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Cover Page Footnote
J.D. Candidate, 2008, Fordham University School of Law; B.S., 2005, Cornell University. I would like to thank Professor Deborah Denno for her excellent guidance. I would also like to thank my wonderful family, especially my loving husband, Brian Cohen, for the constant encouragement and support.

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NOTES

KEEPING STUDENTS ALIVE: MANDATING ON-CAMPUS COUNSELING SAVES SUICIDAL COLLEGE STUDENTS' LIVES AND LIMITS LIABILITY

Valerie Kravets Cohen*

INTRODUCTION

On a February morning during her junior year in college, Anita Rutnam threw herself off the eighth floor of Boland Hall, a Syracuse University dormitory, and fell ninety feet, landing on a patio below.1 Anita had a history of mental illness and was admitted to a mental health hospital several times after making numerous suicide threats and attempts, including a previous attempt to jump from another building.2 Three days prior to Anita’s jump, she received a letter from the University’s Office of Judicial Affairs suggesting she enter an inpatient program because she refused to continue treatment with a local mental health care provider.3 The next day, Anita was informed that Syracuse intended to dismiss her because of her suicidal tendencies.4 Two days after learning about her dismissal, while her parents were in town to help her move out, Anita jumped from Boland Hall.5 Anita miraculously survived her ninety-foot fall and later sued Syracuse for ten million dollars for malpractice and negligence in handling her suicidal condition.6

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2. Davia, supra note 1.
3. Id.
4. Id.
5. Id.
6. Id.; Kelly, supra note 1, at 51 ("Her suit . . . asserts that, given the campus counselor’s advice, school officials should have done more to prevent her suicide attempt.").

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College student suicides have made headlines and sparked litigation in recent years. The prevalence of student suicides has prompted colleges and universities to review their student mental health policies in an effort to shield themselves from liability and to save students' lives. Recent cases vary with respect to whether colleges have a duty to prevent student suicides. Because of this uncertainty, many colleges are unsure about what policies to employ to ward off liability in the event of a student suicide. Policies range from voluntary counseling programs that permit students to seek treatment at their own will to mandatory eviction programs that automatically dismiss students who threaten or attempt suicide. Several colleges have been involved in recent litigation for failing to respond adequately to a suicide threat or for dismissing suicidal students from campus. While the legal and ethical implications of such policies prompt the need for clearer guidelines, this Note argues that an alternative policy of mandatory counseling conditioned on forced dismissal does more good than harm and should be protected by courts.

Part I of this Note examines the suicide problem among college students in the United States and the evolution of suicide liability law. It also discusses how, historically, colleges and universities have been protected from liability for student suicides under tort law. This protection may be eroding, however, because recent cases have found a duty to prevent student suicides in certain circumstances. Part II outlines the various suicide prevention policies utilized by colleges and universities and the legal and ethical implications of each policy. Specifically, it analyzes voluntary counseling policies, forced eviction policies, and policies that involve mandatory assessment conditioned on involuntary withdrawal. Part III urges courts to allow colleges to adopt mandatory evaluation policies that are conditioned on involuntary dismissal for suicidal students because such policies limit colleges' liability and, more importantly, save lives.

8. Compare Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602, 609-10 (W.D. Va. 2002) (holding that a special relationship existed between Michael Frentzel, a freshman at Ferrum College who committed suicide in his dorm room by hanging, and Ferrum College and its Dean, giving rise to a duty to protect Michael from the foreseeable danger that he would hurt himself, and that the college and the Dean breached that duty), with Jain v. State, 617 N.W.2d 293 (Iowa 2000) (holding that no special relationship existed between Sanjay Jain, a freshman at the University of Iowa who committed suicide by inhaling carbon monoxide from a moped he left running in his dorm room, and the University such that the University owed no duty to inform Sanjay's parents of his previous suicide attempt).
9. See infra Part II (discussing the advantages and disadvantages of voluntary counseling, automatic dismissal, and mandatory counseling policies).
10. See infra notes 317-64 and accompanying text (discussing student suicide eviction cases involving Hunter College, George Washington University, Bluffton University, New York University, and Columbia University).
11. See infra notes 133-209 and accompanying text.
I. College Student Suicide Rates and the Evolution of Suicide Liability Law

A. College Suicide Statistics

Suicide is the second leading cause of death among American college students,12 and the third leading cause of death among young people ages ten to twenty-four.13 Research indicates that young adults (ages twenty to twenty-four) are more likely to commit suicide than adolescents (ages fifteen to nineteen).14 Males in each of these age groups are more likely to die from suicide attempts than females.15

Each year approximately 1100 college students commit suicide, resulting in the loss of about three students per day.16 The majority of these students are not receiving mental health treatment at the time of their deaths.17 Despite the high rate of suicide, college students are actually less likely to kill themselves than their peers who do not pursue post-secondary education.18 Campus prohibitions against firearms contribute to this lower rate.19 Instead of using firearms, “[s]tudents who commit suicide [in

13. See Nat’l Inst. of Mental Health, Suicide in the U.S.: Statistics and Prevention (2006), available at http://www.nimh.nih.gov/publicat/suicidefacts.pdf [hereinafter Suicide in the U.S.]. In 2004, suicide was the eleventh leading cause of death among the general U.S. population. Id. It was the eighth leading cause of death for men and the sixteenth leading cause of death for women. Id. Despite the common perception that suicide rates are highest among the young, it is the elderly that have the highest rates. See id.
14. See id. (reporting that 12.5 per 100,000 young adults ages twenty to twenty-four committed suicide in 2004, as compared to 8.2 out of 100,000 adolescents ages fifteen to nineteen).
15. See id. (reporting that almost four times more male adolescents than female adolescents died by suicide and that more than six times as many young adult males died by suicide than did young adult females).
16. See Jed Foundation, http://www.jedfoundation.org/ (last visited Mar. 21, 2007). The Jed Foundation was founded in 2000 by the family of Jed Satow, who committed suicide as a college sophomore. See id.; see also Paul Joffe, An Empirically Supported Program to Prevent Suicide Among a College Population 1 (2003), available at http://www.jedfoundation.org/articles/joffeuniversityoffillinoisprogram.pdf (“[F]rom the 14.9 million students enrolled in 2001, approximately 1100 young adults kill themselves in the nation’s colleges and universities every year.”). Note that this figure may not account for away-from-campus suicides that may occur at students’ permanent home residences over weekends and breaks; the difficulty of measuring the suicide rate away from campus has caused a conundrum in accurately establishing the suicide rate in higher education. Joffe, supra, at 8.
17. See Joffe, supra note 16, at 21 (“[T]he majority of individuals who carry out their suicidal careers, from intent to death, do so without ever entering a therapist’s office.”).
18. The rate of suicide among college-attending young adults is approximately half the rate of their non-attending peers. See Joffe, supra note 16, at 16; see also Ellen, supra note 12.
college] are more likely to hang themselves, jump from unprotected buildings or ingest lethal chemicals commonly found in campus labs.”

Because of advanced medical treatment of mental illness, “[t]oday’s colleges and universities also are drawing many more students who arrive on campus with diagnosed mental illnesses.” In fact, ninety percent of all college students who commit suicide have a diagnosable mental illness, although less than twenty percent of college students who commit suicide ever seek help from college counseling centers.

There is no annual national statistic on suicide attempts, but some research shows that there are eight to twenty-five attempted suicides for each suicide death, with suicide attempts being more successful among men and the elderly and less successful among women and young people.

These alarming rates of suicide attempts and completions have created national concern.

Researchers have also noted a phenomenon, known as “suicide contagion,” in which “exposure to suicide or suicidal behaviors within one’s family, one’s peer group, or through media reports of suicide . . . can result in an increase in suicide and suicidal behaviors . . . especially in adolescents and young adults.” Furthermore, individuals who have had a suicide in their family appear to be at greater risk for suicide, although it is not known whether this heightened risk is a result of genetic or environmental factors, or a combination of both. Although there is no

20. Ellen, supra note 12. Following firearms, the “second most common method for men is hanging; for women, the second most common method is self-poisoning including drug overdose.” Frequently Asked Questions About Suicide, supra note 19.

21. Ellen, supra note 12; see also Lynette Clemetson, Off to College on Their Own, Shadowed by Mental Illness, N.Y. Times, Dec. 8, 2006, at A1 (reporting the difficult transition that mentally ill students have to make between high school and college).


24. But see Maggie Fox, Study Confirms U.S. Suicide Rates Dropping, Free Republic, Sept. 28, 2006, http://www.freerepublic.com/focus/f-news/1710467/posts (“Suicide rates among the youngest and oldest Americans have steadily declined since the late 1980s, [which] . . . contradicts popular conceptions that rates were rising.”). Fox reports that suicide rates among adolescents rose for nearly forty years, but began to decline for adolescents and young adults in the 1990s. Id. While researchers cannot explain the reason for the downturn, they cite the booming economy of the 1990s as a potential factor. Id. Researchers also note that contrary to prior belief, “antidepressants may not be causing more suicides.” Id.

25. Frequently Asked Questions About Suicide, supra note 19; see Patrick Healy, 11 Years, 11 Suicides, Boston Globe, Feb. 5, 2001, at A1 (discussing suicide contagion at the Massachusetts Institute of Technology (MIT)). But see Joffe, supra note 16, at 4 (“[T]here is no evidence to support the contention that peer survivors of college suicide are associated with an increased risk of suicide themselves.”).

way to predict suicide, there are certain risk factors, including "mental illness, substance abuse, previous suicide attempts, family history of suicide, history of being sexually abused, and impulsive or aggressive tendencies." Individuals who suffer from depression face a heightened risk of suicide; 7% of men and 1% of women with a lifetime history of depression will die by suicide. In addition to depression, younger persons who kill themselves often have substance abuse problems. Those who experience depression at a young age often struggle with it throughout their lives, usually in a more severe form as they get older. Individuals who mourn the loss of those who die by suicide "are more apt to feel guilt, experience social discomfort, and struggle with understanding why it happened."

Since 1981, data has been compiled from directors of college counseling centers across the United States and Canada to determine trends in student counseling. According to the 2005 National Survey of Counseling Center Directors, which surveyed 366 colleges and universities across the United States and Canada, 58.5% of colleges offered psychiatric services on campus, which was up 4.5% since 2004. In addition, 9% of all college students sought counseling in 2005. Of the students receiving counseling, 25.1% were already on psychiatric medication, which was up from 24.5% in 2004, 20% in 2003, 17% in 2000, and 9% in 1994. Counseling center directors reported that 42.8% of their patients had severe psychological problems and 8.5% had impairment so serious that they could not remain in school without extensive psychiatric help. Meanwhile, 34.5% of students seeking on-campus counseling experienced severe problems but could be

27. Frequently Asked Questions About Suicide, supra note 19.
28. See id. Research has linked depression and suicidal behavior to decreased serotonin levels in the brain: "Low levels of a serotonin metabolite, 5-HIAA, have been detected in cerebral spinal fluid in persons who have attempted suicide, as well as by postmortem studies examining certain brain regions of suicide victims." Id.
29. See id.
31. See Research on Survivors of Suicide, supra note 26. However, "[s]uicide survivors have not been found to suffer any greater psychiatric disability than individuals bereaved by the unexpected and violent loss of a loved one." Id.
33. See id. at 2.
35. See Gallagher, 2005 Counseling Center Survey, supra note 32, at 3.
36. Id. at 4 (reporting that 95% of directors reported an increase of students coming in for counseling who are already on psychiatric medication, which is up from 92% in 2004).
treated successfully with available services. In 2005, 2462 students were hospitalized for psychological reasons, which was up from 2210 in 2004. It is unclear whether these rising numbers indicate that there are more mental health problems among college students or that a greater number of students are willing to talk about their problems and seek counseling.

B. Evolution of Suicide Liability Law

Tort law has traditionally denied recovery to plaintiffs bringing wrongful death actions against individuals or institutions for failing to prevent an individual’s suicide. To prove negligence, one must show the following: (1) injury; (2) duty of care owed by the defendant to the plaintiff; (3) breach of the duty of care; and (4) that the breach was the actual and proximate cause of the injury. Courts generally deny liability at the causation stage, holding that suicide is an intervening proximate cause that cuts off liability from other potentially negligent parties.

39. Id.
40. Id. (reporting that 90.3% of directors believe that in recent years, the number of patients with severe psychological problems has increased); Gallagher, 2004 Counseling Center Survey, supra note 34, at 2.
42. See Peter Lake & Nancy Tribbensee, The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury, 32 Stetson L. Rev. 125, 129 (2002) (“For many years the American legal system categorically refused to find civil liability arising out of a failure to prevent suicide.”); George S. Gulick, Annotation, Liability for Suicide, 11 A.L.R.2d 756, § 2 (1950) (“Where an action is brought under a wrongful death statute the general rule is that suicide constitutes an intervening force which breaks the line of causation from the wrongful act to the death and therefore the wrongful act does not render defendant civilly liable.”).
43. See 57A Am. Jur. 2d Negligence § 71 (2004) (“The elements of negligence are a duty the defendant owes to the plaintiff, a breach of that duty by the defendant, a causal connection between the breach and the plaintiff’s injury, and actual injury.”).
44. See, e.g., Jain v. State, 617 N.W.2d 293, 300 (Iowa 2000) (“In Iowa and elsewhere, it is the general rule that . . . the act of suicide is considered a deliberate, intentional and intervening act that precludes another’s responsibility for the harm.”); McLaughlin v. Sullivan, 461 A.2d 123, 124 (N.H. 1983) (“As a general rule, negligence actions seeking damages for the suicide of another will not lie because the act of suicide is considered a deliberate, intentional and intervening act which precludes a finding that a given defendant, in fact, is responsible for the harm.”). The reluctance to impose liability on others for suicide stems from two legal traditions embedded in English common law and transplanted into the American legal system: (1) a refusal to impose a duty to rescue, and (2) the historical association of suicide with criminality. See Logarta v. Gustafson, 998 F. Supp. 998, 1000-03 (E.D. Wis. 1998).
There are two recognized exceptions to this rule. The first exception recognizes a cause of action where the defendant actually causes the suicide. The second exception recognizes a cause of action where the defendant has a duty to prevent the suicide. Although an individual does not have a duty to rescue another from danger under common law, the existence of a "special relationship" may give rise to an affirmative duty to aid or protect an individual where no duty would otherwise exist. Special relationships, under section 314A of the Restatement (Second) of Torts, normally arise between a common carrier and its passengers, an innkeeper and his guests, a landlord and his invitees, and one who takes custody of another, depriving him of other assistance. In cases where a defendant has been found liable for another's suicide, the special relationship has primarily existed in the therapeutic and custodial contexts of hospitals and prisons.

Another exception to the no-duty-to-prevent-suicide rule is voluntary undertakings, where an individual voluntarily undertakes to save a life but fails to carry through non-negligently and leaves the victim worse off. Such cases most commonly appear in therapeutic contexts, where a therapist is on notice of an individual's suicidal tendencies but fails to prevent the suicide.

45. See McLaughlin, 461 A.2d at 124 ("In recent years, ... tort actions seeking damages for the suicide of another have been recognized under two exceptions to the general rule, namely, where the defendant is found to have actually caused the suicide, or where the defendant is found to have had a duty to prevent the suicide from occurring.").

46. Murdock v. City of Keene, 623 A.2d 755, 756 (N.H. 1993). A defendant may cause another's suicide "where the conduct of the defendant was an intentional tort and extreme and outrageous, and where this conduct caused severe emotional distress on the part of the victim which was a substantial factor in bringing about the victim's ensuing suicide." Mayer v. Town of Hampton, 497 A.2d 1206, 1211 (N.H. 1985).

47. See Bruza v. PMR Architects, P.C., 693 A.2d 401, 403 (N.H. 1997).

48. See Restatement (Second) of Torts § 314 (1965) ("The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection does not of itself impose upon him a duty to take such action.").

49. See id. § 314A.

50. See id.

51. See Eisel v. Bd. of Educ. of Montgomery County, 597 A.2d 447, 450 (Md. 1991) ("[M]any courts have held that a hospital or a prison that has custody over a person who commits suicide may be liable if the suicide was foreseeable.").

52. See Restatement (Second) of Torts § 324 (1965) ("One who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise reasonable care to secure the safety of the other while within the actor's charge, or (b) the actor's discontinuing his aid or protection, if by so doing he leaves the other in a worse position than when the actor took charge of him.").

