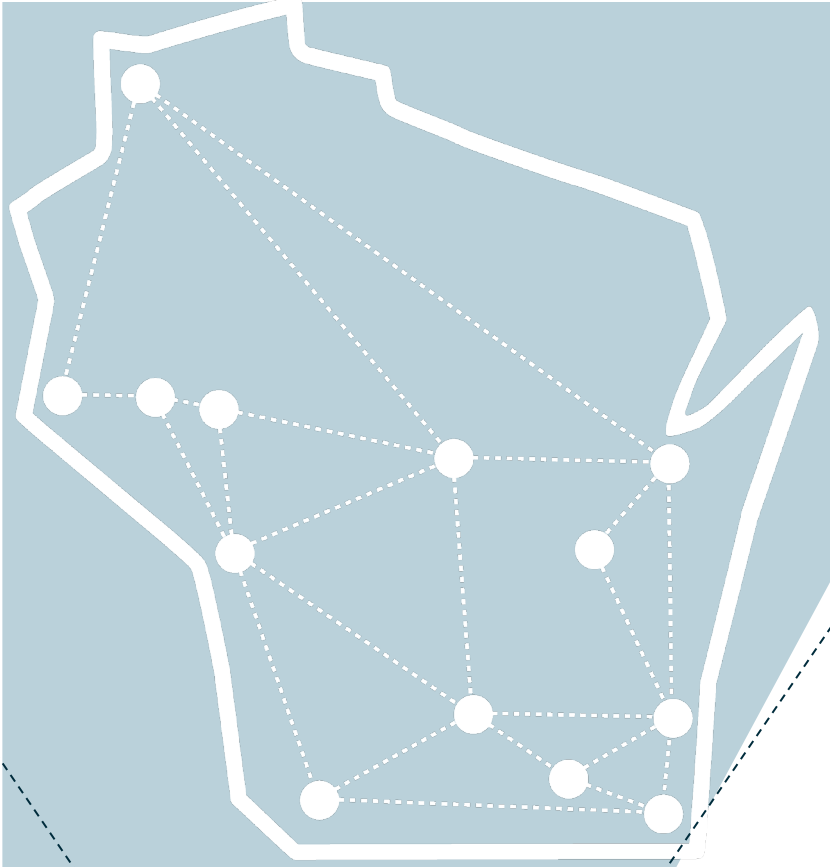


UNIVERSITIES OF WISCONSIN

BEHAVIORAL INTERVENTION: RESPONDING TO THREATS & STUDENT MENTAL HEALTH ISSUES – LEGAL& PRACTICAL CONSIDERATIONS

Wade Harrison, Deputy General Counsel

TOPICS COVERED

- Updated Risks Overview
- Behavioral Intervention Teams/Threat Assessment Management
- FERPA and state medical and mental health privacy laws
- Parental notification
- Duty to respond – suicide and harm to others
- Non-academic misconduct process
  - UWS 17 “Dangerous Conduct” charge
  - Support/accommodations during investigation/hearing
- Involvement of law enforcement
- Involuntary medical withdrawal
- Risk assessments for implementing new tools

