Americans with Disabilities Act (ADA), the Rehabilitation Act, the Fair Housing Act (FHA) and state law.¹⁴ The students alleged that their colleges had failed to perform individualized assessments of their dangerousness.¹⁵ Both cases ended up settling for significant sums. Notably, before settling, a court denied Hunter’s attempt to dismiss claims that were based on the ADA, the Rehabilitation Act, and the FHA.¹⁶ In fact, the U.S. Department of Education’s Office for Civil Rights (OCR) advises colleges that in such cases, individualized assessments are an important factor in complying with federal civil rights laws.¹⁷

Colleges will sometimes have to remove students who pose dangers to themselves or others. Often, this can be safely and appropriately accomplished by convincing a student to leave voluntarily. Other times, involuntary removal may be necessary. But when colleges make *involuntary* removals their default strategy for responding to students who make suicidal statements, they do so at their own legal peril. These two cases demonstrate that the decision to involuntarily remove a student must be limited to those instances in which the student presents a direct threat that cannot be lessened by providing reasonable accommodations. Determining whether the student presents a direct and unmanageable threat requires an individualized assessment. Blanket involuntary removal policies, which use generally applicable rules to remove *all* potentially suicidal students, fail to perform this individualized assessment or make the necessary determinations regarding each student. In addition to exposing colleges to the kind

of litigation brought by Doe and Nott, such blanket policies may ultimately deter students from seeking treatment and actually prevent colleges from learning of, and responding to, suicidality.

The Department of the Public Advocate is responsible for protecting the interests and civil rights of persons with mental illness in the State of New Jersey. After hearing from several New Jersey college students and their families about experiences that mirrored the Doe and Nott cases, the Department began reviewing college policies on responding to students who make suicidal statements or exhibit suicidal behaviors. While the Department has not studied the actual application of these policies, we did find that a number of policies appear to be blanket involuntary removal policies. Commentators have also suggested that the number of colleges adopting blanket involuntary removal policies is growing.¹⁸ The Department has written this report, mindful of the complex legal and practical issues that hinder colleges' efforts to find on-campus solutions for troubled students. We are particularly cognizant of the complex tort liability and compliance issues that colleges now face. We hope that this report will help colleges choose civil rights-friendly responses that limit involuntary removals, encourage treatment, and prevent suicides.

II. THE CAMPUS SUICIDE "EPIDEMIC"

Suicide is one of the leading preventable public health problems plaguing the United States. It is currently the eleventh leading cause of death in the U.S., accounting for approximately 32,439 deaths annually.¹⁹ The overall rate is approximately 10.9 suicide deaths per 100,000 people.²⁰ Among individuals aged 18-24, suicide is the third leading cause of death.²¹ In addition, an estimated 8 to 25 attempts are made for each completed suicide in the total population.²² Suicide rates vary across demographic groups, with the highest rates for completed suicides occurring among Caucasian and Native American males.²³ Suicide is highly correlated with substance abuse and mental illness.²⁴ It is especially common among individuals who have experienced a "major depressive episode," qualifying them for a diagnosis of major depression under the standards of the Diagnostic and Statistical Manual, IV Edition [DSM IV], which is used by mental health professionals to categorize disorders.²⁵

Suicide is increasingly problematic among college students, prompting some commentators to deem it an "epidemic."²⁶ It is estimated that approximately 1100 college students die by suicide each year.²⁷ This number may actually underestimate the problem, since it does not include students who complete suicide while on medical leave or soon after dropping out. College presents a set of atypical circumstances that can foster suicidal thoughts and behaviors. For many students, college is the first time that they are away from their primary support system of family and friends.²⁸ They typically have greater freedom and greater access to alcohol and other drugs, which have been linked to higher suicide rates.²⁹ These factors contribute to suicidal ideation, and if not addressed, can lead to completion of suicide.³⁰ Moreover, depression and other major mental illnesses first manifest themselves in young adulthood.³¹ Someone who is not familiar with the student's usual behavior might not perceive these symptoms to be related to mental illness, or might attribute them solely to the challenges of being in a new environment.³²

Studies of college students have revealed a number of risk factors for suicide.³³ Feelings of hopelessness and relationship problems were both correlated to suicide.³⁴ Among those students who attempted suicide, however, the greatest risk factor appears to be depression.³⁵ In one study, students were asked the question, “In the past 12 months, have you felt so depressed that it was difficult to function?”³⁶ Seventy-eight percent (78%) of students who reported that they seriously considered suicide answered “yes” to this question.³⁷ For students who attempted suicide, 92% reported that they had difficulty functioning due to their depression.³⁸ Students who reported feeling “overwhelmed,” “extremely sad,” or “exhausted” also had higher rates of suicidal ideation and attempts than students who did not report these feelings.³⁹ Many of these students had also experienced “major depressive episodes,” qualifying them for a major depression diagnosis under the DSM IV guidelines.⁴⁰

Considering the significant correlation between diagnosable mental illness and suicide, treatment is clearly a key element to suicide prevention. Most students who complete suicide, however, never sought help from their campus counseling or health center.⁴¹ As one author pointed out, “it is difficult for many students to differentiate between what feelings are normal and what feelings may be symptomatic of a mental illness, so students often do not seek early intervention.”⁴² Many students may avoid treatment even when they recognize the seriousness of their condition, given the strong stigma attached to mental illness. Moreover, students may choose not to seek treatment for fear that they will face negative consequences if anyone learns of their thoughts or actions. Thus, any successful prevention policy must educate students about when they should seek treatment and encourage them to do so by removing any unnecessary stigma or consequences.

III. POTENTIAL RESPONSES TO SUICIDAL STATEMENTS AND BEHAVIOR

In preparing this report, the Department reviewed dozens of policies utilized by colleges in New Jersey and across the country. These policies can be found in any number of locations, but were most often found in disciplinary codes, codes of ethics, housing contracts, and residential life materials. A review of these materials revealed four major categories of response to a student’s suicidality: resources and encouragement, notification, removal, and mandated treatment. Many colleges utilize a combination of one or more of these responses. Each response will be discussed in turn.

A. RESOURCES AND ENCOURAGEMENT

Resources and encouragement policies focus on ensuring that troubled students are aware of, and have access to, any mental health services that they need. They make sure that health centers are properly funded and staffed and that students know what services are available. They do not require students to undergo treatment, but encourage them to do so. In addition to providing and encouraging treatment, such policies also aim to accommodate the student while they are working on their recovery. Encouragement policies recognize that the student is an adult who can make his or her own decisions regarding treatment. As they allow students to stay on campus and choose which treatment to undergo, students and witnesses are not deterred from reporting suicidal thoughts and behaviors. Since students are more likely to voluntarily report their symptoms, college staff can retain knowledge of what is going on with their students.

However, since treatment isn't mandatory, many students who genuinely need treatment may not follow through on it. In fact, when the University of Illinois adopted its own "invite and encourage" program, it found that there was less than a five percent chance that a student would attend the four recommended counseling sessions following a suicide threat or attempt.⁴³

B. NOTIFYING PARENTS/FAMILY

Notification policies require that parents or others be notified in the event that students make suicidal statements or exhibit suicidal behaviors. These policies are generally premised on the notion that family members are often in the best position to intervene and help the distressed student. Indeed, if the suicidal statements or behavior are related to a diagnosed or diagnosable mental illness, the family may have information helpful in formulating a response. In contrast to college employees, a family can also provide support and affection that can help foster recovery. In addition, some colleges may notify parents in order to forestall a potential tort action, believing that the notification either undermines or discharges any duty the institution may have to prevent the student's suicide.

While there may be benefits to notification, it is not a one-size-fits-all solution. Not only does notification invade the student's privacy, but it can also jeopardize important trust relationships that the student may have established with mental health professionals, college administrators, or other college employees. These trust relationships may be critical to keeping the student in treatment long term and ensuring that the student reports future suicidal thoughts or behaviors.⁴⁴ Moreover, in some situations, a family's knowledge or involvement may actually worsen the situation, such as where there is tension or a lack of support. A student may even be motivated to complete the act of suicide, rather than face the family now aware of the student's suicidality.

