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2023 Annual Conference

June 27 – 30, 2023

Accommodating Student Mental Health Needs: Leaves, Returns, and Other Challenging Issues

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ACCOMMODATING STUDENT MENTAL HEALTH NEEDS: LEAVES, RETURNS, AND OTHER CHALLENGING ISSUES

June 27 – 30, 2023

Steven Locke
General Counsel
Brandeis University

Barbara A. Lee
Of Counsel
Bond, Schoeneck & King

Jill Zellmer, MSW
Executive Director of the Office of Equal Opportunity
and Title IX Coordinator
Tufts University

I. Manuscript: Recent Court Decisions in the Evolution of College and University Employee Liability for Student Suicide

Steven Locke

II. Sample Care Contract

Steven Locke

III. List of Resources re: Student Mental Health Challenges

Jill Zellmer

This list of resource links and supports was compiled in Spring 2023 to support NACUA members in their wayfinding of policies and protocols related to leaves, returns, accessibility resources, mental health needs and other challenges at various colleges and universities. Attempts were made to include a variety of colleges and schools, including attention to geography, size, private/public and demographics. Inclusion or exclusion on this list should not be considered a slight or an endorsement.

IV. Manuscript

Barbara Lee

Analysis of court and OCR review of challenges to academic dismissals by students in clinical programs.

ACCOMMODATING STUDENT MENTAL HEALTH NEEDS: LEAVES, RETURNS, AND OTHER CHALLENGING ISSUES

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General Counsel
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Recent Court Decisions in the Evolution of College and University Employee Liability for Student Suicide

In 2018, the Massachusetts Supreme Judicial Court in *Nguyen v. MIT*, 479 Mass. 436 (2018), ruled for the first time that institutions of higher education have a special relationship with students and a “corresponding duty to take reasonable measures” to protect students from self-harm under the following circumstances:¹

When a (non-clinician) university employee:

- 1) has **actual knowledge of**
- 2) a **suicide attempt** that occurred while the student was enrolled or recently before matriculation²
or
- 3) stated plans or intentions to commit suicide.

The duty **does not arise** if the employee is only made aware of generalized statements about suicidal thoughts or ideation without any stated plans or intentions to act on such thoughts. The duty hinges on the concept of foreseeability. Non-clinician employees are not expected to discern suicidal tendencies when a student has not stated their plans or intentions to commit suicide.

Once the duty arises, the non-clinician employee is required to take “reasonable measures” to satisfy the duty, including:

¹ The court’s ruling was based on the premise that, while the age of *in loco parentis*, has “passed,” universities still have a “general duty of care to all students in all aspects of their collegiate life,” which can give rise to a special relationship in certain circumstances.

² While not defining “recently,” the court noted that the fact that the student in this case had engaged in a suicide attempt more than one year prior to matriculation would not be considered recent.

- 1) Initiating the university's suicide prevention protocol, or
- 2) In the absence of such a protocol, contacting appropriate officials empowered to assist the student in obtaining "clinical care from medical professionals."
- 3) If the student refuses care, the employee must notify the student's emergency contact.

In emergency situations, "reasonable measures" also would include contacting police, fire, or emergency medical personnel. By taking reasonable measures under the circumstances presented, a university satisfies its duty.

The court ruled that the duty is time-bound, offering that "[m]edical professionals may, for example, conclude that the student is no longer a suicide risk and no further care or counselling is required."

The **practical takeaways** from this decision were:

- 1) Universities should put in place a suicide prevention protocol and
- 2) Train all employees on their legal obligations and how to initiate such protocol.

The court left unclear the extent to which the duty continues after an emergent situation has been mitigated. The court specifically indicated that the institution's special duty would be satisfied with the initiation of the suicide prevention protocol or arranging for clinical care by medical professionals; however, the test suggests that the duty could continue depending on the student's post-incident mental state and the treating doctor's assessment after the incident. This suggests that the following practices should also be considered:

- 3) The suicide prevention protocol should be multi-layered to respond to the different situations in which the special relationship may arise:
 - a. Emergent situation – where the employee becomes aware of a student's stated plans or intentions to commit suicide.
 - b. Non-emergent situation – where the employee becomes aware of a suicide attempt that occurred while the student was enrolled or recently before matriculation.

- 4) The protocol should also include a follow-up protocol to an emergent situation, which includes ongoing engagement with, and monitoring of, the student to prevent recurrence. A school may want to consider using a “care contract” (see sample attached) as part of the follow-up protocol.
- 5) The protocol should also be clear as to how long any continued engagement and/or monitoring will occur, and under what circumstances it will be discontinued.

In December 2022, a Massachusetts Superior Court judge, applying *Nguyen*, entered summary judgment in favor of Harvard College and several administrators, in ***Tang v. President and Fellows of Harvard College, et al.***, Middlesex Superior Court, C.A. No. 1881CV02603 (Dec. 20, 2022) (Tingle, J.). In *Tang*, a student reported to a Harvard administrator in April 2015 that he had attempted suicide two weeks earlier. Harvard initiated a clinical assessment process that led to the student’s admission to a hospital for an evaluation. The student was discharged a week later, at which time the hospital’s treating physician indicated that the student was no longer suicidal and recommended continuing outpatient therapy. Harvard required the student to enter into a “care contract” which conditioned his continued enrollment and residence on his agreement to seek counseling. The student returned to school and finished the semester, with several administrators engaging with him during that time. When the student returned to Harvard in the fall, an administrator met with him and went over the terms of the care contract with him again. The student denied having any further suicidal thoughts. Ten days later, the student died by suicide.

Applying *Nguyen*, the court granted Harvard’s motion for summary judgment, dismissing the complaint against the university and its non-clinician administrators. The court found that Harvard owed a limited duty to the student because it had been made aware of his suicide attempt in April 2015. However, the court ruled that Harvard satisfied its duty when, after learning of the attempt, it took steps to arrange for clinical care by trained medical professionals and contacted the student’s emergency

contact, both actions sanctioned by the court in *Nguyen*.³ The court also ruled that the duty ended once the student's treating physician deemed the student safe to be discharged and returned to Harvard.

Despite the physician's recommendation for follow-up outpatient therapy, the court found that there was no newly triggered duty because the student had not engaged in subsequent suicidal conduct sufficient to trigger the duty again. The court rejected the plaintiff's argument that the duty continued until "the student no longer needs clinical care according to a properly qualified medical professional or the student graduates," reasoning that such a standard would "require non-clinicians...to identify acute suicidal intentions even where the student expressly denies being suicidal. Further, it would impose an ongoing duty on a university to monitor a student and determine what course of conduct if any was needed to guard against a possible suicide at some future date." Thus, the court was unwilling to extend the duty beyond the initiation of the suicide prevention protocol.⁴

Notably, the court's ruling validated Harvard's use of a care contract to manage the situation after the student's suicide attempt. The plaintiff had argued that Harvard voluntarily assumed a duty to prevent the student's suicide in the future because it required the student to sign a care contract, which required the student to remain in outpatient therapy in order to stay enrolled. Under Massachusetts law,

"One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if

- (a) his failure to exercise such care increases the risk of such harm, or
- (b) the harm is suffered because of the other's reliance upon the undertaking."⁵

³ The court noted that Harvard did not have a suicide prevention protocol at that time, but the steps that it took were sufficient to satisfy its duty.

⁴ The court did note, however, that a university could fail to satisfy its limited duty if its suicide prevention protocol was "clearly inadequate" or if it failed to follow its procedures. However, the court's reasoning seems to suggest that arranging for clinical care by trained medical professionals would be considered legally adequate.

