EXPELLED FOR CRAZY[1]: SUGGESTIONS TOWARDS AN IDEAL POLICY FOR THE REMOVAL AND REINTEGRATION OF STUDENT MENTAL HEALTH CONSUMERS

BY: YVETTE WALKER*

ABSTRACT

In 1956, Allen Ginsberg proclaimed in his poem Howl, "I saw the best minds of my generation destroyed by madness . . . expelled from the academies for crazy." Now, over half a century later, the removal of mentally ill students by universities is still a predominant issue. This Note seeks to address the issue by crafting concrete steps colleges and universities can implement to make the removal of students both less common and less traumatic. The Note begins by considering the case law regarding institutional liability for harm to students. The case law is largely unclear as to whether and when a university will be held liable, putting schools in a precarious situation. The next section looks at a small sample of current school removal policies. Finally, the Note suggests ways that schools can limit the amount of students removed and improve the reentry process for students returning from voluntary or involuntary mental health leave.

---

* J.D. Candidate, Class of 2015, University of Southern California Gould School of Law. I would like to thank Elyn Saks, Christopher Schnieders, and the donors to and scholars of the Saks Institute whose work has very much contributed to the development of mental health related scholarship and student activism. I would also like to thank my mom and sister. Finally, I would like to thank the editors of the Southern California Review of Law and Social Justice.

[1] ALLEN GINSBERG, HOWL (1956) ("I saw the best minds of my generation destroyed by madness . . . who were expelled from the academies for crazy.").

TABLE OF CONTENTS

I. INTRODUCTION

On the night of January 27, 2013, Rachel Williams, a freshman at Yale University, sought medical attention after engaging in parasuicidal behavior.[2] After spending a week in the hospital, she was forced to

[2] Rachel Williams, *We Just Can't Have You Here*, YALE DAILY NEWS (January 24, 2014), http://yaledailynews.com/weekend/2014/01/24/we-just-cant-have-you-here/.

withdraw from Yale.[3] At the beginning of her evaluation by the senior psychiatrist at Yale Mental Health regarding her position at the university, she was told, "Well the truth is . . . we don't necessarily think you'll be safer at home. But we just can't have you here."[4]

Jane Doe, an undergraduate student at Hunter College of the City University of New York, suffered from severe depression, driving her to ingest a large number of Tylenol in 2004.[5] Jane called 9-1-1 for help and was taken to a New York City hospital where she admitted herself for treatment.[6] When she was released from the hospital, Jane found that the locks on her dorm room had been changed. She could not access her accommodations until she was allowed to collect her belongings while being escorted by a security officer.[7] Jane brought a lawsuit for wrongful eviction against the college, which was subsequently settled.[8]

That same year, at George Washington University, sophomore Jordon Nott, suffering from severe depression and suicidal ideations after the suicide of a close friend, checked himself into a hospital for treatment.[9] Within days, Jason received a letter of suspension from the university and was evicted from his campus housing accommodations.[10] Jordon sued his university, eventually settling the case.[11]

Okezie Nwoka, a Brown University student with Bipolar Disorder, was cajoled by the Brown administration into taking a medical leave and was subsequently denied readmission to the university.[12] "The rejection letters—it's almost like a slap in the heart," Okezie said in response to the

---

[3] *Id*.

[4] *Id*.

[5] *Hunter College Settles Lawsuit by Student Barred from Dorm after Treatment for Depression*, BAZELON CTR. FOR MENTAL HEALTH (August 23, 2006), http://www.bazelon.org/LinkClick.aspx?fileticket=Y9wtDQlB0Ss%3d&tabid=314 [hereinafter *Hunter College*].

[6] *Id*.

[7] *Id*.

[8] *Id*.

[9] *Depressed? Get Out!*, WASH. POST (March 13, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/03/12/AR2006031200804_pf.html; *Student and University Settle Lawsuit on Mental Health Issues*, BAZELON CTR. FOR MENTAL HEALTH (August 23, 2006), http://www.bazelon.org/LinkClick.aspx?fileticket=YBKw_jPu8Mw%3d&tabid=199 [hereinafter *Student and University Settle Lawsuit*].

[10] *Id*.

[11] *Id*.

[12] Cara Newlon, *Policies Hamper Students' Return from Mental Health Leave*, USA TODAY, (Nov. 6, 2013), http://www.usatoday.com/story/news/health/2013/11/04/univ-medical-leaves-unhelpful/3359813/.

exclusion from his university community.[13] "At least you're not getting kicked out," the university administrator responded.[14]

A 2002 study showed that the "emotional wellbeing" of college freshmen had decreased to a "record low."[15] In a 2006 survey, nearly half of undergraduate students indicated feeling so depressed that it was "difficult to function."[16] A 2012 study showed that over 80 percent of the surveyed counseling centers at schools of all sizes reported an increase in students arriving to campus with "serious psychological problems."[17] Nearly all of the centers surveyed reported that the number of students seeking help has increased recently, and most of them reported having hospitalized students in 2011.[18]

Rachel, Jane, Okezie, and Jordon's stories illuminate several areas of concern in the struggle universities face when crafting and implementing policies regarding the treatment of students seeking mental health care ("Mental Health Consumers"). There is a tension between university concerns over the safety of at-risk students, the well-being of other students who may be exposed to psychological trauma by physical harm to others on campus, the legal liability they may face for the protection of students and their image as a stable institution, and students' desires to recover from mental health issues and remain valued and respected members of their school's community. This Note seeks to advance an ideal policy for universities regarding the removal of student Mental Health Consumers.[19] This Note seeks to address this issue by crafting concrete steps colleges and universities can implement to make the removal of such students both less common and less traumatic. Part II is a background of the evolution of the legal liability of universities for their

---

[13] *Id*.