53. See, e.g., Jain v. State, 617 N.W.2d 293, 298 (Iowa 2000) (invoking a plaintiff who alleged that the University of Iowa had a duty to inform Sanjay's parents about the suicide threats their son made, which were documented by the University); Shin v. Mass. Inst. of Tech., No. 020403, 2005 WL 1869101, at *9 (Mass. Super. Ct. June 27, 2005) (invoking a plaintiff who alleged that MIT and certain administrators and medical personnel failed to prevent Elizabeth Shin's suicide after providing counseling services to her and being on notice of her suicidal tendencies); Kelly, supra note 1, at 51 (discussing a plaintiff who
For plaintiffs who wish to bring a wrongful death suit against a college for negligently handling a student’s suicide, the biggest hurdle is proving that the school owed a duty to the student to protect the student from harm, and that the school breached that duty by not responding to the risk appropriately. The finding of duty varies among cases of suicide by minors (under the age of eighteen) and those over the age of consent. In the former category of cases, plaintiffs have successfully argued that the school had an in loco parentis relationship with the student, triggering the duty to prevent harm. Colleges used to have an in loco parentis relationship with students as well: “Until the late 1960’s, colleges acted in loco parentis, enforcing dress codes, curfews and other curbs on student behavior in place of parents.” Once eighteen-year-olds obtained the right to vote in 1972 and the Family Educational Rights and Privacy Act was enacted in 1974, the relationship between colleges and their students changed dramatically, and students were given “control of health, disciplinary and educational records on reaching 18 or entering college.” The relationship between colleges and their students further changed as many students moved off campus and professors moved out of dormitories. As a result of these changes, colleges today generally do not serve as in loco parentis. Therefore, plaintiffs bringing wrongful death suits against colleges face a high hurdle because the absence of an in loco parentis relationship and the traditional no-duty-to-prevent-suicide rule significantly shields colleges and universities from liability.

54. See Bogust v. Iverson, 102 N.W.2d 228, 230 (Wis. 1960) (“[B]efore liability can attach there must be found a duty resting upon the person against whom recovery is sought and then a breach of that duty.”).


56. See Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602, 608 (W.D. Va. 2002) (stating that the Fourth Circuit, in a case involving the suicide of a minor at a private boarding school, may have presumed that the school stood in loco parentis to the student, and therefore, a special relationship existed because the student was a minor); Eisel, 597 A.2d at 451-52, 456 (recognizing an in loco parentis relationship between a school and its pupils and holding that such a relationship existed between Nicole Eisel, a thirteen-year-old student at Sligo Middle School who committed suicide after making suicidal statements to the school’s counselors).


58. See id. Grades previously were sent to students’ home addresses, where parents could easily view them, but that is no longer the case. See id. Today, “[c]olleges may share grades with parents who submit proof that the student is a dependent for tax purposes or if the student signs a release form.” Id.

59. See Sontag, supra note 7, at 60.

60. See Schieszler, 236 F. Supp. 2d at 608 (holding that the doctrine of in loco parentis does not apply where a student is not a minor).
1. Traditional No-Duty-to-Prevent-Suicide Rule Remains a Powerful Defense in Student Suicide Cases

As discussed above, there is no common law duty to prevent suicide.\textsuperscript{61} Consistent with this doctrine, student suicide cases in the university context have traditionally held that there is no duty for a school and its administrators to prevent a student's suicide.

\textit{Bogust v. Iverson} was among the first college student suicide cases to deny a claim made by a student who obtained mental health treatment and committed suicide at a college.\textsuperscript{62} The Wisconsin Supreme Court affirmed a lower court's holding that the plaintiffs' complaint was insufficient to state a cause of action because there was no "cause-effect relationship between the alleged nonfeasance of the defendant and the suicide of the deceased."\textsuperscript{63} Jeannie Bogust's parents sued Ralph Iverson, Director of Student Personnel Services and Professor of Education at Stout State College, for failing to secure psychiatric treatment for Jeannie, failing to advise them of her condition, and suggesting Jeannie terminate her counseling six weeks prior to her suicide.\textsuperscript{64} Iverson counseled Jeannie from November 11, 1957, until April 15, 1958, after which he allegedly terminated treatment.\textsuperscript{65} Although Jeannie was suffering from emotional and psychological problems before she began counseling sessions with Iverson,\textsuperscript{66} it was not until May 27, 1958, six weeks after her last counseling session, that she committed suicide.\textsuperscript{67}

In its holding, the court focused on the lack of foreseeability associated with Jeannie's suicide: The court found that when the counseling sessions were terminated, it was not foreseeable to the defendant counselor, nor to a reasonable person in his circumstance, that Jeannie would commit suicide.\textsuperscript{68} The court reasoned that because Iverson did not have any indication that Jeannie had suicidal tendencies, he was not required to contact her parents.\textsuperscript{69} The court eschewed the application of the "further harm" doctrine in the Restatement of Torts, which requires someone who voluntarily undertakes to render aid to another not to leave the victim in a worse-off condition, holding that the counselor did not leave Jeannie worse off after terminating her counseling sessions.\textsuperscript{70} The court further stated that

\begin{itemize}
  \item[61.] See supra notes 42-53 and accompanying text.
  \item[62.] Bogust v. Iverson, 102 N.W.2d 228, 233 (Wis. 1960).
  \item[63.] Id. at 232.
  \item[64.] Id. at 229.
  \item[65.] Id. at 229.
  \item[66.] Id. at 229, 231.
  \item[67.] Id. at 229.
  \item[68.] See id. at 232 ("To hold that the termination [of counseling] was a negligent act, it must be alleged that defendant knew or should have known that Jeannie would commit suicide.").
  \item[69.] See id. at 230 ("The duty of advising her parents could arise only from facts establishing knowledge on the part of defendant of a mental or emotional state which required medical care; and no such facts are alleged.").
  \item[70.] See id. at 231.
\end{itemize}
even with a finding of duty, plaintiffs in such cases would be unable to establish causation: "Even assuming [the defendant]... had advised [Jeannie's] parents of her emotional condition or that he had not suggested termination of the interviews—it would require speculation for a jury to conclude that under such circumstances she would not have taken her life."\textsuperscript{71}

By failing to find a special relationship, \textit{Bogust} reaffirmed the traditional notion that there is no duty to prevent suicide. \textit{Bogust} is an important case not only because of its no-duty holding, but also because the court reached its result at a time when colleges were still perceived as acting \textit{in loco parentis} with respect to their students.\textsuperscript{72} Thus, by holding that a college did not have a duty to protect a student from self-inflicted harm even where the college stood in the place of a parent, \textit{Bogust} served as a strong precedent for colleges defending suicide liability cases.

In \textit{White v. University of Wyoming}, the Supreme Court of Wyoming, like the Supreme Court of Wisconsin, declined to impose liability for the suicide death of Chauncey White, a freshman at the University of Wyoming.\textsuperscript{73} However, the rationale the \textit{White} court employed was different from that of the \textit{Bogust} court. In dismissing the plaintiffs' negligence suit, the \textit{White} court applied a government immunity statute to relieve from liability the University of Wyoming, a government employer, and the individuals who responded to Chauncey's first suicide attempt.\textsuperscript{74} The \textit{White} court did not address special relationships or tort law duties because the University of Wyoming focused its defense on government immunity.

Chauncey was first found intoxicated in his dormitory on December 14, 1990.\textsuperscript{75} The hall director in his dormitory was concerned that Chauncey might asphyxiate in his sleep because he was vomiting, so she called the campus police.\textsuperscript{76} Chauncey was then arrested and taken to a hospital.\textsuperscript{77} After he returned from the hospital, Chauncey attempted suicide by inflicting superficial wounds on his wrists.\textsuperscript{78} Notwithstanding this suicide attempt, the school determined that there was no real risk of Chauncey carrying out the suicide because Chauncey assured a member of the University's Counseling Center Crisis Intervention Team (CIT) that he was not suicidal, that he did not have a plan or a means to commit suicide, and that he had a good support system of friends.\textsuperscript{79} Chauncey's parents were

\textsuperscript{71.} \textit{Id.} at 233.
\textsuperscript{72.} \textit{See supra} notes 55-60 and accompanying text (discussing the evolution of \textit{in loco parentis}).
\textsuperscript{73.} \textit{White v. Univ. of Wyo.}, 954 P.2d 983, 987 (Wyo. 1998).
\textsuperscript{74.} \textit{Id.}
\textsuperscript{75.} \textit{Id.} at 985.
\textsuperscript{76.} \textit{Id.}
\textsuperscript{77.} \textit{Id.}
\textsuperscript{78.} \textit{Id.}
\textsuperscript{79.} \textit{Id.}
not notified about the incident. Two years later, on March 22, 1993, Chauncey committed suicide.

Chauncey’s parents filed a wrongful death action against the University of Wyoming, the hall director, and the CIT member alleging that they were “negligent and breached a fiduciary duty to the Whites by failing to adequately monitor, treat, counsel, or give notice to the Whites in response to their son’s December 1990 suicide attempt.” In affirming a grant of summary judgment in favor of the defendants, the Wyoming Supreme Court reviewed a state immunity statute that imposed liability on government entities only where “damages result[] from bodily injury, wrongful death or property damage caused by the negligence of health care providers who are employees of the governmental entity, . . . while acting within the scope of their duties.” The court held that the individuals involved were not health care providers so as to subject the university to potential liability for their alleged negligence in responding to the first suicide attempt because their jobs did not include “curing and preventing” impairments to the body or “treating or diagnosing physical or mental illness.” The grant of government immunity in White raises concern for plaintiffs trying to bring wrongful death actions against public colleges. Plaintiffs in such cases need to closely examine their state’s immunity statute to see if the incident triggers an exception to the immunity. Private colleges, however, do not have the benefit of using government immunity as a defense.

In Jain v. State, the Iowa Supreme Court held that the University of Iowa had no duty to prevent the suicide death of Sanjay Jain, a freshman at the school, because there was no legally recognized special relationship between Sanjay and the University. The court, using a similar rationale as Bogust, reasoned that the University employees’ response to Sanjay’s suicide attempt did not increase the “risk of self-harm,” and that, to the contrary, University personnel offered Sanjay “support and encouragement, and referred him to counseling.”

Sanjay began to experience personal and academic struggles during his first semester that caused him to miss classes and experiment with drugs and alcohol. Sanjay was later put on a one-year disciplinary probation for smoking marijuana in his room. Sanjay’s parents, however, were not informed about these difficulties. On November 20, 1994, resident

80. Id.
81. Id.
82. Id.
83. Id. (citing Wyo. Stat. Ann § 1-39-110(a) (1997)).
84. Id. at 987.
86. Id. at 299. The Jain court, like the Bogust court, applied the “further harm” doctrine in section 323 of the Restatement (Second) of Torts (1965). Id. at 297-98.
87. Id. at 295.
88. Id.
89. Id.
assistants (RAs) responded to a dispute between Sanjay and his girlfriend, Roopa, in which the two fought over the keys to Sanjay’s moped that he had moved into his room. Roopa asserted that she was trying to stop Sanjay from committing suicide by inhaling exhaust fumes from his moped. When the RAs spoke to Sanjay, he admitted that he tried to commit suicide; however, the following day when he spoke to his hall coordinator, Beth Merritt, he refused to admit or deny the suicide attempt. Merritt encouraged Sanjay to attend university counseling and “demanded that he remove the moped from his room because storing it there violated university policy.” Merritt wanted to contact Sanjay’s parents about the incident, but he would not consent to the notification.

Sanjay then went home for Thanksgiving break without disclosing the incident to his family. Merritt checked up on Sanjay when he returned in late November. Sanjay reassured her that everything was fine but did not reveal that his moped was back in his room. During the early morning hours of December 4, 1994, Sanjay returned to his room after a night of drinking. One of his friends was reluctant to leave him alone but Sanjay convinced her that he was fine, so she left around 4:00 a.m. At about 10:30 a.m. that same day, one of Sanjay’s suite-mates awoke to a strange smell and soon began to feel dizzy. The student discovered a cloud of exhaust smoke in the kitchen and bathroom and knocked on Sanjay’s door, but did not get a response. The RA on duty unlocked the door and found Sanjay unconscious with the moped’s engine still running. Emergency personnel were called and the dormitory was evacuated. Sanjay was later pronounced dead of “self-inflicted carbon monoxide poisoning.”

Sanjay’s father filed a wrongful death action against the University of Iowa alleging that “Sanjay’s death proximately resulted from university employees’ negligent failure to exercise care and caution for his safety.” Mr. Jain also argued that the University had an unwritten policy that permitted the Dean of Students to notify parents in the event of a suicide

90. Id.
91. Id.
92. Id.
93. Id.
94. Id. at 296. The University of Iowa had an unwritten policy that permitted parental notification when there was evidence of a student’s suicide attempt. Id. However, the decision to notify rested solely with the Dean of Students, who, in this case, was not provided with information regarding Sanjay’s suicidal tendencies until after his death. Id.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
104. Id.
105. Id.
attempt, and that he should have been notified about Sanjay’s previous suicide threats. The Iowa Supreme Court affirmed the district court’s holding that under the doctrine of further harm, the University owed no duty to inform Sanjay’s parents of his previous suicide attempt. The court declined to find a duty because “the university’s limited intervention in this case neither increased the risk that Sanjay would commit suicide nor led him to abandon other avenues of relief from his distress.” Although the University of Iowa was a public institution, the court did not consider its potential government immunity because while the University did initially raise a discretionary function exemption to the state’s waiver of sovereign immunity, the school did not pursue that defense beyond the discovery phase.

In *Mahoney v. Allegheny College*, a Pennsylvania judge ruled that two Allegheny deans had no duty of care to prevent Charles Mahoney’s junior year suicide. In its holding, the court applied the same lack of foreseeability analysis that was used in *Jain and Bogust*. Charles first sought counseling at the Allegheny College Counseling Center the summer before his freshman year when he had an anxiety attack during football camp and participated in regular counseling sessions with Jacquelyn Kondrot throughout his next three years at Allegheny. Charles was hospitalized for feeling suicidal right before the start of his sophomore year, at which time his parents were notified and assisted with the hospitalization. During his counseling with Kondrot, Charles admitted having an alcohol problem. Charles’s girlfriend often reported his suicide threats to Kondrot, even after the two broke up in November of Charles’s junior year. In the spring of Charles’s junior year, he confided to Kondrot that he could not imagine living beyond the age of twenty-five because he would have to fight just to get through every day; however, he also expressed a desire to graduate from Allegheny and go to law school. Kondrot insisted that Charles consent to calling his parents, but Charles did

106. *Id.* at 296. The record indicated that the Dean was not informed of Sanjay’s previous suicide threats until after his death. *Id.*
107. See *id.* at 297-99. The court held that because the University’s actions did not increase the likelihood of Sanjay’s suicide, the school was not liable. See *id.*
108. *Id.* at 300.
109. *Id.* at 296.
111. Mahoney, No. AD 892-2003, slip op. at 22.
112. *Id.* at 3.
113. *Id.* at 3-7.
114. *Id.* at 4.
115. *Id.*
116. *Id.*
117. *Id.* at 5.
118. *Id.* at 6, 10.
Charles also would not consider taking a leave of absence and insisted that he would get through his problems by himself. In the early morning hours on the day of his suicide, Charles sent an e-mail to Kondrot stating, “i [sic] just do not like life anymore. . . . i don’t study anymore and just living is a struggle. . . . i hate living. sometimes i wish i would die.” Kondrot replied to the e-mail and met with Charles later that day; she also scheduled an appointment to see him the following day. Later that night, however, Charles hanged himself in his fraternity house.

