

**FINANCIAL AID, STUDY AID, AND FIRST AID: THE GROWING RESPONSIBILITY OF
HIGHER EDUCATION INSTITUTIONS FACING THE MENTAL HEALTH NEEDS OF SUICIDAL
STUDENTS**

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Abstract

Higher education institutions are being confronted with an increased number of student suicides and an increased number of lawsuits brought against them as a result of such suicides. Recent cases have recognized that higher education institutions and administrators might have a duty to protect suicidal students on their campuses. In addition to suicide statistics and potential liability, these institutions also must consider duties of confidentiality owed to students under federal law and duties owed to protect students from third party harm. This paper discusses the legal and social tensions faced by higher education institutions and how they might be addressed.

I. Introduction

On the evening of April 10, 2000, a Massachusetts Institute of Technology (MIT) official called Cho and Kisuk Shin to inform them their daughter Elizabeth had set herself on fire in her college dorm room.¹ On April 14, 2000, Elizabeth Shin, an academically gifted student, talented clarinet player, and skilled fencer, died at the age of nineteen.² Two years after her death, her parents filed a wrongful death law suit against MIT.³

The number of lawsuits filed against colleges and universities for student suicides is growing in frequency.⁴ This increased rate in the number of law suits charging school responsibility after a student commits suicide comes at a time when suicide rates of college

¹ Deborah Sontag, *Who Was Responsible for Elizabeth Shin?*, N.Y. TIMES, Apr. 28, 2002, §6, at 57.

² *Id.*

³ *Id.*

⁴ Ann H. Franke, *When Students Kill Themselves, Colleges May Get the Blame*, CHRON. HIGHER EDUC., (Wash. D.C.), June 23, 2004, at B18; see also Karen W. Arenson, *Worried Colleges Step Up Efforts Over Suicide*, N.Y. TIMES, Dec. 3, 2004, at A1 (recognizing “rise in lawsuits involving student suicides”).

students are also on the rise.⁵ Since 1990, twelve students at MIT have committed suicide, and the school has recently been “battling a reputation as a pressure cooker.”⁶ Similarly, at New York University (NYU), five students jumped to their deaths, all in the same year.⁷ The NYU suicides, like MIT’s, attracted much public attention.⁸

⁵ See Eugene Bjorklund, *School Liability for Student Suicides*, 106 ED. LAW REP. 21, 21-22 (1996)(stating “[s]uicide among American youth is increasing at an epidemic rate...[and] is the fastest-growing cause of death among adolescents”)(citing Vernon Lee Sheeley & Barbara Herlihy, *Counseling Suicidal Teens: A Duty to Warn and Protect*, 37 SCH. COUNS. 89 (1989)); Peter Lake & Nancy Tribbensee, *The Emerging Crisis of College Student Suicide: Law and Policy Responses to Serious Forms of Self-Inflicted Injury*, 32 STETSON L. REV. 125, 126 (2002)(“The rates of suicide among young people have been increasing dramatically.”); Perry A. Zirkel & Richard Fossey, *Liability for Student Suicide*, 197 ED. LAW REP. 489, 489 (2005)(noting dramatic increase in adolescent suicide in United States over last 50 years); Sabrina Tavernise, *In College and In Despair, With Parents in the Dark*, N.Y. TIMES, Oct. 26, 2003, § 1, at 31 (noting that “student suicide rates are rising”).

⁶ Sontag, *supra* note 1. MIT also faced bad press, and liability, after MIT freshman Scott Krueger died from alcohol poisoning at his fraternity house. *Id.* After years of denying any responsibility for the student’s death, MIT finally admitted responsibility, settled with the Kruegers for six million dollars, and instituted a policy requiring freshmen to live on campus. *Id.* In addition, MIT President Charles M. Vest personally visited the Kruegers in Buffalo, New York to offer an apology. *Id.*

⁷ Associated Press, *National Briefs*, FORT WORTH STAR TELEGRAM, Sept. 7, 2004, at A5.

