COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
CASE NO. SJC-12329

DZUNG DUY NGUYEN, as Administrator of
The Estate of HAN DUY NGUYEN
Plaintiff/Appellant

v.

MASSACHUSETTS INSTITUTE OF TECHNOLOGY,
BIRGER WERNERFELT, DRAZEN PRELEC, and
DAVID W. RANDALL,
Defendants/Appellees

ON APPEAL FROM THE MIDDLESEX COUNTY SUPERIOR COURT

BRIEF OF *AMICI CURIAE* AMHERST COLLEGE, BENTLEY UNIVERSITY, BERKLEE COLLEGE OF MUSIC, BOSTON COLLEGE, BOSTON UNIVERSITY, BRANDEIS UNIVERSITY, COLLEGE OF THE HOLY CROSS, EMERSON COLLEGE, ENDICOTT COLLEGE, HARVARD UNIVERSITY, NORTHEASTERN UNIVERSITY, SIMMONS COLLEGE, SMITH COLLEGE, STONEHILL COLLEGE, SUFFOLK UNIVERSITY, TUFTS UNIVERSITY, WILLIAMS COLLEGE, AND WORCESTER POLYTECHNIC INSTITUTE IN SUPPORT OF BRIEF OF DEFENDANTS-APPELLEES

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September 7, 2017 *Counsel for Amici Curiae*

Table of Contents

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST OF THE *AMICI*

Amici Amherst College, Bentley University, Berklee College of Music, Boston College, Boston University, Brandeis University, College of the Holy Cross, Emerson College, Endicott College, Harvard University, Northeastern University, Simmons College, Smith College, Stonehill College, Suffolk University, Tufts University, Williams College, and Worcester Polytechnic Institute (the "*Amici*") submit this Brief in support of defendants Massachusetts Institute of Technology ("MIT") and administrator/faculty members Birger Wernerfelt, Drazen Prelec, and David W. Randall.

Amici are eighteen Massachusetts educational institutions. They range from small, liberal arts colleges in rural areas to large, urban universities. Collectively, they enroll over one hundred thousand undergraduate students and nearly seventy thousand graduate students. Like colleges and universities across the country, *Amici* have experienced increases over the last several years in both the number of students with mental health conditions and the severity of those conditions. To keep up with student need and demand for mental health services, all *Amici*

employ, provide referrals to, or otherwise have access to, psychiatrists and other medical professionals who are trained and licensed to diagnose and treat mental health conditions. The *Amici* also provide, to varying degrees, on-campus mental health services, which range from referral and counseling services to on-campus mental health treatment.

Nevertheless, many of *Amici's* non-clinician employees routinely interact with students who may have mental health conditions. These non-clinician employees include faculty members, deans of students and undergraduate life, deans of residential life, graduate residents, residential assistants, athletic coaches, academic and thesis advisors, and others. The *Amici*'s non-clinician employees are an extremely varied group, with a range of education, training, and expertise covering everything from English literature to coaching basketball. *Amici* provide guidance to their non-clinician employees to help them identify students who may have mental health conditions and refer those students to mental health professionals. In doing so, *Amici* and their non-clinician employees defer — as they must — to the mental health professionals on questions concerning the diagnosis

and treatment of students with mental health conditions.

Amici have serious concerns about Plaintiff's position that under some vague and ill-defined circumstances, universities[1] and their non-clinician employees have, or may have, a legal duty to secure students against self-inflicted harm. *Amici* submit that the duty described for the first time in *Shin v. Mass. Inst. of Tech.* – a case involving a very different set of facts – is contrary to Massachusetts law, is impractical, and does not serve the interests of students. *Amici,* therefore, respectfully request that the Supreme Judicial Court apply to the instant case the well-settled standard that non-clinician third parties have no duty to prevent a person from committing suicide or otherwise harming herself, except in certain limited circumstances not present here, and affirm the Middlesex Superior Court's decision to grant summary judgment for defendants in *Nguyen v. MIT*.

[1] *Amici* use the terms "university" and "universities" hereafter to refer collectively to all institutions of higher education.

SUMMARY OF ARGUMENT

Plaintiff argues that this Court should find that a special relationship exists between universities and their students such that non-clinician employees owe a duty to secure students against self-inflicted harm. The Court should reject Plaintiff's position for several distinct reasons.

First, Plaintiff's position is incompatible with the common law underlying the relationship between universities and students. Courts in Massachusetts and other jurisdictions have determined that there is no special relationship between universities and students such that universities owe a duty to constantly supervise and prevent their students from engaging in self-injurious or risky behavior.

Second, the duty advanced by Plaintiff would require non-clinician employees to take actions that would be contrary to existing state and federal statutory law. Unlike clinicians, non-clinician university employees have no authority under Massachusetts law to restrain or apply for the involuntary hospitalization of students who may commit self-harm. Similarly, if a non-clinician university employee is required to take immediate steps to secure

a student against self-inflicted harm, and does so in a manner that excludes that student from a university program or activity, such actions may expose the university to liability under federal discrimination laws.

Third, unlike clinicians, non-clinicians do not have years of graduate education, clinical training, professional experience, and licensure upon which to base judgments about a student's mental health. Therefore, Plaintiff's position would unreasonably require non-clinician employees to exercise judgment on matters for which they do not have the requisite education, expertise, or training.

Fourth, the imposition of a duty could have a chilling effect on students with mental health conditions and other concerns. If a non-clinician university employee is duty-bound to secure students against self-inflicted harm, she may be incentivized, in an effort to avoid liability, to take the most immediate and most restrictive measures available. Students who witness such conduct may be driven underground for fear of overreaction.

Fifth, the duty advanced by Plaintiff will create a conflict between clinicians and non-clinicians,

which may result in negative health and safety outcomes for students. Unlike clinicians, non-clinician university employees do not have access to student medical records. Without these records, non-clinicians will be unable to determine whether a particular method of securing a student against self-inflicted harm would be consistent with, or interfere with, the treatment plans developed by a student's treating clinicians.

Plaintiff also asks this Court to find that, where a university provides mental health services to students, it has undertaken a voluntary duty to secure students against self-inflicted harm. Plaintiff's position overstates the law. Where a university does not actually provide clinical mental health treatment to a particular student — either because such treatment is not offered, or the student affirmatively rejects such treatment — the university cannot, and should not, be held responsible for an alleged failure to secure that student against self-inflicted harm. Moreover, Plaintiff's position is contrary to public policy and unworkable, as it would expand a university's tort liability well beyond those services that are actually provided to the particular student.

ARGUMENT

I. THIS COURT SHOULD NOT EXPAND MASSACHUSETTS TORT LAW TO CREATE A DUTY THAT REQUIRES NON-CLINICIAN UNIVERSITY EMPLOYEES TO SECURE STUDENTS AGAINST SELF-INFLICTED HARM.

Plaintiff argues that this Court should find that a special relationship exists between universities and their students such that non-clinician employees owe a duty to secure students against self-inflicted harm. Plaintiff's position is incompatible with the common law underlying the relationship between universities and students, and is contrary to existing state and federal statutory law. Furthermore, Plaintiff's position would unreasonably require non-clinician employees to exercise judgment on matters for which they do not have the requisite expertise or training, would discourage students with mental health conditions from coming forward, and could result in negative health and safety outcomes for those students.

A. Imposing a Common Law Duty on Non-Clinician Employees is Incompatible with the Common Law Underlying the Relationship between Universities and Students.

This Court should not expand Massachusetts tort law to impose a duty on non-clinician university employees to secure students against self-inflicted

harm because such a duty is incompatible with the common law underlying the relationship between universities and students. Generally, there is no duty to prevent or protect others from harm caused by themselves or third parties. Cremins v. Clancy, 415 Mass. 289, 296 (1993). Although the existence of a "special relationship" may give rise to a duty to prevent or rescue others from harm, a special relationship only exists where it is reasonably grounded in "existing social values, customs, and considerations of policy." Bash v. Clark Univ., No. 06745A, 2006 WL 4114297, at *4 (Mass. Super. Nov. 20, 2006)(quoting Luoni v. Berube, 431 Mass. 729, 730 (2000)). Courts in Massachusetts and other jurisdictions have determined that there is no special relationship between universities and students such that universities owe a duty to constantly supervise and prevent their students from engaging in self-injurious or risky behavior.

For example, in Bash, supra, a student at Clark University overdosed on heroin in her dorm room. 2006 WL 4114297 at *1. The student's father brought a wrongful death action against the university claiming, in substance, that the university had been negligent

in failing to prevent the overdose. Id. The court (Agnes, J.) determined that there was no special relationship between the university and the student such that the university owed a duty to protect the student from using and overdosing on illicit drugs. Id. at *6. The court, therefore, dismissed the action pursuant to Mass. R. Civ. P. 12(b)(6). Id. at *8

Similarly, in Bradshaw v. Rawlings, 612 F.2d 135 (3d Cir. 1979), the student-plaintiff was a backseat passenger in an automobile driven by a fellow student. 612 F.2d at 137. The driver, who had become intoxicated at a class picnic, crashed the vehicle and caused serious bodily harm to the plaintiff. Id. The "major question" before the Third Circuit was "whether a college may be subject to tort liability for injuries sustained by one of its students involved in an automobile accident when the driver of the car was a fellow student who had become intoxicated at a class picnic." Id. at 136. The Court answered this question in the negative, holding that there was no special relationship that would have required the university to control the conduct of the student-driver. Id. at 141-42; see also Baldwin v. Zoradi, 176 Cal. Rptr. 809 (Cal. Ct. App. 1981) (in a lawsuit

for injuries arising out of a car-racing contest following a drinking party, the court held that there was no special relationship between the university and the student and thus the university had no duty to control the alcoholic intake of its students); Doe v. Emerson Coll., 153 F. Supp. 3d 506, 514 (D. Mass. 2015) (finding no special relationship and thus no duty "to prevent the consumption of alcohol or use of drugs by [plaintiff] or other students").[2]

The holdings in the above cases are rooted in several policy and practical considerations, all of which are applicable here. First, the courts have agreed that universities are no longer *in loco parentis* with respect to their students. See, e.g., Mullins v. Pine Manor Coll., 389 Mass. 47, 52 (1983) (noting "the general decline of the theory that a college stands *in loco parentis* to its students"); Bash, 2006 WL 4114297 at *4 ("The doctrine of *in loco parentis* has no application to the relationship

[2] See also Jain v. State, 617 N.W.2d 293, 295 (Iowa 2000) (finding no special relationship between a university and its student and thus university administrators had no duty to prevent student from committing suicide); Bogust v. Iverson, 10 Wis.2d 129 (1960) (finding that a university professor/dean did not have a duty to prevent a student from committing suicide).

between a modern university and its students.") (citing Bradshaw, 612 F.2d at 139). Rather, students are treated as autonomous adults[3] with privacy interests and expectations protecting them against intrusions by university employees, with only limited exceptions. See, e.g., Bash, 2006 WL 4114297 at *4 (noting that "[s]tudents have insisted upon expanded rights of privacy ….'") (quoting Baldwin, 176 Cal. Rptr. at 816-17); Bradshaw, 612 F.2d at 138-40 (noting "today students vigorously claim the right to define and regulate their own lives").[4] The proposed duty to secure students against self-inflicted harm would require universities to police their students' lives in a way that both students and universities would find a radical shift.

Second, the courts have declined to impose a duty on universities where it is impractical and unrealistic to expect universities to carry out such a

[3] While some students may not have reached age eighteen on matriculation, that number is small and varies from institution to institution. Nevertheless, regardless of their actual age, all *Amici* treat all students as adults, and all students, regardless of their actual age, expect to be treated as adults by their university.

