A student suicide is one of every school’s worst nightmares---a silent threat that can strike at any time, and no school is immune. Suicide is the third leading cause of death for youths between the ages of 10 and 24, and a 2005 nationwide survey reported that 16.9 percent of high school students seriously considered suicide and 8.4 percent tried to take their own life. Moreover, according to a 2008 survey, over 86 percent of school psychologists reported that they had counseled a student who had threatened or attempted suicide; 35 percent reported a death by suicide; and 62 percent reported that they knew a student at their school who had made a nonfatal attempt.

Student suicide also presents many legal risks for the nation’s independent primary and secondary schools. This article aims to chronicle those risks and help schools begin to craft policies that will minimize legal liability and the loss of life. Part I surveys the major compliance risks and theories of action that families have pursued. Drawing lessons from Part I, Part II sketches potential policies and procedures schools should consider implementing before, during, and after a suicide crisis.

I. THE LEGAL RISKS STUDENT SUICIDE PRESENTS FOR INDEPENDENT SCHOOLS

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4 Alan L. Berman School-Based Suicide Prevention: Research Advances and Practice Implications, 38 SCH. PSYCH. REV. 233, 234 (2009).
Independent schools may face liability for suicide on two fronts. First, when a student completes a suicide, parents may claim that the school failed to prevent it. Alternatively, when a school takes action to prevent a suicide, students and parents may claim that the school violated disability or confidentiality laws or a contractual obligation. Though it seems schools cannot win, most efforts to hold schools liable for a student suicide have failed, and the disability and confidentiality laws provide sufficient flexibility to respond to reasonable concerns a school may have. Because the litigation risks are real, however, schools need a coordinated, intelligent approach to suicide risks. Here we provide a high-level overview of the legal concerns to help define key issues.

A. Failing to Prevent a Suicide

Negligence is the most common theory plaintiffs have advanced to recover from schools for a student’s death. A negligence claim asserts that the school had a legal duty to warn the parent or protect the student, unreasonably failed to carry out that duty, and caused the student’s suicide. The traditional rule—still followed by some states—is that such a claim fails alternatively because there is no duty to protect another from suicide or because suicide is an intervening cause that cuts off such liability. Under this approach, a school will be held liable only if its conduct creates an uncontrollable impulse to commit suicide; such cases will likely involve an underlying negligent act that creates the suicidal impulse.

In other states, courts have permitted some negligence theories to move forward. Today, a school is most likely to be held liable when school employees know or should know that a student is presently contemplating suicide and they fail to warn the student’s parents. The

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5 Richard Fossey & Perry A. Zirkel, Liability for Student Suicide in the Wake of Eisel, 10 Tex. Wesleyan L. Rev. 403, 439 (2004) (“As the above discussion and accompanying tables show, educators have little to fear with regard to liability for a student's suicide, whether a cause of action is brought under a common-law theory or as a constitutional tort.”). With the exception of the federal disabilities laws, the likelihood of success of most claims depends entirely upon state law. Some states are more receptive to plaintiffs’ claims than others. Some states may also have a form of charitable immunity that applies to independent schools. See, e.g., Schultz v. Roman Catholic Archdiocese of Newark, 472 A.2d 531, 537–38 (N.J. 1984) (applying New Jersey’s charitable immunity statute to bar a negligent hiring claim against a parochial school when a school employee assaulted a student).

6 We do not include all possible claims. A number of cases allege that the school district breached a federal constitutional duty, Fossey, supra note 5, or committed a Title IX violation, AnnaMaria M. v. Napa Valley Unified Sch. Dist., No. C 03-0101, 2006 WL 1525733 (N.D. Cal. May 30, 2006). We do not discuss Title IX claims because independent schools are not state actors; we do not discuss Title IX claims because many independent schools do not accept federal funding.

7 E.g., McMahon v. St. Croix Falls Sch. Dist., 596 N.W.2d 875, 880 (Wis. Ct. App. 1999) (“In other words, suicide is an intervening, superseding cause, which is another way of saying that the injury is too remote from the negligence.” (citation omitted)).

8 Corales v. Bennett, 567 F.3d 554, 572–73 (9th Cir. 2009) (applying California law and holding that when the decedent student “had the opportunity to appreciate the nature of his actions” the suicide was not the product of an uncontrollable impulse).

9 Wallace v. Broyles, 961 S.W.2d 712, 717 (Ark. 1998) (allowing a case to proceed to a jury when the university allegedly caused a football player’s suicide by negligently distributing drugs to the student).
remaining theories have so far proven less successful, but still present litigation risks for schools.  

