BEFORE IT'S TOO LATE: THE NEED FOR A LEGALLY COMPLIANT AND PRAGMATIC ALTERNATIVE TO MANDATORY WITHDRAWAL POLICIES AT POSTSECONDARY INSTITUTIONS

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ABSTRACT

On January 27, 2015, Yale sophomore Luchang Wang made a Facebook post expressing her fear of facing university dismissal due to her depression. Hours later, she jumped to her death. While devastating, Wang's story is not an anomaly. In a 15-month period between 2014 and 2015, six students took their lives at the University of Pennsylvania. During the same, short window of time, MIT lost six students to suicide, Tulane lost four, and similar clusters rippled across other campuses coast-to-coast. These recent clusters of college student suicides have relaunched a nationwide debate about mental health on campus, but college officials and administrators have continued to enforce mandatory leave policies or, alternatively, condition students' continued enrollment on mandatory treatment.

Despite good intentions, these practices to address student self-endangerment overlook important law and policy issues, including the scope of Article II of the Americans with Disabilities Act of 1990 and its

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revisions, substantive and procedural due process requirements applicable to public institutions, and the perilous impacts of approaching psychiatric withdrawals through a disciplinary framework. Additionally, decisions by state and federal courts and the Office of Civil Rights of the Department of Education have obscured the legal parameters within which colleges enforce mandatory withdrawal policies. This Article proposes increasing mandatory mental health screenings in order to decrease institutional use of mandatory student removals. While few argue against the intent of mandatory screening efforts to find, treat, and prevent mental health issues on campus, many adamantly argue that large-scale screening cannot provide a sufficient basis for preventing student self-harm. This Article integrates constitutional, statutory, and case law with policy considerations to argue that campus-wide mental health screening programs provide a cost-effective solution that both decreases institutional risk and liability and addresses mental health problems on campus before they develop into chronic and severe illnesses that necessitate student removal.

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I. INTRODUCTION

In a fifteen-month period between 2014 and 2015, six students took their lives at the University of Pennsylvania. During the same, short window of time, Massachusetts Institute of Technology lost six students to suicide, Tulane University lost four, and similar clusters rippled across other

campuses coast-to-coast.[1] The recent clusters of college[2] student suicide have launched a nationwide debate about mental health on campus, heightening particular concern on how colleges respond to students in mental crises, and especially those who may present a threat of harm to themselves or others. While campus tragedies have prompted colleges to review their procedural responses to students in mental distress,[3] there remains a lack of consensus among institutions about what constitutes a comprehensive approach.

College and university policies are a key component of a system-wide approach to campus mental health.[4] Institutional leave and withdrawal policies for students with mental health issues not only affect the student withdrawing, but also shape campus environments by endorsing certain beliefs about mental health and discouraging others.[5] Of course, attributing campus tragedies to policy alone would be a gross oversimplification and would indicate a deep misunderstanding of mental illness, disabilities, and disorders.[6] Enhancing campus resources and services, as well as changing campus and cultural attitudes toward mental illness, are equally crucial components to improving campus care. However, college and university administrations can lead the movement by transforming the current leave and withdrawal labyrinth exasperating student mental health into a support

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[1] *See, e.g.*, Jake New, *Suicide Clusters*, INSIDE HIGHER ED (Feb. 12, 2015), https://www.insidehighered.com/news/2015/02/12/several-students-commit-suicide-tulane-appalachian-state (explaining that suicide is the second leading cause of death among college students; suicide ideation is even more common, and that the numbers are staggering.) For statistics regarding college students that have attempted suicide, created suicide plans, and/or seriously considered suicide, *see Suicide Among College and University Students in the United States*, SUICIDE PREVENTION RESOURCE CTR. 1 (May 2014), http://www.sprc.org/sites/sprc.org/files/library/SuicideAmongCollegeStudentsInUS.pdf.

[2] "Colleges" and "universities" are used interchangeably in this article; the focus is on traditional four-year colleges.

[3] *See* Jose M. Pena & Gina M. Manguno-Mire, *Scylla and Charybdis: Dual Roles and Undetected Risks in Campus Mental Health Assessments*, 41 J. AM. ACAD. PSYCHIATRY LAW 532, 532 (2013).

[4] *See generally* 13 HARV. HEALTH POL. REV. (2012) (compilation of articles and notes discussing student mental health); Gerald Stone & Jacqueline McMichael, *Thinking About Mental Health Policy in Universities and College Counseling Centers*, 10 J. OF COL. PSYCHOTHERAPY 3 (1996); Martha Anne Kitzrow, *The Mental Health Needs of Today's College Students: Challenges and Recommendations*, 41 J. STUDENT AFF. RESEARCH & PRACTICE 167 (2003); Daniel Eisenberg et al., *Mental Health and Academic Success in College*, 9 B.E. J. OF EC. ANALYSIS & POL. 40 (2009).

[5] *See generally* 13 HARV. HEALTH POL. REV. *supra* note 4; Stone & McMichael, *supra* note 4; Kitzrow, *supra* note 4; Eisenberg et al., *supra* note 4.

[6] *See generally* 13 HARV. HEALTH POL. REV. *supra* note 4; Stone & McMichael, *supra* note 4; Kitzrow, *supra* note 4; Eisenberg et al., *supra* note 4.

system that, instead, alleviates it.[7]

II. LEGAL LANDMINES

Today there is a troubling absence of thoughtful, cohesive, and pragmatic legislation, case law, and public policy surrounding when universities can and cannot withdraw students for mental health reasons. The laws that do exist are vague, and there are discrepancies among the law, case dictum, federal agency decisions, and a handful of other pressures. Mandatory withdrawal policies in particular must (1) navigate vague disability law—including Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990—and conflicting OCR settlement resolutions and cases; (2) negotiate conflicting cases about universities' duties under tort law—including duties from special relationships, universities' duties as landowners, and duties of campus police who render services to students; and (3) recognize constitutional protections—including the First and Fourteenth Amendments. This Section discusses these external influences on institutions' mandatory withdrawal policies, which present the biggest legal challenges facing university administrators and legal actors trying to balance students' health with universities' liabilities.

A. THE DOCTRINE OF *IN LOCO PARENTIS*

To understand current mental health policies and practices among American colleges and universities, it is important to understand the evolution of college liability for student actions. This section summarizes the concerns, legal cases, and ethical issues that have influenced the development of college and university legal liability over the last sixty years.

America's first colleges and universities were modeled after their European counterparts; accordingly, they adopted many European ideals, including the doctrine of *in loco parentis* (Latin for "in the place of a parent").[8] The concept of *in loco parentis* deals with educational institution's authority and responsibility to serve as a parental figure for its

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[7] *See generally* 13 HARV. HEALTH POL. REV. *supra* note 4; Stone & McMichael, *supra* note 4; Kitzrow, *supra* note 4; Eisenberg et al., *supra* note 4.

[8] Jason Huebinger, *"Progression" Since Charles Whitman: Student Mental Health Policies in the 21st Century*, 34 J.C. & U.L. 695, 706 (2007–2008).

students.[9] During the era of *in loco parentis*, universities would regulate students' lives and proceed with disciplinary actions against students without concern for the students' rights to due process.[10]

While the concept was initially attractive to American educational institutions due to the lower average student age at the time, the influence of *in loco parentis* diminished as colleges and universities evolved.[11] Scholars until the end of the twentieth century recognized that the *in loco parentis* era lasted until the 1960s, when courts began to recognize the constitutional rights of students.[12] Recent cases, however, have created an environment that many scholars argue is reviving the role of *in loco parentis* in higher education.[13]

During the Civil Rights Movement in the late 1960s and early 1970s, public universities' authority over students declined as students' demands for autonomy increased.[14] In *Goldberg v. Regents of the University of California*, the California Court of Appeals held that "the better approach . . . recognizes that state universities should no longer stand *in loco parentis* in relation to their students. Rather, attendance at publicly financed institutions of higher education should be regarded as a benefit somewhat analogous to that of public employment . . ."[15] While the *Goldberg* decision applied only to public universities, it marked a change in courts' mentalities regarding *in loco parentis*' influence over university regulations.[16]

The ratification of the Twenty-Sixth Amendment in 1972 and the reduction of the voting age to eighteen particularly downplayed the role of *in loco parentis* in student mental health policy.[17] Student involvement in college and university politics flourished, while the paternalistic influence of university administrators significantly waned.[18] By the early 1980s,

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[9] *Id.*

[10] *Id.*

[11] *Id.* at 707.

[12] *Id.*

[13] *See generally* Robert D. Bickel & Peter F. Lake, *The Emergence of New Paradigms in Student-University Relations: From 'In Loco Parentis' to Bystander to Facilitator*, 23 J. C. & U. L. 755 (1996–1997); Peter F. Lake, *Still Waiting: The Slow Evolution of the Law in Light of the Ongoing Student Suicide Crisis*, 34 J. C. & U. L. 253 (2008); Phillip Lee, *The Curious Life of In Loco Parentis at American Universities*, 8 HIGHER EDU. IN REV. 65 (2011).

[14] *See* Bickel & Lake, *supra* note 13; *see* Lee, *supra* note 13.

[15] Goldberg v. Regents of Univ. of Cal., 248 Cal. App. 2d 867, 876 –77 (1967).

[16] *See* Bickel & Lake, *supra* note 13; *see* Lee, *supra* note 13.

[17] Huebinger, *supra* note 8, at 710.

