Suicide Prevention Resource Center

Promoting a public health approach to suicide prevention

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The nation's only federally supported resource center devoted to advancing the *National Strategy for Suicide Prevention.*

EDC Learning transforms lives.

SAMHSA
Substance Abuse and Mental Health Services Administration
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Disclaimers

✓ I am NOT a lawyer, so don't quote me!!

✓ My perspective is that of a suicide expert/consultant to colleges/universities that have been sued after a student has died by suicide.

✓ I am both computer- and Power Point-challenged – neither of which are ADA eligible (at least not yet).

Outline of Presentation

- ✓ Overview of legal terminology and liability

- ✓ Overview of TJF/SPRC Framework

- ✓ Key planning documents

- ✓ Important legal considerations

- ✓ Questions

- ✓ Interactive Participation

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Definitions

- ✓ GUIDELINES: criteria, procedures, protocols used where medical outcomes are NOT certain (ex: APA's Practice Guideline for the Assessment and Treatment of Patients with Suicidal Behaviors – 11/03)

- ✓ STANDARDS: activities, procedures, protocols used where the medical outcomes ARE certain

- ✓ STANDARDS of CARE: "that degree of care which a reasonably prudent person or professional should exercise in same or similar circumstances" (Black, 1979).Therefore, a community (not "gold") standard.

Negligence

✓ Negligence can be described as:

"doing something which he or she should not have done (**commission**) or omitting to do something which he or she should have done (**omission**).

✓ Hence, consequences of carelessness or ignorance do not excuse the clinician from liability

✓ The most common legal action is the failure "reasonably" to protect patients from harming themselves (taking precautions)

Simon (1988)

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The Four D's in Establishing Negligence

✓ Each of these must be demonstrated by the plaintiff by a preponderance of evidence ("more likely than not"; the "51% rule")

Dereliction of—-**D**uty---**D**irectly causing---**D**amages

✓ This concept assumes concepts of causation (causal chain) and that the 4 D's occurred in close proximity to the time of injury

Rachlin (1984)

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Establishing Negligence

✓ FORESEEABILITY (attention to risk assessment)

– failure to properly diagnose risk

✓ CAUSATION (proximate cause)

– failure to treat and/or use precautions

– failure to implement appropriate interventions

Foreseeability vs. Prediction

- ✓ Accurate **prediction** of suicide is extremely difficult (Pokorny, 1983; 1997 – "false positives"). Prediction is a mathematical concept.

- ✓ When the suicidal behavior is **foreseeable**, the treatment provided must be consistent with professional standards.

- ✓ Foreseeability is a clinical and judgmental concept, based on the best available and commonly understood knowledge at the time.

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Foreseeability and Causation

Three issues tend to recur in assessing liability cases:

