

PAPERCLIP COMMUNICATIONS

Welcome to Today's
PaperClip Communications
Webinar

Departures & Readmissions:

Handle ADA & Mental Health Considerations with Confidence

Wednesday, October 4, 2023

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Today's Moderator and Presenter



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“It is epidemic, legitimately referred to as a crisis. Often well over 40% of our students arrive on campus with a mental health diagnosis.”

Joan Gabel
President
University of Minnesota
2020

Risk of Self-Harm

The isolation, uncertainty and fear created by the pandemic has significantly increased rates of depression, anxiety, and the risk of our students harming themselves, especially for BIPOC young adults, LGBT and non-binary students. Suicide was the second-leading cause of death for college-aged adults in 2019.



Accommodating Mental Health Issues With Students

- All institutions of higher education have a legal obligation to prevent discrimination against students with disabilities including invisible disabilities like mental health issues, and also to provide “reasonable accommodations” to students.
- AND institutions are also legally required to protect students from suicide or harm from other students.



Today We'll Cover:

1. The legal framework for avoiding discrimination against individuals with disabilities
2. A key new case on the legal obligation to protect students from foreseeable harms, including suicide
3. **GUIDANCE:** A set of questions to help navigate the choppy waters
 - a. With practical examples

Your Navigational Chart

1) Is the student “otherwise-qualified” academically to be enrolled?

2) Is the student “otherwise-qualified” by conduct to remain?

3) Does the student pose a “direct threat” to the health or safety of others?

4a) Is the student unable to maintain their own safety and wellbeing?

4b) Does the student’s condition require such intensive treatment that it’s incompatible with being enrolled?

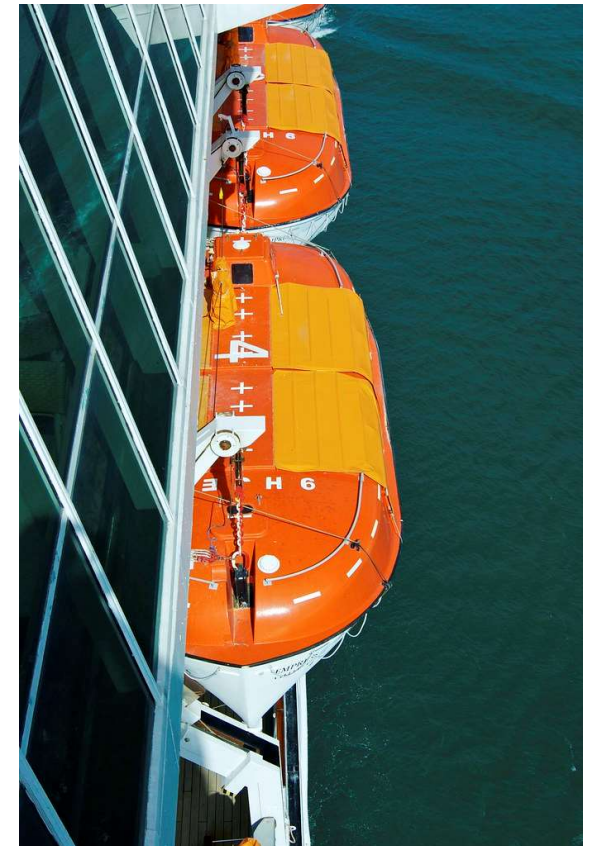
4c) Is there a nexus between the risk to the student’s health/safety and the college environment?

5) If the student is otherwise qualified and not a threat to others or a risk to their own safety, then ask whether reasonable accommodations will allow for access to the education?

