

MAKING the CALL

Parental Notification of Suicidal Students

A MINI PANEL WITH INSIGHTS FROM:

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INTRODUCTION

When students display behavior that points to a high risk of suicide or share suicidal ideations, institutions must respond to keep both those students and the larger campus community safe from harm. Often, the inclination of those tasked with helping suicidal students is to call their parents or guardians, who can presumably step in to get students the help they need and provide them with needed support. However, others may fear violating students' confidentiality and right to privacy by calling in parents or guardians. First Amendment concerns may also hinder administrators from taking action to help suicidal students and protect their campus communities from harm and/or legal risk.

These issues give legislators reason for pause too. A so-called "suicide bill" (HB 1715) passed by a wide margin in the Virginia General Assembly, though only as a watered-down version of the originally filed bill. In its original form, it would have required administrators at public institutions to notify parents of students who exhibit suicidal behavior or express such ideations. The approved version, on the other hand, requires only that institutions notify designated mental health providers.

At the federal level, this issue is getting attention as well. The Helping Families in Mental Health Crisis Act, sponsored by Pennsylvania Congressman Tim Murphy, would have allowed educational institutions to notify parents and/or caregivers when school officials believe doing so is necessary to protect the health, safety or welfare of a suicidal student or others, as long as the student was diagnosed with a serious mental illness and was functionally impaired. That bill got mired in bipartisan politics last year, ultimately going nowhere. But we're likely to see similar legislation introduced again, though hopefully not as the result of yet another student suicide.

However, institutions need not await new legislation explicitly speaking to parental notification of suicidal students to do what's in students' best interests and protect their campuses from the rippling effects of a student suicide.

THE ISSUES

This paper addresses the four specific questions below to help you navigate the issue of when to notify parents of suicidal students:

1. What does the law allow or prohibit when it comes to parental notification of suicidal students? Is this clear? Are there any gray areas?

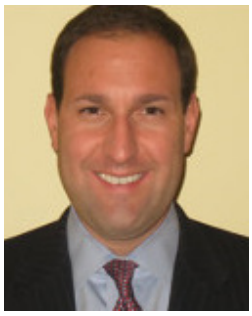
2. What would a good campus policy on this issue look like?

3. How can institutions encourage students to seek help and at the same time inform their parents if students express suicidal ideations? Isn't there a conflict there?

4. How do you balance students' rights (e.g., to free speech, privacy, etc.) and the need to protect them and the campus community when it comes to suicide?

THE PANEL

Four experts on this subject have weighed in to provide you with multiple perspectives on each question in this paper. Two — Brett A. Sokolow and W. Scott Lewis, bring with them a legal perspective, while the other two — Brian Van Brunt and Perry Francis — come from a counseling and mental health background. All have expertise in behavioral intervention and risk assessment involving student suicide.



Sokolow is the president and chief executive officer of The NCHERM Group, LLC. He is recognized for his leadership on system-level solutions for safer campuses and serves frequently as an expert witness in litigation involving colleges and universities. He serves as outside counsel/advisor to 65 colleges and universities, and is a risk management consultant, author, editor and higher education attorney. He is also the founder of the National Behavioral Intervention Team Association and the School and College Organization for Prevention Educators.



Lewis is a partner with The NCHERM Group. He serves as the 2015-2016 president of the Student Affairs Community College Association and is also a co-founder and advisory board member of both NaBITA and SCOPE. Previously, he served as a special advisor to Saint Mary's College in Indiana, and as associate vice provost at the University of South Carolina. He is also one of the most in-demand higher education risk management consultants in the country and has trained thousands of faculty and staff members.



Van Brunt is the senior vice president for professional program development at The NCHERM Group. He is also a past-president of the American College Counseling Association, the president of NaBITA, and the managing editor of *Student Affairs eNews*. He has been the director of counseling at two institutions and has authored various books, including, *Harm to Others: The Assessment and Treatment of Dangerousness*, and *A Faculty Guide to Addressing Disruptive and Dangerous Behavior in the Classroom*.



Francis currently serves as a professor of counseling and clinic coordinator at Eastern Michigan University. His areas of professional expertise include ethical issues in counseling and suicide assessment and intervention. Francis is an active member of the American Counseling Association, ACCA, and the Michigan Counseling Association, having served in leadership roles for all three organizations in the past.