[4] The privacy protections for students set forth in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g ("FERPA"), reflect and reinforce the common law understanding of the relationship between universities and their students.

duty. Bash, 2006 WL 4114297 at *5; see also Emerson Coll., 153 F. Supp. 3d at 514 ("Massachusetts does not impose a legal duty on colleges or administrators to supervise the social activities of adult students" because the imposition of "such an affirmative duty would be impractical and unrealistic"). It is simply not possible for any university to police all student conduct, nor would students accept that kind of surveillance. See Bash, 2006 WL 4114297 at *5. Therefore, this Court should follow the analogous cases cited above and hold that universities do not have a special relationship with students such that they owe a duty to secure students against self-inflicted harm.

B. Imposition of a Duty is Contrary to Massachusetts and Federal Statutory Law.

In addition to being inconsistent with Massachusetts common law, imposing a duty on non-clinician university employees to secure students against self-inflicted harm runs directly counter to existing Massachusetts and federal statutory law.

1. Imposition of a Duty Exposes Universities and their Non-Clinician Employees to the Risk of Liability Under Massachusetts Statutory Law.

The duty Plaintiff asks this Court to impose on non-clinician employees would require such employees to take actions that would be contrary to Massachusetts statutory law. In Massachusetts, the Legislature has determined that only qualified and licensed physicians, psychiatric nurse mental health clinical specialists, psychologists, and clinical social workers (and, in emergencies, police officers) should be empowered to restrain and apply for the involuntary hospitalization of another person. M.G.L. c. 123, § 12(a). A clinician or police officer may only take such action if, "after examining [the] person," the clinician or police officer has reason to believe that "failure to hospitalize [the] person would create a likelihood of serious harm …." Id. The limited scope of Section 12 shows that the Legislature wished to ensure that judgments about persons who are risks to themselves are made by professionals who are specifically trained to recognize the signs of suicidal risk and determine whether hospitalization is necessary. Further, the

Legislature intended for the training needed to make such a judgment to be intensive degree or professional programs that could not possibly be replicated in a university employee orientation or training program.

In addition, recognizing the serious nature and potential consequences of involuntary hospitalization, the Legislature provided that the clinicians and police officers are immune from civil suits that might arise from such involuntary hospitalizations. See M.G.L. c. 123, § 22. Non-clinician university employees would enjoy no such immunity under the law, even if they were trying in good faith to carry out a duty to secure students against self-inflicted harm.

2. Imposition of a Duty Exposes Universities to the Risk of Liability Under Federal Law.

Imposing a duty to secure students against self-inflicted harm also exposes universities to liability under federal statutes. According to the United States Department of Education Office for Civil Rights ("OCR"), before separating a student from campus or excluding the student from a university program or activity, a university must first make an individualized, medical assessment as to that student's fitness for participation. For example,

following an investigation of a complaint filed by a Bluffton University student, OCR concluded that the University was liable under Section 504 of the Rehabilitation Act of 1973[5] because, among other things, it involuntarily withdrew a student who had exhibited suicidal behavior without determining whether she was a "direct threat" to the health and safety of herself or other students.[6] See December 22, 2004 Letter to Bluffton University re: OCR Complaint # 15-04-2042, attached as **Exhibit A**. Specifically, OCR found that Bluffton University failed to consult with medical personnel or to assess the student based on "reasonable medical judgment relying on the most current medical knowledge or the best available objective evidence." Id. at 4-5 (emphases added).

According to OCR, then, if a non-clinician employee takes steps to secure a student against self-inflicted harm, and does so in a way that deprives the

[5] The federal Rehabilitation Act of 1973, 29 U.S.C. § 794, states that "[n]o 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 …." 29 U.S.C. § 794(a).

[6] According to the OCR letter, Bluffton University stated that the student was removed because of a fear that she would attempt suicide again.

student of the right to participate in some program at the university, such conduct may violate Section 504. See also March 6, 2003 Letter to Guilford College re: OCR Complaint #11-02-2003 (similar analysis and result), attached as **Exhibit B.** The duty that Plaintiff advances may require non-clinician university employees to violate the OCR's guidance on this matter. For example, a non-clinician university employee (e.g., a Director of a Study Abroad Program) may learn that a particular student – who is scheduled to participate in a study abroad program - has attempted suicide or is having suicidal ideation. In an attempt to satisfy the duty Plaintiff advances, that employee may decide that it is in the best interests of the student and the general student body for that student not to participate in the study abroad program. If the non-clinician university employee – who is incapable of making an individualized medical assessment of the student – takes such action, then the university may be in violation of Section 504.

The requirement that a university's assessment of a student in a "direct threat" situation be based upon "a reasonable medical judgment relying on the most

current medical knowledge" is consistent with the proper roles of medical professionals. Mental health professionals and trained clinicians are equipped to evaluate the sincerity and gravity of a particular student's suicidal expression; that is, they are capable of making diagnoses. The Plaintiff's legal theory would force non-clinician employees – i.e., lay people – to make judgments about whether a student poses a "direct threat" — judgments that OCR has properly concluded rest with trained clinicians.

Furthermore, in 2011, the Department of Justice issued regulations with a more restrictive definition of "direct threat" for purposes of Title III of the Americans with Disabilities Act ("ADA") (which has been interpreted harmoniously with the Rehabilitation Act and applies to private universities).[7] This regulation suggests that a public accommodation may bar an individual from participating in or benefiting from that accommodation if she is a "direct threat," but the threat must be against the health or safety of others. OCR has suggested that the risk of self harm may still form the basis of a university's removal

[7] 28 C.F.R. § 36.208.

decision. See Jan. 18, 2013 Letter to Princeton University re: OCR Complaint No. 02-12-2155, attached as **Exhibit C** (no violation of federal discrimination laws where university conducted individualized risk assessment that included medical recommendations from two clinicians from the university who evaluated the student and believed he was a "danger to himself" with a "very high risk of another [suicide attempt]") (emphases added). However, universities that exclude students from programs or activities due to judgments of non-clinicians that the students are at risk of self-inflicted harm may face exposure under Section 36.208. Imposition of the duty Plaintiff advances would produce such exposure. The Court should avoid this result.

C. Imposing a Duty Will Unreasonably Require Non-Clinician Employees to Exercise Judgment on Matters for Which They Do Not Have the Requisite Expertise.

Imposing a duty on non-clinician employees – who lack the education, training, and experience in assessing and treating mental health conditions – may result in non-clinicians taking actions that are contrary to or interfere with the treatment plans

appropriately established by the students' clinicians, risking harm to those students.

Clinicians have years of specialized, graduate education, clinical training, professional experience, and licensure upon which to base judgments about a student's mental health. Based on this education, training, and experience, clinicians are able to formulate differential diagnoses and treatment plans that are tailored specifically to each individual. Non-clinicians have no such education, clinical training, professional experience, or licensure upon which to base judgments about a student's mental health. Moreover, a university cannot reasonably provide this education, training, and professional experience to all of the non-clinician employees who could find themselves in contact with students with mental health conditions. Non-clinicians are not able, and should not be required, to identify the health and other issues troubling a student, or to develop a plan of action to address those issues.[8]

[8] Indeed, it would be perverse and contrary to Legislative and public policy to permit, let alone require, non-clinicians to perform work for which the Commonwealth requires mental health professionals to be licensed. See M.G.L. c. 112, § 2 (physician); M.G.L. c. 112, § 80B

If this Court imposes the duty Plaintiff seeks to impose, non-clinician employees will be duty-bound to make uninformed, untrained, and unlicensed subjective determinations not only as to whether a student is at risk, but also as to the extent of the risk that the student will harm herself. A non-clinician who knows she is duty-bound to secure a student against self-inflicted harm but lacks the requisite training, experience, and licensure will inevitably err on the side of caution and take more intrusive steps than a clinician would recommend. That more intrusive step might actually be more harmful to the student and could expose the non-clinician employee to liability under a number of tort theories (e.g., battery and false imprisonment). Additionally, a non-clinician employee, out of fear of liability, might feel pressure to contact the student's family prematurely, which would be inconsistent with the student's privacy interests and expectations. This Court should decline to impose a duty on non-clinician employees that would

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(qualified psychiatric nurse mental health clinical specialist); M.G.L. c. 112, §§ 118-129 (psychologist); M.G.L. c. 112, §§ 130-137 (licensed independent clinical social worker).

incentivize a more aggressive, and potentially more harmful, approach to caring for students.

D. Imposing a Duty Will Discourage Students from Coming Forward for Assistance with Mental Health Conditions.

Imposing a duty on non-clinician employees to secure students against self-inflicted harm may also have an unintended adverse impact on such students. Students may be unwilling to come forward and confide in non-clinician employees if they witness employees erring on the side of caution and taking the most restrictive options available to them. Moreover, this chilling effect would not be limited to those students in immediate risk of self-inflicted harm. Any student who expresses mental illness, homesickness, loneliness, or any other negative emotion may be apprehensive about sharing those feelings with non-clinician university employees. *Amici* function best and provide the best educational experiences when they can take a holistic approach to student development and provide support services to students who require them. If students are driven underground for fear of

overreaction, it may hamper their academic, social, and emotional development.[9]

E. Imposing a Duty Will Create a Conflict Between Non-Clinician Employees and Clinicians.

The duty that Plaintiff asks this Court to impose on non-clinician employees may result in non-clinicians taking steps in an effort to help students that actually conflict with clinicians' medical treatment plans for the students. That is because the non-clinician's judgments regarding students in treatment will be made without any knowledge or informed understanding of that treatment or the students' mental health history.

Whether a student is treated on campus or off, non-clinician employees do not have access to the same information as clinicians. Because of the privacy protections under the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-6, a non-clinician would not have access to a student's treatment records from treatment prior to attending

[9] *Amici* are also concerned that the imposition of this new duty, and the resultant increase in expectations and responsibilities, will make it more difficult to attract and retain the non-clinician employees whose work is essential to all aspects of campus life. This unintended chilling effect will be harmful to the entire community.

the university or from treatment by a mental health professional unaffiliated with the university. Even if the student were receiving treatment from a university-affiliated mental health professional, under FERPA the non-clinician would not have access to those treatment records. See 20 U.S.C. § 1232g(a)(4)(B)(iv). Thus, the non-clinician would be forced to make determinations regarding the student's mental health without knowledge of the vital information contained in the student's treatment records.

Amici recognize that student suicide is a problem on university campuses and are committed to helping students who express suicidal behavior or ideation. When a student expresses such behavior or ideation, the university's focus is on providing support and creating the safest possible outcome for the student. Accordingly, all *Amici* have in place support systems designed to identify and assist students who exhibit suicidal behavior or ideation. *Amici* are concerned, however, that imposing a duty on non-clinician employees to secure students against self-inflicted harm would create confusion and blur the distinction – heretofore clear – between the respective roles of

clinicians and non-clinician employees. Clinicians, by definition, are responsible for providing mental health treatment to students. Non-clinicians are responsible for and focused on advancing students' educational, personal, and social growth. *Amici* are concerned that blurring these roles would potentially disrupt the evaluation and treatment systems on their campuses.

Amici urge this Court to recognize that judgments about students' mental health diagnoses and treatment plans should be left to the clinicians who have the requisite education, training, and licensure to diagnose a student and to establish an appropriate treatment plan based on treatment records and medical history.

II. THIS COURT SHOULD NOT RECOGNIZE A "VOLUNTARILY ASSUMED" DUTY TO PREVENT STUDENT SUICIDE SIMPLY BECAUSE UNIVERSITIES PROVIDE CERTAIN MENTAL HEALTH SERVICES.

Plaintiff contends, in essence, that if a university provides certain services for students with mental health conditions, it voluntarily undertakes an obligation to prevent students from committing suicide. This Court should not recognize and impose this far-reaching duty.