[14] *Id*.

[15] Deborah Sontag, *Who Was Responsible for Elizabeth Shin?*, N.Y. TIMES (April 28, 2002) http://www.nytimes.com/2002/04/28/magazine/who-was-responsible-for-elizabeth-shin.html?pagewanted=all&src=pm.

[16] *See* The American College Health Association, *National College Health Assessment Spring 2006 Reference Group Data Report*, 55 J. AM. COLL. HEALTH 195, 205 (2006), www.achancha.org/docs/JACH%20January%202007%20SP%2006%20Ref%20Grp.pdf.

[17] Robert P. Gallagher, *National Survey of College Counseling*, THE INT'L ASS'N OF COUNSELING SERVS., INC. 13 (2012).

[18] *Id*. at 14.

[19] It should be understood that the concerns evaluated in this Note apply primarily to domestic, residential students in both graduate and undergraduate programs at private and public universities and colleges. Commuter students and international students may face many of the same issues but have unique needs and a unique relationship to the school that calls for their own, special consideration.

students. Part III is a collection of current removal and medical leave procedures from student university handbooks. Part IV is an overview of modern legal and administrative challenges to such policies. Part V is an integrated, ideal approach to the removal and reentrance of student Consumers. Part VI concludes.

II. UNIVERSITY LIABILITY FOR PHYSICAL HARM

University liability is a broad doctrine that indicates several different subsets. Because removal procedures implicate both the university's responsibility to treat its students with fairness as well as the university's duty to protect and ensure the safety of its students, this part of the Note will trace the evolution of these doctrines.

A. HISTORY OF UNIVERSITY LIABILITY

Colleges and universities have long been able to avoid liability for the consequences of the actions of their students.[20] Originally, colleges and universities subscribed to the "in locos parentis" philosophy, allowing them to act in place of the parents of their students.[21] This approach allowed courts to analogize the university-student relationship to the parent-child relationship, which, in turn, allowed courts to insulate the relationship from the reach of the law, just as they did in family law doctrine.[22] This insularity supported a culture in which colleges and parents made decisions for and about students, who were seen as children in the eyes of the law.[23] The in loco parentis dogma, along with the insularity of the university-student relationship, was incorporated into the law when students and families challenged universities and colleges.[24] The Supreme Court of Kentucky even stated that, "A discretionary power has been given them to regulate the discipline of their college in such manner as they deem proper; and, so long as their rules violate neither divine nor human law, we have no more authority to interfere than we have to control

---

[20] Susan H. Duncan, *College Bullies-Precursors to Campus Violence: What Should Universities and College Administrators Know About the Law?*, 55 VILL. L. REV. 269, 299 (2010).

[21] Kristen Peters, *Protecting the Millennial College Student*, 16 S. CAL. REV. L. & SOCIAL JUSTICE 431, 433 (2007).

[22] *Id*.; Peter F. Lake, *The Rise of Duty and the Fall of In Loco Parentis and Other Protective Tort Doctrines in Higher Education Law*, 64 MO. L. REV. 1, 4 (1999).

[23] Lake, *supra* note 22, at 4.

[24] *Id*.

the domestic discipline of a father in his family."[25] This legal structure allowed colleges and universities to subject their students to the rules and regulations the institutions saw fit while remaining insulated from lawsuits, especially those regarding fair treatment, brought by or on behalf of students.[26]

In loco parentis as a legal doctrine protected colleges and universities from legal liability towards their students.[27] As a theory of college and university operations, it allowed each institution to govern its students as a parent would with a child.[28] Courts also relied on other analogies to insulate universities from tort liability to students, considering private colleges to be charities, which were immune from liability, and framing public college as branches of the government endowed with governmental immunities.[29] Through these analogies to other legal doctrines, the law of higher education insulated universities from liability for their own harms to students and from standards for the physical safety of their students.[30]

Inspired and influenced by civil rights movements, students in the 1960s began to protest the control that their colleges and universities exercised over their behavior.[31] An integral 1961 case set the stage for students across the country to successfully claim that they were entitled to constitutional rights within the framework of their university studies and the disciplinary actions such universities were taking.[32] While the advances students made by bringing forth civil rights claims against their colleges helped them regain some of the disciplinary power such colleges exercised, it was tort reform that helped students claim that universities

---

[25] Gott v. Berea Coll., 161 S.W. 204, 207 (Ky. Ct. App. 1913); *see also* John B. Stetson Univ. v. Hunt, 102 So. 637, 640 (Fla. 1924) (quoting *Gott*).

[26] Lake, *supra* note 22, at 4–5; Theodore Stamatakos, *The Doctrine of In Loco Parentis, Tort Liability and the Student-College Relationship*, 65 IND. L.J. 471, 482–83 (1990).

[27] Lake, *supra* note 22, at 5–6.