Our expert panel responded to all four questions in writing after careful consideration of the issue. Our goal with this paper is to provide you with an in-depth analysis to guide you and your colleagues in helping students who may be at high risk of suicide and gain an understanding of when parental notification is appropriate and how to go about the task.

THE LAW: UNDERSTANDING WHAT'S ALLOWED

BAS: Legally, I think campuses have plenty of latitude to notify parents, guardians, authorities and local resources in the event of an acute suicide risk. The Family Educational Rights and Privacy Act, the primary student privacy law, only applies to records. Information that campus administrators have about a suicidal student that is not sourced from a record is not protected by any disclosure restrictions at all.

Even if a campus wanted to release record information, it could under FERPA, using at least three exceptions. One, it could get the written consent of a student. Two, it could contact the parents of a dependent student upon verification of dependency (Internal Revenue Service tax status). Three, it could invoke FERPA's emergency health and safety provision, which permits the release of information to anyone necessary to help address a threat.

THE BOTTOM LINE

FERPA, HIPAA provide leeway for parental notification.

Duty of care, established in *Tarasoff* case, may also protect the release of information in cases where threat of harm is imminent.

Understand what your state laws say on the matter.

Know that abiding by the law may not prevent a lawsuit.

Give each decision careful consideration.

In fact, if the records or information are housed in a campus counseling center, they may also be releasable in a *Tarasoff*-level threat situation, although state law will clarify who may be contacted if a counselor believes it is necessary to breach confidentiality in the event of an imminent threat. (*Tarasoff v. Regents of the University of California* is a case from the 1970s involving the concept of duty to warn. The parents of a student who was murdered by another sued the school, claiming it had a duty to warn their daughter of the threat he posed because that student was known at the counseling center, where he had told a psychologist that he wanted to kill Tarasoff.)

WSL: There really are not too many gray areas here. FERPA, the Health Insurance Portability and Accountability Act, and every other law (including client privilege) have exceptions for health and safety emergencies. For FERPA, this is actually determined by the school. The closest thing to an exception would be if the school had a viable, (very) good-faith belief that the parent was the cause of the suicidality or would greatly exacerbate the problem; but the school would need to show that. Residential schools also have emergency contact forms that could/would be used.

BVB: Given that one can be sued for just about anything, I wonder if the law is always the best place to start this kind of discussion. There are numerous cases where schools followed the course of the law an ended up settling out of court even though those involved did everything the law required. In terms of privileged communication between patients and their doctors or clinicians, state law provides the first set of requirements in terms of what should be kept private and conditional. Many are familiar with the three exceptions found under these laws governing doctors, therapists and social workers, including: immediate danger to self, immediate danger to others, and inability to care for self.

Yet, the conversation broadens on a college campus. There is a reasonable expectation to notify parents when students make suicide attempts and this becomes known to non-counseling staff (e.g., administrators, residential life and campus police). Colleges and universities commonly notify parents concerning over-due bills, alcohol infractions, and other non-life threatening events. It is reasonable that they notify during a suicidal crisis.

Additionally, clinical staff have a responsibility to discuss with patients who are experiencing depressive or suicidal symptoms the involvement of parents in the on-going nature of treatment. Clinical staff members who adopt the "if they are over 18 we don't talk to parents" approach to confidentiality are over-simplifying the issue and avoiding their responsibility to engage those involved in the support of students' well-being outside of the therapeutic hour. Let me be clear here. This is not to say all students who check "has suicidal thoughts" on an intake summary immediately trigger calls to their parents. Instead, it is call to action for clinicians to explore ways to engage parents (as well as spouses and supportive others) in their clients' treatment from the start, regardless of age.

PF: State laws concerning any release of information of mental health records generally require that agencies first get permission of clients (in this case, college students who are considered adults in the eyes of the law) prior to the release of any information. There are exceptions to these laws that require the release of information without the permission of clients in cases where the clients are at substantial risk of harming themselves or others. The ethics of the mental health professions (e.g., professional counselors, psychologists and social workers) are also very clear in this area. Confidentiality is a cornerstone to building a strong therapeutic relationship with clients. Clients may not tell therapists what needs to be shared if they think the information will be given to others (e.g., parents, administrators, employers, etc.).

