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School & Education Law Focus

Bridging the gap: Mental health legal issues in higher education

Students with mental health issues often encounter a variety of difficult challenges at institutions of higher education. The transition from high school to college can be an especially trying time for these students, as they find themselves with more independence, and on-site, intimately involved parents are no longer present on a daily basis.

Some such students may have benefited from the services of private college consultants who assisted them with decisions relating to the admissions process. While these consultants usually do not provide guidance regarding mental health concerns, they can be an invaluable resource nonetheless. However, the role of the consultant generally ends at the high school gates. Too frequently, students with mental illness or substance abuse issues find themselves alone and utterly bewildered at the prospects of navigating, by themselves, the bureaucracy that exists at many colleges and universities.

It is fair to say that a serious gap remains in accessing services that are vital to students with mental illness, behavioral health issues, longstanding developmental disabilities or histories of substance abuse. While it is true that many colleges and universities have made significant strides by establishing offices that provide valuable resources for students with mental health issues, many students with mental illness or substance abuse issues lack access to a centralized and comprehensive resource center, or may not be aware of services that are available. Further, significant disconnects exist among the various offices with stakes in the mental health of college and university students.

A tremendous amount of misinformation surrounds mental health concerns in college and university settings. The stigmatization of individuals with these issues remains in many places; thus, students may be afraid of revealing their diagnoses for fear of negative implications for their edu-

cational endeavors. Unfortunately, public scrutiny of mental illness on college campuses generally focus on the fraction of those mentally ill students who are a danger to themselves or others. Yet, the majority of those with mental health needs have less severe symptoms. Those students' needs for support and, in some cases, psychiatric and/or medical intervention, may be overlooked.



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It is no surprise to find that many university and college staff face challenges in determining how to best deal with students who suffer from mental health and related concerns. Most are not appropriately trained to deal with mental health issues, and others may incorrectly draw a causal relationship between mental illness and violence. This typically leads to fear and misunderstanding, and mental health problems may be overlooked or dealt with inappropriately. Staff may fail to recognize that some

behavioral issues are the result of mental illnesses, warranting appropriate treatment instead of disciplinary sanctions.

A suitable response to the needs of these students means that schools need to educate staff beyond those working in the Office of Student Disabilities, Student Affairs, and the Counseling Center. Instead, all school administration employees who interact with students in this context, such as the Office of Judicial Affairs, and the Freshman Center, should also be aware, at the very least, of the resources on campus for dealing with mental health issues, so they understand the importance of referring students appropriately. It is critical that university and college staff recognize mental health concerns when they arise. They are the individuals with whom students interact with on a daily basis, and are well-placed to fill the gap and assist these students with navigating the various offices on campus that can provide necessary support.

Responsibility for dealing with such student issues may also fall on attorneys hired

by families to assist students in maneuvering through the complex mental health world, and the variety of offices and available services on college and university campuses. Because the questions surrounding mental illness can be complex, even attorneys may encounter some difficulty grappling with these issues.

An understanding of the mental health law and its integration in this area is critical in order to formulate an appropriate response. The answer can be complex in many situations, and may even require a more commonsense or "thinking out of the box" answer, instead of a purely legal approach. While familiarity with applicable laws is crucial, understanding and applying the exceptions to the laws may be even more important. Indeed, the exceptions to the law can make significant differences in the results that attorneys obtain for their clients when addressing student mental health matters.

Certainly, mental health concerns in the higher education setting raise a host of issues that attorneys may not otherwise encounter in their practices. Some include questions centering on confidentiality laws, treatment, and the services, interventions, expectations, and legal rights of parents, students and the institutions themselves. Attorneys also need to be familiar with, and capable of providing, advice to families and individuals regarding student medical leaves, mental health interventions, and navigation of the mental health, health care, and higher education systems, whether individually or in combination.

Attorneys working with students suffering from psychiatric, psychological or substance abuse diagnoses need to recommend thoughtful, decisive, and comprehensive interventions. They should also take into account the policies of the institution, federal and state legal requirements. A familiarity with how to access services on campus, such as the Office of Student Disabilities, Student Affairs, and the Counseling Center, is also important. This should be done, keeping in mind that some issues may require a proactive approach,

while others may not.

Familiarity with federal and state legal requirements is also vital to successfully providing students, their families, and/or the higher education institutions, with the quality assistance they need. For instance, attorneys need to be acquainted with the Family Educational Rights and Privacy Act (FERPA) as well as the Health Insurance Portability and Accountability Act of 1996 (HIPAA). A lot of confusion and misinformation surrounds the application of these laws at colleges and universities, and parents and other loved ones are sometimes frustrated in their attempts to intervene on behalf of these students when educational institutions interpret these laws incorrectly.