A. The Duty Advanced By Plaintiff is Inconsistent with Massachusetts Common Law.

This Court articulated the standard for identifying the existence of a voluntary duty of reasonable care in Mullins, supra. This Court stated that "the mere fact that [a university] voluntarily undertake[s] to render a service is not sufficient to impose a duty. It must also be shown that either (a) the failure to exercise due care increased the risk of harm, or (b) the harm is suffered because of the students' reliance on the undertaking." Mullins, 389 Mass. at 53-54.[10]

To determine whether an actor failed to comply with a duty of care voluntarily assumed, one must first determine the scope of the services voluntarily provided. Davis v. Westwood Group, 420 Mass. 739, 746-47 (1995). An actor is not liable for an alleged failure to provide services that it did not actually promise or undertake to provide. See id. (finding that defendant who hired an officer to direct

[10] Plaintiff does not contend that the provision of any mental health services increased Han's risk of suicide. Instead, Plaintiff appears to contend that, even though Han repeatedly rejected any assistance from MIT Mental Health or S3, a duty of care should nevertheless be imposed upon Defendants because Han "relied on their efforts to his detriment." Plaintiff's Brief at 45.

pedestrians across a state highway did not thereby undertake a broader duty to provide safe pedestrian passage by any other means (such as installation of a traffic light or construction of a pedestrian bridge)). Therefore, the mere fact that a university offers mental health services does not mean that it has undertaken a broader affirmative duty to prevent student suicide.

The scope of the duty actually undertaken will depend on the specific circumstances of the student-university relationship and, in large part, on whether the services provided are clinical or non-clinical. As noted above, all of the *Amici* provide, to varying degrees, certain services to students with mental health conditions. Some of the *Amici* provide only referral and non-clinical counseling services. Other *Amici* provide actual medical treatment through licensed on-campus psychiatrists and psychologists. No two *Amici* provide identical mental health services to their respective students.

There is, therefore, no legal or factual basis for the broad, uniform legal duty that Plaintiff asks this Court to impose. Instead, where a university does not actually provide clinical mental health

treatment to a particular student, and particularly when a student rejects such treatment, the university cannot, and should not, be held responsible for an alleged failure to prevent that student from committing suicide. The imposition of such a duty would expand the university's potential tort liability well beyond those services that are actually provided to the student.

Similarly, even if a university voluntarily provides clinical mental health or other suicide prevention services, any legal duty that arises from those services must be temporally limited. Universities do not provide mental health services to all students indefinitely. Rather, they only provide such services where the student actually requests and accepts the services offered. A university does not have the authority to force its students to accept the mental health services that the university provides. A university could not mandate that a student see a particular university clinician or, for example, engage in a particular type of psychotherapy recommended by the university clinician. Similarly, if a student initially uses a university's mental health services, but then rejects those services, a

university will not, and cannot, demand that the student continue to use the services.

As noted above, the student-university relationship has evolved such that students have and expect greater privacy and autonomy. This is especially true of students enrolled in graduate degree programs and professional schools. Accordingly, where a student rejects the mental health services provided by a university, the university should not be held responsible for an alleged "failure" to provide the rejected services. A student who declines the mental health services provided by a university cannot fairly claim that she "relied" on those services to her detriment.

B. The Duty Advanced by Plaintiff is Contrary to Public Policy.

Furthermore, the duty advanced by Plaintiff is incompatible with public policy, as it would prove unworkable and result in unwanted and unacceptable intrusions into student life. For example, if the Court were to endorse Plaintiff's theory, then a university would have a "voluntarily assumed" duty to secure students against self-inflicted harm each and every time a student visited a university office that

offered any type of service relating to mental health. This duty would exist regardless of whether the office was staffed by clinicians or non-clinicians. This duty would also exist regardless of whether the student visiting the office was at immediate risk of self-harm, or was simply seeking assistance with homesickness or loneliness. And, as Plaintiff seems to suggest, this duty would exist even if the student rejected the services and was obtaining private medical treatment outside the university. Imposing this rigid, one-size-fits-all duty would require non-clinician employees to take overbroad, potentially intrusive steps to force mental health services (or other drastic measures) on students who do not want or need them. No public policy would be served by imposing this duty on universities and their non-clinician employees. This Court should not endorse Plaintiff's view of the law.

CONCLUSION

For the above reasons, *Amici* respectfully submit that this Court should affirm the Superior Court's grant of summary judgment for defendants MIT, Birger Wernerfelt, Drazen Prelec, and David W. Randall.

Respectfully submitted,

AMHERST COLLEGE, BENTLEY UNIVERSITY, BERKLEE COLLEGE OF MUSIC, BOSTON COLLEGE, BOSTON UNIVERSITY, BRANDEIS UNIVERSITY, COLLEGE OF THE HOLY CROSS, EMERSON COLLEGE, ENDICOTT COLLEGE, HARVARD UNIVERSITY, NORTHEASTERN UNIVERSITY, SIMMONS COLLEGE, SMITH COLLEGE, STONEHILL COLLEGE, SUFFOLK UNIVERSITY, TUFTS UNIVERSITY, WILLIAMS COLLEGE, AND WORCESTER POLYTECHNIC INSTITUTE

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RULE 16(k) CERTIFICATION

Pursuant to Rule 16(k), Massachusetts Rule of Appellate Procedure, I hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including without limitation Mass. R. App. P. 16(g), Mass. R. App. P. 16(h), Mass. R. App. P. 17, Mass. R. App. P. 19(b), and Mass. R. App. P. 20.

Alan D. Rose

CERTIFICATE OF SERVICE

I, Alan D. Rose, hereby certify under penalties of perjury that on September 7, 2017, two copies of the foregoing document were served upon counsel for all parties, listed below, by first-class mail, postage prepaid:

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Alan D. Rose

Exhibit A

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
600 SUPERIOR AVENUE EAST, SUITE 750
CLEVELAND, OHIO 44114-2611

DEC 2 2 2004

Dr. Lee Snyder
President
Bluffton University
1 University Drive
Bluffton, Ohio 458172104

Re: OCR Complaint #15-04-2042

Dear Dr. Snyder.

This letter is to advise you of the disposition of the above -referenced complaint, which was received by the U.S. Department of Education, Office for Civil. Rights (OCR), on July 2, 2004. The complaint alleged that Bluffton University (formerly known as Bluffton College) excluded a student from participation in its academic program on the basis of disability. Specifically, the complaint alleged that the University demanded that the Student either withdraw immediately or be indefinitely suspended after her attempted suicide in spring of 2004, and refused to reconsider this decision subsequent to receiving information about the Student's disability (bipolar disorder).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of Federal financial assistance from the U.S. Department of Education. The University is a recipient of Federal financial assistance from the Department. OCR, therefore, has jurisdiction over this complaint.

In making a determination on this complaint, OCR interviewed the Complainant the Student, the Student's mother, and the University official with direct knowledge of the case. In addition, OCR reviewed documentation provided by the Complainant and the University related to the allegation. Based on a careful analysis of this information, OCR determined that the University's actions in this situation did not comply with, the requirements of the Section 504 regulation. However, the University has agreed to take action to resolve the compliance issues raised during this investigation. The basis for OCR's determination is discussed below.

Background and Findings of Fact

The Student entered the University as a freshman at the end of August 2003. In the spring of 2004, while in her dormitory room, the Student cut herself and took an overdose of pills in an apparent suicide attempt. The Student was hospitalized for approximately one week, during which time she was diagnosed for the first time with bipolar disorder. During her hospitalization she worked with mental health professionals who agreed that it would be beneficial to the Student to return to her studies upon her discharge.

Three days after the Student's suicide attempt, a University official (Official) spoke with the Student's mother and told her that the Student was being immediately withdrawn from the University. The Official told OCR that, in consultation with you, he made this decision based on the serious nature of the incident. In a letter to the Student dated five days after the suicide attempt, the Official stated that, "because of the behavior [the Student] exhibited," she was expected to immediately withdraw from the University and would be permitted on campus only to pick up her belongings. The letter stated that if the Student did not withdraw, the University would have no choice but to suspend her. The letter stated that it was in her best interest and that of the University that she leave the University and "receive the kind of professional help" not available at the school. Finally, the letter stated that if the Student wanted to return to the University, she would have to apply for readmission and submit information provided by "the appropriate counselors and/or doctors that [she is] fully capable of functioning as a student." In closing the letter, the Official again encouraged the Student to seek professional help. The Official did not contact any of the Student's treating physicians or counselors before sending this letter, nor did he contact the Student. He also did not review any of the Student's medical or counseling records in making this decision.

OCR's investigation revealed that the Student did not consent to the withdrawal and did not submit or sign any forms or statements suggesting her intent to withdraw from. the University. There were no withdrawal papers in her student file. The only record the University could produce regarding the Student's withdrawal was an email from the Official to employees in the Registrar's office stating that the Student had been withdrawn from the University effective the date of his letter to the Student.

Approximately one week after the Official sent the withdrawal letter to the Student, the Student's mental health counselor, a licensed social worker, sent a letter to the Official that stated that the Student was now able to cope with her mental illness and that she was no longer suicidal. The letter discussed the treatment anticipated. for the Student and informed the University that the counselor had encouraged the Student to resume her studies and get back to her routine. The University made no attempt to contact the counselor after receipt of that letter and did not rescind its decision to withdraw the Student. The counselor also telephoned the Official shortly after her letter to discuss the Student's condition and anticipated treatment and to ask him to reconsider his decision. The Official told OCR that he refused to reconsider the decision and that he could not recall whether be had explained to the counselor what type of documentation the Student would need to submit to be able to return to the University. The Official stated to OCR that he was concerned that the Student would attempt suicide again.

That same week, the Student and her mother met with the Official and requested permission for the Student to return to the University immediately to finish the semester, which request the Official denied. The Official told OCR that, should the Student reapply to the University in the future, she would have to submit documentation from a medical professional indicating a diagnosis, treatment plan, and prognosis. He told OCR that he did not accept the information that the Student's mental health counselor, the

Student, and her mother had provided but could not recall whether he explained to the Student or her mother what information would be sufficient or necessary for her to return.

Following this meeting, the Complainant wrote several letters to the Official on the Student's behalf wherein she asserted that the University's actions in involuntarily withdrawing, the Student constituted disability discrimination. The University's response to the first letter was a one-paragraph letter stating that the Student's withdrawal was considered to be an emergency withdrawal and that she received a full refund of her tuition for the semester. The University responded to a second letter from the Complainant by following up on the tuition refund and thanking the Complainant for sending information on the law concerning direct threat. OCR found that the University neither took any action to address the Complainant's allegations that the actions taken by the University regarding the Student were discriminatory nor to advise the Complainant how to file a formal grievance. OCR's review of the University's Student Handbook revealed that it does not identify, by name or title, a responsible employee to coordinate its efforts to comply with Section 504 regulations and does not set forth any grievance procedures providing for the prompt and equitable resolution of disability discrimination complaints. The Official confirmed that the University has no specific grievance procedures for Section 504 complaints.

There is no provision in the Student Handbook, or in any of the documentation the University provided to OCR, that defines, describes, or mentions an emergency withdrawal or related procedures. The Student Handbook does set forth a judicial process for when a person is accused of violating an academic standard or violating the Honor System, giving students the right to a 72 hour notice of a charge and hearing and, if necessary, an appeal. However, the University did not give the Student the opportunity to use this process to appeal her withdrawal.

The Official could not recall for OCR any other instance where a student was required to withdraw from the University. Records the University provided for the 2002-2003 and 2003-2004 academic years show that there were no emergency withdrawals or involuntary withdrawals for the 2002-2003 or 2003-2004 academic years. The Official did recall that a student who was seriously physically injured in an accident was once withdrawn from the University by her parent. This student was not required by the University to submit medical records, a treatment plan, or a prognosis upon her return The Official could recall only one other instance where the University imposed the same requirements for return that were made for the Student's return. In that case, a student working at the University over the summer of 2003 began to exhibit what the Official deemed to be symptoms of mental illness and was asked to leave. That student was not allowed to return until he provided the University with documentation showing a diagnosis, a treatment plan, and a prognosis.

In addition, during the course of this investigation, OCR found that the University's policy concerning requests for modifications and accommodations for students with disabilities only applies on its face to students with learning disabilities. The Faculty Handbook does provide a more general definition of eligibility for disability services, but

this is not distributed to students at the University. The policy found in the Student Handbook also does not specify the documentation that must be submitted to provide notice of a disability, nor to whom it must be submitted or when.