[28] *Id*. at 4–5; *see, e.g*., Hamburger v. Cornell Univ., 148 N.E. 539, 543 (N.Y. 1925) (overruling jury award for the student plaintiff who had been injured in a laboratory accident on campus, finding that the university was an immune charitable entity); Davie v. Bd. of Regents, 227 P. 243 (Cal. Ct. App. 1924) (extending governmental immunity to a university to insulate it from claims brought by a student injured in the on-campus infirmary); Setrin v. Glassboro State Coll., 346 A.2d 102, 106 (N.J. Super. Ct. App. Div. 1975) (finding that public universities, as government agents, cannot be sued).

[29] Lake, *supra* note 22, at 7.

[30] *Id*.

[31] *Id*. at 9.

[32] *Id*.; *see* Dixon v. Ala. State Bd. of Educ. 294 F.2d 150 (5th Cir. 1961) (reversing the district court's upholding of a principal's dismissal of students with no notice or grounds and a lack of due process, extending constitutional rights to students in public universities).

should have a duty to ensure the physical safety of students.[33] Through the twentieth century, charitable and governmental immunities waivered while the fault and proximate cause elements of tort claims began to relax.[34] Universities began experiencing more and more exposure to liability for harm to students as they incurred duties to maintain safe premises and dormitories.[35] Beyond such safe premises duties, and particularly relevant here, are the cases imposing liability on universities for physical harms faced by students at the hands of others or by their own hand.

In a seminal 1976 case, the parents of a deceased student, Tatiana Tarasoff, sued the University of California, Berkeley.[36] Prosenjit Poddar, a student at the University of California, Berkeley, and patient of therapists employed by the school, murdered Tatiana Tarasoff, after expressing his intention to do so to his school therapist.[37] The plaintiffs, Tatiana's parents, claimed that the university was guilty of the following crimes: Failure to Detain a Dangerous Patient, Failure to Warn of a Dangerous Patient, Abandonment of a Dangerous Patient, and Breach of Primary Duty to Patient and the Public.[38] The California Supreme Court found that the school was entitled to governmental immunity, which insulated them from the charges of Failure to Detain a Dangerous Patient and Breach of Primary Duty to Patient and the Public.[39] However, the court found that governmental immunity would not extend to the claim that the school therapists failed to warn of a dangerous patient, opening the university to liability for the death of Tatiana.[40]

The *Tarasoff* case represented a university's liability for harm committed by students. Soon after *Tarasoff*, however, colleges were held liable for physical harms to students committed on campus by outsiders in *Mullins v. Pine Manor College*.[41] Here, the Massachusetts Supreme Court found that Pine Manor College owed a duty of care to the plaintiff, a first-year student who was raped on campus, given that colleges normally take it upon themselves to protect students from such intrusion, Pine Manor had taken some steps to prevent such harm, and the plaintiff likely relied

---

[33] Lake, *supra* note 22, at 9–11.

[34] *Id*. at 11.

[35] *Id*. at 11–12.

[36] *Id*. at 19.

[37] Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334, 339, 341 (Cal. 1976).

[38] *Id*. at 341.

[39] *Id*.

[40] *Id*.

[41] Mullins v. Pine Manor Coll., 449 N.E.2d 331 (Mass. 1983).

upon Pine Manor to perform such a duty.[42] Furthermore, the Court refused to extend the doctrine of charitable immunity to insulate the Vice President of Operations, who had been named as a defendant in the suit against the college.[43] Courts have expounded upon these analyses in the modern era of higher education jurisprudence, expanding and refining the list of duties that colleges and universities owe to their students, treating students like other tort plaintiffs.[44]

B. THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT

The Rehabilitation Act of 1973 and the Americans with Disabilities Act ("ADA"), which govern equal treatment and access for citizens with disabilities, define a disability as "a physical or mental impairment that substantially limits one or more major life activities."[45] This definition encompasses mental and emotional illnesses as impairments gaining protection under the ADA.[46] Therefore, if student Consumers can show that their specific diagnosis and medical history "substantially" inhibit a "major life activity," then they will be protected by the ADA and entitled, under that act, to protection from discrimination.[47] The Office for Civil Rights of the United States Department of Education is charged with the enforcement of the Rehabilitation Act, governing private universities, as well as antidiscrimination provisions under the ADA, governing public universities.[48] In 2011, the Department of Justice enacted a new provision that provides a defense for universities removing a disabled person

---

[42] *Id*. at 335–36.

[43] *Id*. at 341–42.

[44] Lake, *supra* note 22, at 19.

[45] Americans with Disabilities Act, 42 U.S.C. § 12102 (2012); 29 U.S.C. § 705(9)(B) (2012).

[46] 29 C.F.R. § 1630.2(h)(2) (2015); *see, e.g*., Roman Martinez v. Potter, 550 F. Supp. 2d 270, 278 (D.P.R. 2008) (ruling that a comorbid diagnosis of bipolar disorder, schizophrenia, and depression constituted a mental impairment under the ADA and collecting cases, and finding that the Diagnostic and Statistical Manual diagnoses cognizable mental impairments for the purposes of the ADA).

[47] *See* 42 U.S.C. § 12132 (2012) ("[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."); *see also* 42 U.S.C. § 12182 (2012) ("[N]o 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 by any person who owns, leases (or leases to), or operates a place of public accommodation.").