1. Should the administration/clinician have predicted/foreseen the possibility of the violent behavior?

2. Was there sufficient evidence for an identifiable risk of harm (warning signs; risk factors; changes)?

3. Did the administration/clinician do enough to protect the campus/individual?
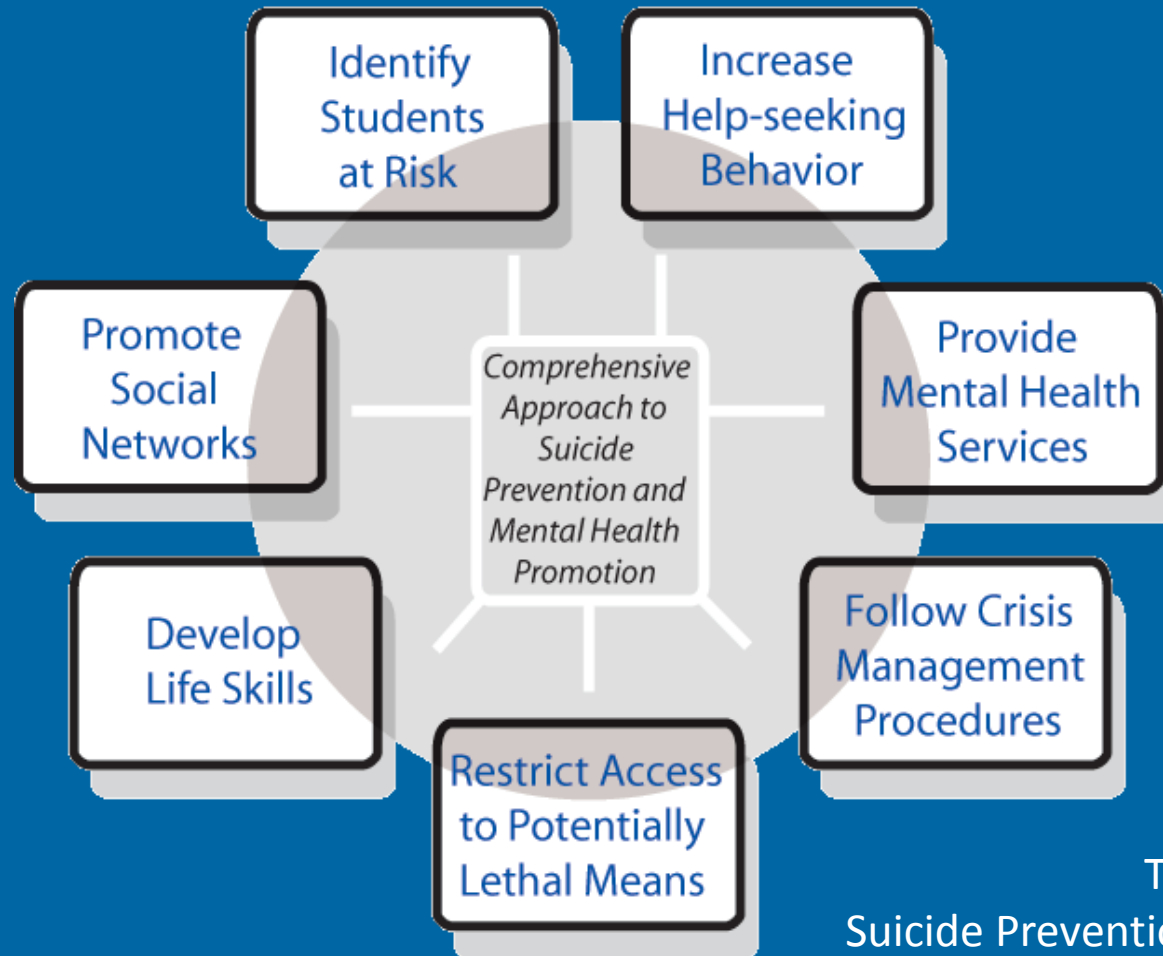
Adequate Precautions

- Documentation
  - who, what, where, when, why, & how
  - phone calls; emails; letters
  - "thinking aloud on paper"
  - "if it isn't written, it didn't happen"

