College Administrators as Case Managers: Challenges of Managing Risk of Violence Related to College Student Mental Illness

By
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Abstract

Managing threats of campus violence is a high priority for college and university administrators. Managing these threats takes on a greater level of complexity when student mental health issues are involved. This article examines the legal implications for institutions of higher education when managing students who pose foreseeable risk of harm to themselves or others. It also outlines recommendations for balancing the best interests for the individual with those of the community and the institution, including multidisciplinary response teams and case management, efficient and resourced campus counseling centers, student-parent-institution partnerships, and public health programs.

Campus violence remains a critical issue for college administrators. Suicide is now the second most common cause of death of college students (Turner & Keller, 2011), and violence against others on college campuses has increased in lethality (Keller, Hughes, & Hertz, 2011). Acts of violence related to mental health issues are of special concern as an increasing number of students come to college with pre-existing mental illness, and a greater number of these students report more severe issues (Guthman, Iocin, & Konstas, 2010). Mental health issues are not only prevalent, but persistent. Of students who reported mental health problems upon entering college, 60% had at least one or more mental health problems two years later (Zivin, Eisenberg, Gollust, & Golberstein, 2009).

Although most students with mental illnesses will never commit acts of violence (Guthman et al., 2010), administrators have a duty to warn of any resultant threatening behaviors. While college administrators work to prevent such incidents, predicting and preventing violence is not always possible. In the recent murder-suicide committed by a University of Maryland College Park graduate student, university officials were unaware of the student’s mental health issues as he never sought assistance from university counselors and his concerning behaviors were never reported by his roommates to university officials (Dominelli, Nancoo-Russell, & Shah, 2013). In the 2012 Aurora, Colorado movie theater shootings, the University of Colorado Denver had knowledge of the shooter’s potential threat to campus, but this information was not communicated beyond campus administrators, and he was no longer under the care of university counselors after he withdrew from the institution (Schererer, 2012). In both cases, information existed that may have helped to prevent the incidents that occurred;

1 This paper should be cited as Woods, K., & Janosik, S. M. (2013). College administrators as case managers: Challenges of managing risk of violence related to college student mental illness. URMIA Journal, 2013, 77-86.

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however, the information was never reported to those who could intervene. College administrators are currently required to act when threats are reasonably foreseeable. These incidents raise questions about the management of concerning student behaviors and the capacity of college administrators to effectively act as case managers providing ongoing care to potentially threatening students in the college community, particularly as the need for mental health services has outpaced the growth and resourcing of counseling centers on campuses. The purpose of this paper is to examine the legal implications of managing students who pose foreseeable risk and offer recommendations for balancing the best interests for the individual with those of the community and the institution.

### Challenges and Legal Implications

College and university administrators face growing concerns about potentially threatening behaviors associated with student mental health issues. Equally challenging is the emergence of litigation related to institutional action and inaction when addressing these issues. Students have claimed disability discrimination under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, breach of contract, and violation of the Fair Housing Amendments Act against institutions upon receiving mandated withdrawals or leaves of absence from school (*Jane Doe v. Hunter College*, 2006; *Nott v. George Washington University*, 2006). On the other hand, plaintiffs have also claimed gross negligence and wrongful death against institutions, suggesting a duty to prevent student self-harm and related acts of violence (*Jain v. State*, 2000; *Schieszler v. Ferrum College*, 2002; *Shin v. Massachusetts Institute of Technology*, 2005). These decisions complicate college administrators’ responses. Removing a potentially threatening student can be aggressive to the point of violating the individual’s rights, while attempting to manage care for that student’s mental health to prevent harm reinforces institutional duty to care and liability for negligence should that student commit harmful behaviors under institutional care.

