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Balancing Student Privacy, Campus Security, and Public Safety: Issues for Campus Leaders

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Overview

The complex issues of promoting student mental health, privacy and public safety—and the delicate balance among them—weigh heavily on the minds of institutional leaders, educational policymakers, and local, state and federal officials. American campuses have a proud history of intellectual freedom, openness and public accessibility to their communities. However, the Virginia Tech shootings on April 16, 2007 marked a grim watershed in American campus violence, casting light on wide-ranging areas of concern including:

- The number of students with mental health issues on college campuses and the resources available to campuses to assist them;
- Gaps in mental health treatment nationwide;
- The legal role of the Americans with Disabilities Act (ADA), Family Education Rights and Privacy Act (FERPA), and the Health Insurance and Portability and Accountability Act (HIPAA) in campus policies and procedures;
- The state of uncertainty on campus regarding the legality of sharing information about students with mental health issues both for students' own good and that of the campus;

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- The role of families and loved ones in students' mental health treatment and how much information can legally be shared with them by campus officials;
- Gun control laws as they pertain to people with psychiatric treatment histories;
- College and university emergency procedures, including "lock-downs" and communication methods, and;
- College and university administrative procedures regarding disturbing student behavior and the legal ramifications thereof.

Purpose of this Paper

The purpose of this paper is twofold: to provide background information on student privacy and campus security, and to review best practices that college and university leaders may consider to help ensure that a system is in place to simultaneously maximize an open community and manage public safety preparedness and responsiveness. It is also intended to complement Dr. Lawrence K. Pettit's piece, *Expecting the Unexpected: Lessons from the Virginia Tech Tragedy*, commissioned by AASCU to assess the Virginia Tech Review Panel's report and provide a "primer" for institutions from the perspective of a retired president. Dr. Pettit's paper can be viewed on the AASCU Web site (aascu.org/associations/documents/07_pettit.htm).

Like any other subpopulation, the American campus population includes people with mental health issues, and this number is rising. The 2006 National College Health Assessment reported that 43.8 percent of 94,806 students surveyed "felt so depressed it was difficult to function" during the past year and 9.3 percent had "seriously considered suicide" during the year.¹ Reasons for this include the onset of some major psychiatric disorders in early adulthood, the fact that approximately twenty percent of the U.S. population "experiences a diagnosable psychiatric disability each year,"² and the fact that increased K-12 special education support and required assistance under the Americans with Disabilities Act (ADA) has enabled more students with mental health issues to attend college. In addition, given that more than 100,000 combat veterans have sought help for mental health issues from VA treatment facilities since leaving the military,³ students who are returning veterans may also be grappling with war-related mental health issues.

Thus, the dilemma for policymakers on the federal and state levels is how to craft policies and legislation that seek to safeguard the privacy of all members of the campus community while simultaneously avoiding compromising their treatment. This must also be done without creating undue risk to the rest of the campus or wider community.

Senior campus administrators, on their part, must create or enforce policies and procedures concerning student mental health issues that allow for increased information-sharing, coordination with state and local officials, risk assessment, and rapid response without violating federal and/or state law. They must also educate faculty, administrators, staff and students—most of whom are not and should not be asked to be legal experts—in how to stay within the confines of various laws while being attentive to the health of their campus community.

Overview of Legal Issues

Legal issues relating to student mental health involve a complex—and potentially conflicting—set of local, state and federal laws. While local laws and specific state laws are outside the scope of this piece, a general comment on state and federal issues follows.

Federal Legal Issues

The key federal laws applying to students with mental health issues and institutions' treatment of them are the Americans with Disabilities Act of 1990 (ADA), the Family Educational Rights and Privacy Act of 1974 (FERPA), and the Health Insurance and Portability and Accountability Act of 1996 (HIPAA). Title II of the ADA and Section 504 of the Rehabilitation Act of 1973 have similar requirements and between them cover almost all postsecondary institutions receiving federal funds.

FERPA and HIPAA, in particular, do not mesh smoothly. Both lead to confusion about what information may be disclosed about a student, under what circumstances, and to whom. In the wake of the April 16, 2007 campus shootings, FERPA—the federal law restricting disclosure of students' information to third parties—was quickly brought to the forefront as a reason why information-sharing had not taken place among different Virginia Tech administrative offices, why Virginia Tech had not shared more information with Cho Seung Hui's (the shooter's) parents without his consent, and why Virginia Tech had not shared information with law enforcement or mental health professionals about him. But issues with FERPA interpretation should not be viewed as confined to one institution's circumstances. According to the Virginia Tech Review Panel,

The panel's review of information privacy laws governing mental health, law enforcement, and educational records and information revealed widespread lack of understanding, conflicting practice, and laws that were poorly designed to accomplish their goals. . . . The widespread perception is that information privacy laws make it difficult to respond effectively to troubled students. This is only partially correct. . . . A narrow interpretation of the law is the least

risky course, notwithstanding the harm that may be done to others if the information is not shared.⁴