⁵ See *Mullins v. Pine Manor College*, 389 Mass. 47, 53 (1983)

The court rejected the plaintiff's argument, ruling that in requiring the care contract, Harvard did not agree to render services to the student, rather it set the ground rules for his continued enrollment, something schools "routinely" do. Furthermore, the court ruled that requiring the student to see an outpatient therapist after the suicide attempt did not qualify as a voluntary assumption of a duty to safeguard the student from any future suicide attempt for an indefinite period of time. The court also recognized the important public policy implications for schools if plaintiff's theory were to prevail:

The position advocated for by Dr. Tang could also have serious policy implications. If such a voluntary duty is imposed upon any college or university that requires a student to get outpatient therapy after a suicide attempt, then one of two things is likely to happen. First, colleges or universities may conclude that it is better for them to simply refuse to allow the student at issue to remain enrolled after a suicide attempt on campus. In the alternative, institutions may cease making any efforts to get students...into ongoing therapy for fear of liability in the event that the student commits suicide at some future date. Both of these likely consequences of imposing a voluntary duty under these circumstances would be potentially harmful to students that may be at risk of suicide.

The **practical takeaways** from this decision are:

- 1) Schools can take some comfort in knowing that if they implement their suicide prevention protocol in response to an emergent situation, they will satisfy their legal duty and will not be held liable for subsequent student self-harm once the initial emergency has been mitigated, unless and until they become aware of a subsequent situation where the student has stated plans or intentions to commit suicide.
- 2) Schools can also feel comfortable imposing follow-up treatment requirements, including care contracts (see attached sample), on students who engage in suicidal conduct, without worrying that they will be voluntarily assuming a duty to protect the student from future self-harm.

While this ruling is helpful in terms of limiting potential liability, a subsequent decision suggests that schools need to be strategic in not just the way in which they respond to emergent suicide situations, but in the services they provide to students on a regular basis. While not fully developed,

an area of law for schools to keep an eye on is the voluntary assumption of a duty. In *Nguyen*, the plaintiffs argued that MIT's provision of mental health services constituted the voluntary assumption of a duty. The court rejected the claim because it found that there was no evidence to suggest that the student had relied on those services or that such services had increased his risk of suicide. However, in 2020, a judge denied a college's motion to dismiss a wrongful death lawsuit after a student's suicide on the grounds that the college, by providing a campus health services office for students, had voluntarily assumed a duty of care, and potentially breached that duty by not keeping it open on weekends. *Anderson v. Bard College*, 20 WL 599034, (August 28, 2020) (Hogan, J.) The student, who had been utilizing the school's mental health services, died by suicide on a weekend. Given that most schools offer mental health services, the court's ruling reinforces the need for schools to make sure that the mental health services that they offer to students ensure that students have access to emergency care when needed.

SAMPLE CARE CONTRACT

Dear [Student]

Concern for your health and safety has led us to put a plan in place for your continued enrollment at XXXX University. This letter will serve as an agreement between you and the Dean of Students Office. Please understand that we all want you to succeed at XXXX University. To ensure this, we are taking appropriate steps to address the challenges you are facing. This letter sets forth our expectations to better ensure your well-being during your remaining time at XXXX University.

Summary of Concern:

[Description of incidents]

Our agreement is as follows:

- Your treatment providers have recommended an intensive outpatient program. You are scheduled to start on [date]. The university expects that you have and will engage in the program for the recommended length of time.
- You will follow the recommendations of your outpatient treatment providers.
- You will allow for communication between your treatment providers and the university's counselor at the Counseling Center. (Releases of information will be provided to you, and should be completed for the IOP and your ongoing outpatient providers).
- You will meet regularly with Assistant Dean of Students.

The following is a treatment contract designated to help aid you in your recovery. This is an agreement between you and the members of your treatment team.

Your treatment team consists of:

Medical:

Mental Health:

Please initial each item in the blank provided below:

I agree to engage in the recommended treatment programs until it is completed or my treatment team has recommended a change in treatment.

If it is recommended that I enter a higher level of care for medical or mental health, such as an inpatient stay or a community stabilization program, I agree to follow this recommendation.

I agree to engage in the discharge plans and treatment recommendations set forth by the

partial hospitalization program (On Call Treatment) and my outpatient team.

I agree to meet regularly with Stephanie Grimes, or a member of the Dean of Students Office.

I agree to have as needed check-ins with Amy Scobie-Carroll or a designee from the XXXX University Counseling Center.

You hereby agree that all members of your treatment team as well as XXXX University Counseling Center have permission to communicate with each other and to communicate with the Dean of Students Office if concerns arise. You agree to sign any additional authorization forms that may be required by any member of your treatment team in order that they may communicate with each other regarding your progress or with me if concerns arise.

If any University official asks you to be psychologically or medically evaluated, you will comply with that request.

I agree to maintain off campus housing in supervision of my family members or their designee.

As a XXXX University student, you are responsible for making sure that your actions and behavior are in accordance with the rules set forth in Rights and Responsibilities. In keeping with our expectations for all students, you should not engage in disruptive behavior on campus or elsewhere.

You hereby agree that prior to returning to XXXX University after your inpatient program, you will be required to provide documentation from an appropriate treating medical professional that addresses your ability to succeed as a student in an academically rigorous environment and reside in a close-quartered campus community. In addition, your plan for care must be identified and solidified prior to return to campus.

Please understand that while we do not expect your treatment team to disclose the substance of your conversations with them, it is vital that they continue to confirm that your treatment is proceeding as planned. Please note that we understand that your treatment providers and/or care plan may shift. It is expected that you are communicating this information with us so that we can adjust the Dean's Agreement if necessary. It is important to note that you may decline to pursue the treatment program recommended to you, that you may revoke permission for your treatment team to speak with me, and that you may decline to meet with me to discuss your progress at any time. Needless to say, we hope that you will not make such choices, as the conditions imposed by this agreement are intended to provide support for you from trained professionals, to prevent problems from arising and for your safety.

If you cannot meet these conditions, then the University will need to re-evaluate whether you may continue to be enrolled. We very much want you to successfully address the challenges you have faced, and in assessing your progress in doing so, we hope to have available the most complete and accurate information possible. If that information is denied to us; however, we must and will still make judgments about your progress and about your ability to remain enrolled at XXXX University.

Please sign this letter to indicate that you have read and agreed to its conditions.

We hope that the measures we have instituted will provide a structure to help you successfully continue your studies. Ultimately, we want to work together to help you be well and do well here.

Please feel free to speak with me at any time about this agreement or about your academic and personal progress. I appreciate that you have been through a difficult time and hope you understand that we are here to assist and support you as you work towards your degree and re-enter the XXXX University community.

I have read and understand this contract and agree to its terms. Signature

of Student

Date:

By signing this letter, we are all affirming our understanding and agreement with its provisions.

Sincerely,

Dean of Students

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Executive Director of the Office of Equal Opportunity and Title IX Coordinator
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Resource List

Compiled Spring 2023

The following list of resource links and supports has been compiled to support NACUA members in their wayfinding of policies and protocols related to leaves, returns, accessibility resources, mental health needs and other challenges at various colleges and universities. Attempts were made to include a variety of colleges and schools, including attention to geography, size, private/public and demographics. Inclusion or exclusion on this list should not be considered a slight or an endorsement. Thanks to Mohammad Hadi H. Ahmadi, Tufts '26 for compiling this list.