### Duty and Negligence

Despite the increase in litigation of cases dealing with student suicide, suicidal ideation, and violence, Peter Lake argues that the “legal guidance” available to help college and university administrators make reasonable decisions is greatly lacking (Lake, 2008, p. 254). Until recently, courts generally in favor of the defendant institutions under the premise of sovereign immunity (Sokolow et al., 2008). In the case of suicide or self-harm, this stance was supported by the definition of such action uncontrollable and unforeseeable to college and university administrators (Wolnick, 2007). These opinions have shifted, and as increasing numbers of college students seek assistance for mental health issues — whether voluntarily or involuntarily — the relationship between institutions and students is being redefined. Institutional duty to prevent foreseeable harm has been established in both *Schieszler* and *Shin* (*Schieszler v. Ferrum College*, 2002; *Shin v. Massachusetts Institute of Technology*, 2005). While the theory of special relationships as described in Section 314A of the Restatement (second) of Torts applies directly to landlord-tenant and caregiver relationships, the court found that the definition was flexible enough to include colleges and universities when the relationship in question is an established service expectation, such as counseling services, and when foreseeability of harm is imminent (Sokolow, et al., 2008). These conditions were met in both cases as affirmed by the court.
College Administrators as Case Managers

(Schieszler v. Ferrum College, 2002; Shin v. Massachusetts Institute of Technology, 2005). In both cases, college administrators and counselors were involved in managing care for the students’ mental health concerns. In Shin particularly, lack of parental notification about the student’s potentially suicidal behavior was found to be the determinant factor in administrators’ failure to warn, establishing that using the Family Educational Rights and Privacy Act (FERPA) to defend lack of notification is indefensible in cases of such threats (Sokolow, et al., 2008).

Civil Rights and Due Process

An increase of claims and reports to the Office of Civil Rights (OCR) of disability discrimination, breach of contract, and violation of the Fair Housing Amendments Act against institutions by students who were dismissed, temporarily or permanently, from colleges and universities or their on-campus residence halls (Lee & Abbey, 2008; Wei, 2008). A growing number of administrators are creating mandatory withdrawal or leave of absence policies, which, if used without proper grounds as suggested by the settlements in Nott and Doe cases, can be found to violate individual rights (Lee & Abbey, 2008; Nott v. George Washington University, 2006; Jane Doe v. Hunter College, 2004). Both the ADA and Section 504 of the Rehabilitation Act place the burden of proof of documented disability upon the person with the disability, not the institution. Once documented, institutions are required to allow full participation from “otherwise qualified” individuals and cannot exclude them based on their disability (Lee & Abbey, 2008). Disability laws do not compel an institution to alter its programs or standards or accept an “undue burden” to accommodate a student with disabilities (Dunkle, Silverstein, & Warner, 2008). In addition, a student who can be defined as a “direct threat” – one who, according to the OCR, “poses a significant risk to the health and safety of the student or others [with] a high probability of substantial harm and not just a slightly increased, speculative, or remote risk” – is not considered as a qualified individual under the ADA or the Rehabilitation Act (OCR letter to Guilford College, cited in Dunkle, et al., 2008, p. 612). “Direct threat” can be challenging to prove, as an individualized assessment of the student by qualified professionals must be completed to establish a sufficient claim (“Perform Threat Assessment,” 2010). Also, administrators must consider the nature, duration, and severity of the threat and whether or not reasonable accommodations can be made to mitigate or remove the threat before removing the student (Lee & Abbey, 2008).

Counseling Centers

The 2010 National Survey of Counseling Center Directors reveals some concerning perceptions about the ability of college counseling centers to provide the type of managed care administrators rely on when responding to students with the potential to harm. While the number of students seeking services for severe psychological issues increased from 16% in 2000 to 44% in 2010, counseling centers saw little relative increase in their staffing and services (Eiser, 2011; Watkins, Hunt, & Eisenberg, 2011). Sixty-four percent of directors surveyed reported staff burnout and shortages, particularly at peak times of need, as major issues affecting services (Watkins, et al., 2011). Seventy-six percent reported reducing the number of visits for non-crisis patients to deal with the overall larger demand and the more time-consuming needs of clients with serious issues (Eiser, 2011). The International Association of Counseling Services Standards recommends a ratio of one counselor to every 1500 students on campus (Bonnie,
2011). Most public institutions fall far short of this figure, and large private schools face the same challenge (Bonnie, 2011). Counseling centers which previously primarily provided short-term care for transitional issues are more frequently providing long-term care to more vulnerable populations of students who are less equipped to deal with failure, emotional stress, and ambiguity than earlier generations and those who come to college already prescribed psychiatric mediation that needs to be administered by professionals (Schwartz & Kay, 2009). Response to increased service demands includes changes to service delivery, such as use of group sessions and briefer therapies and the employment of more interns and social workers, adjustments to intake and scheduling to increase efficiency and target specific concerns, and partnerships with extra-institutional agencies (Bishop, 2006; Schwartz & Kay, 2009; Mowbray, Megivern, Mandiberg, Strauss, Stein, Collins, Kopels, Curlin, & Lett, 2006). The special relationship defined between the institution and the student that requires duty to care and prevent foreseeable harm is not the only motivation for college clinicians to be concerned about student mental wellness; the ethical concerns that arise when services cannot be effectively and efficiently delivered strain clinicians further (McCraw, 2011). College counseling center clinicians also deal with an increasingly complex set of demands from a variety of stakeholders – administrators who rely on the privileged information they discover, parents who demand information about their students, media and society that questions the ethics of protecting individual rights at the potential expense of public safety, and the student-client’s best interests (Girard, Schwartz, Backus, Barreira, Eichler, Goldsmith, Miner, Notman, Reich, & Siggins, 2012). While both the American Psychological Association (APA) and the American Counseling Association (ACA) allow for reasoned flexibility in ethical confidentiality (Bishop, 2006), balancing the role of agent of the institution with confidant to the client is increasingly stressful to clinicians in an increasingly litigious environment (Girard, et al., 2012). College counseling centers that are not equipped to handle the volume and severity of issues students bring present a serious source of liability as college administrators cannot reasonably claim that mandating such services fulfills the duty to care when a student presents foreseeable risk.