An August 2007 NACUANOTES piece entitled “FERPA and Campus Safety” attempted to clarify the legal requirements. “FERPA limits the disclosure of information from student ‘education records,’ a term that the law defines quite broadly and that is not limited to academic records.”⁵ Even “hand-scrawled Post-it notes” can be considered education records if there is any way to figure out the student’s identity from the information on them, either in isolation or combined with other public information.⁶

Given the breadth of the definition of educational records subject to FERPA, institutions have prudent reasons for being conservative in interpreting the law. Unfortunately, risk-averse institutional policy, combined with less-than-specific federal guidance on how to interpret FERPA, can lead to not intervening in a troubled student’s life in time. This can have potentially lethal consequences.

Also, not all students come to institutions from untroubled families. In cases of dysfunctional family situations (regardless of the family structure involved) or divorced/separated parents whose relationships are not amicable, institutions face complex dilemmas of which parent is (or should be) legally permitted access to his/her child’s postsecondary educational records. As a result, institutions need to have flexibility in terms of releasing information to both abide by the law and act in the best interest of the student in widely varying circumstances.

FERPA states that institutions “may disclose education records to parents if the student is a dependent for income tax purposes”⁷ but does not require them to do so. With this in mind, institutions should consult legal counsel to ensure that adequate policy provisions are made for instances when the disclosure of information to a noncustodial parent may, in fact, not be in the best interest of the student.

HIPAA (in addition to state law) governs the release of uniquely identifiable medical information on patients by health care providers. Medical information is defined as all information, either written or oral, obtained during a course of treatment. Therefore, a student telling a therapist about suicidal feelings would be considered medical information. HIPAA’s definition of “provider,” as explained in the Virginia Tech Review Panel report, includes “doctors, nurses, therapists, counselors, social workers, and health organizations such as HMOs and insurance companies, among others.”⁸ As a result, a university’s level of required compliance with HIPAA should be reviewed to make sure university-employed health care practitioners are included.

FERPA and HIPAA—The Interplay

FERPA and HIPAA have different scopes and limitations, yet can intersect in the case of a single student’s institutional records—particularly if the student has been seen at a university mental health counseling center. For example, the Virginia Tech Review Panel explains that:

FERPA provides the basic requirements for disclosure of health care records at campus health care clinics, and state law cannot require disclosure that is not authorized by FERPA. However, if FERPA authorizes disclosure, a campus health clinic would then have to look to state law to determine whether it could disclose records, including state laws on confidentiality of medical records. For example, Virginia Tech’s Cook Counseling Center holds records regarding Cho’s mental health treatment. On a request for those records, the center must determine whether the disclosure is authorized under both FERPA and the Virginia Health Records Privacy Act.⁹

The Virginia Tech Review Panel’s report includes some FERPA guidance from the U.S. Department of Education, dated June 2007. The main categories under which an institution is permitted to release information under FERPA, according to the guidance statement, are as follows:

- Any and all information may be released to an eligible student’s parents without the consent of the student if the student is a dependent for tax purposes under IRS rules.
- Schools can disclose educational record information to parents in the instance of a health or safety emergency involving their child.
- Schools are permitted to disclose to parents of a student under 21 that their child has violated “any law or policy concerning the use or possession of alcohol or a controlled substance.”¹⁰
- Schools are allowed to release information “from ‘law enforcement unit records’ to anyone—including parents or federal, State, or local law enforcement authorities—without the consent of the eligible student.”¹¹ This specifically allows campus security “units”¹² to share information recorded for purposes of law enforcement with others.
- FERPA does not keep campus officials from sharing observations with parents based on information *other* than that contained in an education record (such as personal knowledge).
- HIPAA’s Privacy Rule “excludes from its coverage those records that are protected by FERPA at school districts and postsecondary institutions that provide health or medical services to students. . . . For this reason,

records that are protected by FERPA are not subject to the HIPAA Privacy Rule and may be shared with parents under the circumstances described above.”¹³

However, the Virginia Tech panel made a point of noting that current information privacy law, both in theory and practice, cannot adequately address problems stemming from students with significant issues that require multiple university offices’ collaboration to address. The panel also recommended that in order to facilitate helping students, institutions confront the challenge of widespread lack of on-campus understanding of these laws and inconsistent use of discretion under them.¹⁴ Therefore, institutional leaders should be prepared to design easily understandable policies to clarify issues of appropriate and legal disclosure, liability of any and all institutional personnel under FERPA for either disclosure or nondisclosure, and flexibility in what constitutes an emergency situation.

