

Changing State Law Requirements for Responding to Suicide, Self-Harm, and Criminal Acts Against Students

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Today's Take-Aways

- State Courts and Legislators are redefining, **or clarifying**, institutional responsibilities related to preventing **foreseeable** self-harm and/or harm by third-parties, affecting non-clinical staff.
- Behavioral Evaluation and Threat Assessment work is expected to include the actions of faculty, staff and students. (*primary focus on student actions)
- It is the role of university administrators to translate law to policy; and policy to practice.

And, it is the role of university leaders to align that practice to mission.

Suicide in the US

Suicide is the
10th
leading cause of death in
the US

Each year
44,965
Americans die by suicide

For every suicide
25
attempt

Suicide costs the US
\$ 69 Billion
annually

Suicide on Campus

2nd leading
cause of death
among college
students
(1/12K)

8-10% of college
students report suicidal
ideation each year.
Some campuses report
higher percentages.

Top causes include:
problems with family,
relationships, school,
friends, finances, and
some drug/alcohol

Third – Party Violence / Harm

- Dating Violence / Sexual Assault (Title IX)
- Sexual Misconduct
- Assault / Battery
- Active Shooter and more. . .

INSIDE
HIGHER ED

June 4, 2019

University Crafted False Narrative After Student's Death

Lansing State Journal



William Strampel first Michigan State official tied to Larry Nassar to be convicted (6/12/19)



College track star once dated her killer and had reported him to police, authorities say

Legal Standards

“[a]n actor whose conduct has not created a risk of physical harm to another **has no duty of care to the other unless a court determines that one of the affirmative duties provided in § § 38–44 is applicable.**”

American Law Institute,
*Restatement (Third) of Torts:
Liability for Physical and
Emotional Harm*, § 37 (2012)

Affirmative Duties Special Relationships § 40

- (1) a common carrier / passengers
- (2) an innkeeper with its guests
- (3) a business or other possessor of land that holds its premises open to the public (invitees)
- (4) employer to employees who, while at work, are in imminent danger; or injured/ill and thus rendered helpless
- (5) **a school with its students**
- (6) a landlord w/ tenants, and
- (7) a custodian (doctor, jailor, parent)

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Affirmative Duties

Restatement (Third) of Torts, § § 41-43:

§ 41: special relationship and, knowledge of risk to another; must exercise reasonable care (i.e. *Tarasoff*, college doctor/student patient)

§ 42: when we provide services, we must do so with reasonable care

§ 43: when we provide services, we must provide them with reasonable care to foreseeable third-parties

Cases: Colleges Have *No Duty of Care* to Students

Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979) (applying Pennsylvania law) (college owed no duty to student injured while being transported by another underage student who had become drunk at off-campus class picnic)

Beach v. Univ. of Utah, 726 P.2d 413 (Utah 1986) (university had no duty to protect student from consequences of voluntary intoxication while on university-sponsored field trip)

Booker v. Lehigh Univ., 800 F. Supp. 234 (E.D.Pa. 1992) (university owed no duty to student who was injured after becoming inebriated at on-campus fraternity party);

Coghlan v. Beta Theta Pi Fraternity, 987 P.2d 300, 311–312 (Idaho 1999) (college does not have special relationship with student that imposes a duty to protect student from risks of voluntary intoxication)

Nero v. Kan. State Univ., 861 P.2d 768 (Kan. 1993) (declining to impose duty on university solely because of its role as school but concluding university had duty of care as landlord for student living in dormitory)

Rabel v. Ill. Wesleyan Univ., 514 N.E.2d 552 (Ill.App.Ct. 1987) (university owed no duty to student based on its landlord-tenant relationship with her for harm that resulted from prank by intoxicated fraternity member)

Univ. of Denver v. Whitlock, 744 P.2d 54 (Colo. 1987) (concluding that university owed no duty to student injured while on trampoline at fraternity; to impose duty could result in imposing regulations on student activity that would be counterproductive to appropriate environment for student development)

White v. University of Wyoming, 954 P.2d 983 (1998)(finding college staff not “health care providers” and thus immune from liability under Wyoming Governmental Claims Act)

Jain v. State of Iowa, 617 N.W.2d 293 (2000)(college adoption of notification policy to parents related to known suicide attempt does not create a special relationship to negate the intervening act doctrine)

*Thank you to Jeffrey Nolan, Attorney, Dinse, P.C., and NACUA for case summaries

Cases: Colleges Have A Duty of Care to Students

Schieszler v. Ferrum Coll., 236 F. Supp. 2d 602 (W.D.Va. 2002) (concluding that, on specific facts alleged by plaintiff, college owed affirmative duty to student who committed suicide)

Peterson v. S.F. Cmty. Coll. Dist., 685 P.2d 1193 (Cal. 1984) (duty owed to student raped in college parking ramp)

Furek v. Univ. of Del., 594 A.2d 506 (Del. 1991) (finding university had special relationship with student who was a fraternity pledge but also relying on its undertaking to regulate hazing and its status as possessor of land and student's status of invitee)

Nova Southeastern Univ., Inc. v. Gross, 758 So. 2d 86 (Fla. 2000) (duty owed to graduate student placed by university in mandatory internship)

Stanton v. Univ. of Me. Sys., 773 A.2d 1045 (Me. 2001) (university owed duty to student-athlete as business invitee who was residing in dormitory to provide information about appropriate precautions for personal safety)

Mullins v. Pine Manor Coll., 449 N.E.2d 331 (Mass. 1983) (Colleges have a duty to take reasonable measures to protect their students against foreseeable criminal acts of third parties.)

Knoll v. Bd. of Regents of Univ. of Neb., 601 N.W.2d 757 (Neb. 1999) (victim of fraternity hazing episode owed duty by university based on its role as landowner with student as its invitee)

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Dzung Duy Nguyen v. MIT 479 MASS. 436 (2018)



Held: “a university has a *special relationship with a student* and a corresponding *duty to take reasonable measures to prevent his or her suicide . . . [w]here a university has actual knowledge of a student’s suicide attempt that occurred while enrolled at the university or recently before matriculation, or of a student’s stated plans or intentions to commit suicide*”

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(ROSEN)***
4 CAL.5TH 607 (2018)



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What actions are required?

- Who is the University? (faculty, staff, students)
- Assess activities, determine training needs
- How to implement reasonable care:
 - Does the U have a policy and protocol?
 - If so, are all parties trained
 - If not, do we want to develop one? What resources are needed?
 - Does the U have the same policy and procedure for all students?
 - If not, why not?