

Sending at Risk Students Home: Current Issues

WITH BRICKER & ECKLER LLP

Joshua
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Live Forum

To ask a question using the chat function:

The screenshot shows the Cisco WebEx Event Center interface. The main content area displays a red background with the text "Sending at Risk Students Home: ADA issues WITH BRICKER & ECKLER LLP" and two speaker portraits: Joshua Nolan and Melissa Bondy. On the right, the "Participants" and "Q&A" panels are visible. The "Q&A" panel shows a list of questions and a "Send" button. Red annotations highlight the "Type your question here" input field and the "Send" button.

Event Info: 10600802_1

01: Live Forum for AKA

Sending at Risk Students Home: ADA issues
WITH BRICKER & ECKLER LLP

Joshua Nolan

Melissa Bondy

Participants

Speaking:

Panelists: 1

TG Traci Graham (Host)

Attendees:

CC

Q&A

All [2] My Q&A (1)

Carole Chidester - 3:52 PM

Ask: All Panelists

Type your question here

Send

Hit send

Goals of the Presentation

- Understanding relevant laws (ADA/504)
- Outline removal of “harm to self” from regulations
- Discuss best practices for managing students in crisis with leaves of absences

A Story of Joe

- Senior – former football player with season-ending injury
- Post-surgical use of opioids (potential addiction issues)
- Aggressive mood swings; self-harm (cutting); self-medication (alcohol, pain meds)
- Concern from students, RAs, DOS
- Don't call my parents...

A Story of Joe

- Issues:
 - When is the time to intervene?
 - Joe has not identified himself as having a disability (perceived?)
 - Increased/Increasing anxiety for Joe from community

Relevant Laws and Regulations

- The ADA (Title II and III).
- Section 504 of The Rehabilitation Act of 1973.
- Regulations (specific guidance on individualized assessment for students who present as a substantial harm to others)
- OCR Resolution letters (?)

Definitions

- Qualified Student
- Disability
- Direct Threat Analysis

Definitions

Who is a Qualified Student?

- (1) Must meet the “fundamental requirements” of the academic program...
- (2) ...with or without a reasonable accommodation.

Practice NOTE: What are your fundamental requirements that all students must meet?

Definitions

Princeton Academic Regulations (sample)

1. students are “expected to be **fully engaged members of an intellectual community**”
2. **Identify credit requirements for each class year.**
3. Students are “expected to be **active participants in their education;**”
4. the development of critical study and life skills, such as “**working independently, managing competing obligations, and completing work in a timely fashion,** is an essential educational goal. “

Definitions

What is a disability?

- Physical or mental impairment;
- That substantially limits one or more major life activities;
- A person who has a history or record of such an impairment; or
- A person who is perceived by others as having such an impairment.

Definitions

What is considered a major life activity?

- Caring for oneself; Performing manual tasks; Seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working;

All of these things implicate college life.

Disability Laws Do Not Require Institutions To:

- 1. Lower institutional standards**
- 2. Assume an undue burden when
providing accommodations**
- 3. Fundamentally alter educational
programs**

Direct Threat Analysis

A university is not required to permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that institutions when that “individual ***poses a direct threat to the health or safety of others.***”

-- 2010 Regulations removed “threat to self”

Direct Threat Analysis

A Direct threat means:

- *a significant risk to the health or safety of others* that
- cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Direct Threat Analysis

1. “An individualized assessment”
 - Based on “reasonable judgment” that relies on:
 - current medical knowledge or
 - best available objective evidence

Practice Tip: Need to focus on FACTS versus fears, stereotypes, etc.

Direct Threat Analysis

2. ...To Ascertain:

- the nature, duration, and severity of the risk;
- the probability that the potential injury will actually occur;
- and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

Disparate Treatment

- OCR and DOJ will also review a disability discrimination complaint under a disparate treatment analysis:
- whether similarly-situated, non-disabled students were treated differently** under the circumstances.

** OCR uses this term interchangeably with disparate.

Removal of “Harm to Self”

- 2010 – DOJ announced new regulations removing “harm to self” from Title II (public colleges and universities)
- No new regulations or formal guidance issued since.

Practice Point: Does this mean you cannot consider harm to self?

Review of Resolution Agreements

- Themes:
 - A focus on *disparate treatment*
 - Greater requirements for returns/readmissions for students with mental health/medical issues
 - Lack of clear procedures for LOA/MLOA
 - Individualized assessment

Review of Resolution Agreements

- **Themes (cont.):**
 - **Use conduct process when available to address behavioral issues (applicable to all students)**
 - **Provide information for returning/readmission process requirements in your LOA/MLOA**

Review of Resolution Agreements

- Themes (cont.):
 - Focus on whether the institution is creating different processes for students with disabilities than non-disabled students
 - Focus on expertise (medical/mental health – on and off-campus) to assist decision making (See Regulations)

Review of Resolution Agreements

- Themes (cont.):
 - Return/Readmission requirements
 - Avoid “gainful employment” reqs.
 - Do not require proof of a student being “cured” of a disability.
 - Are there accommodations required?
 - If voluntary LOA consider what reentry requirements are needed, if any.

Practice Tip #1

Remove “threats to self” language from your MLOA/LOA.

- Use “Direct Threat Analysis”
 - Training, constant review, identify decision making team

Practice Tip #2

Focus on “individualized” risk assessment.

- Team of experts (on campus and off-campus- medical, etc.)
- Focus on facts
- Regular meetings and training

Practice Tip #3

Focus on CONDUCT that affects health, safety and welfare of others and community.

- Don't rely on stereotypes
- Don't rely on overgeneralizations
- Is the student no longer "Qualified?"
 - Have your identified fundamental program requirements (attendance, participation)?

Practice Tip #4

Don't forget your code of conduct – enforce in non-discriminatory manner

- Discipline behaviors and NOT disability
 - Remember Jurisdictional analysis
- *Interim suspensions*
 - Do you have a process? Review in conjunction with direct threat analysis

Practice Tip #5

Always ask about disparate treatment of potentially disabled students.

- Same process as students without disabilities?
- What risks are being considered?
- Similar outcomes for all students?
 - If different, does the analysis turn on risks related to the disability?

Practice Tip #6

**Have BOTH voluntary and involuntary
LOA/MLOA**

- **Involuntary LOA/MLOA for extreme cases (direct threat analysis)**
 - **Is there an emergency situation?**
- **Articulate the benefits of voluntary LOA (impacts on aid, credits, etc.)**

Practice Tip #7

Consider behavior contracts that are not punitive in nature.

- View these contracts as a way of creating specific *behavioral* expectations between the institution and the student
- Enforcement through Code of Conduct
- Consider parent involvement

Practice Tip #8

Emergencies and direct threats regarding self-harm may require removal

- **If individualized threat assessment determines a significant risk of serious harm to self + lack of cooperation removal may be required.**
- **Have a policy for this process...**

Practice Tip #9

Provide due process in involuntary LOA

- Provide Notice of Policy and Process
- Opportunity for student to present information
- Appeal (correct erroneous decision)

Practice Tip #10

Establish Individualized and Reasonable Conditions for Return

- Focus: Is the student able to be “qualified” to return from health and safety perspective?
- Examination by IME, school-employed medical professionals
- Release of medical records
- Demonstrated ability to meet academic requirements/conduct standards
- Do not require student to be “cured” of disability

Questions?



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