



## **SUPPORTING STUDENTS: A MODEL POLICY FOR COLLEGES AND UNIVERSITIES<sup>1</sup>**

Colleges and universities should be committed to the success of all their students, including those with mental health needs, and should know what to do when a student is in crisis because of a mental health problem.

Many college-age students suffer from depression. In the 2006 National College Health Assessment, 43.8% of the 94,806 students surveyed reported they “felt so depressed it was difficult to function” during the past year, and 9.3% that they had “seriously considered suicide” during the year.<sup>2</sup> Students also named depression as one of the top ten impediments to academic performance. Academic demands, living away from home, financial responsibilities and new relationships are contributing factors. Depression or other mental health conditions may manifest for the first time during college. Some students arrive with pre-existing mental health needs, often undiagnosed.

There is broad agreement that colleges and universities should encourage students to seek counseling when they feel depressed or overwhelmed, or otherwise have mental health needs. It is a welcome development that on most campuses students now have access to counseling services that are confidential and free of charge. There is no consensus, however, on how schools should respond when students are in crisis, particularly if they manifest self-injurious thoughts or behavior or appear to pose a potential threat to others. Too often colleges and universities lack a comprehensive plan for addressing such situations or respond to such students in punitive ways, requiring them to leave or evicting them from college/university housing. Some students may even be charged with disciplinary violations for suicidal gestures or thoughts.

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<sup>2</sup> *Journal of American College Health*, Vol. 55, No. 4 at 195 (Spring 2006). See [www.acha-ncha.org/docs/JACH%20January%202007%20SP%2006%20Ref%20Grp.pdf](http://www.acha-ncha.org/docs/JACH%20January%202007%20SP%2006%20Ref%20Grp.pdf)

Colleges and universities often justify such responses as best for the student or for other students. The institution may be concerned about potential danger and legal liability. More often than not, school administrators genuinely believe they are doing the right thing by removing the student or initiating disciplinary action.

Such punitive measures, however, discourage students—not just the penalized student but all others—from seeking help. They isolate students from social and professional supports—friends and understanding counselors and teachers—at a time of crisis, increasing the risk of harm. They may also result in loss of insurance coverage for mental health care.

In addition, such measures expose colleges and universities to liability under the Americans with Disabilities Act (ADA), which prohibits discrimination against students whose mental health problems “substantially limit a major life activity,” including learning.<sup>3</sup> Under the ADA, colleges and universities must provide protected students with “reasonable accommodations” – reasonable modifications to normal rules and procedures to allow those students to continue and succeed in higher education.<sup>4</sup> With assistance from the Bazelon Center, a number of students have been successful in their ADA challenges to punitive practices, securing permanent policy changes at their schools.

The Bazelon Center offers this model policy to help colleges and universities navigate these complex issues and develop a nondiscriminatory approach to a student who is in crisis because of a mental health problem. The model was developed after consultation with mental health experts, higher education administrators, counselors and students. It is a collection of best practices that all colleges and universities can and should adopt. It places particular emphasis on how to deal fairly and non-punitively with students in crisis, and how to support those whose mental health problems may be interfering with their academic, extracurricular or social lives. It does not, however, attempt to address the full range of activities and services that a college or university should undertake to promote student mental health.

The Bazelon Center commends the policy to colleges and universities. To adopt it is to promote academic and personal success for all students.<sup>5</sup>

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<sup>3</sup> The ADA, 42 U.S.C. 12101-12213, also prohibits discrimination against students perceived to have such problems and students with a record of such problems.

<sup>4</sup> Where the issue is exclusion from dormitories or other housing, a student may also be protected by the Fair Housing Act, 42 U.S.C. 3601 et seq. See <http://www.bazelon.org/issues/housing/index.htm>

<sup>5</sup> Although written for institutions of higher education, the policy’s core principles apply with equal force to elementary and secondary schools. In such schools, students may be protected by the Individuals with Disabilities

## MODEL POLICY

### Guiding Principles

1. [Name of college/university] is committed to the success of all students, including those with depression or other mental health conditions.
2. [College/university] will:
  - Acknowledge but not stigmatize mental health problems;
  - Make suicide prevention a priority;
  - Encourage students to seek help or treatment that they may need;
  - Ensure that personal information is kept confidential;
  - Allow students to continue their education as normally as possible by making reasonable accommodations; and
  - Refrain from discrimination against students with mental illnesses, including punitive actions toward those in crisis.