Applicable Regulatory Standards

Pursuant to the Section 504 implementing regulation, at 34 C.F.R. § 104.3(j)(1), an individual with a disability is any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an unpairment. Under 34 C.F.R. § 104.3(j)(2)(i)(b), a physical or mental impairment includes any mental or psychological disorder, such as mental illness. Under 34 C.F.R. § 104.3(k)(3), a qualified individual with a disability, with respect to post-secondary education, is one who meets the academic and technical standards requisite to participation in the recipient's education program. 34 C.F.R. § 104.3(j)(2)(iv) states that a person regarded as having a disability is a person who does not have a physical or mental impairment that substantially limits a major life activity but who is treated by others as having such a limitation. Further, pursuant to 34 C.F.R. § 104.43, no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any postsecondary education program or activity.

OCR policy holds that nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a "direct threat" to the health and safety of self or others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity. Howevcr, recipients must take steps to ensure that disciplinary and other adverse actions against persons posing a direct threat are not a pretext or excuse for discrimination.

To rise to the level of a direct threat, there must be a high probatility of substantial harm and not just a slightly increased, speculative, or remote risk. In a direct threat situation, a college needs to make an individualized and objective assessment of the student's ability to safely participate in the college's program, based on a reasonable medical judgment relying on the most current medical knowledge or the best available objective evidence. The assessment must determine; the nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk. Due process requires a college to adhere to procedures to ensure that students with disabilities are not subject to adverse action on the basis of unfounded fear, prejudice, or stereotypes. A nondiscriminatory belief will be based on a student's observed conduct, actions, and statements, not merely knowledge or belief that the student is an individual with a disability. In exceptional circumstances, such as situations where safety is of immediate concem, a college may take interim steps pending a final decision regarding adverse action against a student as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided in the interim and full due process (including a hearing and the right to appeal) is offered later.

Finally, the Section 504 regulation, at 34 C.F.R. § 104.7 requires recipients with fifteen or more employees to designate a responsible employee to coordinate Section 504 compliance efforts and to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of Section 504 complaints. The regulation, at 34 C.F.R. § 104.44(a), also requires postsecondary institutions to make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability.

Analysis

The Student was admitted to the University and, therefore, is qualified within the meaning of Section 504. The evidence supports that, although the Student had not been diagnosed as having bipolar disorder at the time she was involuntarily withdrawn, the University regarded her as having a mental disability that was substantially limiting. The University withdrew the Student following her suicide attempt because of its perception that she was mentally ill and incapable of functioning as a student, as evidenced by the letter the Official sent to the Student and OCR's interview of the Official concerning his decision. The University required the Student to submit evidence from a medical professional of her diagnosis, a treatment plan, and her prognosis before she would be eligible to reapply. This requirement has only been imposed on one other student at the University, a student who the same Official also regarded as mentally ill. Moreover, when the Student was seeking to return to the University, she advised the University that she was diagnosed as having bipolar disorder, and the University does not dispute that the Student has a disability. Thus, OCR finds that the Student is a qualified individual with a disability under Section 504.

In withdrawing the Student from the University, the University did not afford the Student due process. Despite being notified of the Student's disability and receiving documentation and information concerning her ability to return to school from the counselor, the Student, and the Student's mother, the Official refused to reconsider the withdrawal decision. The Official could not recall whether he explained to the Student and her mother the documentation required for the Student to return. The evidence shows that the Official failed to consider the information about the Student's condition that was presented, did not explain what was insufficient about the submitted information to the Student and her another, and would not allow the Student to return to school that semester.

The University did not specifically state that the Student posed a direct threat to herself or others as its reason for withdrawing the Student. OCR examined this possible defense, however, because the University stated that the Student was removed because of a fear that she would attempt suicide again. OCR found that the evidence does not support a defense based on direct threat. The University did not consult with medical personnel, examine objective evidence, ascertain the nature, duration and severity of the risk to the student or other students, or consider mitigating the risk of injury to the Student or other

students. The University made the decision without providing the Student notice of a hearing or an opportunity to be heard. Rather, the evidence showed that the University made a determination to withdraw the Student within forty-eight hours of her attempted suicide based on a conversation between the Official and you.

Finally, the University does not have any formal Section 504 grievance procedures addressing Section 504 grievances and, therefore, did not address the Complainant's disability discrimination allegations against the University. The University's policies also do not designate a specific Section 504 Coordinator as required by Section 504. In addition, the University's limited policies on students with disabilities only include learning disabilities and do not provide information for a student to be able to determine how to notify the University of a disability or need for academic adjustments or auxiliary *aids and services.*

Commitment to Resolve

On December 15, 2004, the University agreed to implement the enclosed agreement to resolve the compliance issues identified during our investigation. Pursuant to the agreement, the University will reimburse the Student for any room fees and books for spring semester 2004 that have not already been returned to her, develop a written policy establishing reasonable emergency removal and return conditions consistent with the direct threat standards explained above; develop policies and procedures that comply with Section 504 for the participation of students with disabilities in the University's programs and for the provision of necessary academic adjustments and auxiliary aids and services to students with disabilities; and develop grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging disability discrimination. OCR will monitor the implementation of the agreement.

Based on the above, we are closing this complaint as of the date of this letter. OCR appreciates the courtesy and cooperatiou shown by your staff and counsel during the investigation and resolution of this complaint. We look forward to receiving your first monitoring report, which is due February 7, 2005. If you have any questions or concerns about the resolution of this complaint, please contact Ms. Ann Millette at (216) 522-2679 or by email at ann.millette@e d.gov.

Sincerely,

Rhonda Bowman
Team Leader, Cleveland Office
Midwestern Division

Enclosure

cc: Ms. Doreen Canton, Esq.

EXHIBIT B

March 6, 2003

By Facsimile and U.S. Postal Service, Return Receipt Requested

Kent Chabotar, President
Guilford College
5800 West Friendly Avenue
Greensboro, North Carolina 27410

RE: OCR Complaint #11-02-2003

Dear Dr. Chabotar:

This letter is to advise you of the determination reached on the above-referenced complaint that was filed on November 20, 2001, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department) against Guilford College (the College). The complaint was filed by xxxx (the Complainant), who alleged that the College discriminated against her on the basis of her disability (emotional disability). Specifically, the Complainant alleged that because of manifestations of her disability, she was involuntarily withdrawn from the College. The Complainant further alleged that the College failed to provide her with due process when it involuntarily withdrew her. The Complainant also alleged that the counseling services provided to her by the College for her disability were inadequate.

OCR conducted a complaint investigation under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability. The College is a recipient of financial assistance from the Department, and, therefore, must comply with the laws enforced by OCR.

The regulation implementing Section 504 states the following:

- § 104.3(j)(1): An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

- § 104.3(j)(2)(i)(B): A physical or mental impairment includes any mental or psychological disorder, such as mental illness.

- § 104.3(k)(3): A qualified individual with a disability, with respect to postsecondary education and vocational education services, is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.

- § 104.4(a): No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

- § 104.7: Recipients with 15 or more employees must designate at least one person to coordinate compliance with Section 504 and must adopt grievance procedures that incorporate appropriate due process standards and provide prompt and equitable resolution of disability-based complaints.

- § 104.43: No qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity.

In reaching our determinations, OCR reviewed the complaint and additional documents and testimony provided by the College, the Complainant, and other sources. Our determinations follow.

Involuntary Withdrawal

The Complainant alleged that the College discriminated against her on the basis of disability when it involuntarily withdrew her because of the self-injury manifestations of her emotional disability and failed to provide her with due process.

Background

The Complainant claims that she has an emotional disability (post-traumatic stress/ dissociative disorder) and that, as a result, she engaged in self-injurious behavior. She stated that, in order to prevent exacerbation of her disability, she had been advised to avoid stress in her life, and, because she believed that her parents were a major source of stress to her, she had broken all ties with her parents and had had her grandmother appointed as her legal guardian while she was in her last year of high school.

The Complainant entered the College as a freshman student at the end of August 2001. On the College health form completed by the Complainant's physician on August 15, 2001, the physician indicated that the Complainant was under treatment for depression/anxiety. The Complainant also indicated on the form that her academic career had been interrupted due to physical or emotional problems and that she had been an in- and out-patient for treatment of depression and sleep problems in March and April 2001.

After the Complainant arrived on campus in August, she discovered that the College had acquired her parents' mailing address from her financial aid information and invited them to visit the College during Parents' Weekend on September 21, 2001. When the Complainant informed the College that she did not want her parents there because she had been removed from her parents' custody, the College apologized for the mistake and promised to immediately correct all administrative records. An electronic mail message dated August 29, 2001, to the Complainant from the Assistant Director of Enrollment informed the Complainant that her parents' address had been removed from the mail flow by the computer staff. However, the Complainant stated that administrators at the College told her that they could not correct the Parents' Weekend invitation and that her parents would be visiting for the weekend of September 21. The Complainant asserted that the College's invitation to her parents to visit during Parents' Weekend caused her undue mental strain and exacerbated her disability, which led to her having two depersonalization episodes involving self-injury over the subsequent few weeks.

The Complainant had first learned about the College's Counseling Center from the College's Student Health Center before she arrived on campus. Once at the College, the Complainant sought out the Counseling Center's services. The Complainant filled out a form entitled *Guilford College Center for Personal Growth Confidential Information Form* when she went for her first counseling session on August 30, 2001. In the section on the form where the client is asked to "explain the main concern that brings you to the counseling center," the Complainant indicated post-traumatic stress with depersonalization and night trauma, nightmares, and occasional insomnia. The Complainant also indicated on the form that she was extremely concerned about family problems and problems with sleep and was very bothered by past events.

During her first counseling session with the College's Director of Counseling Services (Director), who is a therapist/licensed clinical social worker, the Complainant informed the Director that she had post-traumatic stress disorder with certain side effects such as anorexia, bulimia, insomnia, nightmares, night traumas, repression, self-injury, social anxiety, and suppression and that she was taking medications for depression and problems with sleeping. The Director suggested a therapeutic technique called Eye Movement Desensitization and Reprocessing (EMDR) to treat her post-traumatic stress disorder and lent her a book about the technique. The Director told OCR in his telephone interview that he did not consider the Complainant's post-traumatic stress disorder to be a disability at the time of their first session because of the way in which she presented herself and because she did not ask for any reasonable modifications.

On August 31, 2001, the Complainant went to the College's Student Health Center for prescription refills for anxiety and depression medications. The physician's notes indicated that the Complainant reported she had a past history of anxiety, depression, and eating disorders, but no suicidal ideations. The physician refilled the Complainant's prescriptions and instructed her to return within one month.

The Complainant had her second counseling session with the Director on September 6, 2001. The Director's notes of the session reflect that the Complainant "is a cutter and has borderline tendencies" and "has projections to parents," and that she depersonalizes but likes the College. The Complainant stated to OCR that she told the Director that her parents' upcoming visit for Parents' Weekend was causing her stress.

During the weekend of September 8, 2001, while in her dormitory at the College, the Complainant had a depersonalization episode and cut herself. Another student took the Complainant to the emergency room of a nearby hospital, where medical staff taped up her cuts. Upon her release, the emergency room's attending physician notified the College's Director of Counseling Services that the Complainant had been seen in the emergency room. The Director was notified because he is listed as one of the College's contact persons. Because he was not on-call, he contacted the Dean of Student Life, Mona Olds, to ask what he should do. After talking with Dean Olds, the Director went to the hospital to pick up the Complainant and another student who was with her. According to the Director, the Complainant "appeared to be doing well" and agreed to see him on September 10, but her appointment was later changed to September 13. On September 13, the Complainant returned the EMDR book to the Director but told him that she did not want to meet with him anymore because she was looking for another therapist.

OCR learned that, after the Complainant's first hospital visit following the September 8 cutting incident, the Director informed Dean Olds that the Complainant should be watched and that, if another incident did occur, the College should consider placing the Complainant on a medical withdrawal. The Director's notes and interview also revealed that he met with Dean Olds and the Director of Residential Life on September 14 to tell them about the Complainant's cutting situation, although he told them that she was not suicidal.