UNITED EDUCATORS (INSURER) TOP RISKS SURVEY REPORT 2026

Top 10 Risks

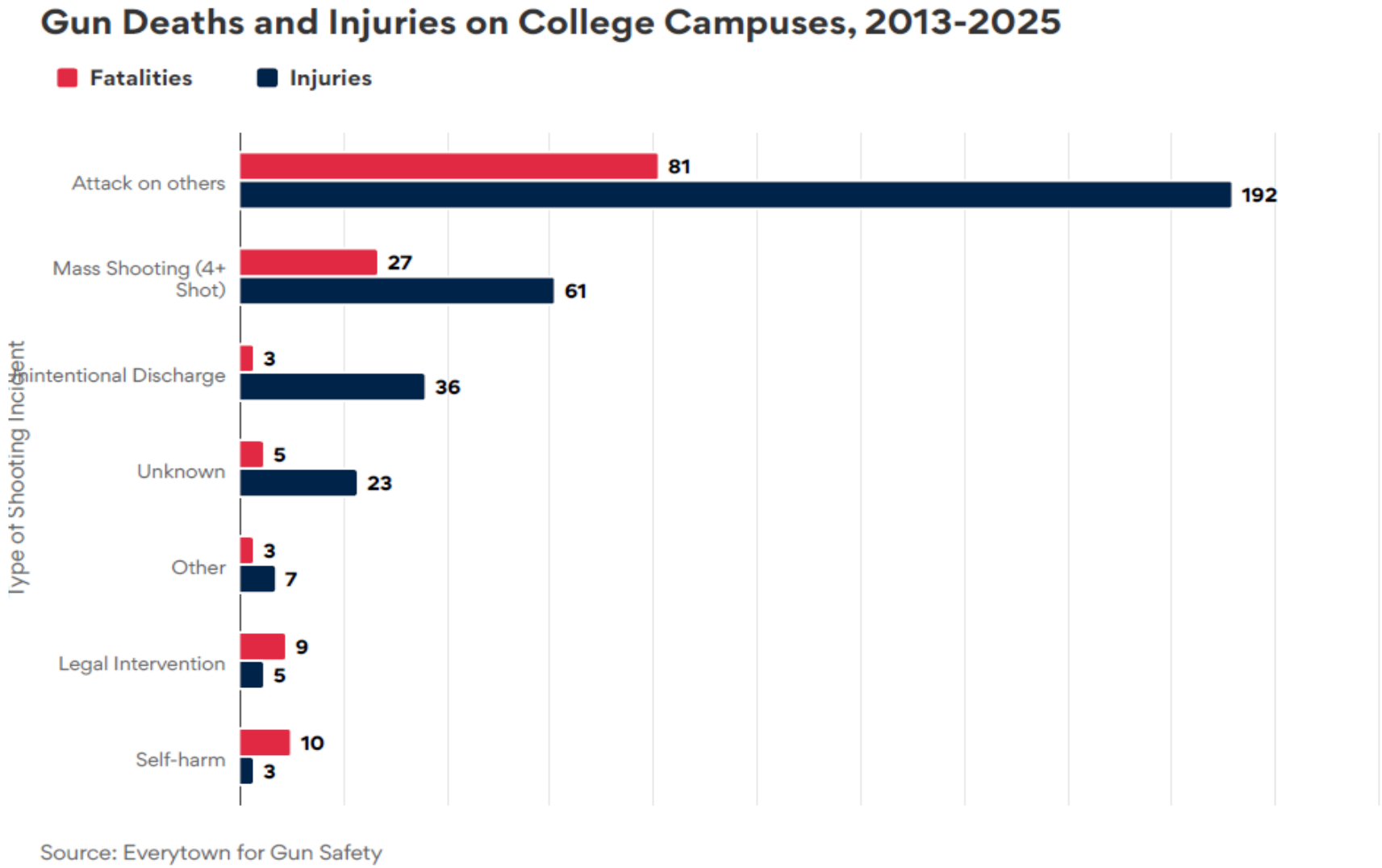
1. Admissions and Retention
2. Data Security/Cybersecurity
3. Compliance (Non-Title IX/VAWA)
4. Operational Pressures
5. Facilities and Deferred Maintenance
6. Funding/Financial Stability
7. Student Mental Health
8. Recruitment and Hiring
9. Public Safety
10. Athletics

BEST COLLEGES DATA (UPDATED APRIL 2025)

Data Summary

- Since 1966, there have been 17 shootings at colleges where at least three people were killed.
- Outside of mass shootings, there have been roughly 385 instances of gunfire on college campuses since 2013, killing 111 people and injuring 266.
- Researchers have found that gun access on college campuses may increase the risk of suicide and turn aggressive incidents more deadly.
- Most college students surveyed say school shootings impact their sense of safety on campus (65%) and favor stricter campus gun policies (63%).

BEST COLLEGES DATA (FROM EVERYTOWN DATABASE)



BEST COLLEGES DATA (UPDATED MAY 2023)

- Suicide is one of the leading causes of death among college students.[1]
- 5.6 out of 100,000 students at Big Ten schools died by suicide from 2009-2018.[2]
- The college student suicide rate is lower than the suicide rate among all 18-24-year-olds in the U.S.[3]
- In 2022, 2% of college students surveyed said they had attempted suicide in the past year.[4] That's higher than reports from 2007-2021.[5]
- Transgender and nonbinary students report far higher rates of suicide-related thoughts and behaviors than cisgender students.[6], [7]
- Pacific Islander, Native American, and Black college students report higher suicide attempt rates than students of other races.[5]
- Suicide is preventable. Colleges can work to reduce the stigma of getting help, end discrimination against certain student groups, and eliminate barriers to culturally sensitive mental health care.

WHAT IS A THREAT ASSESSMENT TEAM?

- Multidisciplinary team that assesses and coordinates a response to actual and potential threatening situations on campus.