1. **Tort—Failure to Warn**

The most common reason a school may be held liable for a student’s suicide is failing to notify the parents when a school has knowledge that the student is presently contemplating suicide. Courts and state legislatures have imposed a duty to warn because the burden of notifying parents is trivial when weighed against the death of a student (regardless of whether the student is actually suicidal). Accordingly, schools may be liable under this theory even when they learn of a student’s intent indirectly and the student denies it when confronted. Just because a warning is legally mandated, however, does not mean that every suicide that occurs after a school failed to warn a parent will result in liability. For example, in some states, a school will not be liable when the student does not threaten *imminent* self-harm and the suicide does not quickly follow the threat. Similarly, a parent’s knowledge of the threat or similar threats may limit a school’s liability. Even so, the safest course is for schools to report all suicide threats to parents.

2. **Tort—Special Relationship Giving Rise to a Duty to Prevent a Suicide**

In some states, schools’ duty to prevent a suicide may extend beyond warning parents. Traditionally, the duty to prevent a suicide arises when a defendant has a special and, typically, custodial relationship with the person. The classic example is a jailer. Some states extend a similar duty to certain mental health professionals. Because of compulsory attendance laws and because schools stand *in loco parentis*, many states impose a “special relationship” duty on

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10 Though many of the cases discussed in this article involve public K–12 schools or colleges and universities, independent schools may be more likely to face liability. Unlike their public counterparts, independent schools may lack immunity, and unlike colleges and universities, they stand *in loco parentis.*

11 *E.g.*, Girard v. Town of Putnam, No. CV085002754-S, 2011 WL 783599 *4* (Conn. Super. Ct. Jan. 28, 2011) (holding that the failure to warn a parent when required by both statute and a school policy creates “a foreseeable harm as a consequence of a failure to act”); *Eisel* v. Bd. of Educ., 597 A.2d 447, 455 (Ct. App. Md. 1991); Wyke v. Polk County Sch. Bd., 129 F.3d 560, 574 (11th Cir. 1997) (holding that if a school official of ordinary prudence would have notified the parents under the circumstances, then the school could be held liable when a student twice attempted suicide at school and then completed it at home); *id.* (“The risk of a child’s death substantially outweighs the burden of making a phone call.”). In many states, mental health professionals also have a duty to warn students regardless of whether the school would have such a duty. *E.g.*, *Tarasoff v. Regents of the Univ. of Cal.*, 551 P.2d 334, 340 (Cal. 1976).


13 Carrier v. Lake Pend Oreille Sch. Dist. # 84, 134 P.3d 655, 660 (Idaho 2006) (holding that although the school had a statutory duty to warn parents of a suicidal threat, the duty did not require reporting passing references in an essay written seven months before the suicide); *id.* (interpreting the statute to require a warning only when the school has knowledge that a student has “a present aim, direction, or trend toward taking one’s own life.”); *Scott* v. Montgomery Cnty. Bd. of Educ., No. 96-2455, 1997 U.S. App. LEXIS 21258, *17* (4th Cir. Aug. 12, 1997) (distinguishing *Eisel* because the student’s threat was not of imminent action and when the suicide followed three months after the threat).


15 *RESTATEMENT (SECOND) OF TORTS* § 314A (1965).

16 *E.g.*, Mass. Gen. Laws Ch. 112, § 129A.
schools to supervise and protect students, even from foreseeable acts of third parties. So far, courts have been reluctant to extend that duty to suicide, reasoning that schools have insufficient custodial control over students. However, most, if not all, of the reported cases involve suicides that occur at home, not at school. With the right facts, a court might extend the duty for a suicide that occurs at school or in a boarding school’s dorms.

Indeed, at least one court has imposed such a duty on a college when it had specific knowledge of an “imminent probability” a student would hurt himself. In that case, within just days of a student’s hanging himself in his on-campus dorm room, the college learned that he had bruised his own head and threatened suicide in three separate letters. The college had even asked him to sign a contract promising not to harm himself. Under these facts, the court held that the school had a special relationship duty to prevent the suicide; a duty the school allegedly breached because it left the student alone, prohibited his girlfriend from visiting him, and failed to obtain counseling for him.

Had the same facts occurred at an independent primary or secondary boarding school, the court might have had an easier time concluding that the school had such a duty, because the boarding school stands in loco parentis. It is conceivable that any independent school would be held to have a similar duty when a suicide is equally foreseeable and occurs at school, during school hours.