Binghamton University - State University of New York

Accommodations

Academic Accommodations

<https://www.binghamton.edu/ssd/resources.html>

Student Leaves:

<https://www.binghamton.edu/services/care-team/withdraw/>

[https://www.binghamton.edu/services/care-team/withdraw/self withdrawal checklist dec2020.pdf](https://www.binghamton.edu/services/care-team/withdraw/self_withdrawal_checklist_dec2020.pdf)

Pregnant/Parenting Students, Lactation Spaces

<https://www.binghamton.edu/services/title-ix/contact.html>

<https://www.binghamton.edu/services/title-ix/pregnant.html>

Disability Services for Students

<https://www.binghamton.edu/ssd/about.html>

<https://www.binghamton.edu/ssd/policies/>

<https://www.binghamton.edu/ssd/index.html>

Brandeis University

Accessibility resources:

On-campus accessibility resources:

- Student accessibility support: <https://www.brandeis.edu/accessibility/>
- Web accessibility support: <https://www.brandeis.edu/web-accessibility/>

- Student Accessibility Support (SAS) Fellows:
<https://www.brandeis.edu/accessibility/students/sas-fellows/index.html>
- Brandeis Campus Accessibility Committee (CAC):
<https://www.brandeis.edu/accessibility/cac.html>
- Creating Accessible Digital Materials:
<https://www.brandeis.edu/accessibility/students/resources.html>
- Brandeis Library: <https://www.brandeis.edu/library/>

Concerns About Accessibility:

- ADA/Section 504 Policy: <https://www.brandeis.edu/equal-opportunity/policies/pdfs/ada-504-policy---9-2021.pdf>
- Accommodation Grievance Process: <https://www.brandeis.edu/equal-opportunity/policies/accommodation-grievance-process.html>
- Service Animal/Emotional Support Animal Policy: <https://www.brandeis.edu/equal-opportunity/policies/pdfs/service-animal-emotional-support-animal-policy-9-2021.pdf>
- Disability Accommodation Procedure (for employees): <https://www.brandeis.edu/human-resources/policies/discrimination/accommodation.html>

Reporting Options: <https://www.brandeis.edu/equal-opportunity/reporting/index.html>

Student Life and Leaves of Absence (includes policies, processes, types of leaves):

<https://www.brandeis.edu/academic-services/advising/academics/absences.html#:~:text=A%20leave%20of%20absence%20is%20granted%20for%20one,at%20least%20one%20semester%20prior%20to%20studying%20abroad>.

Mental Health Support: <https://www.brandeis.edu/counseling/>

Brown University

Student Accommodation and Services (SAS):

- Registering with SAS: <https://www.brown.edu/campus-life/support/accessibility-services/students-registration>
- Forms: <https://www.brown.edu/campus-life/support/accessibility-services/accommodations-and-services-students/forms>
- Academic Accommodations: <https://www.brown.edu/campus-life/support/accessibility-services/academic-accommodations>
- Assistive Technology: <https://www.brown.edu/campus-life/support/accessibility-services/assistive-technology>
- Housing & dining: <https://www.brown.edu/campus-life/support/accessibility-services/housing-accommodations>
- Parking: <https://www.brown.edu/campus-life/support/accessibility-services/parking-accommodations>
- Service & Emotional Support Animals: <https://www.brown.edu/campus-life/support/accessibility-services/accommodations-services/service-emotional-support-animals>
- Note Taking Assistance:
 - o Note Provider Instructions: <https://www.brown.edu/campus-life/support/accessibility-services/note-taker-instructions>

- Note Receiver Instructions: <https://www.brown.edu/campus-life/support/accessibility-services/note-receiver-instructions>
- Financial Assistance for Evaluations or Coaching: <https://www.brown.edu/campus-life/support/accessibility-services/students-financial-assistance-evaluations-or-coaching>
- Library SAS Rooms Scheduling: <https://www.brown.edu/campus-life/support/accessibility-services/library-sas-rooms-scheduling>
- Housing Accommodation request appeals: <https://www.brown.edu/campus-life/support/accessibility-services/housing-accommodations>
- Support Groups: <https://www.brown.edu/campus-life/support/accessibility-services/activities-events>

Campus Accessibility: <https://www.brown.edu/campus-life/support/accessibility-services/campus-accessibility>

- Getting Around Campus: <https://www.brown.edu/campus-life/support/accessibility-services/getting-around-campus>
- Access Shuttle: <https://www.brown.edu/campus-life/support/accessibility-services/access-shuttle>

Faculty Accommodation and Services: <https://www.brown.edu/campus-life/support/accessibility-services/faculty-letter-spring-2019>

- Exam Support: <https://www.brown.edu/campus-life/support/accessibility-services/faculty-exam-support>
- Notes Support: <https://www.brown.edu/campus-life/support/accessibility-services/notes-support-information-course-instructors>
- Online Portal Instructions for Accommodations Letters: <https://www.brown.edu/campus-life/support/accessibility-services/instructor-letters-online-portal>
- Syllabus Statement: <https://www.brown.edu/campus-life/support/accessibility-services/faculty-syllabus-statement>

Community Resources: <https://www.brown.edu/campus-life/support/accessibility-services/resources-students>

- Web Accessibility: <https://www.brown.edu/campus-life/support/accessibility-services/web-accessibility>
- Event Accessibility: <https://www.brown.edu/campus-life/support/accessibility-services/making-your-event-accessible>
- Disability Emergency Evacuation Planning (DEEP): <https://www.brown.edu/campus-life/support/accessibility-services/disability-emergency-evacuation-planning-deep>
- Studying Abroad with SAS: <https://www.brown.edu/campus-life/support/accessibility-services/studying-abroad-seas>
- Mobility or Medical Disabilities: <https://www.brown.edu/campus-life/support/accessibility-services/mobility-or-medical-disabilities>

Access or Accommodation Concerns: <https://www.brown.edu/campus-life/support/accessibility-services/access-or-accommodation-concerns>

Mental Health: <https://caps.brown.edu/>

Catholic University

Accommodations - Disability Support Services

<https://dss.catholic.edu/>

Resources:

<https://dss.catholic.edu/resources1/index.html>

Academic Accommodations

<https://dss.catholic.edu/registered-students/accommodated-testing.html>

<https://deanofstudents.catholic.edu/faqs/time-away.html>

<https://deanofstudents.catholic.edu/faqs/academic leave and withdrawal form 2022.-draft.pdf2.21.22.pdf>

Mental Health Support

<https://counseling.catholic.edu/index.html>

Duke University

Disability Management System (DMS):

- Requesting accommodation: <https://access.duke.edu/requests>
- Process for Review & Implementation of Accommodation Requests: <https://access.duke.edu/requests/review-implementation-process>
- Service and Assistance Animals: <https://access.duke.edu/requests/service-assistance-animals>
- Grievances: <https://access.duke.edu/requests/grievances>
- For students: <https://access.duke.edu/students>
- For employees: <https://access.duke.edu/employees>
- For visitors & patients: <https://access.duke.edu/visitors-patients>
- Getting around campus: <https://access.duke.edu/advisories>
- Resources: <https://access.duke.edu/resources>
 - o Assistive Technology and Tools: <https://access.duke.edu/resources/assistive-tech-tools>
 - o Accessible Event Planning: <https://access.duke.edu/resources/accessible-event-planning>
 - o Obtaining Interpreter(s): <https://access.duke.edu/resources/obtaining-interpreters>

Academic accommodation: <https://bluebook.duke.edu/parents-family/learning/academic-resources-support/>

Student life and leave of absence: <https://undergrad.duke.edu/student-success/time-away-office/time-away-categories/>

Health and mental health:

- Health center: <https://healthy.duke.edu/>
- Mental health and wellbeing: <https://healthy.duke.edu/about/mental-emotional-wellbeing/>

Howard University

Accessibility statement: <https://howard.edu/accessibility-statement#:~:text=Howard%20University%20is%20committed%20to%20providing%20an%20accessible,experience%20for%20our%20users.%20...%203%20Feedback%20>