In their lawsuit against Allegheny College and the individuals involved in Charles’s death, Charles’s parents argued that Allegheny administrators and especially Kondrot, their son’s counselor, “had a responsibility to prevent their son’s suicide.” The court held that the facts of Jain were “factually and legally persuasive [and] that there was no ‘special relationship’ nor ‘reasonably foreseeable’ events that would justify creating a duty to prevent suicide or notify Mahoney’s parents of any impending danger.” The Pennsylvania court distinguished Mahoney from two cases in which the decedents, also college students, threatened and attempted suicide prior to their deaths. In contrast, Charles “had neither engaged in nor threatened any specific acts of self-harm.” Charles’s parents also asserted a breach of contract claim, similar to the claim asserted by the plaintiffs in Shin v. MIT, alleging that a handbook they received in which the College promised to provide mental health services constituted a contract between them and the College, which the College subsequently breached. The court granted Allegheny College summary judgment on the contract claim, holding that no contract was formed. The court’s dismissal of the contract claim and its holding that Allegheny owed no duty of care to protect Charles from harm significantly narrowed the case. Nonetheless, the case continued to trial, where a jury decided in August

119. Id. at 6, 10.
120. Id. at 10.
121. Id. at 8.
122. Id. at 7, 9-11.
124. Id.
125. Mahoney, No. AD 892-2003, slip op. at 22.
126. See id. at 23 (discussing Schieszler v. Ferrum College and Shin v. MIT, where the defendants in both cases were on notice of the imminent probability of the decedent’s suicide); see infra notes 133-86 and accompanying text.
127. Mahoney, No. AD 892-2003, slip op. at 23.
129. Mahoney, No. AD 892-2003, slip op. at 23.
130. Id. at 24.
131. See Capriccioso, supra note 123.
2006 that Allegheny College and Kondrot were not liable for Charles's 2002 suicide and that Charles was responsible for his own death.\footnote{132}

Bogust, White, Jain, and Mahoney demonstrate that the traditional no-duty rule is still a powerful defense in college suicide liability cases. However, the security of the no-duty rule may be eroding as courts in the last several years have started to find a duty to prevent college students' suicides in certain circumstances. While a finding of a duty to prevent suicide is a cause of concern for colleges and universities, no case has yet imposed liability as a result of finding such a duty.

2. A Finding of Duty May Not Result in Liability

Even in cases where courts have found a special relationship between a decedent and a college, giving rise to a duty to prevent suicide, no case has yet imposed liability on the college for a student's death. In situations where courts have found a duty to prevent the death, the suicidal student was receiving counseling on campus and administrators were on notice of prior suicidal threats or attempts. Courts have noted that even where a duty is established, the likelihood of imposing liability on a college for a student's death is remote because causation is a difficult hurdle to overcome.\footnote{133}

In Schieszler v. Ferrum College, a U.S. district court in Virginia denied a motion to dismiss a wrongful death suit against Ferrum College for the suicide of Michael Frentzel, a freshman at the school.\footnote{134} The court held that Ferrum and one of its deans owed a duty to Michael because of a special relationship between them, which was formed when they intervened in Michael's first suicide attempt.\footnote{135}

Michael's problems began in 1999, during the fall semester of his freshman year, when Ferrum College required him to take disciplinary workshops and anger management classes to remedy his behavioral problems before he could return in the spring.\footnote{136} On February 21, 2000,\footnote{137} during the spring semester of his freshman year, campus police and the RA in Michael's dormitory, Odessa Holley, were summoned to Michael's room

\footnote{132. See Capriccioso, supra note 7.}
\footnote{133. See Bogust v. Iverson, 102 N.W.2d 228, 233 (Wis. 1960) (“Even assuming . . . [the defendant] had advised [Jeannie’s] parents of her emotional condition or that he had not suggested termination of the interviews— it would require speculation for a jury to conclude that under such circumstances she would not have taken her life.”); see also Mahoney, No. AD 892-2003, slip op. at 25 (“In our view, the likelihood of a liability determination (even where a duty is established) is remote, when the issue of proximate causation . . . is considered.”).}
\footnote{135. See id. at 609.}
\footnote{137. There is a conflict about whether this dispute occurred on February 20, 2000, or February 21, 2000. Compare Schieszler, 236 F. Supp. 2d at 605 (“On February 20, 2000, Frentzel had an argument with his girlfriend, Crystal.”), with Schieszler, 233 F. Supp. 2d at 798 (“On February 21, 2000, Frentzel and his girlfriend, Crystal, had an argument.”).}
because of a fight between Michael and his girlfriend, Crystal. After Holley and the campus police separated the couple, Crystal told them that Michael "had threatened to harm himself and may have tried to hang himself." When the campus police and Holley approached Michael, they found him locked inside his room with bruises on his head, which he admitted were self-inflicted. The campus police informed David Newcombe, the Dean of Student Affairs, about the incident. Both Newcombe and John Young, a counselor at Piedmont Community Services, arrived at the scene and required Michael to sign a statement that he would not hurt himself.

Newcombe and Young then left Michael alone in his room to speak with Crystal. Crystal informed them that Michael had previously attempted to hang himself with a belt and hanger and that she thought he would do it again. Meanwhile, Michael wrote an e-mail to a friend stating that he was sorry and to tell Crystal that he loved her. Crystal read the e-mail to Newcombe and Young, who remained with her and prevented her from going to Michael's room. When they eventually went to Michael's room, they found that he had hanged himself with his belt. Although emergency medical attention was provided, Michael was pronounced dead on February 23, 2000.

Michael's aunt and guardian, LaVerne Schieszler, filed a ten million dollar wrongful death suit against Ferrum College, Newcombe, and Holley. The issue was whether a special relationship existed between Michael and the defendants that gave rise to a duty to protect Michael from harm. The court noted that "the existence of a special relationship will not, standing alone, give rise to a duty; the harm must be foreseeable." In holding that the harm was in fact foreseeable, the court stated that the defendants were on notice of the "imminent probability" that Michael would try to hurt himself because of their own contact with Michael and because of the reports they received from Michael's girlfriend. As a

139. Id.
140. Id.
141. Id.
142. Id.
143. Id.
144. See id.
145. See id.
146. See id. There is also an indication that Michael wrote another e-mail prior to his suicide, stating "only God can help me now," which Crystal informed the defendants about. Schieszler, 236 F. Supp. 2d at 605.
147. Schieszler, 233 F. Supp. 2d at 798.
148. Id.
150. See Schieszler, 236 F. Supp. 2d at 606 ("A cause of action for negligence will not lie unless there is a duty recognized by law.").
151. See id. at 609.
152. See id.
result, the court found that a special relationship existed between Michael and Ferrum and Newcombe, giving rise to a duty to protect Michael from harm. The defendants breached that duty by leaving Michael alone in his room after finding self-inflicted bruises on his head and by refusing to permit Crystal to return to Michael's room after Michael sent her a message suggesting that he might hurt himself. The strength of the foreseeability in this case differs markedly from Bogust where the court emphasized the lack of foreseeability of Jeannie Bogust's suicide both during counseling and after counseling was terminated.

Notwithstanding the court's holding, in 2003, Michael's aunt settled with Ferrum College out of court for an unspecified amount of damages. Ferrum also agreed to modify its counseling and crisis intervention policies and even acknowledged shared responsibility for Michael's suicide.

In Shin, the Massachusetts Superior Court cleared the Massachusetts Institute of Technology (MIT) of wrongdoings in Elizabeth Shin's sophomore year suicide; however, it denied summary judgment to individual MIT medical professionals who treated Elizabeth, and held that a special relationship existed between them and the student, requiring them to exercise reasonable care to protect her from harm. The court analogized Shin to Schieszler because, in both cases, the defendants were aware of the strong likelihood that the student would inflict self-harm.

Elizabeth committed suicide by setting fire to her dorm room on April 10, 2000, after nearly two years of psychological problems at MIT. Elizabeth's emotional troubles first manifested at MIT in February 1999 during the spring of her freshman year. That semester, she was hospitalized for overdosing on Tylenol with codeine. As a result of this overdose, Elizabeth underwent a one-week psychiatric hospitalization where she revealed that she suffered from mental health problems and had engaged in cutting behavior since high school. After obtaining permission from Elizabeth, the housemaster at Random Hall (the dormitory where Elizabeth resided) called Elizabeth's parents to inform them about the incident. It was recommended that Elizabeth either undergo

153. See id. at 609-10 (stating that the defendants were on notice that Michael would try to hurt himself, giving rise to a duty to protect him from harm, and that "Ferrum and Newcombe breached [their] duty to assist Frentzel"). The court dismissed charges against the Residential Advisor. See id. at 610.
154. Id. at 609.
156. College Blues, supra note 149, at 15.
157. Id.
159. Id. at *13.
160. Id. at *5.
161. Id. at *1.
162. Id.
163. Id. Cutting behavior refers to self-inflicted scratches. See id. at *2.
164. Id. at *1.
psychiatric therapy at MIT or at a mental health facility outside of MIT, or take a leave of absence from MIT and focus on treatment elsewhere. Elizabeth and her parents chose for Elizabeth to receive treatment on campus from an MIT psychiatrist, Dr. Kristine Girard. Elizabeth was treated by Dr. Girard for the remainder of her freshman year and was told to resume therapy when she returned for her sophomore year.

In the fall of her sophomore year, Elizabeth continued to display suicidal behavior and engage in cutting herself. The situation became worse during the spring of her sophomore year, when Elizabeth was again required to undergo overnight hospitalization after displaying further suicidal behavior. With Elizabeth’s consent, her parents were notified, and they brought Elizabeth home to New Jersey. After returning to MIT from spring break, Elizabeth’s condition continued to deteriorate. Between April 8, 2000, and April 10, 2000, Elizabeth relayed suicide plans to her friends and asked a friend to erase her computer files. Elizabeth’s friends notified Nina Davis-Mills, the Random Hall housemaster, about Elizabeth’s behavior. When the housemaster spoke to Elizabeth by phone on the morning of April 10, 2000, Elizabeth accused her of wanting to send her home. That same morning, Elizabeth’s case was discussed at a “deans and psychs” meeting. Following the meeting, an MIT psychiatrist made an appointment for Elizabeth at an off-campus treatment center and left a voicemail to let Elizabeth know. That same night, around 9:00 p.m., a smoke alarm went off in Elizabeth’s room. When campus police broke down Elizabeth’s door, she was engulfed in flames. She ultimately suffered third degree burns on sixty-five percent of her body. On April 14, 2000, Elizabeth’s parents terminated their daughter’s life support after being told that Elizabeth had suffered irreversible brain damage.

Elizabeth’s parents filed a wrongful death suit against MIT and individual medical staff members for $27.65 million. The plaintiffs

165. Id.
166. Id.
167. Id. at *2.
168. Id.
169. Id. at *3.
170. Id.
171. Id. at *4-5.
172. Id.
173. Id. at *5.
174. Id.
175. Id.
176. Id.
177. Id.
178. Id.
179. Id.
180. Id. at *6.
181. Id. at *9 (alleging that MIT and its medical staff “failed to secure Elizabeth’s short-term safety in response to Elizabeth’s suicide plan in the morning hours of [the day she committed suicide]”); Rob Capriccioso, Settlement in MIT Suicide Suit, Inside Higher Ed,
asserted a breach of contract claim against MIT, alleging that the school breached its contractual duty to provide medical help to its students, as articulated in its medical department brochure. In granting summary judgment in favor of MIT, held that there was no contract between the plaintiffs and MIT, and that the representations made in the brochure were merely generalized statements of the medical services provided by MIT.

In denying summary judgment to the medical personnel that treated Elizabeth, the court held that because Elizabeth's medical team failed to develop an immediate plan to respond to her escalating suicide threats, the plaintiffs were able to demonstrate a genuine issue of material fact as to whether the members of the medical team "were grossly negligent in their treatment of Elizabeth." The court further held that a special relationship existed between Elizabeth and the responding medical team under section 314 of the Restatement (Second) of Torts because the team was well aware of Elizabeth's mental problems from numerous reports about her self-destructive behavior and from the team's involvement in her treatment. The court also focused on the foreseeability of Elizabeth's suicide and drew an analogy to Schieszler, where there was "an imminent probability' that the decedent would try to hurt himself, and the defendants had notice of this specific harm." Thus, because individual MIT personnel were on notice of the likelihood that Elizabeth would commit suicide, and even received a report indicating that Elizabeth would hurt herself on the actual morning of her suicide, a special relationship existed, imposing a duty on the individual defendants to exercise reasonable care to protect Elizabeth from harm.

After a lot of publicity, the case was ultimately settled out of court for an undisclosed amount. In a prepared statement following the settlement, both MIT and Elizabeth's father stated that they felt that Elizabeth's death was a tragic accident.

Apr. 4, 2006, http://insidehighered.com/news/2006/04/04/shin ("The Shin family initially filed a $27.65 million wrongful death lawsuit suit against MIT in 2002, charging that its counseling service had failed to take their daughter's depressed situation seriously.").

183. Id.
184. Id. at *9.
185. See id. at *11-13.
186. Id. at *13 (quoting Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602, 609 (W.D. Va. 2002)).
187. Id.
188. See Jonathan D. Glater, National Briefing New England: Massachusetts: Settlement Reached in Student's Death, N.Y. Times, Apr. 4, 2006, at A20 (discussing the Shin family's undisclosed settlement with MIT in exchange for the family dropping individual lawsuits against MIT staff and psychiatrists); Capriccioso, supra note 181 (discussing the undisclosed settlement between MIT and the parents of Elizabeth Shin).
189. See Capriccioso, supra note 181; Angeline Wang, Carpenter Lawsuit Is Settled Out of Court: Amount of Settlement Will Be Confidential, Tech, Sept. 7, 2006, available at http://www-tech.mit.edu/V126/N36/36carpenter.html. Although MIT and Elizabeth's father agreed that Elizabeth's death was an accident, the Cambridge Fire Department, the Suffolk County medical examiner, and Elizabeth's death certificate ruled it a suicide. See Shin, 2005
While Schieszler and Shin demonstrate a recent tendency for colleges to settle suicide cases before trial, at least one recent case has gone to trial on the issue of a university’s liability for a student’s suicide. In Klein v. Solomon, Susan Klein, the mother of Daniel Shuster, sued Brown University under the doctrine of respondeat superior for her son’s junior year suicide.\(^{190}\) Klein also named individual Brown University medical personnel as defendants in the suit because of their alleged negligent referral and treatment of her son.\(^{191}\) The Supreme Court of Rhode Island reversed a lower court’s grant of summary judgment in favor of the defendants and held that a Brown University psychologist who initially counseled Daniel was on notice of Daniel’s potential for suicide and therefore had a duty to refer Daniel to a suicide specialist.\(^{192}\)

By the time Daniel arrived at Brown University as a freshman, he had already suffered from obsessive-compulsive disorder since childhood.\(^{193}\) Soon after starting at Brown in the fall of 1987, Daniel met with a Brown psychologist, Ferdinand Jones, who noted that Daniel suffered from depression and had suicidal fantasies.\(^{194}\) During the course of Jones’s treatment, Daniel experienced additional trauma when his roommate died in a car accident over winter break.\(^{195}\) After Jones’s third session with Daniel, he provided Daniel with a list of four people with whom to continue treatment off-campus.\(^{196}\) None of the four individuals were psychiatrists, nor did any one of them specialize in suicide prevention.\(^{197}\) Daniel chose to undergo treatment with Mark Solomon, whose specialty was eating disorders.\(^{198}\) Solomon treated Daniel for two years, until Daniel terminated his treatment program.\(^{199}\) Two weeks following his last session, Daniel committed suicide by shooting himself in the bathtub of his apartment.\(^{200}\)

WL 1869101, at *6; Wang, supra. Some legal experts felt that MIT should not have settled but rather should have litigated the case to set a strong precedent that colleges and administrators should not be held liable for student suicide. See Capriccioso, supra note 181. Such a victory would have reduced pressure on colleges that are worried about their legal liability in student suicide cases. Id. 190. Klein v. Solomon, 713 A.2d 764, 766 (R.I. 1998) (per curiam). 191. Id. 192. Id. In its holding, the court noted that the psychologist was on notice of Daniel’s suicide risk because of notes that he took during his counseling sessions that recorded Daniel’s suicidal fantasies. Id. 193. Id. at 765. Daniel’s obsessive-compulsive disorder pronounced itself after the unexpected death of his friend when Daniel was only four or five years old. Id. After his friend’s death, Daniel became overly concerned that his deceased friend was being exposed to sewer water as he lay buried, so Daniel refused to throw out garbage and instead collected it in a bag that he kept in his bedroom. Id. 194. Id. 195. Id. at 766 n.2. 196. Id. at 765-66. 197. Id. at 766. Although none of the four were psychiatrists with the ability to prescribe medication, three of the four were psychologists. Id. 198. Id. 199. Id. 200. Id.; see also Kelly, supra note 1.
In 1993, Daniel's mother sued Brown University, Jones, and Solomon for negligent referral and treatment. The claim against Solomon was settled prior to trial, but the lawsuit against Brown and Jones continued to trial. A Rhode Island trial court entered judgment as a matter of law in favor of the University. Daniel's mother subsequently appealed to the Rhode Island Supreme Court. That court reversed and remanded the case to the trial court, holding that judgment as a matter of law was not appropriate where "[a] jury certainly could have reasonably concluded that Jones was negligent in failing to refer Daniel to someone qualified in suicide prevention or to someone who could prescribe medication for Daniel that would reduce his suicidal inclinations." Thus, on remand, the trial court was to determine whether Jones was negligent in referring Daniel for treatment. The court focused on the foreseeability of Daniel's suicide and stated that the notes Jones wrote during his appointments with Daniel indicated that Jones was on notice of Daniel's suicidal tendencies. The court then held that "the trial justice erred in concluding that there was no legally sufficient evidentiary basis for the jury to find for Klein on the issue of negligent referral" and that he should have submitted that issue to the jury. On remand, the jury did not find any fault on the part of either Brown University or the psychologist.

