

Navigating Legal Issues in Student Care

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Core Literature on Teams and Student Mental Health...

- ▶ Higher Education Mental Health Alliance (HEMHA) and the Jed Foundation, *Balancing Safety and Support on Campus: A Guide for Campus Teams* (2012)
- ▶ Deisinger, G., Randazzo, M., O'Neill, D., & Savage, J., *The Handbook for Campus Threat Assessment and Management Teams* (2008)
- ▶ Cornell University, *Recognizing and Responding to Students in Distress*
- ▶ The Jed Foundation, *Student Mental Health and the Law: A Resource for Institutions of Higher Education* (2008)
- ▶ 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
 - VaTech, *Rhaney v. Univ of Maryland Eastern Shore*, *Bash v. Clark Univ.*
- ▶ 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*

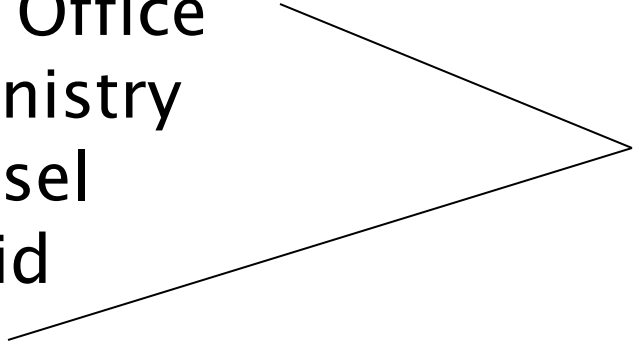
- Faculty/staff issues or just students?
- A separate team for threat assessment/emergency response/ERM?
- Make clear what your purpose is, also what it is not!
- Will you make the team widely known on campus?

▶ *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)

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

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!