The Director's notes indicate that on September 15, 2001, he received a call from Campus Security reporting that the Complainant had cut herself again, but he directed Security to Dean Olds because the Complainant was not comfortable with him. Apparently this cutting was not severe enough to require medical treatment, and others in the Complainant's dormitory and Security checked up on her over the next few hours as she slept.

On the morning of September 17, 2001, the Director again talked with Dean Olds and concluded that the Complainant needed a medical leave for the semester because the Complainant had cut herself again and the Director had met with another student who was upset about the Complainant's cutting. That same day, Dean Olds called the Complainant's grandmother, who had been her legal guardian before she turned 18, to inform her that the Complainant would be placed on medical withdrawal from the College and would need assistance in getting home. The grandmother told OCR that

Dean Olds was agitated when she called and demanded that she "just come and get [the Complainant] out of here." Because the grandmother was very sick at the time, she could not go to campus to assist the Complainant, so she provided Dean Olds with the parents' telephone number. Dean Olds called the Complainant's parents shortly thereafter and asked them to come remove the Complainant from campus.

On the night of September 17, 2001, the Complainant had another depersonalization episode and again cut herself while in her dormitory. Another student took the Complainant to the local hospital, where doctors stitched up her cuts and then involuntarily committed her for evaluation because of her multiple "parasuicidal" cuttings. On September 18, the Complainant was transferred to a psychiatric hospital, where she was put on intermediate-level suicide precautions, but within a few hours staff determined that she was not suicidal and took her off suicide precautions. On September 19, the Complainant met with the resident psychiatrist and a social worker and developed a treatment plan, which included continuing her anxiety medication, attending support group meetings, making follow-up appointments at the community mental health center, and setting up an emergency contact for when she felt an urge to cut herself. The Complainant was released from the psychiatric hospital that day on a 60-day outpatient commitment, and she returned to the College with a letter excusing her absences.

When the Complainant arrived back on campus on September 19, 2001, she had time to send an electronic mail message to faculty members saying that she would be back in class the next day and would make up any missed class work. However, the Residential Life Coordinator found her later that day on campus and informed her that the College was placing her on medical leave, she had to leave campus immediately, and her parents had been contacted and had come to pick her up.

Although the College says that it was involuntarily withdrawing the Complainant for medical reasons, it completed a *Petition for Withdrawal or Leave of Absence* form (Petition), which the College uses when a student voluntarily withdraws or requests a leave of absence, for the Complainant. The form is intended to be filled out by the student, but the signature line of the Petition filled out for the Complainant shows that it had been signed "per [Dean] Olds" on September 19, 2001, to be effective that same day, and there is no evidence or testimony that the Complainant ever saw the Petition before her parents took her from campus. Further down the Petition, under "Special Conditions before Readmitting," it specifies that the Complainant would need "supporting documentation from therapist and approval of Director of Counseling."

On September 24, 2001, after leaving the College as instructed, the Complainant sent a note by electronic mail to Dean Olds indicating that she wanted to appeal the decision to dismiss her from the College. The Complainant attached a notice of appeal statement and an outline of her reasons for the appeal. She requested a statement of the reasons for the

removal decision, a hearing with an opportunity to present evidence, a review of the decision by the appeal board, and immediate reinstatement to the residence hall and classes pending the appeal. As one of her reasons, the Complainant raised her emotional disability and a lack of reasonable modifications. In response, Dean Olds replied to the Complainant by electronic mail on September 25 to clarify that she had been withdrawn from the College for medical reasons, not dismissed, and that she was eligible to reapply as early as the next semester as long as she had supporting documentation. Dean Olds explained that her decision to withdraw the Complainant for medical reasons was based on the strong recommendation of the College's Director of Counseling Services. In a postal letter to the Complainant dated October 1, 2001, Dean Olds repeated her explanation and then provided further details on the reasons for the withdrawal, including two cutting incidents within a short period of time that resulted in hospital visits and other students who were concerned about the Complainant and who feared that the cutting behavior might become worse. The letter also informed the Complainant that she could request a review of the decision by submitting her concerns in writing to the Associate Academic Dean, James Hood.

On October 4, 2001, the Director of Counseling Services received a telephone call from the Complainant's former psychologist. The Director explained to the psychologist the reason the Complainant was placed on medical leave, and the psychologist indicated that he would share the information with the Complainant.

On October 12, 2001, the Complainant sent a letter to Dean Hood via electronic mail requesting his review of the College's decision to withdraw her from enrollment, a reversal of the decision, and reinstatement. She also attached her outline of reasons for the appeal. In addition, she sent a memorandum to Dean Hood on October 22 that detailed the events leading up to her withdrawal. Dean Hood responded to the Complainant in a one-page letter dated November 7, 2001, in which he informed the Complainant that he had talked with the College personnel she mentioned in her materials and had reviewed written documentation regarding her admission and medical withdrawal. It was Dean Hood's judgment that Dean Olds acted appropriately in making the decision to withdraw the Complainant on medical grounds for the reasons explained in her October 1 letter. Dean Hood stated that Dean Olds' decision was made on the basis of a clinical determination that was clearly warranted. Because the Complainant remained eligible to reapply for admission as early as the next semester, Dean Hood would not comment specifically on the summary she included with her request for review, although he pointed out some factual discrepancies in her account. The letter concluded with a reminder that if the Complainant wished to apply for readmission to the College, she would need to provide supporting documentation from a therapist and have approval from the College's Director of Counseling Services. The Complainant then filed her discrimination complaint with OCR two weeks later.

Analysis

In analyzing a disability discrimination complaint under Section 504, OCR first determines if the student is a qualified individual with a disability. Based on OCR's review of the evidence provided, OCR has determined that, within the meaning of Section 504, the Complainant is an individual with a disability relevant to the issues raised by the complaint. Evidence obtained by OCR shows that, among other things, the Complainant had severe night trauma and night terrors and that her post-traumatic stress resulted in nightmares and lack of sleep sufficiently serious to substantially limit her in the major life activity of sleeping.

OCR then examined whether the Complainant put the College on notice of her disability or the need for any reasonable modifications. At the postsecondary level, the burden falls on the individual with a disability to self-identify to a university and to request reasonable modifications, if appropriate. However, an educational institution cannot require "magic words," only a reasonable indication of a student's intention to identify the disability, and must let students know where to go for disability services.

The College's *Student Handbook* contains a general nondiscrimination policy under "Student Rights": "In its active commitment to building a diverse community, [the] College rejects discrimination on the basis of … handicap … in admission, employment or access to programs. The college also seeks to avoid discrimination in the administration of educational programs, admission policies, financial aid or any other college program or activity." The *Student Handbook*'s Resource Guide section, in its description of "Dean of Student Life," states that students with physical disabilities should contact that office for referral to and coordination of needed services, but there is no reference to students with emotional or mental disabilities.[1]

The College provided OCR a copy of its *Policy Statement on Student Applicants and Students with Disabilities: Provision of Reasonable Accommodation for Education Programs, Activities and Other Services* (Sept. 1995) (Policy). However, this Policy does not appear in the College's *Student Handbook*, and the College admitted to OCR that the Policy has been publicized only to faculty. The Policy states that in determining the College's ability to offer reasonable accommodation to an otherwise qualified applicant or student with a disability, each request for an accommodation will be evaluated on a case-by-case basis. A request for reasonable accommodation is submitted in writing to the Dean of Admission (in the case of an applicant) or to the Dean of Student Life (in the case of a student). The Policy also specifies what information the applicant or student needs to provide the College and a timeframe for the College's determinations.

[1] We note that the College's new *Student Handbook* for the 2002-2003 school year (available on the College's website) has been revised to include contact and referral information for students with psychological disabilities.

The College also provided OCR a copy of a form entitled *First Year Program – Guilford College Student Needs Questionnaire*, which is part of the College's Family Guide Book. The questionnaire appears to be directed at parents instead of students, as it asks "does your daughter/son have …" types of questions and requests "information that you think would be helpful as we prepare for your son's/daughter's arrival." The questionnaire asks, among other things, if the student has any learning differences or physical disabilities, or any other medical and/or psychological conditions (such as eating problems, emotional problems, treatment programs) that need monitoring; it further asks if the student needs special accommodations (if so, further information and appropriate professional documentation to support the accommodation request are required). OCR was told that the questionnaire is part of the admission package that is mailed to each student's residence. The Complainant informed OCR that the Family Guide Book and questionnaire were probably mailed to her grandmother's address, but she did not remember seeing the package because she likely was in the hospital when it was mailed. In any event, there is no completed questionnaire for the Complainant.

However, according to the Complainant, when she visited the College in December 2000, she informed several people in the admissions office and during the admission process that her biological parents were not her legal guardians and were not to be contacted. The Complainant further alleged that she told the College that she had an emotional disability. The Complainant informed OCR that she sought only counseling, which is available to all students, and never requested that the College provide her with any modifications for her disability because she did not need any when she first arrived on campus. She stated that the College never requested documentation of her disability.

During telephone interviews with College personnel, several employees informed OCR that although the Complainant had mentioned her parental situation, she did not submit documentation to show that she had been legally emancipated. The employees stated that they took the Complainant's word and removed the parents' address from administrative files. Data from the College indicated that its computer database included a notation from an admissions counselor that the Complainant needed "special advising" due to her "tough life" and that, because she was emancipated from her parents, she would need "social support." However, because the Complainant was admitted late in the admission process, this information was not entered into the database until June 21, 2001, and, as a result, not everyone saw it. Further, her name did not appear on the list of students who would need special attention that is provided to each dormitory residential assistant at the beginning of the school year.

During the first counseling session with the Director of Counseling Services, the Complainant revealed that she had post-traumatic stress disorder and that self-injurious behavior was one of the side effects. The Director told OCR that in the course of counseling students he sometimes asks for disability documentation if he has questions about the information he receives on the intake form and during sessions. He never asked

the Complainant for documentation because he only saw her twice therapeutically and she was guarded with him from the start, so he proceeded carefully. In addition, during a visit to the Student Health Center for prescription refills when she first arrived on campus, the Complainant told one of the physicians that she suffered with anxiety, depression, and an eating disorder. In both cases, it is not clear that the Complainant's statements themselves were sufficient to put the College on notice that she had a disability as defined by Section 504; furthermore, these statements were made in confidential settings and cannot be considered notification to the College of a disability or a need for reasonable modification.

Based on the above information, the evidence is insufficient to show that, prior to her cutting incidents, the Complainant identified herself to the College as a student with a disability, except perhaps in confidential situations, or provided the College with documentation of a disability. However, it is not obvious to OCR that the College makes it clear to applicants and students where to go to give notice of an emotional or mental (as opposed to a physical) disability and the need for reasonable modifications. While the parental questionnaire provides some information, the *Student Handbook* and Policy statement are not clear or widely disseminated. Furthermore, at the time that the College made the decision to involuntarily withdraw the Complainant, the College either knew or should have known that she had a disability, based on the Director's conversations with Dean Olds.

In this case, the nature of the Complainant's disability and its manifestations, along with the nature of the action that the College took with regard to the Complainant, requires OCR to further examine the actions taken by the College. Under Section 504, the "direct threat" standard applies to situations where a college proposes to take adverse action against a student whose conduct resulting from a disability poses a significant risk to the health or safety of the student or others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In a "direct threat" situation, a college needs to make an individualized and objective assessment of the student's ability to safely participate in the college's program, based on a reasonable medical judgment relying on the most current medical knowledge and/or the best available objective evidence. The assessment must determine the nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk.

The College asserted that the Complainant posed a threat of substantial harm to herself and possibly others. Dean Olds said that she made the decision to involuntarily withdraw the Complainant for medical reasons based on the recommendation of the Director of Counseling Services, who in his clinical judgment determined that "a collegiate residential environment was not an appropriate environment" for her at that time and that she needed a "less stressful setting." The Director told OCR that he based his determination on the frequency and increasing severity of the Complainant's cutting episodes over a short period of time and on the impact those episodes had on other students in the dormitory. When the Complainant cut herself while in her dormitory, she called other students for assistance. At least one student met with the Director to express his concern regarding the Complainant's self-injurious behavior, and other students had expressed to College personnel that they were upset by the incidents. The Director further stated that the Complainant had a history of self-injury and had recently injured herself and he was afraid she was going to kill herself.