_Schieszler, Shin, and Klein_ illustrate that while some cases have found a special relationship between a decedent and his university, no case has yet imposed liability on a college for a student's suicide. Other college suicide cases not only deal with the question of duty to prevent suicide, but also implicate an arguably less burdensome duty to notify family members. The duty to notify raises privacy concerns which, in the higher-education setting, are governed by a federal privacy law that conditions federal funding on keeping students' records, including mental health counseling files, confidential.

201. _Klein_, 713 A.2d at 766.
202. _Id._
203. _Id._ at 765.
204. _Id._
205. _Id._ at 766.
206. _Id._
207. _Id._
208. _Id._
C. College Suicides Implicate Federal Laws and Constitutional Concerns

1. Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendment, is a federal law that protects the privacy of student educational records. FERPA protects students' privacy by making federal funding contingent on colleges keeping student files confidential. Under FERPA, a student's records may not be released to anyone, including the student's parent or guardian, unless the student consents or the disclosure falls within narrow exceptions. The statute's special carve-out permits the release of student records to parents of dependent children or to otherwise “appropriate persons” in health or safety emergencies. FERPA permits, but does not require, disclosures to be made in emergency situations to “appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.” The Act explicitly leaves it to the institution's discretion to determine whether a situation constitutes an emergency that would allow disclosure of educational records. FERPA has made schools wary about reporting mental health issues to parents for fear of losing federal funding, especially since an administrative regulation accompanying the statute requires strict construction of the disclosure exception.

211. See 20 U.S.C. § 1232g (2000); United States v. Miami Univ., 91 F. Supp. 2d 1132, 1148-49 (S.D. Ohio 2000) (holding that university student disciplinary records were “education records” as defined by the Family Educational Rights and Privacy Act (FERPA), and thus, protected from public disclosure).

212. See 20 U.S.C. § 1232g(b)(1) (prohibiting the funding of “any educational agency or institution which has a policy or practice of permitting the release of education records”).


216. See id.; Brown v. City of Oneonta, 106 F.3d 1125 (2d Cir. 1997) (holding that whether state university officials were permitted to release a list of black male students' names and addresses to law enforcement officers, to facilitate a search for a violent criminal, under the emergency exception to FERPA was not a clear issue, and that officials were thus entitled to qualified immunity in the students' subsequent 42 U.S.C. § 1983 action alleging a FERPA violation); Victory Outreach Ctr. v. City of Phila., 233 F.R.D. 419 (E.D. Pa. 2005) (holding that the plaintiff's subpoena, which requested the University to disclose the names and addresses of any University students who witnessed incidents that gave rise to the plaintiff's suit against the University, did not violate FERPA, as the statute allows an educational institution to release personally identifiable information contained in a student's records if the institution is subpoenaed).

217. See 34 C.F.R. § 99.36(c) (2006); John S. Gearan, Note, When Is It Ok to Tattle? The Need to Amend the Family Educational Rights and Privacy Act, 39 Suffolk U. L. Rev. 1023, 1025 (2006) (“Despite the increasing threat of wrongful-death litigation, colleges and universities often still choose to protect a student's privacy because they fear violating FERPA, and losing valuable federal funding.”).
FERPA does not confer a private right of action on individuals, so students whose mental health records are released without their consent are not permitted to sue their universities directly. Instead, FERPA directs the Secretary of Education to enforce its nondisclosure provisions by establishing an office and a review board to terminate federal funding to a school when it determines that the school has failed to comply substantially with FERPA. The Family Policy Compliance Office (FPCO), created by the Secretary, promulgates procedures for resolving student complaints about suspected FERPA violations. The FPCO permits students and parents who suspect a FERPA violation to file written complaints. If a complaint is timely and contains the required information, the FPCO will initiate an investigation, notify the educational institution of the charge, and request a written response. “If a violation is found, the FPCO distributes a notice of factual findings and a ‘statement of the specific steps that the agency or institution must take to comply’ with FERPA” within a reasonable period of time.

a. Duty to Notify Under FERPA

FERPA’s discretionary disclosure provision has been tested in college student suicide cases. In Jain v. State, Sanjay Jain’s father argued that the FERPA carve-out, which authorizes disclosure of confidential information where necessary to protect the health or safety of a student, required the University of Iowa to notify Sanjay’s parents about Sanjay’s suicidal behavior. Mr. Jain claimed that the University violated FERPA by not contacting him during an emergency situation. The Supreme Court of Iowa did not rule on this issue because it was not raised before the district court, and thus was not preserved for appeal; however, the court did “entertain serious doubts about the merits of plaintiff’s argument” because “[h]is claim rest[ed]... not on a violation of the Act but on an alleged failure to take advantage of a discretionary exception to its requirements.”

218. See Gonzaga Univ. v. Doe, 536 U.S. 273, 288 (2002) (reasoning that because “FERPA’s nondisclosure provisions... speak only in terms of institutional policy and practice, not individual instances of disclosure[,]... they have an ‘aggregate’ focus, they are not concerned with ‘whether the needs of any particular person have been satisfied,’ and they cannot ‘give rise to individual rights’” (quoting Blessing v. Freestone, 520 U.S. 329, 343-44 (1997))).
219. See 20 U.S.C. § 1232g(g) (requiring the Secretary of Education to “establish or designate an office and review board” for investigating and adjudicating FERPA violations); Gonzaga, 536 U.S. at 279.
220. Gonzaga, 536 U.S. at 289.
221. See 34 C.F.R. § 99.63; Gonzaga, 536 U.S. at 289.
222. See 34 C.F.R. § 99.64-65; Gonzaga, 536 U.S. at 289.
223. Gonzaga, 536 U.S. at 289 (quoting 34 C.F.R. § 99.66(b)-(c)).
225. Id.
226. Id.
As an alternative to his FERPA argument, Mr. Jain alleged that "the university ha[d] voluntarily adopted a policy . . . of notifying parents when a student engage[d] in self-destructive behavior but it negligently failed to act on that policy in the case of Sanjay Jain."227 The Supreme Court of Iowa reasoned that this allegation implicated section 323 of the Restatement (Second) of Torts, which attaches liability to one who fails to exercise reasonable care in providing a service to another where the other incurs an increased risk of physical harm or relies on the care to his detriment.228 The Court held that "Sanjay may have been at risk of harming himself" and that "[n]o affirmative action by the [university's] employees . . . increased that risk of self-harm."229 Thus, because the University's intervention did not increase the risk that Sanjay would commit suicide, section 323 did not give rise to a duty to inform Sanjay's parents about his previous suicide threats.230 The Jain holding illustrates how difficult it is to trigger FERPA's notification exception or, alternatively, to find a voluntary duty to notify.

In Mahoney v. Allegheny College, the parents of deceased student Charles Mahoney also argued that they should have been notified by the college regarding a series of communications their son had with his counselor.231 At trial, lawyers for the College successfully argued that sharing Charles's medical records would have violated his federal privacy rights, as outlined in FERPA, because the school did not have Charles's permission to disclose his medical health information.232 A Pennsylvania judge held that although the duty to notify is less burdensome than a duty to prevent suicide, it still "implicates issues of foreseeability[,] . . . disruption of a professional confidential clinical relationship[,] and . . . a student's right to privacy and expressed wishes involving notification."233

The failure of colleges to notify parents of students' mental health problems because of the fear of losing federal funding has led critics to argue for expanding the now discretionary notification provision of FERPA to require schools, rather than leave it to their discretion, to report incidents

227. Id.; see supra note 106 and accompanying text.
228. See Restatement (Second) of Torts § 323 (1965) ("One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.").
229. Jain, 617 N.W.2d at 299.
230. Id. at 300.
232. See Capriccioso, supra note 123.
233. Mahoney, No. AD 892-2003, slip op. at 23. In Mahoney, Charles Mahoney insisted that he did not want his counselor to contact his parents or anyone else about his psychological problems. Id. at 5-6, 10.
that may harm the student or others.\textsuperscript{234} According to a 2005 survey of 366 directors of counseling centers across the United States and Canada, when a depressed student who has suicidal ideations, but does not meet criteria for involuntary hospitalization, insists that family not be contacted, the majority of directors would comply with the request.\textsuperscript{235}

Some scholars also feel there should be a duty to notify parents, guardians, or administrators about a student’s suicidal ideations.\textsuperscript{236} “A duty to notify is a much lower cost alternative than a duty to actually prevent the suicide from happening.”\textsuperscript{237} In \textit{Eisel v. Board of Education of Montgomery County}, the Maryland Court of Special Appeals imposed a duty of notification on educators in the context of minor children.\textsuperscript{238} In \textit{Eisel}, Nicole Eisel, a thirteen-year-old middle school student in Montgomery County, ended her life with another thirteen-year-old friend from a different school in an apparent murder-suicide pact.\textsuperscript{239} Nicole’s father alleged that a week prior to her death, Nicole told several friends about her suicide plan and that these friends informed two school counselors.\textsuperscript{240} The counselors questioned Nicole about the statements, but Nicole denied making them.\textsuperscript{241} Neither counselor notified Nicole’s parents about the incident, nor did they inform the administration about it.\textsuperscript{242} Nicole’s father sued the Board of Education of Montgomery County, the superintendent, the principal of the school, and Nicole’s counselor for wrongful death.\textsuperscript{243} The Maryland Court of Appeals stated that a mere telephone call communicating Nicole Eisel’s suicide threats to her parents would have discharged the school’s duty to notify.\textsuperscript{244} The court reasoned that “when the risk of death to a child is balanced against the burden sought to be imposed on the counselors, the scales tip overwhelmingly in favor of duty.”\textsuperscript{245} The \textit{Eisel} court’s rationale

\textsuperscript{234} See Gearan, \textit{supra} note 217, at 1027 (“Congress should amend FERPA to impose affirmative duties during an emergency thereby overriding confusing common-law precedents that leave colleges unsure about parental disclosure.”).

\textsuperscript{235} See Gallagher, 2005 Counseling Center Survey, \textit{supra} note 32, at 4 (reporting that in this circumstance, “only 4.3% of directors would [still contact family], 68.8% would not, and 27% said that they would need more information before deciding”).

\textsuperscript{236} See Lake & Tribbensee, \textit{supra} note 42, at 146 (arguing that a duty to notify an intervening party, as opposed to a duty to prevent suicide, “is more readily inferred from the college-student relationship”).

\textsuperscript{237} Id. at 147.

\textsuperscript{238} See \textit{Eisel v. Bd. of Educ. of Montgomery County}, 597 A.2d 447, 456 (Md. 1991). Note that the school in \textit{Eisel} was a public middle school, not a post-secondary institution, and that an in loco parentis relationship existed between the decedent and the school. See \textit{id.} at 451-52, 456.

\textsuperscript{239} Id. at 449-50.

\textsuperscript{240} Id. at 449.

\textsuperscript{241} Id.

\textsuperscript{242} Id.

\textsuperscript{243} Id. at 448.

\textsuperscript{244} Id. at 455.

\textsuperscript{245} Id.
has not been adopted in higher education cases that analyze a duty to notify.\textsuperscript{246}

Similarly, the court in \textit{Wyke v. Polk County School Board} mirrored Eisel's analysis by stating that "[t]he risk of a child's death substantially outweighs the burden of making a phone call."\textsuperscript{247} In \textit{Wyke}, thirteen-year-old Shawn Wyke attempted to hang himself at school on two separate occasions prior to his death.\textsuperscript{248} School officials were notified about the attempts but never contacted Carol Wyke, Shawn's mother, or Helen Schmidt, the woman that Shawn was living with at the time.\textsuperscript{249} Shawn ultimately committed suicide by hanging himself from a tree in Schmidt's backyard.\textsuperscript{250} Following trial, the jury returned a verdict for Shawn's mother on the theory that the school board negligently failed to supervise Shawn.\textsuperscript{251}

In addition to courts and legal scholars, legislatures and practitioners have entered the debate over a duty to notify. Lawmakers in Colorado are currently considering legislation that would grant Colorado colleges and universities "permission to notify a parent, friend, professor or anyone else they desire" if counselors believe that a student seeking help at a campus counseling center is considering suicide or may be a danger to himself.\textsuperscript{252} Supporting a duty to notify family, the lawyer for Charles Mahoney's parents, William D. Phillips, suggested that all colleges should consider "liberalizing their confidentiality policies" to permit counselors and others to call family members of depressed students.\textsuperscript{253}

However, there are many disadvantages to imposing a duty to inform parents of suicidal behavior. First, such a duty may deter students from seeking on-campus medical attention for fear of their parents finding out.\textsuperscript{254} Second, notification may violate students' federal privacy rights

\textsuperscript{246} See \textit{supra} notes 224-33 and accompanying text (discussing how courts have declined to find a duty to notify in \textit{Jain v. State} and \textit{Mahoney v. Allegheny College}).

\textsuperscript{247} \textit{Wyke v. Polk County Sch. Bd.}, 129 F.3d 560, 574 (11th Cir. 1997).

\textsuperscript{248} \textit{Id.} at 563. As in \textit{Eisel}, the school in \textit{Wyke} was also a public middle school. \textit{See id.}

\textsuperscript{249} \textit{Id.} Shawn Wyke was living with Helen Schmidt, the mother of Carol Wyke's ex-boyfriend, when he died. \textit{Id.} at 563 n.1.

\textsuperscript{250} \textit{Id.}

\textsuperscript{251} \textit{Id.} at 566. However, under the comparative fault doctrine, the school was assigned 33\% fault, Shawn's mother was assigned 32\% fault, and Schmidt was assigned 35\% fault. \textit{Id.} As a result, out of a $500,000 damages verdict, Shawn's mother received $165,000. \textit{Id.}

\textsuperscript{252} Rob Capriccioso, \textit{Counseling Crisis}, Inside Higher Ed, Mar. 13, 2006, http://insidehighered.com/news/2006/03/13/counseling. However, any such state law may conflict with FERPA and would likely be preempted by the federal law. See Gonzalez v. Raich, 545 U.S. 1, 29 (2005) ("The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.").

\textsuperscript{253} Capriccioso, \textit{supra} note 7.

\textsuperscript{254} \textit{See id.} (reporting that Allegheny College defended its confidentiality policy on the ground that Charles's privacy rights would have been violated if his parents were notified about his depressed communications with a counselor); \textit{see also} Lake & Tribbensee, \textit{supra} note 42, at 152 ("A common fear is that if the student's therapist notifies the family the student will feel betrayed and abandon the treatment relationship, thus placing the student at greater risk.").
(FERPA),\textsuperscript{255} in addition to a counselor’s professional ethics code.\textsuperscript{256} Third, in some cases, “the parent or other third party who would be notified may be a major factor in the student’s depression or suicidal ideation, and notifying and including that person will only increase the pressure the student feels to complete the act.”\textsuperscript{257} Finally, there is a risk that schools will just call parents whenever a student displays suicidal behavior without providing the immediate mental health care the student needs.\textsuperscript{258}

2. Americans with Disabilities Act

The way colleges respond to a student’s threatened or attempted suicide may also implicate the Americans with Disabilities Act (ADA). The ADA prohibits discrimination against disabled individuals.\textsuperscript{259} Specifically, the ADA forbids discrimination against the disabled “in three major areas of public life: employment, which is covered by Title I of the statute; public services, programs, and activities, which are the subject of Title II; and public accommodations, which are covered by Title III.”\textsuperscript{260} In the higher education context, ADA violations are most commonly asserted under title II as a denial of access to education.\textsuperscript{261} In the context of student suicide,
cases alleging violations of the ADA are brought when universities dismiss a student who threatens or attempts suicide.\textsuperscript{262} Individuals have a private right of action under the ADA through the incorporation of the Rehabilitation Act of 1973,\textsuperscript{263} which authorizes private citizens to bring suits for money damages.\textsuperscript{264} To prevail on a claim for a violation of title II of the ADA, a plaintiff must show that he has a disability; that he was either excluded from participation in or denied the benefits of some public entity’s services, programs, or activities; and that such exclusion, denial of benefits, or discrimination was by reason of plaintiff’s disability.\textsuperscript{265}

Plaintiffs asserting ADA violations against public state universities need to overcome the Eleventh Amendment’s grant of sovereign immunity to succeed on their claims.\textsuperscript{266} Although a state’s sovereign immunity will be abrogated where plaintiffs are denied access to a fundamental right,\textsuperscript{267} courts are split as to whether to abrogate a state’s immunity and permit an ADA violation claim to go forward in lawsuits asserting a denial of access to a non-fundamental right such as higher education.\textsuperscript{268}

response to pervasive unequal access to administrative services, such as disqualifying disabled individuals from voting, marrying, or serving as jurors. See \textit{Lane}, 541 U.S. at 524.

