

**FERPA Then and Now: Tipping the Balance in Favor of Disclosure of Mental Health Information Under the Health and Safety Emergency Exception**

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**A ship in harbor is safe, but that is not what ships are built for.**

—JOHN A. SHEDD, AMERICAN AUTHOR AND PROFESSOR

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# FERPA Then and Now: Disclosure of Mental Health Information Under the Health and Safety Emergency Exception

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*Abstract: The mental health of students, faculty, and staff and the safety of the campus community are major concerns for administrators and mental health professionals on US college campuses. Colleges and universities face a difficult task, however, in responding to mental health issues and indicators of potentially harmful behavior while continuing to protect the privacy of their students. The Family Educational Rights and Privacy Act (FERPA) was recently amended to assist colleges and universities in protecting their campuses and getting students the mental health assistance they may need. These amendments give higher education institutions greater freedom in working to protect students from themselves and from potentially dangerous behavior of others without the fear of violating confidentiality laws. This article discusses how the recent FERPA amendments will impact mental health providers on campus and how the amendments aim to provide campuses with greater options for responding to high risk students.*

## Introduction

Mental illness is a significant and growing concern for colleges and universities nationwide.<sup>1</sup> Increasing numbers of students are seeking out on-campus mental health services for a variety of mental health issues.<sup>2</sup> Although student shooters who kill or injure others are more likely to receive press coverage, students who commit suicide, which is the third leading cause of death among college students, are far more common.<sup>3</sup> As a result of increasing caseloads, greater numbers of more seriously ill students, and poor insurance coverage which pays for only brief hospitalizations, colleges and universities are facing ever-increasing pressures to identify and manage students in mental distress.<sup>4</sup> This pressure to help students struggling with mental illness is often counterbalanced by colleges' and universities' duty and desire to protect student privacy.

**Colleges and universities are facing ever-increasing pressures to identify and manage students in mental distress.**

In trying to strike a balance, schools are faced with the question of when it is lawful to release confidential mental health records and information about students to third parties, such as off-campus mental health professionals, law enforcement personnel, or parents.<sup>5</sup> In the past, schools often erred on the side of maintaining a distressed student's confidentiality in fear of violating confidentiality laws, such as the Family Educational Rights and Privacy Act (FERPA).<sup>6</sup> After the recent amendments, however, FERPA should no longer be viewed as an insurmountable obstacle to disclosure.

## What is FERPA?

FERPA is a federal statute that governs disclosure of student records and information.<sup>7</sup> Although parents have access to student records while their child is in elementary or secondary school, once a student attends college, the rights provided by FERPA rest with the student—not the parents—even if he or she is younger than 18 years old.<sup>8</sup> Generally, under FERPA, an institution cannot disclose information from a college student's

"education records" unless (1) the information is directory information and the student has not requested it remain private, (2) the student consents to the disclosure, or (3) an exception applies which allows disclosure without the student's consent.<sup>9</sup> FERPA contains several exceptions to the general rule of non-consensual disclosure of education records. Of particular importance in dealing with on-campus mental health issues is FERPA's health and safety emergency exception.<sup>10</sup>

## The Health and Safety Emergency Exception

Under FERPA, medical and psychological records used only for the treatment of students, termed "treatment records," are not considered "education records" or subject to FERPA's disclosure rules.<sup>11</sup> However, once student

medical information is released for a reason other than treatment, such as in response to an emergency, that information is deemed to be “education records” under FERPA. At that point, it cannot be disclosed absent an exception.<sup>12</sup>

The health and safety emergency exception allows disclosure of student information to appropriate parties in connection with an emergency if the knowledge is necessary to protect the health or safety of the student or another individual.<sup>13</sup> Although signs of student emotional distress rising to the level of an emergency are sometimes difficult to identify, especially in college students who may have a unique definition of acceptable behaviors, this exception could apply to a student’s suicidal statements or ideations or atypical erratic and angry behavior posing a risk of harm to the student or others.<sup>14</sup>

Amendments to the federal regulations implementing FERPA, including the regulation on the health and safety emergency exception, became effective on January 8, 2009.<sup>15</sup> An understanding of how and why the law has changed provides insight into how the amended exception is intended and how it might be interpreted in the future.

### **FERPA Enforcement**

Although parents and students do not have a right to sue for violations of FERPA, the government can investigate allegations of violations from any source.<sup>16</sup> Under FERPA, the government may not make funds available to any agency or institution that has a policy or practice of violating a parent’s or a student’s rights under the statute with regard to disclosure of education records.<sup>17</sup> Before seeking to withhold, terminate, or recover funds for a violation of FERPA, the Secretary must first find that an institution has a policy or practice in violation of FERPA’s non-disclosure requirements. Further, the government cannot take any action against a school that has violated FERPA until it has provided the school a reasonable period of time to come into compliance with the law voluntarily. Potential punishments include withholding payments under any applicable program, issuing a complaint to compel compliance, terminating eligibility to receive future funding, entering into a compliance agreement, seeking an injunction, or any other legally available enforcement action.<sup>18</sup>

In wrongful death lawsuits involving alleged violations of FERPA, many times initiated by a deceased student’s family, the most common claim is for negligence.

### **Looking Back: Strictly Construing “Emergency” Under the Prior Regulations**

Under the prior FERPA regulations, institutions were required to strictly construe the definition of “emergency” under the health and safety emergency exception.<sup>19</sup> In attempting to comply with the law, school officials often erred on the side of maintaining a distressed student’s confidentiality, sometimes with disastrous results.<sup>20</sup> The April 2007 Virginia Tech shootings, during which Seung Hui Cho killed 33 people, including himself, is such a case.<sup>21</sup> In the months prior to the shootings, Mr. Cho’s behavior disturbed both professors and fellow students.<sup>22</sup> In 2005, he was declared at “imminent risk” of causing harm and ordered by a judge to seek counseling.<sup>23</sup> Some faculty members reported that they complained about Mr. Cho’s behavior to school authorities but were unaware of student complaints about him.<sup>24</sup> Other faculty members wanted to notify Mr. Cho’s parents of his disturbing behavior but believed that to do so would violate FERPA.<sup>25</sup>

If under the pre-amended regulations school officials were reluctant to share information on a student whose behavior was as overtly disturbing as Mr. Cho’s, then they were even less likely to disclose information of students whose mental distress was less obvious or whose risk of harm to themselves or others was less clear. Two well-known case examples illustrate two significant problems that arose under pre-amendment FERPA: (1) schools’ reluctance to break student confidentiality and (2) the complicated nature of a school’s decision to disclose a student’s confidential information in the face of mental illness.<sup>26</sup>