In October 2007, the Department of Education issued several brochures for parents, postsecondary institutions, and elementary and secondary institutions, all intended to clarify and reinforce FERPA. The brochures restated key FERPA provisions in clear language and specifically mentioned in the postsecondary institution brochure that guidance on FERPA/HIPAA relations will be forthcoming.¹⁵ The Senate recently passed an amendment instructing the Department of Education to update a guidance document on information sharing under HIPAA and FERPA prepared jointly by the Department of Education and the U.S. Secret Service within three months of the amendment’s enactment. If the amendment survives the political process, this will hopefully assist institutions in further developing and retooling their policies. However, the earliest date schools might anticipate receiving this guidance would be spring/summer 2008.

HIPAA trumps state law in a conflict between the two. Thus, if a state law is less protective of health records’ privacy than HIPAA—such as a freedom of information law permitting disclosure at the discretion of an agency rather than forbidding it entirely—HIPAA prevails. However, disclosure is permissible by HIPAA in some situations where state law requires it. The example in the Virginia Tech Review Panel’s report is that of Virginia, where Virginia health care providers are required to report evidence of child abuse or neglect; this is permissible disclosure under HIPAA.¹⁶ Institutional officials should review HIPAA in conjunction with their own state laws and clarify procedures for the university community.

State Legal Issues

After April 16, 2007, several states rushed to create commissions and task forces to study campus safety and pertinent public policy. Conclusions

released to date largely focus on expanding mental health staffing and training at the campus level, and expanding campus security and mass alert systems. However, at least one federal bill (H.R. 2220) has been introduced partly because of concern over the liability of institutions under state law for releasing information even when permitted under FERPA.¹⁷ These issues will need further monitoring.

K-12 Record-Sharing with Universities

Currently, students with physical or mental disabilities undergo a transition from the K-12 environment of Individualized Education Plans (IEPs) and supportive services to the college/university environment. In college, they must self-identify as being in need of assistance in order to receive support from disability services offices.

While there are sound reasons for the self-identification requirement—most compellingly, personal privacy and legal protection against admissions discrimination for students with disabilities—the practice also keeps a large amount of potentially helpful IEP information amassed at the K-12 record level from reaching colleges and universities. Also, if a student chooses not to self-identify, academic and other supports she or he has been accustomed to are suddenly withdrawn just as she or he is adjusting to a new environment.

A thorny question relating to K-12 records was raised by the Virginia Tech Review Panel report, which expressed hope that the issue would be more publicly and widely discussed:¹⁸ should records indicating that a student has had psychological problems at the K-12 level be *required* to be submitted post-admission but prior to enrollment at a college/university? They would need to be kept strictly confidential and with restricted access unless an institution judges the student to be a potential threat to him/herself or others. Another issue is whether college administrators coping with a troubled and potentially dangerous student should be permitted to go to the student's parent(s) and secondary school(s), inform the parent(s) of the student's behavior, and request all available information from K-12 administrators about that student's psychiatric history.

Whether this kind of record-sharing requirement is ethically sound, enforceable or logistically workable is unclear. But the Virginia Tech Review Panel report pinpoints the heart of the issue: "This much is clear: information critical to public safety should not stay behind as a person moves from school to school. Students may start fresh in college, but their history may well remain relevant."¹⁹

State Agency Mental Health Record-Sharing with Universities

Whether a state agency is currently permitted to share mental health records of students with institutions depends on the state involved.

However, the federal report to President Bush on the Virginia Tech incident recommended that state agencies both disseminate “accurate information to help ensure that family members, educational administrators, mental health providers, and other appropriate persons understand when and how they are legally entitled to share and receive information about mental illness”²⁰ and scrutinize state law to see whether appropriate changes are necessary to balance individual privacy versus the common good of security.

Both the federal report and the Virginia Tech Review Panel recommended that much more information-sharing be done by stakeholders (law enforcement, institutions, mental health agencies, other community stakeholders, and so forth). This would dispel some of the current uncertainties about when it is permissible for these stakeholders to act together with pooled information.

Institutional Best Practices

Best practice suggestions in this document are just that: suggestions for guidance. Individual institutions must have autonomy to determine which practices work most effectively to best serve their own students, faculty, staff, administration and local communities. Policies imposed from above—whether state or federal—requiring rigid solutions for assisting students with mental health issues run significant risk of alienating the very people whom the policies are intended to assist.

One of the lessons of the April 2007 Virginia Tech incident was that operating in an informational vacuum can lead to tragedy. Provided below are possible focal areas for institutions and policymakers to explore.

Internal Focal Areas

Student Mental Health: Separating Diagnosis from Behavior

People cannot and should not be presumed to be potentially at risk of hurting themselves or others just because they have been diagnosed as having a mental health issue. According to the Surgeon General, most people with mental health issues do *not* commit violent acts.²¹ If a student, for example, coping with a mental health issue keeps his/her grades at an acceptable level for continued enrollment and functions as a law-abiding member of the university community, he or she should not be stigmatized according to his/her diagnosis.