C. REMOVAL FROM CAMPUS

Removal policies require or encourage students who make suicidal statements or exhibit suicidal behaviors to leave student housing or the campus altogether. These policies are premised on the need to remove the student from the stresses of student life and to motivate them to get the care they need. In addition, these policies recognize the need to protect other students from the suicidal student's potentially dangerous behaviors. As one commentator noted, "[a] lot of suicidal people don't just kill themselves.... They also can hurt others, even if it's unintentionally."⁴⁵ *Blanket* involuntary removal policies dictate removal under a specific set of circumstances, such as when a student makes an attempt, threat, or gesture. In contrast, *individualized* involuntary removal policies dictate removal after an individualized determination that the student presents an imminent threat that cannot be safely dealt with on campus. Critics argue that involuntary removal policies deter students and witnesses from reporting suicidal behavior, for fear of removal.⁴⁶ This could significantly reduce the number of troubled students who voluntarily seek treatment. In addition, removal effectively separates the student from supports and resources available on campus, including their health insurance, trusted mental health professionals, and friends.

A number of colleges involuntarily remove suicidal students by forcing them to take a medical or other leave of absence.⁴⁷ Colleges sometimes use the threat of potential discipline to turn an otherwise voluntary leave option into an involuntary one. Such methods allow the college to remove a potentially dangerous student from the campus, without any disciplinary notations to the student's permanent record. In contrast to the disciplinary actions, such leaves are usually not subject to a hearing or other review. While these policies *generally* assume that students will return when they recover, they vary widely on what a student must show before returning. Some college policies, for example, require a student to undergo a specific and detailed course of treatment before returning, despite an expert's opinion that another course of treatment had effectively managed his suicidality. Other colleges welcome students back after they have taken a leave and received treatment, upon a showing that there is no longer any risk of suicide.

The most controversial way that colleges involuntarily remove students is through invocation of the disciplinary procedure. Codes of conduct and residence life agreements often prohibit students from harming or threatening to harm anyone, which can be interpreted to include self-harm. In addition, colleges might use the disciplinary code to punish students who are urged to take a voluntary leave but do not do so. Thus, a student could be suspended, expelled, or evicted from their dormitory for suicidal statements or actions. Most students subject to disciplinary action are given an opportunity to challenge or appeal the discipline, although the "emergency" nature of the situation may allow colleges to delay review until after the removal takes place. Disciplinary actions result in a negative mark on a student's permanent record, making it difficult to transfer or apply to graduate programs. These policies have been harshly criticized as punishing a person for having – and seeking treatment for – a mental illness.⁴⁸ They also contribute to the stigma that surrounds mental illness by effectively punishing a student because of a mental illness.

D. MANDATORY EVALUATION AND TREATMENT

Mandatory treatment policies require students who make suicidal statements or exhibit suicidal behaviors to get treatment. These policies attempt to keep the student in class and on campus, while connecting the student to needed treatment. The student need not submit to treatment, of course, but could face forced leave, discipline, or eviction under certain circumstances. Some policies require that the student undergo a specific course of treatment, while others simply require the student to obtain some treatment that sufficiently eliminates the risk of suicide. In contrast to policies that simply encourage treatment, mandatory treatment policies recognize the serious "resistance to treatment shown in the general population and the outright rejection of treatment shown by the majority of suicidal individuals."⁴⁹ At the same time, students are less likely to be deterred from sharing their problems, as they would under a removal policy, because they believe they can avoid disturbing their education, housing, or social support networks. On the other hand, mandatory treatment may be seen as violating, or at least undermining, a student's right to refuse treatment.

The oft-cited University of Illinois suicide prevention policy falls into the mandatory treatment category. Under the University of Illinois' policy, any student who makes suicidal statements or exhibits suicidal behaviors must attend four sessions with a mental health

professional; those who refuse may be forced to withdraw from the university.⁵⁰ If the student does begin sessions, mental health professionals use the first sessions to determine whether the student is dangerous and requires removal.⁵¹ If such a determination is made, students are given the opportunity to present evidence and cross-examine witnesses in a hearing before the “Suicide Prevention Team,” which reviews the evidence to determine whether it would be dangerous for the student to remain on campus. If the decision is made that the student must be removed from campus, the student can appeal that team decision to the Dean of Students, whose decision is final.⁵² If the student is not removed, he or she must complete the four mandated sessions.⁵³ Any further treatment is voluntary.⁵⁴ The team may decide to notify parents under limited circumstances.⁵⁵

In contrast to most other suicide prevention policies, the University of Illinois policy has been extensively studied and commented on.⁵⁶ Overall, the studies have proven the program has been quite successful in reducing the rate of suicide.⁵⁷ Since the program was implemented, the college’s suicide rate has dropped from 6.91 per 100,000 to 3.08 per 100,000.⁵⁸ This 55.4% decrease is especially noteworthy considering that the national suicide rate on college campuses has been going up during the same period.⁵⁹ Moreover, none of the students who were treated through the program completed suicide during their remaining time on campus.⁶⁰ Interestingly, no students have ever decided to withdraw from the college in order to avoid the mandated treatment.⁶¹

IV. INCREASE IN BLANKET INVOLUNTARY REMOVAL POLICIES

In consultation with several experts working in higher education, the Department has identified three phenomena that have promoted the proliferation of blanket involuntary removal policies: the increasing concern over campus safety; the specter of tort liability; and confusion over when a college can notify parents as part of its response to suicidal statements and behaviors. Each will be discussed in turn.

A. INCREASED CONCERN OVER CAMPUS SAFETY PROMOTES REMOVAL

Recent campus shootings have awakened concern about the potential threat that a suicidal student poses to others on campus. Last year, a senior at Virginia Polytechnic Institute killed and wounded dozens of students and faculty when he went on a shooting rampage.⁶² The rampage ended when the gunman shot himself.⁶³ After the tragedy, it was revealed that the gunman had a history of suicidal thoughts, stalking, grim writings, psychiatric hospitalization, and even a finding of imminent danger to himself.⁶⁴ Within a year, a second gunman went on a shooting spree at Northern Illinois University, killing six people before completing suicide.⁶⁵ It was later revealed that the gunman, who had previously been seen as a model student, had ceased taking his psychiatric medication. As one commentator noted, “the violence...gave birth to a heightened awareness that people with mental health problems, on rare occasions, take the lives of others as well as their own.”⁶⁶ Because these homicidal gunmen were also suicidal, some have concluded that detecting and responding to suicidality may be a way to predict and prevent similar massacres.⁶⁷

In the aftermath of these shootings, almost 87% of U.S. colleges reported they had reviewed their policies and procedures to determine how they could better prevent another campus shooting.⁶⁸ For many colleges, this included consideration of forced withdrawal policies as a means of getting dangerous students off of campus.⁶⁹ Many colleges also report they have streamlined internal communications systems so that reports of dangerous behaviors can be shared more quickly and consistently with various campus officials, including law enforcement, administration, health professionals, and others.⁷⁰ As a result of the policy reworking, college officials may be more likely than ever to be notified when a student makes suicidal statements or exhibits suicidal behaviors. At the same time, officials may be more likely to invoke their removal policies in response to notification because of the heightened concern circulating among college officials.