[18] *Id.*

courts began to treat colleges and universities as bystanders to student behavior.[19] The key case of the era showcasing this new mentality was *Bradshaw v. Rawlings*, which stated, "[w]hatever may have been [colleges'] responsibility in an earlier era, the authoritarian role of today's college administrators has been notably diluted in recent decades . . . today students vigorously claim the right to define and regulate their own lives."[20] As a result, universities no longer play the role of a parent in the students' lives.

However, recent trends governing student mental health leaves of absence suggest that *in loco parentis* did not perish from student mental health policies; rather, the doctrine's influence may have simply changed form as courts began to apply tort law and federal disability law to preclude a paternalistic misuse of involuntary psychiatric removals.[21]

B. TORT LIABILITY

In the late 1990s, courts began to widen the scope of colleges' potential liability for student behavior by various applications of tort law.[22] Outside of the scope of student mental health, courts have increasingly adopted a totality of the circumstances analysis that focuses on a voluntary assumption of a duty of care.[23] For example, the courts in *Coghlan v. Beta Theta Pi Fraternity*[24] and *Knoll v. Board of Regents of the University of Nebraska*,[25] two exemplar cases in the early duty era, found that a duty of care arose under the facts of each case, without affirmatively fixing a permanent duty owed by institutions to their students.[26]

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[19] Absent from Part II is a discussion of Tarasoff v. Regents of Univ. of Cal., 17 Cal. 3d 425 (1976). While *Tarasoff* created an enormous ripple in the mental health community, the Supreme Court's holding on a psychotherapist's duty to protect patients and potential victims pivoted on the issue of patient privacy, which is—for the most part—beyond the scope of this background section. For a discussion of how the struggle to balance student privacy with public safety has shaped disclosure policies, *see* Elizabeth J. Lilley & Kenneth R. Kaufman, *Suicide and Violence in US Colleges: Legal and Clinical Perspectives*, 46 LEGAL & FORENSIC MEDICINE, 773, 773–95 (2013).

[20] Bradshaw v. Rawlings, 612 F.2d 135, 138–40 (3d Cir. 1979).

[21] *See* Bickel & Lake, *supra* note 13; *see* Lee, *supra* note 13.

[22] *See* Theodore C. Stamatakos, *The Doctrine of In Loco Parentis, Tort Liability and the Student-College Relationship*, 65 IND. L. J. 471 (1999).

[23] *See id.*

[24] *See generally* Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 314 (Idaho 1999).

[25] *See* Knoll v. Bd. of Regents of the Univ. of Neb., 601 N.W.2d 757, 765 (Neb. 1999).

[26] *See also* Furek v. Univ. of Del., 594 A.2d 506, 519–20 (Del. 1991) (holding that a university-student relationship alone does not impose a duty of care on the university, but the university cannot abandon its "residual duty of control" when it has direct knowledge of or involvement in "dangerous practices of its students"); Delta Tau Delta v. Johnson, 712 N.E.2d 968, 973–74 (Ind.

In *Coghlan*, University of Idaho student Rejena Coghlan sued the school for injuries she sustained when she fell off her sorority house's third-floor fire escape after becoming intoxicated at a local fraternity party.[27] Coghlan argued that the university was liable because, under the special relationship doctrine, it had a duty to protect her from risks associated with her own intoxication.[28] While the court rejected that claim, it ruled that the university had assumed a duty of care through its actions: two university employees were present at the fraternity party, and it should have known that underage students were being served alcohol.[29]

In *Knoll*, University of Nebraska student Jeffrey Knoll was abducted by his peers from his on-campus dormitory and taken to a fraternity house off campus.[30] While the university did not own the fraternity house, university policy regulated any conduct occurring inside of it.[31] At the fraternity house, Knoll was forced to consume alcohol and was handcuffed to various objects, managing to escape only to fall through a window and suffer serious injuries.[32] Knoll sued the university, arguing that it had a duty to protect him because the abduction, which occurred on university property, was foreseeable, and the university should have known that the fraternity house was hazing students in violation of university rules.[33] The court held that the relationship between a university and a student did not in and of itself create a special duty of care[34] and that, while foreseeability alone was not dispositive, a duty of care arose under a totality of the circumstances test because the initial event triggering the injury occurred on university property.[35]

In *Coghlan* and *Knoll*, cases involving student intoxication, the courts utilized more fact-intensive tests than they have in cases regarding students with mental illness. Courts in cases relating to mental health issues have relied on more absolute standards, such as the inflexible "direct threat"

1999) (holding that a fraternity owed a duty of care to a student that had been raped at one of its parties because the fraternity had previously been made aware of the frequency of college rape but had ignored the warning signs).

[27] *Coghlan*, 987 P.2d at 305.

[28] *Id.* at 313.

[29] *Id.* at 312.

[30] *Knoll*, 601 N.W.2d at 760.

[31] *Id.* at 761.

[32] *Id.* at 760.

[33] *Id.* at 761.

[34] *See id.* at 762.

[35] *Id.* at 765.

standard detailed below.[36] Consequently, judicial decisions in mental health-related cases are more favorable to universities than to student-plaintiffs.[37]

Mental health-related litigation between students and universities is relatively rare; in most instances, such cases are dismissed before reaching trial or are decided by administrative agencies rather than judicial courts.[38] Nevertheless, the few cases involving mental health issues on college campuses that have reached the bench and thus provide at least persuasive authority, typically involve student suicide.[39] However, since 2000, courts have offered different directives regarding a school's duty to prevent student suicide.[40] Some courts, like that in *Jain v. State*, have supported an institutional hands-off approach to self-harming students, even when the college offered, and even encouraged, that the student use mental health services.[41] On the other hand, other courts have held that college administrators may owe a duty of care to students at risk of committing suicide.[42]

The leading rule regarding suicide liability was established in 2000 by the Iowa Supreme Court in *Jain v. State of Iowa*.[43] The family of University of Iowa student, Sanjay Jain, claimed a special relationship existed between the University and Jain under the Restatement (Second) of Torts, Section 323, and that the University's failure to notify the family of Jain's suicide attempts prevented access to care.[44] The court held that the University of Iowa had not affirmatively undertaken a duty to warn, even though university officials failed to follow a university policy of notifying parents

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[36] *See* Daryl J. Lapp, *The Duty Paradox: Getting It Right After a Decade of Litigation Involving the Risk of Student Suicide*, 17 WASH. & LEE J. CIV. RTS. & SOC. JUST. 29, 48 (2010).

[37] *See id.* at 33.

[38] *See id.* at 36–37.

[39] *See id.*

[40] *See id.* at 37–40.

[41] Jain v. State, 617 N.W.2d 293, 295 (Iowa 2000).

[42] Lapp, *supra* note 36, at 40; *see also* Schieszler v. Ferrum College, 236 F. Supp. 2d 602 (W.D. Va. 2002); *see also* Shin v. Mass. Inst. of Tech., 19 Mass. L. Rep. 570, *13 (2005).

[43] *Jain*, 617 N.W.2d at 300. In *Jain*, a student struggled with his personal life and academic performance in his first semester at the University of Iowa, and one night admitted to resident assistants ("RAs") that he was suicidal. *Id.* at 295. An RA encouraged the student to seek help from the university's counseling service, discussed the incident with her supervisor, and requested the supervisor's permission to notify the student's parents. *Id.* at 295–96. However, the University had a policy calling for privacy in its relationship with its adult students, so the request was denied. *Id.* A short time later, the student committed suicide. *Id.* at 296.

[44] *Id.* at 297–98.

of students' self-harming behavior.[45] The university's knowledge of the student's mental condition was not enough to create a special relationship giving rise to an affirmative duty of care because the university's actions, or lack thereof, did not make matters worse for Sanjay.[46]

Two years later, in *Schieszler v. Ferrum College*, the U.S. District Court took a less tolerant view of institutional responsibility.[47] Michael Frentzel was a freshman at Ferrum College when university officials required him to complete anger management counseling following a series of disciplinary problems during his first semester.[48] Shortly after Frentzel completed the counseling, campus police responded to an altercation between Frentzel and his girlfriend, finding Frentzel covered in self-inflicted bruises and exhibiting suicidal behavior.[49] Campus police and a resident assistant were also subsequently shown notes that Frentzel wrote to his girlfriend indicating his suicidal plans, but they took no action.[50] Three days after the initial altercation, Frentzel hung himself.[51] As a result, his aunt sued Ferrum College, the dean of student affairs, and the resident assistant for wrongful death.[52]

A similar standard was applied in what is widely considered the present era's other benchmark case, *Shin v. Massachusetts Institute of Technology*. In a summary judgment ruling, the Massachusetts Superior Court concluded that Massachusetts Institute of Technology ("MIT") administrators owed a duty of care to student and suicide victim Elizabeth Shin.[53] Shin began to suffer from psychiatric problems as early as February 1999, when she overdosed on Tylenol with codeine and was sent to the hospital for a one-week stay.[54] She was later diagnosed with "adjustment disorder."[55] Months later, in October 1999, Shin was sent to MIT's Mental Health center after she cut herself and informed a teaching assistant of her suicidal

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[45] *Id.* at 299–300. Although not cited in *Jain*, Bogust v. Iverson, 102 N.W.2d 228, 233 (Wis. 1960) is the only other appellate decision to address the issue. In *Bogust*, the Supreme Court of Wisconsin similarly held that a counseling dean who had terminated his counseling relationship with a student had no duty to prevent the student's suicide. *Id.* at 300.

