

# **Students in Distress: Balancing Privacy, Safety and Due Process Concerns**

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# AGENDA

- What laws might apply?
- What UC and campus policies might apply?
- OCR Guidance
- Scenarios

# What laws might apply?

- FERPA
- CMIA
- HIPAA
- ADA, Title II
- Section 504 of the Rehabilitation Act of 1973
- Fair Housing Act
- California Civil Code section 5150
- First Amendment/California Constitution
- Tarasoff v. UC Regents

# What policies and other documents might apply?

- Student code of conduct
- Housing contract/guidelines
- Workplace violence
- Non-discrimination
- University of California Policies Implementing HIPAA

# OCR and Other Guidance

- Prior to 2011 institutions of higher education routinely placed students on leave a student who were deemed to present a direct threat to self or to others, as a function of an underlying mental health problem with apparent approval of OCR
- In March 2011, DOJ released a modified version of Title II of the ADA which (section 35.139) redefined the “Direct Threat Standard” as being applicable only in situations in which the person with the disability presents a “significant risk to the health or safety of others” - omitting of any reference of “danger to self”
- Series of OCR cases and guidance in the last 5 years (Spring Arbor, SUNY, Georgetown, Western Michigan University) has changed how Colleges and Universities deal with “threat to self” situations.

# OCR and Other Guidance

- While no longer applying a direct threat-to-self analysis, OCR still requires institutions to conduct a similar type of individualized risk assessment to justify removals, withdrawals, and conditions on readmission;
- OCR will apply a disparate treatment analysis to claims of disability discrimination in violation of the ADA or Section 504;
- Institutions should ensure that disabled students are treated the same as similarly-situated, non-disabled students;

# OCR and Other Guidance

- Removal and readmission decisions should be based on generally-applicable conduct policies concerned with student health, well-being, and safety;
- Institutions should consider multiple risk factors;
- Institutions should provide students with due process in the form of notice regarding applicable policies, an opportunity to present medical and other relevant information, and the ability to appeal;

# OCR and Other Guidance

- Institutions have fairly wide discretion in setting conditions for readmission after withdrawal for medical reasons (depending on the individualized assessment, the conditions may include medical evaluations, treatment plans, release of medical records, personal statements, and evidence of the ability to meet academic and conduct requirements).

# Top 10 Tips – OCR Guidance

- Avoid “direct threat to self” language
- Conduct individualized risk assessments in a team environment
- Assess observable conduct that affects the health, safety, or welfare of the campus community
- Enforce conduct codes or other policies applicable to all students
- Compare conduct with similarly-situated, non-disabled students to avoid disparate treatment

# Top 10 Tips – OCR Guidance

- Absent emergency circumstances, first consider voluntary leave or other voluntary restrictions
- Resort to involuntary removal in emergency or direct threat situations
- Satisfy due process concerns by providing adequate notice, an opportunity to present information, and an appeal
- Establish reasonable and individualized conditions for a student's return
- Keep appropriate records/document decision-making

# Scenarios

- Scenario 1 - Student with behavior of concern who is no longer enrolled
- Scenario 2 - Student who transfers from one UC campus to another
- Scenario 3 - Student with eating/weight issues
- Scenario 4 - Student seeking to return to campus after an academic disqualification

# 1. Student with behavior of concern who is no longer enrolled

## PART A

- Your BIT team has just been informed that the behavior of Eric, a 1st year student, has come to the attention of his fellow students and professors. Eric is a self-confessed veteran sniper who frequently comes to class dressed in military fatigues. Recently Eric has become verbally aggressive with both fellow students and his professors over what he considers “liberal bias” in the curriculum and in comments made by fellow students and his professors. In addition, Eric was overheard telling a fellow student: *“I’ve looked down the scope and dealt with the real world.”*

# 1. Student with behavior of concern who is no longer enrolled

## PART B

- New information has been provided to your team informing you that Eric is not a military veteran. Eric however continues to describe himself in class as a “combat sniper” and frequently attends class in military uniform. In addition, Eric has become more outspoken in class about his anger towards: “*Those that have not served.*”

# 1. Student with behavior of concern who is no longer enrolled

## PART C

- Eric has failed to attend any of his classes for the last term, and has therefore been dropped from his classes. Several of Eric's classmates are concerned for his welfare. You receive an unconfirmed report that Eric was '5150'ed' by the local police based on "an incident" at a local mall. Eric's parents have called requesting help in finding their son.

## 2. Student who transfers from one UC campus to another

You are informed that Lavanya, a UCSD graduate student, has reported to her advisor her concerns over the behavior of Raj, a fellow graduate student who, while they were both enrolled at UCSB, had engaged in unwanted contact with her. The student tells her advisor that Raj has since contacted her and told her he has transferred to UCSD; “To prove his love to her.” She reports taking her concerns to her previous advisor at UCSB who, in turn, reported Raj’s behavior to the UCSB police.

# 3. Student with eating/weight issues

## PART A

- You are called by the Dean of Student Affairs about an international student (junior) with eating problems and extremely low weight. Through appropriate releases which are now expired, you are aware that Student Health Services staff are very concerned about this student. Her BMI is 16 and her lab values are very concerning to them but not low enough to warrant “grave disability” and involuntary hospitalization. The student refuses to see a counselor insisting that she does not have a problem. She will see SHS staff but only for her “real medical problem” which is not eating disorder. SHS staff are concerned that she may collapse “at any time”. She is doing well in all of her classes with a cumulative GPA of 3.6.

### 3. Student with eating/weight issues

#### PART B

- She has few friends and no family in the US. She lives on campus and has two roommates who are concerned but don't see her much and are not close to her. The mother is contacted and thinks that her daughter does not have a problem.

## 4. Student seeking to return to campus after an academic disqualification

A student was academically disqualified and sanctioned to leave the university for a period of one year following poor academic performance. The BIT was aware of this student during the process of his disqualification because he also exhibited “bizarre behavior” coming to class late and disheveled. Roommates and residential life staff were concerned because of frequent conflicts where he would leave piles of unwashed laundry around the suite, be up all night, talk to himself and to other people not in the room, get in verbal altercations with roommates about his dirty dishes he never washed and one incident when he shoved one of them saying that he would “get back at them for turning him in.”

He is now applying for readmission to your campus.

# Questions