B. SPECTER OF TORT LIABILITY DETERS ON-CAMPUS RESPONSES

Historically, individuals bringing tort actions for failure to prevent suicide stood little chance of success.⁷¹ At common law, “the act of suicide is considered a deliberate, intentional, and intervening act that precludes another’s responsibility for the harm.”⁷² In general, one had no duty to protect another from a third party’s intentional acts unless it was a custodial situation, such as jail staff holding a suspect or psychiatric hospital staff holding a civilly committed individual.⁷³ The common law did, however, always provide an exception, requiring individuals to protect another from the foreseeable intentional acts of another if they had a “special relationship.”⁷⁴ Certain categorical relationships, such as a bus or train and its passengers, were well recognized as “special” at common law.⁷⁵ In other instances, such a special relationship might exist because it was foreseeable that the endangered party depended or relied upon the defendant, such as when someone voluntarily undertakes to rescue someone.⁷⁶ At common law, courts declined to tap either source to find a special relationship between colleges and their suicidal students. This was true despite the categorization of the college-student relationship as “*in loco parentis*” or “in place of parent.”⁷⁷

Changing attitudes about suicide, however, have weakened the traditional legal barrier that prevented liability because suicide was a “deliberate, intentional, and intervening act.”⁷⁸ “While suicide may still be stigmatized as a criminal act, today it is commonly viewed from a mental health perspective in which the victim is not an autonomous criminal, but in which he or she is ailing with a mental illness and whom others have a duty to safeguard.”⁷⁹ As such, courts have imposed a duty upon mental health professionals – whose skills, training and insight make them uniquely able to predict and prevent patients’ suicides.⁸⁰ This would include mental health professionals employed by colleges, such as psychologists working in campus health centers. Thus, for some time now, courts have distinguished between a college’s administrators and mental health professionals in evaluating claims arising from student suicides.⁸¹

Despite evolving views on suicide, courts have generally retained their hesitance to find a “special relationship” between suicidal students and colleges.⁸² While there is no New Jersey case law in this area, the oft-cited Jain v. State presents the prototypical application of this phenomenon nationwide.⁸³ There, the father of a deceased student sued the state of Iowa for negligence in connection with his son’s suicide, while a student at the University of Iowa.⁸⁴ The father claimed that the college was negligent because it failed to intervene in any way or notify a

family member after learning of a previous suicide attempt.⁸⁵ The court dismissed the action, holding that no special relationship existed between the college and the student.⁸⁶ Key to that holding was the fact that the college had not taken steps to provide assistance to the student and, therefore, did not worsen the situation or impede efforts by another to assist him.⁸⁷ Jain is also the only case to directly address whether the college has a duty to inform parents, holding that no such duty existed.⁸⁸ Moreover, in the past few decades courts have been less inclined to hold that colleges stand in the place of the student's parents, and instead have been increasingly interpreting the relationship between colleges and students as a contractual "arms length" relationship.⁸⁹

But the analysis of the courts was very different in two recent cases. In Scheiszler v. Ferrum and Shin v. MIT, courts in Virginia and Massachusetts found that colleges had developed special relationships with suicidal students.⁹⁰ In both cases, the colleges were aware of past attempts, knew of current threats, and declined to tell the parents.⁹¹ Both courts held that a special relationship arose because the colleges were aware of an "imminent probability" that the students would attempt suicide.⁹² Thus, the courts in each of these cases found that a special relationship between the college and the student arose out of the foreseeable *threat* of suicide.⁹³ Interestingly, while they found that a "special relationship" did exist between the college and the student in each of these cases, neither court found that the college had breached its duty to the student. Most recently, a Pennsylvania court in Mahoney v. Alleghany College found no special relationship on similar facts.⁹⁴ While refusing to overtly disagree with the Scheiszler and Shin holdings, the court cautioned that the "foreseeability" of the threat and the "special relationship" between the student and the college must remain separate and necessary findings.⁹⁵

Colleges have struggled to reconcile the court rulings in the Scheiszler and Shin cases with the holding in Jain and other similar rulings. Unfortunately, this has led some college officials to reach the conclusion that a college is better protected from liability if it removes a student from campus and can later take the position that it did not know there was an "imminent probability" of suicide.⁹⁶ Such conclusions, however, are largely unwarranted. Even if the Scheiszler and Shin rulings gained dominance nationwide, they would only apply in limited circumstances. In finding "special relationships," both courts relied heavily on the fact that the students had made both past attempts and current threats.⁹⁷ Thus, where there is simply a suicidal action *or* threat, it would not automatically lead a court to find that there was a "special relationship" between the student and the college.⁹⁸ Moreover, in New Jersey, colleges enjoy protection from many types of lawsuits.⁹⁹ For example, under the Charitable Immunity Act (CIA), colleges and their agents are often protected from common negligence actions instituted by students who are "beneficiar[ies], to whatever degree, of the works of... [the college]."¹⁰⁰ The New Jersey Supreme Court has held that this immunity bars a student's suit, if the college was promoting its "objectives and purposes" at the time of the injury.¹⁰¹ The court also clarified that this chartable immunity is not lessened because the college is public.¹⁰² This would essentially bar many lawsuits before the "special relationship" issue is even considered. Still, the rulings in Scheiszler and Shin have caused palpable concern among colleges nationwide because they had long relied on the insurmountable legal barriers that blocked lawsuits arising out of student suicides.¹⁰³

C. CONFIDENTIALITY CONFUSION LIMITS NOTIFICATION ALTERNATIVE

Federal law protects the privacy of parents and students regarding outside access to student records under the Family Education Rights and Privacy Act of 1974 (FERPA).¹⁰⁴ When a student is under eighteen years of age, the rights belong to the parents; after the student turns eighteen, the rights inure to the student. FERPA prohibits the disclosure of a student's "educational records" without his or her consent.¹⁰⁵ The term "educational records" has been construed broadly, going well beyond academic records to include records concerning class schedules, finances, disability accommodations, and disciplinary matters.¹⁰⁶ Notably, FERPA does not restrict personnel with *firsthand* knowledge from disclosing their observations.¹⁰⁷ Repeated or egregious violations of FERPA can result in the loss of federal funding.¹⁰⁸

While FERPA aims to protect confidentiality, it provides a number of exceptions to the non-disclosure rule. First, educational records may be shared between college officials who have a legitimate educational interest in the information.¹⁰⁹ This exception has been construed broadly to include almost any personnel employed by the University who needs to review the record in order to do his or her job.¹¹⁰ Second, colleges have discretion to disclose educational records to "appropriate parties" when necessary to protect the health or safety of the student or others."¹¹¹ Third, colleges have discretion to disclose any educational records to a parent if the student is a dependant for federal tax purposes.¹¹² Fourth, colleges have discretion to disclose educational records to a parent regarding violations of drug and alcohol policies or a final adjudication of a violent crime.¹¹³

Some colleges have remained hesitant to notify parents for fear of violating FERPA.¹¹⁴ However, two exceptions seem especially appropriate in the suicide context. The tax dependence exception would allow colleges to notify parents in roughly 50 percent of cases.¹¹⁵ The failure to utilize this exception may be the result of poor record-keeping regarding the tax dependence status of students, or a policy that assumes a student to be independent for tax purposes unless a parent affirmatively indicates otherwise.¹¹⁶ Even if fully utilized, however, this exception would not cover every student in need of response. The "health or safety" exception seems squarely applicable to the student suicide context, yet it is dramatically underutilized.¹¹⁷ This may be because colleges are afraid that an improper invocation of the exception will result in sanction. Since invocation is always discretionary – even when the exception is clearly applicable – there is no risk in failing to invoke. There is some indication, however, that colleges may be overestimating the risk of invoking. The Department of Education has advised that a student making suicidal statements and engaging in unsafe behaviors constituted a "health emergency."¹¹⁸ Thus, at least where there is a nexus of statements and behaviors, colleges could safely invoke the exception.

Even if colleges were to feel more comfortable invoking the FERPA exceptions, many disclosure scenarios are out of FERPA's purview. Information and records gathered in mental health treatment are not covered by FERPA.¹¹⁹ While the Health Information Portability and Accountability Act (HIPAA) usually covers medical and psychological treatment records, records kept by a campus medical or counseling center are specifically excepted from the law.¹²⁰ Thus, state law governs disclosure. New Jersey has long recognized the tort of "breach of confidentiality" as well as doctor-patient and psychologist-patient privileges.¹²¹ Consistent with the national trend typified by Tarasoff v. Regents of the University of California, however, New

Jersey courts have made clear that any duty to maintain confidentiality can be trumped.¹²² As the New Jersey Supreme Court has noted, a patient is entitled to confidentiality “except where the public interest or the private interest of the patient so demands.”¹²³ A patient, therefore, possesses “a limited right to confidentiality ...subject to exceptions prompted by the supervening interest of society.”¹²⁴ While this language strongly supports limited disclosures to prevent a suicide, our courts have not had an opportunity to address this issue. Thus, many physicians and psychologist may be hesitant to breach confidentiality, even if the disclosure could help save a patient’s life.

