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OCR and Justice Department Recognize World Mental Health Day by Releasing Fact Sheet on Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19

Guidance outlines K-12 and Postsecondary Schools' Response

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On October 13, 2021, in connection with World Mental Health Day (October 10), the U.S. Department of Education's Office for Civil Rights ("OCR") and the U.S. Department of Justice's Civil Rights Division ("CRT") jointly issued a [fact sheet](#), entitled, *Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19*. OCR also released a [letter to educators](#), outlining the civil rights obligations of K-12 and postsecondary schools to students with mental health disabilities. These documents provide important insight into the Biden-Harris Administration's view on the responsibility of schools to respond to students with mental health disabilities, and offer crucial guidance to schools looking to provide that support to their students.

What You Need to Know:

- The fact sheet issued jointly by the Department of Education and Department of Justice provides examples of situations involving students at K-12 and postsecondary schools that could trigger federal investigation and enforcement actions.
- The fact sheet also provides a list of steps that schools should take to create a supportive environment for all students in compliance with federal law.
- The Department of Education's Office for Civil Rights also released a letter to educators explaining that, amid the COVID-19 pandemic, there has been a rise in suicidal ideation among children, young adults, and specific populations of students, including students of color and students who identify as LGBTQI+.

OCR's letter to educators stresses the importance of suicide prevention and mental health in light of the pandemic's effects on students, citing a [report on the disparate impacts of the pandemic](#) that shows a rise in suicidal ideation among children, young adults, and specific populations of students, including students of color and students who identify as LGBTQI+.

The fact sheet explains that the stressors of the COVID-19 pandemic have, in many instances, exacerbated existing mental health disabilities, while causing some students to experience mental health disabilities for the first time. Conditions such as anxiety, depression, and/or a substance abuse disorder can qualify as mental health disabilities protected by federal civil rights laws, including Section 504 of the Rehabilitation Act of 1973 ("Section 504") and the Americans with Disabilities Act of 1990 (the "ADA"). OCR and CRT emphasize in the fact sheet, that, consistent with prior guidance, Section 504 and the ADA require K-12 and postsecondary schools to respond to students at risk of self-harm based on an individual assessment of each student's particular circumstances rather than "fears, generalizations, or stereotypes about mental illness." Schools must provide students who have mental health disabilities with reasonable modifications to school policies, practices, and procedures, as appropriate for each individual student. Failure to meet these responsibilities can result in investigation and enforcement actions by OCR or CRT.

The fact sheet includes a list of actions that schools can take to create supportive environments for all students:

- Develop trauma-informed crisis management procedures that include an individualized assessment of the student's circumstances.
- Provide and facilitate access to mental health evaluations and services, including making efforts to reduce or remove barriers or potential negative consequences, such as stigma, associated with receiving mental health services.
- Reasonably modify policies, such as attendance policies, for individual students, as appropriate.
- Train staff to recognize and respond appropriately to signs of distress and suicidal ideation in students.
- Review and share the resources included in the fact sheet.

The fact sheet also includes several examples of incidents involving students in K-12 and postsecondary schools that could trigger an investigation by OCR or CRT. Schools should review these examples, and the suggested action items, in conjunction with their current institutional policies to ensure alignment with federal law. Schools should also review the resources included in the fact sheet, which include crisis and suicide prevention services, counseling services, and resources for individuals at higher risk for self-harm, and make these resources known and readily accessible to their student populations.

If you have questions about this alert or about other student mental health and disability issues, please reach out to your regular Saul Ewing Arnstein & Lehr contact or the authors.

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