### Counseling and Mental Health Services

3. Students are encouraged to seek counseling and mental health treatment through campus services or other available avenues.
4. Counseling services and mental health treatment are available to members of the campus community affected by a student's depression or other mental health condition as well as to the student.
5. Peer-run groups are available on campus to support students with depression or other mental health conditions.
6. Emergency psychiatric services are available to students at all times.<sup>6</sup>
7. Counseling and mental health treatment provided by [college/university] will be based on the student's preferences, strengths and needs.
8. All services are provided on a voluntary basis and it remains the student's decision whether or not to seek services.<sup>7</sup>

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Education Act (IDEA), 20 U.S.C. 1400 et seq., as well as the ADA. *See* [idea.ed.gov/explore/home](http://idea.ed.gov/explore/home).

<sup>6</sup> These may be provided by the school itself or through arrangement with a community provider.

<sup>7</sup> In exceptional circumstances, and as the law permits, [college/university] may seek involuntary treatment of the student.

9. [College/university] will refer a student to the counseling center<sup>8</sup> when it learns that:

- The student exhibits academic, behavioral or other difficulties that appear to be due to depression or another mental health condition, or
- The student has made a suicidal gesture or is known to have contemplated suicide.<sup>9</sup>

10. If a referred student does not seek services through the counseling center or another service provider, the counseling center will make individualized efforts, including direct outreach, to encourage the student to access services.<sup>10</sup>

11. In the event a student is hospitalized, the counseling center, if requested by the student, will work with the student and the hospital as part of the hospital treatment team to, among other things, ensure appropriate aftercare planning.

### **Confidentiality**

12. Counseling and mental health services are confidential. The counseling center will not share information about a student with faculty, staff, administrators or others unless the student consents.

13. The student, not [college/university], is the client of the counseling center.

14. As appropriate, the counseling center may encourage the student to consent to sharing information with the student's family or others.

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<sup>8</sup> For convenience the term "counseling center" is used throughout to refer to counseling and mental health services provided by or through the college or university.

<sup>9</sup> [College/university] recognizes that certain forms of self harm, such as cutting, may not be suicidal gestures or expressions of suicidal thoughts. Self-injury is common in individuals with post-traumatic stress disorder. The motivation for cutting may be to reduce internal tension or anxiety, express anger or despair, exert self-control, or communicate non-verbally.

<sup>10</sup> In exceptional circumstances, [college/university] may seek the services of a mobile crisis outreach team. Many public mental health systems have such teams. The services of a typical team are described at [www.cdha.nshealth.ca/programsandservices/mentalhealth/documents/mobileCrisisTeam2006.pdf](http://www.cdha.nshealth.ca/programsandservices/mentalhealth/documents/mobileCrisisTeam2006.pdf)

15. As permitted by law, the counseling center may disclose information about a student to the extent needed to protect the student or others from a serious and imminent threat to safety, for example, by making disclosures to crisis intervention or emergency personnel. Disclosures are permitted only if the student will not consent to interventions that will ameliorate the risk.<sup>11</sup>

16. When a student enrolls, and when a student becomes a client of the counseling center, the student will be asked whom, if anyone, the student wants contacted in case of a psychiatric emergency (*e.g.*, family member, friend, clergy). This information will be on file at the counseling center only. Students will be encouraged to update this information.

### **Accommodations**

17. [College/university] will reasonably accommodate students with depression or another mental health condition. Accommodations will be designed to enable the student to remain in school, meet academic standards and maintain normal social relationships.

18. The following accommodations will be provided if needed to enable a student to remain in or return to school, meet academic standards or maintain normal social relationships:

- Allowing the student to take a reduced course load or complete alternative assignments;
- Allowing the student to postpone assignments and exams;
- Allowing the student to work from home;
- Allowing the student to drop courses;
- Allowing the student to change roommates or rooms;
- Allowing guests to stay in the student's room;
- Retrospective withdrawals from courses if academic difficulties were due to depression or another mental health condition.<sup>12</sup>

19. Requests for accommodation need not be made in any particular form or in writing. A student will be considered to have requested an accommodation when the student:

- Asks for a particular accommodation, or

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<sup>11</sup> See American Psychiatric Assn, Practice Guideline for Assessment and Treatment of Patients with Suicidal Behaviors (2003) (disclosures permitted to protect safety of patient and others if patient is or is likely to become dangerous and will not consent to interventions that will ameliorate the risk). *Cf.* Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 201 et seq., 45 C.F.R. 164.512(j) (disclosures permitted to prevent or lessen serious and imminent threat to a person or the public), 45 C.F.R. 164.512(f) (disclosures permitted for certain law enforcement purposes); Family Education Rights and Privacy Act (FERPA), 20 U.S.C. 1232g(b)(1)(I), 34 C.F.R. 99.36 (disclosures permitted in emergency to protect health or safety of student or others).

<sup>12</sup> The list is not exhaustive. Other accommodations should also be considered and provided if needed.

- Asks [college/university], the disability services center<sup>13</sup> or the counseling center to help the student devise an accommodation.

20. The counseling center will help identify and secure needed accommodations, with the student's consent.

21. Absences for treatment, including hospitalization, will be considered excused absences. Students will not automatically receive a failing grade or otherwise be sanctioned for missing classes due to depression or another mental health condition.

22. When a student takes a leave, the student will be permitted, for each class in which he/she is enrolled, to withdraw from the class or postpone assignments and exams.<sup>14</sup>

23. The student need not have disclosed his/her condition prior to requesting an accommodation, including a leave of absence. [College/university] may not deny an accommodation on the ground that the student failed to previously disclose his/her condition.

## **Leaves of Absence**

### *Voluntary leave*

24. Students are permitted to take voluntary leaves of absence for mental health reasons.

25. If a student so requests, the counseling center will help the student decide whether to take a leave of absence and, as appropriate, help the student secure a leave.

26. A student on voluntary leave may maintain contact with, and may visit, campus friends and teaching, residence, counseling and administrative staff. The student may also attend campus events.

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<sup>13</sup> The term "disability services center" refers here to an office or individual that addresses concerns of students with disabilities.

<sup>14</sup> This applies to either a voluntary or an involuntary leave. Incompletes will not be averaged into the student's GPA as failures or otherwise.

## *Involuntary Leave*

27. In the uncommon circumstance that a student cannot safely remain at [college/university] or meet academic standards even with accommodations and other supports, [college/university] may require the student to take a leave of absence.

28. Decisions whether to impose an involuntary leave will be made by a committee that includes the director of the counseling center.

29. The committee may impose an involuntary leave for safety reasons if it finds, after an individualized assessment, that there is a significant risk that the student will harm him/herself or another, and that the risk cannot be eliminated or reduced to an acceptable level through accommodations.<sup>15</sup>

30. In making its decision, the committee will:

- Consider whether there are accommodations that would allow the student to meet academic standards and remain safely in school, and
- If safety is an issue, consider the nature and severity of the risk, the probability that injury will actually occur, and whether accommodations can sufficiently mitigate the risk.

31. Before making its decision, the committee must:

- Notify the student that the committee is considering imposing an involuntary leave and the basis for the committee's belief that the student may need to be placed on involuntary leave, and
- Provide the student and his/her representative the opportunity to appear personally before the committee and provide relevant information.

32. The committee may inquire into a student's current condition, including requesting recent mental health information and records, but must confine its inquiry to information and records necessary to make a determination. The committee may not insist on unlimited access to confidential information or records.

33. If the committee imposes an involuntary leave because there is a significant risk that the student will harm another if he/she remains on campus, the committee may restrict the student's interactions with the campus community during the period of the leave as needed to ensure safety. Such restrictions may include limits on the student's communications with faculty, staff

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<sup>15</sup> The risk must not be remote or speculative.

or other students and on the student's access to the campus, for example, to visit friends or attend campus events.<sup>16</sup>

### *Refunds*

34. The same arrangements for refunds of tuition or other costs will be available to a student who takes a leave of absence for mental health reasons, whether voluntary or involuntary, as are available for a student who takes a leave of absence for physical health reasons.

### *Returning from leave*

35. A student on leave, whether voluntary or involuntary, may request at any time to return to [college/university] as a student.

36. If [college/university] requires students on leave for medical reasons to demonstrate that they are fit to return, the college may require such a demonstration from a returning student on leave for mental health reasons. An opinion from the student's treating mental health professional that the student is fit to return should, in most cases, be sufficient to allow the student to return. In exceptional cases, [college/university] may seek a second opinion.