V. BLANKET INVOLUNTARY REMOVAL POLICIES THREATEN RIGHTS

Relevant civil rights laws – the Rehabilitation Act, the Americans with Disabilities Act, the Fair Housing Act, and the N.J. Law Against Discrimination – recognize that unmanageably dangerous students should not remain on campus. However, all three acts prohibit *blanket involuntary removal policies*, which allow or require removal based solely on the existence of suicidal thoughts or behavior. These laws require that before a student is removed, an individualized determination must be made that the student presents a direct threat that cannot be lessened through the provision of reasonable accommodations. Moreover, due process arguably requires that students facing removal be given an opportunity to contextualize their behavior before the decision-making body. Each of these protections will be discussed at length below.

A. REHABILITATION ACT/AMERICANS WITH DISABILITIES ACT

The Rehabilitation Act of 1973 provides, “no otherwise qualified individual with a disability...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal funds.”¹²⁵ The Americans with Disabilities Act, passed in 1990, incorporated the Rehabilitation Act and extended its non-discrimination mandate to “public entities,” like state and local governments.¹²⁶ Importantly, it added, “no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation,” including a “private school.”¹²⁷ It goes on to define “qualified individuals” as those persons who, given “reasonable modification to rules, policies and practices, are otherwise eligible for participation in, or receipt of, the services provided.”¹²⁸ Under both acts, a person with a disability includes anyone with a “physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.”¹²⁹ In general, the ADA and Rehabilitation Acts are applied simultaneously and interchangeably.¹³⁰

The United States Department of Education’s Office of Civil Rights (OCR) is charged with promulgating, interpreting and enforcing regulations under the Rehabilitation Act in the higher education context.¹³¹ OCR regulations state, “no qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid ... benefits, or services.”¹³² They also admonish that a covered entity “may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.”¹³³

In letter opinions, OCR has confirmed that potentially suicidal students would be considered “individuals with a disability,” protected by the Rehabilitation Act, since the college treats the student as having an impairment and takes adverse action against the student on that basis.¹³⁴ OCR has maintained that this does not prohibit a college from taking action to address a “direct threat” of danger posed by the student’s presence.¹³⁵ OCR defines “direct threat” as a “significant risk to the health or safety of the student or others and has clarified that “significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk.”¹³⁶ Removal action, under the “direct threat” standard, can only be taken after an “individualized and objective assessment of the student’s ability to safely participate in the institution’s programs based on a reasonable medical judgment...”¹³⁷ The assessment must look at the “nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications... will sufficiently mitigate the risk.”¹³⁸ Importantly, “the student must not be subject to adverse action on the basis of unfounded fear, prejudice, and stereotypes.”¹³⁹

Applying blanket involuntary removal policies will violate the Rehabilitation Act and the Americans with Disabilities Act by incorporation and analogy. New Jersey’s colleges are either public entities or public accommodations under the ADA and all receive federal funds subjecting them to the Rehabilitation Act. When a student is removed, the student is excluded from the benefits and services that the college provides. However, students removed pursuant to a blanket involuntary removal policy have not had the *individualized* assessment that OCR requires. Instead, colleges utilizing such policies improperly presume danger and fail to consider whether any actual danger could be mitigated by providing reasonable modifications or other accommodations.¹⁴⁰

B. FAIR HOUSING ACT

The Fair Housing Act (FHA), as amended, prohibits discrimination on the basis of disability in a variety of housing scenarios, including a student's residence in a dormitory.¹⁴¹ The FHA covers essentially the same people covered by the ADA and Rehabilitation Act, including (1) individuals with "a physical or mental impairment which substantially limits one or more of such person's major life activities," (2) "individuals with a record of having such an impairment," or (3) individuals "regarded as having such an impairment."¹⁴² The FHA makes it unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter" or to "discriminate against any person in the terms, conditions, or privileges of sale or rental" because of a handicap.¹⁴³ Mirroring the ADA, covered entities must make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling"¹⁴⁴ The only case to apply these protections in the student suicide context is the aforementioned Doe v. Hunter, which settled out of court without significant guidance.¹⁴⁵

The United States Department of Justice is responsible for promulgating, interpreting and enforcing regulations under the FHA. While the DOJ has not specifically addressed suicide removal policies, it has provided some more general guidance.¹⁴⁶ Regulations adopted by DOJ state: "Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others."¹⁴⁷ In guidance materials, the DOJ has added that: "determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability."¹⁴⁸ Thus, the DOJ has adopted similar standards to the OCR, in evaluating the removal of individuals from housing.

Applying blanket involuntary eviction policies would probably violate the FHA for the same reasons that the greater category, of blanket involuntary removal policies, violates the ADA and the Rehabilitation Act. These removal policies exclude students from housing opportunities due to their perceived mental illness and an unsupported presumption of dangerousness. Blanket eviction policies fail to make the individualized assessment required by the DOJ guidance. Contrary to the DOJ guidance, they rely on an unsupported assumption of dangerousness. While colleges may claim that the eviction is based on a contractual breach – and not on the student's mental illness – any contract terms that prohibit suicidal statements or behaviors would also constitute discriminatory behavior. These terms will disparately impact individuals with mental illness, since many individuals who will break these rules suffer from some sort of mental illness, such as major depression or anxiety disorder.

C. NEW JERSEY LAW AGAINST DISCRIMINATION

The New Jersey Law Against Discrimination (LAD) provides that "[a]ll persons shall have the opportunity ... to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation...without discrimination because of... disability... subject only to conditions and limitations applicable alike to all persons. This opportunity is recognized as and declared to be a civil right."¹⁴⁹ The term "disability" includes any mental, psychological

or developmental disability ... which prevents the normal exercise of any bodily or mental functions.”¹⁵⁰ Colleges and universities, as “places of public accommodation include,” must refrain from discriminating on the basis of disability.¹⁵¹

Regulations promulgated pursuant to the New Jersey Law Against Discrimination (LAD) more specifically address discrimination in the disability context. They provide that the non-discrimination provisions should not be read to require public accommodations to include a person with a disability if doing so would create “a reasonable probability of serious harm to the person with a disability, or to others, that cannot be eliminated with reasonable accommodation.”¹⁵² Like the ADA, Rehabilitation Act, and FHA, the LAD requires that an individualized assessment be made, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence. That assessment should determine the probability that the serious harm will actually occur and whether reasonable modifications of policies, practices, or procedures will eliminate the probability of serious harm.¹⁵³

Applying blanket involuntary removal policies would likely violate the LAD for the same reasons that they run afoul of the ADA, Rehabilitation Act and FHA. Under such policies, affected individuals are excluded because they are perceived to have mental disabilities and because their colleges presume dangerousness. Blanket policies fail to provide the required individualized assessment or consider the effect of reasonable accommodations. In addition, New Jersey case law has specifically noted that, at least in the disability discrimination context, the LAD has been interpreted as more broadly than the ADA.¹⁵⁴ Thus, to the extent that claims of improper removal of a student can be brought under the ADA, they likely can be brought under the LAD as well.