This does not mean a college community is obligated to unquestioningly tolerate *behaviors* that put someone coping with a mental health issue and/or other members of the community at risk. Institutions should

implement revisions to policies and procedures to make clear that, as the Virginia Tech Review Panel puts it, “incidents of aberrant, dangerous, or threatening behavior must be documented and reported immediately to a college’s threat assessment group, and must be acted upon in a prompt and effective manner to protect the safety of the campus community.”²²

The institution’s task here is to balance abiding by the law, ensuring adequate public safety, and directing its finite resources in a way that is appropriate for the *entire* community. Not all institutions will possess equal financial or other resources to provide support services—particularly in communities where access to outpatient mental health services is difficult for reasons of budget, geography and/or lack of personnel. Institutions should work closely with their local communities to not only determine how their students will fare in the community outpatient mental health care system, but whether partnerships between the institutions and communities can be leveraged to create better services for all.

Policies addressing unacceptable student behavior should be clear and unambiguous and the chain of command for reporting incidents should be publicized to the institutional community. Communication between the academic and administrative sides of the university—preferably by means of referring incidents to a centralized threat assessment team composed of stakeholders from all areas of the university and possibly local law enforcement and/or mental health providers—should be encouraged and protocols for communication explicitly delineated.

Finally, threat assessment rather than profiling²³ and focusing on primary prevention in addition to emergency planning²⁴ may be the most effective ways of preventing emergencies and handling those that do occur.

Admissions/Financial Aid Policies

The Department of Education’s Office of Civil Rights clearly states (quoting Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794 [Section 504]): “No otherwise qualified individual with a disability in the United States . . . shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”²⁵

Therefore, it is illegal to discriminate against students with disabilities who are “otherwise qualified” on the basis of their disabilities alone. Under Section 504, institutions are not permitted to inquire of students, prior to admission, whether they have disabilities except under very restricted circumstances.²⁶ High school students are not required to report disabilities to postsecondary institutions. Thus, those students who do not self-report a disability to their college or university may not receive available support

to maximize their academic and personal successes. Yet students who do self-report a disability, particularly a mental health-related one, may fear discrimination as a result.

Given these competing legal issues and the litigious nature of current society, institutions should discuss with counsel the extent of potential liability in terms of the admissions application and admissions process. They should also discuss what measures institutions can legally take to balance individual student privacy and the common good.

Along these lines, the Common App, a popular admissions application, specifically asks high school guidance counselors (in their portion of the form) to indicate if an applicant has been found guilty of disciplinary violations “whether related to academic misconduct or behavioral misconduct”²⁷ and if the applicant has been convicted of any misdemeanor, felony or other convictions known to the counselor. Information-sharing is possible between high school guidance counselors and admissions offices to an extent; institutions should strengthen ties while adhering to the law.

The FERPA provision that permits (but does not require) institutions to choose to disclose education records to parents if the student is claimed as a dependent for tax purposes²⁸ is one that should be examined carefully in crafting disclosure policies. This disclosure of student/parent tax return information between institutional offices is also subject to FTC regulations in terms of safeguarding customer financial information stemming from the Gramm-Leach-Bliley (GLB) Act of 2000. This includes colleges and universities in its provisions regarding safeguarding information, though the privacy provisions of the GLB Act are deemed to be met if an institution is in compliance with FERPA.²⁹

Housing

Housing policy relating to troubled students involves not only the issue of appropriately addressing harmful behaviors on the part of students, but also thorny legal issues such as whether students who attempt or threaten suicide or other self-injurious behavior are legally permitted to be subject to disciplinary action or banned from housing under ADA and/or the Fair Housing Act. The ideal is to treat harmful behavior without making students feel stigmatized or afraid to reach out for help. As the Judge David L. Bazelon Center for Mental Health Law explains in their model policy for supporting students in crisis:

More often than not, school administrators genuinely believe they are doing the right thing by removing the student or initiating disciplinary action. Such punitive measures, however, discourage students—not just the penalized student but all others—from seeking help. They isolate students from social and professional

supports—friends and understanding counselors and teachers—at a time of crisis, increasing the risk of harm. They may also result in loss of insurance coverage for mental health care.³⁰

Two major court cases—both settled out of court, but which can nonetheless serve as reference points—regarding whether students who demonstrate self-injurious behavior can legally be removed from housing are *Nott v. George Washington University* and *Jane Doe v. City University of New York (Hunter College)*.³¹ In both cases, the students sued alleging discriminatory treatment and violations not only of ADA but the Fair Housing Act for being precipitously removed from student housing after seeking medical treatment for mental health issues.