[46] *Jain*, 617 N.W.2d at 300.

[47] *See* Schieszler v. Ferrum College, 236 F. Supp. 2d 602 (W.D. Va. 2002).

[48] *Id.* at 605.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] Shin v. Mass. Inst. of Tech., 19 Mass. L. Rep. 570, *13 (2005).

[54] *Id.* at *2.

[55] *Id.* at *4.

thoughts.[56] Finally, on April 10, 2000, MIT's mental health center was informed of, but chose to not respond to, Shin's new suicidal thoughts.[57] Later that night, Shin set herself on fire and burned to death.[58]

Shin's parents filed a wrongful death suit against MIT and several university employees, arguing that MIT's mental health center had not taken their daughter's depression seriously.[59] In 2005, the superior court of Massachusetts dismissed all claims against MIT, but, in analyzing claims against university administrators, cited *Schieszler*'s "imminent probability" standard and focused on the history between Shin and the university:

> "In the instant case, [administrators] were well aware of Elizabeth's mental problems at MIT from at least February 1999 [. . .] The plaintiffs have provided sufficient evidence that [the administrators] could reasonably foresee that Elizabeth would hurt herself without proper supervision. Accordingly, there was a 'special relationship' [. . .] imposing a duty [. . .] to exercise reasonable care to protect Elizabeth from harm."[60]

However, both *Schieszler* and *Shin* settled and, thus, offer only persuasive authority on liability. Nonetheless, the two cases suggest a trend toward a foreseeability standard in college and university liability for student mental health cases.[61] *Shin* and *Schieszler* are also often cited as the two cases driving school administrators' fears of legal liability. A foreseeability standard does not incentivize colleges and universities to promote mental healthcare resources to its students; rather, it encourages colleges and universities to overreact to risks of student self-harm.[62] However, in neither case did the court require the school to predict which students were suicidal and timely intervene.[63] As a result of these cases, colleges and universities face a greater risk of liability for ignoring or mishandling known suicide attempts or threats.[64]

Not long after the Massachusetts court decided *Shin*, a Pennsylvania trial court dismissed a negligence claims against two college administrators in a case concerning the suicide of Chuck Mahoney, a Allegheny College

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[56] *Id.* at *5.

[57] *Id.* at *11 –12.

[58] *Id.* at *14.

[59] *Id.* at 15–16.

[60] *Id.* at 36–38.

[61] Ann MacLean Massie, *Suicide on Campus: The Appropriate Legal Responsibility of College Personnel*, 91 MARQ. L. REV. 625, 645 (2008).

[62] *See id.*

[63] *See id.*

[64] *See id.*

student.[65] In *Mahoney v. Allegheny College*, the student's parents argued that the college breached its duty of care to prevent their son's suicide and failed to mandate a leave of absence for health reasons.[66] Two weeks prior to his suicide, the deans of students learned that he was seeking a counselor for depression.[67] On the day of Mahoney's suicide, the university counselor discussed with the deans whether they should enforce mandatory withdrawal, but decided that Mahoney did not meet the criteria for either policy.[68] Moreover, the counselor advised the deans that involuntarily removing Mahoney for his mental state would be more harmful than helpful to him.[69]

Unlike in *Schnieszler* or *Shin*, the deans had no independent basis for placing him on a leave of absence.[70] The court criticized the holding in *Shin* as steeped in "hindsight" and reasoned that the college administrators had no affirmative duty of care to prevent student Mahoney's death because, while Mahoney was being treated for severe depression, his immediate risk of suicide was not known to the administrators.[71] Moreover, not only did the college administrators not have a legal responsibility to prevent Mahoney's suicide, but "concomitant to the evolving legal standards for a 'duty of care' to prevent suicide are the legal issues and risks associated with violations of the therapist-patient privilege, student right of privacy and the impact of 'mandatory medial withdrawal policies regarding civil rights of students with mental disability."[72] Perhaps most notably, the end of the court's decision resounded with a call to post-secondary institutions to focus on their "more realistic duty to make strides toward prevention."[73] The court's words emphasize that its decision was not an invitation for institutions to avoid action; rather, it was an entreaty for the university to shift its concerns about "ill-defined" duties and liabilities to a focus on doing "all that it can" for students' mental health before the point of crisis.[74]

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[65] *Id.*

[66] Mahoney v. Allegheny Coll., No. AD 892-2003, at *2 (Ct. Com, Pl. of Crawford County, Pa. Civ. Div. Dec. 22, 2005).

[67] *Id.* at *11–12.

[68] *Id.* at *13.

[69] *Id.*

[70] *Id.* at *23.

[71] *Id.*

[72] *Id.* at *20; *see also* Lapp, *supra* note 36, at 49–50.

[73] *Mahoney*, No. AD 892-2003, at *25.

[74] *Id.*

C. FEDERAL DISABILITY LAW

Mental health policymaking at colleges and universities is also shaped by legal obligations under federal disability law, particularly Section 504 of the Rehabilitation Act of 1973 ("Section 504") and Title II and Title III of the Americans with Disabilities Act ("ADA"), which govern how colleges may act to suspend, or place on leave or withdrawal, a student on the basis of a disability.[75] Section 504 addresses discrimination against individuals with disabilities, and thus governs "direct threat" issues.[76] The ADA governs issues of "reasonable accommodations," with public colleges covered under Title II and private colleges covered under Title III.[77] However, courts apply the same analysis for disability discrimination claims brought under either law.[78] Moreover, both laws are enforced by the Department of Education's Office of Civil Rights ("OCR"), under authority delegated by the Department of Justice ("DOJ").[79]

The requirements of Section 504 and the ADA, including what is required of students with mental disorders and what is required by their colleges, are effectively identical.[80] To "qualify" for protection from disability discrimination, a student must provide documentation of a recognized disability that "substantially limits" one or more "major life activity"; colleges are not required to provide reasonable accommodations to students who have not disclosed their disability.[81] With or without accommodation, the student is also expected to perform the essential functions of completing the academic program in which she is enrolled, including complying with the college's code of conduct or honor code.[82] Both Section 504 and the ADA require universities to provide reasonable accommodations and make reasonable adjustments to academic and student policies for students who are so qualified unless the student provides a

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[75] Amir v. St. Louis Univ., 184 F.3d 1017, 1023 (8th Cir. 1999).

[76] 29 U.S.C. § 701 et seq. (2014).

[77] Barbara A. Lee & Gail E. Abbey, *College and University Students with Mental Disabilities: Legal and Policy Issues*, 34 J. C. & U. L. 349 (2008).

[78] Bonnie Poitras Tucker, *Application of the Americans with Disabilities Act (ADA) and Section 504 to Colleges and Universities: An Overview and Discussion of Special Issues Relating to Students*, 23 J. C. & U. L. 1 (1996).

[79] *Id.* at 2.

[80] § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, 29 U.S.C. 794 (1976 ed., Supp. II); Americans with Disabilities Act of 1990, 28 C.F.R. Parts 35–36.

[81] *See* 29 U.S.C. § 706(8)(A), (B) (1995); 42 U.S.C. § 12102(2) (1988 & Supp. 1993).

[82] *See* Cmty. Coll. v. Davis, 442 U.S. 397 (1979); El Kouni v. Trustees of Boston Univ., 169 F. Supp. 2d 1 (D. Mass. 2001).

"direct threat."[83]

For years, OCR provided well-recognized and understood regulations by which colleges determined a student to be a "direct threat": college officials were permitted to send home, involuntarily if necessary, students who posed a "direct threat" to the health or safety of themselves or others.[84] Then, in September 2010, the DOJ issued revisions that fundamentally changed the "direct threat" framework by no longer specifically addressing colleges' options for self-harming students.[85] Under the revised law, the "direct threat" definition applied only to students who presented "a significant risk to the health or safety of *others* that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services . . ."[86] In the last six years, neither OCR nor the DOJ have offered formal instructions to colleges on how to respond, without violating federal disability laws, to students who are at risk of self-harm, but who do not pose an imminent threat to others.[87] Consequently, colleges have been making case-by-case decisions while using OCR's resolution agreements as guidance.[88] However, it was not long until the significance of the definitional shift grabbed the attention of college officials—the first OCR resolution agreement under the revised regulations occurred later that year in a case brought under Section 504 against Spring Arbor University.[89]

In 2010, OCR investigated a complaint of disability discrimination against a Spring Arbor University student under Section 504 of the Rehabilitation Act of 1973.[90] In his admission materials, the student

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[83] § 504 of the Rehabilitation Act of 1973, 29 USCS § 794; Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.104 (2010).

[84] 75 Fed. Reg. 56164 (Sept. 15, 2010); 75 Fed. Reg. 56180 (Sept. 15, 2010).

[85] Paul G. Lannon, Jr., *Direct Threat and Caring for Students at Risk for Self-harm: Where We Stand Now*, CATHOLIC UNIV. OF AM. (Sep. 3, 2014), http://counsel.cua.edu/fedlaw/nacuanote-student-self-harm.cfm.

[86] Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. § 35.104 (2010); *see also* Paul Lannon & Elizabeth Sanghavi, *New Title II Regulations Regarding Direct Threat: Do They Change How Colleges and Universities Should Treat Students Who Are Threats to Themselves?*, 10 NACUANOTES 1 (Nov. 1, 2011).

[87] *See generally* Lannon, *supra* note 85; Paul Grayson & Phil Meilman, *From the Editors Mandatory Leaves in Limbo*, 26 J. C. STUDENT PSYCHOTHERAPY 253, 254 (2012).