OCR has long made clear that nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a "direct threat" to the health and safety of self or others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity. However, colleges must take steps to ensure that disciplinary and other adverse actions against persons posing a direct threat are not a pretext or excuse for discrimination. Due process requires a college to adhere to procedures to ensure that students with disabilities are not subject to adverse action on the basis of unfounded fear, prejudice, or stereotypes. A college may inquire into a student's medical condition where the college, on a nondiscriminatory basis, believes that a student represents a direct threat to self or others. A nondiscriminatory belief will be based on a student's observed conduct, actions, and statements, not merely knowledge or belief that the student is an individual with a disability. In exceptional circumstances, such as situations where safety is of immediate concern, a college may take interim steps pending a final decision regarding adverse action against a student as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided in the interim and full due process (including a hearing and the right to appeal) is offered later. OCR accords significant discretion to decisions of post-secondary institutions made through a fair due process proceeding.

However, there is evidence that the Director and Dean Olds made the decision to involuntarily withdraw the Complainant before she had her second severe cutting episode, which prompted the hospital's psychiatric evaluation and suicide precautions. Dean Olds called the Complainant's family members to come and remove her from

campus during the day on September 17, 2001, and the Complainant did not have her second severe cutting incident until the night of September 17. The Complainant was released from the psychiatric hospital a day and a half later, after a psychiatrist determined that she was not suicidal. The Complainant stated that she and the psychiatrist had developed a treatment plan prior to her release and that she told the Residential Life Coordinator about the plan when he sought her out on campus. The Residential Life Coordinator says that the Complainant did not show him a copy of the treatment plan, but the Complainant says that she did not have an opportunity to discuss it further because the Residential Life Coordinator then told her that her parents were there to assist her in packing her belongings and she only had 30 minutes before she had to leave campus. The Director also did not talk to the Complainant's previous psychologist to get his medical opinion before he made his determination, nor did he take into account the Complainant's alleged particular stressor, the imminent arrival of her parents on campus due to the College's inadvertent invitation to them. The College did not consider any alternatives less severe than withdrawal from all College programs as a modification for the Complainant, such as whether she was still qualified to participate in the academic program even if she may not have been qualified to participate in the College's housing program,[2] or whether her parents could be requested not to visit during Parents' Weekend. The College never claimed, and OCR found no evidence, that the academic environment was a causal factor in the Complainant's self-injurious behavior.

OCR is concerned that, while the College may have had reason to believe that the Complainant was a direct threat to herself[3] on campus, there is inadequate evidence to show that it adhered to due process principles inherent in Section 504's direct threat standard in making its determination.[4]

The College informed OCR that it has no written involuntary withdrawal procedures, but that in situations like the Complainant's, where the College believes that a student needs a withdrawal for medical reasons, its practice is to follow the procedures for voluntary withdrawals or leaves of absence. The College's *Student Handbook* contains procedures for voluntary withdrawals and leaves of absence under the "Academic Regulations"

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[2] OCR's investigation did not locate any off-campus mental health treatment living arrangements convenient to the College that would have enabled the Complainant to continue participating in the academic program. However, we note that the College did not address this possibility while making its decision to withdraw her.

[3] As previously noted, the College has asserted that the Complainant possibly posed a threat of harm to others as well. However, the College referred only to concerns of other students, not evidence of a significant risk to the health and safety of other persons, so OCR need not address this alternative. In any case, the College did not consider any alternatives less severe than withdrawal that could have relieved the other students' concerns.

[4] OCR makes no comment on whether the outcome of the College's decision making was inappropriate or would have been the same or different if the College had adhered to due process principles.

section. The College used its form for voluntary withdrawals or leaves of absence to process the Complainant's administrative withdrawal for medical reasons. However, this form does not appear to be applicable to involuntary withdrawals, as demonstrated by the College's failure to follow the procedures for that form as described in the *Student Handbook*: "Students who are withdrawing will be asked to complete a withdrawal form." Instead, the College completed the form for the Complainant without her knowing about it until after it took effect. "Students considering leaves of absence … need to meet with a member of the student life staff to work out the specific arrangements." The College's Residential Life Coordinator told the Complainant that she had to leave campus immediately because she was being withdrawn for medical reasons, but nobody else met with her to "work out the specific arrangements" and she received no paperwork on the matter before she had to leave campus. The Residential Life Coordinator told OCR that normally he would bring a student who is being involuntarily withdrawn to the Dean of Student Life for processing, but he was given the responsibility for informing the Complainant about her withdrawal because the Dean was not on campus at the time. The Complainant did receive a pro-rata refund of her tuition and room and board charges afterward, however, as provided in the withdrawal procedures.

Because the College referred to the Complainant's treatment as an administrative withdrawal for medical reasons, OCR looked to see if the College followed its administrative withdrawal procedures instead. The *Student Handbook* addresses administrative withdrawals under the "Administrative Sanctions" description of the disciplinary violations section:

> In order for the community to pursue its social and academic endeavors without unwarranted disruptions, certain administrative sanctions, such as administrative withdrawal, may be imposed at the discretion of the college administration. An administrative withdrawal allows the president and/or the dean of student life the authority to withdraw a student from the college if the continued presence of the student on campus constitutes a danger to the individual, to others or to property.

The *Student Handbook* also addresses "Administrative Removal from Residence Hall" under the same section:

> The dean of student life or the director of residential life has the authority to remove a student from college housing … when there is evidence that continued presence of a student in the residence hall threatens the well-being of that individual, the well-being of others or their property or would be a continuing disruption to the college community.

The College did not charge the Complainant with any disciplinary violation, so it is not apparent that a judicial procedure would apply to the Complainant; yet the College did use its discretion to withdraw her after determining that she constituted a danger to

herself or others. Appeals of either of these administrative withdrawals are considered by the Disciplinary Appeals Board, made up of students and faculty members, but the Complainant was instructed to appeal to the Associate Academic Dean.

OCR is concerned that the College does not have formal procedures for involuntary student withdrawals for medical reasons, as in the Complainant's situation, and did not follow any appropriate existing procedures. Although the College advised OCR that it followed the same practices for the Complainant as it has for other students whom it deemed in need of medical withdrawals, we are concerned that the College's lack of clear procedures for any student who is being involuntarily withdrawn contributed to a lack of due process in this case. Furthermore, the medical withdrawal practice the College did apply in the Complainant's situation did not provide the Complainant with minimum due process, such as notice and an opportunity to present evidence on her own behalf. Even if the College administratively withdrew the Complainant for immediate safety reasons, as the College contends, the College did not first provide the Complainant with notice of the withdrawal and the opportunity to challenge the truth and accuracy of the College's determinations about her behavior and its perceived dangerousness. It also did not determine whether any interim measures were available that would address its concerns about the Complainant's safety or that of other students pending full due process comparable to the due process provided to other students in withdrawal or leave situations.

Furthermore, an educational institution must not discriminate on the basis of disability in establishing conditions under which a student can return after having been withdrawn from any of the institution's programs, whether academic, housing, both, or other. While the institution has discretion in fashioning return conditions, its discretion is not unlimited. Educational institutions cannot set as a condition for readmission that a student's disability-related behavior no longer occurs, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications. Instead, what conditions a student must meet so as to no longer pose a direct threat should be determined on an individual basis. Hence, an educational institution may require as a precondition to a student's return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g., followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional).

The withdrawal form completed by the College for the Complainant on September 19, 2001, specified that she would need supporting documentation from a therapist and approval from the Director of Counseling Services in order to return. What the Director would look for before allowing the Complainant to return is set forth in his October 1, 2001, memorandum to Dean Olds. The Director recommended that the Complainant be permitted to return to the College after the documentation from her therapist indicates that she is no longer engaging in self-injurious behavior. Further, in a telephone interview, the Director told OCR that the Complainant could be readmitted to the College if she provided documentation that she has received treatment/therapy; that the self-injurious behavior has gone into "extinction" or is no longer present; and that she is ready to return to college. The College stated that it has imposed similar return conditions on other students with psychological disabilities in their medical withdrawals as well.

OCR is concerned that the return conditions set by the College for the Complainant (and, perhaps, other involuntarily withdrawn students) are overbroad and inconsistent with Section 504. For example, the College required that the self-injurious behavior stop completely. Not all self-injurious behavior may be sufficiently serious as to constitute a direct threat. Indeed, even the Director originally felt that the Complainant's behavior was not serious enough to require withdrawal immediately.

OCR also looked to see what procedures the Complainant had available to her at the College after she was involuntarily withdrawn to address her concern that the action taken against her was discriminatory. The Section 504 regulation, at § 104.7, mandates that educational institutions have grievance procedures that incorporate appropriate due process standards and provide prompt and equitable resolution of disability-based complaints. The College's *Student Handbook* contains grievance procedures for harassment and academic issues, but no other references to procedures for discrimination complaints, including ones on the basis of disability. The 1995 Policy on reasonable accommodations for students with disabilities, which has never been distributed to students, states that students should follow the complaint procedures in the *Student Handbook*, although it is unclear what these are, as noted above. Moreover, the Complainant raised the issue of possible disability discrimination with both Dean Olds and Dean Hood in the weeks after she was involuntarily withdrawn, yet neither dean directed the Complainant to any grievance procedures. Dean Olds told OCR that the College does not have specific disability grievance procedures, but because the College is small, it channels appeals and complaints up through the College's organizational structure instead. Hence, any requests for review of Dean Olds' decisions are directed to her supervisor, the College's Executive Vice President, but in the Complainant's case the Executive Vice President delegated his authority to Dean Hood, to whom Dean Olds directed the Complainant for appeal of her involuntary withdrawal. Neither of the deans addressed the Complainant's disability discrimination issue in any of their responses to the Complainant.

OCR is concerned that the College is not meeting the Section 504 requirement for offering appropriate grievance procedures.

In order to address OCR's above-stated concerns, the College has voluntarily agreed to enter into a Commitment to Resolve (CTR) (copy enclosed), which, when implemented, will resolve the concerns. The CTR was signed on March 5, 2003. OCR will monitor implementation of the agreement. If the College fails to carry out its commitments, OCR will reopen the case and resume its investigation.

Counseling Services

The Complainant also alleged that the counseling services provided to her by the College as a result of her disability were inadequate.

Background

The College makes its counseling services available to all students, and it has two counselors on staff. According to the Complainant, within the first week after arriving on campus, she made an appointment with the Director of Counseling Services. The Complainant stated that her reason for making an appointment was to request counseling, to inform him of her emotional disability and symptoms, and also to provide her medical history.

The Complainant asserted in her complaint that the Director was irresponsible and abusive toward her. At the first meeting, the Director asked to have an intern sit in on the session. Although the Complainant felt this was inappropriate, she and the Director agree that she gave her consent. The Director recalls that he discussed the issue of a psychiatrist or psychologist with the Complainant, but she did not have health insurance that would cover the cost. The Complainant stated that during that session the Director's questioning was very aggressive, and she was not comfortable with his method. Also, during the first session the Director suggested a therapeutic technique called Eye Movement Desensitization and Reprocessing (EMDR) and gave her a book to read about the technique. The Complainant stated that although she told the Director that she was not comfortable with the use of EMDR and felt that it was not appropriate for someone with a dissociative disorder, he ignored her concerns and continued to press for EMDR. The Complainant further stated that in her subsequent dealings with him, the Director was aggressive and had a physically threatening manner, which continued to intimidate her and cause her undue stress. The Director acknowledged to OCR that he knew the Complainant was not very comfortable with him.