Nott's complaint contended that since he was not actively suicidal but simply seeking treatment for depression, GWU's actions in barring him from housing and in its preparations to expel him exacerbated his mental health problems and stood to cause more harm than good. Jane Doe's complaint focused on Hunter College's changing the locks on her dormitory room while she was hospitalized for treatment after a suicidal gesture. Press coverage of both cases focused on the perceived insensitivity toward mental health issues and heavy-handedness demonstrated by the institutions' actions.

Since both cases were settled out of court, no legal opinions are available for guidance. However, administrators may find it useful to review the legal documents and press coverage of these cases in light of their own institutional policies. The Department of Education's Office of Civil Rights has issued a number of recent decisions concerning complaints by students regarding both housing and involuntary leaves of absence that institutions should consult for guidance.³²

Student Life/Counseling

Student life and student counseling professionals should work closely with a university's centralized threat assessment team and should be notified when students exhibit extremely abnormal or threatening behaviors. This will enable the counseling office to assess the student and see whether mandatory counseling should be required for the student to remain enrolled in classes and/or living in campus housing, or whether an alternative approach may be appropriate. Student life and/or student counseling services should also be reviewed to make sure that services are accessible and are not fragmented across different campus offices.

In terms of specific follow-through policy, the Virginia Tech Review Panel recommended that college counseling centers report all students receiving court-ordered mental health treatment (on- or off-campus) to the threat assessment team for follow-up. It also recommended that policies be

developed regarding what information about such students can be shared with their families and roommates without violating privacy laws.³³ This recommendation is supported by research regarding voluntary counseling practices for suicidal college students. The University of Illinois' voluntary suicide prevention program reported that there was a less than 5 percent chance that students who either made suicide attempts or suicide threats would voluntarily attend four counseling sessions. However, when counseling sessions were made mandatory under a "mandated assessment program" if suicidal students wished to continue enrollment at the university, approximately 90-95 percent of students complied.³⁴

Any policy developed must abide not only by privacy laws, but also by the legal and ethical constraints placed on certain mental health and medical professionals requiring them to adhere to a higher standard of patient confidentiality than nonmedical professionals. Medical and mental health professionals are generally subject to a higher burden of proof in terms of breaching professional confidentiality—i.e., an imminent threat of significant and imminent harm to a specific person may be necessary before they can disclose confidential treatment information.

However, while still honoring the legal and ethical limits placed on those medical and mental health professionals, the recommendation allows students whose mental health issues are severe enough that a court has mandated treatment to be monitored. In the best-case scenario, they will benefit from the combination of treatment and attention by counselors. It also balances the individual student's right to privacy with the right of his or her roommates to have an environment that is not threatened by their roommate's behavior.

Adding to the counseling office's caseload by creating a centralized threat assessment team and encouraging staff, faculty and administration to come forward regarding troubling or threatening student behavior costs money and requires adequate staffing. At Virginia Tech in July 2007, one full-time psychiatrist was available for 27,000 students.³⁵ Institutions are encouraged to review available counseling resources and develop strategies to augment them as necessary.

Faculty Members/Teaching Assistants (TAs)

Faculty members and TAs are in a unique position to notice troubling and potentially dangerous behavior by students and try to steer them toward helpful institutional resources. But because of the organizational structure of a university, faculty are often separated from administrative offices that might be in possession of facts regarding troubling and/or potentially dangerous behavior by students. The Virginia Tech report addresses the numerous instances in which such circumstances were present in the case of Cho Seung Hui. His individual incidents of antisocial behavior

in individual professors' classes were neither connected as a whole nor connected with other antisocial behaviors on his part. Such incidents were reported to administration (campus police and residence life) rather than faculty.³⁶

However, faculty members and TAs are not clinical psychologists or law enforcement officials and should not be expected to act as such. Also, student creative writing—as morbid and violent as it can be—should not be assumed to be indicative of potential violence. Guidelines for assessing disturbing student writing, released by Virginia Tech's creative writing faculty after the shooting incident, state:

The creative writing program develops the creativity of student writers, which necessarily involves allowing them freedom of expression. Students should not feel that the program monitors and threatens them with disciplinary action for the themes and language they choose. Instructors should not feel that they must take on the roles of therapists or police officers—roles for which they have no professional training. . . . Probably at the core, we're concerned about writing that seems to warn of potential harm to self or others, or writing that reflects a deep desperation. Themes of violence and gruesome details might be markers, but they do not in themselves establish a problem.³⁷

The best practice for faculty members/TAs is to have open and clear lines of communication between faculty and appropriate administrative offices about disturbing and/or confrontational student behavior. Preferably, the communication would be directed to a single team of members drawn from all appropriate offices. That way, individual faculty/TA experiences can, if necessary, be connected into a coherent behavior pattern and then intervention to help a troubled student can be performed.