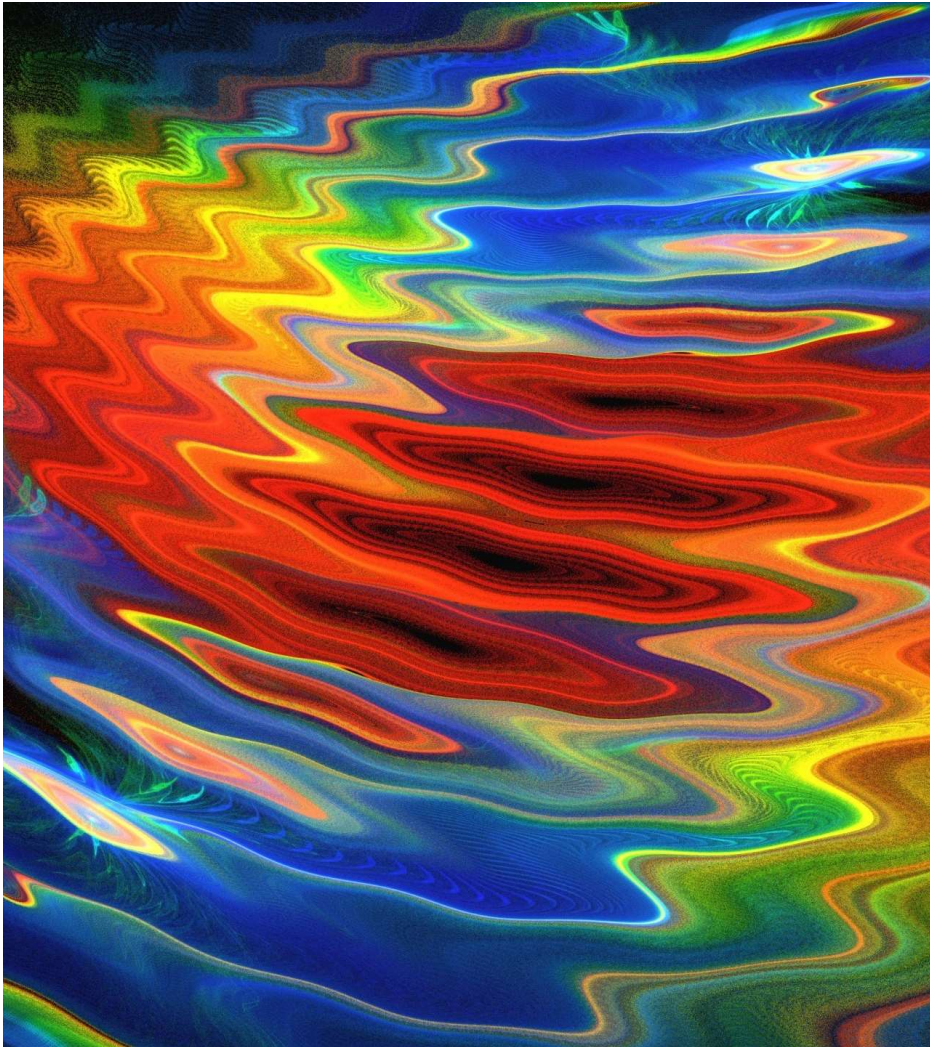
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Here's your life raft

- What level of treatment is recommended by the [best] clinician?
 - Short term psychotherapy for homesickness, a break-up or roommate conflict
 - Weekly psychotherapy
 - Twice/thrice-weekly psychotherapy plus group psychotherapy
 - Intensive outpatient treatment
 - Partial hospitalization treatment
 - Inpatient hospitalization
 - Involuntary commitment



Note: Mental Health Issues Range Over a Wide Spectrum



- Be mindful to design your policies and practices to address a wide range of physical and mental challenges
- Depression or anxiety fluctuate or vary over time
- Young adults in their 20s are at the age of onset for several serious mental health conditions, such as BPD, schizophrenia, etc.

ADAA in 2008

Expansion of definition of
qualifying disabilities

ADA in 1990

Integration in employment,
government services, public
accommodations, transportation &
telecommunications

Non-Discrimination: Core Tenets

Against qualified individuals with a disability who can perform the essential functions, with or without modifications

Including against individuals with a history of a disability

Or who are “regarded as” disabled by the institution/organization



“Qualified” means that the student meets academic/admission criteria and ALSO that they satisfy any other academic and technical standards required of all students. 34 CFR §104.3

We all have academic & technical standards.**



PROVIDE “reasonable accommodations” for qualified individuals with a disability

Auxiliary Aids

- Auxiliary Aids are not required to be provided by colleges/universities
 - Mobility devices such as wheelchairs, crutches, scooters
 - Assistance with personal care activities, such as bathing, dressing, eating, sleeping

Accommodations

- Accommodations require the permission or action of the institution
 - Extra time to complete a test
 - Late course drop for a student who became seriously ill
 - Waiver of a PE requirement for a person who cannot participate in the available activities

Reasonable Accommodations

Individuals can request an accommodation in a variety of ways

Institutions may require documentation to understand the condition and the limitations it creates

Both the student and the college need to participate in an “interactive process” to identify the necessary, and reasonable accommodations