### ***The Case of Elizabeth Shin***

On April 14, 2000, Elizabeth Shin died from burns she suffered from a fire in her dormitory room at the Massachusetts Institute of Technology (MIT).<sup>27</sup> At the time of the fire, she had overdosed on medications.<sup>28</sup> As early as her freshman year, and possibly before, Elizabeth experienced psychiatric problems with periods of severe depression accompanied by threats of suicide and cutting followed by periods of apparently normal behavior.<sup>29</sup>

During her time at MIT, Elizabeth had numerous interactions with MIT staff and administrators regarding her mental health. For instance, she met with a dean to discuss her mental health and received counseling and treatment at the campus mental health center.<sup>30</sup> Signs

of her worsening distress included overdosing on medication, sending a disturbing e-mail to a professor, and repeatedly threatening suicide.<sup>31</sup> At one point, Elizabeth's friends took turns staying up at night with her because they feared for her safety.<sup>32</sup> Her treating mental health professionals considered hospitalization and contacted the dean of students about her worsening condition.<sup>33</sup> On the morning of her suicide, a "deans and psychs" meeting was held to discuss Elizabeth's case.<sup>34</sup> It is unclear what treatment options, if any, were discussed at the meeting.<sup>35</sup>

On Monday, April 10, 2000, Elizabeth again threatened suicide.<sup>36</sup> That evening, Elizabeth locked her dorm room door and lit candles. Around 9:00 pm, students smelled smoke, heard the smoke detector, and tried to get into Elizabeth's room. When the campus police arrived, they found Elizabeth with her clothes engulfed in flames. She was taken to the hospital, where days later she died from her injuries.<sup>37</sup>

During her struggle with mental illness at MIT, Elizabeth specifically requested that her parents not be contacted.<sup>38</sup> Her friends who were aware of the relationship she had with her parents indicated that they would not have considered calling her parents, either.<sup>39</sup> Ultimately, Elizabeth's parents were never notified of their daughter's troubling behavior by MIT. They were aware and reassured that she was seeing a psychiatrist to help her cope with academic and relationship stresses, but they did not know that she had, over a course of months, repeatedly threatened suicide.<sup>40</sup> They also did not know that Elizabeth cut herself with a knife or that some of her psychiatrists recommended hospitalization.<sup>41</sup> The night in the spring of 2000 when Elizabeth was taken to the infirmary, her parents were told only that she was taken to the infirmary, but they were denied further information because of confidentiality rules.<sup>42</sup>

In 2002, Elizabeth's parents brought a \$27.65 million wrongful death lawsuit against MIT, MIT healthcare

providers, student life administrators, dormitory housemasters, and MIT police officers, arguing that MIT violated the health and safety exception in FERPA by not notifying them of Elizabeth's troubling behavior.<sup>43</sup> In 2005, the Massachusetts Superior Court dismissed claims against MIT and its police officers but held that MIT administrators and medical staff were potentially liable for Elizabeth's death, allowing Elizabeth's parents to proceed with the negligence claims.<sup>44</sup> In March 2006, in response to the proposition that non-clinicians, including school administrators, might be held liable for student suicides, schools nationwide filed amicus briefs in support of MIT.<sup>45</sup> Elizabeth's case never made it to a jury. Instead, in April 2006, MIT and Elizabeth's parents reached a confidential settlement agreement.<sup>46</sup>

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#### ***The Case of Chuck Mahoney***

In 2002, 20-year old Chuck Mahoney, who had been diagnosed with major depression by a psychiatrist, hanged himself in his fraternity house at Allegheny College in Meadville, Pennsylvania.<sup>47</sup> He was considered a high risk for suicide and had been hospitalized between his freshman and sophomore years. Chuck's mental health issues seemed to go through periods of control and exacerbation, with the stress from performing both academically and athletically and relationship troubles contributing to his decline.<sup>48</sup>

During his time at Allegheny, Chuck saw a college counselor who consulted with several off-campus mental health professionals about his case. Chuck had refused repeated requests from his counselor that she have his consent to contact his parents or hospitalize him. The professionals disagreed as to the extent of the risk and whether it justified breaking Chuck's confidentiality.<sup>49</sup>

When Chuck told his counselor that he had regular thoughts of suicide and planned to kill himself, she notified the dean of students and once again consulted with colleagues, some of whom believed Chuck should

be forced to take a leave of absence.<sup>50</sup> The concern over Chuck grew so great that the president of Chuck's fraternity house called both the dean of students and the associate dean at home to express his concern over Chuck's behavior, and another of his fraternity brothers sent an e-mail to Chuck's counselor, the two deans, and other college staff requesting a meeting.<sup>51</sup> College officials met and debated whether to call Chuck's parents or force him to take a leave of absence. Unfortunately, Chuck hanged himself in his fraternity house on February 11, 2002. His parents were never notified of his disturbing behavior prior to his death.<sup>52</sup>

In 2003, Chuck's parents brought a civil action against Chuck's college counselor, the college, the two deans, and a doctor.<sup>53</sup> At the time of Chuck's suicide in 2002, an emergency under FERPA's health and safety emergency exception was to be strictly construed. Although Allegheny school officials and mental health professionals discussed whether to share Chuck's confidential information with his parents, they decided it was not in his best interest to do so.<sup>54</sup> Like Elizabeth, Chuck had repeatedly and explicitly refused to give his consent to the release of information to his parents. Although Chuck's parents might question whether Chuck was capable of making this decision, school officials honored Chuck's wishes. A jury ultimately agreed that Chuck was responsible for his own actions and that the school and its officials could not be held liable for his suicide.<sup>55</sup>

### **Looking Forward: Affording Schools Greater Flexibility Under the Amended Regulations**

Although FERPA has never been a complete obstacle to releasing confidential student information in the case of an emergency, the amendments to the health and safety emergency exception now make it easier for a college or university to release information to parents or other appropriate third parties without a student's consent.<sup>56</sup> Specifically, the amendments remove the requirement that the emergency exception be strictly construed and allow

school officials to specifically notify parents when there is a health or safety emergency involving their child.<sup>57</sup> The amendments also require a school to record what information is released under the exception.<sup>58</sup> Thus, the amendments afford greater flexibility and deference to school administrators to use appropriate resources quickly and decisively in managing emergencies.<sup>59</sup> They also provide reassurance to school officials that their reasonable decisions to disclose information about students who may be at risk of harming themselves or others will not be second guessed by the government.<sup>60</sup>

Whereas under the prior regulations the term, "emergency," had to be "strictly construed" before a school was permitted to disclose confidential information without a student's consent, the amended regulations alter this standard. Under the amended regulations, a school may disclose confidential student information to appropriate parties, including parents, in connection with an emergency "if knowledge of the information is necessary to protect the health or safety of the student or other individual."<sup>61</sup> In deciding whether to disclose information under this exception, a school is permitted to consider all of the circumstances surrounding the threat.<sup>62</sup> If the school determines that there is "an articulable and significant threat" to the health or safety of a student or other individual, it

may disclose information from the student's confidential records to parties "whose knowledge of the information is necessary to protect the health or safety of the student or other individuals."<sup>63</sup> If there is a "rational basis" for the school's decision to release the information, based on information available at the time, then the Department of Education will defer to the school and not substitute its judgment for that of the institution.<sup>64</sup>

The Analysis of Comments and Changes section of the amended FERPA regulations explains that an emergency could be a situation where a student gives "sufficient cumulative warning signs" that lead a school or school officials to believe that the student may be a danger to himself or others at any moment. A school official must be able to

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express in words the circumstances leading the official to reasonably conclude that a student poses a significant threat of substantial bodily harm to any person, including the student himself. If a school official can do so, then he may disclose the confidential student information to any person whose knowledge of the information will help in protecting a person from that threat. Further, the person receiving the information does not have to be the person responsible for providing the protection.

