Navigating Legal Issues in Student Care

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Core Literature on Teams and Student Mental Health…

- Cornell University, *Recognizing and Responding to Students in Distress*
- Katie Baker, Newsweek, *How Colleges Flunk Mental Health* (Feb. 11, 2014)
Impetus for Teams?

- Elizabeth Shin suicide at MIT in 2000 (*Shin v. MIT*)
- Tyler Clementi, shooting tragedy at Virginia Tech in April 2007 (and others)
- Increased student mental health issues/increased visibility of mental health issues
- Millennials challenging professors in the classrooms
- “Information silos” and reports on Va. Tech
- State mandates in Illinois and Virginia (including who must be on the team)
- On some campuses, teams existed for many years – Delworth
- Clery auditors ask about team operations – they assume one operates on your campus
- Looming possibility of Clery mandate for teams?
Legal Issues for Teams to Consider...

- Compliance Obligations
  - Title IX
  - Clery Act, VAWA, SaVE Act
  - Privacy – FERPA, HIPAA, FOIA, Sunshine Laws, open records
    - Can share information in safety matters on a need-to-know basis!
  - Title II and Direct Threat
  - ADA
  - Fair Housing Act

- Civil Liability
- Criminal Liability
- Narratives
Continued…

- Negligence law/Reasonable care
- Contract law (Leave of Absence)
- Legal repercussions for having such a team?
Legal repercussions for having such a team?

- Negligence law/Reasonable care // Are you “assuming a duty”?
- Liability, Premises-Based
- Special Relationships
  - *Tarasoff v. Regents of the Univ. of California*
- Contract law
  - *Shin v. MIT* (Medical negligence?)
  - Voluntary leaves of absences
- Voluntarily Assuming a Duty
  - *Jain v. State*

There are often no clear legal repercussions from team operations.
A Word on Mental Health…

- Populations
  - Millennials
  - Veterans
  - Older learners
  - Students with differences
  - International students

- Success of Disability Law
Sketch of Disability Law

- “Disabled” vel non
- “Qualified”/”Otherwise Qualified”
  - No fundamental alteration
  - “Technical requirements”
    - Academic
    - Behavioral
    - Competency/”Job” qualifications

- Accommodation
  - K–12 vs. Higher Ed
  - “Reasonable”

- Direct Threat
  - Spring Arbor/Title II
Team Basics

- **NAME**
  - Students of Concern
  - CARE Team
  - Behavioral Intervention Team
  - Name should reflect what you do!

- **SCOPE/MISSION**
  - Faculty/staff issues or just students?
  - A separate team for threat assessment/emergency response/ERM?
  - Make clear what your purpose is, also what it is not!
  - Will you make the team widely known on campus?

- **MEMBERS**
  - Special issues with police/counselors/medical staff
  - Who will lead?
  - Team Dynamics
Typical Team Members

- Dean of Students
- Counseling Center Director
- Director of Public Safety
- Housing Director
- Student Conduct Officer
- Health Services Director
- Faculty Representative
- Disabilities Office
- Campus Ministry
- Legal Counsel
- Financial Aid
- Athletics

May be permanent members or on a case-by-case basis

HEMHA/Jed Foundation, Balancing Safety and Support on Campus (2012)
The Sorting Hat

What dimensions of analysis does the situation present?
- Legal?
- Mental Health/Wellness?
- Safety?
- Management/Organization?
- Community?
- Academic?
- Personnel?

Be careful when transforming one issue into another!
Gathering and Processing Information

- How will information be gathered?
  - Website form?
  - Hotline?
  - “Facebook audits”
  - Emails/conversations with colleagues?

- What will be the response?
  - Flowcharts can be helpful.
  - Role of “case managers”?

- Who will conduct follow up?

- What about record keeping?
A SPECTRUM OF POSSIBLE CAMPUS TEAM INTERVENTIONS / RESPONSES

- Monitor the situation —
- Engage directly with the person to de-escalate —
- Work with a trusted peer or ally to monitor more closely —
- Work with other departments to coordinate a plan of action (e.g., assessment, counseling, case management, disciplinary action) —
- Voluntary referral for mental health assessment or treatment —
- Mandated psychological assessment —
- Involuntary hospitalization for evaluation and/or treatment —
- Disciplinary review/action —
- Notify family member(s) —
- Convene Threat Assessment Team —
- Separate from IHE (voluntary leave, interim suspension, involuntary leave) —

Source: Compiled from Eells and Rockland-Miller (2011) and Nolan, Randazzo, and Deisinger (2011)
Team Maintenance

- Training team members
- Resources
- Who cares of the CARE team?
- Member burnout
- Get faculty on board
  - A HELPFUL EXERCISE: Eastern Michigan Univ. held a retreat where all academic deans attended a “theater-in-the-round” and viewed a mock CARE team meeting with two different scenarios. Licensed health care providers would occasionally stop the scenario and explain how they could process info without sharing confidential info.
  - “SELF STUDY” – reporting
Litigation surrounding Virginia Tech incident

- Recent VA Supreme Court case
  - Rebukes state report to VA governor
    - Validates police focus on knowledge/foreseeability of teams, not motives or good/bad faith
- No duty, but court sets accountability standards
  - Foreseeability
    - Question of law, de novo for appeals court
    - Different standards for different commercial operations – “imminent risk”
    - Based on reasonable foreseeability; knowledge at that time, in real time
Thank you!