- Consultation

- Availability

- Family/Support network involvement

- Medical & Mental Health Management
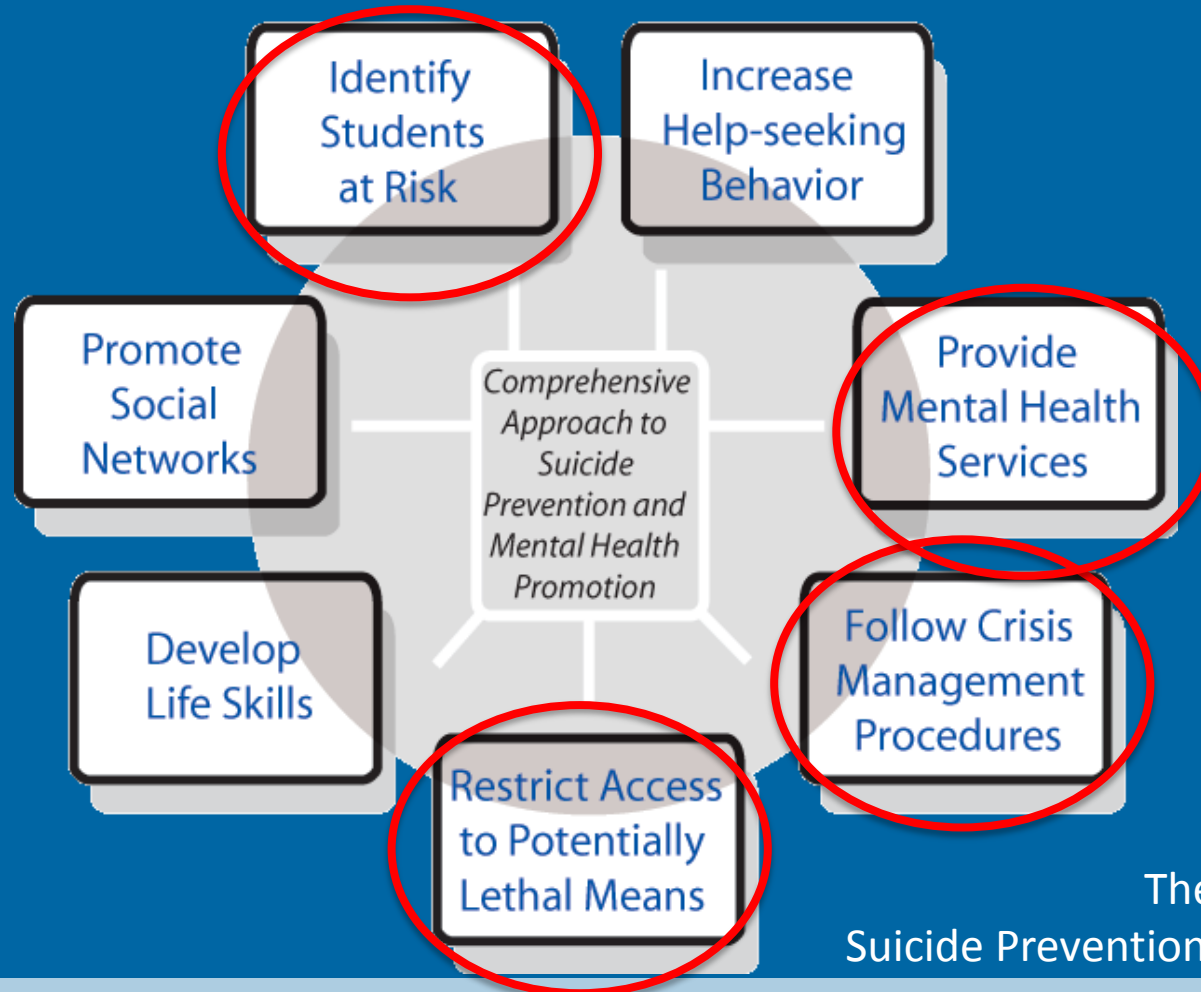
- Contingency Plans known to all

Errors

- ✓ Honest errors of judgment are inevitable in clinical practice – however, good clinical judgment needs to based on facts and clinical investigation.

- ✓ There is no place for clinical intuition in the assessment, treatment, and management of suicidal individuals.

- ✓ An error of prediction, or even judgment, does not necessarily establish negligence.

TJF/SPRC Comprehensive Approach

Identify Students at Risk

Increase Help-seeking Behavior

Promote Social Networks

Comprehensive Approach to Suicide Prevention and Mental Health Promotion

Provide Mental Health Services

Develop Life Skills

Follow Crisis Management Procedures

Restrict Access to Potentially Lethal Means

The Jed Foundation;
Suicide Prevention Resource Center

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TJF/SPRC Comprehensive Approach

The Jed Foundation;
Suicide Prevention Resource Center

# TJF Framework for Developing Institutional Protocols (2006)

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TJF Framework: Key topic areas

