

SUIT OVER PRINCETON'S ACTIONS AGAINST SUICIDAL STUDENT RAISES TOUGH ISSUES

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William Maderer

Princeton University, defending a suit by a student made to leave school due to an attempted suicide, faces difficult questions about its analysis of the safety threat he posed to himself or others and whether its actions went overboard.

The case, *W.P. v. Princeton University*, which raises claims under federal and state laws against disability discrimination, has stirred debate at Princeton and in legal circles about colleges' appropriate response to students exhibiting self-destructive behavior.

Case law is scant on whether removing a student or making it hard for him or her to return constitutes a failure to accommodate a disability or whether the school is acting within the proper scope of its duty to protect the student body.

"I don't know if there's any set law on this," said Anna Maria Tejada, a lawyer at Kaufman, Dolowich & Voluck in Hackensack who represents colleges and universities. "I think this is going to be an interesting case with respect to how you deal with the issue of whether a student is a harm to himself or others."

Tejada said making sure the student does not hurt himself in the future is the largest part of a university's analysis after a student's suicide attempt but added that potential liability to the university is also a valid consideration.

Students ousted from other schools over mental-health issues have sued and won recoveries. In 2006, Hunter College of the City University of New York paid \$165,000 to settle a suit by a

student who was asked to leave her dorm after she attempted suicide. That same year, George Washington University reached a confidential settlement with a student, Jordan Nott, who was suspended from school after telling staff at the university counseling center that he was considering suicide.

In the Princeton case, filed in March in federal court in Trenton, N.J., a student named as W.P. alleges he was banned from campus after taking an overdose of antidepressant pills in February 2012. He claims the school failed to accommodate his disability following the incident and held him to a higher standard than others when he applied to return to school a year later.

W.P.'s suit, raising claims under the Americans with Disabilities Act, the Rehabilitation Act of 1973 and New Jersey's Law Against Discrimination, was filed after the U.S. Department of Education's Office of Civil Rights concluded Princeton acted properly.

In a Jan. 18, 2013, letter to Princeton, the OCR found no disability discrimination in the university's failure to accommodate W.P.'s requests to live off campus, to take a reduced course load or to take a semester off.

While colleges must modify academic requirements to accommodate student disabilities, students have a duty to disclose disabling conditions and to follow school rules for requesting accommodation—and W.P. never did, the OCR said.

The OCR also held nondiscriminatory Princeton's decision to ban W.P. from campus. The school's determinations that he continued to be a danger to himself and at a high risk of another suicide attempt in the future were well-founded, it said, noting the university's psychological services office had found that W.P.—who had four prior suicide attempts or suicidal ideations—lacked insight into the severity of his illness, failed to consistently attend treatment sessions, abused alcohol and drugs and had minimal family support.

“Based on the above, OCR determined that the University proffered legitimate, nondiscriminatory reasons for banning the complainant from campus...namely, concerns about the complainant's health, well-being and safety,” the letter stated.

The OCR reopened the case after W.P. appealed.

But the unresolved question is whether colleges have any duty to protect students from killing themselves.

Gary Pavela, who has written two books on mental-health issues in higher education, suggested colleges don't. Most authority on the subject comes from prior OCR letter rulings, which, though not binding on courts, are generally granted deference. The OCR has held that universities should perform a so-called “direct threat” analysis in the wake of a student's suicide attempt before deciding whether to expel the student. That analysis should consider whether a student threatened others or was generally disruptive but not whether the student might injure himself in the future.

“OCR has taken the position that a threat to self is not a direct threat; a direct threat is a threat to others,” said Pavela, a retired University of Maryland administrator. But there is a “debate

among practitioners [as to whether the OCR] has formalized a general interpretation.”

Pavela cited a 2011 OCR letter opinion that said Spring Arbor University in Michigan violated the civil rights of a student with a mental-health disability when it required him, after withdrawing voluntarily and in good academic standing, to meet certain conditions for readmission. The OCR said a student would have to pose a threat to others, not just to himself, to justify such conditions.

Pavela said different OCR offices are providing different interpretations of what constitutes a proper direct threat analysis, which helps explain the apparent contradiction between the rulings in the Princeton and Spring Arbor cases.

But another authority in the field believes a student’s future propensity to hurt himself is a valid basis for such an analysis. Barbara Lee, a co-author of “The Law of Higher Education,” published by Wiley, said a university must consider whether the student can get proper treatment for his problems in the academic setting and the disruption inflicted on other students when a classmate or roommate attempts suicide.

Lee, who teaches higher education law at Rutgers University’s School of Management and Labor Relations, said the university has a behavioral assessment team, consisting of doctors, lawyers and student affairs representatives, that meets weekly to discuss students with mental-health issues.

“When a student behaves in a way that the university feels is dangerous to the student or to the community around the student, the university has the right to remove that student,” she said. “Some students may have serious mental-health issues that need to be treated in a hospital setting or as an outpatient and they may not be able to manage being a student and getting well or getting better at the same time.”

Pavela said that in W.P.’s case, Princeton administrators’ actions may well be motivated by a sincere belief that sending away students with mental illness is in their best interest, but that view is mistaken and “crosses over into a kind of paternalism that is dangerous.”

Pavela said concerns about getting sued are not a major concern of colleges when they ask students to leave after a suicide attempt. Colleges are sometimes sued over suicides by students, but he cited a 2000 ruling by the Iowa Supreme Court, *Jain v. State of Iowa*, which held that the University of Iowa was not liable for failing to prevent a student’s suicide.

At Princeton, students have accused the school of seeking to avoid liability and protect its reputation when dealing with students with mental illness. One student, writing anonymously to the *Daily Princetonian* on April 20, said he took a yearlong leave without telling the university he was taking off to seek treatment for depression. When the school found out the reason for the leave, he said, it demanded to see his treatment records before it permitted him to return.

Cynthia Cherrey, Princeton’s vice president for campus life and a named defendant in W.P.’s suit, wrote to the *Princetonian* on April 23 to deny that liability or publicity are factors in the school’s dealings with students with mental-health problems. Cherrey said such decisions are based on the best interests of the student and those of the other members of the campus

community. Before allowing a student to return to campus after a mental-health-related leave, the school consults with deans, its own mental-health professionals, the student's doctors and family members.

Princeton's administration also issued an "FAQ" concerning mental-health-related withdrawals and readmissions. It said most students with mental-health issues stay in school but Princeton will "strongly counsel" a student to withdraw from school to address mental-health problems three to five times per year. The school said most return to complete their degrees.

W.P. is pro se in his suit and the university has not filed an answer. William Maderer, of Saiber in Florham Park, acknowledged he was retained by Princeton but declined comment.

Karen Bower, the Washington, D.C., disability-discrimination lawyer who represented the suing students in the Hunter College and George Washington University cases, declined comment.

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