

# MODEL INVOLUNTARY WITHDRAWAL POLICY

Presentation to Deans  
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# What Is the Problem?

- Students with serious mental health problems who have not violated the Code of Conduct
- When the code of conduct has been violated, institutions can negotiate withdrawal, treatment, and terms for re-enrollment, as an alternative to discipline
- When the Code of Conduct has not been violated, the only tool to get the student in treatment is persuasion



# What Are the Legal Constraints?

- Students with serious mental health problems qualify as disabled under the Americans with Disabilities Act (ADA) and section 504 of the Rehabilitation Act of 1973 (a person is “disabled” if s/he has “a physical or mental impairment [or is regarded as having a physical or mental impairment] that substantially limits one or more ... major life activities”) 42 U.S.C. 12102 (2)
- When a student has not violated the Code of Conduct, any adverse action based on their mental health problems is potentially discriminatory. 34 C.F.R. 104.43 (a) (“No qualified handicapped student shall, on the basis of handicap, be ... denied [any postsecondary education] benefits....”)
- OCR Guidance: automatic withdrawal policies, based on attempted suicide or a perceived potential threat of harm to others, are generally impermissible
- OCR Guidance: “Direct Threat”: University may take action “to address an imminent risk of danger posed by an individual with a disability who represents a direct threat to the health and safety of himself/herself or others....” (March 18, 2005, OCR letter to Marietta College)

# What is Required to Establish That a “Direct Threat” Exists?

- “Individualized” and “objective” assessment based on “reasonable medical judgment” relying on the “most current” information. (Dec. 22, 2004, OCR letter to Bluffton Univ.)
- The assessment should evaluate three factors: “the nature, duration, and severity of the risk; the probability that the potentially threatening injury will occur; and whether reasonable [accommodations] will sufficiently mitigate the risk. (Id.)
- Ultimate question: does student’s conduct “pose a significant risk to the health or safety of the student or others”. (Feb. 17, 2005, OCR letter to DeSales Univ.) “Significant risk” exists if there is a “high probability of substantial harm and not just a slightly increased, speculative or remote risk.” (Id.)



# Due Process

- Due Process required even where a direct threat exists. (Feb. 17, 2005, OCR letter to DeSales Univ.)
- Minimal process due “where safety is of immediate concern”. Minimal due process requires: (1) adequate notice of adverse and action; (2) opportunity to address the evidence; full due process as soon as practicable (Dec. 22, 2004, OCR letter to Bluffton Univ.)
- Full due process requires a hearing with rights of appeal. (Id.)

# Cases

- *Doe v. Hunter Coll.*, No. 04-cv-6470 (S.D.N.Y., Aug. 25, 2005) (student attempted suicide excluded from dorm, pursuant to housing contract; college's motion to dismiss denied; court found that even if policy was nondiscriminatory, plaintiff had a viable claim for failure to reasonably accommodate; case settled for \$65,000 plus \$100,000 in attorneys' fees)
- *Nott v. George Washington Univ.*, No. 05-8503 (D.C. Super. Ct., Dec. 22, 2005) (student suspected of posing a danger of suicide excluded from dorm and suspended from University; case settled on confidential terms.)



# What Does the Proposed Policy Do?

- Applies when University "reasonably believes that a student has engaged or is likely to engage in behavior that poses a significant risk of harm to self or others, or significant property damage, or substantially interfering with lawful activities on the campus."
- Preliminary Review: student is informed of concerns and has an opportunity to respond
- ME: if University remains concerned, can request assessment by a qualified health professional. Student must provide release
- Emergency: if immediate action is warranted, student can be withdrawn immediately, on an interim basis. Student remains entitled to Preliminary Review and Hearing
- Hearing: student entitled to hearing in accord with due process procedures on the campuses available in disciplinary cases; includes: statement of reasons; right to be present, with support person; right to testify, present evidence, cross-examine; tape recording made.

# What Does the Proposed Policy Do? (cont'd)

- Purpose of hearing: to determine whether direct threat exists. Factors: nature, duration, severity of risk of harm; likelihood of harm; whether reasonable accommodations will mitigate the risk. Must consider best medical evidence available
- Decision: those hearing the case make findings and forward to the Vice Chancellor Student Affairs, who makes the final decision. If decision is involuntary withdrawal, must provide statement of reasons and conditions for return (e.g., ME indicating readiness to return, continued therapy, limits on housing, re-enrollment not guaranteed)
- Appeal: in accord with campus disciplinary cases. Grounds: Univ. procedures not followed or no substantial evidence supports the decision
- Voluntary Withdrawal: At any time in the process the student can offer to withdraw voluntarily and negotiate mutually-agreeable conditions for return (e.g., ME clearance, continued therapy, etc.)



# What are Other Universities Doing?

- UC Davis: has similar policy, most recently amended 2001; needs updating, but substantively similar to proposed policy. Matters have gone as far as a hearing only once. Policy used primarily to help negotiate voluntary withdrawals and/or treatment
- Cornell: similar direct threat analysis leading to involuntary withdrawal; less due process (no formal hearing)
- Illinois: emphasis is on assessment leading to required treatment (rather than involuntary withdrawal). Only if student declines treatment can student be withdrawn involuntarily

# Responses to Draft Policy

- policy might discourage students from seeking help;
- “threats should not be disciplined”;
- eating disorders are not the business of the university;
- withdrawal may be harsh if student has nowhere to go;
- withdrawal may not result in the student getting help;
- withdrawal may result in student employee losing job