⁸ Arenson, *supra* note 4; see also Jean Marie Angelo, *Privacy, or Peril?*, U. BUS., Jan. 1, 2004, at 39 (noting that NYU’s suicide tragedies drew much media attention in the fall of 2004). NYU President John Sexton told the press in November 2004 that “[s]tudent depression and suicide are major, national problems for all colleges and universities.” *Id.* It is important to note that other universities in the United States have experienced “strings of suicides” that have received national attention, including George Washington University and the University of Illinois. Arenson, *supra* note 4.

The increased competition among students applying to get into colleges like MIT and NYU and the intense academic competition at such schools are two factors that contribute to “a culture of ambition but also one of high anxiety that is shaping a kind of Generation Stress.”⁹ Along with increased competition and heavy school workloads, some counselors attribute the greater amount of stress on college students to the fact that “the wider world that today’s students live in is more frightening and anxiety-provoking than it was a decade or two ago.”¹⁰ Student stress is one reason cited for a reported increase in campus counseling center visits; other factors contributing to an increase in college students seeking counseling include more complicated family lives and “improvements in psychopharmacology” that enable students with mental illnesses and learning disabilities to attend college.¹¹ In January of 2004, Harvard’s

⁹ Sontag, *supra* note 1. “Administrators, especially at elite schools, worry about students who start college ready to do graduate-level research and yet are unprepared to be one among thousands of other ‘perfect children.’ They talk about kids who...after a high-school experience packed with electives, college-level courses, test preparation classes, internships and after-school activities, are simply burned out by the time they arrive for their freshman year.” *Id.*; see also Daniel McGinn & Ron DePasquale, Taking Depression On, NEWSWEEK, Aug. 23, 2004, at 59 (noting “[t]he process to get into a top college has grown so cutthroat for many that more students are emerging from it emotionally damaged”).

¹⁰ Mary Duenwald, *The Dorms May Be Great, But How’s the Counseling?*, N.Y. TIMES, Oct. 26, 2004, at F1. A doctor from the University of Iowa says, “[w]ith the global war on terrorism and terror alert codes, the world has become a pervasively more frightening place to live in.” *Id.*; see also John Freeman Gill, *Grim Homework*, N.Y. TIMES, Sept. 12, 2004, § 14, at 4 (citing Columbine shootings and September 11th terrorist attacks as two current events making today’s world scarier place for students).

¹¹ Sontag, *supra* note 1; see also Duenwald, *supra* note 10 (stating “new medications for depression, bipolar disorder and other problems are enabling many people to go to college who would not have been able to in the past”). Seeking counseling has also become more acceptable. *Id.*

student newspaper published a series of articles that revealed “an overwhelming majority’ of Harvard undergraduates experience mental-health problems.”¹² MIT reported that between 1995 and 2000, the number of students hospitalized for psychiatric reasons increased by 69%.¹³

Increases in student suicide, bad press, and increases in student need for counseling call for improvements in campus counseling services; the further threat of liability for a student’s suicide has, in fact, caused colleges and universities across the United States to react in a variety of ways.¹⁴

This Note will address the issue of liability for student suicide, specifically at the higher education level. Part II provides a summary of the legal framework in which school liability for student suicide has arisen, discussing the case law that has led up to the most recent decision on the issue, *Shin v. MIT*. Part II will also describe the framework within which schools currently must deal with the issue of possible liability, reviewing the federal Family Educational Rights and Privacy Act (FERPA), current suicide and mental health statistics, and programs already developed at some colleges and universities in reaction to the trends discussed above. Part III offers an analysis of both possible effects in the *Shin* case specifically and possible effects of the *Shin* decision generally on the possible future liability of colleges and universities. It will also address what actions should be taken in light of the previous case law discussed in Part II and will explore the different actions schools have already taken due to the threat of liability.

II. Background

a. general legal principles

1. The Common Law. At common law, a person did not have an affirmative duty to rescue someone from harm.¹⁵ Similarly, a person did not have a duty to prevent another from

¹² McGinn & DePasquale, *supra* note 9.

¹³ Sontag, *supra* note 1.

¹⁴ See *infra* notes 222-42 and accompanying text.