A. PROCEDURAL DUE PROCESS PROTECTIONS

The fourteenth amendment to the United States Constitution provides: “nor shall any State deprive any person of life, liberty, or property, without due process of law.”¹⁵⁵ In general, only state actors must provide procedural protections.¹⁵⁶ However, OCR has held that the Rehabilitation Act requires public *and* private colleges to comply with the dictates of due process, making the analysis potentially applicable to both. To be entitled to the procedural protections of the fourteenth amendment, an individual must show that a particular action – usually a state action – deprived him or her of a liberty or property interest.¹⁵⁷ Once this threshold is met, a court must determine whether the requested process was in fact *due*.¹⁵⁸ Generally, courts look to the test set forth in Matthews v. Eldridge, which advises them to balance the seriousness of the interest at stake and the likelihood that it will be erroneously deprived, against the state’s interest in forgoing the requested process.¹⁵⁹

Federal courts have applied this analysis in several cases involving students dismissed from their colleges.¹⁶⁰ They have found a student’s interest in education to be a protected liberty or property interest.¹⁶¹ In applying the Matthews test, Federal courts distinguish between *academic* and *disciplinary* dismissals.¹⁶² While both dismissals implicate the same protected interests – education, reputation, and housing – disciplinary dismissals require greater procedural protections.¹⁶³ Whereas disciplinary dismissals involve factual disputes as to whether the student committed the prohibited act, academic dismissals require “an expert evaluation of cumulative

information and [are] not readily adapted to the procedural tools of judicial or administrative decision making.”¹⁶⁴ In the interest of preserving academic freedom, courts have allowed colleges to limit on the procedural protections they afford students.¹⁶⁵ In the disciplinary context, a student must be given notice and *some* opportunity to present their case, although federal courts have refused to require a formal court-like hearing or counsel.¹⁶⁶ In the academic context, dismissal decisions are upheld as long as they are “careful and deliberate.”¹⁶⁷

Students in New Jersey colleges enjoy even greater protections under a *state* due process clause. Article 1, Paragraph 1 of the New Jersey Constitution provides that “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”¹⁶⁸ While federal due process precedent is persuasive, the New Jersey Supreme Court has made clear that it can and will interpret greater protections for its citizens under the state Constitution.¹⁶⁹ In contrast to federal court rulings, the New Jersey Supreme Court has not adopted the rigid distinction between academic and disciplinary dismissals. Indeed, even where dismissal was based solely on academic grounds, the Court has required “fair procedure,” including “the right to adequate notice of the deficiencies, an opportunity to examine the evidence of those deficiencies...and the right to present a case to the decision-making authority.”¹⁷⁰ Thus, in all likelihood, involuntary removals for suicidality would be subject to these “fair process” requirements as well.

While our state and federal courts have been silent on how suicidality removals would be treated, OCR believes that such removals are subject to extensive process, akin to what is required for disciplinary removals under federal law or the “fair process” required by New Jersey law. OCR has suggested that in most circumstances, a potentially suicidal student would be entitled to a “hearing and the right to appeal” the decision before any adverse action was taken. Recognizing the need for some flexibility in extreme emergency situations, OCR did provide that “in exceptional circumstances, such as situations where safety is an immediate concern, a college may take interim steps pending a final decision regarding an adverse action...”¹⁷¹ However, OCR stressed that even these emergency “interim steps” are subject to “minimal due process, such as notice and an opportunity to address the evidence,” before adverse action is taken.¹⁷² Moreover, OCR went on to state that where this abridged process is provided, full due process – including a hearing and the right to appeal – must be provided before any final decisions are made.¹⁷³ Thus, anything less than full due process can only be used in limited circumstances to respond to immediate danger that precludes swift and full process and only until that full process can be provided.

Applying blanket involuntary removal policies will violate due process and, by incorporation, the Rehabilitation Act and the Americans with Disabilities Act. When a blanket involuntary removal policy is applied, the student is removed for exhibiting suicidality and is not given a hearing or other opportunity to address the decision-maker(s), as is required both under New Jersey’s “fair process” and OCR’s reading of the due process incorporated into the Rehabilitation Act. While OCR has recognized that “exceptional circumstances” will allow an abridged process, such a determination must be made on a case-by-case basis, as the situations arise. Blanket policies deny full process *as a matter of course*, without considering whether “exceptional circumstances” have actually arisen in any particular case. Assuming that

exhibition of suicidality would normally constitute “exceptional circumstances” is inconsistent with OCR’s assumption that the run of cases – all of them involving potentially suicidal students – would allow for full process. While there will certainly be situations calling for abridged process, blanket involuntary removal policies impermissibly assume that full process is impossible.

VI. ELEMENTS OF A RIGHTS-FRIENDLY RESPONSE

After analyzing the previously discussed civil rights law, considering the most significant concerns facing colleges, and reviewing policies employed by New Jersey’s colleges, the Public Advocate concluded that there are any number of different policies that could be properly and successfully employed when responding to the potentially suicidal student. Many of New Jersey colleges’ most thoughtful policies combine the notification, encouragement, mandatory evaluation and/or treatment, and removal features outlined above. The combination and balance of these features will necessarily depend on the unique features and resources of the institution. The Department has, however, identified six elements that we recommend all colleges include. These elements should apply equally to removals from student housing and from the campus altogether. When utilized together, we believe that these six elements effectively balance colleges’ interests with students’ rights. Each element will be described in turn, including an explanation of why each element is essential.

A. CONSENSUAL SOLUTIONS

Colleges should strive to arrive at consensual solutions whenever possible, especially where that solution is removal. To the extent that the college and student can come to agreement with regard to the proper course of action, the student will feel more empowered and will likely view the college in a less adversarial light. As a result, students may be more likely to share suicidality with the college’s agents in the future, allowing the college to remain aware of potential danger. Pursuing consent also creates maximum flexibility as the legal requirements outlined above apply only to *involuntary* removals and not to removals that the student has voluntarily agreed to. Consent should be pursued at every step of the process, even where the college is within their legal rights to act without it.

B. MANDATORY EVALUATIONS

Colleges may require students making statements expressing intent to attempt suicide or exhibiting suicidal behaviors to undergo a mandatory evaluation, as way of determining whether the student presents a danger to self or others. Such an evaluation can assess for risk factors associated with suicide. In general, statements or behaviors that simply exhibit sadness, anxiety, loneliness, fear or other “negative” emotions should not be considered suicidal. This is true even if the student exhibits these emotions at levels consistent with mental illnesses, such as major depression or anxiety disorder. In contrast, statements that *specifically* threaten suicide or serious self-injury could fall into the definition of suicidal statements. Similarly, self-injurious behaviors could meet the definition of suicidal behaviors if there is any indication that they were motivated by a desire to die by suicide. Since students are identified for evaluation based upon

behavior, the college can avoid discriminating on the basis of mental illness. Indeed, individuals who exhibit suicidal behavior will be evaluated whether they are mentally ill or perfectly healthy. Students who refuse to submit to evaluation can appropriately be removed without regard to this analysis, since the ground is non-compliance and not suicidality or mental illness.

Colleges should provide a mental health professional to conduct the evaluation. The professional should assess the precipitating incident, prior attempts and threats, and current suicidal intent. The professional's main task is to determine whether the student presents a threat of substantial harm to self or others immediately or within the reasonably foreseeable future.¹⁷⁴ If the student does not meet that standard, the professional should make suggestions, encourage treatment, and/ or seek consent to notify the student's parents when appropriate. While the Joffe model requires four mandatory sessions, this is not recommended; requiring sessions beyond what is necessary to assess the threat level may be viewed as violating the student's right to refuse treatment. If the student does present such a threat, the student should generally be referred for an individualized removal hearing, pursuant to part C. In exceptional cases, where the threat is immediate, the college should consider emergency procedures outlined in part D. If the college ultimately decides to remove the student, this mandatory evaluation provides the medical judgment necessary for the "individualized assessment" required by law.