262. See infra notes 317-38 and accompanying text (discussing student suicide cases from Hunter College and George Washington University that triggered legal liability under the ADA).


266. See U.S. Const. amend. XI (prohibiting individuals from suing states).

267. See United States v. Georgia, 126 S. Ct. 877, 882 (2006) (holding that title II of the ADA validly abrogates state sovereign immunity and creates a private cause of action for damages against states for conduct that violates the Fourteenth Amendment); Tennessee v. Lane, 541 U.S. 509, 533-34 (2004) (applying title II of the ADA to abrogate Tennessee’s sovereign immunity where two plaintiffs, paraplegics who used wheelchairs for mobility, were denied access to the state’s courts in contravention of their fundamental right of access to courts).

268. Compare Constantine v. Rectors and Visitors of George Mason Univ., 411 F.3d 474, 488-90 (4th Cir. 2005) (holding that even though the constitutional right to education is not a fundamental right and is only subject to rational basis review, given the importance of education, relief under Title II is proportional and congruent to the alleged injury), and Ass’n for Disabled Ams., Inc. v. Fla. Int’l Univ., 405 F.3d 954, 958-59 (11th Cir. 2005) (abrogating government immunity where a university failed to accommodate the plaintiff’s disability and reasoning that even though there is no fundamental right to education, it is an important right that requires relief under Title II of the ADA), with Press v. State Univ. of N.Y., 388 F. Supp. 2d 127, 134-35 (E.D.N.Y. 2005) (holding that the application of title II to a university’s alleged denial of access to post-secondary education on the basis of disability is not a valid exercise of congressional power to abrogate state sovereign immunity because the disabled are not a suspect class and access to education is not a fundamental right). It is well settled that there is no fundamental right to equal education, let alone equal higher education. See San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) (holding that there is no fundamental right to education that would trigger strict scrutiny review under the Equal Protection Clause); Cady v. S. Suburban Coll., 310 F. Supp. 2d 997, 1000 (N.D. Ill. 2004) ("There is no general constitutional right to higher education.").
3. Constitutional Claims

College student plaintiffs suing a university for its inappropriate response to a student's suicide threat or attempt may assert both substantive and procedural due process violations under the Fourteenth Amendment. While a substantive due process violation is unlikely to succeed because there is no fundamental right to higher education, an alleged violation of procedural due process requires a case-by-case evaluation to determine whether an institution adhered to its disclosure policies and suicide prevention plans, if any.

A plaintiff may also assert an equal protection violation claim under the Fourteenth Amendment based on discrimination on the basis of mental disability. However, it is difficult to prove an equal protection violation because the disabled are not a suspect class. Therefore, to succeed on an equal protection violation claim, a plaintiff needs to show that the action directed at members of the disabled class is not "rationally related to a legitimate governmental purpose."

A "right to die" argument may also be asserted by defendant colleges in wrongful death cases stemming from a student's suicide. These colleges may contend that the student had a right to choose not to live and that the school was not required to interfere with that choice. The right to die is not recognized by courts, however, and there is no case to date in which a college has asserted the right to die as a defense.

II. HOW TO RESPOND TO STUDENT SUICIDE RISKS WITHOUT VIOLATING THE LAW

In the wake of litigation against colleges for student suicides, universities have been reviewing their student suicide policies to come up with a policy that simultaneously saves lives and wards off litigation. Colleges are

269. U.S. Const. amend. XIV.
270. See San Antonio, 411 U.S. at 35.
271. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 442 (1985) (holding that the mentally retarded are not a quasi-suspect class (like gender) and are only subject to rational basis review).
272. Id. at 446; see Doe v. Bd. of Trs. of Univ. of Ill., 429 F. Supp. 2d 930, 944 (N.D. Ill. 2006) (holding that a student with learning disabilities who was dismissed from medical and doctoral programs had a valid equal protection claim because there was no rational basis to intentionally single him out for different treatment from others similarly situated). The plaintiff in Doe also asserted a constitutional right to privacy claim against the University for disseminating his medical records, but the court dismissed the claim because the plaintiff had to know that his medical information "would be disclosed to others within the university to ensure that he received accommodations for his disabilities." Id. at 944-45.
273. See Washington v. Glucksberg, 521 U.S. 702, 728 (1997) (holding that a right to die is not a fundamental liberty interest protected by the Due Process Clause).
274. See Karen W. Arenson, Worried Colleges Step Up Efforts over Suicide, N.Y. Times, Dec. 3, 2004, at A1 (discussing how Emory University and the University of North Carolina are asking students to fill out anonymous mental health questionnaires, Duke University is asking that faculty notify the school about changes in students' behavior, and Columbia
torn between adopting voluntary counseling policies or mandatory dismissal procedures in response to a suicide threat or attempt. Colleges that adopt voluntary policies and expect students to seek out counseling on their own protect themselves from violating FERPA and the ADA but risk a wrongful death suit if the student commits suicide.\textsuperscript{275} In contrast, colleges that adopt mandatory dismissal policies and require a student to withdraw following a suicide attempt may be violating the ADA by denying a mentally disabled person access to education and FERPA by disclosing the student's mental health problems to university officials and the student's family when sending the student home.\textsuperscript{276} A third policy option requires students to attend counseling following a suicide threat or attempt, on the condition that if they refuse, they may be forced to withdraw. Such an aggressive response may better identify high-risk students and save more lives, but may pose privacy concerns under FERPA.\textsuperscript{277} Part II of this Note explores the legal and ethical implications of the catch-22 that each policy creates for colleges.

A. Voluntary Counseling Policies

Colleges that adopt voluntary counseling policies for at-risk students allow such students to seek treatment at their own will. These schools do not require students who threaten or attempt suicide to attend a mandatory evaluation, nor do they automatically dismiss them for medical leave.

1. Advantages of Voluntary Counseling Policies

A voluntary policy has the benefit of safeguarding a student's privacy and avoiding conflict with FERPA because a student can choose to attend counseling and share his private feelings at will.\textsuperscript{278} A voluntary policy is consistent with treating college students as adults, especially in light of the absence of an in loco parentis relationship.\textsuperscript{279} In not forcing depressed students into treatment, voluntary policies avoid targeting students who may not be at risk for suicide, thereby preventing discrimination lawsuits under the ADA and avoiding spending resources on unnecessary medical treatment.\textsuperscript{280} By not mandating withdrawal following a suicide threat or attempt, voluntary policies also avoid lawsuits under the ADA that claim...
denial of access to education.\textsuperscript{281} By permitting deeply depressed students to remain in school, voluntary policies preserve the value of education.\textsuperscript{282}

2. Disadvantages of Voluntary Counseling Policies

Despite the above mentioned benefits of voluntary suicide prevention policies, there are also some disadvantages. First, voluntary policies assume that students will seek out counseling when they feel depressed. While this assumption may be true of some students, it denies the "resistance to treatment shown in the general population and the outright rejection of treatment shown by the majority of suicidal individuals."\textsuperscript{283} When the University of Illinois adopted a voluntary suicide prevention program, it found that there was a less than five percent chance that a suicidal student would attend four counseling sessions following a suicide threat or attempt.\textsuperscript{284} The University of Iowa also employed a voluntary suicide prevention policy in \textit{Jain v. State}.\textsuperscript{285} After Sanjay Jain’s residence hall coordinator was made aware of Sanjay’s suicide threat, she encouraged Sanjay to get university counseling but never required him to do so.\textsuperscript{286} However, Sanjay never sought counseling and committed suicide without ever getting evaluated.\textsuperscript{287} Acquiescing to the request to make an appointment but not actually making it (as Sanjay did), or, alternatively, scheduling an appointment but not keeping it, are common pitfalls of voluntary programs according to Paul Joffe, the Director of the Suicide Prevention Program at the University of Illinois at Urbana-Champaign.\textsuperscript{288} Recognizing the futility of merely encouraging a suicidal student to seek treatment, the court in \textit{Schieszler v. Ferrum College} reprimanded Ferrum College and its staff for failing to obtain counseling for Michael Frentzel after he inflicted bruises on his head and expressed suicidal thoughts to his girlfriend, especially because the college had previously required Michael to undergo counseling for behavioral issues.\textsuperscript{289}

MIT also encountered liability as a result of its voluntary policy. During the spring of 2001, Julia Carpenter (known as Julie), a twenty-year-old MIT
sophomore, committed suicide by ingesting cyanide. Starting in the fall of 2000, a fellow Random Hall dormitory resident, Charvak Prakash Karpe, began to harass Julie in an attempt to pursue a romantic relationship with her by “sleep[ing] overnight in the lounge outside her dorm room, ke[eping] her under constant surveillance, enter[ing] her room without permission, listen[ing] in on her private conversations, and [stealing] data from her computer.” In the spring of 2001, Julie filed a complaint against Karpe to the Judicial Committee of Random Hall. Even though Karpe admitted to most of the allegations made against him, the Judicial Committee allowed Karpe to remain in Random Hall. Julie’s friends became concerned about her suicidal behavior after she learned that Karpe would stay in the dorm. As a result, Julie accompanied her friend, Kristin Josephson, to Kristin’s home in Connecticut, where Kristin’s mother, Dr. Lynn Josephson, spoke to Julie and immediately sent an e-mail to an MIT dean and MIT’s President, stating, “[P]lease help me prevent another MIT student suicide.”

Upon her return to campus, Julie met with an MIT dean, attended counseling, and pursued an administrative review of the Judicial Committee’s decision. The review committee decided to remove Karpe from Random Hall for the remainder of the spring 2001 semester, but allowed him to reapply in September. Upon learning of this decision, Julie purchased sodium cyanide over the Internet. A few days after receiving the cyanide package, Julie was found dead in her dorm room by her roommate. Although there was no suicide note, the medical examiner ruled her death a suicide.

In 2003, Julie’s parents sued MIT, Karpe, and several administrators for more than twenty million dollars for wrongful death, alleging that MIT officials were negligent in failing to prevent Julie’s suicide. Julie’s suicide was MIT’s twelfth student suicide in eleven years.

291. Carpenter, 2005 WL 1488417, at *1; see also Marissa Vogt, Key Events in the Carpenter Case., Tech, Sept. 7, 2006, available at http://www-tech.mit.edu/V126/N36/36timeline.html. It has also been reported that Charvak Prakash Karpe stole a video of Julie Carpenter having sex with her boyfriend (who attended another college) and showed the video to other students. Wang, supra note 189.
293. Id.
294. Id.
295. Id.
296. Id.
297. Id.
298. See Vogt, supra note 291; Wang, supra note 189.
299. See Vogt, supra note 291.
300. Id.
301. See Capriccioso, supra note 7; Vogt, supra note 291; Wang, supra note 189 (reporting that the suit also charged MIT with breach of contract for failing to keep Karpe away from Carpenter).
The Carpenter case settled in September 2006 for an undisclosed amount.\textsuperscript{303} Carpenter illustrates how MIT's voluntary suicide prevention policy may not have been enough to protect Julie from herself.

\subsection*{B. Automatic Dismissal Policies}

Another way colleges have responded to the threat of liability from student suicide is by implementing a policy of dismissing students before they commit suicide. Such a policy requires a student to either move out of his residence hall (if he is living in university-owned housing) or to withdraw from the institution following a suicide threat or attempt.\textsuperscript{304} The decision to mandate withdrawal is within the discretion of the university, and there is no hearing or appeals process for the student.\textsuperscript{305}

\subsubsection*{1. Advantages of Automatic Dismissal Policies}

Automatic dismissal policies have the advantage of potentially saving more students’ lives by releasing them from the university at the first sign of trouble. The rationale is that once students are relieved from their academic responsibilities, they can focus entirely on their mental health needs.\textsuperscript{306} Once students are emotionally prepared to return to school, they may do so.\textsuperscript{307} By requiring the student to leave right away, the institution does not voluntarily undertake to help the student, which may limit the school’s liability if the student commits suicide at a later date.\textsuperscript{308}

\begin{footnotesize}
\begin{enumerate}
\item See Capriccioso, supra note 7 (discussing the undisclosed settlement of Carpenter and a statement by Julie’s parents stating that they were pleased with MIT’s increased mental health resources and suicide prevention efforts).
\item See Rob Capriccioso, Hunter Settles Suicide Suit, Inside Higher Ed, Aug. 24, 2006, http://www.insidehighered.com/news/2006/08/24/suicide (reporting that Hunter College’s mandatory dismissal policy automatically barred students who tried to take their lives from the institution’s dorms, and required them to leave campus for one full semester after the semester in which they were banned); see infra notes 317-38 and accompanying text (discussing how Hunter College and George Washington University evicted depressed students from campus-owned housing).
\item See infra notes 319, 353 and accompanying text (discussing how a Hunter student tried to appeal her school’s decision to evict her following her suicide attempt, but was told the decision was final, and how a New York University (NYU) student’s doctor, who treated her for depression, advocated for her return to school, but NYU still required a mandatory leave for the semester).
\item NYU spokesman John Beckman has stated that “[i]n most cases, students who take a mandated break come back and succeed at the university.” Jason Feirman, NYU Tells Troubled Student to Take Leave, Wash. Square News (N.Y.), Oct. 28, 2004, available at http://media.www.nyunews.com/media/storage/paper869/news/2004/10/28/UndefinedSection/Nyu-Tells.Troubled.Student.To.Take.Leave-2389116.shtml. See also infra note 361 and accompanying text (discussing how a Columbia University student was required to leave the University to focus on her mental health at home).
\item See infra notes 354, 363 and accompanying text (discussing how a NYU student and a Columbia University student were permitted to return to school following treatment at home).
\item See supra notes 52-53 and accompanying text (discussing how a duty of care may attach in voluntary undertakings).
\end{enumerate}
\end{footnotesize}
Therefore, in the event of a wrongful death suit, the institution may claim that it had no duty to prevent the student from self-harm in light of the absence of an in loco parentis relationship in higher education and its failure to voluntarily undertake such a duty by its actions. In addition, a mandatory dismissal policy protects students’ privacy by shielding their psychological troubles from schoolmates’ prying eyes.309

2. Disadvantages of Automatic Dismissal Policies

a. Forced Dismissal May Violate FERPA

College administrators recognize that there are two competing interests in the context of student mental health: (1) guarding a student’s confidentiality, and (2) potentially saving a life by disclosing personal mental health information.310 Under a policy of mandatory dismissal, a student’s guardians are notified about their child’s mental health problems so that they understand why their child is being sent home.311 In the area of psychiatry, the benchmark case of Tarasoff v. Regents of University of California held that psychiatrists may breach a patient’s confidentiality when there is a serious risk of harm to an individual.312 However, in the college counseling environment, a disclosure of student health records triggers privacy concerns under FERPA.313 Some schools have already considered modifying their confidential counseling policies to try to get around FERPA’s restrictions. For example, a plan recently considered at George Washington University (GW) “would ask that students, faculty members or anyone else receiving counseling services at the [campus health care] center sign a waiver that would allow notes and discussions that occur during sessions to be shared with certain administrators.”314 After much controversy, including mental health professionals and legal experts arguing that the waiver would stigmatize students who seek care and might conflict with confidentiality guidelines traditionally associated with psychological and psychiatric treatment, the University abandoned the plan.315 Because counseling waivers are legally and ethically inappropriate and because

310. See Ellen, supra note 12.
311. See infra note 361 and accompanying text (discussing how the parents of a Columbia University student were notified about their daughter’s dismissal following her on-campus counseling session).
312. Tarasoff v. Regents of Univ. of Cal., 551 P.2d 334 (1976) (holding that when a psychotherapist determines, or should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger).
313. See supra Part I.C.1 (discussing legal liability under FERPA).
family members will demand to know why their child is being sent home involuntarily, there is no clear way to avoid violating FERPA under a mandatory dismissal policy.\textsuperscript{316}

b. Forced Dismissal May Violate the ADA

The ADA is implicated in cases where students are forced to withdraw because of their purported mental illness. Litigation arising out of the use of mandatory dismissal policies at several different colleges illustrates how such procedures may violate the ADA and result in unwanted litigation.