"Clinical staff members who adopt the 'if they are over 18 we don't talk to parents' approach to confidentiality are over-simplifying the issue and avoiding their responsibility to engage those involved in the support of students' well-being outside of the therapeutic hour."

— Van Brunt

Yet, college students inhabit that transitional developmental stage of not quite being full adults, but no longer adolescents. Their brains are not yet fully developed in areas of critical thinking and decision-making, and are therefore impulsive and still trying to determine the boundaries of their behaviors. The tendency for suicide in the traditional-aged college student (18-25) is higher than that of the next developmental stage (26-40). However, it should be noted that young adults in college have a lower suicide rate than the same age group who is not in college.

So, for example, in its original version, the Virginia bill would have required parental notification if students demonstrate a "substantial likelihood" to harm themselves or others and had sought help at their college counseling center. That bill would have required that this information be shared if it came from someone other than a mental health professional (e.g., professor, friend or resident adviser). No other state has tried to go this far in notification laws.

There are inherent problems with this action, including:

» What does "substantial likelihood" mean or look like? Well-trained mental health professionals can make that determination, but it is highly unlikely that a college professor of chemistry or economics is versed in the determination and evaluation of suicidal ideation.

» Will such a law drive students away from seeking help, especially when they know that parents will certainly be notified? Mental health professionals can work with students to help them seek help from their families in proactive ways.

» Who becomes the arbitrator of what and what will not be shared and when?

Confusion and misunderstanding in such bills may bring about many false reports and/or impede any report from being made.

Putting this aside, what about the rest of the nation? The question becomes, "When do you involve parents when their 'children' (and the college's 'adult students') demonstrates concerning behaviors or ideation?" This is an emotional decision that requires a thoughtful response, and no law yet has been crafted to provide one beyond the mental health laws already on the books.

THE BOTTOM LINE

Good policies should describe legal provisions and exceptions.

Provide well-written and detailed informed consents.

Ensure your BIT has good policy on records retention, access and information sharing.

Look to model policies from other institutions.

Have a policy for campus administrators, faculty and staff, and a separate one for those in privileged relationships with students.

Make sure your policy balances students' right to privacy with institutional obligations.

THE ROLE OF CAMPUS POLICY

BAS: I think good policy exists on three fronts. One is a policy on parental notification that clearly describes the provisions and exceptions identified above. The second is clear policy on confidentiality in the counseling center and health service department, with well-written informed consents that spell out any circumstances in which those services will breach confidentiality. Finally, the campus Behavioral Intervention Team — or BIT — should have a clear policy on records retention, access and sharing of information. FERPA allows internal campus officials to share information liberally with each other when there are concerns about a student's welfare, and good policy should detail what the expected communications protocols are in such situations. For example, as campuses are implementing mandated reporter policies now to address Title IX and campus crime reporting, many campuses are also training all personnel to report disruptive and disturbing incidents that should be brought to the attention of the BIT.

WSL: I would say look for guidance and training from the American College Counseling Association and the Association of University and College Counseling Center Directors.

BVB: We are really dealing with two issues here — a policy for campus administrators, staff and faculty, and a policy for those in privileged relationships with students such as doctors, counselors, psychologists and social workers.

For the first group, a centralized approach to reporting any suicidal student to the campus BIT or similar organization is the first step. The sharing of information with parents should be a collective decision after a group's reflection on the best way to share the information given the best data available at the time. Problems occur when you have one department acting independently without the support or knowledge of others, such as residence life staff making these decisions in a vacuum without consulting the larger team.

For clinical staff, having a policy that demonstrates a similar discussion and case review of the pros and cons of notification would be located within the policy and procedure manuals of the counseling or health center. Beyond policy, I have found this process of parental involvement is easier to achieve with staff when it is demonstrated as a top-down, director-level philosophy rather than just a written policy. There is no better reminder to clinical staff to involve parents in cases involving suicidal students

than when the director sets a meeting with the parents and their children to discuss treatment planning. There are, of course, certain situations in which you should naturally advocate against parent involvement, such as when there is an abusive parent or one that increases the risk of a student to commit suicide. It has been my experience, however, that these are extraordinarily rare scenarios and should not be used as arguments to avoid involving parents in other cases.