OCR Principles

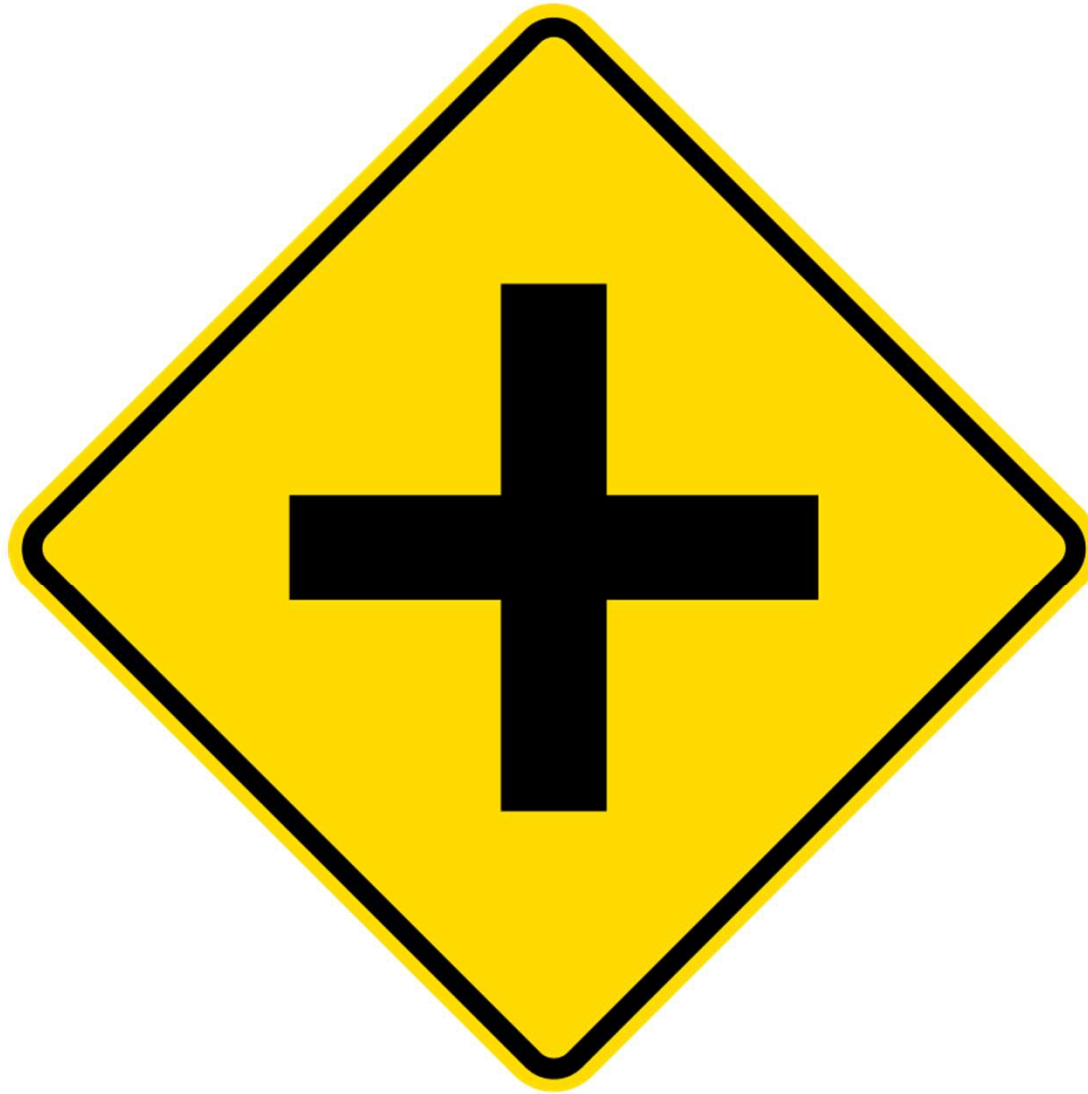
OCR principles were articulated in January 2018, and reflect OCR resolutions, such as Rutgers, as well as DOJ settlement agreements

1. Students must be treated as individuals
2. Institutions should be in an interactive, good-faith conversation with a student about their needs and the institution's expectations
3. Institutions are permitted to take actions that are intended to protect the student's safety, including steps the student may oppose, such as involuntary separations from enrollment as a last resort, and individualized conditions for continued enrollment or return.

Published at *Helping Students At Risk of Self Harm*, <https://www.higheredtoday.org/2019/09/04/helping-students-risk-self-harm-considerations-new-academic-year/>

Non-Discrimination: Defining Unreasonable

- A fundamental alteration to education
- An undue burden on the college
 - Extreme disruption to education or living environment due to a student’s behavior
- A situation that presents a “direct threat” to other students or employees
- A student who poses a serious, imminent risk of harm to their own safety or well-being



INTERSECTION

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Recent Cases Are Reminders – Not a New World

- *Nguyen v. Massachusetts Institute of Technology, et al.*, May 7, 2018, (Supreme Judicial Court of MA): Institutions have a duty to use interventions when a student is known to intend to act on suicidal thoughts, or recently attempted suicide, BUT MIT FULFILLED THAT DUTY
- *Regents of Univ. of California v. Rosen*, Mar. 22, 2018 (Supreme Court of CA): UCLA does have duty to protect students in curricular activities from foreseeable harm by other students – NO verdict yet on whether UCLA actually did fail to take reasonable steps

Nguyen v. MIT

In 2009, Nguyen jumped off a building on MIT's campus and died. His father sued MIT, alleging that MIT employees should have prevented his son's death.

The MA court announced a limited exception to the rule that "generally, there is no duty to prevent another from committing suicide."