- The team develops strategies to assess, intervene, interrupt, and mitigate threats posed by students, faculty, staff, visitors, and others who are unaffiliated with the campus.

EXAMPLE TEAM COMPOSITION

- Student Affairs
- Residence Life
- Disability Services
- Human Resources
- Police and Public Safety
- Title IX
- Counseling Center
- Provost's Office
- General Counsel (as needed for advising)
- Others of Key Significance for your Institution

BEST PRACTICE: PERIODIC REVIEW

- Auditing its behavioral threat assessment and management programs to ensure that the institution is on a path consistent with best and promising practices;
- Changing course and upgrading the program as necessary, depending on the results of the audit; and
- Staying the course by actually using institutional threat assessment capacities fully and whenever potentially necessary to assess and manage those threats.

BEST PRACTICE: RECORD CREATION, MAINTENANCE AND DISCLOSURE

- Documentation is one of the most important aspects of a tracking threat assessment practices (and lawsuit defense).
- Be intentional, accurate and up to date when creating or updating a files.
- Accurate records help tell the story of what occurred, how the institution responded, and potentially identify areas of improvement.

BASIC HEALTH MODULE

MENTAL HEALTH AND COUNSELING SERVICES:

Mental health is a critical factor in student success. Ongoing psychological or emotional distress can significantly disrupt student academic progress. Each institution should provide counseling services sufficient to address the psychological and developmental needs of students as well as respond to unexpected crises. Services should reflect a brief psychotherapy model that is time-sensitive and goal-oriented. The services should be provided by licensed mental health professionals, e.g., psychologists, counselors, clinical social workers, marriage and family therapists.

RECORD CREATION, MAINTENANCE AND DISCLOSURE (CONT.)

- Treatment records are not usually subject to HIPAA or FERPA
- Under FERPA "treatment records" are records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

INFORMED CONSENT REQUIREMENTS

Informed consent must be in writing and must be voluntarily given by an individual who is "substantially able to understand all information specified on the consent form". The form must contain:

- the name of the individual, agency or organization to which disclosure is to be made;
- the name of the person whose treatment record is being disclosed;
- the purpose or need for the disclosure;
- the specific type of information to be disclosed;
- the time period during which consent is effective;
- the date on which consent is signed; and,
- the signature of the individual or person legally authorized to give consent on behalf of the individual.

LIMITED EXAMPLES OF PERMISSIBLE DISCLOSURE (TREATMENT RECORDS) WITHOUT INFORMED CONSENT

- Pursuant to a court order (usually obtained from the Probate Court judge). Under DHS 92.04(4)(b), a subpoena for treatment records must be signed by a judge of a court of record, not simply by an attorney, to be sufficient to allow disclosure.
- To health care providers who cannot obtain the individual's consent due to the individual's condition or the nature of the emergency: i) For treatment of the individual in a medical emergency; ii) Limited to the information necessary to meet the medical emergency.
- To the individual's counsel or guardian ad litem: i) To prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals or other actions (such as Chapter 55 proceedings) relating to detention, admission, commitment or patients' rights under Chs. 51

FERPA

- The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of eligible students' education records.
- FERPA defines an eligible student as a student who has reached 18 years of age or is attending a postsecondary institution at any age.
- "Education records" - records, files, documents, or other materials that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution.vi This includes health information in an education record (but usually not treatment records).
- Post-secondary education students must generally consent to a release of education records.

PARENTAL NOTIFICATION EXCEPTIONS

- FERPA permits schools to disclose personally identifiable information from an eligible student's education records to his or her parents, without the consent of the eligible student, in connection with a health or safety emergency if the parents' knowledge of the records is necessary to protect the health or safety of the student or other persons.
- FERPA permits a college or university to inform parents of students under the age of 21 (at the time of disclosure)that the student has violated any law or policy concerning the use or possession of alcohol or a controlled substance if the institution determines that the student committed a disciplinary violation with respect to that use or possession.

DUTY OF CARE: SUICIDE

Nguyen v. MIT—Wrongful death lawsuit

- Mr. Nguyen's father brought a wrongful death action against Massachusetts Institute of Technology (MIT), a MIT professor and an MIT assistant dean for the on-campus suicide of his son on June 2, 2009.
- Mr. Nguyen had a history of depression since high school and two suicide attempts in college.
- In 2007, Mr. Nguyen reported test-taking difficulties to the PhD program coordinator who referred him to MIT's student disability services. The disability coordinator recommended test accommodations, but Mr. Nguyen declined to be identified as disabled.
- The PhD program coordinator then referred him to MIT's mental health and counseling service, where he attended two sessions with a psychologist.
- He disclosed his history of suicide attempts, denied suicidal ideation, and reported seeing Dr. Worthington, a psychiatrist at Massachusetts General Hospital, thus rejecting MIT-based services.