37. In evaluating a student's request to return, [college/university] will follow the process described in paragraphs 30-32. A student's request to return may be denied only if the committee finds that the student will not be able, upon return, to meet academic standards or be safely at the school even with accommodations.

38. A student who desires to return to school after taking a leave of absence for mental health reasons will not be subject to more rigorous standards or procedures than a student who desires to return to school after taking a leave for physical health reasons.

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<sup>16</sup> Decisions to impose involuntary leave or otherwise respond to a student with depression or another mental health condition should be informed by the guidance issued by the U.S. Department of Education, Office for Civil Rights, in three decisions, OCR # 03-04-2041 (DeSales Univ. 2/17/05), OCR # 15-04-2042 (Bluffton Univ. 12/2/04), and OCR # 09-00-2079 (Woodbury Univ. 6/29/01). The letters discuss the application of the ADA's "direct threat" provisions, procedural requirements, probative evidence and other matters. They counsel that, among other things:

- "In a direct threat situation, a college needs to make an individualized determination of the student's ability to safely participate in the college's program, based on reasonable medical judgment relying on the most current medical knowledge or the best available objective evidence."
- "In exceptional circumstances, such as situations where safety is of immediate concern, a college may take interim steps pending a final decision regarding adverse action against a student as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided in the interim and full due process (including a hearing and the right to appeal) is offered later."

## **Alternative Housing While Enrolled**

39. In the uncommon circumstance that a student does not meet the standard for imposition of involuntary leave but cannot safely remain in [college/university] housing even with accommodations, [college/university] may require the student to live in housing other than [college/university] housing while enrolled.<sup>17</sup>

40. Decisions whether to require a student to leave [college/university] housing will be made by the committee identified in paragraph 28 according to the process described in paragraphs 30-32.

41. The committee may, in addition, restrict the student's entering [college/university] housing – for example, to visit friends — as needed to prevent a significant risk that the student will harm himself or others.

42. The student may continue to attend classes, extracurricular activities and campus events; maintain normal contact with teaching, administrative and other staff; and otherwise visit friends on campus.

## **Disciplinary Action**

43. Disciplinary action will not be used as a pretext for discrimination.<sup>18</sup>

44. Self-injurious behavior will not be addressed through the disciplinary system. [College/university] will not bring disciplinary action against a student for suicide attempts, suicidal thoughts, or self-injury, including self-cutting.

45. Students charged with offenses will be afforded the following accommodations:

- If the student takes a voluntary leave for mental health reasons, disciplinary proceedings will be stayed until the student returns.

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<sup>17</sup> Housing contracts should not include provisions forbidding suicidal or other self-injurious gestures or thoughts. Nor should they include provisions requiring the student to be capable of living independently.

<sup>18</sup> Disciplinary rules must, therefore, be non-discriminatory and must be applied in a non-discriminatory manner. For example, the [college/university] must not discipline a student for “having hallucinations.” Nor may it punish more severely a student who disturbs others by conversing loudly with an imaginary person than a student who disturbs others by playing loud music. Further guidance on avoiding discrimination may be found in the U.S. Department of Justice's regulations implementing the ADA, 28 C.F.R. Part 35, and Section 504 of the Rehabilitation Act, 28 C.F.R. Part 41.

- If [college/university] is considering whether to require the student to take an involuntary leave or to leave [college/university] housing, disciplinary proceedings will be stayed while the decision is being made.
- If a student is placed on involuntary leave, the stay will continue until the student returns.
- If the student is required to leave [college/university] housing, the stay will continue until that restriction is lifted.

46. Disciplinary action should be avoided, and disciplinary sentences mitigated, when the offense was the product of depression or other mental health condition. This is especially true when, as a result of treatment or other interventions, the student is likely to comply with the code of conduct in the future.

### **Education and Training**

47. [College/university] provides education and training so that students, resident advisors, campus police, and teaching, administrative and other staff:

- Are familiar with signs of mental illness, depression, self harm and suicide risk,
- Understand – and know how to access – the range of supports available to students, including peer-run groups, counseling services and accommodations,
- Know what emergency procedures to follow in a crisis.

48. Information about mental health issues and services and the disability services center is provided at student and parent orientations.