

Principles for Students Who Pose a Risk of Self-Harm
National Association of College & University Attorneys
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On January 26, 2018, Candice Jackson, Acting Assistant Secretary for the U.S. Department of Education Office for Civil Rights, participated in a NACUA Briefing and described principles to guide colleges and universities in their efforts to address students who pose a risk of self-harm. Assistant Secretary Jackson said the principles are gleaned from past resolution agreements and that OCR is and will continue to be guided by these principles in its enforcement approach in matters involving students at risk of self-harm.

Assistant Secretary Jackson began by stating that OCR appreciates the good faith and dedication that institutions have been demonstrating in addressing the risk of student self-harm for many years, particularly given some lack of clarity in the past few years. OCR believes that most institutions are on the right track in handling these matters.

She then offered the following general principles:

- 1. Colleges and universities always have the option of offering mental health services to students, whether or not the students are identified as having a mental health issue and whether or not the students are in crisis.**
- 2. Institutions should consider reasonable accommodations that would enable the student to remain enrolled and/or on campus.**
 - The college environment should be safe, inclusive, and nondiscriminatory. Where possible, and consistent with the Americans with Disabilities Act, institutions should explore whether a student at risk of self-harm may remain enrolled at the institution, with or without reasonable accommodations.
 - Institutional policies that refer instances of self-harm to the student discipline system, and offer no other channels for accommodation, may be found by OCR to have a discriminatory effect.
- 3. Where separation from the institution is considered, institutions should encourage and prioritize voluntary actions by the student where feasible.**
- 4. OCR looks for institutional policies that are non-discriminatory on their face and that treat similarly-situated disabled and non-disabled students similarly.**
 - A policy that singles out particular mental diagnoses would be problematic.
 - A policy that treats mental health differently from other medical conditions would be problematic.
- 5. Involuntary separations from enrolled status may be utilized as a last resort.**
 - Students must be afforded a fair process to contest an involuntary separation.
 - Involuntary leave policies should be based on the student's particular circumstances rather than a one-size-fits-all or minimum mandatory durations for certain types of leaves; however,

this principle does not prevent the application of general academic policies to all students who take leaves of absence.

6. When responding to a student self-harm situation, colleges and universities should conduct an individualized assessment of the risk of self-harm by the particular student.

- Actions should not be tied to myths, fears, or stereotypes about mental illness.
- Actions should develop from a premise of doing what's right and appropriate for a particular student.
- A one-size-fits-all approach is a potential red flag; instead, institutions should tailor their assessments and actions to individual circumstances.

7. OCR expects institutions to respond to student's risk of self-harm in a reasonable and fair manner.

- A fair process typically should include:
 1. Notice;
 2. Information about the process;
 3. An opportunity to provide information that the student wants to have considered; and
 4. The institution's careful consideration of the information provided by the student, with due weight given to the student's health care providers.
- A fair process calls upon institutions to consider the context in which the information is exchanged, including the seriousness of the crisis the student may be facing.
- Institutions may still take swift action or call on law enforcement in exigent circumstances to detain the student, but the use of law enforcement should not be the only option considered. As with other aspects of the assessment, institutional actions in non-emergency situations should be undertaken only when based on individualized assessments.

8. As part of an individualized assessment, institutions may consider medical and clinical information.

- Input from qualified health providers is relevant to individualized assessments.
- A student's treatment provider should be given an opportunity to provide information and their input given serious consideration.
- Institutional requests for medical information should not be overly broad and should be tailored to whatever information is necessary for qualified personnel to assess the risk of self-harm.
- Medical and clinical information provided to the institution should be reviewed and interpreted by qualified personnel.
- Any actions taken in reliance on medical/clinical information should be reasonably linked to the information gleaned from the medical/clinical information.
- As part of its individualized assessment, an institution may consider the impact of the student's behavior on others in the community.

9. Institutions may impose reasonable, individualized conditions for students returning after a leave of absence.

- Conditions must be individually tailored to a student’s unique circumstances.
- In setting conditions for return, while institutions may consider a uniform set of criteria in all cases (which should be set forth in applicable policy), each individual case must be considered on its merits and facts. Imposition of one-size-fits-all conditions for return from leaves of absence would not be consistent with OCR’s expectation that institutions will always undertake a thoughtful and fair individualized assessment of a student’s unique circumstances.
- Institutions can require medical evaluations from treatment providers in preparing for a student’s return and can require compliance with a medically prescribed treatment plan.
- Institutions may execute individually-tailored behavioral contracts with students upon their return and hold students accountable to the terms of the contract.

Finally, Assistant Secretary Jackson said it would be prudent for colleges and universities to avoid use of the “direct threat to self” terminology and framework, and suggested institutions should focus on generally applicable health and safety requirements and conduct individualized assessment of a student’s risk of self-harm under the principles outlined above.