Faculty and TAs also need to be clearly informed as to what FERPA permits in terms of communicating with other offices and/or parents about a student's behavior.

Campus Police/Security

Given the wide variety of higher education institutions across the United States—ranging from urban campuses in large cities to isolated rural campuses with little nearby law enforcement presence—there is no single best practice for campus security. Each institution must evaluate its own needs and devise its own emergency plans based on what resources are available within its local community.

However, in general, campus police should not work in isolation from the rest of the university. As Oren R. Griffin says in “Confronting the

Evolving Safety and Security Challenge at Colleges and Universities,” “Campus safety and security can no longer be considered the parochial responsibility of the campus police department. College campuses are simply too vast in terms of facilities, programs, and personnel to expect a single unit to monitor any modern-day institution of higher learning.”³⁸ Campus police should be involved in the creation of any threat assessment team, and their FERPA role should be clarified not only to them, but to the entire university community.

Communication and increased training on what to do in case of an emergency are key—not only for campus police, but for faculty, staff and students. The Virginia Tech Review Panel report recommends that campus police be authorized to send emergency communications to the entire university community, instead of having to funnel requests through an administrator or a committee.³⁹

Providing multiple methods of technology ranging from low-tech to high-tech methods for those in charge of communicating emergencies or safety information are also crucial. In recent months, St. John’s University (N.Y.) and the University of Colorado at Boulder both effectively used text-messaging systems to alert their campus communities to the presence of, respectively, a masked student with mental health issues carrying a loaded gun across campus and a random stabbing of a student by a former cafeteria worker with a history of mental illness and violence. But high-tech communications measures can be disrupted in many ways (power lines can be blown down or shorted; university Web sites and e-mail systems can be overwhelmed by traffic), so low-tech communications measures (sirens, bullhorns, etc.) should also be available.

Whether to arm campus police officers is a decision to be handled at the individual campus or system level, given that firearm laws vary by state and institutional climates differ. Recent cases involving the tasing of students also play a role in the institutional-level discussion of what is an appropriate equipping of public safety officers and use of force on campus.

The question of whether guns *other* than those carried by campus police officers should be allowed on campus is best handled at the individual campus or system level. Virtually all campuses currently prohibit firearms on campus. However, a candid discussion of the issue—for instance, weighing Second Amendment rights versus state law versus the appropriateness of carrying guns on a college campus, and attempting to divorce emotionalism from the issue as much as possible—is key. It is important to note that the Supreme Court’s November 2007 decision to hear a Second Amendment case regarding the District of Columbia’s ban on gun ownership (with an anticipated decision date of June 2008 as of this writing) may make such a discussion moot.

General Student Population Policy

Again, good communication is crucial. Students should, as emphasized by the Department of Education/Secret Service Safe Schools Initiative, feel secure in talking about problematic behaviors—their own or those of someone else they know—to their faculty and administrators without fearing reprisal or dismissal⁴⁰ (although the document focuses mostly on K-12 safety, it will be updated by the Department of Education in response to the April 2007 shootings and university stakeholders should be aware of its contents).

But a policy of encouraging communication about mental health issues and any corresponding problematic behaviors cannot turn into Orwellian surveillance or star chambers. Due process must be observed and students given every opportunity to reach out for help without being penalized.

External Focal Areas

Off-Campus Mental Health Treatment Facilities

Institutions' student counseling/mental health facilities should work with off-campus mental health treatment facilities in their communities—if they are not doing so already—to coordinate both treatment for their students and information-sharing between facilities and institutions. Information-sharing is obviously subject to HIPAA rules, and coordination of treatment is subject to off-campus resources' budgetary limitations. However, students should not be allowed to fall through the cracks in the way that Cho Seung Hui did in his encounters with off-campus mental health services in Blacksburg, Virginia.

Local Law Enforcement Agencies

Institutions should gauge their interactions with local law enforcement—including making decisions on what role local law enforcement should play in a campus threat assessment team—depending on their particular locations' law enforcement structure. A campus located in a rural area where state troopers are the primary form of law enforcement and a campus located in a densely populated city with a large police department will be interacting with different law enforcement infrastructures and must be sensitive to their law enforcement partners' needs.

The Virginia Tech Review Panel recommended that campus police train with local law enforcement on how to respond to shooters on campus and other emergencies.⁴¹ The National Association of Attorneys General suggested that institutions also be included in general law enforcement training regarding large-scale hazards such as terrorism, as well as in more specific community-based training addressing the particular vulnerabilities of educational institutions (open campuses, events drawing large crowds, etc.).⁴²

Government

Government—at the federal, state and local levels—can be an important partner with institutions working to balance individual student privacy and the public good. However, excessive micromanagement by government will not advance the overall public good.