[48] *About OCR*, U.S. DEP'T OF EDUC., OFFICE OF CIVIL RIGHTS (May 29, 2012), www2.ed.gov/about/offices/list/ocr/aboutocr.html.

because that person poses a "direct threat" to others.[49]

C. MODERN LIABILITY FOR VIOLENCE

On-campus peer-to-peer violence is steadily rising.[50] In a series of cases involving students who were raped on campus, courts began to refine and retool the analysis applied to the *Mullins* case, creating a substantial body of case law classifying students as business invitees of colleges and universities.[51] In *Johnson v. State*, a Washington court found that Kansas State University owed a duty of reasonable care to a first-year student who had been raped on campus because she was a resident in campus housing and, therefore, a business invitee.[52] Several other jurisdictions impute such a duty to colleges and universities regarding harm to their students.[53] On the other hand, some jurisdictions have rejected the contention that students are business invitees of their colleges or universities.[54] Several courts have held that there is no special relationship giving way to university liability for harm to students by other students or outsiders.[55]

D. MODERN LIABILITY FOR PERSONAL HARM

As the exposure of colleges and universities has grown, some schools

---

[49] *See* 28 C.F.R. § 35.139(a) (2015).

[50] Gallagher, *supra* note 17, at 9 ("22 [percent] of directors report that there has been a marked increase in student-to-student violence on their campuses over the past 5 years.").

[51] *See* Nero v. Kan. State Univ., 861 P.2d 768, 779 (Kan. 1993) (ruling that the college had the same duties to a female student who had been attacked in a dormitory as landlords owe to protect their tenants); *see also* Johnson v. State, 894 P.2d 1366, 1369–70 (refusing to find a special relationship between a student and her university, but, in the alternative, finding that she could be classified as a business invitee to which the school owed a duty).

[52] *Johnson*, 894 P.2d at 1371.

[53] *See, e.g.*, Furek v. Univ. of Del., 594 A.2d 506, 521 (Del. 1991) (finding that a student burned during fraternity hazing was owed a duty of reasonable care as an invitee); Peterson v. S.F. Cmty. Coll. Dist., 685 P.2d 1193, 1198, 1202–03 (Cal. 1984) (finding that the "plaintiff, an enrolled student using the parking lot in exchange for a fee, was an invitee" and that his claims were not foreclosed on by governmental immunity); Jesik v. Maricopa Cnty. Cmty. Coll. Dist., 611 P.2d 547, 551 (Ariz. 1980) (ruling that a deceased student, who had warned a security guard that another student had threatened to kill him, was owed a duty of reasonable care given that the school had a "duty of adequate supervision" and notice of the threat).

[54] Rhaney v. Univ. of Md. E. Shore, 880 A.2d 357, 364–65 (Md. 2005) (finding that while a battered student may have been a business invitee of the university in some areas of the campus, once in his dorm, where the assault had taken place, he was to be considered a tenant, as regulated by the campus housing agreement).

[55] *See Johnson*, 894 P.2d at 1369–70.

have begun to face liability for student suicide.[56] The Shin family, whose daughter Elizabeth Shin died by self-immolation in her Massachusetts Institute of Technology ("MIT") dorm room, sued MIT for their daughter's wrongful death.[57] The Massachusetts Superior Court was willing to impose a duty to Elizabeth Shin on the MIT deans and medical professionals familiar with her past suicide attempts and suicidal ideations given that such knowledge created a special relationship between the parties.[58] Similarly, in *Schieszler v. Ferrum College*, a district court in Virginia was hesitant to impose a general special relationship duty between students and universities, instead finding that Ferrum College owed the deceased student a duty because he was a full-time student and on-campus resident with a known history of psychological trouble.[59]

The *Shin* case exposed MIT to a new level of legal vulnerability with one administrator stating, "We have to win. If we don't, it has implications for every university in this country."[60] This case was eventually settled before an appellate court could hand down a decision, leaving the state of the law as to whether universities could now be held liable for suicides of student Consumers unclear.[61] While the question of what liability colleges and universities do have under the current state of the law can be confusing and contentious, the level of liability that universities should have can be a more vivid debate. Further, schools are also faced with other pressures, including concern over how they will be portrayed in the media and resource shortages in their counseling departments. There is a need for federal intervention, whether statutory or judicial, which clarifies the national state of college and university liability for student harm, whether self-inflicted or perpetrated by another actor with which the institution maintains a relationship. As it stands, the law attempts to govern such difficult situations by providing the parameters within which answers must fall, but it does not, and possibly cannot, provide the answers. This may mean that the focus, when it comes to the removal of students with a mental illness, must be on the students themselves and the school communities, rather than on the law.

---

[56] Heather E. Moore, *University Liability When Students Commit Suicide: Expanding the Scope of the Special Relationship*, 40 IND. L. REV. 423 (2007).

[57] Sontag, supra note 15.

[58] Shin v. Mass. Inst. of Tech., 19 Mass.L.Rptr. 570, 583 (Sup. Ct. Middlesex Cnty. 2005).

[59] Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602, 609 (W.D. Va. 2002).

[60] Sontag, *supra* note 15.

[61] Rob Capriccioso, *Settlement in MIT Suicide Suit*, INSIDE HIGHER ED., (Apr. 4, 2006), http://www.insidehighered.com/news/2006/04/04/shin.