[88] *See generally* Lannon *supra* note 85; Grayson & Meilman, *supra* note 87.

[89] *See generally* Charles H. Webb, *OCR Letter: Spring Arbor University*, NAT'L CTR. FOR HIGHER EDUC. RISK MGMT. (Dec. 16, 2010), https://www.ncherm.org/documents/OCRLetter_SpringArborU.pdf.

[90] *Id.* at 9–18.

disclosed information about his anxiety and depression.[91] However, after enrollment he did not identify himself as a disabled student nor did he request accommodations.[92] The following summer, the student was diagnosed as bipolar.[93] When he returned to school for the next term, he engaged in cutting, uncontrolled crying, and persistently discussed his problems with his peers.[94] Regardless, he remained in good standing.[95]

However, as a result of his behavior on campus, university officials met with the student and required him to enter into a behavior contract as a condition of continued enrollment.[96] The proposed contract, or "Section 504 plan," imposed seven obligations: (1) attend mandatory therapy; (2) provide written confirmation of attendance from a therapist; (3) provide a release permitting the Director of the Health Center to discuss his case with his therapist; (4) comply with his therapist's treatment plan; (5) maintain composure during class; (6) avoid stressful social situations that might trigger a crisis; and (7) contact university officials when in a crisis situation.[97] Rather than submit to the behavior contract, the student "voluntarily" withdrew.[98] When he was subsequently denied readmission, the student filed his complaint with OCR.[99]

OCR found that, although the student's withdrawal was voluntary, the imposed behavioral contract and its mental health treatment elements indicated that the school regarded the student as having a disability.[100] Furthermore, the university discriminated against the student based on his disability when they imposed readmission requirements that were not required of other students seeking readmission.[101] OCR also challenged the university's claim that the behavior contract was imposed to ensure the student's success upon readmission, labeling the contract instead as a pretext for disability discrimination.[102] Lastly, OCR stated that a college or university may remove, or deny readmission to, a student with a disability

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[91] *Id.* at 2.

[92] *Id.*

[93] *Id.* at 3.

[94] *Id.*

[95] *Id.*

[96] *Id.* at 3–4.

[97] *Id.* at 4.

[98] *Id.*

[99] *Id.*

[100] *Id.* at 10.

[101] *Id.* at 11.

[102] *Id.*

if it applied a *direct threat-to-others* analysis; Spring Arbor had only stated it believed the student was a threat to himself, but not to others.[103]

OCR's decision against Spring Arbor suggests that, in lieu of the formerly applicable direct threat-to-self-analysis, a "disparate treatment" and "individuated assessment" analysis now applies. The new inquiry requires courts to answer the following question: is the college applying the same standard to similarly situated students with respect to behavior, withdrawal, and readmission?[104] If not, is the unequal treatment the result of an individualized assessment of particular risk factors other than the student's disability?[105] However, Spring Arbor fell short of providing guidance on what terms a college may validly impose as a condition for involuntary withdrawal or readmission, providing only that "institutions cannot require that a student's disability related behavior no longer occur, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications."[106] At best, Spring Arbor merely confirmed that the revised regulations have limited the ability of colleges to remove a student from campus who is a danger only to herself, not to others.

With no "practical and clear guidance"[107] from OCR about the revised federal disability regulations' implications,[108] colleges have no guarantees for how they can use mandatory leaves to safeguard students and still avoid disability claims.[109] In September 2014, the National Association of College and University Attorneys (NACUA) proposed a series of best practices, based on the few self-harm cases OCR had investigated since March 2011's regulatory change.[110] Among other guidelines, NACUA stated that colleges may "resort to involuntary removal in emergency or direct threat situations," noting that OCR had not yet faulted a college for removing a student whom the college showed a good faith belief that a student was in need of immediate medical care or where a reasonable threat assessment determined that there was a significant risk of serious harm that

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[103] *Id.*

[104] Lannon, *supra* note 85.

[105] *Id.*

[106] Webb, *supra* note 89, at 9.

[107] Allie Grasgreen, *Before a Suicide, OCR Again Tells Colleges Not to Remove Self-Threatening Students*, NAT'L ASS'N OF COLL. & UNIV. ATTYS 61 (Jan. 2, 2014), http://www.nacua.org/securedocuments/programs/March2015/01_15_03-1.pdf.

[108] *See* Jill L. Rosenberg et al., *Top Trends and Emerging Issues in Higher Education Discrimination Law*, NAT'L ASS'N OF COLL. & UNIV. ATTYS (Mar. 11, 2015), http://www.nacua.org/securedocuments/programs/March2015/01_15_03-1.pdf.

[109] Lannon, *supra* note 85.

[110] *Id.*

could not be adequately managed.[111] However, an additional, and more definite, principle appears discernable from recent decisions not included in NACUA's review, such as a resolution with Western Michigan University: colleges should not remove students at risk of self-harm except for emergency situations, but they must first "correctly" differentiate a "true" emergency from an extremely increased risk.[112]

In February 2013, a Western Michigan University student suffering from general anxiety and depression filed a complaint with OCR, alleging Title II and Section 504 violations after he was involuntarily withdrawn following his hospitalization for suicidal tendencies.[113] The student had been disciplined for violating the university's student conduct code, and his appeal of that discipline was denied a few months later.[114] Campus police, based on concerns of his peers, entered his residence hall while he was out and found a document titled "Last Will and Testament" and pill bottles.[115] They found and spoke with the student, who told the officers he was fine. However, the following day, the local sheriff arrested the student and involuntarily committed him to a psychiatric hospital.[116] While he was hospitalized, the university involuntarily withdrew the student pursuant to its student code procedures for assisting students with serious mental health concerns.[117] Although the student was discharged, the university waited to readmit until after his private physician, who was out-of-state at the time, provided a letter recommending that he be allowed to return to classes.[118]

The student ultimately won his appeal to return to campus and the university entered into a resolution agreement with OCR.[119] Tragically, less than a month later (several months after his return to campus), the student committed suicide.[120] However, the resolution agreement did not

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[111] *Id.*

[112] *Ensure Uniform Procedures for Students with/without Mental Health Issues*, STUDENT AFFAIRS TODAY (Dec. 22, 2014), http://onlinelibrary.wiley.com/doi/10.1002/say.30020/epdf [hereinafter *Ensure Uniform Procedures*].

[113] *Id.*; Christina Cantero, *Western Michigan University Revises Policy Related to Students Showing Suicidal Tendencies*, MLIVE MEDIA GROUP (Dec. 29, 2013), http://www.mlive.com/news/kalamazoo/index.ssf/2013/12/western_michigan_university_re_15.html.

[114] *Ensure Uniform Procedures*, *supra* note 112.

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

state whether a college has the authority remove a fully suicidal student; the resolution simply stated that colleges must ensure their policies do not treat students with mental health impairments differently than non-disabled students. [121] In light of the circumstances surrounding the Western Michigan University student's removal, which suggested the student was suicidal, the outcome of the case can easily leave colleges wondering whether involuntary removal is now a per se violation of federal disability law.[122]

OCR's most recent decision suggests that the revised federal regulations also remove the popular safe harbor of "conditioned" removals or return. In *R.W. v. Board of Regents of the University System of Georgia*, a Georgia State University ("GSU") student alleged the college discriminated against him because of his mental illness when they removed him from campus housing and set conditional terms for return.[123] In 2013, R.W. visited the student clinic seeking medical testing.[124] During the visit R.W. voluntarily disclosed that he was schizophrenic, and he was immediately ordered to the student counseling center, where he was interrogated about his diagnosis.[125] When he left the center after being told he was free to do so, he was taken into police custody and subjected to an involuntary psychological examination, which found him to be "calm" and "cooperative."[126] The following day he was called to the dean's office and told he would be banned him from his dormitory unless he gave the university access to his medical records and undergo a "mandated risk assessment."[127] Despite R.W.'s cooperation, a month later the dean sent R.W. a letter recommending withdrawal for the remainder of the term.[128]

During the summary judgment hearing, GSU would not point to which specific behaviors deemed R.W. to be a threat.[129] The judge found that the Dean's letter indicated that the conditions were imposed because of his diagnosis and not because he was actually a threat.[130] The judge also

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[121] *Legal Roundup: A Review of this Month's OCR Letters*, DISABILITY COMPLIANCE FOR HIGHER EDUC. 12 (May 2015), http://onlinelibrary.wiley.com/doi/10.1002/dhe.30070/epdf.

[122] Grasgreen, *supra* note 107.

[123] *See* R.W. v. Bd. of Regents of the Univ. Sys. of Ga., 114 F. Supp. 3d 1260 (N.D. Ga. 2015).

[124] *Id.* at 1267.

[125] *Id.*

[126] *Id.* at 1268.

[127] *Id.*

[128] *Id.* at 1269.

[129] *Id.* at 1283–84.

[130] *Id.* at 1283.

pointed out the state's inconsistency in arguing that R.W. posed such a significant threat that he had to be immediately removed from campus housing, yet was allowed to continue attending classes.[131] In its final order, the court ruled that GSU intentionally discriminated against R.W. due to his disability, without evidence that he posed a threat to campus safety, in violation of the ADA and Rehabilitation Act.[132] The order sets precedent as to the minimum circumstances under which a school may or may not mandate a student to undergo psychiatric examination.