Parents

Parents are an extremely important part of the equation when it comes to working with troubled students. Parents are typically not only the student's next of kin, but a source of love and support. They can also provide crucial information to institutions regarding the student's prior treatment history and behavior. Yet if a student is experiencing psychological issues related to his or her family of origin, it may be more detrimental than beneficial for an institution to inform or involve his or her parents in treatment activities.

However, *not* informing parents when a student is exhibiting disturbing or potentially dangerous behavior may be just as detrimental to the student's health and well-being. Several court cases involving student suicides have raised the issue of whether institutions have a "duty to notify" parents about students' suicide attempts according to FERPA (see *White v. University of Wyoming*, *Jain v. State*, and *Mahoney v. Allegheny College* for examples).⁴³

Institutions should work with legal counsel, student affairs, and other institutional stakeholders to craft updated parental notification policies that are both legally permissible under FERPA and allow flexibility to handle situations on a case-by-case basis.

Summary and Conclusions

Balancing student privacy, the public good, and campus security is a delicate and complicated task. There cannot be a single mandated course of action for institutional procedures in handling extremely troubled students. However, some basic guidelines can be distilled for institutions to adapt as their individual circumstances fit:

- *Institutions must understand and clearly communicate to their faculty, administration, staff and students what applicable federal and state law allows regarding the treatment of students with mental health issues.*
To this end, institutions should work with the Department of Education to receive more training and guidance on the subject of FERPA, HIPAA, Fair Housing Law and other applicable laws.
- *Institutions must set up clear, consistent lines of external communication with local law enforcement and appropriate state officials (such as governors) regarding legal issues, threat assessment, and the*

coordination of unified crisis management communications in the event of a large-scale emergency. This will differ from institution to institution, but information-sharing about what is permissible under state and local law, and how communication will be handled in the event of a large-scale emergency is key.

- *Institutions should, as far as possible, encourage an institutional climate and develop policies to ensure that students facing mental health issues feel safe in seeking help without fear of retribution. A punitive attitude toward mental health issues on the part of an institution helps no one—not the student, not the institution, and not the community. The institutional goal should be to balance both the needs of a troubled student and the common good of the community to accommodate both as much as is reasonable and appropriate.*
- *Institutions and their local communities should work together in identifying mental health treatment gaps in the community and advocating in common for increased mental health treatment resources. A rising tide floats all boats; institutions and their communities can help each other secure more resources together than they can working separately.*
- *Institutions should examine their available on-campus resources in terms of mental health treatment and determine—with state and local involvement as appropriate—the feasibility of expansion. Colleges and universities are not mental health treatment centers and should not be thought of as such. They also should not be expected to unreasonably accommodate behaviors that are dangerous to a student or to others on campus. However, it is in their best interest and that of the public to provide reasonable and appropriate accommodations and mental health supports to assist students in completing college and moving on to productive lives.*
- *Centralized threat assessment teams should be set up at the institutional level and involve not only student services, but faculty, campus law enforcement, off-campus law enforcement, and mental health services personnel as appropriate. As has been seen in the analysis of the Virginia Tech tragedy, fragmented communication among different divisions of the university hindered putting individual incidents of aberrant student behavior into a coherent whole. Centralizing the process of evaluating threatening or frightening behavior to provide inputs from all possible sources and facilitate extensive communication allows institutions to devise the most effective plans to help troubled students, rather than inadvertently let them fall through the cracks.*

These are not hard and fast guidelines; campus-level administrators and system executives must be allowed flexibility to adapt policies to their own campuses.

The most important best practice this document can offer is emphasizing communication and understanding among all higher education stakeholders regarding mental health issues. With communication and understanding, reasonable yet compassionate policies can be crafted and information can be shared as widely as it can *appropriately* and *legally* be shared for the purpose of helping students with mental health issues succeed and thrive to their fullest potential while simultaneously maximizing campus security.

Resource Information

This brief listing of electronic resources available to institutions on student privacy, mental health, and campus security does not pretend to be comprehensive in a rapidly evolving field or an endorsement of any particular organization, but is offered as a service to readers.

U.S. Government Links

U.S. Department of Education:

Family Policy Compliance Office: Various policy, brochures and guidance.

ed.gov/policy/gen/guid/fpco/index.html

Office of Civil Rights: Handles issues relating to discrimination and higher education.

ed.gov/about/offices/list/ocr/index.html

“Practical Information on Crisis Planning” brochure:

ed.gov/admins/lead/safety/crisisplanning.html

“Protecting Students with Disabilities: Frequently Asked Questions About Section 504 and the Education of Students with Disabilities.”

ed.gov/about/offices/list/ocr/504faq.html

Safe Schools and FERPA: Various FERPA-related brochures and guidance.

ed.gov/policy/gen/guid/fpco/ferpa/safeschools/index.html

U.S. Department of Health and Human Services:

Report to the President on Issues Raised by the Virginia Tech Tragedy

hhs.gov/vtreport.html

U.S. Secret Service:

National Threat Assessment Center—Secret Service Safe Schools Initiative

secretservice.gov/ntac_ssi.shtml

U.S. Surgeon General:

Mental Health: A Report of the U.S. Surgeon General

surgeongeneral.gov/library/mentalhealth/chapter1/sec1.html#approach

Association/Organization Links:

American Association of State Colleges and Universities (AASCU)

Expecting the Unexpected: Lessons from the Virginia Tech Tragedy.

aascu.org/pdf/07_expectingunexpected.pdf

American College Health Association (ACHA)

Information and link to the National College Health Assessment. acha.org/

Judge David L. Bazelon Center for Mental Health Law

Students and Mental Health: Information including text of OCR complaints, lawsuits and other publications

bazelon.org/issues/education/StudentsandMentalHealth.htm

National Association for College Admissions Counseling (NACAC)

Information available for both members and nonmembers
nacacnet.org/MemberPortal/

National Association of College and University Attorneys (NACUA)

Legal Resources Services: Information available, some for members only
nacua.org/lrs/documents.asp#ferpa

National Association of Student Personnel Administrators (NASPA)

Information available for both members and nonmembers. naspa.org/

Other

Active Minds on Campus

Nonprofit organization for mental health awareness on campus.
activemindsoncampus.org/

The Catholic University of America Office of General Counsel

Information and publications. <http://counsel.cua.edu/security/publications/>

The Jed Foundation

Nonprofit organization working to prevent suicide on campus.
jedfoundation.org/

The Virginia Tech Review Panel Report

State commission report. vtreviewpanel.org/report/index.html

Gary Pavela.com: Law and Policy in Higher Education

Noted scholar on law and policy issues (including student mental health issues).
garypavela.com/

Threat Assessment Group Inc.®: A Park Dietz Company

Company that has worked with federal/state officials regarding school violence issues. taginc.com/

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- ³"Veteran stress cases up sharply," *USA Today*, October 18, 2007, retrieved from usatoday.com/news/washington/2007-10-18-veterans-stress_N.htm.
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- ⁶*Ibid.*
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- ⁸Virginia Tech Review Panel, 2007, p. 65.
- ⁹*Ibid.*, p. 66.
- ¹⁰*Ibid.*, p. H-7.
- ¹¹*Ibid.*
- ¹²*Ibid.*
- ¹³*Ibid.*
- ¹⁴*Ibid.*, p. 68.
- ¹⁵U.S. Department of Education, "Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities," October 30, 2007, p. 2.
- ¹⁶Virginia Tech Review Panel, 2007, p. 65.
- ¹⁷J.J. Hermes, "Congress Mulls Change in Student Records Law to Help Prevent Violence," *The Chronicle of Higher Education*, October 5, 2007, v. 54, issue 6, p. A20.
- ¹⁸Virginia Tech Review Panel, 2007, p. 39.
- ¹⁹*Ibid.*
- ²⁰U.S. Department of Education, U.S. Department of Health and Human Services, U.S. Department of Justice, *Report to the President on Issues Raised by the Virginia Tech Tragedy*, June 13, 2007, p. 8.
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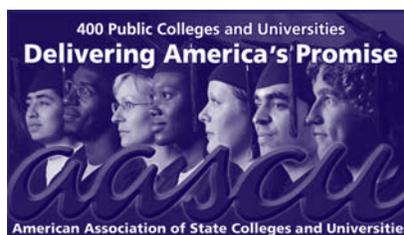
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- ²⁷Common App, Secondary School Report, downloaded from commonapp.org/CommonApp/docs/downloadforms/SSR.pdf
- ²⁸*Parents' Guide to the Family Educational Rights and Privacy Act: Rights Regarding Children's Education Records*, U.S. Department of Education, October 30, 2007, p. 2.
- ²⁹NACUBO Advisory Report 2003-01, January 13, 2003, "Colleges and Universities Subject to New FTC Rules Safeguarding Consumer Information," p. 1.
- ³⁰Judge David L. Bazelon Center for Mental Health Law, "Supporting Students: A Model Policy for Colleges and Universities," May 15, 2007, p. 2.
- ³¹Bazelon Center for Mental Health Law, "Students and Mental Health," retrieved October 31, 2007 from bazelon.org/issues/education/StudentsandMentalHealth.htm
- ³²Bazelon Center for Mental Health Law, "Legal Challenges," retrieved January 10, 2008 from bazelon.org/issues/education/StudentsandMentalHealth.htm
- ³³Virginia Tech Review Panel, p. 54.
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- ³⁸Oren R. Griffin, "Confronting the Evolving Safety and Security Challenge at Colleges and Universities," March 2007, *Pierce Law Review* 5 no. 13, p. 431, downloaded from Wilson Web September 18, 2007.
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