While universities "are not responsible for monitoring and controlling all aspects of their students' lives,"

An institution must take "reasonable measures" to protect a student when the institution actually knows of



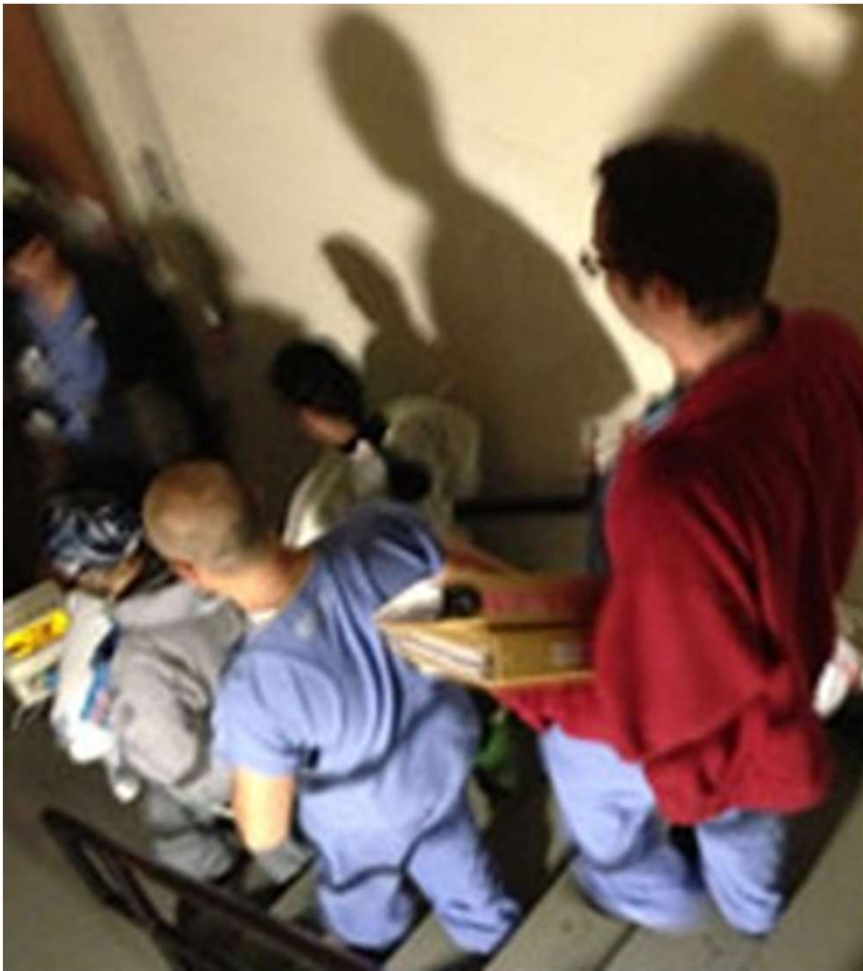
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- A recent suicide attempt OR
- A stated plan or intention to die by suicide

Reasonable Measures *Include*:

1. Initiating a suicide protocol, if the institution has one; or
2. Arranging for clinical care, if student agrees; or
3. If care is refused, notifying the student's emergency contact(s).

2023 Update: *Tang* Holding



- *Nguyen* duty was triggered by disclosure to Harvard of suicide attempt “just two weeks earlier”
- Harvard’s actions in April and May 2015 satisfied the limited duty articulated in *Nguyen*

Tang v. Harvard timeline

April 2015, suicide attempt by Luke Tang in Harvard dorm.

He was hospitalized for a week, and his father was notified as well. Luke was discharged with a recommendation for ongoing psychotherapy.

Sept. 2015, Luke Tang dies by suicide in on-campus dorm.