D. CONSTITUTIONAL CONSIDERATIONS

In addition to potential violations with federal disability laws, public universities conditioning continued enrollment on mandated assessment and treatment may also violate students' constitutional rights. Educators and students have criticized the overbroad, vague, and confusing standards for student conduct. The principle that students are subject to arbitrary dismissals based on regulations that fail to precisely state what is, or is not, acceptable behavior triggers First Amendment issues.

The First Amendment, in part, protects freedom of expression. Most psychiatric withdrawal policies are not designed to restrict students' freedom of expression; however, overbroad policies potentially restrict expression if university administrators associate mental disorders with the expression of unpopular social or political views. One of the most dangerous misapplications of a policy may be to withdraw "eccentric" students who have not engaged in any behavior dangerous to themselves or others, nor behavior that disrupts normal university activities.[133] Scholar Gary Pavela argues that, by relying on broadly written psychiatric policies, university officials are able to readily remove students in order to assure their needs are met by "therapy" elsewhere.[134]

Courts have generally been unwilling to tolerate the type of abuse feared by Pavela. For example, in *Shamloo v. Mississippi State Board of Trustees*, the court held that "the regulation must not be designed so that

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[131] *Id.* at 1284.

[132] *Id.* at 1290.

[133] GARY PAVELA, THE DISMISSAL OF STUDENTS WITH MENTAL DISORDERS: LEGAL ISSUES, POLICY CONSIDERATIONS, AND ALTERNATIVE RESPONSES 13 (1985) ("The malleable standards found in most psychiatric withdrawal policies could be used to withdraw (and to stigmatize as 'mentally ill') the most thoughtful, sensitive, intelligent, challenging, and socially committed students . . ."); Gary Pavela & Gregory Pavela, *The Ethical and Educational Imperative of Due Process*, 38 J. C. & U. L. 567 (2012); *In re* Sealy, 218 So. 2d 765 (Fla. Dist. Ct. App. 1969).

[134] *Id.*

different officials could attach different meanings to the words in an arbitrary and discriminatory manner."[135] *Shamloo* followed a long line of cases in which the court required public universities to grant "scrupulous protection" to students' First Amendment rights. Perhaps the best known example dates back to 1968, when the *Tinker* court held that some forms of behavior could be symbolic acts protected by the free speech clause of the First Amendment.[136] In the context of psychiatric evaluation and treatment, the Supreme Court has held that "[w]here claims that the State is acting in the best interest of the individual are said to justify reduced procedural and substantive safeguards, this Court's decisions require that they be 'candidly appraised.'"[137] Vague or overbroad standards that could justify the removal of a student who is merely a harmless eccentric, or a student who holds unpopular views—rather than a student who poses a threat to herself or others—could violate the Free Speech clause and would likely not survive judicial scrutiny.

Universities must also accord due process protections to students subject to mandatory mental health withdrawals. Public universities must abide by the Fourteenth Amendment, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[138] The Supreme Court has interpreted the Fourteenth Amendment as giving rise to substantial due process (concerning whether the government has provided adequate reasons for taking away a person's life, liberty, or property) and procedural due process (concerning whether the government has adequately followed procedures in taking away a person's life, liberty, or property).

All procedural due process questions can be broken down into three issues. The first issue is whether there has been a deprivation. Psychological or psychiatric withdrawals, as well as disciplinary removals, implemented via policies offering little to no procedural protection may constitute a deprivation.

Second, there must be a deprivation of life, liberty or property.

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[135] Shamloo v. Mississippi State Board of Trustees, 20 F.2d 516, 523–24 (5th Cir. 1980).

[136] Tinker v. Des Moines School District, 393 U.S. 503, 509 (1968) ("Certainly where there is no finding and no showing that engaging in the forbidden conduct would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,' the prohibition cannot be sustained.").

[137] O'Connor v. Donaldson, 422 U.S. 563, 586 (1975).

[138] U.S. CONST. amend. XIV, §1 (While private schools may not be required by the Fourteenth Amendment to accord due process protections to students, courts can impose comparable procedural requirements through contract theory.).

Pertinent Supreme Court decisions are in conflict or ambiguous.[139] Over the years, courts have broadly construed "liberty" and "property." In 1961, *Dixon* introduced constitutional safeguards into the area of student discipline. The United States Supreme Court acknowledged the case as a "landmark decision." Established in *Wisconsin* in 1971 and extended to the educational context in *Goss* four years later, courts held that persons have a "liberty interest" in their good name and reputation. Courts have also held persons have a "property interest" in certain benefits provided by the state, such as continuing secondary school education. Eventually, courts recognized a property right in continuing higher public education, including graduate education, based upon an entitlement from payment of tuition in accordance with state law. Courts have also held that if the dismissal and its reasons are noted on the students' permanent record, it also arguably infringes on the student's liberty interest if the student must later disclose such information when pursuing other educational and employment opportunities.

Courts have recognized a property interest in continuing higher education[140] based upon the payment of tuition or an implied contract in the college catalogue.[141] Scholars have also argued that the deprivation of "liberty" by the stigma imposed from psychological or psychiatric withdrawal likely invokes due process protection. For example, Gary

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[139] Dixon v. Alabama State Board of Education, 294 F.2d 150, 158 (1961) (stating "[w]e are confident that precedent as well as a most fundamental constitutional principle support our holding that due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct"); Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971) (stating "[w]here a person's *good name, reputation, honor, or integrity* is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential") (emphasis added); Goss v. Lopez, 419 U.S. 565, 574–75 (1975)(stating "[s]chool authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the *students' standing with their fellow pupils and their teachers* as well as interfere with later opportunities for higher education and employment.") (emphasis added); *Goss*, 419 U.S. at 574 (stating "the State is constrained to recognize a student's legitimate entitlement to a *public education as a property interest* which is protected by the Due Process Clause and which may not be taken away for misconduct without adherence to the minimum procedures required by that Clause.") (emphasis added); Harris v. Blake, 798 F.2d 419, 422 (1987) (stating "Colorado has created the basis for a *similar claim of entitlement to an education in its state college system*, which includes the University of Northern Colorado. The legislature has directed that these colleges 'shall be open . . . to all persons resident in this state' upon payment of a reasonable tuition fee.") (emphasis added).

[140] *Goss*, 419 U.S. at 574; Harris v. Blake, 798 F.2d at 422; *see also* Regents of Univ. of Michigan v. Ewing, 474 U.S. 214, 515-16 (1985) (not recognizing disciplinary proceedings).

[141] Steven D. Milam & Rebecca D. Marshall, *Impact of Regents of the University of Michigan v. Ewing on Academic Dismissals from Graduate and Professional Schools*, 13 J. C. & U. L. 355 (1987).

Pavela argues that the stigma associated with psychiatric labeling is intrinsically damaging and dehumanizing; thus, constituting a deprivation of liberty under the courts' definition.[142] Others have laid out arguments that this is a coercive approach and does not allow the student to enjoy due process. It exposes the student to stigmatization, as classmates and families would become aware of the student's problems.[143] Case law has also suggested that, to trigger due process protection, stigma requires publication. In *Bishop v. Wood*, a police officer was charged with misconduct, purportedly based on incorrect information.[144] The Court found that the police department had not infringed upon the officer's liberty interest because the department had not publicly disseminated the information, since they only gave the information orally to the officer in a private conference. However, courts have refused to extend *Bishop* to dismissals in the university setting.

If there is in fact a deprivation of life, liberty, or property, the third issue is what procedures are required. If the government does not follow required procedures, then there is a deprivation of due process. Institutions are most likely to run into legal trouble for failure to provide due process, as it is unclear what procedures are required for a legal psychiatric dismissal. Relevant laws and regulations do not provide specification, nor do OCR letters and settlement resolutions; at most, OCR decisions and rare case law provide hints.[145]

Many colleges have justified removal or conditioned enrollment by framing a student's mental-health-driven behavior as disruptive and in violation of the student conduct code.[146] Colleges have also attempted to avoid liability by categorizing leaves as a disciplinary dismissal for behavioral misconduct, rather than as a medical leave. However, courts have not legitimized the categorization strategy. In *Board of Curators of the University of Missouri v. Horowitz*, the U.S. Supreme Court limited *Goss*'s due process requirements to suspensions and dismissals for misconduct. While ruling that dismissals for academic inadequacy need "far less stringent procedural requirements," the *Horowitz* decision lacked clear guidelines to distinguish between academic and disciplinary matters.

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[142] Pavela, *supra* note133, at 15–19.

[143] Lilley & Kaufman, *supra* note 19, at 773–95.

[144] Bishop v. Wood, 426 U.S. 341, 348 (1976).

[145] Infra Part III.

[146] *See, e.g.*, Barnes v. Zaccari, 669 F.3d 1295, 1301 (11th Cir. 2012).

III. POPULAR ALTERNATIVES (AND THEIR PROBLEMS)

Ultimately, in the absence of thoughtful, cohesive, and pragmatic legislation, case law, and public policy, universities must continue to navigate the currently murky waters between case dicta, federal laws, federal agency decisions, and the myriad of other pressures exerted on student withdrawal and return decisions. Colleges cannot remain idle, as they continue to regularly encounter students at risk for self-harm. Yet even with experts proposing best practices, and colleges reviewing and revising their own policies, OCR continues to hold institutions liable.[147] Moreover, the regulation changes made in 2011 vary among OCR's independent regional offices, making it difficult for schools to understand how the laws are implemented on a national level.[148] The stakes are higher than ever, and so the need to find alternatives to involuntary removals has never been more imperative.