The information can also be disclosed in order to gather information from any person, including other students, mental health professionals, law enforcement, the potential victim, or other schools or institutions previously attended by the student, who has further information that would be necessary to provide the protection needed.<sup>65</sup> In addition, unlike the prior regulations, the amended regulations specifically include a student's parents as an appropriate party to whom a school can disclose mental health information in an emergency.

The recent amendments also require a school to keep a record of the "articulable and significant threat" that formed the basis for the disclosure and the parties to whom the information was disclosed.<sup>66</sup> A school must make the record within a reasonable time period after the disclosure has been made and maintain this record with the education records of the student for as long as the education records are maintained.<sup>67</sup> The purpose of this record requirement is to demonstrate to parents, students, and the Department of Education the circumstances that led school officials to believe there was an emergency and how they justified the disclosure of information otherwise protected by FERPA.<sup>68</sup>

### **A Second Look at Two Lives Lost: The Balance Has Shifted in Favor of Disclosure**

Taking a second look at the cases of Elizabeth Shin and Chuck Mahoney, there is no clear answer as to whether either case would have turned out differently had their

parents been notified of the students' behavior prior to their deaths.<sup>69</sup> In general, however, the amendments present no downside to disclosure in such situations. It is understandable that, prior to the amendments, schools felt constrained to maintain confidentiality. The newly amended regulations remove many of those constraints. Because the amended FERPA regulations no longer require that an emergency be strictly construed, school

officials have greater flexibility to notify law enforcement, mental health professionals, or students' parents in an attempt to prevent similar situations if they consider a student a danger to himself or others. By erring on the side of disclosure in such situations, schools can minimize the likelihood of a court ruling that school officials should have taken action to protect a student based on a special relationship but failed to do so.

### ***When Disclosure May Not Be in a Student's Best Interest***

In some cases, campus officials or health professionals may believe that a student's situation is best handled without involving parents or other third parties. In such cases, school officials or mental health professionals might seek a student's consent to disclosure of his information to a parent. However, if the student refuses, the official or professional may believe that breaking the student's confidentiality

would cost them the student's trust or push the student to suicide. Therefore, the official or professional might decide not to notify the student's parents, even if the law allows them to do so.<sup>70</sup> In those cases, the FERPA amendments may have little direct impact.

### ***Sued for Disclosure, Sued for Non-Disclosure***

In the past, schools have opened themselves to lawsuits by students and their families regardless of whether they decided to disclose information or keep it confidential.<sup>71</sup> For example, some universities have tried to avoid liability by forcing potentially suicidal students off campus under mandatory withdrawal policies.<sup>72</sup> In addition to having the

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possible effect of deterring suicidal students from seeking treatment on-campus, this may also open schools up to liability for violation of discrimination laws, such as the Americans with Disabilities Act or the Rehabilitation Act.<sup>73</sup> In 2005, Jordan Nott sued George Washington University, claiming that the institution barred him from campus and suspended him from class after he sought treatment for depression and suicidal thoughts.<sup>74</sup> The case was settled out of court.<sup>75</sup> Several students have filed complaints with the Department of Education, alleging that they have faced situations similar to Nott's.<sup>76</sup> It is important to note that these cases involved affirmative school action above and beyond merely disclosing a student's mental health information under FERPA, such as suspending a student or forcing his withdrawal from the school.

On the other hand, there are numerous examples of cases where an institution was criticized or sued because it *failed* to disclose student information under FERPA's previous regulations.<sup>77</sup> Although many such lawsuits settle out of court, two court decisions are important to note. In *Jain v. Iowa*, brought in 2000, the Supreme Court of Iowa held that non-therapist school officials at the University of Iowa had no general duty to notify parents that their son was in "impending danger" before he committed suicide and that no special relationship existed between the school and the student that would create an affirmative duty to prevent the suicide.<sup>78</sup> In comparison, in 2002, in *Schieszler v. Ferrum College*, a Virginia federal court held that school officials had a legal duty to ensure the safety of the deceased student, Michael Frentzel, because they knew of the "imminent probability" that he would try to harm himself.<sup>79</sup> In 2003, Ferrum settled the lawsuit with Mr. Frentzel's family, admitting to "shared responsibility" for his suicide, the first such acknowledgment by an American college.<sup>80</sup> Similarly, the court in the Shin case reasoned that Elizabeth's suicide was foreseeable

because a special relationship existed between Elizabeth and university administrators.<sup>81</sup> The amendments to FERPA suggest that schools can mitigate their risk of exposure by erring on the side of disclosure in cases involving indicators such as those in the cases of Elizabeth Shin and Chuck Mahoney, although the full impact of the amendments on court decisions remains to be seen.

**In addition to the health and safety emergency exception, FERPA allows campus personnel to share information from student education records with other "school officials" if those officials have a "legitimate educational interest" in the information being disclosed.**

### **Immediate Steps Colleges and Universities Can Take**

Colleges and universities should view increased discretion granted by the FERPA amendments as an opportunity to review their policies and resources for addressing student mental health issues. Now that FERPA's regulations have been amended, nothing is stopping a school with a rational basis for doing so from disclosing mental health information. Even though it is important to know when, under FERPA's amended regulations, school officials can share confidential student information, schools should also work to (1) try to prevent emergencies by providing coordinated and effective mental health services for students and (2) be prepared for when emergencies arise. There are certain steps that colleges and universities can take toward these goals now.