3. Tort—Negligent Undertaking

Schools may also face liability when they volunteer to help a suicidal student but fail to act reasonably when providing the help. The theory is called “negligent undertaking.” For example, in one case, parents claimed that an English teacher who had helped students with emotional

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17 Mikell v. Sch. Admin. Unit No. 33, 972 A.2d 1050, 1057 (N.H. 2009) (explaining that a school has a common law duty to protect students but limited to “only those periods of time when parental protection is compromised, and only to those risks that are reasonably foreseeable.”); Shin v. Sunriver Preparatory Sch., Inc., 111 P.3d 762, 772 (Or. Ct. App. 2005) (holding a private boarding school has a special duty because it stands in loco parentis); Wyke v. Polk County Sch. Bd., 129 F.3d 560, 571 (11th Cir. 1997) (explaining that “Florida schools have a duty to supervise students placed within their care”); Brooks v. Logan, 903 P.2d 73, 79 (Idaho 1995) (holding that the statute codifying the in loco parentis doctrine gave rise to a special duty to “seek help” for a suicidal student), superseded by statute Idaho Code Ann. § 33-512B, as recognized by Carrier, 134 P.3d at 659 (explaining that the statute narrowed the duty to the duty to warn).
18 Mirand v. City of New York, 637 N.E.2d 263 (N.Y. 1994) (holding a school could be liable for injuries sustained by a student from other students when the school could “reasonably” have “anticipated” the harm); id. (“Actual or constructive notice to the school of prior similar conduct is generally required because, obviously, school personnel cannot reasonably be expected to guard against all of the sudden, spontaneous acts that take place among students . . . .”).
19 Mikell, 972 A.2d at 1057 (“[A]though a school no doubt possesses some amount of custody and control over its students during school hours, such control is a far cry from that held by jails, juvenile detention facilities, or similar institutions where the duty to prevent another's suicide has been imposed.”; but see Brooks, 903 P.2d at 79 (suggesting that a school may not have a duty to physically prevent the suicide, but concluding the school’s special relationship did give rise to a duty to “seek help” for a suicidal student), superseded by statute Idaho Code Ann. § 33-512B.
21 Id. at 610. The school also failed to notify his guardians. Id.
22 Id. at 608 (“The instant case does not involve a minor, and therefore, strictly speaking, no duty arises from an in loco parentis relationship . . . .”).
issues in the past was liable for their son’s suicide. The teacher took no action after allegedly reading his class journal where he expressed suicidal thoughts. The court rejected the claim that “occasional past actions of helping troubled students” would give rise to a duty to help all students. Similarly, in some states, merely ceasing to provide help after starting does not necessarily give rise to liability—the assistance must have put the plaintiff in a worse position or deprived the plaintiff of the ability to seek help elsewhere.

Regardless, if a school provides counseling or other services, it should provide those services competently or it risks litigation. The likelihood of success will often be fact-specific. For example, one court rejected as too speculative the claim that had a school counselor instructed a mother to seek professional help for the student, then the student would have received help and the suicide would not have occurred.

4. Tort—IIED Claims and “Bullying”

In many states, a plaintiff may recover upon proof that a school employee recklessly, intentionally—and, in some cases, negligently—inflicted severe emotional harm on a student and suicide resulted. Often brought as an “intentional infliction of emotional distress” (IIED) claim, this claim requires a plaintiff to prove that the conduct is extreme, outrageous, and beyond all bounds of decency. This is no easy task. For example, a student committed suicide the day he was suspended. His mother sued the school claiming IIED, because his suicide note complained that his teacher had falsely accused him. The court rejected this claim, holding that falsely accusing a student is not beyond all bounds of decency.

Taking such claims one step farther, some plaintiffs have alleged that schools should be liable for negligently permitting student-on-student harassment, including bullying. These claims are often dismissed because student bullying is an intervening cause that cuts off a school’s liability. At some point, however, a school may be liable. For example, if a school is clearly aware of

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24 Id.
26 See id. at 1058.
27 Id.
28 Id. at 1055 (“One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.”); see Shin v. Sunriver Preparatory Sch., Inc., 111 P.3d 762, 772–73 (Or. Ct. App. 2005) (holding that a school may be liable for negligent infliction of emotional distress, even when no physical injury is involved, when the school has a special relationship with a student).
29 RESTATEMENT (SECOND) OF TORTS § 46 cmt. d (1965) (“Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”).
30 Mikell, 972 A.2d at 1055.
chronic and severe bullying and does nothing to stop it, or worse, its employees sanction it, it is conceivable that the school would be held liable for a resultant suicide. Studies show that students who are bullied are more likely to contemplate suicide. These combine to create significant litigation risk on this front, even if it is unlikely that a plaintiff would ultimately be able to recover.

5. Contract—Failure to Follow a Student Handbook

A handful of cases involve contract theories of liability, with plaintiffs relying on representations in a student handbook as grounds for the breach. So far, courts have often rejected these claims, usually because handbook promises are not sufficiently definite. For example, in a suit by parents of an MIT sophomore who committed suicide in her dorm, the court held that statements in MIT brochures promising to help students with their “physical and psychological needs” were too vague to be enforced as a contract. Similarly, in a non-suicide case, a student alleged that a private school had a duty to protect her physical and emotional health under its student handbook. The court again held that this was too imprecise to impose a contractual duty. The plaintiff also failed to show any understanding or “meeting of the minds” between the school and the student’s parents that could form an implied contract. Still, a handbook with sufficiently specific representations or breach of any other contract may give rise to a claim.