In June 2004, a depressed nineteen-year-old Hunter College honors student attempted suicide by swallowing handfuls of Tylenol, but then saved her own life by calling 9-1-1.\textsuperscript{317} When she returned from the hospital, the locks on her door had been changed and she was expelled from her dorm (but still allowed to attend class) for violating the housing policy by attempting suicide.\textsuperscript{318} Following the eviction, the student asked college administrators to let her remain in her dorm because doctors had determined that she was not a risk to herself or others; however, the school denied her request.\textsuperscript{319} This student, whose name remains anonymous, sued Hunter College, claiming that her eviction violated the Fair Housing Act,\textsuperscript{320} the ADA,\textsuperscript{321} and section 504 of the Rehabilitation Act.\textsuperscript{322}

Hunter College settled this lawsuit in August 2006 for $65,000 and abandoned its three-year-old housing policy that automatically banned students who attempted suicide from living in the institution’s dorms and mandated that they leave campus for one full semester after the semester during which they were banned.\textsuperscript{323} The former policy also enabled Hunter to require students to attend mental health counseling.\textsuperscript{324} A Hunter College spokeswoman, Meredith Halpern, stated that while “the college may still

\begin{footnotes}
\footnotetext[316]{Although FERPA contains a carve-out provision that permits disclosure in emergency situations, the statute does not enumerate what constitutes an emergency situation. See supra notes 213-17 and accompanying text (discussing FERPA’s carve-out provision).}
\footnotetext[317]{See Caruso, supra note 309; Capriccioso, supra note 304.}
\footnotetext[318]{See Capriccioso, supra note 304; Caruso, supra note 309.}
\footnotetext[319]{See Capriccioso, supra note 304.}
\footnotetext[320]{42 U.S.C. § 3604(f)(1) (2000) (providing that it is unlawful to “discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap”). The Act defines handicap as “a physical or mental impairment which substantially limits one or more of such person’s major life activities.” 42 U.S.C. § 3602(h)(1).}
\footnotetext[321]{42 U.S.C. § 12132; see also supra Part I.C.2 (discussing legal liability under the ADA).}
\footnotetext[322]{29 U.S.C. § 794 (“No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”); Capriccioso, supra note 304; see also supra notes 263-64 (discussing how the Rehabilitation Act is incorporated into the ADA).}
\footnotetext[323]{See Caruso, supra note 309.}
\footnotetext[324]{See Capriccioso, supra note 304.}
\end{footnotes}
Consider temporarily removing troubled students from residence halls, . . . such evictions won’t be automatic.  

Karen Bower, an attorney with the Bazelon Center for Mental Health Law, which helped litigate the Hunter College case, stated that the biggest problem with these dismissal policies is that they may deter students from seeking help through the college for fear of being evicted. While schools that employ such eviction polices claim that their procedures are meant to give students a break from the stress of university life and protect their privacy, some activists suspect that such evictions are an attempt by colleges to avoid legal liability if someone commits suicide in the dorms. The Hunter student, meanwhile, considers the settlement a victory and may return to Hunter to complete three courses that were left incomplete after she left the school.

Hunter College is not alone in facing litigation because of its handling of an attempted suicide. In the fall of 2004, Jordan Nott, a sophomore at GW, sought help for depression at the University’s hospital. After returning from treatment, Jordan “was put on an interim suspension by the university, evicted from his dorm room, prohibited from attending classes, and barred from [GW] property and events.” Jordan’s visit to GW’s hospital was his second that semester; he first sought help for a bout of depression resulting from the suicide of a friend, also a GW student, who jumped out of his dorm room window while Jordan and two others desperately tried to unlock the door.

Despite GW’s assessment that he was suicidal, Jordan maintained that he never tried to kill himself but was merely thinking about it after reading about a correlation between antidepressant use and suicide. GW maintained that Jordan violated the University code of conduct by engaging in “endangering behavior,” which it defined as behavior that endangers oneself or others. Jordan sued the University for violating the ADA “by charging him through the student disciplinary process and barring him from campus.” Following the incident, Jordan transferred to the University of Maryland-College Park, from which he graduated during the summer of

325. See Caruso, supra note 309.
326. See id.
327. See id.
328. See Capriccioso, supra note 304.
329. Capriccioso, supra note 252.
330. Id. “[Jordan Nott] was warned that if he came onto campus for any reason, he would be considered a trespasser and could be arrested.” Id.
331. Id.
332. Jordan was upset upon learning about this correlation because he was on Zoloft, an antidepressant prescribed to him following his earlier psychiatric visit to George Washington University’s (GW’s) hospital. Id.
333. Id.
Terry Schario, a spokesperson for GW, said the University’s treatment of Jordan “was not an attempt to limit legal liability,” but “to protect a life”; however, Schario admitted that the school was currently considering policy alternatives.336

In October 2006, Jordan’s lawsuit settled for an undisclosed amount during the discovery phase prior to trial.337 GW did not admit fault and Jordan hoped that his case would prompt “positive changes in how student mental health issues are handled at campuses across the country.”338

The Department of Education’s Office for Civil Rights (OCR) has received numerous complaints from college students who allege civil rights violations similar to those of the Hunter College student and Jordan Nott.339 In 2005, following a complaint filed by a student who attempted suicide at Bluffton University in Ohio, the OCR sent a letter to the President of the University stating that the school’s removal of that student did not comply with federal law.340 This letter was in regard to a female student at the University who cut herself and tried to overdose on pills in an apparent suicide attempt during the spring of 2004.341 The student was hospitalized for a week and diagnosed with bipolar disorder.342 Although medical professionals suggested that it would be beneficial for the student to return to school, University officials dismissed the student three days after the incident.343 The OCR found that the University improperly dismissed the student without notice and without giving her a proper hearing.344 Although a lawsuit was never brought, Bluffton University ultimately agreed that it had violated the federal law, worked with the OCR to make policy changes, and reimbursed the student for her room, board, and books.345

336. Caruso, supra note 309 (internal quotation marks omitted). GW’s immediate reaction to Jordan’s depression may be explained by the fact that during the 2003-2004 academic year, there were seven GW student deaths, including two drownings that were ruled accidental. See Posting of HM, GW Alum to http://www.insidehighered.com/news/2006/11/01/settle (Nov. 1, 2006, 13:46 EST). Students and parents demanded information about these deaths and GW formed a commission to research the situation. Id. Jordan’s fall 2004 bout of depression came on the heels of these student deaths (which many believed were suicides), so one reason why GW may have acted so aggressively was because it was trying to prevent what it considered to be the onset of another student suicide. Id.
337. See Lederman, supra note 334.
338. Id.
339. Capriccioso, supra note 252.
340. Id.
341. Id.
342. Id.
343. Id.
344. Id.
345. Id.
Sue Schaller, a New York University (NYU) freshman, also suffered from her school’s mandatory dismissal policy in the fall of 2004. In late September of 2004, Sue called NYU’s Wellness Exchange health hotline after feeling depressed. Sue spoke to a counselor, Marcos Quinones, and met with him on several occasions. Sue stated that Quinones felt that she was calling too frequently between her counseling appointments, and, on October 11, 2004, told her that she should try not calling for a week. Two days later Sue felt even worse and called the hotline; however, Sue was unable to reach an NYU counselor. Sue then sent an e-mail to Quinones expressing that she was thinking about committing suicide by swallowing Tylenol. Quinones was out of town, but the e-mail was forwarded to another counselor who met with Sue the next morning and convinced her to come to NYU’s Tisch Hospital, where she was treated for depression for four nights. Although the doctors who treated Sue at the hospital advocated for her return to class, NYU forced her to take a mandatory leave for the semester.

Sue returned to NYU in the fall of 2005 and was required to see a counselor regularly throughout her first semester back. Despite her experience, Sue has decided not to sue NYU because “[i]t would be like David taking on Goliath.” Officials at NYU say that Sue’s case is uncommon and that “mandated leave is used only as a last resort. Less than 0.3 percent of the approximately 3,400 students who visit the university’s counseling center are required to leave.”

Columbia University is yet another institution that applied its mandatory dismissal policy to force the medical withdrawal of freshman Nicole Thompson. Nicole was already suffering from bipolar disorder when she left Nashville, Tennessee, for Columbia University in the fall of 2003 to begin her freshman year. Nicole went out drinking one night early in the fall semester, became separated from her friends, and began to cry and panic. Nicole called her friends, stating that she “just wished the traffic

346. Id.
347. Feirman, supra note 306.
348. Id.
349. Id.
350. Id. Sue decided not to use an alternative citywide after-hours hotline, LifeNet, because she did not want to “tell random people [her] problems.” Id. (internal quotation marks omitted).
351. Id.
352. Id.; see also Capriccioso, supra note 252.
353. Capriccioso, supra note 252.
354. Id.
355. Id. (internal quotation marks omitted).
356. Id. “Of the 3,400 students who use University Counseling Service each year, about 100 to 120 students take medical leave, and in about 10 cases the student does so unwittingly, university spokesman [John] Beckman said.” Feirman, supra note 306.
357. Arenson, supra note 274.
358. Id.
would take [her] out."³⁵⁹ By the time Nicole safely returned to campus, her friends had already notified Columbia about the incident.³⁶⁰ Nicole went to see a Columbia counselor following the incident, and, although she and her family planned on getting her help in New York, Columbia required that she withdraw for the semester.³⁶¹ Upon returning to Nashville, Nicole felt worse and wound up in a psychiatric hospital.³⁶² Nicole returned to Columbia the following semester feeling better but still having mixed feelings about how the school had treated her.³⁶³ Columbia officials said that the University does not keep statistics on how many students they send home, but that there are few of them.³⁶⁴

The above cases illustrate just how many colleges and universities employ mandatory dismissal policies. They also demonstrate the mostly negative publicity that such policies receive following a student’s forced dismissal.

In addition to the risk of negative publicity, colleges that adopt mandatory withdrawal policies may also face legal liability. The Association of Student Judicial Affairs (ASJA) and the National Association of Student Personnel Administrators (NASPA) caution administrators about misapplying cases like Shin v. MIT and Schieszler v. Ferrum College by dismissing suicidal students, because “[n]ot only would such a practice be ethically and educationally indefensible (e.g. students sent home often have ready access to firearms, the most frequent method of suicide), it might also violate the Americans with Disabilities Act, thereby engendering more litigation."³⁶⁵ Students should only be dismissed where they pose a “direct threat,” which is defined as “a high probability of substantial harm and not just a slightly increased, speculative, or remote risk.”³⁶⁶ The “direct threat” assessment must determine “the nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk.”³⁶⁷

³⁵⁹. Id. (internal quotation marks omitted).
³⁶⁰. Id.
³⁶¹. Id.
³⁶². Id.
³⁶³. Id.
³⁶⁴. Id.
³⁶⁷. Id. at 34 (quoting an Office of Civil Rights letter to Bluffton University).
C. Mandatory Evaluation Conditioned on Forced Withdrawal

A mandatory evaluation program requires a student who makes a suicide threat or attempt to attend a specified number of counseling sessions following the incident. If the student refuses to attend the sessions, she faces the threat of expulsion. The goal of such a program is to treat every incidence of suicidal behavior seriously and systematically, all while keeping students in school.

1. Advantages of Mandatory Evaluation Conditioned on Forced Withdrawal

In 1984, Paul Joffe, Director of the Suicide Prevention Program at the University of Illinois at Urbana-Champaign, instituted a program called “mandated assessment,” which required any student who made a suicide threat or attempt to receive four sessions of professional assessment. The first appointment had to be “within a week of the incident or release from the hospital and the remaining sessions would ideally occur at weekly intervals.” If a student fails to attend the sessions, he may face “academic encumbrance, disciplinary suspension, and/or involuntary psychiatric withdrawal.” The program “targets those students who make a nonlethal suicide attempt as high risk. Every suicidal gesture or attempt triggers an incident report and a follow-up response.”

Prior to the mandatory assessment program, the campus experimented with a more hands-off approach, through an “invite and encourage” program, which invited and encouraged suicidal students to make appointments with campus therapists to evaluate the roots of their suicidal intent. However, less than five percent of students attended the sessions, and “[t]hose who were most in need were most reluctant to get help.”

368. See infra note 372 and accompanying text (discussing how the University of Illinois’ mandated assessment program requires a minimum of four counseling sessions following a suicide report).
369. See infra note 374 and accompanying text (discussing how expulsion may be a consequence of not participating in the mandated assessment program at the University of Illinois).
370. See infra note 398 and accompanying text (stating how the mandated assessment program is premised on keeping students in school).
371. “The program was termed ‘mandated assessment’ as opposed to ‘mandated therapy’ because of the perspective that one cannot mandate treatment.” Joffe, supra note 16, at 11.
372. Id. at 9. Although the focus of the mandated assessment program is on students, it is equally binding on all members of the college community, including professors. Id. at 14.
373. Id. at 9-10. Students are also permitted to satisfy the counseling requirement by meeting with private therapists but only at their own expense and only after signing a release form that authorizes the University of Illinois suicide prevention team to debrief the therapist and to monitor compliance. Id. at 10.
374. Id. at 10.
375. Sontag, supra note 7, at 61.
376. Joffe, supra note 16, at 9; see also Capriccioso, supra note 22.
377. Capriccioso, supra note 22 (internal quotation marks omitted). “The project of invite and encourage lasted for three months and the results were wholly unsuccessful in
The University boasts impressive results from its mandated assessment program. As of 2005, approximately 2000 students had gone through the program and not one had committed suicide.\(^{378}\) Only one of these 2000 students was forced to withdraw for three months after four suicide attempts within a span of two weeks, in addition to two psychiatric hospitalizations.\(^{379}\) Before the mandated assessment program, less than five percent of students attended four counseling sessions; however, following its implementation, an estimated ninety to ninety-five percent of students complied with attendance requirements.\(^{380}\) Students who are in serious trouble even after the four sessions will usually verbally consent to either leaving the University or getting more intense professional help.\(^{381}\) Over thirty percent of students have chosen to remain in counseling beyond the required four sessions.\(^{382}\) Not only has the program achieved empirically proven success, it has done so while complying with the ADA.\(^{383}\)

The rationale for the mandated assessment program was that “a student who threatened or attempted suicide was 543 times more likely to commit suicide in the following year than his . . . classmates who had not threatened or attempted.”\(^{384}\) The mandated assessment program achieved over a fifty-five percent decline in suicides among University of Illinois students,\(^{385}\) even while the national average and the suicide rate in peer institutions increasing the number of contacts [suicidal students had] with social workers and psychologists.” Joffe, supra note 16, at 9.

\(^{378}\) Best Practices in Reducing Suicide, supra note 365, at 74.

\(^{379}\) Joffe, supra note 16, at 19. The student’s suicide attempts were becoming more lethal and disruptive and, following her third suicide attempt, the student signed a contract stipulating that if she attempted suicide again, the suicide prevention team would petition to have her withdrawn. \textit{Id.} Two weeks later, she attempted another overdose and was hospitalized. \textit{Id.} The student was forced to withdraw and received a contract with the terms of a potential readmission. \textit{Id.} She moved into an apartment off-campus, continued to meet weekly with the school’s psychologist, and successfully petitioned to return just three months later in time for the spring semester. \textit{Id.} She graduated two years later with high honors and without another suicide attempt. \textit{Id.}

\(^{380}\) \textit{Id.} at 15.

\(^{381}\) Capriccioso, supra note 22.

\(^{382}\) \textit{Id.}

\(^{383}\) Joffe, supra note 16, at 14 (“By focusing exclusively on student conduct, by applying the same standard uniformly to all students, and by making no assumptions about psychological disorders that might underlie suicidal conduct, the program functioned in accordance with the Americans with Disabilities Act of 1990.”).

\(^{384}\) \textit{Id.} at 10.