III. AN OVERVIEW OF CURRENT INVOLUNTARY REMOVAL AND REENTRY PROCEDURES

To understand the modern complaints to removal procedures and the ideal policy for which this Note advocates, a primer in current policies advertised and implemented by colleges and universities can provide important context.[62] Many schools have procedures in place for students taking family or personal leave,[63] and nearly 70 percent of on-campus counseling centers surveyed in 2012 reported that their schools had medical leave policies to address suicidal behavior.[64] The focus here will be on medical leave where the college or university specifically includes mental health concerns as an impetus for such leaves of absence.

A. WELLESLEY COLLEGE

Wellesley College of Wellesley, Massachusetts allows students to apply for leaves of absence and withdrawal from the community.[65] Furthermore, the college maintains the right to require students to submit to such disconnections.[66] According to Wellesley's involuntary withdrawal policy, the Dean of Students' Advisory Committee, "in consultation with health professionals as necessary, may require a student needing time away to address medical or mental health concerns to be placed on a leave of absence."[67] The remainder of the policy regarding forcible removal is dedicated to the conditions that may be placed on removal.[68] Under the advertised policy, conditions on reentry will be decided upon on a case-by-case basis but may include written declarations of readiness to return by both the student and a medical professional.[69] Specifically for return

---

[62] The colleges and universities examined in this section are of no particular importance. They were selected mostly by familiarity of the author, variability in removal procedures, representation of private and public systems, and accessibility of the student handbook and medical leave procedures.

[63] *See, e.g.*, *Yale University Bulletin School of Public Health 2014-2015 Administrative Policies*, YALE UNIV., http://www.yale.edu/printer/bulletin/htmlfiles/publichealth/administrative-policies.html#leave_of_absence (last visited Jan. 19, 2015).

[64] Gallagher, *supra* note 17, at 7.

[65] *Leaves of Absence and Withdrawals from Wellesley College*, WELLESLEY COLL. http://www.wellesley.edu/advising/classdeans/loas (last visited Jan. 19, 2015) [hereinafter *Leaves of Absence*].

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

from involuntary medical leave where the impetus is a mental health concern, a student will be required to: (1) submit a written request to the on-campus counseling center, (2) inform her class dean of her request to return, (3) relinquish consent for counselors to consult with class deans about her situation, (4) request any and all medical professionals contacted while on leave to complete and submit the "Community Provider Report," (5) submit copies of any specialized evaluations that were requested when the student was placed on leave, and (6) "write a statement explaining [her] understanding of why [she] had to take a leave, what [she has] been doing while on leave to address the issues that resulted in [her] taking a leave, and what [she thinks she] would need for a successful transition back to Wellesley . . . ."[70]

B. SAN FRANCISCO STATE UNIVERSITY

Students at San Francisco State University are only given the option of a "Planned Educational Leave of Absence" or a withdrawal.[71] "Health" is not considered a cognizable justification for a leave of absence from the school and students wishing to remove themselves from their program of study for this reason have to withdraw.[72] Once a student has not enrolled for two consecutive semesters, they will need to reapply should they wish to reenter their program.[73] The online portion of San Francisco State University's website does not divulge the school's mandatory leave policy.[74]

C. COLUMBIA UNIVERSITY

Students at Columbia University may be placed on medical leave "for reasons of personal or community safety."[75] The university states that mandatory medical leave will only be implemented "in extraordinary

---

[70] *Student Checklist for Returning from a Medical/Psychological Leave of Absence*, WELLESLEY COLLEGE COUNSELING SERVICE 1, http://www.wellesley.edu/sites/default/files/assets/departments/studentlife/files/checklist_psychological.pdf (last visited Feb. 20, 2015).

[71] *General Policies and Procedures San Francisco State University Bulletin 2013-2014*, S.F. STATE UNIV. BULL., http://www.sfsu.edu/~bulletin/previous_bulletins/1314/genpol.htm (last visited Jan. 19, 2015).

[72] *Id*.

[73] *Id*.

[74] *Id*.

[75] *Essential Policies for the Columbia Community: Involuntary Leave of Absence Policy*, COLUMBIA UNIVERSITY (Sept. 2014), http://www.essential-policies.columbia.edu/involuntary-leave-absence-policy [hereinafter *Involuntary Leave*].

circumstances when there is compelling information to suggest that the student is engaging in or is at heightened risk of engaging in behavior that could lead to serious injury to others."[76] Students may also be placed on involuntary medical leave in the event that they are at "significant risk" of self-injury *and* that risk cannot be abated through reasonable on-campus intervention.[77] If and when the school is considering involuntarily removing a student, that student will be notified and an investigation will commence, making removal a case-by-case, appealable undertaking.[78] Students placed on leave will be forced to surrender their college identification card, immediately vacate university owned housing, and refuse to visit campus until the leave is over.[79] Students placed on involuntary leave will be notified what steps they will need to take to gain readmission to the community, including but not limited to an assessment interview, a Certificate of Fitness to Return completed by a treating medical profession, and an investigation of the student's behavior while on leave.[80] The involuntary leave of absence policy warns that it does not supersede disciplinary policies and students may be subject to action under those policies if their behavior is violative.[81]

IV. MODERN CHALLENGES TO REMOVAL PROCEDURES[82]

Within the past decade, a few legal challenges have been brought by or on behalf of students who have been removed from campus due to struggles with mental health.[83] The Bazelon Center for Mental Health Law has supported students in such claims, focusing on the removal from

---

[76] *Id*.

[77] *Id*.