C. INDIVIDUALIZED REMOVAL HEARINGS

If an evaluation shows that a student presents a threat of suicide, the college should provide the student with notice and a removal hearing of some kind. While this hearing need not resemble a formal disciplinary hearing, the student should be given the opportunity to review any evidence offered in support of a removal, to contextualize their behavior, and to directly address the decision-maker(s). If the decision-maker(s) agree that the student must be removed, the decision-maker(s) should consider whether any modifications or accommodations could be made that might sufficiently mitigate the risk, like a change in dormitory or a reduced course load.. The student should be given the opportunity to suggest accommodations or modifications that he or she believes will mitigate the risk. If the decision-maker(s) believe parental notification, mental health treatment, or other action would sufficiently mitigate the risk, they should encourage the student to consent to these actions in order to stay on campus. In this context, colleges can properly leverage the possibility of removal to get a student into consensual treatment without running into ADA or forced treatment issues. If the college ultimately decides to remove the student, this process constitutes both the individualized assessment and the due process required by law.

D. STUDENTS PRESENTING IMMEDIATE DANGER

In rare instances, students will present an absolute immediate danger that renders a pre-removal evaluation and hearing unsafe. In these instances, the college could probably take *very temporary* action to remove the student, pending completion of the evaluation and hearing, pursuant to OCR's analysis of due process in "exceptional circumstances." The state due process clause is also probably flexible enough to allow temporary deviation from full process. However, before even temporary removal, students must be provided with "notice and an opportunity to address the evidence." In addition, an evaluation and hearing must be provided swiftly thereafter. As the extent of rights deprivation grows with each passing day that a student is removed, the greater the college's interest will have to be in order to justify it under the due process analysis outlined above. In addition, it must be remembered that under OCR analysis, this process represents *the exception*, not the rule, and that full process is called for in most instances.

While colleges can utilize these measures for a short time in limited circumstances, it is worth noting that this discussion may largely be a moot point. When a student presents an immediate danger to self or others, he or she should be connected to an emergency screening center for evaluation and stabilization. If the student is actually imminently dangerous, he or she will not be discharged back to campus. Rather, the student would be held, involuntarily if necessary, pursuant to the state's police and *parens patriae* powers. Thus, even where the student presents a very immediate threat of harm to self or others, the college could avoid taking any adverse action against the student by connecting him or her to the proper services. Indeed, this option provides a more appropriate solution than mere removal, which does little to actually prevent the student from harming him or herself. After the screening center releases the student, affirming that he or she is not imminently dangerous, the "exceptional circumstances" exception to the process requirements is likely no longer applicable.

E. MINIMIZING AND DEFERRING DISCIPLINE

Discipline should never be used to remove a student who makes suicidal statements or exhibits suicidal behaviors. There should be no rules prohibiting students from expressing their suicidality or from harming themselves, as such behavior is the manifestation of a mental illness that should be treated. Punishment would likely be viewed as discriminatory. However, there will be times when a student's behaviors or statements independently violate legitimate rules. For example, a student who steals pills from the college pharmacy would violate a legitimate prohibition on theft. These students will legitimately be subject to the disciplinary process. Of course, colleges assessing a student's actions in a disciplinary hearing can and should take the circumstances of the student's mental state into consideration when determining the proper response. Most importantly, disciplinary measures should be reserved until the student is deemed to present no danger and is otherwise capable of returning to or remaining on campus.

F. RETURNING TO CAMPUS

If a student has been removed, he or she should be given instructions on how a return to campus will unfold. The process for return should provide similar protections as were granted on removal. Once the student shows – through the attestation of a chosen mental health professional or by completing an evaluation with the college’s evaluating professional – that he or she no longer presents a “direct threat,” the student should be welcomed back to campus. If the college’s evaluating professional declines to find that the immediate threat has passed, the student should be entitled to review of that decision in a manner similar to the individualized assessment provided on removal. Colleges should not require students to show that they are cured of any mental illness or that they underwent a specific course of treatment recommended by their evaluating professional or anyone else. Failing to provide individualized immediate threat assessments for students seeking reentry will likely violate the ADA, Rehabilitation Act, FHA, LAD or due process protections for essentially all of the same reasons that blanket involuntary removals are prohibited. When a student no longer presents a direct threat, the college is no longer justified in excluding the student from campus.

VII. CONCLUSIONS

Responding to students struggling with suicidality has never been easy for colleges. It raises challenging complexities concerning legal liability and risk management concerns, making this job more difficult for today’s college administrators. While adopting blanket involuntary removal policies may simplify a college’s response efforts, such a decision may ultimately expose that college to new problems, including litigation alleging civil rights violations. In addition, blanket involuntary removal policies may have the unintended consequence of deterring students from sharing their experiences with friends or college staff, for fear that they will be removed from their dorm or from campus altogether. Not only can this keep troubled students from treatment, but it may also keep colleges uninformed about how troubled and dangerous a student may actually be. Colleges that adopt policies that are in accordance with the Department of the Public Advocate’s recommendations can remove dangerous students and discipline those who need discipline. Such policies will provide the protections required under the law, and ensure that colleges can respond appropriately when a student is truly dangerous. We hope that in adopting our model policy, New Jersey’s colleges can begin to limit involuntary removals, encourage treatment, and prevent suicides.

¹ Complaint of plaintiff, Nott v. George Washington University at 10, (Sup. Ct. D.C. 2004) (No. 05-8503).

² Id.

³ Id.

⁴ Id. at 11.

⁵ Id. at 11-12

⁶ Id. at 12-14.

⁷ Id. at 14.

⁸ Complaint of plaintiff, Doe v. Hunter at 7 (S.D.N.Y. 2004)(04 CV 6740).

⁹ Id.

¹⁰ Id.

¹¹ Id. at 8.

¹² Id. at 8-9.

¹³ Nott Complaint, *supra*, at 22-27. Doe Complaint, *supra*, at 17-21.

¹⁴ Nott Complaint, *supra*, at 22-27. Doe Complaint, *supra*, at 17-21.

¹⁵ Nott Complaint, *supra*, at 22-27. Doe Complaint, *supra*, at 17-21.

¹⁶ Order denying Motion to Dismiss in Doe v. Hunter, available at <http://www.bazelon.org/pdf/Doe-v-hunter-Order-denying-motion-to-dismiss.pdf>

¹⁷ See e.g. Doe v. DeSalles University, OCR 03-04-2041 (2005).

¹⁸ Eric Hoover, "Giving Them the Help They Need," *Chron. of Higher Educ.*, May 19, 2006, at 39; Elizabeth Wolnick, Depression Discrimination: Are Suicidal College Students Protected by the Americans with Disabilities Act?, 49 *Ariz. L. Rev.* 989 (Winter 2007). Richard D. Kadison, The Mental-Health Crisis: What College Must Do, *Chron. of Higher Educ.*, Dec. 10, 2004, at 20; Rob Capriccioso, Self-Injury Epidemic, Inside Higher Ed, June 5, 2006, available at <http://www.insidehighered.com/news/2006/06/05/injury>.

¹⁹ National Institute of Mental Health, Mental Disorders in America, (last visited July 6, 2009), available at <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america.shtml#>.

²⁰ Id.

²¹ National Center for Health Statistics, Multiple Cause-of-Death Public Use Data Files, 1990-2004 (last visited August 6, 2008), available at http://www.cdc.gov/nchs/products/elec_prods/subject/mortmcd.htm.

²² National Institute of Mental Health, Mental Disorders in America, (last visited July 6, 2009), available at <http://www.nimh.nih.gov/health/publications/the-numbers-count-mental-disorders-in-america.shtml#>.

²³ Madelyn Gould & Rachel Kramer, Youth Suicide Prevention, 31 *J. Suicide & Life Threatening Behavior* 6 (Spring 2001).

²⁴ The Jed Foundation, Framework for Developing Institutional Protocols for the Acutely Distressed or Suicidal College Student, (last visited July 26, 2008) available at <http://www.jedfoundation.com/framework.php>.

²⁵ American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 4th Edition, 349 (2000).

²⁶ Elizabeth Wolnick, Depression Discrimination: Are Suicidal College Students Protected by the Americans with Disabilities Act?, 49 *Ariz. L. Rev.* 989 (Winter 2007); Richard D. Kadison, The Mental-Health Crisis: What College Must Do, *Chron. of Higher Educ.*, Dec. 10, 2004, at 20; Rob Capriccioso, Self-Injury Epidemic, Inside Higher Ed, June 5, 2006, <http://www.insidehighered.com/news/2006/06/05/injury>.