Requesting various types of accommodations: <https://studentaffairs.howard.edu/diversity-inclusion/accommodations-requests>

Leave of Absence and Withdrawal Policy: <https://howard.edu/registrar/withdrawal>

Health and mental health services:

- Student health center: <https://catalogue.howard.edu/student-health-center>
- Counseling Services: <https://studentaffairs.howard.edu/wellness/get-counseling-services>

Macalester College

Disability services: <https://www.macalester.edu/disabilityservices/>

- Accommodations for students: <https://www.macalester.edu/disabilityservices/students/>
- Accommodations for faculty: <https://www.macalester.edu/disabilityservices/faculty/>
- Exam accommodations: <https://www.macalester.edu/disabilityservices/testing/>
- Disability information and resource: <https://www.macalester.edu/disabilityservices/disability-information-and-resources/>
- Accommodation forms: <https://www.macalester.edu/disabilityservices/forms/>
- Universal Design for Learning (UDL) at Mac (a research-based framework for creating accessible learning environments): <https://www.macalester.edu/disabilityservices/faculty/universal-design/>
- Accommodations for staff: <https://www.macalester.edu/disabilityservices/staff/>

Academic policies, leave of absence, and student life:

<https://catalog.macalester.edu/content.php?catoid=23&navoid=2068>

Health and mental health support:

- Counselling Services: <https://www.macalester.edu/health-and-wellness/counseling/>
- Laurie Hamre Center for Health & Wellness: <https://www.macalester.edu/health-and-wellness/>

MIT

Student Support Services (S3): <https://studentlife.mit.edu/s3>

- Support & advocacy: <https://doingwell.mit.edu>
- Leaves: <https://studentlife.mit.edu/s3/leaves>
- Returns: <https://studentlife.mit.edu/s3/returns>
- Money & food resources: <https://studentlife.mit.edu/s3/money-food-resources>

Disability and Access Services: <https://studentlife.mit.edu/das>

- Accessibility: <https://studentlife.mit.edu/das/accessibility>

- Accommodation Procedures: <https://studentlife.mit.edu/das/accommodation-procedures>
- Assistive Technology: <https://studentlife.mit.edu/das/assistive-technology>
- User Experience: <https://studentlife.mit.edu/das/user-experience>

CARE Team: Resources for all types challenges students may face at MIT:
<https://studentlife.mit.edu/careteam/resources-for-families>

Alcohol & Other Drug Services: <https://studentlife.mit.edu/aods>

Residential Education: <https://studentlife.mit.edu/wellness-and-support/residential-education>

Office of Religious, Spiritual, and Ethical Life: <https://studentlife.mit.edu/orsel>

Office of Student Wellbeing: <https://studentlife.mit.edu/wellbeing>

Morehouse College

Student Counselling and Accessibility Services Center: <https://morehouse.edu/life/services-and-resources/student-counseling--disabilities-center/>

- Counselling Services: <https://morehouse.edu/life/services-and-resources/student-counseling-disabilities-center/professional-counseling/>
- Accessibility Services: <https://morehouse.edu/life/services-and-resources/student-counseling-disabilities-center/accessibility-services/>
- Facilities for Students with Disabilities: <https://morehouse.edu/life/services-and-resources/student-counseling-disabilities-center/facilities-for-students-with-disabilities/>

Student leave of absence and relevant academic policies: <https://morehouse.edu/about/services-and-administration/registrar/academic-policies/#:~:text=Morehouse%20students%20are%20required%20to%20attend%20class%20and,work%20missed%20because%20of%20officially%20excused%20class%20absences>.

Health and Mental Health Services: <https://morehouse.edu/life/health/>

- The James B. Ellison, Sr. Student Health Center: <https://morehouse.edu/life/health/services/>
- Student Counseling and Accessibility Services Center: <https://morehouse.edu/life/services-and-resources/student-counseling--disabilities-center/>
- Recreation, Intramural, and Fitness: <https://morehouse.edu/life/fitness-and-recreation/>

Princeton University

Office of Disability Services (ODS):

- Registration and Self-Identification: <https://ods.princeton.edu/student-services/registration-and-self-identification>
- Student Services Process: <https://ods.princeton.edu/student-services/student-services-process>
- Documentation Requirements: <https://ods.princeton.edu/student-services/documentation-requirements>
- Disability and accommodation forms: <https://ods.princeton.edu/student-services/forms>
- Policies and rights and responsibilities: <https://ods.princeton.edu/rights-responsibilities/ods-rights-responsibilities>
 - Students' Rights and Responsibilities: <https://ods.princeton.edu/rights-responsibilities/students-rights-and-responsibilities>
 - Process for Resolving Issues: <https://ods.princeton.edu/rights-responsibilities/process-resolving-issues>
 - Confidentiality: <https://ods.princeton.edu/rights-responsibilities/confidentiality>
- Accessibility Center: <https://ods.princeton.edu/accessibility>
- Faculty Services: <https://ods.princeton.edu/faculty>
- ACCOMMODATE (a specifically designed for disability services offices and features a portal for students, faculty and staff to engage in full featured management of all accommodation-related information and processes):
<https://ods.princeton.edu/accommodate>
- Accommodation request for employees: <https://hr.princeton.edu/request-accommodation>

Academic Accommodations: <https://odus.princeton.edu/services/disability/academic>

Housing Accommodations: <https://odus.princeton.edu/services/disability/housing>

Residential Life Programs: <https://odus.princeton.edu/living>

Student life and leave of absence: <https://timeaway.princeton.edu/taking-leave/leave-policies>

Health and Mental Health Support: <https://uhs.princeton.edu/>

South Dakota State

Disability Services Office: <https://www.sdsstate.edu/disability-services>

- ADA and Housing requests: <https://www.sdsstate.edu/student-life/housing-residential-life/ada-and-housing-accommodation-requests>
 - What is considered an accommodation?
<https://www.sdsstate.edu/disability-services/what-considered-reasonable-accommodation>
- Academic Accommodations for Students with Disabilities
- Accommodation Information, <https://www.sdsstate.edu/disability-services/accommodation-information>
 - Attendance and Related Issues <https://www.sdsstate.edu/disability-services/attendance-and-related-issues>

- Working with Blind or Visually Impaired Students
<https://www.sdstate.edu/disability-services/working-blind-or-visually-impaired-students>
- Working with Deaf or Hard of Hearing Students
<https://www.sdstate.edu/disability-services/working-deaf-or-hard-hearing-students>
- Disability Laws and Regulations <https://www.sdstate.edu/disability-services/disability-laws-and-regulations>
- Disability Services Form: <https://www.sdstate.edu/sites/default/files/file-archive/2022-06/Documentation-of-Disability-Form.pdf>

Accessibility Resources: <https://www.sdstate.edu/disability-services/accessibility-resources#:~:text=If%20you%20have%20general%20questions,Office%20of%20Human%20Resources%20directly>

Academic Resources: <https://www.sdstate.edu/StudyHub>

Counseling Center: <https://www.sdstate.edu/wellness-center/counseling-services>

Spelman College

Student Access Center (contact for academic and disability accommodations):
<https://www.spelman.edu/student-life/health-and-wellness/student-access-center/overview>

- Privacy policies: <https://www.spelman.edu/student-life/health-and-wellness/privacy-practices>
- Title IX (policies, reporting, & procedure): <https://www.spelman.edu/title-ix>

Student Health and Wellness: <https://www.spelman.edu/student-life/health-and-wellness/overview>