B. Efforts to Prevent a Suicide

Schools may also face liability in their efforts to prevent a suicide—generally under federal or state laws related to disability, confidentiality, or contract.

1. Federal & State Disability Laws

33 *See AnnaMaria M. v. Napa Valley Unified Sch. Dist., No. C 03-0101, 2006 WL 1525733 *5 (N.D. Cal. May 30, 2006) (refusing to dismiss a deliberate indifference Title IX claim when a student attempted suicide after daily sexual harassment); see Jasperson v. Anoka-Hennepin Ind. Sch. Dist. No. 11, No. A06-1904, 2007 WL 3153456, *5 (Oct. 30, 2007) (dismissing claim that school caused student’s suicide when it failed to stop bullying because the “record [did] not present a genuine issue of material fact that anyone at the school had any knowledge that J.S. was subject to harm from the two boys”).

34 *See Joseph A. Dake et al., The Nature and Extent of Bullying at School, 73 J. SCH. HEALTH 173, 175 (2003) (“Bullies also were 4.0 times more likely . . . and bully-victims 2.5 times more likely to report severe suicidal ideation.”).


38 *Id.; see also Mahoney v. Allegheny Coll., 892-2003 (Pa. Ct. Com. Pl. 2005)) (holding that the handbooks received by students and parents describing counseling services did not create any contract to perform specific mental health services for the student).

39 *Miss Porter’s Sch., 738 F. Supp. 2d at 312, 322 (holding a reasonable finder of fact could conclude that a school employee violated the student handbook promise not to “comment on an infraction” without having been specifically requested to do so); Goodman v. President and Trustees of Bowdoin Coll., 135 F.Supp.2d 40, 57 (D. Me. 2001) (“By citing this provision of the Student Handbook, Plaintiff has pleaded sufficient allegations to indicate Bowdoin’s manifestation of its intent to be bound by the standard of fundamental fairness, the requirement of impartiality, and the delineated procedures.”).
Two federal disabilities laws may apply to independent schools. First, Title III of the Americans with Disabilities Act (“ADA”) applies to all independent schools except for religious schools. Second, Section 504 of the Rehabilitation Act applies to any school that accepts federal financial assistance, including religious schools. The ADA and Section 504 both prohibit discrimination on the basis of a student’s disability. Because many mental health disorders tied to suicide qualify as disabilities, schools may not have an automatic policy of excluding students just because of a past threatened or attempted suicide. We focus on the ADA here because many independent schools do not accept federal financial assistance; however, the ADA and Section 504 track very closely in law so schools that are not required to follow the ADA but are required to comply with Section 504 may find the following instructive.

To prove an ADA violation, a student must show: (1) that he or she is disabled, (2) that the school took adverse action against the student because of the disability, and (3) that the school failed to make reasonable accommodations that would allow the student to attend. A reasonable accommodation is a change that would not fundamentally alter a school’s program or unreasonably burden the school’s resources. For truly suicidal students, it may often be difficult to prove an ADA case. First, “legitimate effort[s]” to protect a student from self-harm pursuant to a “policy” are not motivated by discriminatory intent. Second, when a student is likely to inflict self-harm at any moment, the necessary modifications would in many cases prove too burdensome. Ultimately, each case must be evaluated on its own facts, and schools must not leap to conclusions.

The Department of Education’s Office of Civil Rights (“OCR”) enforces Section 504 and has offered extensive guidance to colleges on permissible responses to suicidal students under Section 504’s “direct threat exception.” Though not directly applicable to Title III of the ADA,
this guidance focuses on objectivity and process, which, if followed, should help a school demonstrate compliance with the ADA. Under Section 504, a “direct threat” requires a “high probability of substantial harm,” as determined by objective, fact-based assessments after due process. The school must determine the nature, duration and severity of the risk, the probability that the risk will materialize, and the ability of modifications to sufficiently mitigate the risk. In the context of a true emergency, schools may act immediately so long as the student has minimal due process (the chance to explain). Schools may in certain cases require an emergency withdrawal and a formal evaluation, and may also require the student to meet conditions for readmission. Any such conditions must be individually tailored, and geared toward ensuring the threat no longer exists.

Independent schools should consider disability law obligations when responding to a suicide and addressing matters related to suicidal or formerly suicidal students, and they should have policies in place that will enable handling such matters consistent with disability law obligations. In addition to the ADA and Section 504, states may also have applicable disability laws about which schools should be aware.