Allan Schwartz, College Student Suicide in the United States: 1990-1991 through 2003-2004, *Journal of American College Health*, May 2006, at 54.

²⁷ Press Release, American Academy of Child & Adolescent Psychiatry, Jun 12, 2006, available at http://www.aacap.org/cs/root/media/press_releases/2006_press_releases/depression_and_suicide_on_college_campuses.

²⁸ Eric Hoover, Giving Them What They Need: The Author of a New Book on Student Suicide says Colleges Need to Think About More Than Liability, *The Chronicles of Higher Education*, May 19, 2006 at A39.

²⁹ S.J. Garlow, et al., Depression, Desperation, & Suicidal Ideation in College Students: results from the American Foundation for Suicide Prevention College Screening Project at Emory University School of Medicine, 25 *J. Depression & Anxiety* 482-488 (June 2007).

³⁰ *Id.*

³¹ National Institute for Mental Health, National Co-morbidity Survey Replication Study: Mental Illness Exacts Heavy Toll Beginning in Youth, (last visited August 6, 2008), available at <http://www.nimh.nih.gov/health/statistics/ncsr-study/index.shtml>.

³² *Id.*

³³ J. Kisch et al., Aspects of Suicidal Behavior, Depression, & Treatment in College Students: Results from the Spring 2000 National Health Assessment Survey, 35 *J. Suicide & Life-Threatening Behavior* 3-13 (February 2005).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 4th Edition, 349 (2000).

⁴¹ Robert Gallagher, National Survey of Counseling Center Directors, (last visited August 6, 2008) available at <http://www.education.pitt.edu/survey/nsccd/archive/2005/monograph.pdf>.

⁴² Lauren Seymour Barnes, et al., Help-seeking Behavior Prior to Nearly Lethal Suicide Attempts, 32 *J. Suicide and Life-Threatening Behavior* 68-75 (Dec 2001).

⁴³ Paul Joffe, An Empirically Supported Program to Prevent Suicide Among a College Population 38 *J. Suicide and Life-Threatening Behavior* 1 (February 2008).

⁴⁴ Peter Lake and Nancy Tribbensee, The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-inflicted Injury, 32 *Stetson L. Rev.* 125, 129 (2002).

⁴⁵ Julie Rawe & Kathleen Kingsbury, When Colleges Go on Suicide Watch, *Time*, May 22, 2006, at 62-63.

⁴⁶ Karin McAnaney, Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities, 94 *Va. L. Rev.* 197, 199 (March 2008).

⁴⁷ See e.g. Cornell University, Involuntary Student Leave for Reasons of Personal or Community Safety 1 (Mar. 1999), available at <http://www.policy.cornell.edu/CM Images/Uploads/POL/vol7 2.pdf>.

⁴⁸ McAnaney, *supra*, 94 *Va. L. Rev.* at 235.

⁴⁹ Joffe, *supra*, 38 *J. Suicide and Life-Threatening Behavior* at 13.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 15.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 22.

⁵⁶ Id. at 29.

⁵⁷ See e.g. Valerie Kravets Cohen, Keeping Students Alive: Mandating On-Campus Counseling Saves Suicidal College Students' Lives and Limits Liability, 75 Fordham L. Rev. 3081, 3111 (May 2007).

⁵⁸ Joffe, 38 J. Suicide and Life-Threatening Behavior at 4.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Christine Hauser, Virginia Tech Shooting Leaves 33 Dead, N.Y. Times (April 16, 2007).

⁶³ Id.

⁶⁴ Michael Luo, U.S. Rules Made Killer Ineligible to Purchase Gun, N.Y. Times (April 21, 2007).

⁶⁵ Judy Keen, Gunman Stopped Taking Meds, Became Erratic, U.S.A. Today (February 16, 2008); Inside Higher Ed, Six Killed in northern Illinois Shooting, (February 15, 2008), available at <http://www.insidehighered.com/news/2008/02/15/niu>

⁶⁶ McAnaney, *supra*, 94 Va. L. Rev. at 200.

⁶⁷ See Helen Smith et al., Violence on Campus: Practical Recommendations for Legal Educators, 32 City U. L. Rev. 443 (Fall 2007).

⁶⁸ Midwestern Higher Education Compact, The Ripple Effect of Virginia Tech, (last visited August 6, 2008) available at http://www.mhec.org/policyresearch/052308mhecsafetyrpt_lr.pdf

⁶⁹ Id. at 24.

⁷⁰ Id. at 14.

⁷¹ Jain v. State, 617 N.W. 2d 293, 300 (Iowa 2000).

⁷² See e.g. Bogust v. Iverson, 102 N.W.2d 228 (Wis. 1960).

⁷³ See e.g. Hickey v. Zezulka & Michigan State Univ., 443 N.W.2d 180 (Mich. Ct. App. 1988) (a case involving the suicide of a student held in a university-run jail). McBride v. State, 277 N.Y.S.2d 80, 88-89 (N.Y. Ct. Cl. 1967), *aff'd*, 30 App. Div. 2d 1025, 294 N.Y.S.2d 265 (1968) (State training school); Dezort v. Village of Hinsdale, 35 Ill. App. 3d 703, 709, 342 N.E.2d 468, 473 (1976) (jail); or because the institution is a hospital or the individual is a specially trained medical or mental health professional, who has the precise duty and the control necessary to care for the physical and/or mental well-being of a patient (see Meier v. Ross General Hospital, 69 Cal. 2d 420, 424, 71 Cal. Rptr. 903, 907, 445 P.2d 519, 523 (1968); Farrow v. Health Serv. Corp., 604 P.2d 474, 477 (Utah, 1979)).

⁷⁴ Restatement (2d) of Torts §314A.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ For an in-depth analysis of the forces altering the relationship between colleges and students, see Kristen Peters, Protecting the Millennial College Student, 16 S. Cal. Rev. L. & Social Justice 431 (Spring 2007).

⁷⁸ Carrie Elizabeth Gray, The University-Student Relationship Amidst Increasing Rates of Student Suicide, 31 Law & Psychol. Rev. 137, 139-141 (Spring 2007).

⁷⁹ Id.

⁸⁰ See e.g. McLaughlin v. Sullivan, 461 A.2d 123, 125 (N.H. 1983).

⁸¹ See e.g. Mahoney v. Alleghany Coll., No. AD 892-2003, at 23 (Pa. Ct. C.P. Dec. 22, 2005), available at

<http://www.asjaonline.org/attachments/articles/35/Allegheny%20college%20SJ%20decision.pdf>.

⁸² Jain, supra, 617 N.W. 2d at 300.

⁸³ McAnaney, supra, 94 Va. L. Rev. at 199.

⁸⁴ Jain, supra, 617 N.W.2d at 295-96.

⁸⁵ Id. at 296.

⁸⁶ Id. at 298-300.

⁸⁷ Id. at 300.

⁸⁸ Id. at 299-300.

⁸⁹ Peters, supra, 16 S. Cal. Rev. L. & Social Justice at 431.

⁹⁰ Scheiszler v. Ferrum College, 236 F. Supp. 2d 602 (W.D. Va. 2002); Shin v. MIT, 19 Mass. L. Rptr. 570 (Super. Ct. June 27, 2005).

⁹¹ Shin, supra, 19 Mass. L. Rptr. at 570-573.

⁹² Id. at 606-07, 609.

⁹³ Id.; Contrast Restatement (2d) of Torts §314A. Essentially, the courts collapsed the “foreseeable intentional acts” and the “special relationship arising from foreseeable dependence” analyses.

⁹⁴ Mahoney, supra, No. AD 892-2003 at 23.

⁹⁵ Id.

⁹⁶ Joy Blanchard, University Tort Liability and Student Suicide: Case Review and Implications for Practice, 36 J.L. & Educ. 461, 477 (October 2007).