- Mental health and counselling: <https://www.spelman.edu/student-life/health-and-wellness/counseling-center>
- CARE Team: <https://www.spelman.edu/student-life/care-team/overview>
- Wellness Center: <https://www.spelman.edu/about-us/wellness-center>

Student leave of absence and relevant forms and polices: <https://www.spelman.edu/academics/office-of-the-provost/office-of-undergraduate-studies/forms-resources>

Stanford University

Office of Accessible Education (OAE): <https://oae.stanford.edu/>

- For students:
 - Accommodations & Services:
 - Academic Accommodations:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations>
 - Alternate Format Services:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/alternate-format-services>

- Assignment Extensions:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/assignment-extensions>
- Assistive Technology: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/assistive-technology>
- Attendance Flexibility: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/attendance-flexibility>
- Audio Recording Lectures:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/audio-recording-lectures>
- Captioning Media Content:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/captioning-media-content>
- Class Participation Accommodations:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/class-participation-accommodations>
- Classroom Relocation: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/classroom-relocation>
- Assistants: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/assistants>
- Exam Accommodations for Students:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/exam-accommodations-students>
- Live Captioning and Sign Language Interpreting:
<https://oae.stanford.edu/students/accommodations-services/academic-accommodations/live-captioning-and-sign-language>
- Notetaker Services: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/notetaker-services>
- Reduced Course load: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations/reduced-courseload>
- Assistive Tech Evaluations: <https://oae.stanford.edu/students/accommodations-services/assistive-tech-evaluations>
- Housing Accommodations: <https://oae.stanford.edu/students/accommodations-services/housing-accommodations>
 - Dining & Meal Plan Accommodations:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/dining-meal-plan-accommodations>
 - Freshman Year Housing Accommodations:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/freshman-year-housing-accommodations>
 - Housing Assignment Accommodations:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/housing-assignment-accommodations>
 - OAE Undergraduate Housing Assignments:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/housing-assignment-accommodations/oaе-1>
 - The OAE Graduate Housing Lottery:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/housing-assignment-accommodations/oaе>

- Housing Facility Accommodations:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/housing-facility-accommodations>
 - Support Animals in Stanford Student Housing:
<https://oae.stanford.edu/students/accommodations-services/housing-accommodations/support-animals-stanford-student-housing>
 - Disability-Inclusive Considerations for Living in a Community:
<https://oae.stanford.edu/students/being-neighborly-disability-inclusive-considerations-living-community>
- Grievance & Complaint Resolution: <https://oae.stanford.edu/students/grievance-complaint-resolution>
- Advocacy and campus partners: <https://oae.stanford.edu/students/campus-partners>
 - Diversity and Access Office:
<https://diversityandaccess.stanford.edu/disability-access>
 - Stanford Learning Lab: <https://learninglab.stanford.edu/>
 - Center for Teaching and Learning: <https://ctl.stanford.edu/>
- Resources:
 - Disability Access Symbols:
<https://oae.stanford.edu/students/resources/disability-access-symbols>
 - Disability-Related Scholarships:
<https://oae.stanford.edu/students/resources/disability-related-scholarships>
 - Emergency Preparedness Tips:
<https://oae.stanford.edu/students/resources/emergency-preparedness-tips>
 - For Deaf or Hard-of-Hearing:
<https://oae.stanford.edu/students/resources/deaf-or-hard-hearing>
 - Personal Care Attendants (PCAs):
<https://oae.stanford.edu/students/resources/personal-care-attendants-pcas>
 - For the Visually Impaired:
<https://oae.stanford.edu/students/resources/visually-impaired>
 - Health Care Services: <https://oae.stanford.edu/students/resources/health-care-services>
 - Wheelchair Repair & Medical Supplies:
<https://oae.stanford.edu/students/resources/wheelchair-repair-medical-supplies>
- Faculty and staff:
 - Faculty & Teaching Staff Role: <https://oae.stanford.edu/faculty-staff/faculty-teaching-staff/faculty-teaching-staff-role>
 - Faculty FAQs: <https://oae.stanford.edu/faculty-staff/faculty-teaching-staff/faculty-teaching-staff-role/faculty-faqs>
 - Concerns & Complaints: <https://oae.stanford.edu/faculty-staff/faculty-and-teaching-staff/role-facultyteaching-staff/concerns-complaints>
 - Syllabus Statement: <https://oae.stanford.edu/faculty-staff/faculty-teaching-staff/syllabus-statement>
 - Academic Accommodations: <https://oae.stanford.edu/students/accommodations-services/academic-accommodations>
 - Document Remediation by OAE's Alternate Format Team:
<https://oae.stanford.edu/faculty-staff/document-remediation-oaes-alternate-format-team>

- Student life and leave of absence: <https://studentservices.stanford.edu/my-academics/time-away-stanford-leave-withdraw-return/leaves-absence>

Tufts University

Office of Equal Opportunity, Accommodation and Related Policies

<https://oeo.tufts.edu/policies-procedures/accommodation-policies/>

Medical/Disability Accommodation Policy

Lactation Policy

Pregnancy Policy

Service Animal, Companion Animals and Pet Policy

Flowchart of Accommodation Process for students

<https://oeo.tufts.edu/wp-content/uploads/ADA-Student-Readable.pdf>

Closed Captioning Policy

<https://oeo.tufts.edu/accommodations/accessibility/captioning-policy/>

Printable Resources

<https://oeo.tufts.edu/resources/printable-resources/>

Accommodation Request Form

<https://oeo.tufts.edu/wp-content/uploads/ADA-Medical-authorization-release-letter-and-form-Student.pdf>

Immunization Exemption Request Form <https://oeo.tufts.edu/wp-content/uploads/ADA-Student-Readable.pdf>

Report a Denial of an Accommodation or an Access Barrier

Academic Accommodations

<https://students.tufts.edu/staar-center/about/about-staar-center>

Student Accessibility and Academic Resource Center (StARR Center)

- Coaching
- Tutors
- Writing Support
- Academic requests for accommodation (i.e. extra time for tests, distraction reduced location for exams, notetakers/smart pens, other assistive technologies)
- Accessibility Handbook for Students and Faculty
<https://tufts.app.box.com/s/l1ag3wwrxokkrhhc6k6fpjg7t18bfy3>

Student Life and Leaves of Absence (includes policies, processes, types of leaves and returning from leaves steps and checklist)

<https://students.tufts.edu/student-outreach-and-support/services/taking-leave-absence>

Personal, medical and parental leaves of absence

<https://students.tufts.edu/student-outreach-and-support/services/taking-leave-absence>

Medical Leaves

<https://students.tufts.edu/student-outreach-and-support/services/medical-leave>

How to think about a personal leave of absence

<https://students.tufts.edu/student-outreach-and-support/services/personal-leave>

Returning from a Medical Leave, includes process, steps and checklist:

<https://students.tufts.edu/student-outreach-and-support/services/medical-leave/return-medical-leave>

Mental Health Support

How do I get mental health support?

<https://students.tufts.edu/health-wellness/mental-health/counseling-and-mental-health-service>

What if I have an emergency?