[78] *Id*.

[79] *Id*.

[80] *Id*.

[81] *Id*.

[82] Many of these challenges necessarily define mental illness as a disability, which is problematic and may contribute to a "chilling effect" in terms of coming forth with complaints regarding treatment and discrimination. Because of the stigma surrounding Mental Health Consumption and disabilities in this country, impressionable students may remain silent in the face unfair treatment if they are forced to refer to their mental illness as a disability in order to claim any sort of legal recourse. While it is an argument for another article at another time, the author is compelled to note that a legal structure that does not force Mental Health Consumers to consider their illness a disability under the ADA and other statutory frameworks is necessary.

[83] *See, e.g*., Second Amended Complaint, Jane Doe v. Hunter Coll., *available at* http://www.bazelon.org/LinkClick.aspx?fileticket=LJYj0hJIXUw%3d&tabid=314.

university residential accommodations as a violation of the ADA.[84] Both cases brought by the Bazelon Center maintained a focus on unfair residential removal and were settled.[85]

A wider array of challenges to university procedures regarding student Consumers has been brought through Office of Civil Rights Education ("OCR") complaints alleging discrimination at the hands of colleges and universities. These complaints can be the building blocks of policy reform, responding to student concerns from the admissions process, on-campus access and treatment, withdrawal procedures, and readmission conditions.[86]

A former Princeton University student, suffering from Type II Bipolar Disorder, filed a 2012 OCR complaint, alleging that the university "evict[ed] him from his dorm room, prohibit[ed] him from attending classes . . . bann[ed] him from all areas of campus," and "coerc[ed] him to withdraw" after he ingested several Trazodone tablets and sought help from the university.[87] This complaint is currently being adjudicated.

The resolution of these complaints also concerns readmission policies, investigating the substantive and procedural fairness of such policies. In response to an OCR complaint, Georgetown University was ordered to reform its medical leave policies and procedure to include reasonable, individualized reenrollment conditions and ensure that students are fully informed as to the typical reenrollment time frame and process.[88] Spring Arbor University was found in violation of the ADA because it imposed higher scrutiny on a student Consumer seeking to return from medical leave than it would impose on a student who had taken medical leave for reasons other than mental instability.[89]

These OCR complaints highlight that student concerns about university treatment of Consumers implicate the totality of the student

---

[84] *Id*. at 1.

[85] *Hunter College*, supra note 5; *Student and University Settle Lawsuit*, *supra* note 9.

[86] *See Campus Mental Health > Legal Action*, BAZELON CTR. FOR MENTAL HEALTH, http://www.bazelon.org/Where-We-Stand/Community-Integration/Campus-Mental-Health/Campus-Mental-Health-Legal-Action.aspx (collecting OCRE complaints brought on behalf of student Mental Health Consumers).

[87] *Discrimination Complaint*, U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS 2 (July 6, 2012), *available at* http://www.bazelon.org/LinkClick.aspx?fileticket=KgxSxhU1XQM%3d&tabid=313.

[88] U.S. DEP'T. OF EDUC., OFFICE FOR CIVIL RIGHTS (OCR), *Letter to Georgetown University in Washington D.C*. (Oct. 13, 2011).

[89] *Determination Letter for OCR Complaint Docket #15-10-2098* at 11, *available at* http://www.bazelon.org/LinkClick.aspx?fileticket=WGmoOxFqnto%3d&tabid=313.

experience from admission to readmission. This underscores the importance of an integrated approach to removal and reintegration policies in college and universities.

V. AN INTEGRATED APPROACH TO REMOVAL AND REINTEGRATION

A. WHEN SHOULD A STUDENT BE REMOVED?

Student Mental Health Consumers who are allowed to remain on university campuses have a better chance at recovery than those who are removed.[90] Therefore, the goal of an ideal removal policy should be to remove students only when absolutely necessary. In other words, universities should seek to place their students on involuntary medical leave only when that student poses a threat of harm to him or herself or others affiliated with the university and removal would abate that risk of harm. When a student Consumer is considered "disruptive," the university must again launch an individualized investigation weighing the interests of other students, faculty, and staff who are being "disrupted" with the interests of the student who is "disruptive." Schools should then take every plausible step to minimize the disruption while keeping the disruptive student engaged in his or her social and academic environment. Involuntary medical leave for "dangerous" or "disruptive" students should be conceptualized as a protective measure taken by a college or university and never considered a "disciplinary" action against a student or trainee. Furthermore, such an action should always be appealable to a counsel consisting of school deans and other students, in the event that the removed student requests the presence of other students.

However, because predictive indicators of violent behavior are unreliable,[91] universities are saddled with vague removal conditions even when they are attempting to implement an ideal policy. Columbia University and Wellesley College both rely on case-by-case investigations before placing their students on involuntary medical leave.[92] While this is an ideal approach, it underscores one of the reasons that crafting sound

---

[90] Frances L. Hoffmann & Xavior Mastrianni, *Psychiatric Leave Policies: Myth and Reality*, 6(2) J. COLL. STUDENT PSYCHOTHERAPY 3, 14 (1992). It is important to note that this difference may reflect that students with more severe mental illnesses are those being removed and those not removed have a higher chance at recovery not just because of their connection to the school community but also due to the nature of their illness.

[91] Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334, 360–61 (Cal. 1976).