✓ Developing a Safety Protocol

- responding to acutely distressed students

- hospitalization protocols

- post-crisis follow-up plan

- documentation of encounters with students

✓ Developing an Emergency Contact Notification Protocol

✓ Developing a Leave of Absence and Re-Entry Protocol

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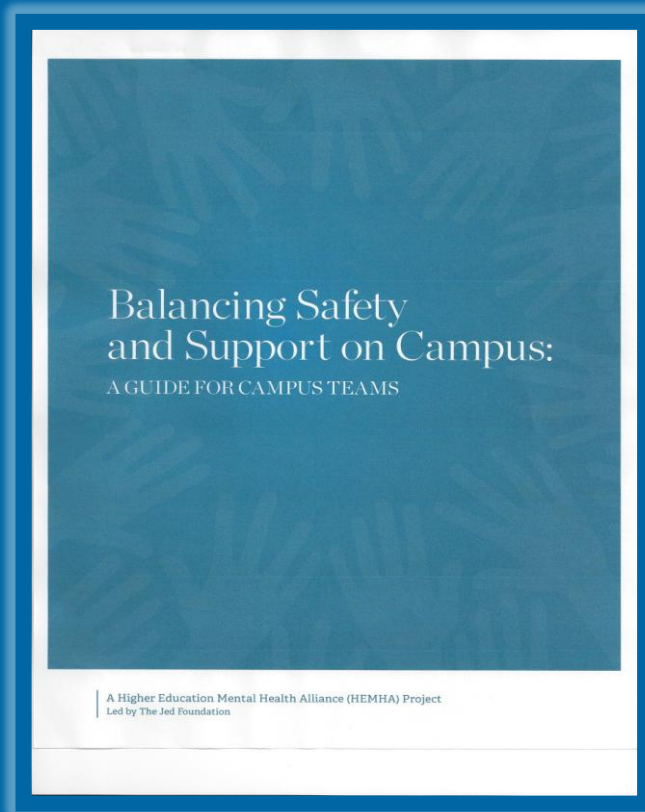
TJF Student Mental Health and the Law (2008)

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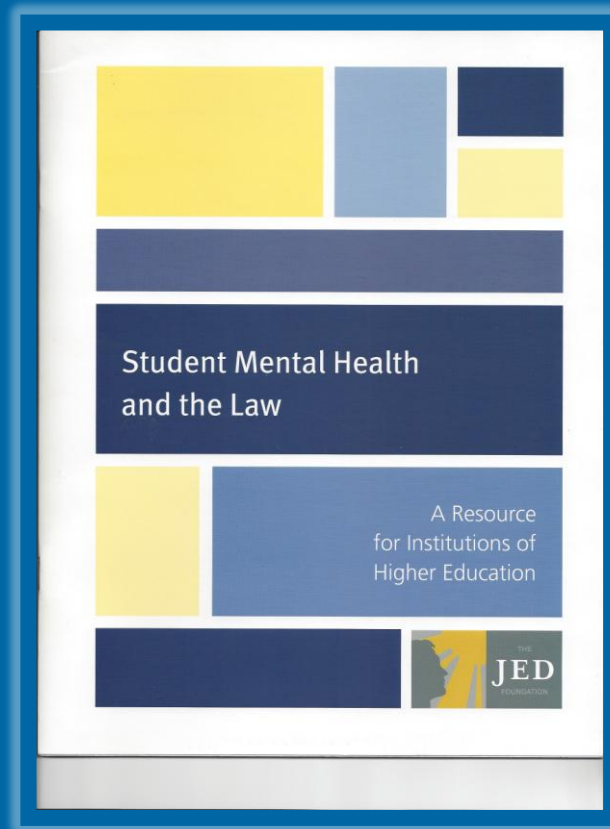
Contents

✓ Privacy and Confidentiality

– FERPA

– HIPAA

✓ Disability Law

– Americans with Disabilities Act (1990; 2008)

– Section 504 of Rehabilitation Act (1973)

– Title VIII of Civil Rights Act (1968)

– Office of Civil Rights (OCR) of DoE memoranda

✓ Delivering Mental Health Services

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Higher Education Mental Health Alliance (HEMHA) A Guide for Campus Teams

Balancing Safety
and Support on Campus:
A GUIDE FOR CAMPUS TEAMS

A Higher Education Mental Health Alliance (HEMHA) Project
Led by The Jed Foundation

http://www.jedfoundation.org/professionals/programs-and-research/campus_teams

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A Better Approach

"A prevention plan that guards against common risks, rather than the sensational ones that are much less likely to occur; that relies on a network of collaboration and clear communication; and that contributes to campus-wide awareness and a sense of community, trust, and meaningful human connection."