FERPA seeks to ensure access to educational records for students and parents, while protecting the privacy of such records from the public at large. Too often, FERPA is misinterpreted as prohibiting the release of any information about students to their own parents, or other offices on campus. The Act makes clear that campus personnel are allowed to share information from student education records with other school officials who have legitimate education interests in the information. Moreover, FERPA authorizes the disclosure of education record information to a student's parents if the student is their dependent for federal tax purposes, or is under 21 years and has violated an institutional rule or policy governing the use or possession of alcohol or a controlled substance.

Disclosure of information from a student education record can also be made to appropriate parties, in connection with an emergency, if knowledge of the information is necessary to protect the health and safety of the student or other individuals. In these cases, the disclosure must be made on the basis of a good-faith determination in light of the facts available at the time. Additionally, when reasonably possible, the initial disclosure should be made to professionals trained to evaluate and handle such emergencies, such as campus mental health or law enforcement personnel, who can then determine whether further and broader disclosures are appropriate.

Attorneys also need to be familiar with the provisions of HIPAA, and how it applies to records kept by colleges and universities. Some institutions interpret HIPAA as prohibiting the release of student medical information. But, in general, information that a student health center creates,

receives, or maintains with respect to students is not considered protected health information and can be disclosed to family members or mental health/health care professionals under legally authorized exceptions or circumstances. Other state confidentiality laws may also apply, and should be considered when appropriate. Attorneys must be familiar with and have experience utilizing Public Health and Mental Hygiene laws regarding confidentiality, voluntary or involuntary hospital commitments and related statutes and regulations.

Certain situations require that students with mental health or substance abuse issues be sent on medical leave in order to receive appropriate treatment. If the medical leave is involuntary, attorneys should step-back and gain a big-picture understanding of all the relevant issues, before they decide to challenge the decision. Indeed, there are circumstances where a medical leave might be beneficial for the student. In these cases, it is vital that the attorney develop good relationships with administrators and other campus officials for a smooth readmission process to occur. Knowledge and use of appropriate "experts" is often vital to a successful outcome.

Attorneys also have to remember that institutions of higher education face a number of competing factors when making decisions about voluntary or involuntary medical leaves, or other forms of disciplinary sanctions. On the one hand, the institution must respect the civil rights of their student in these circumstances, and ensure that schools do not discriminate against students with special needs; on the other hand, institutions also have to ensure that they maintain a safe learning environment for all students and the campus community as a whole. The bureaucracy at these institutions may exacerbate these challenges for administrators, and it can be a tricky balancing act to arrive at the correct decision.

Increasingly, colleges and universities are becoming more complex institutions. As new specialized services are offered to students, it becomes increasingly frustrating to deal with multiple offices that may be disconnected from one another. As such, the need to build relationships and develop contacts is especially great. Bureaucracy slows things down, and can make it difficult for attorneys to obtain the right intervention for their clients, and the right answers for the families they represent. By developing working relationships with administrators

and other staff, attorneys will be able to cut through the bureaucracy and render more effective solutions on behalf of these clients.

The need to develop working relationships is also important because, in many instances, the wishes of the client and the institution converge. Both institutions and families generally want the best forms of support and treatment, if necessary, for students with mental health issues. As such, decisions about initiating adversarial proceedings must be weighed carefully. Attorneys may also need the services approved by these administrators and staff in the future, so the law should be used as a tool to obtain the right services for a client, not as a sword. Indeed, no one really benefits from premature adversarial action and expertise in mental health law is often crucial.

A better strategy, when available and appropriate, is to partner with institutions, not to exaggerate differences. Attorneys can collaborate with institutions of higher learning to obtain workable, acceptable, and livable outcomes for students, parents, and institutions. Some amount of compromise might be required at times, but it is the best interest of the student that remain paramount.

The challenges facing students with mental health, substance abuse and related issues at institutions of higher education are great. But, attorneys who are familiar with mental health law issues can be a significant resource to these students. They provide assistance with weighing the options for counseling center interventions, medication management, on- or off-campus alternatives, use of independent experts and accompanying questions regarding who should be retained, who pays for these services, and other administrative concerns and responsibilities. When attorneys work productively with administrators and other staff at universities and colleges, they can help bridge the gaps, and ensure that these students receive the support they need to successfully complete their college experience.

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