2. Federal and State Confidentiality Laws

Schools must also comply with federal and state privacy and confidentiality laws. In general, these laws should not pose a barrier to school officials sharing information on a need-to-know basis when responding to a suicidal student. Still, the laws may impose liability when employees stray beyond that, as sometimes happens in the dust cloud of tragic events. At the federal level, the key law is the Federal Education Rights and Privacy Act (“FERPA”). FERPA applies only

48 Like Section 504, Title III permits a school to take action against a disabled student in the face of a “direct threat.” 28 C.F.R. § 36.208. Title III defines “direct threat” to include only a threat of harm against others. 28 C.F.R. § 36.208. Section 504, by contrast, has been interpreted to include “conduct resulting from a disability that? poses a significant risk to the health or safety of the student or others.” E.g., OCR Letter to DeSales Univ., supra note 43.

49 E.g., OCR Letter to DeSales Univ., supra note 43; OCR Letter to Marietta College 5 (Mar. 18, 2005) (rejecting a direct threat defense when the College “never conducted an individualized and objective assessment of the Student’s ability to safely participate in the College’s program, based on a reasonable medical judgment, and did not consider whether the perceived risk of injury to the Student could have been mitigated by reasonable modifications of College policies, practices, or procedures.”).

50 OCR Letter to DeSales Univ., supra note 43

51 E.g., id. (noting that “full due process” is required after the emergency has been resolved.”); Letter from OCR to Bluffton Univ. 5 (Dec. 22, 2004) (concluding that the University violated Section 504 when it refused to permit a student who had attempted suicide to return when 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 would not allow the Student to return to school that semester.”).

52 E.g., OCR Letter to Guilford College 13 (Mar. 6, 2003) (“[A]n institution has discretion in fashioning return conditions, [but] its discretion is not unlimited.”).

53 E.g., id. ([W]hat conditions a student must meet . . . should be determined on an individual basis. [A]n educational institution may require as a precondition . . . [for example, requiring the student to] follow[] a treatment plan, submit[] periodic reports, grant[] permission for the institution to talk to the treating professional.”).

54 The Health Insurance Portability and Affordability Act (“HIPAA”) may also apply in rare cases. HIPAA’s Privacy Rule requires “covered entities” to keep protected health information confidential. “Covered entities,” include healthcare providers who engage in certain “covered transactions.” Covered transactions are those for which the U.S. Department of Health and Human Services has adopted a standard, such as health care claims submitted to a health plan. See 45 C.F.R. § 160.103 (defining
to independent schools that accept federal funds. Although FERPA may have limited application in the independent school world due to the federal funds triggering requirement, the guidance and structure of FERPA can be helpful to schools building their policies and internal procedures. While FERPA does not incorporate a private right of action, it does present a compliance risk. On the state level, state confidentiality laws often focus on medical or mental health information and may limit certain employees’ ability to share relevant information during a suicide response.

FERPA prohibits the unauthorized disclosure of personally identifiable information from “education records.” For students under age 18, FERPA permits and, upon a parent’s request, requires that schools share this information with a student’s parents. Within the school, FERPA also allows disclosure to school personnel with “legitimate educational interests” in the information, which permits need-to-know, up-the-chain reporting. Finally, FERPA permits disclosures “necessary to protect the health or safety of the student or other persons.” This includes “a situation in which a student gives sufficient cumulative warning signs that lead an educational . . . institution to believe the student may harm himself or others at any moment.”

It is critical that schools understand what sorts of state confidentiality laws may come into play in the school. Some of these laws, guidelines, and regulations may depend on the licensing of the mental health professional that the school employs or uses on a contract basis. Many states, for example, prohibit healthcare professionals from disclosing medical or mental health information. Minors may have rights under these laws when they can consent to treatment. Even then, many states permit or require the disclosure of information to prevent a suicide. Schools should also be aware of any ethical rules that may prevent certain professionals employed by the school in their professional capacity from sharing relevant information. Schools should consult with counsel to identify which confidentiality laws apply and the restrictions those laws impose. With

advance planning, schools should be able to craft policies that would allow necessary information sharing in a suicide crisis, without violating any applicable confidentiality laws.