The Academy for Critical Incident Analysis (2010). A broader view. Proceedings of the winter 2010 ACIA Conference.
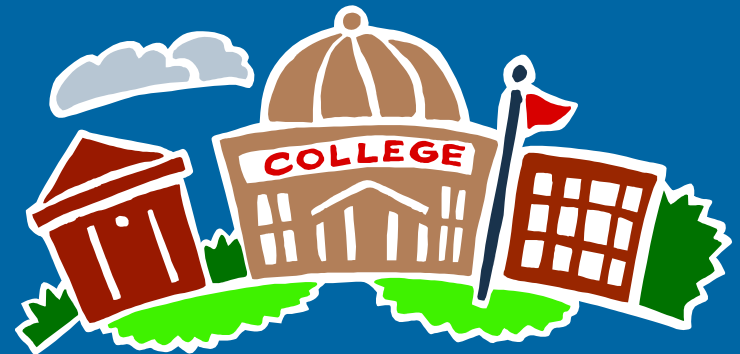
http://winter2010.aciajj.org/overview/a-broader-view

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EDC/TJF CampusMHAP: A Guide to Campus Mental Health Action (2011)
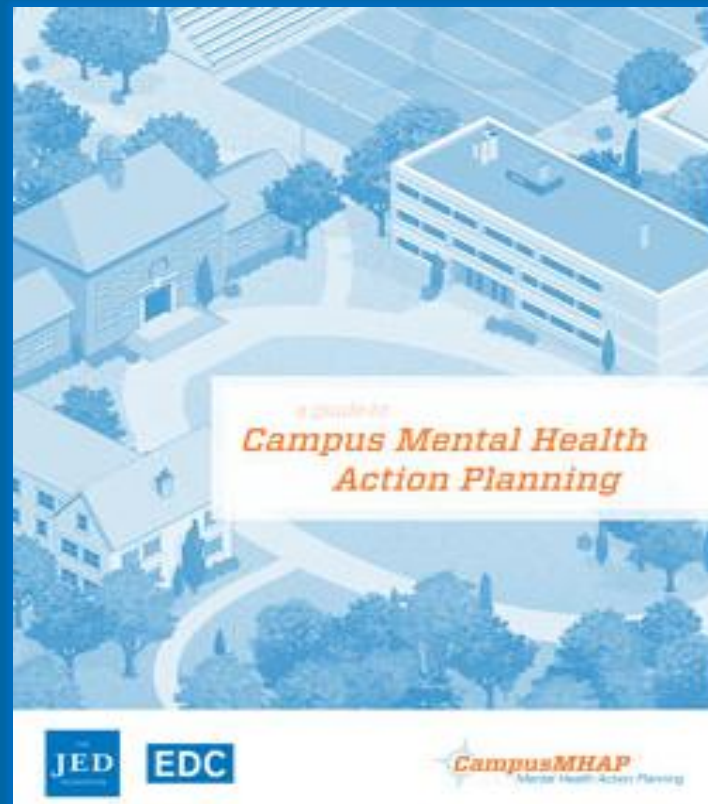
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Sources of Relevant Law: Federal Statutes

1) ADA Amendments Act of 2008 (Titles II and III)

2) Section 504 of the Rehabilitation Act

3) Fair Housing Act

Sources of Relevant Law (cont.)