### **Review Current Policies**

In addition to the health and safety emergency exception, FERPA allows campus personnel to share information from student education records with other "school officials" if those officials have a "legitimate educational interest" in the information being disclosed.<sup>82</sup> Under both the previous regulations and the amended regulations, individual institutions may define in their own policies who is considered to be a "school official" and what is deemed to be a "legitimate educational interest."<sup>83</sup> Therefore, each college and university should make its own determination as to which school officials can access a student's educa-

tion records and disclose information to parents or other appropriate parties.<sup>84</sup> Institutions with policies in place should also review their current FERPA policies for the scope of “school officials” and other terms to gain the maximum flexibility and discretion for sharing information.<sup>85</sup> The policy should be clear as to which school officials have access to and the responsibility for disclosing information in emergency situations.<sup>86</sup>

In addition, schools should review their policies regarding student consent for disclosure of information. Under FERPA’s regulations, both before and after amendment, schools are able to have a policy of seeking prospective student consent for disclosure of confidential information or may have a policy for obtaining student consent for disclosure on a case-by-case basis.<sup>87</sup> Similarly, schools can have a policy placing all students under the age of 24 in the dependent category unless proof of independence is provided or require parents to verify students’ dependency each semester by sending a copy of their tax returns.<sup>88</sup> Schools should take time to review their policies and provide maximum flexibility to act in preparation for future emergencies.

### ***Train Staff and Increase Awareness***

It is often difficult to determine, even for mental health professionals, which students are in danger of harming themselves or others. Many troubled students who are depressed or angry do not ultimately engage in overtly destructive behavior.<sup>89</sup> Many times the best way of knowing that a student is in distress is through intuition.<sup>90</sup> Therefore, one of the most effective ways of identifying students in distress is to provide training to people of all levels and positions on campus.<sup>91</sup> Education on the common warning signs of such things as suicide and eating disorders is key.<sup>92</sup> School officials and staff should be educated on the limits and applications of FERPA’s emergency health and safety exception through training sessions and should know what steps to take in the case of an emergency or suspected emergency.<sup>93</sup> In addition, employees should know where to go to find further information on the school’s policies

if they have questions or concerns. Schools can consider providing information through publications on the internet or newsletters or through speeches and seminars.<sup>94</sup>

Schools can also extend awareness beyond their campuses to parents by encouraging parents to (1) inform school officials in advance if they know that their child has a history of mental health problems and (2) file the necessary paperwork to establish that their child is a dependent.<sup>95</sup> By taking steps to establish that a student is a dependent prior to the manifestations of any mental health issues, the school will be in a position, if necessary, to release information to that student’s parents without fear of liability under FERPA.

**Through communication, mental health response or threat assessment teams can better monitor high risk students.**

### ***Improve Quality of and Access to On-Campus Mental Health Services***

A 2004 government-ordered investigation discovered major gaps in college mental health services, including limited crisis management, a shortage of mental health professionals, limited communication between campus mental health staff and student health services staff, a lack of re-integration plans for students who return to school after a hospitalization or leave of absence, and extreme variation in interpretations of FERPA.<sup>96</sup> In addition, students are becoming increasingly concerned that, when dealing with mental health issues, schools are more concerned

with minimizing their own liability than with the well-being of their students.<sup>97</sup>

Some believe that cases such as Elizabeth’s and Chuck’s are good for schools and students because they encourage all schools to re-evaluate their policies and provide more comprehensive mental health services to their students.<sup>98</sup> As an example, prior to Elizabeth’s death, MIT did not offer evening counseling hours and had few therapists, which forced students to wait at least 10 days for an appointment.<sup>99</sup> As a result of Elizabeth’s case, MIT made important changes to its mental health treatment policy, including evening hours for the mental health department, increased mental health staff fluent in a variety of languages, and improved coordination of mental health and medical care with other campus departments, including athlet-

ics, religious services, the disabilities office, and residential life.<sup>100</sup> MIT's Medical Department is now fully staffed by physicians, psychiatrists, and other medical specialists.<sup>101</sup> However, many other institutions still do not have a psychologist or psychiatrist on staff at their campuses, and, unfortunately, therapists and guidance counselors may not be aware of their responsibilities under FERPA or when it is lawful to break a student's confidentiality.<sup>102</sup>

Although individual health professionals are essential to averting student suicides and other destructive behavior, it is vital that institutions develop mental health response teams or threat assessment teams consisting of people all across campus, including professors, housing and security staff, counselors or mental health professionals, and deans.<sup>103</sup> Through communication, these teams can better monitor high risk students.<sup>104</sup>

For instance, at Cornell University, professors report students who have poor grades, seem withdrawn, or are not coming to class mid-semester. Although therapists are legally required to keep patient information confidential, they can receive information from other college staff members and follow up with students. Further, Cornell's health center screens students who come in, regardless of the reason, for signs of depression by asking about warning signs, including trouble sleeping, poor appetite, difficulties concentrating, or thoughts of self-harm. Cornell's therapists also hold free, no appointment consulting hours in multiple locations across campus.<sup>105</sup> Similarly, the University of Illinois considers all students who make non-lethal suicide attempts to be high risk. Each suicide attempt or gesture triggers an incident report and a follow-up response. These students are ordered to undergo mandatory assessment sessions for four weeks and, if necessary, receive continued therapy.<sup>106</sup>

## Conclusion

Each case involving a student's mental health is as different as are the students themselves. Therefore, there are no hard and fast rules for schools to follow when deciding whether to release information under FERPA's health and safety emergency exception. Although in retrospect a school official, counselor, or mental health professional may wish he or she had acted differently or disclosed or not disclosed certain information, those in the difficult position of making this decision can only base their deci-

sions on information available at the time and what the law allows. The new, more discretionary amendments do not provide a complete answer, but they do suggest that the more prudent option may often be disclosure. Under the amended FERPA regulations, schools are afforded more flexibility to decide whether to disclose information regarding a student's mental health, and, if they do decide to disclose the information, their decisions are less likely to be second guessed by the government. The balance has now tipped in favor of disclosure. By disclosing information of a student considered to be a danger to himself or others, schools can minimize their own risk of liability. Further, there are certain steps that institutions can take immediately to improve their response to emergencies and decrease the likelihood of emergencies arising, including educating employees on school policies, training staff and increasing awareness, and improving the quality of and access to mental health services on-campus.

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## Endnotes

- <sup>1</sup> Six percent of undergraduates and four percent of graduate students seriously considered suicide within the previous 12 months, according to an August 2008 American Psychological Association survey.

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Karen Grava, "Communication Key to Helping Students with Mental Health Issues," *University of Connecticut Advance*, March 17, 2008, <http://advance.uconn.edu/2008/080317/08031714.htm>.

- <sup>2</sup> Common mental health issues on college campuses include attention deficit and eating disorders, depression, addiction, personality and mood disorders, phobias, and anxiety and panic disorders. According to a 2007 survey by the Association of University College Counseling Center Directors, a national organization, 82 percent of counseling center directors noted that the number of students seeking counseling who have significant psychological problems is increasing. The increasing numbers of students with mental illness on campuses is attributed to a number of factors, including onset of many disorders around college age, better diagnosis, and improved treatment options, such as medications which allow mentally ill students to become functional and attend college. Some students who are diagnosed with a mental illness and receive treatment prior to college begin to deteriorate once on campus when they stop taking their medications or have a change in their support systems. In addition to the often difficult transition from home to college, students also face increasing competition in academics and sports at a younger age and disruptive or chaotic family lives. Working while attending college to afford laptops, cell phones, and other technology is yet another stressor for many students.