"That is the hallmark of a good policy — balancing students' right to privacy with institutional obligations to provide a safe and secure environment for students to learn, teachers to teach, and researchers to research."
— Francis

PF: Campus policies concerning students who demonstrate suicidal ideation or behaviors need to consider:

1. Who does the policy apply to? You should not craft a policy that requires mental health professionals to violate state and federal laws or ethical codes.

2. Are there existing policies or procedures in place through a Behavior Intervention Team that can be modified?

3. What interventions or supports can be put in place to help identify students and help them prior to issues becoming so difficult that suicide becomes an option?

4. If information needs to be shared with parents, who does the sharing and how much information is conveyed?

5. What triggers a notification? What level of suicidal behavior or ideation is necessary for someone to call the parents in and violate students' right to privacy?

That is the hallmark of a good policy — balancing students' right to privacy with institutional obligations to provide a safe and secure environment for students to learn, teachers to teach, and researchers to research. This cannot be done in an environment that is consistently disrupted by students' whose behavior puts themselves and others at risk.

ENCOURAGING HELP-SEEKING WHEN PARENTAL NOTIFICATION IS ON THE TABLE

BAS: There can be conflict, but part of the art of being a campus administrator is navigating that conflict wisely and effectively. Policies should not result in automatic notification, but instead should permit notification when it would be potentially helpful or part of a legal duty. If involving the parents would exacerbate a situation, involve grandparents, guardians, siblings or others who can help instead. Do your due diligence on who should be brought into the support effort. Mainly, do all you can to encourage a student to make that contact him or herself, with campus support.

WSL: Traditional-age students are generally aware that schools can contact parents in any number of lesser instances (e.g., the FERPA alcohol and drug exception), so this is

not a surprise to them. They may not like it or be happy about it, but they are generally not surprised.

BVB: For the clinician, this should be seen as part of the treatment discussion. Students don't stop being suicidal after their therapy hour is over. Students don't get everything they need to reduce suicidal ideations between appointments through conversations with their therapists or doctors. Good treatment providers acknowledge the importance of building a diverse community of supports for students that include online forums, readings, peers, social groups and organizations, hotlines, crisis plans and parental and family support.

PF: How do colleges help students develop and grow through troubling times and at the same time involve parents in that process? If institutions are serious about helping students develop, they need to do more in the areas of wellness, health and counseling. Adding more mental health professionals is merely putting a bigger bandage on a wound that seems to be getting larger and larger.

THE BOTTOM LINE

Leave yourself room for individualized decision-making.

Encourage clinicians to approach parental notification as part of the treatment discussion.

Place increased focus on prevention and wellness program offerings.

Students are arriving at the doors of institutions with increasingly complex mental health problems on top of the normal developmental issues that plague all college students (e.g., "Who do I want to be?," "What are my values?," "How do I get along with others?," etc.). Prevention and wellness programs and their accompanying staff need to increase on campuses, as do more mental and physical health services. This will hopefully reduce the need to involve parents and help students learn to take care of themselves.

But what about students who do not seek help or seek help at a point when their problems have taken a serious turn and require more aggressive interventions? Even outside the ivory towers of academia, we have not fully solved that problem. For example, Arizona has a law that can be used to compel individuals to take psychiatric medications if it has been determined they are at risk but are not hospitalizable. Many wondered why that law was not invoked for Jared Lee Loughner, the former college student who shot and killed six people and serious wounded 13 others, including Rep. Gabrielle Giffords, on January 8, 2011. There is no simple answer to this question that will satisfy everyone.

STUDENTS' RIGHTS V. RISK OF HARM: BALANCING THE TWO

BAS: We want to address threats before they become life-threatening, but the First Amendment largely protects threatening speech until it becomes life-threatening. I think the key is to consult regularly with legal counsel who is familiar with the key legal decisions about threats, including cases like *Virginia v. Black*, *J.S. v. Blue Mountain*, *Layshock v. Hermitage*, and the cases that are starting to come out now about social-media based threats. These help to guide public universities on the boundaries of free speech and threatening speech. This is less of a concern for private colleges, of course. To bottom line this, I think the key is to use a well-developed threat-assessment tool on every case. It should guide you on when a threat is severe enough to warrant intervention, and when a threat falls within the range of speech protected by law.