4) Regulations implementing those statutes (new ADAAA regulations in effect since March 2011)

5) Judicial opinions interpreting those statutes and their regulations

6) U.S. Department of Education's Office of Civil Rights "Resolution Letters"

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ADA/ Section 504

The primary obligation under the ADA/Section 504 is to not discriminate against individuals with disabilities

- ✓ Includes affirmative obligation to provide reasonable accommodations

- ✓ Exception: individuals who poses a "direct threat" to self or others, defined as a "significant risk of substantial harm"

Bazelon Center for Mental Health Law, 2012

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"Guidance" from Cases and Federal Guidance

- ✓ Individualized assessments, not blanket ("zero tolerance") policies

- ✓ Safety concerns must be grounded in evidence, not stereotypes

- ✓ Cannot require someone to be "stable" or "cured"

- ✓ No blanket waivers for medical information

Bazelon Center for Mental Health Law, 2012

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"Guidance" from Cases and Federal Guidance (cont.)

✓ Clear policies on voluntary or involuntary medical leaves of absence

✓ Consistent reenrollment criteria

✓ Clear disciplinary and grievance procedures

✓ Transparent emergency suspension with an opportunity to present evidence and challenge the decision

Bazelon Center for Mental Health Law, 2012

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Specific Challenges

✓ At risk vs. threat assessment committees:

- Understand the difference between risk and threat

- Primary focus should be on student support - actual threats are rare and this erodes trust

- Importance of having a good understanding of relevant laws - fear of FERPA

- Concept of interlocking committees: academic/dean and psycho-social/student services

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Direct Threat Assessment

The Four-Factor Test requires that you analyze:

1) Nature of the risk

2) Duration of the risk

3) Severity of the risk

4) Probability that the potential injury will actually occur

28 C.F.R. § 35.139(b) (Title II, or public, entities); 28 C.F.R. § 36.208(b) (Title III, or private, entities)

Bazelon Center for Mental Health Law, 2012

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Direct Threat Assessment

Whether someone poses a "direct threat" must be determined based on an ***individualized assessment*** (<u>not</u> stereotypes or assumptions) using the most current, objective medical evidence.

Bazelon Center for Mental Health Law, 2012

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Specific Challenges

✓ Screening programs and online resources:

 – Are very appealing to many students and often an acceptable way to make contact with treatment system

 – Don't screen if you do not have the resources to handle the capacity

 – Peer-to-peer programs are very appealing, but you need the resources to supervise properly

 – Look for specific tools that may help you (ex., appointment reminder system)

Resources

• SPRC Grantee Webinar "Developing Crisis Protocols and Legal Considerations for Student Mental Health http://www.sprc.org/news-events/events/developing-crisis-protocols-and-legal-considerations-student-mental-health (includes presentation from Julia Graff from the Bazelon Center cited throughout)

•Jed Foundation: Framework for Developing Institutional Protocols http://www.jedfoundation.org/professionals/programs-and-research/framework

• Jed Foundation: Student Mental Health and the Law http://www.jedfoundation.org/professionals/programs-and-research/legal-resource

• EDC/ Jed Foundation: CampusMHAP Guide http://www.sprc.org/sites/sprc.org/files/library/CampusMHAP_Web%20final.pdf

• HEMHA/ Jed Foundation: Balancing Safety and Support on Campus: A Guide for Teams http://www.jedfoundation.org/professionals/programs-and-research/campus_teams

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Resources (cont.)

• "Campus Mental Health: Know Your Rights!" Guide for College Students,
http://www.bazelon.org/Who-We-Are/Leadership-21/Campus-Rights-Guide.aspx

• "Supporting Students: A Model Policy for Colleges and Universities,"
http://www.bazelon.org/pdf/supportingstudents.pdf

• Bazelon Center: Campus Mental Health Legal Action: http://www.bazelon.org/Where-We-Stand/Community-Integration/Campus-Mental-Health/Campus-Mental-Health-Legal-Action.aspx

• U.S. Department of Education Office of Civil Rights:
http://www2.ed.gov/about/offices/list/ocr/docs/howto.html

•The Academy for Critical Incident Analysis (2010). A broader view. Proceedings of the winter 2010 ACIA Conference. http://winter2010.aciajj.org/overview/a-broader-view/

Questions?

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Your Turn!