DUTY OF CARE: SUICIDE

Nguyen v. MIT—Wrongful death lawsuit

- Mr. Nguyen met with an MIT assistant dean in September 2007, and he disclosed the same information and again denied suicidal ideation.
- The assistant dean “strongly encouraged” him to visit MIT's mental health services. The student said he was already seeing a psychologist, Dr. Bishop, but gave, and then revoked, permission to contact treatment providers.
- Between July 2006 and May 2009, Mr. Nguyen was treated by nine mental health professionals with psychotherapy, pharmacotherapy, and electroconvulsive therapy.
- Over many suicide assessments, he was not considered imminently suicidal and was not overtly self-destructive.
- June 2009, Nguyen was working on a research team and sent a message to the PI that was deemed inappropriate.
- One of Nguyen’s advisors spoke with him about the email, and in part described his conversation with Nguyen as “I read Nguyen the riot act…”
- After the call, Mr. Nguyen went to the roof of the lab building and jumped to his death.

DUTY OF CARE : SUICIDE

Nguyen v. MIT—Wrongful death lawsuit; dismissed by lower court and upheld by Massachusetts Supreme Court

- Graduate student died by suicide in 2009
- Prior suicide attempts while undergraduate at different university
- Utilized off-campus mental health services due to preference to keep academics separate from mental health
- Never conveyed suicidal ideation to any MIT employee
- Court recognized a "special relationship" under very limited circumstances
- Under WI law, there is no "special relationship" requirement; everyone has a duty of care
- No liability for MIT under facts presented

DUTY OF CARE: SUICIDE (CONT.)

- *Tang v. Harvard University* - Wrongful death lawsuit; summary judgment motion by Harvard granted
  - Student enrolled at Harvard Fall of 2014 and indicated no prior history of mental health conditions.
  - Early Spring 2015, student informed a student health psychologist that he attempted suicide two weeks prior, but did not report current suicidal ideation.
  - The next day, student informed a Harvard social worker that he had in fact attempted suicide twice on the day in question.
  - This led to the social worker assisting with an in-patient admission, and the student was in-patient for one week, during which he consistently denied any ongoing suicidal ideation.
  - Tang was released from care and cleared to return to school.
  - Tang agreed to be placed on a "care contract," which conditioned his continued enrollment at Harvard and residence on campus on Tang agreeing to seek outside psychiatric therapy.

DUTY OF CARE: SUICIDE (CONT.)

- *Tang v. Harvard University* - Wrongful death lawsuit
  - In late August 2015, Tang returned to Harvard, where he resumed his participation in various academic and volunteer activities.
  - The Resident Dean of Tang's new residence hall had previously been made aware of Tang's prior suicide attempts and the care contract.
  - In early September 2015, the Resident Dean reminded Tang of his continued obligation to engage in outside therapy and of the possible consequences for failing to do so.
  - The student told the Resident Dean that his suicide attempts were an aberration and that he would obtain a new outside therapist.
  - Approximately one week later, Tang took his own life in his residence hall.

DUTY OF CARE: SUICIDE (CONT.)

- *Tang v. Harvard University* – Court granted summary judgment motion by Harvard and noted following steps taken by Harvard:

- After the student's disclosure about his suicide attempt, the HUHS's licensed psychiatrist confirmed with the student that he did not have any future suicidal plans and made arrangements for him to be seen by HUHS's staff;
- A licensed social worker spoke with the student and arranged for the student's admission to a hospital for an intensive evaluation in a secure setting; and
- After the student's release from the hospital, Harvard made efforts to get the student to follow his treating physician's recommendation to seek outside therapy, including requiring the student to enter into a "care contract."
- The court further noted that the social worker notified Tang's father of Tang's suicide attempt and hospital admission.