¹⁵ Richard Fossey & Perry A. Zirkel, *Liability for Student Suicide in the Wake of Eisel*, 10 TEX. WESLEYAN L. REV. 403, 406 (2004)[hereinafter Fossey & Zirkel, *Student Suicide in the Wake of Eisel*].

committing suicide.¹⁶ Suicide, “by its very nature, as an act of self-destruction...has not led courts and juries to be inclined to find other people responsible for it.”¹⁷ In addition, some courts believed that suicide was a criminal act for which non-criminal parties should not bear any blame.¹⁸ However, common law has evolved, and courts today now recognize three instances in which a person may face liability for the suicide of another person: (1) when an intentional infliction of harm has caused the suicide, (2) when a negligent infliction of harm causes suicide, or (3) “when a person or institution has a special duty of care for one who commits suicide while in their care.”¹⁹ A special relationship duty has been imposed when a relationship exists that is “protective by nature, requiring the defendant to guard his charge against harm *from others*.”²⁰ Such special relationships include “the duty of a carrier toward its passengers....innkeepers towards their guests, landlords toward their tenants, employers toward their employees, hospitals toward their patients, schools toward their pupils, [and] business establishments toward their customers.”²¹ The person or institution falling under such category has a duty to protect their charge by maintaining the premises and by using reasonable care to prevent harm by third parties.²² However, in terms of liability for the suicide of another, the situation involves a duty to protect the charge from herself. It is this special relationship category that “poses potential liability

¹⁶ *Id.*

¹⁷ PATRICK W. MCKEE ET AL., *SUICIDE AND THE SCHOOL* 39 (LRP Publ’n 1993).

¹⁸ Fossey & Zirkel, *Student Suicide in the Wake of Eisel*, *supra* note 15, at 406.

¹⁹ MCKEE ET AL., *supra* note 17, at 44.

²⁰ PROSSER AND KEETON ON THE LAW OF TORTS 383 (W. Page Keeton et al. eds., 5th ed. 1984)(1941)(emphasis added).

²¹ *Id.*

²² *Id.* See also Ralph D. Mawdsley, *The Community College’s Responsibility to Educate and Protect Students*, 189 ED. LAW. REP. 1, 9 (2004) (“Increasingly, courts are finding that higher education institutions also have a preventative duty to warn based on the business invitee status of students.”).

for educators and educational institutions.”²³ Yet, because the special relationship duty as applied to schools commonly is asserted only in terms of protecting students from third party harm, recognition that the duty to protect students includes protecting them from themselves would be an extension of the law as currently applied.²⁴

2. Duty to Prevent Suicide. A cause of action for negligence requires a plaintiff to prove four elements: a “duty to use reasonable care,” “a breach of that duty,” a “reasonably close causal connection between the conduct and the resulting injury,” and “actual loss or damage resulting to the interests of another.”²⁵ Thus, the existence of a duty and a breach of that duty are indispensable elements in a negligence action.

Limited circumstances exist in which a person or institution has a special duty of care for one who commits suicide while in their care. “Courts have been most likely to impose duties arising from such a special relationship on a jail, hospital, or reform school, and on others having actual physical custody and control over individuals.”²⁶ In addition, “[m]ental hospitals, psychiatrists and other trained professionals in the mental-health field are also often deemed to have the type of training and experience to permit them to be aware of behavior patterns that may increase the potential for suicide.”²⁷

Although the court has been willing to recognize the existence of such a duty in custodial relationships and doctor-patient relationships, courts have tended to limit the exception to the no-

²³ MCKEE ET AL., *supra* note 17, at 45.

²⁴ Breach of the duty of care in the context of a failure to prevent suicide would be based on a theory of nonfeasance. Donnie Braunstein, *Custodial Suicide Cases: An Analytical Approach to Determine Liability For Wrongful Death*, 62 B.U. L. REV. 177, 179 (1982). Nonfeasance is “a failure to act which causes injury to another.” *Id.* The scope of nonfeasance-based liability includes the limited groups of special relationships. *Id.* at 181.

²⁵ VICTOR E. SCHWARTZ ET AL., PROSSER, WADE AND SCHWARTZ’S TORTS 130 (Schwartz et al. eds., 10th ed. 2000)(1951).

²⁶ Lake & Tribbensee, *supra* note 5, at 132-33.