Case Management

One way college administrators have met the challenge of relieving the burden on counseling centers and increasing information sharing is through distribution of managed care throughout the institution. Multidisciplinary groups of administrators and faculty such as threat assessment teams and care teams work to identify students of concern and take appropriate actions. Sometimes these teams define their work as ‘case management,’ and Case Manager job descriptions are becoming more common outside the clinical setting at colleges (Kattner, 2012). The Case Management Society of America (CMSA) defines case management as:

Case management is a collaborative process of assessment, planning, facilitation, care coordination, evaluation, and advocacy for options and services to meet an individual’s and family’s comprehensive health needs through communication and available resources to promote quality, cost-effective outcomes (Case Management Society of America, 2012, para. 1).

The CMSA further states in its philosophy that case managers should be certified to demonstrate necessary preparation for effectiveness in patient care (Case Management Society of America,
Practically, college administrators do engage in case management when engaging in ongoing, collaborative work to provide support to students of concern. The use of the commonly accepted professional term ‘case manager’ without the accompanying training, certification, and support could create liability should the case manager not be found adequate to meet the standards of duty to care (Kattner, 2012). In many cases, individuals participating in case management on threat assessment teams and care teams hold other primary roles throughout the institution rather than focusing completely on case management (Kattner, 2012). This also poses risk of falling short of institutional duty. While these teams certainly play a positive role in reducing serious incidents, they also open the institution to liability when insufficiently trained or qualified to adequately meet the duty to care.

Litigation claims arising from actions of university officials regarding self-harm are likely to continue along with the continued admission of more students with mental health issues. College and university administrators have to balance showing care for individuals with their obligations to the community. Responses to one demand, such as removing threatening students, do not always provide sufficient response to the other (Shpancer, 2012). As former NASPA Executive Director Gwendolyn Jordan Dungy asked, “what [can we] do to support our students while protecting our universities?” (Hoover, 2006, para. 8). The primary legal implication this seeming contradiction presents is how administrators show care appropriately and reasonably without unnecessary risks. Regardless of interventions, there is never any guarantee of complete safety to the individual student or others. Creating policies that label self-harmful thoughts and behaviors as violations with sanctions such as involuntary withdrawal from residence halls or the campus could lead to reduced reporting and access of critical resources (Wolnick, 2007; Appelbaum, 2006). On the other hand, administrators who opt to continue to support students on campus through ongoing therapy and monitoring through Care Teams and Threat Assessment Teams also run the risk of finding themselves at the center of a claim that they did not do enough, such as in Shin (2005). The creation and use of mandated assessment and mandated withdrawal or leave policies comes with an expectation of reasonable use as well. The legal implications of their overuse are established in the claims of disability discrimination and due process violations brought against institutions.

**Strategies for Response and Reducing Liability**

Responses to threatening student behaviors should focus on balancing care for the individual with the interests of the community and the institution. College administrators must be committed to providing effective and efficient responses that respect student rights, fulfill duty to care, and promote the academic mission of the institution (McBain, 2008).