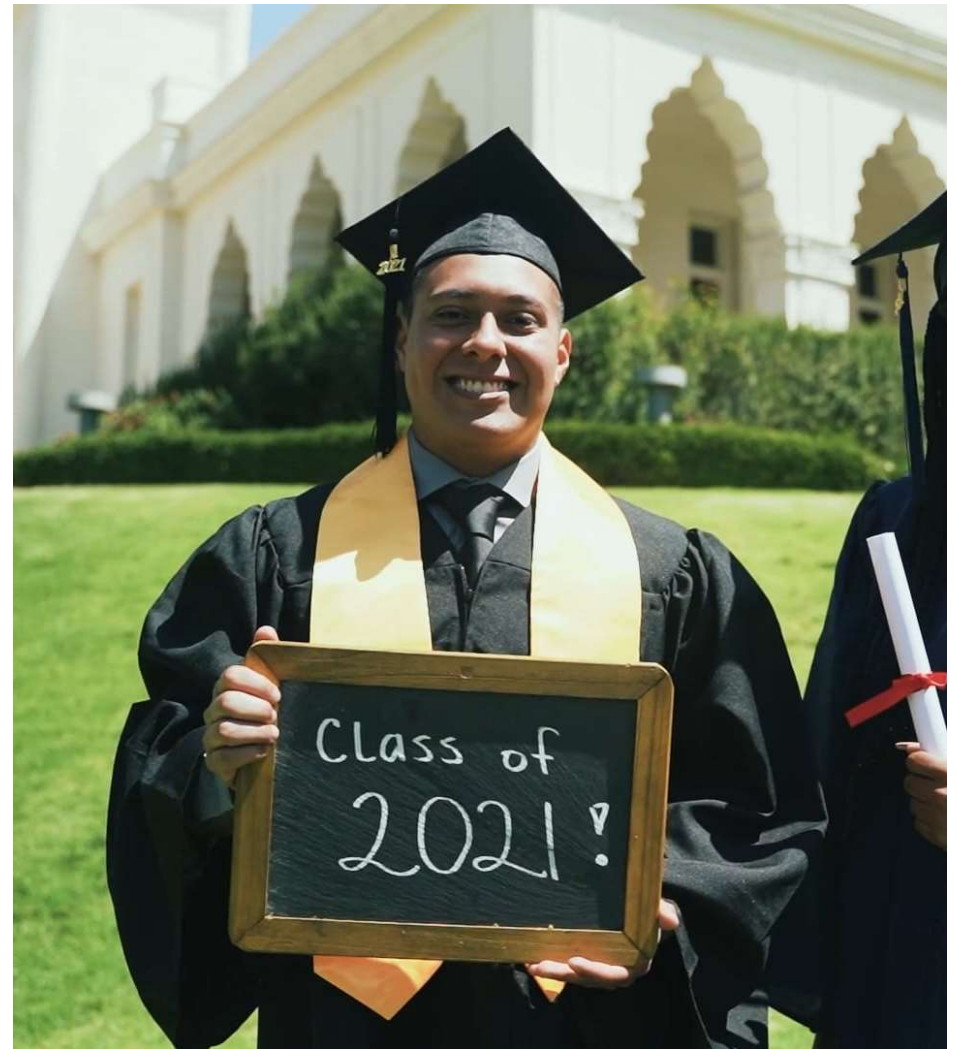
2018: Luke Tang's father sued claiming that Harvard had **failed to fulfill its duty of care under *Nguyen* to prevent Luke's death**. Dr. Tang also argued that, even after the hospitalization and Harvard's requirements that Luke do counseling, Harvard still **needed to do more to prevent Luke from dying by suicide**.

Tang v. Harvard Decision

- The judge disagreed. The court noted that prior case law in MA held that the duty to take reasonable measures to protect against a student's death by suicide is **a limited duty**.
- The court pointed out the importance of “respecting the **privacy and autonomy of an adult student** in most circumstances” and the need to rely “in all but emergency situations on the student's own capacity and desire to seek professional help.”
- These principles contributed to the Court rejecting Dr. Tang's theory that Harvard should have somehow forced Luke to participate in therapy that he disliked, or to take other steps that would theoretically have reduced Luke's risks.

Tang v. Harvard Decision

Tang illuminates a core element of the relationship between a college student and the institution they attend: The student is an adult, and the college is not intended to be a parent controlling their actions, nor an inpatient treatment facility where a student would be supervised every minute of every day.





What does this mean?

- The *Nguyen* court was balancing different interests and stated that the duty “respects the privacy and autonomy of adult students in most circumstances, **relying in all but emergency situations on the student’s own capacity** and desire to seek professional help to address [their] mental health issues.”
- It also recognized that non-clinicians “cannot be expected to probe or discern suicidal intentions that are not expressly evident.”

Note: Setting rules for students is OK

Dr. Tang claimed that actions of Harvard's first year dean (meeting with Luke, signing the "care contract" and reminding Luke of his agreement to seek counseling) created a **voluntary duty** to provide services [of preventing suicide] for an undefined period of time.

The judge squarely rejected this theory, pointing out that colleges do not assume duties to provide ongoing, individualized mental health services for indefinite periods of time to students.

Rather, said Judge Tingle, Harvard "**set ground rules** that Luke would need to follow in order to remain enrolled at the college." Harvard referred Luke to therapists in the community which he was free to select, and he "scheduled and attended sessions without direct involvement from Harvard."



Tang helps define what's “reasonable”

- A student whose situation necessitates ongoing mental health services or student support services, for an indefinite period of time, provided by the institution directly in order to safeguard them against risk of suicide, may be utilizing services more heavily than other students, and for a longer time than others.
- That student may also be imposing on the institution's mental health professionals on an emergent basis quite frequently, or necessitating the professionals to reach out to the student after hours or on weekends.
- That level of care may exceed what it is reasonable for a college or university to do – an educational institution that is intended to be an environment for independent living, rather than a supervised treatment center.