²⁷ Lake & Tribbensee, *supra* note 5, at 133.

duty rule to these groups of people. In the case *Nally v. Grace Community Church of the Valley*, the California Supreme Court rejected the imposition of a special relationship duty on a church pastor.²⁸ In this case, the parents of a twenty-four year old who committed suicide by shooting himself in the head sued the Grace Community Church and four pastors on allegations of “‘clergy malpractice,’ i.e., negligence and outrageous conduct in failing to prevent the suicide.”²⁹ On the issue of whether a pastor as a “non-therapist counselor” had a duty to refer a counselee to a licensed mental health professional once it was foreseeable the counselee might be at risk for committing suicide,³⁰ the court decided not to extend a special relationship duty to a nontherapist counselor.³¹ Among the reasons the court cited for its decision were the pastor’s lack of control over the counselee’s environment and the consequence of imposing such a duty on the pastor, which would place a similar duty on all nontherapists.³²

Universities ordinarily are not considered to have custody of their students nor are the administrators necessarily trained professionals in the mental-health field; these are two possible reasons for courts’ hesitance in holding that either have a duty to aid a suicidal student.

b. cases involving student suicide at the university level

The courts have faced the issue of school liability for student suicide in both the high school and college context.³³ Different dynamics are at play depending on whether the institution being sued is a high school, a college, or a university. For example, the doctrine of *in loco*

²⁸ Bjorklun, *supra* note 5, at 24.

²⁹ *Nally v. Grace Community Church of the Valley*, 763 P.2d 948, 949 (1988).

³⁰ *Id.* at 950-51.

³¹ *Id.* at 960-61.

³² *Id.* at 957, 959. Interestingly, the court also seemed to have reservations about imposing a duty on pastors in particular because “such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity.” *Id.* at 960.

³³ See Zirkel & Fossey, *Liability for Student Suicide*, *supra* note 5, at 489-90 (discussing cases in which defendants were school district and/or school employees).

*parentis*³⁴ plays a greater role in high school student suicide cases, whereas it has much less impact, if any,³⁵ in a college student situation, in which the student is no longer a minor.³⁶ High school teachers and administrators tend to be in a better position to act as “surrogate parents”³⁷ as opposed to college and university professors and administrators. Also, because college and university students are considered adults, issues of confidentiality tend to be of greater concern at the higher education level.³⁸

Another distinction, which affects the legal principles appearing in cases of school liability for student suicide, is whether the school is public or private.³⁹ Both public and private schools can be charged with liability under a theory of negligence. However, public institutions can be

³⁴ *In loco parentis* is defined as “of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent” BLACK’S LAW DICTIONARY 803 (8th ed. 2004). “The Supreme Court has recognized that during the school day, a teacher or administrator may act *in loco parentis*.” *Id.*

³⁵ Lake & Tribbensee, *supra* note 5, at 135-36 (discussing court’s opinion in *Schieszler v. Ferrum College*).

³⁶ See Sontag, *supra* note 1 (suggesting doctrine of *in loco parentis* as applied to colleges almost “died legally as it had socially” when “students were put in charge” and “universities began withdrawing from their role as surrogate parents” until 1980s when legal drinking age was changed to twenty-one and “[s]uddenly, most college students were no longer fully adult.”) The role of *in loco parentis* at the college level today is in a state of limbo, and courts deciding cases of liability for student suicide may shed some light on the proper role of colleges and universities in relation to its students.

³⁷ *Id.* The questionable role of *in loco parentis* at the college and university level may be one reason cases arising in the university setting are much less litigated than cases arising in public secondary schools. MCKEE ET AL., *supra* note 17, at 56.

³⁸ See *infra* notes 185-97 and accompanying text for discussion of the Family Educational Rights and Privacy Act.

³⁹ MCKEE ET AL., *supra* note 17, at 47.

held accountable on an additional ground: whereas “common-law principles apply to both public and private schools...statutory liability under the Civil Rights Act [Section 1983⁴⁰] applies only to public schools.”⁴¹ For example, in the *Shin* case, the plaintiffs sued on a theory of negligence;⁴² a constitutional tort claim under Section 1983 was not available to them since MIT is a private university.