STUDENT NON-ACADEMIC MISCONDUCT

- How is your campus using the following provision of Chapter 17? DANGEROUS CONDUCT. Conduct that endangers or threatens the health or safety of oneself or another person.
- Northern Michigan University—October 2018 settlement of federal DoJ investigation pursuant to Title II of ADA
  - Student alleged NMU threatened to dis-enroll her and required her to submit to psychological assessment and sign behavioral agreement after she sent chat message to friend and fellow NMU student in which she told her friend she had Major Depressive Disorder and her doctors are concerned she is at risk for suicide
  - Pursuant to "Policy Relating to Student Self-Destructive Behavior," NMU required student to agree not to discuss "suicidal thoughts or actions with residents of her dorm, friends, or other students"
  - Settlement required NMU to implement non-discrimination and reasonable accommodation policies and revise its voluntary withdrawal policies; undergo staff training; undergo period of monitoring; and pay $173,500 in damages

INVOLVEMENT OF LAW ENFORCEMENT

Wheeler v. American University – disability discrimination claims, 4th Amendment claims, false arrest, false imprisonment, assault, and trespass claims

- Student had been diagnosed with major depressive disorder and anxiety disorder and was receiving accommodations from university.
- September 2019, campus and local law enforcement obtained key to her off-campus apartment and entered without warrant and forcibly restrained and transported her to local hospital for evaluation and involuntary commitment based upon unsubstantiated allegations she had assaulted a dean or a student.
- Student was placed on interim suspension for same allegations and eventually was found not responsible for assault allegations in student conduct hearing.
- Motion for Summary Judgment filed before answer; granted in part/denied in part; case was referred to mediation.

DIRECT THREAT TO OTHERS

R.W. v. University of Georgia—disability discrimination lawsuit

- Student disclosed to health center he had schizophrenia; he was then escorted to counseling center; provider believed student was experiencing hallucinations and had police transport student for involuntary commitment; hospital determined involuntary commitment was not appropriate.
- University referred student to psychologist for risk assessment; student was not permitted to remain in university housing pending assessment; psychologist learned student had stopped taking medications and was not receiving mental health care, but did not make a finding that he posed risk to self or others.
- School conditioned eligibility for housing on withdrawal for a semester and continued compliance with medication, counseling, and monitoring by university.
- Jury awarded $75,000 in compensatory damages; granted injunctive relief to allow student to live in university housing; and awarded over $400,000 in attorney's fees.

DIRECT THREAT TO OTHERS (CONT.)

- Regulatory Text, 28 CFR § 35.139

  (a) This part does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity **when that individual poses a direct threat to the health or safety of others**.

  (b) In determining whether an individual poses a direct threat to the health or safety of others, a public entity **must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain**: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

DIRECT THREAT TO OTHERS: MEDICAL WITHDRAWAL (INVOLUNTARY?)

- First consider voluntary withdrawal and provide student easy access to info about tuition refund and readmission
- Some key factors for consideration include the following:

1) Whether the institution conducted an individualized risk assessment to justify its actions: information from student; information from student healthcare provider; information from campus experts, including healthcare providers; evaluate whether the student can continue to participate with reasonable accommodations; evaluate the direct threat factors .
2) Whether the institution utilizes generally applicable policies and procedures, rather than those that single out students with disabilities.
3) Whether due process was provided to the student, including notice of applicable policies and procedures, an opportunity to provide medical information and other relevant information, and the ability to appeal.
4) Whether conditions for readmission following medical leave or involuntary withdrawal were reasonable and individually tailored based on available medical information and other relevant information.

STUDENTS AT RISK OF SELF HARM: INVOLUNTARY MEDICAL WITHDRAWAL

- *Jane Doe v. Hunter College*—(Settled August 2006)
  - Student was barred from dormitory room after she had been hospitalized.
  - Pursuant to school policy stating that students who attempt suicide would be asked to take a leave of absence from their residence hall for a semester, the college notified student that she would not be allowed to live in the dorm during the fall 2004 semester.
  - College also required student to visit with deans and counselors on campus.
  - Settlement agreement required college to pay $100,000 in attorney's fees and $63,000 in damages.

STUDENTS AT RISK OF SELF HARM

- No "direct threat to **self**" defense under Title II of the ADA
- OCR has given informal guidance: selfharmbriefing.pdf (nacua.org)
  - The college environment should be safe, inclusive, and nondiscriminatory. Where possible, and consistent with the Americans with Disabilities Act, institutions should explore whether a student at risk of self-harm may remain enrolled at the institution, with or without reasonable accommodations.
  - Institutional policies that refer instances of self-harm to the student discipline system, and offer no other channels for accommodation, may be found by OCR to have a discriminatory effect.
  - Institutions should consider reasonable accommodations that would enable the student to remain enrolled and/or on campus.

STUDENTS AT RISK OF SELF HARM (CONT.)

- Where separation from the institution is considered, institutions should encourage and prioritize voluntary actions by the student where feasible or utilize standard processes, such as a UWS 17 suspension recommendation based on behavior.