Levels of Care



Short-term support for homesickness, a break-up or roommate conflict



Weekly psychotherapy



Twice/thrice-weekly psychotherapy plus group psychotherapy



Intensive outpatient treatment



Partial hospitalization treatment



Inpatient hospitalization

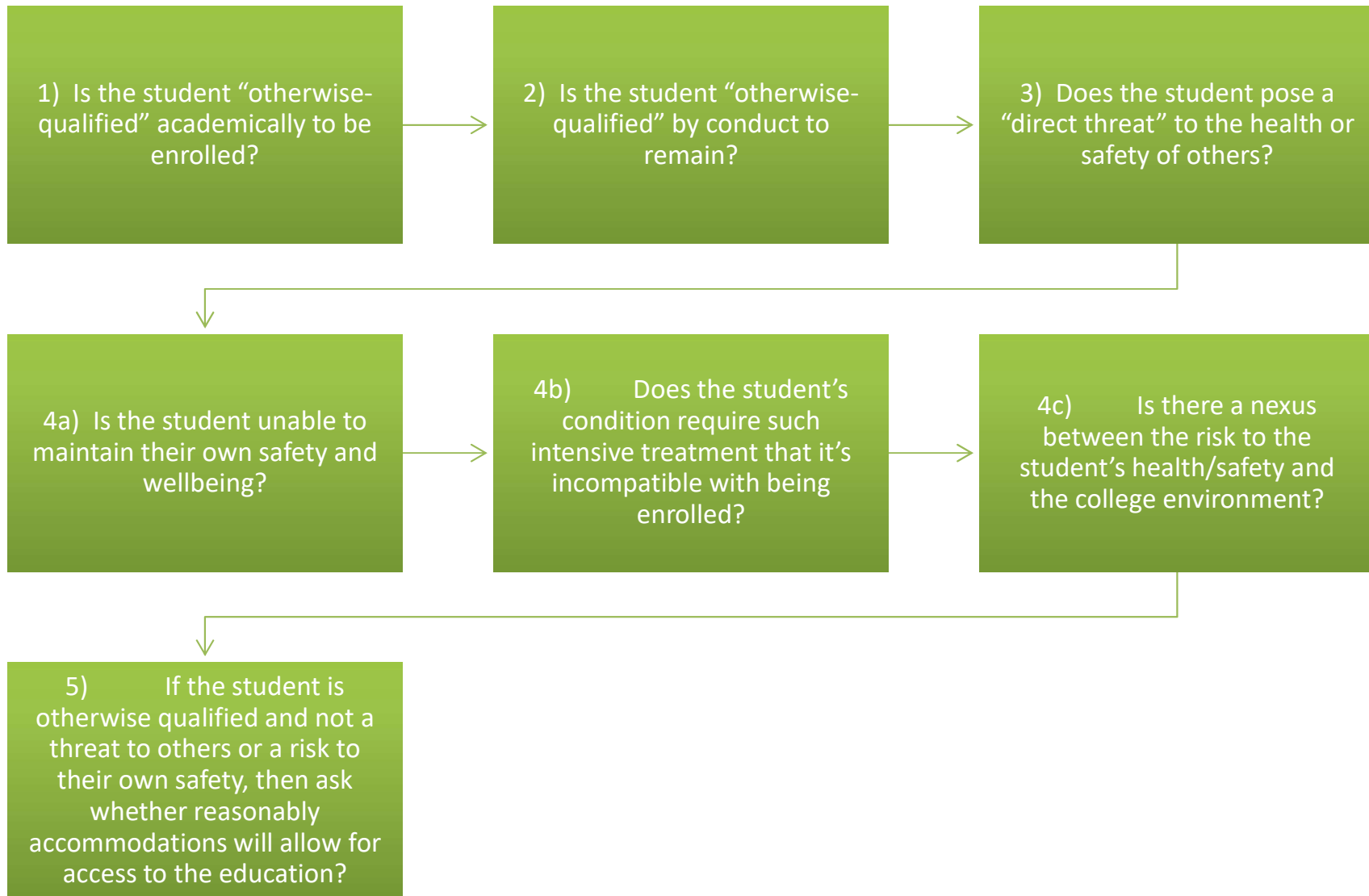


Involuntary commitment



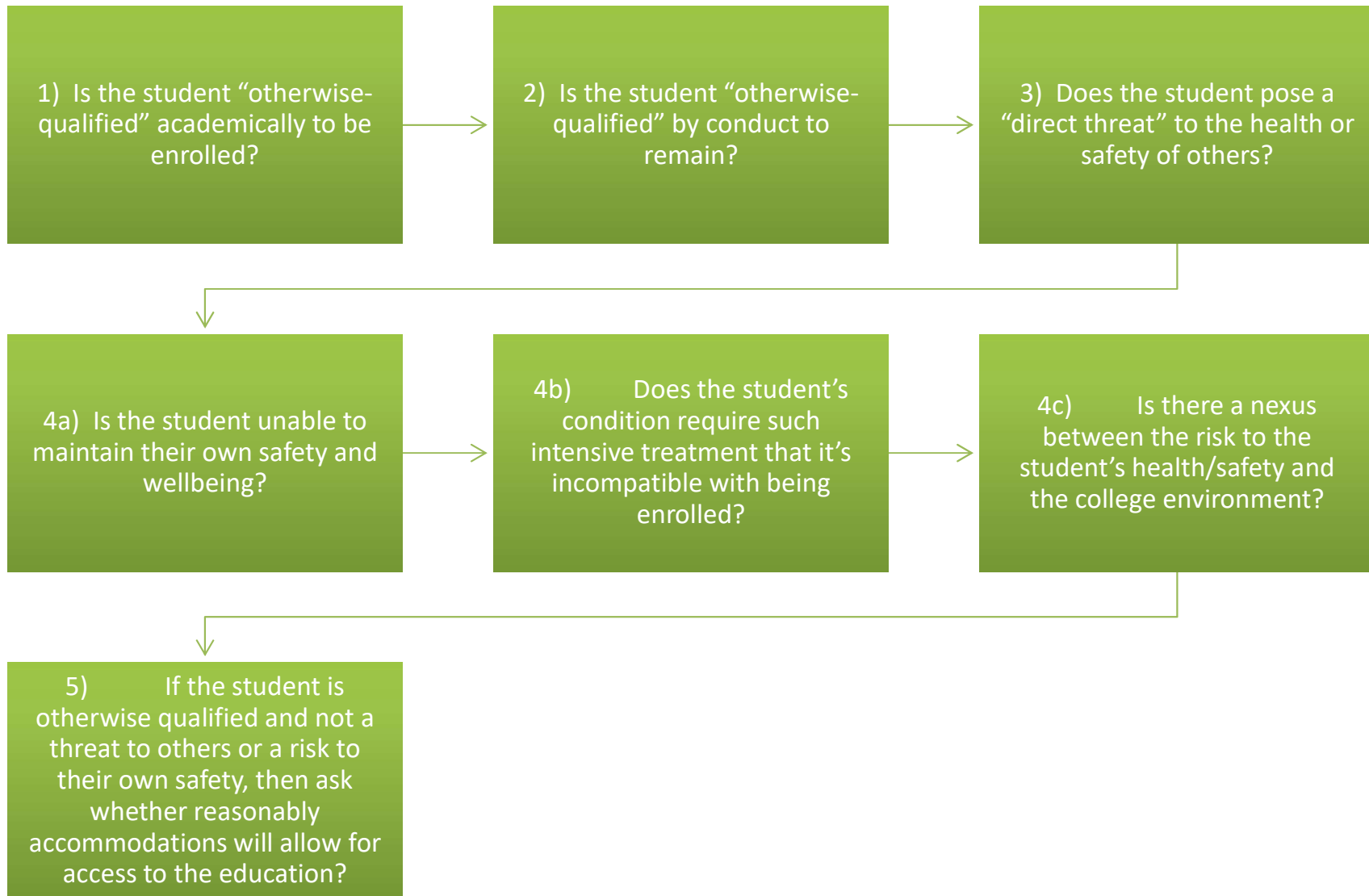
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Here's How to Navigate:



Now it's time
for a 3-minute
break.

Your Navigational Chart



Case Study 1

A student has gotten in three fights with other students on campus over the last few months.

The student has been seeing a counselor in the community, after referral by campus counseling for possible bi-polar disorder.

During the last fight, the student was described as being “manic” and the other student required stitches.

Your Navigational Chart

1) Is the student “otherwise-qualified” academically to be enrolled?

1) Yes

2) Is the student “otherwise-qualified” by conduct to remain?

2) No?

3) Does the student pose a “direct threat” to the health or safety of others?

3) Yes

4a) Is the student able to maintain their own safety and wellbeing?

4b) Does the student’s condition require such intensive treatment that it’s incompatible with being enrolled?

4c) Is there a nexus between the risk to the student’s health/safety and the college environment?

5) If the student is otherwise qualified and not a threat to others or a risk to their own safety, then ask whether reasonable accommodations will allow for access to the education?

Can the College Discipline a Student with a Disability?

- Behavioral expectations apply to all members of the community, and conduct policies are how those behaviors are enforced. Individuals with disabilities must be able to regulate their behavior to meet those expectations.

WHAT IF THE BEHAVIOR HARMS ONLY THE STUDENT

- When a student's behavior is solely directed at themselves, and they do not disrupt or negatively impact other students' learning or living setting, **avoid** utilizing conduct/discipline as a response.
OCR Principle 2.