**Multidisciplinary Response Teams and Case Management**

While the development of threat assessment and similar teams can result in additional liability for institutions, they have been shown to be effective in increasing information sharing and response time regarding students of concern through collective planning and shared responsibility (DeHaven, 2008; Lake, 2008; Wei, 2008). These groups should coordinate inquiries into all students of concern rather than selecting which to consider in arbitrary fashion, and members of the team should not only be empowered to take necessary action, but also
recognize their shared responsibility for communication and action to reduce personal and institutional liability (DeHaven, 2008). A critical factor in increasing effectiveness and decreasing liability of such groups is training. Basic training should include a thorough understanding of the policies and procedures to which the group is accountable (Kattner, 2012). Further training regarding principles of professional case management and mental health needs of students adds to the legitimacy of such individuals to perform the task assigned (Kattner, 2012; Mowbray, et al., 2006). Finally, threat assessment teams should have members that are solely dedicated to case management as the primary focus of their jobs. College administrators have multiple competing priorities, and effective case management cannot be compromised amongst them (Kattner, 2012).

Efficient and Resourced Campus Counseling Centers

The significant increase in the number of students seeking mental health services on college campuses, while challenging to service providers, is not negative. The increase in reporting is positive for administrators seeking to promote a healthy educational environment and reduce risk. Counseling centers are used by about 10% of the entire student population in a single year (Gold, 2013). With budget challenges persisting for college administrators, additional funding and staffing of college counseling centers is not immediately realistic. Improving services to students in ways that do not diminish the quality of service are essential to effective treatment and fulfillment of duty to care.

Some strategies for approaching care differently include group therapy sessions and briefer treatments. These types of treatment can often be facilitated by post-graduate interns and social workers who are more affordable to counseling centers and have fewer demands from students presenting more severe issues that require administration of psychiatric medications (Bishop, 2006; Schwartz, et al., 2009).

In her article for NPR, Jenny Gold (2013) discusses the structure of a triage system employed by the University of Virginia to provide service based on severity of need (Gold, 2013). The triage system initially evaluates a student’s current mental health status before assigning the student to immediate intervention on campus, or delayed intervention with a campus counselor or off-campus private practitioner (Gold, 2013). This system increases immediate response to the most critical needs, as well as distributes care across campus and community counselors to better handle the case load. One challenge of the University of Virginia triage system that is not discussed in the article is the different nature of the relationship with the institution between university-employed and privately-practicing counselors. While both are required by HIPPA to maintain certain standards of patient privacy (Nolan & Moncure, 2012), those in university counseling centers have a different defined relationship in the duty to care as agents of the university. This is usually expressed through the use of disclosure forms for students attending mandated assessment sessions that may not be as professionally acceptable beyond the institution grounds. This method for increasing efficiency could unintentionally limit the intended information sharing of such systems that groups such as threat assessment teams and care teams rely upon without carefully constructed agreements between institutions and providers. Another concern noted with outsourced mental health care is lack of knowledge of the academic environment and understanding of institutional duty and reasonable
accommodations that can be made to students with mental health needs. Forming partnerships with outside agencies will require a greater commitment to sharing information and promoting shared understanding of expectations, cultures, and interests (Mowbray, et al., 2006).

**Student-Parent-Institution Partnerships**

Campus officials are reducing liability by creating a shared sense of responsibility between students, parents, and administrators. Working within FERPA, more administrators are asking students at time of enrollment if they want to sign disclosure waivers to include their parents willingly in conversations about their wellbeing (Tribbensee, 2008). This certainly raises the burden on administrators to use the established line of communication, but it creates a network of support for the student that, if engaged, is not solely the responsibility of the institution. College administrators should be honest with parents and students about the limitations of their ability to completely control or provide support for certain student behaviors. Per the ADA guidelines and the identification of “direct threat”, administrators can implement mandatory withdrawal or leave policies and deny students reinstatement if certain disabilities cannot be adequately accommodated. Being transparent with parents and students about these policies does not guarantee lack of litigation, but it does provide some context should such challenging decisions need to be made in the most extreme cases.