As mentioned above, three exceptions to the rule that there is no duty to prevent suicide have been carved out.⁴³ The two exceptions relevant to the discussion of university liability for student suicide are negligent infliction of harm as a cause of suicide and the special relationship duty.

1. Negligent Infliction of Harm. Under a claim of negligent infliction of harm that causes suicide, a decedent’s parents might make a claim against a university or university employees that “the institution put the student in harm’s way.”⁴⁴ This claim was asserted in *Wallace v. Broyles*.⁴⁵ In this case, the mother of Shannon Wright, a varsity football player who committed suicide by shooting himself, sued nine defendants, including University of Arkansas’ Director of

⁴⁰ Fossey & Zirkel, *Student Suicide in the Wake of Eisel*, *supra* note 15, at 426.

⁴¹ MCKEE ET AL., *supra* note 17, at 47; *see also* Zirkel & Fossey, *Liability for Student Suicide*, *supra* note 5, at 489 (stating two alternative legal theories that can be pursued in such a case). Zirkel and Fossey provide a tabular overview of decisions, which includes the details of claims pursued in each case. *Id.* at 491. Because public schools may be afforded governmental immunity in common law negligence actions, some plaintiffs have asserted § 1983 claims to “escape the state-based barrier of governmental immunity,” but defenses to such claims, where available, include Eleventh Amendment immunity, asserted by school districts, and qualified immunity, asserted by school employees in their individual capacities. Fossey & Zirkel, *Student Suicide in the Wake of Eisel*, *supra* note 15, at 426-27.

⁴² *Shin v. Mass. Inst. of Tech.*, 2005 WL 1869101, *14 (2005).

⁴³ *See supra* note 19 and accompanying text.

⁴⁴ Franke, *supra* note 4.

⁴⁵ *See generally* *Wallace v. Broyles*, 961 S.W. 2d 712 (1998).

Athletics Frank Broyles and Head Athletic Trainer Dean Weber, for improperly administering Darvocet and other controlled substances to her son; she alleged that their conduct proximately caused her son's suicide.⁴⁶ Although the trial court granted all of the defendants' motions for summary judgment,⁴⁷ the Arkansas Supreme Court reversed and remanded on the grounds that the trial court used the wrong standard for granting summary judgment⁴⁸ and that there were genuine issues of material fact that should go to the jury.⁴⁹

2. Special Relationship Duty. The duty to prevent suicide more commonly appears under the special relationship category. In the case *Hickey v. Zezulka*, a student, after being arrested for driving under the influence, was placed in a holding cell by a Michigan State University Department of Public Safety officer.⁵⁰ The officer violated two DPS policies by not removing any of the student's personal belongings and by not checking on the detainee.⁵¹ When the officer returned to the cell thirty-seven minutes later, she found the student hanging from a noose he had made using his belt and socks.⁵² Plaintiffs sued Michigan State University (MSU) on both

⁴⁶ *Id.* at 713.

⁴⁷ *Id.* at 714.

⁴⁸ *Id.* at 719. The circuit court, using an erroneous standard, held that "there was not evidence before the court on which reasonable minds could differ" that (1) Shannon had taken a significant amount of Darvocet that caused his suicide, (2) that, even if he had, the Darvocet caused his death, (3) or that any act or omission by the defendants had caused the death. *Id.* at 714.

⁴⁹ *Id.* at 718. The Supreme Court of Arkansas believed a "genuine issue of material fact exist[ed] regarding whether Shannon, prior to his suicide, had been consuming Darvocet from the University's supply of drugs," *Id.*, and "regarding whether Broyles and Weber acted with a conscious indifference as to the consequences that University athletes, and Shannon in particular, could suffer harm due to the drug-dispensing procedures employed by the athletic department." *Id.* at 719.

⁵⁰ *Hickey v. Zezulka*, 487 N.W.2d 106, 109 (1992).