<https://students.tufts.edu/help-now-i-have-emergency>

UCLA

For students and faculty with disability: <https://equity.ucla.edu/civil-rights/ada-504/>

- How to Qualify for Accommodations: <https://cae.ucla.edu/eligibility-criteria>
- Academic Accommodations Application Process: <https://cae.ucla.edu/cae-academic-accommodations-application-process>
- Center for Accessible Education: <https://cae.ucla.edu/accommodations>

Scroll down to see information about the following types of accommodations:

- o Testing Accommodations
- o Flexibility Accommodations
- o Notetaking Accommodations
- o Communication Access
- o Alternative Format
- o Course Registration
- o Adaptive Furniture
- o Animals on Campus
- o Animals on Campus
- o Parking & Transportation

Student Life and Leaves of Absence: <https://caac.ucla.edu/policies/withdrawal-time-off/#:~:text=There%20is%20no%20Leave%20of%20Absence%20status%20for,Withdrawing%20from%20a%20term%20in%20progress%20or%20retroactively>

Mental health: <https://counseling.ucla.edu/>

- STAR: <https://www.stand.ucla.edu/star>
- Off-campus mental health options: <https://ucla.rints.com/>
- RISE Center at UCLA: <https://risecenter.ucla.edu/>
- UCLA CARE Program: <https://careprogram.ucla.edu/>

University of New Mexico - Albuquerque

Office of Equal Opportunity Accommodation and Related Policies

<https://oeo.unm.edu/>

<https://oeo.unm.edu/ada/request-an-accommodation.html>

<https://arc.unm.edu/>

<https://arc.unm.edu/faculty/referring-students.html>

Academic Accommodations

<https://arc.unm.edu/accommodations/other-academic.html>

Mental Health Support

Student Health and Counseling:

<https://shac.unm.edu/>

<https://shac.unm.edu/services/mental-health/index.html>

University of Wisconsin - Madison

Disability Resource Center: <https://mcburney.wisc.edu/>

- Applying for accommodations: <https://mcburney.wisc.edu/apply-for-accommodations/>
 - Scroll down this page to see several different accommodation forms including Traumatic Brain Injury form, Psychiatric Disability form, Learning Disability form, AD/HD form, Deaf/ Hearing Impairment form, Low Vision/Blindness form, Mobility, Systemic or Health-Related Disabilities form
- Alternative Formats <https://mcburney.wisc.edu/alternative-formats/>
- Alternative Testing <https://mcburney.wisc.edu/alternative-testing/>
- Sign language interpretation and testing <https://mcburney.wisc.edu/communication-access/>
- Notetaking accommodations <https://mcburney.wisc.edu/notetaking/>
- Other accommodations <https://mcburney.wisc.edu/accommodations-listing/>
- Undiagnosed students <https://mcburney.wisc.edu/apply-for-accommodations/undiagnosed-students/>
- Temporary conditions: <https://mcburney.wisc.edu/resources/temporary-conditions/>
- Accommodation statement to include on events and announcements <https://mcburney.wisc.edu/resources/accessibility-taglines-for-events/>
- Instructor resources <https://mcburney.wisc.edu/instructor/>
- Accessible transportation resources <https://mcburney.wisc.edu/category/transportation/>
- Housing Accommodations <https://mcburney.wisc.edu/housing-accommodations/>
- Mental Health Resources <https://mcburney.wisc.edu/resources/mental-health-resources/>

Leave of Absence Policy: <https://iss.wisc.edu/students/current-students/leave-of-absence/>

- International students
- Any enrolled students
- Leave of absence and how to return from a leave
- Common questions and more information

University Health Services; <https://www.uhs.wisc.edu/mental-health/>

Wellesley College

Accessibility and Disability Resources: <https://www.wellesley.edu/adr>

- Disability rights: <https://www.wellesley.edu/adr/general-information/disability-rights>
- Forms and policies: <https://www.wellesley.edu/adr/general-information/forms-and-policies>
 - o Accommodation decision and appeal process:
<https://www.wellesley.edu/adr/general-information/forms-and-policies/appeal>
- Documentation guidelines: <https://www.wellesley.edu/adr/general-information/documentation-guidelines>
- Accommodations for students (including notetaking, dining/meal plan, and housing):
<https://www.wellesley.edu/adr/for-students>
- Accommodations for faculty and staff(including employee accommodation and service animal policy): <https://www.wellesley.edu/adr/for-faculty-staff>
- Resources: <https://www.wellesley.edu/adr/resources>
 - o Remote Learning Access Basics:
<https://www.wellesley.edu/adr/resources/remote-learning-access-basics>
- Assistive Technology: <https://www.wellesley.edu/adr/assistive-technology>

Student life and leave of absence:

<https://www.wellesley.edu/advising/classdeans/loas#:~:text=Any%20student%20who%20has%20completed%20one%20semester%20at,one%20semester%20and%20as%20long%20as%20two%20years.>

Health and mental support: <https://www.wellesley.edu/Counseling>

- The Stone Center for Counselling Services:
<https://www.wellesley.edu/counseling/ourservices>
- Health services: <https://www.wellesley.edu/healthservice>

Yale University

Student Accessibility Services Office: <https://sas.yale.edu/>

Accessibility Resources: <https://accessibility.yale.edu/>

Mission Statement: <https://sas.yale.edu/who-we-are/sas-mission-vision-and-values>

Request an Accommodation Form: https://yale-accommodate.symplicity.com/public_accommodation/

Assistive Technology Information: <https://sas.yale.edu/assistive-technology-services>

Yale Time Away and Return Policies: <https://yalecollege.yale.edu/policies-procedures/time-away-and-return>

<http://catalog.yale.edu/ycps/academic-regulations/leave-of-absence-withdrawal-reinstatement/>

Student Guide to Mental Health at Yale: <https://yalehealth.yale.edu/directory/departments/mental-health-counseling#:~:text=Yale%20Health%20Mental%20Health%20%26%20Counseling,medication%20consultations%20and%20management>.

Recent External Links:

Redefining Mental Health for Students: Key Podcast:

- Lederman, Doug. "Redefining Mental Health for College Students: Key Podcast." *Inside Higher Ed | Higher Education News, Events and Jobs*, <https://www.insidehighered.com/news/quick-takes/2023/04/26/redefining-mental-health-students-key-podcast>

2023 Spring CLE Workshop:

- Dexter, Latosha, Daniel Sypolt, and Esther C. Haley Walker. "Get Well Soon: Practical Strategies for Mental Health Leaves/Withdrawals." The National Association of College and University Attorneys, 2023.

On-Campus Outpatient Program Addresses Complex Student Needs

- Mowreader, Ashley. "How Rutgers Counseling Serves Complicated Student Cases." *Inside Higher Ed | Higher Education News, Events and Jobs*, <https://www.insidehighered.com/news/student-success/health-wellness/2023/04/25/campus-outpatient-program-addresses-complex-student>

United Educators articles, Student Mental Health Resources

College students are experiencing unprecedented levels of depression and anxiety, resulting in an increased demand for mental health treatment. See below for United Educators' (UE's) resources on student mental health, tips to prevent suicide clusters, and tabletop scenarios involving student suicide and minor student sexual misconduct. Plus, see a new Title IX court ruling for higher ed institutions.

https://www.e.org/risk-management/enterprise-risk-management/manage-critical-risks-higher-ed/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=YourUEInsider_Member_HE_RM_4_26_23&utm_content=Tag_Critical_Risk&spMailingID=28131159&spUserID=NTcwMTI0Mzg4NjE3S0&spJobID=2441558078&spReportId=MjQ0MTU1ODA3OAS2

ACCOMMODATING STUDENT MENTAL HEALTH NEEDS: LEAVES, RETURNS, AND OTHER CHALLENGING ISSUES

June 27 – June 30, 2023

Barbara A. Lee
Bond, Schoeneck & King
New York, NY

A survey conducted of college students in the spring of 2022 found that over three-quarters of the students had experienced mild to severe psychological distress in that academic year.¹ Student demand for mental health services on campus has never been higher, and colleges are struggling to find the resources, both human and financial, to provide students with the services they need in order to be successful in their academic programs. Furthermore, the legal landscape facing these institutions and their staff is shifting, with greater federal government oversight of institutional responses to student mental health challenges and increased judicial scrutiny of institutional and individual responses to students in mental health crisis.