3. Student Handbook Liability Revisited

Finally, as discussed above, independent schools may face liability for failing to comply with any contracts they may have with students. For example, the school may face liability if it makes an unqualified promise to provide due process before expelling a student and summarily expels a student after a suicide attempt.65

II. STEPS SCHOOLS CAN TAKE TO PREVENT SUICIDES AND LIMIT THE RISKS

Given the legal risks, and more importantly, the potential loss of life, schools should take the opportunity to create or update their suicide policies before tragedy strikes. Looking at the before, during, and after of a suicide crisis, this discussion identifies possible policies and procedures schools may wish to implement; it is intended to identify issues, not provide advice. Nothing can replace a thorough policy review by school administrators in consultation with legal counsel and other professionals. Generally speaking, though, whatever policies a school adopts, the school should follow them explicitly.66

A. Prevention—When all is “Quiet”

It is impossible to manage student suicide risk strategically unless a school knows where it stands. Therefore, if a school has never had a plan for suicide prevention and response, or if it has a dated plan, the first thing to do is to create one or update the old one. Ideally, top managers would review the school’s current policies and procedures, obtain advice from legal counsel and other professionals, and draft a research-based, institution-focused suicide risk management plan.67 This process offers a prime opportunity for a school to formally update other policies and procedures to ensure compliance with the law and alignment with the suicide risk management strategy. For example, it may be advisable to clarify what services the school does and does not offer, and what, if any, due process it is willing to provide under ordinary and emergency circumstances.

Schools may also focus on taking affirmative steps to prevent suicide. This might involve training for both staff and students. On the staff side, training may focus on identifying student

65 See Bass ex. rel. Bass v. Miss Porter's Sch., 738 F. Supp. 2d 307, 324–25 (D. Conn. 2010) (rejecting a student’s claim that the school did not follow its own policy on medical leave petitions because the policy gave the school sufficient discretion).


67 There are a number of resources on suicide prevention and response. See, e.g., YOUTH SUICIDE PREVENTION SCHOOL BASED GUIDE, available at http://theguide.fmhi.usf.edu/ (offering checklists and issue briefs); AM. ASS’N OF SUICIDIOLOGY, http://www.suicidology.org/web/guest/home (collecting a range of resources).
warning signs and responding when they suspect a student is contemplating suicide. Some states may actually require this training. Staff with a more formal role in the school’s response plan may require more specific training on student interviews and threat assessments. Students can also benefit from suicide prevention training focusing on warning signs and where to go for help. A more aggressive approach might be to screen students for suicide risk, using surveys.

A school may also consider evaluating its school climate in order to address issues that may impact students’ mental health. For example, emerging data demonstrates that bullying correlates to suicide at alarming rates. This is especially true among certain student populations, including lesbian and gay students.

B. Intervention—Responding to a Crisis

1. When a Student Threatens Suicide

Schools should define what staff should do when a student threatens suicide or suicidal thoughts are suspected. This is true in all situations, but especially in states where schools have an obligation to report a suicide threat to parents. One way to ensure the right people have the necessary information is to implement a mandatory up-the-chain reporting requirement. This approach may start with a requirement that students report suicide threats to teachers or counselors. Teachers or counselors must then report the information up to the appropriate official. Schools might designate a crisis or suicide prevention team or require immediate notification to administration. Whatever the case, the process must be documented. Professional, confidential communication among staff is imperative to ensure that the “right hand knows what the left hand is doing” and the appropriate steps are implemented. Otherwise, schools may be charged with constructive knowledge of a suicide threat and failure to act appropriately with the information.

Assuming schools adopt an information reporting system, they must then decide what to do with the information. If a school has the resources, one approach is a mandatory at-school interview by a trained mental health professional to assess the threat. Regardless of whether the threat rises to the level of an emergency, schools must develop a standard for when a student must be referred for professional evaluation. In developing their approach, schools should consider a

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68 According to the Center for Disease Control?, warning signs include: history of previous suicide attempts, family history of suicide, history of depression or other mental illness, alcohol or drug abuse, stressful life event or loss, easy access to lethal methods, exposure to the suicidal behavior of others, incarceration. CDC, supra note 2.
71 Id. at 182 (noting, however, that there are “limited data currently available regarding [suicide screening program’s] effectiveness for reducing suicidal behavior.”).
72 See Jason A. Wallace, Bullycide in America’s Schools: Forging a Comprehensive Legislative Solution, 86 IND. L.J. 735, 738–43 (2010).
73 Id.
number of practical realities: who will take the student to the hospital, who will notify the parents, and whether there are specific professionals to whom the school automatically takes the student.

In the course of handling the immediate crisis, it is important for schools to understand the general liability concern of that moment. Generally, the school is expected to act as “a reasonably prudent person under the circumstances” would act. This would mean, for example, not leaving the student alone or with ready access to implements that the student could use to harm others or himself. Although such an example may seem obvious, such basic steps can be overlooked in an effort to effectively follow procedures. Similarly, schools must also understand what information is confidential versus what information may or must be disclosed under federal and state confidentiality laws. This understanding should be built into the notification process(es) that the school drafts.