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- <sup>3</sup> In 2005, suicide ranked as the third leading cause of death for people ages 15-24. Further, according to the Jed Foundation, 80 percent of college students who commit suicide never sought mental health services at their college counseling center.

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Roan, "Crisis on Campus Anxious Parents, Troubled Students."

Sharpe, "Suicide at MIT Raises Parents' Ire."

- <sup>4</sup> Common warning signs of suicide include (1) acting recklessly or engaging in risky activities, (2) increased alcohol or drug use, (3) anxiety, and (4) being unable to sleep or sleeping all the time. Many of these symptoms are typical for the average college student, making it difficult for counselors or peers to recognize which students are at risk for suicide or might endanger the well-being of others. It is especially difficult to get help for those who are struggling with these disorders because many students with problems never seek help themselves.

The Jed Foundation, *About Suicide Prevention*, 2009, <http://www.jedfoundation.org/learn-more/about-suicide-prevention>.

Jaschik, "Redefining Suicide Risk—and Prevention Strategy."

Roan, "Crisis on Campus Anxious Parents, Troubled Students."

Sharpe, "Suicide at MIT Raises Parents' Ire."

- <sup>5</sup> Roan, "Crisis on Campus Anxious Parents, Troubled Students."  
Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."  
<sup>6</sup> Roan, "Crisis on Campus Anxious Parents, Troubled Students."  
Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."  
<sup>7</sup> See 20 U.S.C. § 1232g. FERPA applies to any "educational agency or institution" that receives funds under any program administered by the Department of Education which includes virtually all public and private postsecondary institutions. 34 C.F.R. section 99.1(a).

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*, December 2008, <http://www.ed.gov/policy/gen/guid/fpco/pdf/ht12-17-08-att.pdf>.

Elizabeth Bernstein, "Education Department Reworks Privacy Regulations," *The Wall Street Journal*, December 9, 2008, <http://online.wsj.com/article/SB122878222728889843.html>.

The National Association of College and University Attorneys (NACUA), *FERPA and Campus Safety*, NACUANOTES, August 6, 2007, [http://www.missouristate.edu/assets/registrar/NACUANOTES\\_Aug\\_07.pdf](http://www.missouristate.edu/assets/registrar/NACUANOTES_Aug_07.pdf).

- <sup>8</sup> NACUA, *FERPA and Campus Safety*.  
<sup>9</sup> Education records are broadly defined as records (1) directly related to a student and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. Directory information is information contained in a student's education record that would not generally be considered harmful or an invasion of privacy if disclosed. Directory information includes, for example, a student's name, photograph, date of birth, and degrees. See 34 CFR § 99.3.

United States Department of Education and United States Department of Health and Human Services, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, November 2008, <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/hipaaferpajointguide.pdf>.

NACUA, *FERPA and Campus Safety*.

University of Rhode Island, *Introduction to FERPA, Family Education Rights and Privacy Act, or FERPA 101*, <http://www.uri.edu/es/forms/pdf/faculty/ferpa.pdf>.

- <sup>10</sup> 34 CFR § 99.36.

In addition to the health and safety emergency exception, FERPA allows campus personnel to share information from student education records with other "school officials" if those officials have a "legitimate educational interest" in the information being disclosed. 34 CFR § 99.31.

Two other exceptions allow disclosure of student information to a student's parents without the student's consent. Under the first, student information can be released to a parent or guardian under any circumstances if the student is dependent for federal tax purposes as defined in section 152 of the Internal Revenue Code of 1986. To disclose information under this exception, the institution must verify the student's dependent status by, for example, asking the student for confirmation or asking the parents for a copy of their tax return. This exception will apply to approximately 50 percent of undergraduate students. Under the second, the institution may disclose information to a student's parents regarding any violation of a law or of an institutional rule or policy governing the use or possession of alcohol or a controlled substance. To release information under this exception, the institution must have determined that the student committed a disciplinary violation with respect to the law or institutional policy and the student must be under 21 at the time of both the violation and disclosure. 34 CFR § 99.31.

Federal Register, 34 CFR Part 99: *Family Educational Rights and Privacy; Final Rule*, December 9, 2008, <http://www.ed.gov/legislation/FedRegister/finrule/2008-4/120908a.pdf>.

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

Karin McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities," *Virginia Law Review*, 94:197 (2008), 204.

NACUA, *FERPA and Campus Safety*.

- <sup>11</sup> State and federal laws, other than FERPA, may protect the privacy of student medical records, including mental health records. For example, professional confidentiality rules demand a higher burden than FERPA regulations for release of information, such as the existence of a significant threat of serious and imminent harm to a specifically foreseeable victim. If this threshold is met, then confidential mental health information can be shared with police or other authorities or the individual may be involuntarily hospitalized.

34 CFR § 99.36.

34 CFR § 99.3.

NACUA, *FERPA and Campus Safety*.

Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

University of Rhode Island, *Introduction to FERPA, Family Educational Rights and Privacy Act, or FERPA 101*.

United States Department of Education and United States Department of Health and Human Services, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*.

- <sup>12</sup> The federal Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104-191, 110 Stat. 1936 (codified as amended in scattered sections of 18, 26, 29, and 42 U.S.C.), excludes from coverage treatment and education records that are protected by FERPA at schools that provide health or medical services to students. Therefore, once a student's mental health information is released for purposes other than treatment and that information is considered part of an "education record," its disclosure would have to fall under one of FERPA's exceptions to be justified. HIPAA would not apply.

United States Department of Education and United States Department of Health and Human Services, *Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance*

*Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*.

United States Department of Education, *Disclosure of Information from Education Records to Parents of Postsecondary Students*, <http://www.ed.gov/policy/gen/guid/fpco/hottopics/ht-parents-postsecstudents.html> (last modified June 7, 2007).

- <sup>13</sup> NACUA, *FERPA and Campus Safety*.

<sup>14</sup> Ibid.

- <sup>15</sup> Federal Register, 34 CFR Part 99.

- <sup>16</sup> 34 CFR § 99.64.

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

Bernstein, "Education Department Reworks Privacy Regulations."

- <sup>17</sup> Federal Register, 34 CFR Part 99.

<sup>18</sup> Ibid.

- <sup>19</sup> Bernstein, "Education Department Reworks Privacy Regulations."

- <sup>20</sup> Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

Eric Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed," *The Chronicle of Higher Education*, August 12, 2005, <http://chronicle.com/cgi-bin/printable.cgi?article=http://chronicle.com/free/v51/i49/49a00101.htm>.