Case Study 2

Roommates approach their sophomore dean because they worry their roommate will kill themselves, and they are scheduling who will be with them. Student made two attempts with pills last year, voluntarily hospitalized self one month earlier

Student has been talking with roommates about suicide recently, and maybe be failing three classes

Evaluation at campus counseling recommends intensive outpatient treatment

Your Navigational Chart

- 1) Is the student “otherwise-qualified” academically to be enrolled? **1) No?**
- 2) Is the student “otherwise-qualified” by conduct to remain? **2) Yes**
- 3) Does the student pose a “direct threat” to the health or safety of others? **3) No**
- 4a) Is the student able to maintain their own safety and wellbeing? **4) No?**
- 4b) Does the student’s condition require such intensive treatment that it’s incompatible with being enrolled? **5) Yes??**
- 4c) Is there a nexus between the risk to the student’s health/safety and the college environment?
- 5) If the student is otherwise qualified and not a threat to others or a risk to their own safety, then ask whether reasonable accommodations will allow for access to the education?

Legitimate Safety Requirements



- Safety is the foundation for the residential and academic experiences we offer
- The question to ask is: “Can the student safely and effectively participate in the educational program at this time?”
- Behavioral contract terms should aim to support the student safely and effectively participating.

When assessing safety, ask:



“What level of treatment is RECOMMENDED to reduce the risk so that the student can safely live and learn in our environment?”

The answers should be things like:

- weekly psychotherapy, plus groups plus medication
- intensive outpatient treatment,
- partial hospitalization, OR
- inpatient hospitalization

Consider Training

- Settlement agreements with UTHSC and Princeton indicate that the Department of Justice is interested in assuring that institutions have adequate training of staff who have responsibilities for considering or providing reasonable accommodations to students.
- Mental health is a professional field with a wide variety of practitioners and substantial complexity. Ensuring that your staff who have primary professional responsibilities for responding to students in distress, as well as those in the specialized office for disabilities or educational access, are regularly provided training in current issues relating to mental health is likely to benefit your institution in multiple ways.

Case Study 3

A faculty member asks to have a student placed on a mandatory leave of absence because they turned in a “terrifying” story, with “markers of serious mental illness”.

A week earlier, the student’s coach recommended the student for a leadership award.

In a CARE [BIT] team meeting, the Director of Counseling indicates that the student has been seen and is compliant with treatment recommendations.

Your Navigational Chart

1) Is the student “otherwise-qualified” academically to be enrolled?

1) Yes

2) Is the student “otherwise-qualified” by conduct to remain?

2) Yes

3) Does the student pose a “direct threat” to the health or safety of others?

3) No

4a) Is the student able to maintain their own safety and wellbeing?

4) Yes

4b) Does the student’s condition require such intensive treatment that it’s incompatible with being enrolled?

5) No

4c) Is there a nexus between the risk to the student’s health/safety and the college environment?

6) No

5) If the student is otherwise qualified and not a threat to others or a risk to their own safety, then ask whether reasonable accommodations will allow for access to the education?

7) Interactive process

What are your tools?

The Toolbox

- **Health & Wellness Education**
- **Behavioral contracts**
- **Required evaluation**
- **Voluntary leaves**
- **Mandatory/Involuntary leaves**

Tool: Behavioral Agreements

- Talk to the student about what supports their well-being, and set goals
- Be clear that the student needs to make good-faith efforts to develop better management of symptoms, and improve their coping strategies
- Don't create ways for the student to fail (e.g., missing one appointment)
- The goal is not a “cure” but a student who can manage their body & mind to be reasonably healthy, well and safe, while pursuing their educational goals.

Tool: Mandated Evaluations

- Institutions are permitted to require a student to have an evaluation by a provider of the institution's choosing. (At our cost)
- This may be a forensic psychologist, educational psychologist, etc., and it may be structured as a risk assessment, a safety evaluation, or other labels.
- You can give more weight to this opinion than to the student's preferred provider. See, Stanford Leave Policy, Rutgers

Join us for a second webinar in January to dive into creating the policies to enable these tools.

Resources & References

Here's How to Navigate

- 1) Is the student “otherwise-qualified” academically to be enrolled?
- 2) Is the student “otherwise-qualified” by conduct to remain?
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Resources and References

- NACUANote: Ross & Kincaid, *Students at Risk of Self-Harm: A Legal Update Addressing Leaves of Absence*, February 2021
- American Counsel on Education, *Helping Students At Risk of Self Harm*,
<https://www.higheredtoday.org/2019/09/04/helping-students-risk-self-harm-considerations-new-academic-year/> (OCR Principles)

Now it's time
for today's
key takeaways.

Today's Key Takeaways

1. Treating students as individuals is the hallmark of non-discriminatory treatment.
2. Disability law has many nuances; consider training for staff working with students of concern.
3. Factor in academic issues, conduct, threats, and the student's own safety.
4. Colleges are not inpatient medical facilities. Appropriate treatment may require a break in enrollment, as a last resort.

Now it's time
for the Q&A.

Today's Moderator and Presenter



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Thank you for your participation,

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Rev. Dr. Jamie Washington
on Overcoming Prejudices to
Improve Connections

October 17, 2023



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Curriculum Components,
Workforce Partnerships &
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Strategies For Awareness
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