[92] *Leaves of Absence*, *supra* note 65; *Involuntary Leave*, *supra* note 76.

mental health policies is so difficult. Although individualized consideration respect all students' unique and intimate relationship with their mental illness as well as their school, the lack of designated precursors to involuntary medical leave can create a culture of distrust in university medical professionals and administrators, creating a chilling effect on student Consumers. The tension between the importance of sound, case-by-case treatment and the chilling effect of ambiguous removal policies is likely unresolvable. However, if colleges and universities take a serious pledge to only remove student Consumers as an absolute last resort and show students they have nothing to fear from seeking mental health treatment, they may be able to mitigate the chilling effect of an ambiguous removal policy.

Further, schools should adjust their governing policies to better understand and be more responsive to the needs of student Consumers by allowing for limited mental health exemptions and adjudicating infractions through a panel of specially trained community members. First, colleges and universities should implement a limited mental health exemption from university policies akin to health exemptions to policies such as mandatory vaccination and physical exercise requirements. Under such a scheme, students who have violated a school policy, when the violation was a symptom of a mental illness, should be considered exempt from that policy if they are willing to comply with a treatment plan provided by the school's counseling services. By excusing student misbehavior when that misbehavior is a symptom of a mental illness and the student is willing to comply with a treatment plan, schools can ensure that their students are being treated for a mental illness rather than punished. However, it is important to note that such an exemption must not be considered a "blank check" to disobey school policy. That could be both dangerous and offensive to student Consumers. The goals of a mental health exemption are (1) to reduce the number of disciplinary actions regarding behavior that is a direct result of a mental illness, and (2) to push students who are struggling with a mental illness towards a comprehensive treatment plan. Second, school administrators should rely upon faculty and staff members who have some level of psychological training when they consider taking disciplinary action against a student with a mental illness. This training could bring important insight into the disciplinary process and inform difficult decisions.

B. HOW SHOULD A STUDENT BE REMOVED?

While there is no perfect policy regarding when to place students and

trainees struggling with mental illness on involuntary medical leave, colleges and universities should take some steps to ensure that those students can remain as much a part of their school community as is reasonable and safe. Here, this Note will advance four steps to endow removed student Consumers with agency in their treatment plan and build a post-removal network of care for such students. While this Note seeks to establish ideal pursuits for colleges and universities, there are very real barriers to some of the following suggestions. For example, schools are facing unclear legal standards, media scrutiny, and limited and finite counseling resources. This may make it difficult for many schools to implement all, or even some, of the following suggestions. However, there is one governing attitude that lies beneath each of them: schools should want to foster and protect their students, even the sick ones. If school administrators, faculty, and staff are trained to embody this sentiment, it will likely go a long way towards building better communities for all students.

1. Psychiatric Advanced Directives

The National Alliance for Mental Illness argues that Psychiatric Advance Directives ("PAD") can "empower" Mental Health Consumers while reducing harmful conflict over care and medication.[93] Universities should have students submit a distilled PAD along with their enrollment paperwork. This procedure would empower students who later seek mental health treatment or suffer from a psychiatric emergency to have a say in how they and their private medical information are treated during emergency care or involuntary medical leave procedures. At a minimum, PADs should prompt students to indicate whether they would like to be hospitalized in a particular facility and whether they would want to be forcibly medicated so that students can maintain a level of agency regarding their own mental health care if they are faced with an emergency situation.[94] Furthermore, students should be asked who should be contacted in the event of a psychiatric emergency and what information should be divulged to those persons. Having all students submit PADs to the university will allow for a more sensitive and individualized response to psychiatric emergencies.

---

[93] *Policy Topics, Psychiatric Advance Directives*, NAT'L ALLIANCE ON MENTAL ILLNESS, (April 17, 2012), http://www.nami.org/Template.cfm?Section=Issue_Spotlights&Template=/TaggedPage/TaggedPageDisplay.cfm&TPLID=5&ContentID=8217.

[94] Importantly, the student's decisions may not always be feasible. For example, in some jurisdictions, it is illegal to forcibly medicate someone regardless of their express wishes.

2. Continued Education

Universities should offer opportunities for capable students to continue their educational programs while on involuntary medical leave. If students on involuntary medical leave for mental health purposes are capable of sustaining their academic course of study, they should be provided a system that allows them to progress along with their classes. Students who need only be removed from on-campus housing could attend regular classes. On the other hand, students who cannot attend class could be allowed access to recorded lectures and the opportunity to complete and submit assignments along with the rest of their classmates.

3. Continued Treatment

Nationwide, campus mental health providers have been facing a growing demand for treatment in both the number of students seeking care and the severity of illnesses being treated.[95] These students depend on the university for their mental health care and that dependence should be recognized and addressed when students are placed on medical leave.

Universities should, therefore, allow students to remain in contact with and receive treatment from their university mental health care providers until they have transitioned to the care of a community provider. The institution of such a transition period would give students being placed on medical leave support through their period of vulnerability and build a system through which university professionals could guide student Consumers to continue compliance with their treatment. Although this type of procedure requires more resources and greater investment from already overburdened university counseling centers, it could make leaps and bounds with regard to the protection of forcibly removed students.[96]

4. Continued Housing Accommodations

Some schools have faced challenges for evicting students from their

---

[95] *See* Gallagher, *supra* note 17, at 4–6 ("[T]he ratio of counselors to clients, on average, was 1 to [1600] students . . . 88 [percent] of directors report that the recent trend toward greater number of students with severe psychological problems continues to be true on their campuses . . . 88 [percent] of directors state that the increased demand for services, along with the increase in clients with more serious psychological problems, has posed staffing problems for them.").