Universities have increasingly adopted certain alternatives to mandatory psychiatric withdrawal. First, institutions have adopted mandatory assessments and treatment (which act as positive conditions to remain on campus). For example, the University of Oregon has adopted a policy requiring, as a condition to remain, mandatory assessments of students exhibiting suicidal behavior.[149] Similarly, Yale University's policy states that the university "reserves the right to require a student to withdraw for medical reasons," if a medical problem is deemed serious or if a student becomes a danger to herself or others, as determined by the dean of the college, the director of Yale health, or the chief of the mental health and counseling department.[150]

These policies, however, have not been accepted without some resistance from students. In a 2014 *Huffington Post* article, Francis Chan—then a Yale junior—wrote about her own struggle with Yale's treatment

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[147] *See* Amir v. St. Louis Univ., 184 F.3d. at 1017.

[148] *See* Cantero, *supra* note 113.

[149] Higher Education Mental Health Alliance Project, *Balancing Safety and Support on Campus: A Guide for Campus Teams*, JED FOUND. (2012), http://www.jedfoundation.org/campus_teams_guide.pdf [hereinafter *Balancing Safety and Support on Campus*]; Scott L. Warner & Linda Schutjer, *Threading the Needle: Best Practices in Dealing with Distressed and Dangerous Students*, NATIONAL ASS'N OF COLL. AND UNIV. ATTORNEYS MID-WINTER CONFERENCE (2009).

[150] *Leave of Absence, Withdrawal, and Reinstatement*, YALE COLL. PROGRAMS OF STUDY, http://catalog.yale.edu/ycps/academic-regulations/leave-of-absence-withdrawal-reinstatement/ (last visited Apr. 23, 2016).

policy when university health staff believed she had an eating disorder.[151] Yale told Chan—who was 5-foot 2-inches tall and weighed 92 pounds at the time—that she would be forced into medical leave if she did not attend weekly weigh-ins to monitor her low body mass index, despite her repeated claims that her low weight was genetic, rather than an eating disorder.[152] Chan spent five months fighting university officials before they relented and admitted they had made a mistake in believing she had an eating disorder.[153]

Schools have argued that mandated assessments prevent self-harm in students who might not otherwise seek out or accept treatment.[154] In theory, mandated conditions also allow students to remain in school by helping to manage stressors and improve academic performance. In reality, however, schools have used mandated conditions to encourage a reluctant student to take a voluntary leave.

OCR resolutions have also set parameters on leave and return policies that require mandatory assessments. For example, while a university does not need to rely on the opinion of a mental health professional, the judgments of *non*-healthcare professionals may be considered only if they are fair, stereotype-free, and based on reasonably reliable and objective sources.[155]

Second, many universities have begun to impose conditions to return. Even in instances of voluntary withdrawal, many institutions only allow students to return if they fulfill a standard set of requirement, such as taking courses, finding part- or full-time employment, or seeking psychiatric care. Additionally, many policies require that students to prove they were *constructive* while on leave—a vague requirement that merits clarification specific to individual circumstances.[156] Many universities' policies also require coursework and counseling for readmission.[157] Universities have

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[151] Francis Chan, *Yale University Thinks I Have an Eating Disorder*, HUFFINGTON POST (Mar. 7, 2014).

[152] *Id.*; *Student Says Yale Pressured Her to Gain Weight*, ABC NEWS (Apr. 8, 2014), http://abcnews.go.com/GMA/video/yale-student-frances-chan-school-pressured-gain-weight-23235166.

[153] *Student Says Yale Pressured Her to Gain Weight*, *supra* note 152.

[154] *Balancing Safety and Support on Campus*, *supra* note 149.

[155] Gary D. Jackson, *OCR Letter: Spring Arbor University* (June 19, 1991), http://www.bazelon.org/LinkClick.aspx?fileticket=prSYF7NSqsg%3D&tabid=313.

[156] Steven S. Lee & Dev A. Patel, *Getting Better: Students Who Take Time Off for Mental Health Concerns Face Challenges Throughout the Healing Process at Home*, HARVARD CRIMSON (Apr. 29, 2014).

[157] *See, e.g.*, Zaynah Alam, *Medical Leave Policies for Mental Health Criticized at Duke and Peer Schools*, THE CHRONICLE (Apr. 14, 2014).

also imposed required documents and positive committee decisions.[158] Conditions to return, however, constitute blanket policies, with terms that do not correspond to a student's particular circumstances and fitness for enrollment.

A third alternative commonly adopted by universities today is the use of behavioral contracts. Some intuitions set conditions for suicidal students on campus through housing system contracts—commonly referred to as "behavioral contracts"—rather than through mental health removal proceedings.[159] Behavioral contracts are distinguishable from other conditions to remain or return in that they usually set negative conditions (that is, behavior a student cannot repeat), rather than positive conditions (that is, behavior that a student must exhibit).

Unfortunately, the enforcement of policy through housing contracts can effectively shroud the existence of involuntary leave policies at a college or school. It may also widen the opportunity for student misunderstanding of involuntary leave policies.[160] In a recent article in the Daily Bruin, a UCLA student described how her search for the school's mental health withdrawal policy led her, unexpectedly, to a confusing housing policy instead:

> "While [UCLA] told me that the university does not employ involuntary psychiatric withdrawal from the university, I found a policy listed on UCLA Residential Life's website that specified suicidal ideation or attempts could result in eviction from housing. Evicting a student from housing essentially amounts to withdrawing them from the university. I wrote about that confusing mix of policies in the column I had been reporting for.
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> After that column published, [. . .] the director of Counseling and Psychological Services, and [. . .] the assistant vice chancellor for student

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[158] *Id.* To return to Duke University, for example, students on medical leave must not only complete two semesters of leave, but they must submit a readmission application that includes a $30 application fee, personal statements regarding their time on leave, medical treatment details and recommendation letters from employers and healthcare providers. Decisions are made by a committee that consists of an academic dean, the director of the office of student returns, and other chosen representatives from Duke Health or the Academic Resource Center. An article in the Duke Chronicle last year referred to this mental leave policy as "reflexive," as opposed to "supportive."

[159] Behavioral contracts were also at issue in the Spring Arbor case discussed above. *See also* Christine Pesetski et al., *Veteran Transfer Students and Concealed Weapons on Campus*, 17 J. OF CASES IN EDUC. LEADERSHIP 33, 45–56 (2014).

[160] Natalia Delgadillo, *UCLA Should Be Upfront, Create Uniform Policy on Mental Health Issues*, DAILY BRUIN (Nov. 10, 2014); Katie Shepherd, *UCLA Residential Life Alters Policy Language to Accommodate Mental Health Issues*, DAILY BRUIN (Nov. 6, 2014).

> development, wrote a submission to the Daily Bruin in which they said I'd misunderstood the 'the intent and the spirit' of the housing policy, and that the policy was 'primarily' used in instances when the student posed a risk of danger to others, not to themselves."[161]

Following the article's publication, UCLA Residential Life changed its policy regarding dismissible offenses due to "inconsistencies between UCLA's policy and practices."[162]

Fourth, universities have increasingly turned to the use of disciplinary leaves. Schools are able to discipline students for disorderly conduct—including conduct caused by a student's mental health condition—so long as the code of conduct is applied to all students; the ADA does not consider such disciplinary action to be discriminatory. Universities have even punished students who actively sought out help for their mental health issues, rather than encouraging such behavior, such as in *Nott v. George Washington University* (D.C. 2006).[163]

Many students—especially students who do not know where to turn to support, students who choose not to visit their school's counseling center, and students who attend a school with residentially-based mental health programming and support—find their residential community to be a safe space to talk about mental health issues. As illustrated in the case study below,[164] however, students may not understand that such methods of seeking help may trigger a disciplinary policy.

Most often, forced leave following a student's confession is the result of a blanket mandatory withdrawal policy. The state of Virginia acknowledged that this was the case in *Nott v. George Washington University*.[165] Colleges and universities have begun to acknowledge that psychiatric problems, let alone individual assessments, were not considered when drafting their disciplinary policies.[166] Most legal scholars agree that

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[161] *Id.*

[162] Katie Shepherd, *UCLA Residential Life Alters Policy Language to Accommodate Mental Health Issues*, DAILY BRUIN (Nov. 6, 2014), http://dailybruin.com/2014/11/06/orl-alters-policy-language-to-accomodate-mental-health-issues/.

[163] Jason Huebinger, "Progression" Since Charles Whitman: Student Mental Health Policies in the 21st Century, 34 J. C. & U. L. 695, 702–14 (2008).

[164] Natalie Delgadillo, *Involuntary Withdrawal Policies Must Be Accessible to Students*, DAILY BRUIN (Oct. 6, 2014).

[165] Lilley & Kaufman, *supra* note 19, at 787–88; Alexa Millinger, *Virginia Congress Passes Suicide Law, Lobbyist Cite Nott, GW*, GW HATCHET (2007); Pena & Manguno-Mire, *supra* note 3, at 533.