WSL: This is the reason the health and safety exception to every rule exists. I think the

line is much blurrier on the lower end (yet still dangerous) behaviors, such as eating disorders and cutting behaviors. They may not be life-threatening, but are still potentially a dangerous trajectory behavior. In those instances, the therapist could not violate privilege without permission, but the behavioral intervention team could call (and might, if the shift from baseline was severe enough).

BVB: This expands the argument some, as the vast majority of suicidal individuals never harm anyone other than themselves. This issue has recently gained some momentum when we see those involved in rampage shooting attacks ending their attacks in suicide. While hopelessness and desperation are risk factors for predatory violent attacks, we should be careful to not profile suicidal students as dangers to the community as a whole.

That being said, the answer for any suicidal statement or ideation that is made by a student is first to secure a complete and detailed assessment of the risk. Once the risk assessment is complete, future steps such as intervention and parental notification can be put into place.

PF: There is a point in law and ethics when the risk to a community and/or clients outweighs the autonomy of clients and their right to confidentiality. Students' privacy is secondary to their safety. Paul R. McHugh, the former chair of the department of psychiatry at Johns Hopkins School of Medicine, put it best many years ago when he stated: "Privacy isn't everything; life is everything. We lock people up, we take their civil liberties away if they are a danger to themselves. But we can't call the parents? What kind of nonsense is that?"

The issue at hand is when is a student considered enough of a danger to oneself and/or others to make the right to privacy and autonomy secondary to the obligation of the community (and specifically of the mental health counselor) to act in the student's best interests and intervene. That is the job of the mental health counselor. Another question to ask is who is to be involved in that intervention. For college students, who are "adults in training," it is the parents as well as the college and mental health community.

Finally, and most importantly, it is better to intervene before an issue becomes a crisis. That is why outreach, prevention, and wellness services are so important. When crises do happen, help students contact their parents and offer them the opportunity and control to decide what is told and how. This will go a long way toward helping students feel like participants in the process of healing, rather than passive receivers of services. ◊

THE BOTTOM LINE

Understand case law regarding threats of harm.

Adopt and use a well-developed threat-assessment tool on every case.

Make use of alternative means of helping students with lower-end behaviors.

Avoid profiling students as threats to others based solely on suicidal ideations and/or behaviors.

Use common sense to protect the campus community.

ADDITIONAL READING

The following resources were referenced in the text of this paper. We provide links to their full text on the Web here for those who would like to learn more.

Legal Cases:

1. ***J.S. v. Blue Mountain School District:*** *www2.ca3.uscourts.gov/opinarch/084138p1.pdf*.
2. ***Layshock v. Hermitage School District:*** *https://scholar.google.com/scholar_case?case=4776689052801290341&hl=en&as_sdt=6&as_vis=1&oi=scholarr*.
3. ***Tarasoff v. Regents of the University of California:*** *https://scholar.google.com/scholar_case?case=2632319346734705 61&q=17+Cal.+3d+425+&hl=en&as_sdt=1fffffffffffffffffffffffffffffffe000000000000001f000001fffffecfff87fe3fffffff0010800000000002004*.
4. ***Virginia v. Black:*** *https://scholar.google.com/scholar_case?case=2729037874515332053&hl=en&as_sdt=6&as_vis=1&oi=scholarr*.

Statutes & Bills:

1. **The Family Educational Rights and Privacy Act:** *www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=11975031b82001bed902b3e73f33e604&rgn=div5&view=text&node=34:1.1.1.1.33&idno=34*.
2. **The Health Insurance Portability and Accoutability Act:** *www.hhs.gov/ocr/privacy/hipaa/administrative/statute/*.
3. **Virginia's HB 1715:** *http://lis.virginia.gov/cgi-bin/legp604.exe?ses=151&typ=bil&val=hb1715*.

Best-Practice Resources:

1. **The American College Counseling Association:** *www.collegecounseling.org*.
2. **The Association of University and College Counseling Center Directors:** *www.aucccd.org*.
3. **The National Behavioral Intervention Team Association's Threat Assessment Tool:** *www.nabita.org/wordpress/wp-content/uploads/2014/04/2014-NaBITA-Threat-Assessment-Tool.pdf*.

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