- <sup>21</sup> Dennis Carter, "Updated Privacy Law Addresses Student Safety," *eSchoolNews*, January 12, 2009, <http://www.eschoolnews.com/news/top-news/index.cfm?i=56670>.

<sup>22</sup> Ibid.

- <sup>23</sup> Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

- <sup>24</sup> Three days after the Virginia Tech shootings, Virginia Governor Timothy Kaine formed the Virginia Tech Review Panel to evaluate the events of that day. The panel's findings indicated that there were clear warning signs of Mr. Cho's mental distress and that, although individuals and school departments were aware of the signs, they did not communicate with each other or intervene effectively. The panel also found that there was confusion among school officials about what information could be disclosed to each other and Mr. Cho's parents under FERPA.

Va. Tech Review Panel, *Mass Shootings at Virginia Tech, Report of the Review Panel 2*.

Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

- <sup>25</sup> Carter, "Updated Privacy Law Addresses Student Safety."

Bernstein, "Education Department Reworks Privacy Regulations."

Walter Olson, "Could Less Rigid Privacy Laws Have Prevented the Virginia Tragedy," *Times Online*, April 20, 2007, <http://business.timesonline.co.uk/tol/business/law/columnists/article1683556.ece>.

- <sup>26</sup> It is important to note that many times school mental health personnel do not believe it is in the best interest of a student with mental illness to release mental health information to parents or other third parties, even if they are legally able to do so. Every case must be assessed on an individual basis.

Roan, "Crisis on Campus Anxious Parents, Troubled Students."

- <sup>27</sup> Elizabeth suffered third degree burns over 60 percent of her body. Although her death was initially ruled a suicide by "self-inflicted thermal burns" by the Suffolk County Medical Examiner's Office and the Cambridge Fire Department, toxicology reports showed that she had overdosed on medications at the time of the fire, which may have prevented her from reacting to the fire.

Curt Fischer, "Controversial MIT-Related Cases Resolved Last Year," *The Tech*, February 9, 2007, <http://tech.mit.edu/V127/N2/2lawsuits.html>.

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

*Shin v. Massachusetts Institute of Technology*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 15 (Mass. Super. June 27, 2005).

Sontag, "Who Was Responsible for Elizabeth Shin?"

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>28</sup> Fischer, "Controversial MIT-Related Cases Resolved Last Year."

<sup>29</sup> Elizabeth enrolled at MIT in 1998 and experienced psychiatric problems during the spring of her freshman year. It appears that Elizabeth had mental health problems as far back as high school. She told a psychiatrist that she had cut herself deliberately during that time. A psychiatrist described her as suffering from depressive disorder and possible borderline personality disorder.

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

Sontag, "Who Was Responsible for Elizabeth Shin?"

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>30</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

<sup>31</sup> After receiving a poor grade in physics while at the same time suffering from mononucleosis, she spent a week in a hospital for evaluation after overdosing on Tylenol with codeine. The following month, she sent a disturbing e-mail message regarding a bottle of sleeping pills to one of her instructors who forwarded the message to another professor who sent the e-mail on to the dean with whom Elizabeth had previously met. It is unclear what, if any, action was taken in response to this e-mail. On Saturday, April 8, 2000, Elizabeth was taken to the infirmary by campus police after she told another student she was going to kill herself with a knife. The psychiatrist on call, who had not previously treated Elizabeth, spoke with her by phone for approximately five minutes and decided it was safe for her to return to her dorm room.

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

*Shin*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 11-12.

Sontag, "Who Was Responsible for Elizabeth Shin?"

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>32</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

<sup>33</sup> *Ibid.*

<sup>34</sup> Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

*Shin*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 13.

<sup>35</sup> *Shin*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 13.

<sup>36</sup> Elizabeth told two friends that she was preparing to kill herself with a combination of alcohol and Tylenol and requested one of them erase her computer file. After threatening to kill herself, Elizabeth fell asleep. Her friend talked to the dorm master who contacted the psychiatrist on call. They decided to let her sleep and contact the school administrators in the morning.

Sontag, "Who Was Responsible for Elizabeth Shin?"

<sup>37</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

<sup>38</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

<sup>39</sup> *Ibid.*

<sup>40</sup> Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>41</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>42</sup> Sontag, "Who Was Responsible for Elizabeth Shin?"

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>43</sup> The Shins' lawsuit claimed that MIT was overly concerned with protecting Elizabeth's confidentiality, failed to notify them of her mental deterioration, and did not provide adequate coordinated mental health services. They questioned whether Elizabeth was in the right state of mind

to refuse requests to notify her parents.

Fischer, "Controversial MIT-Related Cases Resolved Last Year."

Barbara Lauren, "MIT Student Suicide Case Settled Out of Court," *American Association of Collegiate Registrars and Admissions Officers (AACRAO)*, April 5, 2006, [http://www.aacrao.org/transcript/index.cfm?fuseaction=show\\_print&doc\\_id=3116](http://www.aacrao.org/transcript/index.cfm?fuseaction=show_print&doc_id=3116).

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

Sontag, "Who Was Responsible for Elizabeth Shin?"

<sup>44</sup> The Superior Court of Massachusetts held that there was a "special relationship" between the MIT administrators, the dormitory housemaster, and a dean and Elizabeth, "imposing a duty on [the housemaster and dean] to exercise reasonable care to protect Elizabeth from harm."

*Shin*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 37-38.

Fischer, "Controversial MIT-Related Cases Resolved Last Year."

Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."

Marcus, "Judge Backs Family in MIT Suicide Case."

<sup>45</sup> Twenty-three universities, including Cornell, and eight national higher education associations filed three amicus briefs on behalf of MIT arguing that university staff members who were not health professionals should not be held liable for failing to prevent a student's suicide and that imposing a legal duty on non-clinicians to detect and prevent suicides will foster an incentive for school officials to disengage from distressed students' lives.

Fischer, "Controversial MIT-Related Cases Resolved Last Year."

Lauren, "MIT Student Suicide Case Settled Out of Court."

Marcella Bombardieri, "Parents Strike Settlement with MIT in Death of Daughter," *The Boston Globe*, April 4, 2006, [http://www.boston.com/news/local/articles/2006/04/04/parents\\_strike\\_settlement\\_with\\_mit\\_in\\_death\\_of\\_daughter](http://www.boston.com/news/local/articles/2006/04/04/parents_strike_settlement_with_mit_in_death_of_daughter).

Danny Pearlstein, "Honoring Elizabeth Shin," *The Cornell Daily Sun*, March 15, 2006, <http://cornellsun.com/node/17077>.

<sup>46</sup> As part of the agreement, the Shins did not proceed with a lawsuit against the MIT psychiatrists and agreed that Elizabeth's death was probably accidental.

Lauren, "MIT Student Suicide Case Settled Out of Court."