[166] *See generally* Gary Pavela, *The Dismissal of Students Issues; Policy Considerations; and Alternative Responses*, C. ADMIN. PUBL'NS (1985).

mandatory withdrawals of students should involve an individualized assessment of the student's circumstances, allow both the university and student to voice their positions, and involve qualified experts be involved.[167]

Other states have since followed in the footsteps of Virginia. The New Jersey Office of the Public Advocate issued a report in 2009 that analyzed involuntary dismissal policies and recommended a "rights-friendly" approach.[168] Schools are similarly beginning to transition away from the adversarial approach; in doing so, these institutions (such as Yale and Cornell[169]) are stepping away from a disciplinary process that, by definition, moralizes and stigmatizes mental health issues. OCR has also advised colleges that cases involving suicidal students should include individualized assessments in order to comply with federal civil rights laws.[170]

There is less of a consensus among schools on whether suicidal threats or ideation should be managed through mental health staff, medical policies, or disciplinary policies. Like automatic dismissal policies generally, automatic dismissals for suicidal students can be driven by college administrators' fears of liability, and yet be framed as punishment for misconduct. For example, rather than establishing mandatory medical withdrawal policies, the University of Illinois treats suicide threats as threats of violence, which can be sanctioned through the campus disciplinary system after some due process.[171]

The University of Illinois policy is grounded on the philosophical premise that students have no right to threaten or inflict violence, including violence against themselves.[172] Dr. Paul Joffe, who implemented the formal suicide prevention program at the University of Illinois at Urbana-Champagne, has also put forth a "control theory" that is often cited in the

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[167] Pena & Manguno-Mire, *supra* note 3, at 533.

[168] *College Students in Crisis: Preventing Campus Suicides and Protecting Civil Rights*, N. J. DEPT. OF THE PUBLIC ADVOCATE (2009), http://dspace.njstatelib.org:8080/xmlui/bitstream/handle/10929/21921/c6972009.pdf?sequence=1&isAllowed=y.

[169] *See, e.g., Counseling & Psychological Services (CAPS)*, GANNETT HEALTH SERVS., https://www.gannett.cornell.edu/services/counseling/caps/ (last visited Apr. 23, 2016) (stating that Cornell offers same-day triage and emergency care program); *see generally* Harry S. Rockland-Miller & Gregory T. Eells, *The Implementation of Mental Health Clinical Triage Systems in University Health Services*, J. C. STUDENT PSYCHOTHERAPY 20 (2006); *see also* Matthew S. Boone & Gregory T. Eells, *Reaching Students Who Won't Walk In; Innovative Outreach Programs Offer Options*, NASPA: LEADERSHIP EXCHANGE (2008).

[170] *See, e.g.*, Lannon, *supra* note 85; Sanghavi, *supra* note 86, at 6.

[171] Paul Joffe, *An Empirically Supported Program to Prevent Suicide in a College Student Population*, 38 SUICIDE & LIFE-THREATENING BEHAVIOR 87, 92–93 (2008).

[172] *Id.* at 92.

literature.[173] Joffe defends the imposition of strict, mandatory conditions in conjunction with the threat of mandatory withdrawal by the "surprising number of students [who] emphatically denied"[174] that they ever made a suicide threat or attempt and refused to accept referrals; he further argues that "[g]iven the program's evolving perspective that suicidal behavior is an act of control rather than one of desperation, it was assumed that suicidal students would have problems with power and control. The power struggle with students, once avoided, was seen as an opportunity."[175] The University of Illinois policy has been extensively studied in the literature. Overall, studies show that the program has successfully reduced the rate of student suicide.[176] Additionally, no student under the policy has ever chosen to withdraw from school to avoid mandated treatment.

However, mandated treatment is not always effective when the student has no input in a plan for remaining on, or returning to, campus. Variations of the University of Illinois' systemic, campus-wide approach have been scrutinized at other universities, including Princeton University. Princeton's current policy states that a student will be placed on involuntary leave if she is "unable or unwilling to carry out substantial self-care obligations, or presents a substantial risk of self-harm or harm to others, and the student declines to voluntarily withdraw . . ."[177] In 2012, the Bazelon Center helped a Princeton student file a lawsuit pro se against the university, alleging that he was coerced to withdraw from the school after attempting to commit suicide in his dorm room. The student argued that Princeton's efforts to remove the student from campus violated the Americans with Disabilities Act.[178]

IV. EARLY INTERVENTION AS AN ALTERNATIVE

The court decisions and legislative changes discussed above suggest that postsecondary institutions should recognize student mental health, not

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[173] *See generally id.*

[174] *Id.* at 89.

[175] *Id.* at 92.

[176] *See, e.g.*, Gary Pavela, *Should Colleges Withdraw Students Who Threaten or Attempt Suicide*, 54 J. AM. C. HEALTH 367, 369–70 (2007); Valerie K. Cohen, *Keeping Students Alive: Mandating On-Campus Counseling Saves Suicidal College Students' Lives and Limits Liability*, 75 FORDHAM L. REV. 3081, 3111 (2007).

[177] *Taking Time Away from Princeton*, OFFICE OF THE DEAN OF THE COLLEGE, https://odoc.princeton.edu/advising/taking-time-away-princeton (last visited Apr. 24, 2016).

[178] Rachel Aviv, *Should Suicidal Students be Forced to Leave Campus?*, NEW YORKER (Dec. 1, 2014), http://www.newyorker.com/news/news-desk/suicidal-students-allowed-campus.

merely as a trigger of duties and liabilities, but, more importantly, as a fundamental policy challenge that can—and should—affect institutional values and strategies from the ground-up.[179] The *Mahoney* court recognized that imposing a duty would be a disincentive for colleges to be proactive with students at risk of self-harm.[180] The court's recognition resonated in the changes to Title II of the ADA and their implications that institutions of higher education should not respond with removals, but with care.

Students, practitioners, and college officials have also acknowledged that, like campus psychiatric removal policies, campuses' mental health *systems* on the nation's campuses are also flawed.[181] The issues with campus mental health systems parallel those of the United States' mental health system: insufficient resources to comprehensively provide services and support.[182] Understaffed student mental health clinics are forced to prioritize service delivery, forcing students whose conditions are deemed less severe onto long wait lists or limiting their number of treatment sessions.[183] Most campus mental health care efforts today focus on providing care for students whose untreated conditions have developed into serious disorders.[184] On the contrary, the focus should be on providing early care—before the onset of a crisis.

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[179] *Supra* Part III.

[180] Caitlin Cleary & Dan Majors, *Suit Says Allegheny College Remiss in Student's Suicide*, PITTSBURGH POST GAZETTE (Aug. 20, 2006), http://www.post-gazette.com/frontpage/2006/08/20/Suit-says-Allegheny-College-remiss-in-student-s-suicide/stories/200608200154.

[181] Darrell Steinberg, *Time to Adjust California's Mental Health Services Act*, SACRAMENTO BEE (Sept. 15, 2015), http://www.sacbee.com/opinion/op-ed/soapbox/article36452658.html; Kimberly Alters, *What a Successful University Mental Health Program Looks Like*, THE WEEK (Oct. 15, 2015), http://theweek.com/articles/580547/what-successful-university-mental-health-program-looks-like; John Hicks & Ovetta Williams, *Hundreds Attend Md. Rally for Mental-Health Drug-Treatment Funding*, WASH. POST (Feb. 25, 2016), https://www.washingtonpost.com/local/md-politics/hundreds-attend-md-rally-for-mental-health-drug-treatment-funding/2016/02/25/60831b56-dbba-11e5-925f-1d10062cc82d_story.html.

[182] *See* THE VIRGINIA TECH MASSACRE: STRATEGIES AND CHALLENGES FOR IMPROVING MENTAL HEALTH POLICY ON CAMPUS AND BEYOND (Aradhana Bela Sood & Robert Cohen, Eds. 2015).

[183] Branden Largent, *A Waitlist for Mental Health*, MINN. DAILY (Oct. 23, 2012), http://www.mndaily.com/2012/10/23/waitlist-mental-health; Marney White, *To Prevent Suicide in College Mark Mental Health Screening Mandatory*, WASH. POST (Dec. 21, 2015), https://www.washingtonpost.com/news/grade-point/wp/2015/12/21/to-prevent-suicide-in-college-make-mental-health-screening-mandatory/.

[184] Jeremy Davis, *Are Our Colleges Flunking When it Comes to Mental Health?*, HUFFINGTON POST (Mar. 7, 2016), http://www.huffingtonpost.com/kicker/are-our-colleges-flunking_b_9385140.html; Mark Bliss, *College Students, Campuses Cope with Mental Illness*, SOUTHEAST MISSOURIAN (Mar. 2, 2016), http://www.semissourian.com/story/2282416.html.

While reactionary treatment, or "tertiary" care, is a necessary component of a comprehensive approach to mental health treatment, it is widely recognized that prevention and early intervention models ("PEI") have the greatest impact on mental health promotion.[185] Early prevention—including reducing risk factors or stressors, building protective factors and skills, and increasing support—has the greatest impact on cognitive, social, and emotional wellbeing.[186] Early intervention—which is directed toward individuals for whom a relatively short, low-intensity intervention is appropriate—measurably improves mental health issues and avoids the need for more extensive treatment.[187]

In fact, early intervention and prevention is becoming the new norm. The U.S. Preventative Task Force has recommended that all American adults be screened for depression as part of their normal health-care routine.[188] The new recommendations are an acknowledgement of the devastating toll mental illness is taking nationwide. Based on the amount of clinical evidence supporting its findings, the Task Force gave the recommendations a rating sufficient for providing coverage for the screenings under the Affordable Care Act.[189]

While everyone can agree that prevention and early intervention is important, there has been an ongoing debate about the desirability and feasibility of implementing PEI programs in the university setting. Objections have argued that implementing PEI efforts will reduce the already limited resources devoted to tertiary mental health care.[190] It is true

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[185] *See* TOM CALLALY, EARLY INTERVENTION FOR YOUNG PEOPLE WITH MENTAL ILLNESS, IN EARLY INTERVENTION IN PSYCHIATRY: EI OF NEARLY EVERYTHING FOR BETTER MENTAL HEALTH, 68–79 (Peter Byrne & Alan Rosen eds., 1st ed. 2014).