When the Complainant was discharged from the emergency room after treatment for cutting she had inflicted on herself during her depersonalization episode on September 8, 2001, the Director was there to take her back to campus because the hospital had contacted him as the on-call contact person for the College. The Complainant stated that she was nervous about the Director taking her back to the College and believed that he had overstepped his bounds as a counselor. According to the Director, the Complainant appeared to be doing well and agreed to see him on September 10. However, the Complainant later rescheduled the appointment, and, after consulting with her former psychologist, she decided to no longer see the Director for counseling.

When the Director called the Complainant a few days later to ask her to come in, the Complainant told the Director that she did not wish to see him anymore, but when he asked her to return the book he had lent her, she returned the book to him at his office. According to the Complainant, because the Director was intimidating, she took a friend with her when she returned the book. When they arrived, the Director insisted that she sit down and he attempted to close the door. When the Complainant requested that the door not be closed, the Director allegedly ignored her request. According to the Director, the Complainant informed him when she returned the book that she would no longer be making appointments with him. The Director stated that when he asked the Complainant if she wanted to see the other counselor at the Counseling Center instead, her response was that she did not need one. However, the Complainant told OCR that she was about to request another counselor when she had the second severe cutting incident and was involuntarily withdrawn from the College.

Analysis

Educational institutions are not obligated to provide counseling services to students, but when they do choose to offer those services, Section 504 requires that they be provided in a nondiscriminatory manner. In the instant case, the Complainant is not alleging that students without disabilities were treated better than she was.

The College offered the Complainant the same counseling services it offers to all students. There was no evidence presented to indicate that the Director, a therapist/licensed clinical social worker, was unqualified to provide counseling services. In a telephone interview, the Director informed OCR that he told the Complainant that EMDR was a beneficial treatment for post-traumatic stress syndrome, and the College documented that the Director had at least 40 hours of training in EMDR. Differences in

opinion or personality are not sufficient grounds for determining adequacy of service. Moreover, generally, the adequacy of counseling services is beyond OCR's purview. Further, the evidence indicates that the College offered another counselor to the Complainant, but she declined the offer. Based on the above information, OCR has determined that there is insufficient evidence to substantiate the Complainant's allegation that the counseling services provided by the College were inadequate.

This concludes OCR's consideration of the allegations, and OCR is closing the complaint effective the date of this letter. This determination letter addresses only the issues discussed herein and should not be construed to cover any other issues regarding compliance with Section 504.

You are advised that no recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one had made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of personal privacy.

We wish to thank the College and its staff for the cooperation and courtesy extended to us as we worked to achieve resolution in this case. If you have any questions about OCR's determination, please contact Janice Alexander, the investigator assigned to the case, at (202) 208-7670.

Sincerely,

/s/

Sheralyn Goldbecker
Team Leader

Enclosure

cc: Allan L. Shackelford, Legal Counsel

EXHIBIT C

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 18, 2013

Shirley M. Tilghman
President
Princeton University
1 Nassau Hall
Princeton, New Jersey 08544

Re: Case No. 02-12-2155
Princeton University

Dear President Tilghman:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against Princeton University. The complainant alleged that the University discriminated against him, on the basis of his disabilities, by denying his requests to: (a) live off-campus; (b) take a reduced class schedule; and (c) take a single semester leave of absence in February/March 2012, as accommodations and/or necessary academic adjustments for his disability (Allegation 1). The complainant also alleged that in February/March 2012, the University discriminated against him, on the basis of his disabilities, by banning him from the University campus, including his residential college and classes (Allegation 2); compelling him to voluntarily withdraw from the University (Allegation 3); and imposing on him conditions of readmission that are more onerous and intrusive than those applied to other students (Allegation 4).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR reviewed documentation that the complainant and the University submitted. OCR also interviewed the complainant, the complainant's mother, the complainant's representative (the representative), and University staff. OCR made the following determinations.

OCR determined that during academic year 2011-2012, the complainant was a freshman undergraduate student at the University. OCR determined that on February 25, 2012, the complainant attempted suicide by overdosing on medication, and was taken to a nearby hospital for treatment. OCR determined that on February 29, 2012, following the complainant's suicide attempt, the University made the decision to ban the complainant from campus and require his voluntary withdrawal from classes.

With respect to Allegation 1, the complainant alleged that the University discriminated against him, on the basis of his disabilities (depression and/or bi-polar disorder), by denying his requests to: (a) live off-campus; (b) take a reduced class schedule; and (c) take a single semester leave of absence, in February/March 2012, as accommodations and/or necessary academic adjustments for his disability.[1] The complainant stated that his mother and the representative made the requests for him to live off-campus during a meeting with University staff on March 6, 2012, and during a telephone conversation with the University's associate counsel and general counsel on March 12, 2012, respectively. The complainant stated that he and the representative made the requests for him to take a reduced class schedule and single semester leave of absence during a meeting with University staff on February 29, 2012, and during the telephone conversation with the University's associate counsel and general counsel on March 12, 2012, respectively.

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids and services. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids/services. It also is the student's responsibility to know and follow a postsecondary school's procedures for requesting an academic adjustment. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustment or auxiliary aids/services were required; (2) the academic adjustments or auxiliary aids/services were necessary; (3) the appropriate academic adjustments or auxiliary aids/services were provided; and (4) the academic adjustments or auxiliary aids/services were of adequate quality and effectiveness.

OCR determined that in accordance with the University's policies and procedures, students with disabilities requesting accommodations must register with the Office of Students with Disabilities (ODS), and submit current documentation as required by ODS's documentation

[1] Pursuant to the University's policies and procedures, all undergraduates are required to reside in a residential college during their freshman and sophomore years. OCR further determined that the University policy states that the normal course load for undergraduate University students is four courses each semester; and that under exceptional circumstances, a student may be allowed to take one course less than the normal course load during a semester. University policy further states that upon the satisfactory completion of any semester, undergraduates are eligible to take leaves of absence at the discretion of the dean of the college for one, two, or three years, but not less than one year.

guidelines. ODS staff members determine accommodations and/or academic adjustments through an interactive process that includes an intake interview.[2]

During the course of its investigation, the complainant informed OCR that he did not register with ODS during academic year 2011-2012, because he did not require accommodations for his disabilities. The complainant also informed OCR that he did not need or request that University staff permit him to live off-campus; take a reduced class schedule; and/or take a single semester leave of absence, as accommodations and/or necessary academic adjustments for his disabilities. Rather, the complainant stated that he, his mother, and his representative made the offers of his living off-campus, taking a reduced class schedule, and taking a single semester leave of absence as ways for the complainant to remain enrolled in his classes only after the University decided to ban him from campus and require his voluntary withdrawal on February 29, 2012, in response to the complainant's suicide attempt on February 25, 2012. ODS staff confirmed that the complainant never requested to live off-campus, and/or take a reduced class schedule or single semester leave of absence, as accommodations and/or necessary academic adjustments. The complainant did not provide, nor did OCR find, evidence indicating that the complainant requested to live off-campus, and/or take a reduced class schedule or single semester leave of absence, as accommodations and/or necessary academic adjustments, by submitting such requests to ODS with appropriate supporting documentation, in accordance with University policies.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by denying his requests to live off-campus, take a reduced class schedule, and/or take a single semester leave of absence, as accommodations and/or necessary academic adjustments for his disabilities. Accordingly, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the College discriminated against him, on the basis of his disabilities, by banning him from the University campus, including his residential college and classes, in February/March 2012. Specifically, the complainant alleged that following his suicide attempt on February 25, 2012, which stemmed from his disabilities, on or about February 28, 2012, University staff informed him that he was banned from campus and could not return to his dorm room or classes. The complainant further stated that while the University lifted its full ban in April 2012, he currently is unable to enter numerous parts of campus (including the library, cafeteria, and dining hall) without providing school officials with two to three weeks advanced notice, which he believes is unduly burdensome.

[2] OCR determined that pursuant to the University's policies and procedures, students with disabilities seeking housing accommodations must first register with ODS; and ODS determines whether the student is eligible to receive services. Thereafter, staff members in the University's Office of the Dean of Undergraduate Students, in consultation with the student seeking accommodations, make a determination regarding necessary accommodations.

University staff informed OCR that following the complainant's attempted suicide on February 25, 2012 and release from the hospital on February 28, 2012, two clinicians with the University's Counseling and Psychological Services office (CPS) evaluated the complainant. They determined that due to the complainant's lack of insight into the severity of his illness, at least four prior suicide attempts and/or suicidal ideations, failure to consistently attend treatment in fall 2011, lack of family support/connections, and continued abuse of alcohol and marijuana, the complainant continued "to be a danger to himself and [wa]s a very high risk of another [suicide attempt] in the future." University staff stated that as a result, the clinicians did not clear the complainant to be on campus, and relayed this assessment to the Office of the Dean of Undergraduate Students (ODUS).

OCR determined that in an electronic mail (email) message, dated February 29, 2012, the University's Associate Dean of Undergraduate Students (the Associate Dean) informed the complainant that he could not be cleared to be on campus at that time. OCR determined that in an email, dated March 1, 2012, the University's Dean of Undergraduate Students (the Dean) reiterated that the complainant may not return to campus until he is cleared by ODUS. OCR determined that on March 29, 2012, the complainant voluntarily withdrew from the University. OCR further determined that in a letter, dated April 24, 2012, the Associate Dean and the Director of Student Life (the Director) informed the complainant that during the voluntary withdrawal period (a minimum period of approximately one year), he was not banned from attending public events at the University, such as theatrical performances or sporting events, or visiting spaces or buildings in which the public has access; but, needed to make an advanced request to the Director if he wished to visit dormitories, dining halls, libraries, or other locations that are for the use of resident members of the University.

The Dean and Associate Dean informed OCR that they made the decision to ban the complainant from campus after reviewing the lethality of the incident; the complainant's risk to himself; the complainant's engagement with that risk; the complainant's engagement with treatment; and a general assessment of risk by professional clinicians. The Associate Dean and Dean stated that they believed the complainant remained a safety threat to himself because in this instance, the CPS evaluation indicated that the complainant still posed an active safety risk; the complainant had a pattern of suicidal behavior;[3] and he was unwilling to engage in appropriate treatment.[4] The Associate Dean and Director further stated that they required that the complainant first make an advanced request to the Director if he wished to visit dormitories, dining halls, libraries, or other locations that are for the use of resident members of the University, because all unenrolled students are expected to limit their presence on campus and not participate in University life as if they are resident students or in ways inconsistent with the expectations for the productive use of their time while away from the University. They stated that they did not require that the complainant make these requests two to three weeks in advance, but rather within a reasonable period of time, which could be shorter than two weeks of the date of the event. The complainant did not provide, nor did OCR find, any evidence indicating that he had to provide notice to the University two to three weeks in advance of visiting campus.

[3] The complainant's medical records indicated that the complainant had a prior suicidal ideation, and attempted suicide on three other occasions.

[4] OCR determined that both CPS clinicians and a local hospital psychiatrist recommended to the complainant that he participate in an inpatient treatment program; however, the evidence indicated that the complainant declined this level of treatment.

OCR determined that pursuant to University-wide Regulation 1.1.7, in circumstances seriously affecting the health or well-being of a student, or where physical safety is seriously threatened, the University may summarily bar that student from the University, provided that there is a reasonably prompt review process. Moreover, pursuant to University policies, if a student expresses suicidal thoughts, threatens, or attempts suicide, CPS must evaluate and clear him/her before the University will contemplate a return to residency. The Dean informed OCR that these policies are intended to ensure that it is safe for students to return to the University after an emergency. OCR determined that these policies apply to any student, not solely students with disabilities.