⁹⁷ Scheiszler, supra, 236 F. Supp. 2d at 609; Shin, supra, 19 Mass. L. Rptr. at 573.

⁹⁸ See Id.

⁹⁹ See New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 59:12-3; New Jersey Charitable Immunity Act, N.J.S.A. 2A:53A-7 to -11;

¹⁰⁰ O’Connell v. Montclair State, 171 N.J. 484, 489 (2002). See New Jersey Charitable Immunity Act (CIA), N.J.S.A. 2A:53A-7(a). Under the CIA, they may still be liable for damage caused by “a willful, wanton or grossly negligent act of commission or omission...” N.J.S.A. 2A:53A-7(c).

¹⁰¹ O’Connell, supra, 171 N.J. at 489.

¹⁰² Id. at 491-492.

¹⁰³ Inside Higher Education, Counseling Crisis, (March 2007), available at:

<http://www.insidehighered.com/layout/set/print/news/2006/03/13/counseling> (citing says Gary Pavela, director of judicial programs at the University of Maryland at College Park and author of a new book called *Questions and Answers on College Student Suicide*. “These rulings have alarmed college administrators nationwide,” Many fear they will be held liable for failing to determine when troubled or depressed students pose a heightened risk of suicide.”).

¹⁰⁴ 20 U.S.C.S. § 1232g(a).

¹⁰⁵ 20 U.S.C.S. § 1232g(d). If the student is under eighteen, the right to privacy belongs to the parents and they must consent to the disclosures.

¹⁰⁶ 20 U.S.C.S. § 1232g(a)(4); 34 C.F.R § 99.3.

¹⁰⁷ 20 U.S.C.S. 1232g(a)(4)(A). 34 C.F.R. §99.3.

¹⁰⁸ 20 U.S.C.S. § 1232g (a)(1)(A)-(B).

¹⁰⁹ 34 C.F.R § 99.31(b)(1)(A).

¹¹⁰ 34 C.F.R § 99.31(b)(1)(A); 34 C.F.R. 99.31(a)(1).

¹¹¹ 20 U.S.C.S. 1232g(b)(1)(I); 34 C.F.R § 99.36.

¹¹² 20 U.S.C.S. 1232g(b)(1)(H); 34 C.F.R. 99.31(a)(8).

¹¹³ 34 C.F.R. § 99.31 (15)(i).

¹¹⁴ See Thomas R. Baker, Notifying Parents Following a College Student's Suicide Attempt: A Review of Case Law and FERPA and Recommendations for Practice, 42 NASPA J. 513 (2004).

¹¹⁵ Nat'l Ctr. for Educ. Statistics, Student Financing of Undergraduate Education: 2003-04, (last visited August 6, 2008), available at <http://nces.ed.gov/pubs2006/2006186.pdf>.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ Id. at 102

¹¹⁹ 20 U.S.C.S. § 1232g.

¹²⁰ 42 U.S.C.S. §1320d.

¹²¹ See e.g. Kinsella v. Kinsella, 150 N.J. 276 (1997).

¹²² See e.g. Runyon v. Smith, 163 N.J. 439, 443 (2000), adopting Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334 (1976).

¹²³ Runyon, supra, 163 N.J. at 248.

¹²⁴ Hague v. Williams, 37 N.J. 328, 336 (1962).

¹²⁵ 29 U.S.C.S. § 794.

¹²⁶ 42 U.S.C.S. § 12181

¹²⁷ 42 U.S.C.S. § 12181, 12182.

¹²⁸ 42 U.S.C.S. § 12131.

¹²⁹ 42 U.S.C.S. § 12102; 29 USCS § 705.

¹³⁰ See e.g. Powell v. Nat'l Bd. of Med. Examiners, 364 F. 3d 79, 85 (2d Cir.2004). The only case to apply these protections in the student suicide context is the aforementioned Doe v. Hunter, which settled without significant guidance.

¹³¹ 34 C.F.R. § 104

¹³² 34 C.F.R. § 104.43(a) (2007).

¹³³ 34 C.F.R. § 104.43(c) (2007).

¹³⁴ See e.g. Doe v. DeSalles University, OCR 03-04-2041 (2005).

¹³⁵ Id.; Doe v. Marietta College, OCR 15-04-2060 (2005).

¹³⁶ Doe v. DeSalles University, OCR 03-04-2041 (2005).

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ While colleges may attempt to argue undue hardship, since the student may present dangers to others on campus, such an argument falls particularly flat where the college has adopted a blanket removal policy and has not bothered to determine whether the student is, in fact, dangerous.

¹⁴¹ 42 U.S.C.S. 3601 et seq; See Hershman v. Yale College, 237 F.3d 81 (2d Cir. 2000) (applying FHA to allegedly discriminatory housing conditions at Yale University).

¹⁴² 42 U.S.C.S. § 3602(h).

¹⁴³ 42 U.S.C.S. § 3602(f).

¹⁴⁴ 42 U.S.C. § 3602 (f)(3)(B). In addition, covered entities cannot “make, print, or publish...any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates

any preference, limitation, or discrimination based on...disability... or an intention to make any such preference.”¹⁴⁴

¹⁴⁵ Order denying Motion to Dismiss, Doe v. Hunter, (S.D.N.Y. 2004)(04 CV 6740), available at <http://www.bazelon.org/pdf/Doe-v-hunter-Order-denying-motion-to-dismiss.pdf>; The fact that Doe survived the dismissal does suggest that claims based on removal are not completely baseless under the ADA, Rehab Act, and FHA.

¹⁴⁶ See 24 C.F.R. § 100.202.

¹⁴⁷ *Id.*

¹⁴⁸ United States Department of Justice, Civil Rights Division Housing and Civil Enforcement Section, (last viewed August 6, 2008), available at

http://www.usdoj.gov/crt/housing/housing_coverage.htm.

¹⁴⁹ N.J.S.A. 10:5-4.

¹⁵⁰ N.J.S.A. 10:5-5.

¹⁵¹ N.J.S.A. 10:5-5.

¹⁵² N.J.A.C. 13:13-4.8.

¹⁵³ *Id.*

¹⁵⁴ Gerety v. Atl. City Hilton Casino Resort, 184 N.J. 391, 409 (2005).

¹⁵⁵ U.S. Const. Amend XIV, §1.

¹⁵⁶ However, the ADA requires that all covered entities provide due process.

¹⁵⁷ University of Missouri v. Horowitz, 435 U.S. 78, 82 (1978);

¹⁵⁸ Matthews v. Eldridge, 424 U.S. 319 (1976).

¹⁵⁹ See *Id.*

¹⁶⁰ Horowitz, supra, 435 U.S. at 82; Greenhill v. Bailey, 519 F2d 5 (8th Cir. 1975).

¹⁶¹ Greenhill, supra, 519 F2d 5.

¹⁶² Horowitz, supra, 435 U.S. at 87.

¹⁶³ *Id.* at 87-89

¹⁶⁴ *Id.* at 89-90.

¹⁶⁵ *Id.*

¹⁶⁶ See *Id.* at 87-89; Goss v. Lopez, 419 U.S. 565, 583-84 (1975); Hart v. Ferris State Coll., 557 F. Supp. 1379, 1385-88 (W.D. Mich. 1983)(no right to counsel in disciplinary hearing).

¹⁶⁷ Horowitz, supra, 435 U.S. at 87.

¹⁶⁸ N.J. Const. Art. 1, Par. 1.

¹⁶⁹ See Abbott v. Burke, 100 N.J. 269, 295 (1985).

¹⁷⁰ Hernandez v. Overlook Hospital, 149 N.J. 68, 81 (1997).

¹⁷¹ Doe v. Marietta College, OCR 15-04-2060 (2005).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Mental health professionals who are conducting evaluations are encouraged to refer to the Suicide Prevention Resource Center, which provides best-practice guidelines to assess suicide risk at www.sprc.org.