

Institutional and Administrator Liability for Student Suicide

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Overview

- ▶ No trend toward holding colleges or individual administrators liable for college student suicide.
- ▶ But a rise in the number of suicides is likely to lead to more lawsuits.
- ▶ And, some historical barriers to liability have eroded.
 - ▶ Immunities/causation
- ▶ Best interest of the student/professional discretion.

Mahoney v. Allegheny College

- “We believe the ‘University’ has 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.”

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Negligence Liability: Four Elements

Duty

- Legal obligation requiring adherence to a standard of care when performing (or failing to perform) any acts that could foreseeably result in harm to another.

Breach

- Failure to act as a (1) reasonable person (2) under the same or similar circumstances.
- Professional (e.g., doctors or lawyers).
- Special relationships:
 - Landlord – tenant
 - Outduty
 - Specific factors (but not based just on student status)

Causation

- Actual = “but for” //factual link between defendant’s conduct and plaintiff’s injury
- Proximate = not too attenuated or freakish: was result foreseeable?

Damage

- Death
- Compensatory and potentially punitive (usually need malice for punitive damages)

What We've Learned – And Gleaned

- ▶ Training and awareness (new Virginia legislation)
 - ▶ Policies and protocols
- ▶ Safety trumps privacy
 - ▶ Suicide-homicide continuum (shooters/moped)
 - ▶ But, individualized assessment of threat (*Nott + Virginia*)
- ▶ Student at-risk response teams
 - ▶ Becoming an industry standard?
 - ▶ Collaboration and prompt follow up (*Shin*)
- ▶ Students who lie/conceal (*Clark*)
 - ▶ We are not insurers of student safety
- ▶ Parental notification – discretionary (*Jain + FERPA*)
- ▶ Caring . . . not liability shifting (*Mahoney*)

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Virginia Legislation

§ 23-9.2:8. Policies addressing suicidal students.

- ▶ The governing boards of each public institution of higher education shall develop and implement policies that advise students, faculty, and staff, including residence hall staff, of the proper procedures for identifying and addressing the needs of students exhibiting suicidal tendencies or behavior. The policies shall ensure that no student is penalized or expelled solely for attempting to commit suicide, or seeking mental health treatment for suicidal thoughts or behaviors. Nothing in this section shall preclude any public institution of higher education from establishing policies and procedures for appropriately dealing with students who are a danger to themselves, or to others, and whose behavior is disruptive to the academic community. (2007, c. 705.)

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