Rob Capriccioso, "Settlement in MIT Suicide Suit," *Insider Higher Ed*, April 4, 2006, <http://www.insidehighered.com/news/2006/04/04/shin>.

<sup>47</sup> Elizabeth Bernstein, "After a Suicide, Privacy on Trial," *The Wall Street Journal*, March 24, 2007, <http://online.wsj.com/article/SB117470447130847751.html>.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

<sup>50</sup> In the months preceding Chuck's death, his fraternity brothers and ex-girlfriend grew increasingly concerned about his behavior. He was spending a great deal of time alone in his room, drinking heavily, and making plans to give away his dog.

*Ibid.*

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> By the time the case reached the jury, the only remaining defendants were Allegheny College, Chuck's counselor, and a doctor. The jury voted 11-1 in favor of the defendants.

*Ibid.*

<sup>56</sup> Federal Register, 34 CFR Part 99.

NACUA, *FERPA and Campus Safety*.

<sup>57</sup> The amended regulations state that, in some cases, it might be appropriate to release information to a spouse or other family member.

Federal Register, 34 CFR Part 99.

<sup>58</sup> Ibid.

<sup>59</sup> United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

Federal Register, 34 CFR Part 99.

<sup>60</sup> Bernstein, "Education Department Reworks Privacy Regulations."

<sup>61</sup> The amended regulations, section 99.36 states that the following conditions apply to disclosure of information in health and safety emergencies:

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents or an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individual.

(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.

34 CFR § 99.36.

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

NACUA, *FERPA and Campus Safety*.

<sup>62</sup> 34 CFR § 99.36.

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

NACUA, *FERPA and Campus Safety*.

<sup>63</sup> 34 CFR § 99.36.

United States Department of Education, *Family Educational Rights and Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

NACUA, *FERPA and Campus Safety*.

<sup>64</sup> 34 CFR § 99.36.

NACUA, *FERPA and Campus Safety*.

<sup>65</sup> Federal Register, 34 CFR Part 99.

<sup>66</sup> Section 99.32. What recordkeeping requirements exist concerning requests and disclosures?

(a)(5) An educational agency or institution must record the following information when it discloses personally identifiable information from education records under the health or safety emergency exception in § 99.31(a)(10) and § 99.36:

- (i) The articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure; and
- (ii) The parties to whom the agency or institution disclosed the information

Federal Register, 34 CFR Part 99.

United States Department of Education, *Family Educational Rights and*

*Privacy Act (FERPA) Final Rule, 34 CFR Part 99, Section-by-Section Analysis*.

Bernstein, "Education Department Reworks Privacy Regulations."

NACUA, *FERPA and Campus Safety*.

<sup>67</sup> Ibid.

<sup>68</sup> Federal Register, 34 CFR Part 99.

<sup>69</sup> Although it is impossible to objectively evaluate in retrospect the wisdom of Allegheny's or MIT's decisions not to disclose information to Elizabeth's or Chuck's parents, it was apparent that both students' counselors, mental health professionals, and friends believed that they were in immediate danger of harming themselves.

<sup>70</sup> Elizabeth's and Chuck's cases illustrate the delicate balance with which schools are faced. In both cases, (1) on-campus counselors or psychiatrists evaluated and treated the students, (2) the schools' deans were aware of the students' distress, and (3) off-campus mental health professionals and colleagues were consulted for advice and guidance. When both students explicitly refused requests that their parents be contacted, the school officials abided by their wishes. The school officials considered other alternatives, such as hospitalization and involuntary leave of absence. Arguably, the school officials took the action they believed was in the students' best interest.

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>71</sup> Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

<sup>72</sup> Bombardieri, "Parents Strike Settlement with MIT in Death of Daughter."

<sup>73</sup> Mandatory withdrawal policies may also make the friends of suicidal students less likely to come forward about early warning signs of suicidal behavior to school officials. As an alternative to mandatory withdrawal, the University of Illinois requires every student who attempts or threatens suicide to attend four sessions with a mental health professional for assessment of the student's mental health. If the students refuse to attend the sessions, then they may face mandatory withdrawal from the school. The University of Illinois also requires student affairs personnel to submit a Suicide Incident Report to the school's counseling center when they have evidence or information that a student has "threatened or attempted suicide, engaged in efforts to prepare to commit suicide or expressed a preoccupation with suicide."

McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities."

Rob Capriccioso, "Counseling Crisis," *Inside Higher Ed*, March 13, 2006, <http://www.insidehighered.com/news/2006/03/13/counseling>.

<sup>74</sup> Nott filed suit in the D.C. Superior Court alleging that school policies discriminated against those who have mental illness and punish those who seek help. Nott was barred from campus under the school's "endangering behavior policy" that applies to students whom the school suspects pose a danger to themselves and others.

Ryan Holeywell, "University Settles Jordan Nott Lawsuit," *The GW Hatchet*, November 2, 2006, [http://www.gwhatchet.com/home/index.cfm?event=displayArticlePrinterFriendly&uStory\\_id=0388547b-6d39-46e0-85d4-a9c8c2210562](http://www.gwhatchet.com/home/index.cfm?event=displayArticlePrinterFriendly&uStory_id=0388547b-6d39-46e0-85d4-a9c8c2210562).

Lauren, "MIT Student Suicide Case Settled Out of Court."

Bombardieri, "Parents Strike Settlement with MIT in Death of Daughter."

<sup>75</sup> Holeywell, "University Settles Jordan Nott Lawsuit."

<sup>76</sup> In at least four cases in 2006, the Department of Education's Office for Civil Rights, which is responsible for enforcing the Rehabilitation Act of 1973 prohibiting discrimination based on disability by recipients of federal assistance, sided with the students.

Capriccioso, "Counseling Crisis."