\(^{385}\) \textit{Id.} Abstract (“The rate of suicide at locations within Champaign County decreased from a rate of 6.91 per 100,000 enrolled students during the eight years before the program started to a rate of 3.08 during the [first] 18 years of the program. This represents a reduction of 55.4 percent.”). Joffe notes that the program has been more effective with students who were younger and female than with students who were older and male. \textit{See id.} at 16. The program was not effective in reducing suicide rates among graduate students, and their suicide rate actually increased 62.4 percent during the program period. \textit{Id.} at 22.
While the University still has encountered suicides from students not in the program, its suicide rate is about half of what it was prior to the program’s inception.\textsuperscript{387}

According to Joffe the program is exemplary for its structured and consistent application to students who cross a threshold of suicidal behavior. Actions that require the filing of a suicide incident report form, thereby triggering the mandated assessment program, include “preparation of means (e.g. purchasing pills), practicing of means (e.g. holding a knife over one’s wrist), public statements, and attempts.”\textsuperscript{388} A student who is required to enter the mandated assessment program usually resists and asserts that the decision to live or die belongs to him and that “the university [has] no authority to interfere with this basic right.”\textsuperscript{389} In response, a member of the Suicide Prevention Team (Team) would assert that the student’s attendance was a privilege granted by the university, not an inalienable right, and that this privilege was conditioned not only on maintaining a certain grade point average, but also on a standard of self-welfare.\textsuperscript{390} The Team member would then state that the student’s recent suicide threat or attempt was a breach of the standard of self-welfare, and, to maintain the student’s safety and assist him in adhering to the standard in the future, the University was requiring him to meet with a social worker or a psychologist for four sessions.\textsuperscript{391}

While most colleges rely on mental health professionals (usually psychiatrists) to sort out the students who are truly serious about suicide from those who are not, despite research that questions the predictive value of such subjective judgments, the mandatory assessment program is more inclusive and consistent.\textsuperscript{392} Rather than notify parents in the event of a suicide threat or attempt and risk violating FERPA,\textsuperscript{393} the University of Illinois considers it more appropriate “for colleges and universities to adopt their own rigorous internal standard of administrative response.”\textsuperscript{394}

While some universities may think that a suicide prevention program like the University of Illinois’ is cost prohibitive, they may be surprised to learn

\textsuperscript{386} Id. at 17-19 (noting that the decreasing suicide rates at the University of Illinois “would seem to rule out the alternative hypothesis that the overall rate of reduction was due to a naturally occurring decline in the rate of suicide”).

\textsuperscript{387} Arenson, supra note 274.

\textsuperscript{388} Joffe, supra note 16, at 11. “The same report and resulting mandate would apply to a student who took three Tylenol (with the intent of dying), a student who took 100 Tylenol, or the student who bought 100 Tylenol for the purposes of killing herself but did not actually take them.” Id.

\textsuperscript{389} Id. at 12. See supra Part I.C.3 (discussing constitutional arguments, including the right to die).

\textsuperscript{390} Joffe, supra note 16, at 12.

\textsuperscript{391} Id.

\textsuperscript{392} See id. at 7.

\textsuperscript{393} See supra note 213 and accompanying text (discussing how notifying family members about a student’s mental health without first obtaining the student’s consent may violate FERPA).

\textsuperscript{394} Joffe, supra note 16, at 22.
that the price is modest compared to how much colleges spend on non-mental health treatment. Annual costs of the program are $10,000 a year for training and administration and $40,000 a year for treatment. Dividing this cost among the 37,000 students who attend the University of Illinois comes out to $1.35 per student. In comparison, "in 2002 the university spent $2.03 per student on its flu vaccination program and $3.43 per student for Menomune shots against meningitis."

The suicide prevention program utilized by the University of Illinois is premised on keeping students in school. Supporting this notion, a survey of college counseling center directors reported that when their student-patients are asked to evaluate the success of their counseling, the majority report that counseling enabled them to remain in school and helped them with their academic performance.

Several colleges are considering adopting a program similar to the one developed by the University of Illinois. The University of Puget Sound in Tacoma, Washington, follows the University of Illinois’ approach by requiring any student who threatens or attempts suicide to attend counseling. Richard Kadison, chief of mental health services at Harvard University, stated that Harvard, like the University of Illinois, has an involuntary medical leave policy, but it has only been used once in the past ten years. Likewise, Thomas McGuinness, director of health services at Boston College (BC), reports that among the forty to fifty of the 9000 undergraduates who take medical leave annually at BC, only four or five students left involuntarily in 2003. An associate director of community relations at Cornell University stated that none of the school’s 19,000 students were forced to take leave in 2003 and that only two students have left involuntarily in the last eight years. Judith Rodin, a psychologist and former President of the University of Pennsylvania, has said that in regard to college suicide prevention policies, “I think I’d rather err on the side of overextending to someone who isn’t in trouble than missing those who are.” Joanna Locke, a program director for the Jed Foundation (a nonprofit organization focused exclusively on college student mental health and suicide prevention), said that “it’s best for a campus health center to operate on a case-by-case basis, never explicitly saying that if a student

395. Id. at 23.
396. Id. at 23-24.
397. Id. at 24.
398. See Gallagher, 2005 Counseling Center Survey, supra note 32, at 5 (reporting that 54.6% of students who visited college counseling centers felt that counseling helped them to remain in school and 60% felt that it helped their academic performance).
399. See Arenson, supra note 274.
400. See id. The University of Puget Sound describes its heavy-handed approach as “a public statement that suicide is unacceptable here.” Id.
401. Capriccioso, supra note 22.
402. Feirman, supra note 41.
403. Id.
404. Sontag, supra note 7, at 139-40.
takes some specific action, he or she will be kicked out of an institution.\footnote{405} Locke further acknowledges that some schools may be justified in sending a student home if the school cannot offer him proper treatment or if the student has become disruptive.\footnote{406}

A mandated evaluation policy is not a disclosure policy in that it does not require contacting a student's family and actually insists on managing suicide prevention internally.\footnote{407} Thus, it does not raise privacy concerns under FERPA.\footnote{408} Where a college using the mandatory assessment policy finds that a student is at extreme risk of suicide and the student's family is not yet informed of that risk, notifying family in that context would likely fall within FERPA's emergency carve-out.\footnote{409}

Another benefit of mandatory evaluation policies is that they can substantially eliminate negligence in the handling of students' mental health problems.\footnote{410} Because such policies require clear standards, consistent application, and thorough assessment, a plaintiff claiming the college failed to reasonably respond to a student's threat of suicide will be facing an uphill battle.\footnote{411} Not all negligence claims will be futile, however, because if a student commits suicide during the course of the assessment program, parents can still argue that they should have been notified or that the student should have received involuntary hospitalization.\footnote{412} Nonetheless, a structured program has greater potential for warding off some liability as compared to voluntary treatment or mandatory withdrawal policies.

2. Disadvantages of Mandatory Evaluation Conditioned on Forced Withdrawal

A policy of mandated evaluation for suicide risk triggers privacy, discrimination, and constitutionality concerns.\footnote{413} The most obvious issue posed by mandatory evaluation policies is their potential over-inclusiveness by targeting students who are not at risk of committing suicide.\footnote{414} A student who jokingly makes a suicidal threat or who is having a difficult

\begin{footnotes}
\footnote{405}{Capriccioso, supra note 22.}
\footnote{406}{Caruso, supra note 309.}
\footnote{407}{See supra notes 393-94, 398 and accompanying text (discussing how the mandated assessment program at the University of Illinois handles suicidal students internally).}
\footnote{408}{See supra Part I.C.1 (discussing legal liability under FERPA).}
\footnote{409}{See supra notes 213-17 and accompanying text (discussing FERPA's carve-out provision).}
\footnote{411}{See id.}
\footnote{412}{This argument remains untested given that the University of Illinois has not yet had a student who was enrolled in the mandated assessment program commit suicide. See supra note 378 and accompanying text.}
\footnote{413}{See supra Part I.C.1-3 (discussing legal liability under FERPA, the ADA, and constitutional claims).}
\footnote{414}{See supra note 405 and accompanying text (stating that suicide prevention policies should operate on a case-by-case basis).}
\end{footnotes}
week and expresses a desire to die without any intention to inflict self-harm may inadvertently trigger the mandatory evaluation policy. This over-inclusiveness problem is checked by installing an appeals process into every incidence of suicide threat or attempt. This way, if a threat was misconstrued, taken out of context, or was the result of a thoughtless remark, a student would not have to undergo unnecessary evaluation. The University of Illinois' appeals process permits students to contest the accuracy of their suicide reports. To date, there are no reported lawsuits stemming from the over-inclusiveness of the mandated assessment policy at the University of Illinois.

While the University of Illinois explicitly declines to recognize an inherent right to die, students could potentially raise this constitutional argument to enjoin efforts to prevent their suicides. Although this right has previously been asserted, and denied, in the context of physician-assisted suicide, its constitutionality has not been tested in the context of college counseling.

Finally, the mandatory evaluation model is leveraged on a college's right to control a student's continued enrollment. While this leverage is influential in schools where admission is competitive, a similar program may not be as effective in a less competitive environment or in an area where students have ready access to other institutions.

III. MANDATORY EVALUATION POLICIES CONDITIONED ON FORCED DISMISSAL SAVE LIVES AND LIMIT LIABILITY

The suicide prevention policies employed by various universities discussed in Part II, while showing positive results in some instances, raise legal and ethical concerns in others. Despite these valid concerns, colleges and universities should be permitted and encouraged to institute mandatory evaluation policies conditioned on dismissal to protect suicidal students because such policies provide the best chance at saving lives and limiting liability. Even though "depression is highly responsive to treatment, it is unnecessarily exacerbated by the low rates of recognition and diagnosis." Thus, a policy that confronts suicide and actively seeks to eliminate it is the most appropriate response to suicide risk. This part will describe how the benefits of a mandatory evaluation policy, conditioned on forced dismissal, outweigh any negative side effects. Specifically, it will discuss how

415. See Joffe, supra note 16, at 13 (discussing the appeals process at the University of Illinois).
416. Id.
417. See supra Part I.C.3 (discussing various constitutional arguments that can be made in the context of student suicide cases).
418. See supra note 273.
419. See supra note 374 and accompanying text (discussing how the University of Illinois conditions enrollment on participation in the mandatory assessment program).
421. Saluja et al., supra note 30, at 760.
mandating evaluation reinforces the value of education, avoids violating FERPA's confidentiality requirements, saves lives, and is consistent with current campus policies.

A. Mandatory Evaluation Conditioned on Forced Dismissal Promotes the Value of Education

Mandatory evaluation policies are premised on the desire to keep students in school. Contrary to colleges that employ instant dismissal policies and force students to take a medical leave following a suicide threat or attempt, colleges working under a mandatory evaluation model strive to keep their students in school while addressing their mental health needs: “Paradoxically, while the prevention program [at the University of Illinois] is based on the leverage of withdrawing students if they fail to comply, the program strongly advocate[s] continued enrollment following even a serious suicide attempt.”422

Because research indicates that most college-age students will age out of suicide risk,423 there is a great incentive to invest in suicide prevention policies at the college level because they will not only safeguard individuals during a very vulnerable time, but will also protect them as they age. “Recognizing depression as early as possible could be a critical step to reducing the prevalence of depression among older individuals, managing depression more effectively, and preventing negative outcomes.”424 The investment in education will be realized if schools implement policies that are aggressive about saving lives.

In 2005, less than fifty percent of counseling center directors reported that their schools provided adequate campus-wide public education about suicide, programs and materials for parents, student support networks, and post-suicide intervention (“post-vention”) programs.425 Because a majority of students who commit suicide on campus have never sought counseling, colleges need to do more to reach out to these students.426 Moreover, during the annual American College Health Association Conference in New York in 2006, counseling professionals said they found measurable success in preventing suicides by proactively and firmly dealing with students who have either threatened or attempted suicide.427

423. See supra notes 12-13 and accompanying text (reporting that suicide is the second leading cause of death among college students, but is the eleventh leading cause of death in the general U.S. population).
424. Saluja et al., supra note 30, at 761.
427. Capriccioso, Suicide on the Mind, supra note 22.
B. Mandatory Evaluation Conditioned on Forced Dismissal Does Not Violate Students’ Privacy Rights

A policy of mandatory evaluation conditioned on forced dismissal does not require disclosure of a student’s mental health records because the policy maintains control over a student’s health on campus. Therefore, it does not present a FERPA problem. However, if a student requires treatment beyond four preliminary evaluation sessions but refuses to attend, FERPA may be triggered, as a school would then require forced withdrawal. Under these circumstances, it is reasonable that this student’s situation would fall under FERPA’s notification exception because, after four counseling sessions, the college has determined that the student poses a danger to himself or to others. A school is in a better position to defend its disclosure to guardians under this policy than under an automatic dismissal policy where no evaluation was conducted prior to the dismissal.

Providing evaluation services on campus not only prevents the dissemination of a student’s confidential mental health records, it also saves students money. On-campus health centers usually provide services at a much lower price than off-campus facilities. This financial burden may be especially problematic for students who depend on their parents’ insurance, which may not cover psychological counseling and/or psychiatry. Because of this problem, the Jed Foundation suggests colleges “[a]dvocate for adequate mental health services to be covered under both the mandatory student health fee and supplemental student health insurance.” In addition, requiring students to go off campus to receive mental health care may create a problem for students in rural

428. See supra notes 392-94, 398 and accompanying text (discussing how mandatory counseling policies require on-campus counseling).
429. See supra note 213 and accompanying text (discussing how FERPA may be triggered when a student’s health records are disclosed without the student’s permission).
430. See supra note 374 and accompanying text (discussing how withdrawal is one of the consequences of refusing to participate in mandatory assessment).
431. See supra notes 213-17 and accompanying text (discussing the FERPA disclosure exception in emergency situations).
432. See Healy, supra note 25 (reporting that counseling sessions are free at MIT and that for students who carried MIT health insurance in 2001, the school paid $35 a session for up to fifty appointments per year with a private therapist). As of 2005, 10.9% of college counseling centers charged for personal counseling and of this amount, 79% began charging only after a number of free sessions. Gallagher, 2005 Counseling Center Survey, supra note 32, at 3. The mean fee charged was $19 per session and $25 per session when third-party payments had to be collected. Id.
433. Although most colleges require students to have insurance, whether it is through a parent or through the insurance offered by the school, schools generally do not require students’ policies to cover mental health care.
colleges where there is not a wide array of medical care available in the vicinity. 435

C. Mandatory Evaluation Conditioned on Forced Dismissal Saves Suicidal Students’ Lives and the Lives of Innocent Bystanders

Violent suicides endanger not only the person trying to inflict self-harm, but also the safety of others. Thus, colleges and universities should be proactive about addressing suicidal students’ needs because a suicide, whether it is attempted or completed, may result in undue harm to the student and to innocent bystanders. 436 In Shin v. MIT, emergency personnel arrived in time so that no other student was physically harmed by the fire Elizabeth Shin set in her room. 437 However, there certainly could have been more injuries, and thus more liability for MIT. In Jain v. State, emergency personnel were also able to evacuate the dormitory in time to prevent physical harm to others. 438 Although no one besides Sanjay was harmed, innocent students were put in danger of dying from carbon monoxide poisoning from Sanjay’s running moped. These cases demonstrate that “suicide attempts and completions may involve serious violence against others, thus creating a significant potential risk to the community and other students.” 4439 The case of Anita Rutnam, the Syracuse University student who attempted suicide by jumping off a ninety-foot building, is another example of how suicide poses a danger to bystanders. 440 While Anita miraculously survived the plunge with a limp as her only physically visible sign of the incident, she could have fallen on an innocent passerby below, potentially causing him physical harm. These gruesome images are the realities of violent suicides.

While the suicides of Elizabeth Shin and Sanjay Jain, and Anita Rutnam’s attempt posed serious physical risks to other students, all instances of student suicide also create the potential for deep emotional and psychological harm to surviving witnesses. Research has indicated that exposure to suicide or suicidal behavior within one’s family or peer group may increase the risk for suicidal behavior, also known as suicide...


436. Joffe, supra note 16, at 22 (reporting that students who commit suicide “conduct themselves with a deeply held license to inflict an act of murderous violence upon themselves and the further privilege of subjecting bystanders and survivors to the diverse consequences of their death. . . . [Therefore,] mandating these students to meet with its representative for four times, forcefully challenges this privilege head-on”).