This paper addresses mental health challenges faced by students and the institutions they attend, and the manner in which courts and the U.S. Department's Office of Civil Rights reviews those challenges. It discusses litigation results related to accommodation of students with mental health challenges who are required to complete a clinical component of their academic program and provides suggestions for avoiding litigation and for complying with OCR guidance on the appropriate process for determining 1) what academic and technical standards will be developed for academic programs and 2) how to evaluate requests for accommodation that may involve adapting or modifying those standards.

¹ American College Health Association, *American College Health Association-National College Health Assessment III: Undergraduate Student Reference Group Executive Summary Spring 2022*. Silver Spring, MD: American College Health Association, spring 2002, available at <https://www.bestcolleges.com/research/college-student-mental-health-statistics/#fn-1>.

Assessing the Academic and Technical Standards: What the Courts and OCR Require

Both the ADA² and the Rehabilitation Act³ require that a student with a disability be “qualified” in order to be protected by either law. With respect to the qualifications for an academic program, the student must be able to meet its academic and technical standards.⁴ Technical standards, particularly those for programs with a clinical component, are often linked to behavior. As the U.S. Department of Education’s Office for Civil Rights (OCR) indicated in 1997, “[s]tandards should be based on the legitimate educational program . . . Standards also could include reasonable standards of conduct to continue in a class, program or activity.”⁵ Although a qualified student with a disability is entitled to request an accommodation, neither law requires the institution to make “fundamental alterations” to its academic and technical standards.

OCR explained its criteria for reviewing a program’s academic and technical standards in a letter to an institution responding to a student complaint about the academic and technical standards developed for one of its programs.⁶

OCR reviews whether the determination by an institution that a requirement is an essential requirement is educationally rationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. The degree of deference accorded the institution on these types of decisions should correspond with the nature of the decision.

Courts and OCR generally defer to academic determinations by colleges and universities based on the expertise of the institution and the right to academic freedom, as long as the institution can

² 42 U.S.C. §§ 12101 et seq. (1990).

³ 29 U.S.C. § 794 (1973).

⁴ 34 C.F.R. §104.3(l) (3) (Section 504); 35 C.F.R. §104 (ADA Title II); 36 C.F.R. § 302 (ADA Title III—criteria must be “necessary” for the provision of the [educational] service).

⁵ *North Central Technical College*, 11 NDLR 326 (1997).

⁶ Letter to Appalachian State Univ., OCR 34 NDLR 176 (2006), NDLR (LRP) LEXIS 578 (2006).

show that it reached the determination through a reasoned and informed process. To the extent that a decision or standard is an academic one, it is entitled to more deference. In general, a determination of the requirements to graduate with a degree in Music Therapy is an academic determination. On the other hand, if the decision is more about the modifications or academic adjustments that a student needs to complete the requirements in a program, it is not an academic determination and therefore is entitled to less deference.

In reviewing the process that a postsecondary institution utilizes to determine whether an academic requirement is an essential requirement, OCR considers whether the process has the following elements:

1. The decision is made by a group of people who are trained, knowledgeable and experienced in the area;
2. The decision makers consider a series of alternatives as essential requirements; and
3. The decision follows a careful, thoughtful and rational review of the academic program and its requirements.

An example of this process in the context of a case involving a student teaching program would be that the Dean of Education and a group of experienced staff and professors meet over a period of time to consider a series of options or standards. After a careful, thoughtful review, they develop a group of essential requirements for graduation with a teaching degree that are rationally based on their knowledge of teaching and experience in the field.

In some cases, requirements that are deemed essential by colleges or universities are related to an intended course of study to prepare an individual for a type of job or profession, such as doctor, lawyer, truck driver, teacher, or, as in this case, music therapist. These requirements are often based on the need for a student to master certain skills that are believed to be necessary to perform the duties of the job upon completion of the program. Many of the court

decisions in this area have involved essential requirements in professional educational programs and, specifically, various types of clinical settings. An institution should determine the appropriate or essential requirements for a course of study, not the licensing requirements for a specific jurisdiction, although these requirements may be similar or related. A student who completes a teacher education or graduate speech therapy program may have an expectation that this course of study will allow the student to meet the local licensing requirements to be a teacher or a speech therapist. Some students may still want to take a program or course of study, although they could not or do not desire to practice in the field. Requirements for programs leading to licensure in a profession may often be directly related to performing the duties of that profession. Different institutions may develop different essential requirements for their programs.⁷

Given the specificity of the OCR guidelines, the *process* for developing the academic and technical standards appears to be as important as the justification for the standards themselves.

Accommodating Students in Clinical Settings⁸

Accommodating students with mental health challenges who are enrolled in academic programs that require a clinical component—for example, medicine, pharmacy, nursing, teaching, or social work—may create special challenges. Accommodations that were appropriate in classroom settings, such as additional time to complete assignments, or being given instructions in writing rather than orally, may not be possible in some clinical settings. Furthermore, the institution’s clinical partner may not be affiliated with the college or university, and thus may be less willing to provide accommodations that its staff may believe are inconsistent with the safety of patients, students or clients. Although most

⁷ *Id.* at *338-39.

⁸ Portions of this section are excerpted from Barbara A. Lee, *Judicial Deference to Academic Decisions: Evolution of a Controversial Doctrine*. 47 J. Coll. & U. L. 93 (2022).

of the published court opinions involving students with mental health challenges in clinical settings involve medical students, other programs, such as social work, education, and nursing may also face potential legal liability if a student claims that the clinical site and/or the institution did not appropriately accommodate the student's disability.

In most lawsuits brought by students with mental health challenges when they are disciplined or dismissed from a clinical assignment (or from the program), their claims are typically brought under the Americans With Disabilities Act, the Rehabilitation Act, or both. In these cases, the court usually defers to the academic judgment of the institution that the student's clinical performance was inadequate. For example, in *Doe v. Board of Regents of the University of Nebraska*,⁹ a medical student with depressive disorder had numerous problems during his clinical rotations but did not seek accommodations. After allowing Doe to postpone several examinations and granting him a leave of absence, his supervisors noticed several lapses in professionalism such as tardiness, being abrupt with patients, and a general lack of medical knowledge. He was dismissed from the program, and an internal appeal was unsuccessful.

The Nebraska Supreme Court deferred to the medical professionals' academic judgment concerning the quality of Doe's performance. This court said:

In actions under the ADA and the Rehabilitation Act, substantial deference is generally given to academic judgments. Courts are generally ill equipped, as compared with experienced educators, to determine whether a student meets a university's reasonable standards for academic and professional achievement. Evaluating performance in clinical courses is no less an academic judgment than that of any other course, and is entitled to the same deference.¹⁰

In *Halpern v. Wake Forest University Health Sciences*, a federal appellate court rejected a medical student's ADA and Rehabilitation Act claims that his dismissal from medical training was

⁹ 846 N.W.2d 126 (Neb. 2014).

¹⁰ *Id.* at 151.

discriminatory.¹¹ The student had been diagnosed with attention deficit hyperactivity disorder and an anxiety disorder but had not requested accommodations prior to the commencement of his clinical rotations. When his supervisors confronted him with concerns about unprofessional behavior during his clinical rotations, he claimed that his disabilities were responsible for his allegedly rude, unprofessional treatment of staff and his inability to deal with constructive criticism. He later requested accommodations that the faculty found to be unreasonable – unlimited time to modify his behavior-- and the problematic behavior continued.

The trial court awarded summary judgment to the medical school, and the appellate court affirmed. The appellate court concluded that meeting standards of professionalism is an essential function of a medical doctor, and that Halpern had requested an accommodation that was unreasonable and of an uncertain outcome, given his previous behavior. Thus, said the court, Halpern was not qualified, as required by both the ADA and the Rehabilitation Act, and thus was not protected by either.