Based on the above, OCR determined that the University proffered legitimate, non-discriminatory reasons for banning the complainant from campus on or about February 29, 2012; namely, concerns about the complainant's health, well-being, and safety. OCR determined that the proffered reasons were not pretextual, as the University made an individualized determination regarding the complainant in accordance with its policies. Additionally, OCR determined that there was insufficient evidence to conclude that the University required two to three weeks' notice for the complainant to visit campus while voluntarily withdrawn. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by banning him from the University campus in February/March 2012. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the College discriminated against him, on the basis of his disability, by compelling him to voluntarily withdraw from the University in February/March 2012. Specifically, the complainant alleged that during a meeting on February 29, 2012, University staff strongly encouraged him to voluntarily withdraw from the University because of his suicide attempt on February 25, 2012. The complainant informed OCR that staff members urged voluntary withdrawal, stating that he was unlikely to make up his classwork, and intensive inpatient treatment programs of the sort that they recommended were incompatible with a full-time course load. The complainant stated that in early March 2012, he appealed this assessment to the Vice President for Campus Life at the University (the Vice President); however, on March 26, 2012, the Vice President informed him that she agreed with the initial assessment and asked that the complainant consider voluntary withdrawal. The complainant asserted that the Vice President stated that if he did not voluntarily withdraw, he would be involuntarily withdrawn from the University, which could have led to the loss of his tuition. The complainant stated that he, therefore, decided to voluntarily withdraw from the University.

According to the University's Undergraduate Announcement for 2011-2012, a voluntary withdrawal takes place whenever a student who begins a term of study leaves the University before the end of the reading period. The University's "Withdrawal and Readmission Procedures for Students Who Leave for Medical (Including Psychological) Reasons" (the Withdrawal and Readmission Procedures) further state that if a student has exhibited "life threatening behavior,"[5] the University may require an involuntary withdrawal if he/she refuses to

[5] These students are referred to as "Category 1" students. This category encompasses "extremely high-risk students with a pattern of behavior" who "pose[] a serious and imminent health or safety risk to him/herself or others." Examples include students with "serious cases of anorexia, serious substance abuse, life-threatening behavior, repeat psychotic episodes, etc."

withdraw voluntarily.[6] OCR determined that these policies apply to any student, not solely students with disabilities.

OCR determined that on February 29, 2012, following the complainant's suicide attempt on February 25, 2012, the Associate Dean suggested that the complainant voluntarily withdraw from the University. OCR determined that in a letter to the complainant, dated March 7, 2012, the Dean reiterated the recommendation that the complainant consider voluntarily withdrawing from the University. The Associate Dean and other University staff members informed OCR that in making its voluntary withdrawal recommendation, they met with the complainant and his family; and, reviewed the complainant's health records from August 2011 to February 2012, which were already on file with the University;[7] and CPS's assessment dated February 29, 2012. The Associate Dean stated that he suggested that the complainant voluntarily withdraw from the University because of concerns that the complainant remained a safety threat to himself and after considering the factors stated above. The Dean stated that she recommended that the complainant voluntarily withdraw from the University based on the complainant's CPS evaluation on February 29, 2012; the severity of the complainant's suicide attempt; the complainant's declining the treatment recommendations of the local hospital, his social worker, and CPS staff; the complainant's signing out of the local hospital against its advice; the complainant's failure to engage in any psychological or psychiatric treatment immediately after the suicide attempt; the complainant's prior suicide history; and the complainant's behavioral instability[8] during a meeting with University staff on February 29, 2012.[9]

OCR determined that on or about March 9, 2012, the complainant appealed the Dean's determination to the Vice President. The Vice President stated that in reviewing the complainant's appeal, the Vice President, in conjunction with the Executive Director of University Health Services (the Executive Director), met with the complainant and others on March 16, 2012, and considered all medical documentation in the University's possession;

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[6] As noted above, University Regulation 1.1.7 allows the University to suspend, dismiss, or bar a student in circumstances seriously affecting the health or well-being of that student, or where physical safety is seriously threatened, provided that he/she is subject to reasonably prompt review by the University.

[7] This includes a student health questionnaire, a CPS information sheet, a Counseling Center Assessment of Psychological Symptoms (CCAPS) profile report, a CPS diagnostic evaluation, a CPS progress note, a psychiatric diagnostic evaluation, 12 psychiatric progress notes, and three group psychotherapy screening reports.

[8] The CPS Director, the Associate Dean, and contemporaneous documentation all stated that the complainant had several outbursts at this meeting, left the room, and told the CPS Director, "Have you ever tried to kill anyone before?"

[9] OCR determined that at a meeting on March 16, 2012 with the Vice President and other University staff members, the complainant disputed some of the Dean's assertions. Specifically, the complainant asserted that he had not declined treatment, and had had a telephonic intake interview with a local behavioral health clinic (the Health Clinic) for their partial hospitalization program soon after leaving the hospital. The complainant stated that he also met with a psychiatrist on February 29, 2012. The complainant acknowledged that he declined a hospital psychiatrist's recommendation that he attend an inpatient program. The complainant also acknowledged that he technically signed out of the hospital a day early, against medical advice, but stated that hospital staff wished that he stay an extra night for convenience purposes. The complainant stated that he had been medically cleared to leave, but had been asked to stay so that it would be easier to perform an additional test the next morning. OCR determined that the complainant did not dispute any of the other assertions the Dean made that formed the basis of her recommendation that he voluntarily withdraw.

additional documentation the complainant provided;[10] as well as information gleaned from a discussion between the Executive Director and the complainant's personal psychiatrist.[11] OCR determined that in a letter to the complainant, dated March 26, 2012, the Vice President determined that "the brief intensive outpatient treatment so far does not sufficiently mitigate the significant risk of further substantial self-destructive behaviors that is apparent from the records" presented. The Vice President informed OCR that that the additional information the complainant provided did not address many of the risk factors at issue, which included: (1) the complainant's prior history of suicide attempts; (2) the fact that relatively minor issues, such as a fight with a girlfriend and an $80 monetary fine, prompted the complainant's most recent suicide attempt; (3) evidence of a high level of impulsivity in the complainant; (4) a history indicating that the complainant did not always engage in treatment after a suicide attempt; (5) the high lethality of the complainant's prior attempts; (6) the complainant's substance abuse issues; (7) the stress that the complainant's taking classes while receiving treatment would entail; and (8) the small amount (two weeks) of outpatient treatment the complainant had received thus far.[12] The Vice President stated that she, therefore, recommended that the complainant voluntarily withdraw from the University, and stated that if he did not do so, he would be involuntarily withdrawn. OCR determined that on March 29, 2012, the complainant voluntarily withdrew from the University.

Based on the above, OCR determined that the University proffered legitimate, non-discriminatory reasons for suggesting that the complainant voluntarily withdraw from the University after his attempted suicide; namely, concerns about the complainant's health, well-being, and safety. OCR determined that the University's proffered reasons were not pretextual because the University made an individualized determination regarding the complainant pursuant to its policies. Additionally, OCR determined that the University considered the information provided by the complainant's treating medical providers, and provided him with a right to appeal. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by compelling him to voluntarily withdraw from the University in February/March 2012. Accordingly, OCR will take no further action regarding Allegation 3.

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[10] OCR determined that this included: (1) a letter from the complainant's personal psychiatrist stating that the complainant was not a threat to himself and that it would be in his best interest to return to University life; (2) a note from the complainant's cardiologist; (3) medical records from the complainant's hospital stay on February 25, 2012; (4) an academic plan; (5) emails of support from some of the complainant's professors; (6) a risk evaluation by a Mercer County health screener; (7) a document from the Health Clinic indicating only that the complainant was admitted there; (8) a summary showing the dates when the complainant received treatment at CPS, but not describing the treatment; (9) CPS's post-hospitalization risk assessment; and (10) a history of the complainant's previous mental health treatment, as written by the complainant.

[11] The Executive Director informed OCR that during this conversation, the psychiatrist confirmed that the complainant was abusing drugs and alcohol; was still fragile and could regress back to self-harm; and required an intensive outpatient program as well as meetings with him twice per week. The psychiatrist also informed the Executive Director, however, that he did not feel that the complainant was in immediate danger of harming himself, and that the notion of the complainant's leaving the University would not be therapeutic for him. The Executive Director stated that he disagreed with the assessment that it would less therapeutic for the complainant to leave the University, noting that the complainant did not need added stressors while in an outpatient program, and that the University's daytime schedule is typically not consistent with such a program.

[12] OCR reviewed the additional documentation provided to the Vice President, and confirmed that this documentation did not address any of the aforementioned risk factors.

With respect to Allegation 4, the complainant alleged that the College discriminated against him, on the basis of his disability, by imposing on him conditions of readmission that were more onerous and intrusive than those applied to other students. Specifically, the complainant alleged that in order to return from his voluntary withdrawal, he had to complete a treatment provider form that was extremely detailed and overly broad. The complainant also stated that the CPS had to independently assess him before he could return. The complainant stated that he intended to provide his own assessments from two private providers, and asserted that requiring an additional assessment by the University was unnecessary, unless CPS could articulate a reason to question the original assessments. Additionally, the complainant asserted that the University required that he show evidence of "sustained stability" as a condition of return, which he deemed vague.

OCR determined that pursuant to the University's Withdrawal and Readmission Procedures, when a student who is deemed "extremely high-risk" voluntarily withdraws for psychological reasons, that student may only return to the University if and when he/she complies with specific, personalized conditions outlined by ODUS, including a recommended treatment plan. The Withdrawal and Readmission Procedures further state that prior to return, such a student must apply for readmission and complete a readmission evaluation with CPS. OCR determined that pursuant to University policy, a student must provide an authorization for the release of medical information, and a petition describing his/her activities while away from the University; any recent documentation from a treating professional; and, a questionnaire for treatment providers.[13] ODUS, in consultation with CPS, then determines whether the student may return to the University.

OCR determined that following the complainant's voluntary withdrawal, in a letter to the complainant, dated April 24, 2012, the Director of Student Life and the Associate Dean outlined the following conditions for the complainant's return to the University: (1) following the University's treatment recommendations;[14] (2) demonstrating that the complainant had increased ability to handle safely the stresses that arise from studying at the University, including evidence of sustained stability; (3) undergoing a readmission evaluation at CPS; and (4) agreeing to any recommendations for ongoing treatment after readmission. The Associate Dean informed OCR that he and the Director of Student Life required these conditions to ensure that upon return, the complainant could sufficiently manage his behavior and symptoms.[15] OCR determined that the treatment provider form is a standardized form used in all situations similar to the complainant's circumstances.

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[13] OCR determined that the treatment provider form is a standardized form used whenever a student wishes to return to the University following a withdrawal for psychological reasons.

[14] In an email, dated April 20, 2012, the Director of Student Life outlined specific treatment recommendations for the complainant, including: (1) ongoing, frequent, and regular psychotherapy; (2) compliance with prescribed medications and regular consultation with a psychiatrist for medication management; (3) the submission of treatment provider forms to CPS showing consistent engagement in treatment; and (4) his attendance at a readmission evaluation at CPS prior to a return to University life.

[15] The University informed OCR that in January 2013, it accepted the complainant's application for readmission to the University.

Based on the information described above, OCR determined that the University proffered a legitimate, non-discriminatory reason for the conditions it imposed upon the complainant for readmission; namely, it wanted to ensure that the complainant could manage his behavior and symptoms, such that he would not be a risk to himself. OCR determined that the proffered reason was not pretextual, as the University imposed the conditions only after a personalized assessment of what would be necessary for the complainant to demonstrate that he would not be a risk to himself upon his return. OCR's regulations do not prohibit the University from establishing conditions of readmission for students who have withdrawn from the University for psychological reasons. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University discriminated against him, on the basis of his disability, by imposing conditions on the complainant's readmission. Accordingly, OCR will take no further action with respect to Allegation 4, and has closed the complaint as of the date of this letter.

This letter is not intended, nor should it be construed, to cover any issues regarding the University's compliance with Section 504 that may exist, but are not discussed herein. This letter is intended to address this individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released could constitute an unwarranted invasion of personal privacy.

If you have questions about OCR's determination, please contact Stacy Bobbitt, Compliance Team Investigator, at (646) 428-3823 or stacy.bobbitt@ed.gov; David Hensel, Compliance Team Attorney, at (646) 428-3778 or david.hensel@ed.gov; or me, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

Nadja Allen Gill
Compliance Team Leader

cc: Hannah Ross, Esq.