- <sup>77</sup> A Brown University student's mother sued after her son, Daniel Shuster, committed suicide in 1990. In 2004, Paul Kraut, a freshman at Babson College in Wellesley, Massachusetts, jumped off a balcony. Prior to his death, his mother had asked the school to have a counselor speak with him. In 2002, James Ross, a student at State University of New York at Buffalo, shot himself to death. His parents were not notified about his behavior prior to his death.
- Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."  
Sharpe, "Suicide at MIT Raises Parents' Ire."  
Tova A. Serkin, "Brown University Sued for Negligence in Suicide Case," *The Harvard Crimson*, July 14, 2000, <http://www.theharvardcrimson.net/article.aspx?ref=101273>.
- <sup>78</sup> McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities."  
Lauren, "MIT Student Suicide Case Settled Out of Court."  
*Jain v. Iowa*, 617 N.W.2d 293, 300 (Iowa 2000).
- <sup>79</sup> The court explained that the fact that the school required Mr. Frentzel to sign a statement that he would not hurt himself after he was found alone in his room with self-inflicted bruises on his head was an indication that the school believed Mr. Frentzel was likely to harm himself again.
- Schiesler v. Ferrum College*, 236 F. Supp. 2d 602, 609 (W.D. Va. 2002).  
Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."
- <sup>80</sup> Hoover, "Judge Rules Suicide Suit Against MIT Can Proceed."
- <sup>81</sup> The decisions that have found liability for student suicides on the part of school administrators based on a special relationship between the administrators and students may have the effect of discouraging administrators from becoming more actively involved in monitoring and treating potentially suicidal students. Some schools are concerned that programs focusing on reaching out to students with mental health problems that involve school administrators learning details about a student's situation may form the basis for a court to find that any subsequent suicide is foreseeable by the administrator. However, as an alternative to deciding not to offer such programs, schools can instead minimize liability exposure by erring on the side of disclosure in cases where students are at imminent risk of harming themselves or others.
- Shin*, No. 02-0403, 2005 Mass. Super. LEXIS 333, at \* 37-38.  
Susanna G. Dyer, "Is There a Duty?: Limiting College and University Liability for Student Suicide," *Michigan Law Review*, 106:1379 (2008), 1383.  
McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities."
- <sup>82</sup> 34 CFR § 99.31.
- <sup>83</sup> In addition to deans, trustees, and professors, law enforcement personnel and health staff are considered to be appropriate "school officials" under model definitions provided by the Family Policy Compliance Office (FPCO). An official has a legitimate educational interest in student records and information, for example, if the official needs to review the information in the performance of his or her professional responsibilities for the school, in performance of a task related to the student's education or to student discipline, or maintaining safety and security on campus.
- NACUA, *FERPA and Campus Safety*.  
University of Rhode Island, *Introduction to FERPA, Family Education Rights and Privacy Act, or FERPA 101*.
- <sup>84</sup> Bernstein, "Education Department Reworks Privacy Regulations."  
<sup>85</sup> NACUA, *FERPA and Campus Safety*.  
<sup>86</sup> Bernstein, "Education Department Reworks Privacy Regulations."

- <sup>87</sup> Ibid.
- <sup>88</sup> McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities."  
<sup>89</sup> Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."  
<sup>90</sup> Grava, "Communication Key to Helping Students with Mental Health Issues."  
<sup>91</sup> Dartmouth in Hanover, New Hampshire, receives many mental health referrals from maintenance workers who find vomit in wastebaskets from students with eating disorders.  
Sharpe, "Suicide at MIT Raises Parents' Ire."  
<sup>92</sup> One additional consideration is education and training on cultural differences and how they may affect a student's mental health crisis or a school's response. Certain cultures may be less open about dealing with mental health issues. Culture may have played a role in the cases of Elizabeth Shin and Mr. Cho, both of whom came from Korean households. Elizabeth, in consultation with her father, refused to seek treatment outside of the university contrary to a doctor's recommendation. She did agree to meet with a university psychiatrist periodically throughout the academic year. For many in Korea, mental or emotional problems are signs of shame and guilt, which are additional obstacles to getting treatment. The impact of cultural differences will continue to grow as the immigrant population in the US grows. Therefore, to more fully understand students' backgrounds and pressures, staff should be made aware of the potential impact of cultural differences when dealing with mental health issues.
- Va. Tech Review Panel, *Mass Shootings at Virginia Tech*, Report of the Review Panel 2.  
The Jed Foundation, *About Suicide Prevention*.  
*Shin v. Mass. Inst. of Tech.*, 19 Mass. L. Rptr. 570, 571 (Mass. Super. Ct. 2005).  
Sontag, "Who Was Responsible For Elizabeth Shin?"
- <sup>93</sup> NACUA, *FERPA and Campus Safety*.  
Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."  
<sup>94</sup> The University of Connecticut has a website that provides online assessment tools and self-help information for faculty, staff, parents, and students. It includes the handbook for helping students in distress. The University also produces a Counseling and Mental Health Services newsletter.  
Grava, "Communication Key to Helping Students with Mental Health Issues."  
Elizabeth Bernstein, "Bucking Privacy Concerns, Cornell Acts as Watchdog," *The Wall Street Journal*, December 28, 2007, <http://online.wsj.com/article/SB119881134406054777.html>.
- <sup>95</sup> Although in the Virginia Tech case Mr. Cho was bright and did well academically, he had significant difficulty communicating with others throughout his school career. Mr. Cho's parents were aware of the special education services he received in high school. However, Virginia Tech admitted Mr. Cho based on his academic record without a personal interview. The school was unaware that the special services he received in high school enabled him to reach the college level with a strong academic record but virtually no social or communication skills.  
McAnaney, "Finding the Proper Balance: Protecting Suicidal Students Without Harming Universities."  
Va. Tech Review Panel, *Mass Shootings at Virginia Tech*, Report of the Review Panel 2.
- <sup>96</sup> Roan, "Crisis on Campus Anxious Parents, Troubled Students."  
<sup>97</sup> Pearlstein, "Honoring Elizabeth Shin."

Capriccioso, "Counseling Crisis."

<sup>98</sup> Others argue that cases such as the Shin case are bad for schools because, whether schools are right or wrong, they usually settle and costs rise.

Capriccioso, "Settlement in MIT Suicide Suit."

<sup>99</sup> Ibid.

<sup>100</sup> Lauren, "MIT Student Suicide Case Settled Out of Court."

Sharpe, "Suicide at MIT Raises Parents' Ire."

<sup>101</sup> Ibid.

<sup>102</sup> The International Association of Counseling Services and the American College Health Association state that colleges should have at least one mental health staff member to 1,500 students, with the "platinum standard" being one mental health staff member for every 1,000 students.

Grava, "Communication Key to Helping Students with Mental Health Issues."

Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

<sup>103</sup> Cornell's mental health program, which is modeled after the Air Force's program, includes an "alert team" of administrators, campus police, and counselors who meet weekly and compare notes on signs of students with mental health problems. Cornell also encourages staff to recognize students with potential problems and provides training for college employees all across campus, including librarians and handymen.

Bernstein, "Education Department Reworks Privacy Regulations."

Bernstein, "Bucking Privacy Concerns, Cornell Acts as Watchdog."

Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

<sup>104</sup> Bernstein, "Education Department Reworks Privacy Regulations."

Grava, "Communication Key to Helping Students with Mental Health Issues."

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Bernstein, "Colleges' Culture of Privacy Often Overshadows Safety."

<sup>105</sup> Bernstein, "Bucking Privacy Concerns, Cornell Acts as Watchdog."

<sup>106</sup> Sontag, "Who Was Responsible For Elizabeth Shin?"

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**Health is not valued till sickness comes.**

—THOMAS FULLER (1608–1661), BRITISH CLERGYMAN AND WRITER

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