In *Mbawé v. Ferris State University*,¹² a student enrolled in a pharmacy program exhibited what the university believed “demonstrated delusional and paranoid thinking.” A state court ordered the student to be involuntarily committed to a mental health facility. After the involuntary commitment, the student did not gain readmission to the program because he had not completed the rehabilitation program required by state law of medical professionals with mental health issues. His lawsuit under both the ADA and the Rehabilitation Act was unsuccessful. The court found him not to be “qualified” under either of these laws, and awarded summary judgment to the university.

And in *Mootoor v. Eastern Kentucky University*,¹³ a student with learning disabilities was enrolled in an occupational therapy program and assigned to work at a Veterans Administration hospital.

¹¹ 2012 U.S. App. LEXIS 5287 (4th Cir. Feb. 28, 2012).

¹² 366 F. Supp. 3d 942 (W.D. Mich. 2018)

¹³ 2020 WL 5633847 (E.D. Ky. 2020).

Despite the program's provision of reasonable accommodations, the student struggled with some of the essential skills deemed necessary in the OT graduate program—including her ability to communicate with instructors, staff, and patients, ability to accept feedback, professional judgment, and issues involving safety protocol. She was dismissed from the program, and filed claims under the ADA, the Rehabilitation Act, and state law. The court, quoting previous cases in which courts had explained why they deferred to the academic judgment of the clinical faculty, awarded summary judgment to the university on all claims.

As discussed above, many courts defer to the institution's judgment, but not all do. For example, in *Pahlavan v. Drexel University College of Medicine*,¹⁴ a medical student with ADHD encountered difficulties in meeting the standards for his clinical rotations. He had been provided several accommodations, including being allowed to repeat certain rotations and being given additional time to complete tests, but he was unable to meet the academic and technical standards. The court flatly refused to defer to the university's judgment "as a matter of law," and performed its own analysis of the facts and allegations. The court agreed, however, that the student was not qualified, and thus not protected by either the ADA or the Rehabilitation Act, and awarded summary judgment to the university on both claims.

Although most cases brought by students challenging negative academic judgments during clinical assignments are unsuccessful, not all are. For example, in *R.W. v. Columbia Basin Coll., A Pub. Inst.*,¹⁵ a nursing student with depression expressed homicidal ideation regarding several of his professors to his primary care physician, who encouraged the student to be admitted to a mental health facility. The student repeated the ideation to hospital staff, who contacted public safety authorities, who in turn informed the college and the professors who were the subject of the ideation. The Assistant Dean

¹⁴ 438 F. Supp. 3d.404 (E.D. Pa. 2020).

¹⁵ 2019 U.S. Dist. LEXIS 243578 (E.D. Washington, October 4, 2019).

of Students charged the student with a conduct code violation and banned him from the campus, which meant that he could not complete his course work (he was one quarter away from graduation). The trespass order meant that the student could not complete his studies for approximately a year, since the courses he was required to re-take were only offered in the spring.

In addition to stating claims under the ADA and the Rehabilitation Act, the student added a claim that the university had violated his free speech rights by punishing him for his communication to the medical professionals. The court refused to dismiss either his disability discrimination claims or his free speech claim, and ruled that the college and its administrators who had imposed the no trespassing order were not protected by qualified immunity. The court pointed to evidence that the medical professionals believed that the student did not intend to act on his ideation and that his “threats” had not been made directly to the faculty members, therefore rejecting the college’s contention that the student’s speech was unprotected as a “true threat.” With respect to the student’s free speech claim, the court said: “College students have a clearly established right to engage in protected speech, even if that speech violates their universities’ codes of student conduct. [College] officials violated clearly established law and violated [the student’s] First Amendment rights.”¹⁶ Therefore, the defendants were not entitled to qualified immunity. The court awarded summary judgment to the student on the First Amendment issue.

With respect to the student’s disability discrimination claims, the court determined that several material facts needed to be resolved: (1) whether the student is a qualified individual or posed a direct threat, and (2) whether the College’s adverse actions toward him were because of a disability. Therefore, none of the parties were awarded summary judgment on the discrimination claims, and further proceedings would be necessary.

Two recent compliance rulings by OCR illuminate the institution’s responsibilities when considering a student’s request for an academic accommodation. In the first ruling, a student had

¹⁶ Id. at *23.

requested an extension of the deadline for his final class assignment, but the professor had rejected the request, despite the fact that such an extension was an approved academic accommodation for the student. Although OCR ultimately did not make a finding on this complaint because it had been resolved before the ruling was issued, OCR discussed its concerns about how the matter had been handled:

[P]rofessors are not qualified to solely determine what the requesting student may be entitled to under Section 504 and Title II. Professors do not necessarily have specialized training in the law or disability issues to make informed decisions about what is legally required by Section 504 or Title II. Thus, leaving students to negotiate with their professors to obtain accommodations compromises the interactive process, which is further compromised because of the disparity in power and authority between a student and a professor who ultimately assigns the student a grade.¹⁷

And in a second recent OCR finding, a pregnant student with severe nausea asked for accommodations to the professor's strict attendance and assignment deadlines policy.¹⁸ The instructor rejected the request, and the student requested help from both the disability services office and the Title IX coordinator. The Title IX Coordinator spoke with the professor and then rejected the student's request, saying that it would create a fundamental alteration to the academic program and thus was not required.

OCR found violations of both Title IX (on the basis of the student's pregnancy—a temporary disability) and Section 504 of the Rehabilitation Act for the college's failure to engage in the required interactive process. According to the OCR letter of findings, the college made the negative decision "based solely on the communication between the Title IX Coordinator and Professor, and not by a group

¹⁷ University of Massachusetts-Boston, No. 01-16-2120, Office for Civ. Rts. Ltr. Of Finding (U. S. Dep't of Education, at 5, Feb. 23, 2018, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01162120-a.pdf>.

¹⁸ Salt Lake Community College, No. 08-22-2021, Office for Civ. Rts. Ltr. Of Finding (U. S. Dep't of Education, June 14, 2022, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08222021-a.pdf>.

of people who are trained, knowledgeable, and experienced in the area of when to grant academic adjustments or special services to pregnant students and students with other temporary medical conditions under 34 C.F.R. §§ 106.40(b)(4) and (5).”¹⁹

These cases and OCR findings demonstrate that, although both the courts and OCR will defer to the institution’s academic judgment when a student challenges the denial of an accommodation, both must be satisfied that the institution’s decision was made properly, as explained in the *Appalachian State University* finding and as determined in the *Salt Lake Community College* finding (OCR) and in the *Columbia Basin College* case (court). Conversations between either a disability advisor or Title IX coordinator and the professor whose denial has been challenged may not be sufficient to satisfy the requirements of either the disability discrimination laws or Title IX.

Recommendations

This review of cases and OCR findings suggests that institutions should ensure that the academic and technical standards for *all* programs, but especially those programs that have a clinical component where the physical and mental demands on students may be particularly high, are developed using the guidelines listed in the *Appalachian State University* excerpt quoted above. These standards should be reviewed on a regular basis to ensure that they are still appropriate and relevant to the requirements of the profession. Requests to modify or avoid certain technical standards should be made by professionals trained in the discipline or specialty at issue, and not by generalists who may not be aware of the significance of the standard, or whether its modification or avoidance might be permissible in certain circumstances. And public institutions need to consider the possibility of personal liability—and denial of immunity—for cases involving speech or allegations of discrimination against students with disabilities, including pregnant students.

¹⁹ *Id.* at 10.