**Public Health Programs**

The use of threat assessment teams, counseling services, and partnerships are effective at mitigating known risk (Peterkin, 2012). Unfortunately, risk cannot always be perceived. In the University of Maryland College Park and Aurora, Colorado incidents the risk was unknown and the outcomes generally considered unpreventable. While no legal action has been filed against the institutions at this time, the fact that information did exist that could have led to timely interventions that may have changed the outcome. The use of these services on college campuses is primarily responsive to a behavioral issue or enacted threat after it has occurred (Eells, Marchell, Corson-Rikert, & Dittman, 2012). In many cases, the impact is minor. In some, it can be devastating. Taking a public health approach to promote mental health and overall wellness throughout the campus community is one method of reducing incidents, increasing self-regulation and reporting, and reducing liability (Eells, et al., 2012). Cornell University created and uses a public health framework that focuses on multiple aspects of mental health care that includes environmental factors, internal factors, and institutional responses and policies (Eells, et al., 2012). This framework allows college administrators to establish a culture that values care for mental health and operates in ways that promote collective and individual responsibility in regards to mental health (Eells, et al., 2012). Counseling center clinicians continue to play an important role in providing service to students, and important and professionally-appropriate roles emerge for non-clinician administrators as well, such as promotion of life skills and resilience, development of healthy social networks, and creation of healthy environments (Eells, et al., 2012). By allowing administrators trained more in student development theory than college student counseling to focus on promoting these things as a way of promoting public health and decreasing concerning behaviors reduces overall liability for the institution.
Another positive impact of normalizing mental health promotion through a public health framework is the reduction in the stigma of reporting mental health issues or concerns. Despite the overall increase in students seeking services, many students still do not disclose issues or concerns. Less than 25% of students with depression receive treatment for depression, and the frequency is similar in students with anxiety disorders (Hunt & Eisenberg, 2010). In a 2011 survey of college students who identified themselves as having a mental illness conducted by the National Alliance on Mental Illness (NAMI), 35% of students responded that they did not report their mental illness to their institution in any manner, believing that their institutions were completely unaware, even when they felt they were in crisis (NAMI, 2011). Another study of why students do not use counseling services found that students most frequently claimed they did not have time or financial support to receive services, they were concerned about the lack of privacy at their institutions, and they were skeptical about the effectiveness of treatment (Hunt & Eisenberg, 2010). Incorporating strategies to increase reporting and information sharing could prevent harm from acts of violence. One of the aims of the triage system at the University of Virginia is to reduce the stigma of reporting by making the process as seamless as possible for students who do choose to report (Gold, 2013). Socially-constructed stigma about mental illness is hard to overcome, and institutionally created policies that seemingly punish students dealing with mental health issues – whether real or perceived – further the reluctance to report. The Jed Foundation produced a list of recommendations for creating a caring campus culture that considers risk management from a perspective of partnerships and inclusion with at-risk students. The recommendations reflect the Cornell framework, and among them are the promotion of social networks that create a connection to community and individuals, intentional education programs to develop coping skills, identify triggers and symptoms, and seek appropriate assistance, and the creation of policies and physical spaces that promote safety rather than mandate punitive consequences for undesirable behaviors (Silverman, 2008). Ideally, increasing community awareness also increases the likelihood that community members will not only be able to notice concerning behaviors, but will also know where to report them or, better still, where to take an individual exhibiting concerning behaviors for help. Creating a caring campus community to reduce liability does not remove the threat of student self-harm or violence toward others, but it does display recognition of institutional duty to care and the creation of an environment that encourages disclosure so that appropriate and timely actions can be taken.

Conclusions

Rarely can acts of violence be predicted with accuracy. College and university administrators deal with challenging uncertainties concerning how to address threatening or troubling student mental health issues. While a great majority of students with mental health issues successfully participate in higher education with little incident, some students have greater needs and present greater threats to themselves and the community (Dunkel, et al., 2008). Administrators must understand that current case law opinion has more liberally defined “special relationships” to extend to the relationship between an institution or individual administrators and students in ways that create a duty to prevent foreseeable harm. At the same time, administrators must be sensitive to the creation of policies and procedures designed to protect individual students and the community that in actuality create fear of reporting and seeking resources and discriminate against students with disabilities. Administrators can never guarantee complete safety and security of students from self-harm or harm by others, but careful attention
to how students of concern are addressed, supported, and monitored are essential duties that cannot be ignored. The creation of programs and policies to carry out these tasks must be done with serious and full commitment to be effective.
References