2. When a Student Refuses to Take a Leave of Absence or Wishes to Return

Schools should consider implementing a mandatory emergency withdrawal policy with a provision that permits return on certain conditions. This policy would have to comply with the ADA or Section 504 (as applicable) and any state disability laws. As discussed above, the conditions must be individually tailored to the particular student. In crafting these policies, each school should consider its resources and its duty to provide certain accommodations. Generally, each school should also develop due process policies and procedures that reflect the school’s actual practice and comply with disability laws. Even when not strictly required by law, the more process a school affords, the more deference its decision is likely to receive. For example, a school may provide that all suicidal students take a leave of absence and require that, in a particular case, the student may return when a mental health professional provides a statement about the student’s ability to come back and function within the school community once more without the potential threat of harm to himself or others.

C. Response—When Tragedy Strikes

A student suicide—especially a suicide committed at school—shakes a school community to its core. A school’s response is critical and requires a “delicate and well-planned approach.”74 First, in releasing information, schools should comply with any confidentiality law requirements and respect the grieving family’s needs. Second, schools should exercise caution when communicating with students because of the well-documented phenomenon of suicide “contagion.”75 Suicide “contagion” is the process by which suicidal behavior influences an

75 Zenere, supra note 74, at 12–13.
increase in suicidal behaviors by others. Simply put, suicide contagion is copycat or imitation suicides.

Just one adolescent suicide “increases the risk of additional suicides within a community and may serve as a catalyst for a cluster.”76 Suicide clusters account for 1–5 percent of adolescent suicides each year.77 For example, in just the past two years, one Wisconsin school district experienced seven student suicides.78 In 2009, four students from the same high school in California separately committed suicide by jumping in front of a train.79

To manage suicide contagion, schools should have a policy about how to respond to a completed suicide—what information will be released, by whom, and when. This policy should avoid romanticizing the student’s death, including distributing unnecessary details about how it occurred.80 At the same time, the school should consider making grief counseling available and taking additional suicide prevention steps to reach out to those most vulnerable to contagion, often known as “postvention.”81

III. CONCLUSION

Student suicide is a tragic reality facing independent schools. It also presents legal risks and compliance challenges. Schools should address these issues to minimize institutional liability and the loss of life. The following examples of policies from an independent school and a modified one from a university may be helpful to independent schools approaching this difficult process. While independent schools seem to handle these issues in different ways, many seem to agree on the “sunset rule,” meaning that the sun does not set on a situation such as this without the issue being dealt with in some capacity.

76 Id.
77 Id. at 13.
80 Zenere, supra note 74, at 14.
81 Id.
Emergency Procedures for Students Manifesting an Intent of Self Harm, Harm to Others or an Overall Inability to Function as Part of the School Community

If a student should indicate or disclose at any time that he or she has actively considered or is considering harming him-or herself or has actually attempted to harm him-or herself (including self-mutilation), it is critical to take it seriously and report it immediately.

- Do not assure confidentiality.
- Do not try to assess the situation yourself.
- Do not leave the student unattended at any time.

If the student is in immediate physical danger (unconscious, non-responsive, bleeding, etc):

- If the student appears to be in immediate danger, stay with the student and call or have someone call 911, and then the Duty Administrator (DA).
- If possible, bring student to the Health Office to ensure emotional safety of the community. Stay with the student at all times.
- Call Director of Health and Counseling Services or school counselor.

If the student is not in immediate physical danger (talks of suicide, disclosed self-mutilation etc):

- Call the DA to gather facts
- Contact the Director of Health and Counseling Services or school counselor
- Stay with the student until a counselor arrives

At this point, the DA and the school counselor will take over responsibility and assess the needs of the student. In consultation, decisions will be made regarding the care of the student.

- Health Office staff and evening nurse prepare to stay overnight.
- DA or School Counselor to contact parents. It is recommended that the DA or School Counselor contact parent prior to the student.
- Student completes a Safety Agreement with the DA/ School Counselor.

The following steps should occur within 24 hours of the incident:

- Notify Head Master/ Assistant Head of School
- Notify Head of Upper School
- Notify Advisor/ Dorm Parents
- Documentation of Incident
- Mandatory meeting of student with School Counselor
- Notify School Nurse if ongoing medical attention is required
Student Suicide Attempt, Threats, or Gestures

I. Policy

Suicide is known to be the third leading cause of death for youths between the ages of 10 and 24. In addition, suicide, attempted suicide, and suicidal gestures have a significant detrimental effect, not only on the involved student, but on others in the campus community. The purpose of this policy is to provide guidance that outlines an appropriate medical and psychological response to suicide attempts, threats, or gestures by students currently enrolled at the Boarding School.