437. See supra notes 177-78 and accompanying text.

438. See supra note 103 and accompanying text.

439. Lake & Tribbensee, supra note 42, at 129.

440. See supra notes 1-6 and accompanying text.
contagion. For example, Jordan Nott, the student who recently settled with GW after being evicted from his residence hall following treatment for depression, was himself affected by another student’s suicide. But for the potentially preventable suicide of his college friend, Jordan might not have suffered from his own depression, which disturbed his undergraduate years and resulted in litigation. One can only speculate about the emotional and psychological toll Sanjay Jain’s suicide took on his girlfriend, who unsuccessfully tried to take the keys from his moped, or Michael Frentzel’s girlfriend, who tried unsuccessfully to prevent his suicide.

Colleges and universities should be permitted to take an aggressive stand against suicide because of the tremendous emotional effect that it has on fellow students, parents, college administrators, and other bystanders.

D. Dismissal for Noncompliance with Mandatory Evaluation Guidelines Should Be Permitted as Long as It Is Not Triggered Automatically

Colleges and universities that have had recent legal problems stemming from their suicide prevention policies involve policies that employ hair-trigger dismissals following a suicide threat or attempt. Such blanket black-letter policies are what lead to liability and taint the image of other effective dismissal programs. The mandated assessment policy employed by the University of Illinois, for example, provides students with a right to contest the accuracy of information detailed in their suicide reports. Following the student’s challenge, a therapist would obtain a signed release authorizing the Team to investigate the matter by talking to bystanders who witnessed the incident. A majority of the Team would be required to rescind the report and, if the student were dissatisfied with the Team’s conclusion, he could appeal it to the Dean of Students, who would then have the final say. While this appeals process is imperfect because it may raise privacy concerns over obtaining waivers to discuss a student’s alleged suicide attempt with others, at least it is standardized and clear. Perhaps a better plan is to provide a one-step appellate process

441. See supra note 25 and accompanying text (discussing suicide contagion).
442. See supra notes 329-34 and accompanying text (discussing how Jordan was prescribed Zoloft to ease his depression following the suicide of a friend, which led to another bout of depression that caused him to return to GW’s hospital and resulted in his ultimate eviction and lawsuit against the University).
443. See supra notes 90-91, 143-46 and accompanying text.
444. See supra note 318 and accompanying text. Likewise, Jordan was barred from his dorm within twelve hours of his hospital admission. See Capriccioso, supra note 252; supra note 330 and accompanying text.
445. See supra Part II.B.2 (discussing the legal liability of automatic dismissal policies).
446. Joffé, supra note 16, at 13; supra note 415 and accompanying text.
448. Id.
449. See supra note 410 (citing the Massachusetts Superior Court’s admonition of MIT for not establishing a clear response plan to Elizabeth’s escalating suicide threats).
through a hearing where each side presents evidence of the suicide threat, or lack thereof, to an odd number of judges, consisting of Team members, but with one of the panelists always being the Dean of Student Affairs.\footnote{450} As long as students are provided with a fair hearing, colleges should be protected from engaging in inconsistent, ad hoc decision making.\footnote{451}

As long as colleges do not implement hair-trigger dismissal policies, they should not fear implementing forced withdrawal policies if students do not comply with the terms of their mental health evaluations.\footnote{452} Furthermore, not all students and family members resist academic withdrawal. Paul Joffe notes that it is not uncommon for students who require hospitalization following a suicide attempt to withdraw voluntarily either because of an interruption of their studies or at the encouragement, if not insistence, of their parents.\footnote{453}

E. Colleges and Universities Exercise Broad Discretion in Dealing with Legal Issues on Campus—Student Suicide Should Not Be an Exception

Many (if not most) colleges have campus review boards and judicial committees that review disciplinary charges against students.\footnote{454} The boards consider everything from charges of academic dishonesty to allegations of rape, and determine whether the accused should be suspended and the matter turned over to the police.\footnote{455} For example, in Julie Carpenter’s suicide case, the judicial committee initially made a decision not to evict Julie’s harasser from Random Hall—a decision that ultimately led to Julie’s suicide.\footnote{456} Regardless of whether such broad administrative powers are good or bad, as long as they still exist, the assessment of a student’s suicidal tendencies should be a matter within the institution’s discretion.\footnote{457}

\footnote{450} Such a plan would allay the privacy concerns under the University of Illinois’ current policy.
\footnote{451} See supra note 410.
\footnote{452} See supra notes 317-38 and accompanying text (discussing litigation stemming from automatic dismissal policies at Hunter College and GW).
\footnote{453} Joffe, supra note 16, at 20. Joffe reports that the University of Illinois had a self-initiated withdrawal rate of 9.4% of students who threatened or attempted suicide during the 2001-2002 academic year. \textit{Id.} Out of sixty-five students who threatened and sixty-two students who attempted suicide that year, six of those who threatened and six of those who attempted chose to withdraw. \textit{Id.}
\footnote{454} See Student Conduct Process, supra note 365 (providing over 750 member colleges and universities throughout the United States and Canada guidance on procedures of campus discipline).
\footnote{455} \textit{Id.} (providing guidance on the appropriate “procedures [for] most campus discipline processes, with particular emphasis on the difference between the campus process and criminal prosecution”).
\footnote{456} See supra notes 293-99 and accompanying text.
\footnote{457} It is important to note that private institutions have greater flexibility in their hearing standards, consequences for misconduct, and what types of conduct they can regulate than public institutions. See Student Conduct Process, supra note 365.
The most common example of college judicial committees disciplining students is in the area of underage drinking and drug use. These committees determine whether a disciplinary citation will be added to the student’s record (which may affect the student’s future job prospects or acceptance to graduate school), whether the student should attend mandatory alcohol or drug treatment classes (run by the university), or whether the matter should be turned over to local police. For example, in Jain v. State, when Sanjay Jain was caught smoking marijuana in his dorm room, the University of Iowa did not call the police; instead, the school placed him on disciplinary probation and required him to attend alcohol and drug education classes. Likewise, in Schieszler v. Ferrum College, Michael Frentzel was required to enroll in disciplinary workshops and take anger management classes before he could resume classes in the spring of 2000. Because colleges have such broad discretion in handling situations that would otherwise result in criminal charges outside the confines of college, these same schools should be permitted to manage the safety of their student body. Requiring a suicidal student to attend mandatory mental health counseling is analogous to requiring a student with a widely observed drinking or drug problem to attend mandatory alcohol or drug rehabilitation.

Furthermore, many of these oversight committees are staffed with not only professionals, but also students. If the law permits students to act as

458. See id. (offering procedures on how to deal with various types of misconduct, but focusing on alcohol and drug offenses).
459. At least one court has spoken out about colleges’ overbroad discretion in handling criminal matters: “The colleges and universities of the Commonwealth [of Massachusetts] are not sovereign entities—our laws, and law enforcement agents, do not stop at their gates. Where criminal conduct has occurred on college property . . . college students should know that they have every right to seek their first course of redress from the municipal police and state courts.” Carpenter v. MIT, No. 032660, 2005 WL 1488417, at *1 n.3 (Mass. Super. Ct. May 17, 2005).
460. See supra note 88 and accompanying text.
461. See supra note 136 and accompanying text.
462. See Joffe, supra note 16, at 22 (“The development of an internal standard-of-response to suicide incidents parallels the recent evolution at institutions of higher education of an internal standard-of-response to underage drinking and incidents of alcohol incapacitation.”). Unlike counseling requirements following a threatened or attempted suicide, it is not clear whether students who have to attend alcohol or drug counseling risk forced withdrawal if they do not comply. Compare Schieszler v. Ferrum Coll., 233 F. Supp. 2d 796, 798 (W.D. Va. 2002) (requiring Michael Frentzel to enroll in disciplinary workshops before he could return for a new semester), with Jain v. State, 617 N.W.2d 293, 295 (Iowa 2000) (requiring Sanjay to attend alcohol and drug education classes while staying enrolled at the University).
463. See, e.g., Cornell University, University Assembly Codes and Judicial Committee, http://assembly.cornell.edu/CJC/Join (last visited Mar. 19, 2007) (providing that the judicial committee has a total of eleven voting members, three of whom are undergraduate students); Stanford University, Board on Judicial Affairs, http://www.stanford.edu/dept/vpsa/judicialaffairs/about/bja.htm (last visited Mar. 19, 2007) (providing that Stanford’s Board on Judicial Affairs, which creates university policy on student judicial affairs, is a fifteen-person committee composed of six Stanford faculty, three staff, three undergraduate, and three graduate students); Virginia Tech, Student Judicial
police officers and district attorneys in criminal matters such as underage drinking and drug use,\textsuperscript{464} one can argue that they should be able to decide when it is unsafe for a fellow student to go untreated for his mental illness. While this Note does not suggest that students should make such decisions, it does urge critics to consider mandatory mental health policies in light of the broad discretionary powers universities currently have.

The reality is that colleges have a widely recognized and seldom questioned ability to waive what would otherwise be criminal charges for the activities in which their students participate.\textsuperscript{465} Until such power is revoked, critics cannot demand that colleges not institute mandatory mental health policies without also demanding the abolition of discretionary judicial committees.

F. How to Design an Effective Mandatory Evaluation Policy Conditioned on Forced Withdrawal

Based on the programs various colleges have adopted and experimented with over the years, it appears that programs that aggressively respond to suicidal behaviors and suicide attempts have been the most successful at preserving a student’s life and warding off liability.\textsuperscript{466} Universities have “a responsibility to adopt prevention programs and protocols regarding students[’] self-inflicted injury and suicide that address risk management from a humanistic and therapeutic as compared to just a liability or risk avoiding perspective.”\textsuperscript{467} The program at the University of Illinois is exemplary, not only in its current effectiveness, but also in its transition from a prior voluntary program.\textsuperscript{468}

Campus administrators are not the only ones in favor of mandatory evaluation policies—college students themselves advocate for a more aggressive response to suicidal behavior. In an article following the involuntary dismissal of NYU student Sue Schaller, the editorial staff of NYU’s student-run newspaper stated, “The university should do everything it can, including requiring therapy and regular check-ins, to ensure that

\textsuperscript{464} See supra notes 87-94 and accompanying text (discussing how the University of Iowa dealt with Sanjay’s drinking and drug problem internally).

\textsuperscript{465} See supra notes 87-94, 136, 463 and accompanying text (reviewing the internal handling of violations ranging from academic dishonesty to drug use).

\textsuperscript{466} See supra notes 371-412 and accompanying text (discussing the advantages of a mandatory treatment policy conditioned on forced withdrawal).


\textsuperscript{468} See supra note 380 and accompanying text (discussing the increase in effectiveness of the University of Illinois’ mandated assessment program as compared to its voluntary program).
troubled students who wish to remain on campus can stay and that they pose as little risk as possible.469

The tripartite prevention, intervention, and post-vention framework that the Jed Foundation outlines470 is a good model for colleges and universities grappling with how to respond to student suicides. In all suicide prevention models, the focus should be on continued education rather than withdrawal. Paul Joffe notes that there is anecdotal evidence to suggest that the mandated assessment program at the University of Illinois has led to a reduction in the number of students who withdraw from school because of psychological problems, further emphasizing the education-centric feature of the model.471

Because a mandatory evaluation policy requires several counseling sessions, there are some practical concerns regarding the environment in which the counseling occurs. First, the design of counseling centers should not have signs saying “Suicide Prevention Counseling” because these pronouncements would clearly deter students from seeking help.472 Second, there should not be large glass windows in the counseling rooms into which bystanders can look.473 Third, student staff should not be employed in counseling centers where they would have access to student records.474 Finally, holding counseling sessions in different locations around campus is a good way to ensure privacy, despite the hassle of reserving space.475

Critics of mandated counseling programs wrongly assume that students will resist any kind of forced care.476 However, many suicidal students, especially those who publicize their suicide threats and make superficial attempts at taking their own lives, are crying out for help but are reluctant to voluntarily seek treatment.477 A program of mandated assessment reaches out to these high-risk individuals proactively instead of expecting these


470. See Framework, supra note 434.

471. Joffe, supra note 16, at 20. There have also been occasions where parents initially decide to withdraw their child, but after learning about the University’s intensive aftercare program, change their minds and permit their child to stay in school. Id.

472. See supra note 315 and accompanying text (discussing how limiting confidentiality would deter students from seeking help).

473. See id.

474. See supra notes 462-63 and accompanying text (discussing how students often sit on committees that evaluate student conduct records).

475. See supra note 315 and accompanying text (discussing how limiting confidentiality would stigmatize students who seek help).

476. See supra notes 380-82 and accompanying text (discussing how students at the University of Illinois often elect to stay for more counseling beyond the required four sessions).

477. See Joffe, supra note 16, at 6 (reporting that many suicidal students are proud of their power to control their own fate and if campus suicide prevention efforts overlook these students, they will remain out of the reach of traditional mental health services).
students to find help on their own. While critics may contend that college is no place for such hand-holding and that college students are adults who need to fend for themselves, when it comes to saving a life, such arguments become moot.

Effective suicide prevention plans address suicide head-on instead of expecting the problem to go away on its own. Consistent with this view, colleges should publicize their suicide prevention policies during orientation, on their Web sites, and in other literature. Efforts to educate the student population about a college’s suicide policy should parallel the efforts made to educate students about the dangers of alcohol and drug use and the procedures for assisting intoxicated, underage drinkers. To ensure that a college’s suicide prevention message is well distributed, colleges may request students and parents to sign off on having read the school’s suicide prevention plan. Furthermore, colleges should strive to define the college-student-parent relationship. Stating the limits that federal privacy laws, primarily FERPA, put on colleges’ ability to disclose students’ academic, health, and judicial records may help students and parents understand why confidentiality is so important in higher education.

Providing clear guidelines that describe a college’s mandatory suicide response may mitigate liability to the extent that the policy is applied consistently. Therefore, the Jed Foundation advocates for the use of a “crisis checklist” to ensure that appropriate actions are taken in each student suicide case. In Shin v. MIT, the Massachusetts superior court chastised individual members of the medical team that treated Elizabeth Shin for failing to create an immediate plan to respond to her escalating suicide threats. Had the school been working under a clear suicide prevention

478. See id.
479. See id. at 25 (“Universities are untapped natural laboratories for innovative programs to prevent suicide. Instead of lagging behind, they have the potential to lead the nation, saving not only the lives of their own students but of Americans in general.”).
480. See Healy, supra note 25 (reporting a suggestion that mental health offices be placed on the freshman orientation tour as a way to destigmatize counseling at MIT). The Jed Foundation also suggests being transparent with students and parents about the content of a college’s suicide prevention protocol and the circumstances under which it may be invoked. See Framework, supra note 434, at 8.
481. See Framework, supra note 434, at 9 (stating that universities should ensure that suicide prevention protocols are consistent with protocols on alcohol and drug abuse).
482. See id. at 11 (asking under what circumstances a student should be asked to sign a release of information form).
483. See id. at 7 (suggesting colleges identify the relevant stakeholders and define their expected roles in their suicide prevention protocols).
484. See supra notes 211-23 and accompanying text (discussing FERPA’s confidentiality requirement).
485. See Framework, supra note 434, at 8.
model, it would not have had to make impromptu decisions as the threat of suicide increased. A college can better defend its actions when it abides by standardized, publicized procedures rather than ad hoc arrangements made in stressful and dangerous situations.

"Institutions of higher education . . . benefit from a rate of suicide that is one half that of their non-college attending peers. These same institutions are in a position to cut that rate in half again if they . . . challeng[e] all students who show visible signs of suicidal intent." Therefore, colleges should adopt mandatory evaluation policies conditioned on forced withdrawal to take advantage of their positions and work aggressively to save more lives.

CONCLUSION

Suicide among college students remains a serious problem in the United States. Conflicting court decisions in the last several years have left colleges wondering whether they may be held liable for a student’s suicide. While the law holds that under normal circumstances, colleges do not owe a duty to prevent student suicide, the question becomes murkier once a school begins to treat a student for mental illness.

In an effort to prevent student suicides, colleges have encountered additional legal battles because of their voluntary suicide prevention or automatic dismissal policies aimed at students who have either attempted suicide, or expressed a desire to do so. The success of the mandatory evaluation model utilized by the University of Illinois at Urbana-Champaign for the last twenty-two years may be just what colleges need to save students and reduce their liability at the same time. Adopting a policy that errs on the side of doing too much to save a life is a sound decision for which courts should not hold colleges liable.

487. See id.