- OCR looks for institutional policies that are non-discriminatory on their face and that treat similarly-situated disabled and non-disabled students similarly
  - A policy that singles out particular mental health diagnoses would be problematic.
  - A policy that treats mental health differently from other medical conditions would be problematic.

STUDENTS AT RISK OF SELF HARM (CONT.)

When responding to a student self-harm situation, colleges and universities should conduct an individualized assessment of the risk of self-harm by the particular student:

- Actions should not be tied to myths, fears, or stereotypes about mental illness (a multidisciplinary team helps guard against this).
- Actions should develop from a premise of doing what is right and appropriate for a particular student.
- A one-size-fits-all approach is a potential red flag; instead, institutions should tailor their assessments and actions to individual circumstances.

STUDENTS AT RISK OF SELF HARM (CONT.)

As part of an individualized assessment, institutions may consider medical and clinical information

- Input from qualified health providers is relevant to individualized assessments.
- A student's treatment provider should be given an opportunity to provide information and their input given serious consideration.
- Institutional requests for medical information should not be overly broad and should be tailored to whatever information is necessary for qualified personnel to assess the risk of self-harm.
- Medical and clinical information provided to the institution should be reviewed and interpreted by qualified personnel.
- Any actions taken in reliance on medical/clinical information should be reasonably linked to the information gleaned from the medical/clinical information.
- As part of its individualized assessment, an institution may consider the impact of the student's behavior on others in the community.

STUDENTS AT RISK OF SELF HARM (CONT.)

Institutions may impose reasonable, individualized conditions for students returning after a leave of absence

- Conditions must be individually tailored to a student's unique circumstances.
- In setting conditions for return, while institutions may consider a uniform set of criteria in all cases (which should be set forth in applicable policy), each individual case must be considered on its merits and facts. Imposition of one-size-fits-all conditions for return from leaves of absence would not be consistent with OCR's expectation that institutions will always undertake a thoughtful and fair individualized assessment of a student's unique circumstance.
- Institutions can require medical evaluations from treatment providers in preparing for a student's return and can require compliance with a medically prescribed treatment plan.
- Institutions may execute individually tailored behavioral contracts with students upon their return and hold students accountable to the terms of the contract.

SUPPORT AND ACCOMMODATIONS IN DISCIPLINARY PROCEEDINGS

- Katie Meyer, senior varsity soccer player at Stanford University, died by suicide; family says there were no warning signs, but parents said she was facing some sort of disciplinary action at school.
- Preamble to 2020 proposed Title IX regulations note complainants and respondents have died by suicide
  - What supports do you have for complainants/victims?
  - Do you also have support for respondents going through disciplinary proceedings?
  - Are your student conduct/Title IX staff prepared to provide accommodations for physical, mental, and learning disabilities throughout the investigatory and disciplinary process?

RISK ASSESSMENT FOR NEW TOOLS & STRATEGIES

- Mental health first aid training and response – Who are you asking to participate? Do they have the bandwidth?
- Do frontline staff and instructional staff know to refer students to appropriate resources?
- Peer hotlines/support groups – Is the institution providing oversight? Is the institution providing defense/indemnity?
- University hosted social media platforms for mental health issues – Is the university monitoring? Do students or their parents expect that the university is monitoring? What are the First Amendment implications? What are the non-discrimination implications?
- Mental health + law enforcement co-response model – Is a provider-patient relationship created? How does privacy work? Who assesses safety/involuntary commitment issues? What happens if additional crises occurs after hours?
- Are you trying to do "too much"?

SOUND DECISION-MAKING IS USUALLY A GOOD DEFENSE

- Follow best practices and ethical codes of your profession – often consideration of legal issues is baked in.
- Try to establish a culture of respectful communication.
- For significant and imminent threats to self or others, prioritize life and safety over concern about later legal liability.
- Keep the professional dialogue going about supportive, non-punitive, restorative solutions.
- Utilize the vast array of resources available in the university.
- Your legal offices are available to advise your decision-making team.
- Your legal offices are there for defense and indemnity after the fact.



UW RESOURCES (NON-EXHAUSTIVE LIST)

- UWPD Emergency Management Unit
  - Emergency Management - UW–Madison Police Department
- Universities of Wisconsin Office of Risk Management
  - Risk Management
- Applicable Office of General Counsel or Office of Legal Affairs
- Behavioral Health Resources
  - Student Behavioral Health | A Framework for Student Well-being

QUESTIONS?