This policy is to enhance the safety and well-being of both individual students who may be at risk and other members of the campus community. When the School believes that there is a direct threat to the safety of a student, or any other person is at risk, the School may contact appropriate family members, individuals a student has identified as emergency contacts, or others as the School deems necessary or appropriate under the circumstances.

The policy outlines a two-fold approach: 1) to educate and promote discussion about self-abuse and violence, and 2) to provide crisis intervention and prevention services.

For the purpose of this policy, suicide is the purposeful act of causing one's own death; attempted suicide is any act, threat, or gesture in which a person engages in life-threatening behavior(s) with the intent of jeopardizing his/her life; and threatened suicide (gesture) is any expression of intent to seriously harm oneself or take one’s life. BIT, the Behavioral Intervention Team, is a group of qualified and dedicated School professionals whose mission is to:

- Balance the individual needs of the student and those of the greater campus community;
- Provide a structured positive method for addressing student behaviors that impact the School community and may involve mental health and/or safety issues;
- Manage each case individually;
- Initiate appropriate intervention without resorting to punitive measures;
- Eliminate “fragmented care”.

A. The relationship of the School to its students is one that has, as one of its basic purposes, the creation of an environment conducive to the pursuit and dissemination of knowledge. Since a portion of this relationship involves the interaction between the student's personal welfare and his/her academic achievement, the mental and emotional stability of students is a primary concern for the School.

B. Students experiencing mental or emotional instability or distress are encouraged to obtain professional assistance from the medical and/or counseling facilities on campus.

C. In order to provide for the safety and security of students, and maintain an atmosphere conducive to the pursuit and dissemination of knowledge, suicide attempts, threats or gestures by students are prohibited.

D. It is the responsibility of all members of the campus community to support actions and efforts to enhance the mental and emotional stability of students.
E. Educational programming will be offered by ________ and designed to promote the awareness and understanding of the complex dynamics of suicide and to recognize behaviors that may signal suicidal intent. Periodic programming will address issues of depression, general principles of mental health, stress, and other topics related to student concerns. These collaborative educational efforts will involve staff from Student Housing, Student Life, Student Counseling, and other staff who work with students from across campus.

II. Procedure
A. The goal of educational programming and resources offered by various departments within the School is to promote understanding concerning the dynamics of suicide and to help members of the campus community recognize behaviors that may signal suicidal intent.
B. When a School Official becomes aware of a situation suggesting that either a suicide attempt may occur or that a suicide attempt, threat, or gesture by a student has occurred, the following crisis intervention procedures should be implemented: (Debra: the following text is in another font—is that what you want?-nr)

1. Staff at the Counseling Center will follow professional ethical guidelines when dealing with suicidal or potentially suicidal students. The general requirement that counselors keep information confidential may not apply when a counselor believes that disclosure is required to prevent harm to the student or others.
2. If concerned over either the mental or emotional well being of a student or the possibility of a suicide attempt, or if the student has made a suicide threat, the School Official shall contact the Counseling Center and request assistance. If the situation occurs after normal counseling hours and immediate assistance is needed, contact 911.
3. If a suicide attempt or gesture has occurred, the School Official should initiate an appropriate medical response:
   a. Render First Aid or other immediate assistance to the student as possible and as needed.
   b. If a medical emergency exists, call 911.
   c. A followup counseling referral should also be completed.
   d. If no medical emergency exists, immediate physical and psychiatric evaluation is needed. Initial evaluation is provided by ____________ [this might be on or off-campus, depending on the school resources and structure]. To initiate this process, contact ____________. Advise them of the situation and request assistance. After normal operating hours, contact ____________ and request assistance.
   e. Transportation should be provided by EMS ambulance (for medical emergencies) or by ____________ for non-medical emergencies. The School Official should stay with the student until ____________.
f. Following the incident, the student must spend at least one night in a hospital for observation and/or treatment when recommended by the School Psychiatrist or attending physician. (Debra: the following text is larger—is that what you want?—nr)

g. If the student's behavior warrants it, involuntary or voluntary hospitalization at an appropriate medical or mental health facility may be ordered by the School Psychiatrist, or other appropriate attending physician, in accordance with State Law.

h. The student must have a follow-up evaluation by a member of the Counseling staff or designee regardless of a student's decision to be treated by another provider. This evaluation must occur within five days of the incident or within five days of the student's return to campus if treated off-campus. This time period may be adjusted at the School's discretion.

i. Notification of the student's parents/guardian by School Official, or attending Physician will occur. Both FERPA (34 CFR 99.36) and HIPAA (Public Law 104-191) provide for the release of normally protected data when it is believed that the individuals’ health or safety to self or others is jeopardized.

A decision regarding the student’s continuation at the School will be made by the Head of School in conjunction with the appropriate members of the school staff. Outside professional guidance may also be sought.

Questions should be directed to _________________ at __________________.