[96] An extensive cost-benefit analysis regarding efficient ways to extend mental health care services to meet the demand of on- and off-campus student Mental Health Consumers is an important analysis that colleges and universities should undergo.

on-campus housing accommodations.[97] Rather than evicting students by changing the locks to their campus housing and requiring a student to be escorted by campus security to collect their personal effects, students should be allowed access to their campus housing accommodations for a short period of time decided on a case-by-case basis. This would allow students to gather their belonging with dignity while they arrange other housing accommodations with their parents or other members of their support network. Student Consumers should not be symbolically shunned from their university community, especially when facing a time of increased vulnerability.

C. HOW SHOULD A STUDENT BE REINTEGRATED?

Another key aspect of removal procedures governing students placed on involuntary medical leave is a student's reintegration into the school community. This calls for colleges and universities to decide whether to allow students to return to their educational program and to the school's student body. In the event that a student is placed on involuntary medical leave because of the state of that student's mental health, the goal of that leave should always be to give the removed student the time needed to recover with the intention of rejoining the school community. Having a process in place that establishes concrete steps to re-enrollment would give removed students clear goals to pursue in order to reintegrate into the university.

1. Reenrollment Conditions

Colleges and universities should expect the cessation of bad behavior, not the dissipation of the student's mental illness or disorder, to allow reintegration into the school community. It should be made clear to the student that, in order to return, they should be able to function within the school community and not be asymptomatic. In determining if the behavior that caused the students' removal has subsided enough to call for their reintegration into their school community, letters of recommendation from community practitioners must be considered a prima facie case for re-enrollment and should be required under some circumstances (for example, when a student is suspected as a physical threat to other students, faculty, or staff on campus).

---

[97] *Hunter College*, *supra* note 5; *Student and University Settle Lawsuit*, *supra* note 9.

2. Privacy Concerns

Student Consumers face staggering amounts of stigma on campus.[98] While it may be important for university officials to consult one another regarding a student Consumer's behavior and affect, this information-sharing network should not be abused in the case of involuntary medical leave. In order for students to return to normalcy, and to fully reintegrated into their school's student body, their medical information should be kept confidential from the faculty, staff, and students with whom they have intimate contact, unless those students wish for their medical information to be shared. School administrators should use vague and normalizing words and phrases when they discuss a removed student. For example, administrators can tell professors that a student is "on leave" or "taking an approved absence" rather than "on mental health leave" or "hospitalized."

3. Reenrollment Support

Students returning to their schools will likely return to a different situation. They may be behind their friends in course units, extracurricular clubs, and team sports. Colleges and universities should attempt to make their returning students feel welcomed back, not just let back in. Schools can make returning students more comfortable with some fairly simple actions. First, school administrators should reach out to returning students. Simply asking students what they need may go a long way in terms of making them feel welcomed, decreasing confusion, and abating anxiety.

Further, colleges should establish a leave of absence support group. Such a group should consist of all interested students who have been on voluntary or involuntary leave from the university. While students will inevitably have had unique leave experiences, the inclusion of both voluntary and involuntary leave students will broaden the base of students in attendance and help to normalize the experience of returning to campus. Students should initially be introduced to this group when it has been decided that they will leave the educational institution. This will allow a removed student to see that students can and do come back after leave, have an avenue for peer-to-peer contact while on leave, and have a support network in place upon return to reduce isolation.

Finally, schools should build a reintegration handbook for students on

---

[98] Abiodun Adewuya & Roger Makanjula, *Social Distance Towards People with Mental Illness Amongst Nigerian University Students*, 40(11) SOC. PSYCHIATRY AND PSYCHIATRIC EPIDEMIOLOGY 865–68 (2005).

leave from campus. This handbook should include a list of services available to the returning student such as counseling centers, resident assistants, and deans. The reintegration guide should also include personal stories of students who have successfully returned to campus after being placed on leave to give returning students a peer perspective on the pitfalls of life after removal and services provided by the university.

VI. CONCLUSION

Student Consumers who are considered "dangerous" or "disruptive" put colleges and universities in a difficult place as they have to balance the needs of the student Consumer, the rest of the student body, and the image of the university, which may be exposed to liability for physical harm. The legal duty that colleges owe to their students regarding their protection from physical harm is unclear, and schools across the nation have implemented different policies to address involuntary medical leave for struggling students. Student Consumers have challenged the exclusionary and disciplinary nature of university responses to their distress.[99] Schools should abolish such policies and replace them with one under which student Consumers are only placed on involuntary medical leave if they are shown to be a danger to other students, faculty, or staff, or if their behavior is so disruptive that they are an inhibition to the educational or residential process of others. Once a student Consumer is placed on involuntary medical leave, colleges and universities should take efforts to aid in the recovery and reintegration of that student rather than implement procedures and restrictions ostracizing the removed student from his or her school community. Schools should give removed students a clear list of requirements to meet in order to regain admission into the student body. Colleges and universities should then seek to reintegrate removed students back into the school community as smoothly as possible while maintaining their privacy and mental health treatment.

[99] *Hunter College*, *supra* note 5.