[186] *See* Nicholas Ialongo, *Center for Prevention and Early Intervention*, JOHNS HOPKINS BLOOMBERG SCH. PUB. HEALTH 212–216, http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-prevention-and-early-intervention/Publications/Center_Overview.pdf (last visited Apr. 22, 2016) (stating that successful prevention and early intervention efforts in school settings could not only reduce the occurrence of such mental and behavioral disorders, but the associated impairments in educational and occupational attainment as well).

[187] *See* Callaly *supra* note 185; *see also* Vinod H. Srihari, Jai Shah, & Matcheri S. Keshavan, *Is Early Intervention for Psychosis Feasible and Effective?*, NAT'L CTR. FOR BIOTECHNOLOGY INFO., U.S. NAT'L LIBR. OF MEDICINE (July 21, 2012), http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3431510 (examining whether PEI is feasible and effective for psychosis); Ialongo, *supra* note 186.

[188] US Preventive Services Task Force (USPSTF), *Screening for Depression in Adults: US Preventive Services Task Force Recommendation Statement*, 315 JAMA 380-87 (2016).

[189] Id.

[190] *Prevention and Early Intervention in Mental Health – Prevention and Early Intervention Policy*, MENTAL HEALTH AM., http://www.mentalhealthamerica.net/issues/prevention-and-early-

that "whatever strategies we come up with must also take into account the fact that many educational institutions, facing severe budget cuts, are struggling to cater to students who are *not* troubled, let alone those who are."[191] These objections ignore that treating conditions in their beginning phases, rather than waiting until they become chronic, makes sense from a cost-efficiency standpoint; the direct and indirect costs of untreated, chronic mental illness are global healthcare's greatest economic burden. [192] Moreover, the expenditures in screening programs would be adequately justified merely by the number of students who identify with depression or anxiety and who seek help while in school.[193] Further, an appropriately staffed counseling center will increase, not reduce, an institution's ability to "sustain tuition revenues and contain recruitment costs."[194] Others have argued that individuals with chronic, severe mental illness are the most important population to target.[195]

The reluctance to adopt PEI programs constitutes a willingness to ignore the value of mental health education and awareness. Usually, students are required to attend mandatory alcohol awareness programs, workshops on sexual assault, and workshops on campus safety.[196] There is no analogue, however, for mental health. Ignoring mental health education and awareness effectively promotes a campus culture that stigmatizes mental health conditions.

Universities are offering optional mental health screening programs and referring students to treatment when warranted.[197] These programs should be extended to mandated annual screenings. In addition to the objections noted above about economic feasibility and clinically optimum

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intervention-mental-health-prevention-and-early-intervention-policy (last visited Mar. 24, 2016).

[191] Lucinda Roy, *Insights Gleaned from the Tragedy at Virginia Tech*, 17 WASH. & LEE J. CIV. RTS. & SOC, JUST. 93, 100 (2010).

[192] Thomas R. Insel, *Assessing the Economic Costs of Serious Mental Illness*, 165 AM. J. PSYCHIATRY 663, 663–65 (2008).

[193] *See* Daniel Eisenberg et al., *Stigma and Help Seeking for Mental Health Among College Students*, 66 MEDICAL CARE RESEARCH & REV. 522, 534–541 (2009).

[194] John B. Bishop, *The Counseling Center: An Undervalued Resource in Recruitment, Retention, and Risk Management*, 26 J. C. STUDENT PSYCHOTHERAPY 253 (2012).

[195] Howard H. Goldman & Gerald N. Grob, *Defining 'Mental Illness' in Mental Health Policy*, 25 HEALTH AFFAIRS 737 (2006).

[196] Nancy P. Barnett & Jennifer P. Read, *Mandatory Alcohol Intervention for Alcohol-Abusing College Students: A Systematic Review*, 29 J. SUBSTANCE ABUSE TREATMENT 147, 149–150 (2005).

[197] Michelle A. Scott et al., *School-Based Screening to Identify At-Risk Students Not Already Known to School Professionals: The Columbia Suicide Screen*, 99 AM. J. PUB. HEALTH 334, 334–39 (2009).

health outcomes, some may argue that mandatory evaluations and treatment violate student privacy and are paternalistic.[198] However, few people similarly question the ethics of regularly screening patients for physical conditions. Each year, hundreds of thousands of colleges require all incoming students to comply with specific health immunizations and pass medical screenings prior to enrollment.[199] Furthermore, students arrested or admitted to the ER for alcohol-related offenses are required to participate in substance abuse counseling.[200]

There are effective ways to screen and identify students who are at-risk of self-harm due to underlying mental health condition; mandatory, early screening is a tangible solution. The American Foundation for Suicide Prevention's ("AFSP") Interactive Screening Program ("ISP") already provides a mechanism to reach out to students who are at risk for depression, suicide, and related problems.[201] ISP proactively engaging those in need supports student mental health and helps create a campus culture that recognizes that stress and depression are common and treatable problems. ISP is currently utilized in the University of California system, where it is funded by California's voter-approved Mental Health Services Act.[202]

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[198] Paul S. Applebaum, *The Ethical Dilemmas of College Student Suicide*, COLUMBIA UNIV., 4 (Apr. 22, 2005), http://www.columbia.edu/itc/hs/medical/bioethics/nyspi/material/Applebaum.EthicalDilemmas4.22.05Color.pdf.

[199] Kent Snyder, *Mandatory Mental-Health Screening of Children*, ASS'N AM. PHYSICIANS & SURGEONS, INC. (Sept. 7, 2004), http://www.aapsonline.org/confiden/mhspaul.htm.

[200] SPENCER H. TURNER & JANET L. HURLEY, THE HISTORY AND PRACTICE OF COLLEGE HEALTH 146–48 (The University Press of Kentucky, 2002); Barnett & Read, *supra* note 196.

[201] *Interactive Screening Program*, SUICIDE PREVENTION RESOURCE CENTER, http://www.sprc.org/bpr/section-iii/interactive-screening-program (last visited Apr. 23, 2016).

> ISP starts with a brief, confidential online Stress & Depression Questionnaire that students are invited to complete. The questionnaire incorporates the PHQ-9, a 9-item standardized depression screening scale, as well as questions about suicidal ideation and attempts, problems related to depression such as anger and anxiety, alcohol and drug abuse, and eating disorder symptoms. The questionnaire contains 35 questions and normally takes less than 10 minutes to complete. To fully protect their anonymity, students identify themselves only with a self-assigned user ID. Each student who submits the questionnaire receives a personal written response from a campus counselor, offering options for follow-up evaluation and treatment. Students may "dialogue" with the counselor online while maintaining their anonymity, schedule a telephone or in-person meeting, or request a referral for treatment or support services. Each college or university that implements the ISP has its own customized, secure website that is fully managed by AFSP. The website houses the Stress & Depression Questionnaire and supports all online exchanges between students and counselors.

[202] Claudia Luther, *New Online Tool to Help Screen for Students at Risk of Suicide*, UCLA NEWSROOM (Sept. 27, 2012), http://newsroom.ucla.edu/stories/suicide-prevention-hotline-launches-239127.

If caught early, subclinical mental disorders can respond readily to treatment. From a cost-effectiveness standpoint, it makes more sense to treat conditions in the beginning phases than to wait until a problem has worsened and potentially become chronic. To responsibly address mental health on campus, we must adopt a public health approach focused on early identification and treatment. At its most aggressive form, a public health approach would mandate screening programs and treatment for those students identified as at-risk of developing a serious mental disorder.

Most people understand that early intervention prevents the onset of a more serious condition. The same is true for mental health conditions. Ignoring subclinical symptoms of a mental disorder only facilitates a more serious and chronic problem to develop later on. A problem that, at its most extreme, might force a student to withdraw from school, or worse. Early mental health screening on college campuses is ultimately a tangible tool in the fight to prevent student self-harm—and one that universities can simultaneously leverage to avoid liability.

Despite the end of *in loco parentis*, and despite the conflicting judicial precedent of the current era, universities will continue to fill a unique role in students' lives. The policies of even the most well-intentioned universities have produced the unintended consequences of deterring students from seeking help, exposing institutions to new legal perils, and preventing the community as a whole from learning of, and appropriately responding to, the struggles of mentally ill students. As the enrollment of students with mental health problems continues to increase, so will these consequences.

Going forward, college and university administrations must form leave and return policies that remove mentally ill students' stigmatization, fear, loss of privacy, and loss of freedom, and instead encourage their treatment and academic success. A reluctance to adopt mandated, early mental-health screening programs suggests that universities are too concerned with distinguishing institutions of higher education from treatment centers. However, there is a strong need for colleges and universities to consistently and clearly communicate to students about the importance of caring for one's mental health, and how their leave policies—whether involuntary or voluntary—can contribute to students' success. Policies that convey messages of mindfulness, resilience, and self-care—perhaps best reflected in early screening policies—can only reduce the stigma of mental illness and strengthen a supportive campus culture.