⁵¹ *Id.*

⁵² *Id.*

negligence claims and a Section 1983 claim.⁵³ The court held that MSU was entitled to state governmental immunity, although the officer was not, and that the Section 1983 claim against the officer was not supported by evidence of “deliberate indifference.”⁵⁴ However, the court also held that the plaintiff could recover damages from the officer under the negligence theory but remanded the case for a new trial to decide what the damages would be after applying comparative fault principles.⁵⁵ The question of whether the officer owed a duty to the student did not appear to be problematic since the officer was in a custodial relationship with the student and therefore fit the definition of a pre-existing special relationship.

In the following year, another court struggled with how to conceptualize a person’s liability for another person’s independent act of suicide. In *Hoeffner v. The Citadel*, the parents of Gerald Hoeffner, a student who hanged himself in his dorm room, sued The Citadel and its physician Joseph C. Franz, whom Gerald told he often had suicidal thoughts.⁵⁶ Gerald’s parents advanced claims of negligence against the defendants in a wrongful death suit.⁵⁷ The jury found for The Citadel and Franz after the judge gave a jury instruction on assumption of risk.⁵⁸ Although the court may have instructed on assumption of risk as a way to avoid charging the defendants with liability, the Supreme Court of South Carolina found that such an instruction constituted an error, since “[t]he defense of assumption of risk applies where the plaintiff assumes a risk of harm arising from the *defendant’s* negligent or reckless conduct rather than his own.”⁵⁹ Because the instruction was erroneous, the Supreme Court reversed the trial court’s decision and remanded for a new trial.⁶⁰

⁵³ *Id.* at 110. See *supra* notes 41-42 and accompanying text.

⁵⁴ *Hickey*, 487 N.W.2d at 108.

⁵⁵ *Id.*

⁵⁶ *Hoeffner v. The Citadel*, 429 S.E.2d 190, 191-92 (1993).

⁵⁷ *Id.* at 192.

⁵⁸ *Id.* at 192.

⁵⁹ *Id.* at 193.

⁶⁰ *Id.* at 194. The decision of the trial court on remand is not a published decision.

The question of duty was not present here since Franz was a medical professional. The Court cited *Bramlette v. Charter-Medical-Columbia* for the proposition that “where a duty exists to prevent a patient from committing suicide, the very suicide which the defendant has the duty to prevent cannot constitute assumption of risk or contributory negligence as a matter of law.”⁶¹ The Court expressed concern that application of *Bramlette* to an out-patient setting would be interpreted as imposing strict liability upon health care professionals “to take extreme action whenever a patient expresses signs of depression.”⁶² To avoid such interpretation, the Court emphasized that the factfinder in such cases should evaluate a breach of duty by the health care professional’s departure from the standard of care, not by the suicide itself, when such departure is the proximate cause of the patient’s suicide.⁶³

In a 1998 case, a mother sued Brown University and Mark Solomon, a private psychologist, following the suicide of her son Daniel.⁶⁴ Daniel suffered from obsessive compulsive disorder and was treated by medical professionals prior to attending Brown.⁶⁵ He sought attention from Brown psychologist and professor of psychology Ferdinand Jones, who noted that Daniel was suffering from anxiety, depression, and suicidal fantasies.⁶⁶ After three visits, the maximum number that Brown’s policy commanded for short-term care, Jones gave Daniel four references – none of whom were psychiatrists, and only three of whom were psychologists – from which to choose a new doctor.⁶⁷ Daniel chose Solomon, who had a specialty in eating disorders and whom Daniel saw for two years.⁶⁸ Two weeks after Daniel

⁶¹ *Id.* at 193.

⁶² *Id.* at 194.

⁶³ *Id.*

⁶⁴ *Klein v. Solomon*, 713 A.2d 764, 766 (1998).

⁶⁵ *Id.* at 765. In fact, because of Daniel’s history of psychological issues, he purposefully chose to attend Brown “because of the psychological and psychiatric services it offered.” *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 766.

⁶⁸ *Id.*

terminated his treatment with Solomon, he killed himself.⁶⁹ Klein sued Solomon for negligent treatment, and this claim was settled.⁷⁰ Klein also sued Brown on a claim of negligent referral by Jones, as Brown's agent.⁷¹ The Supreme Court of Rhode Island reversed the trial judge's grant of a judgment as a matter of law in Brown's favor because a jury "could have reasonably concluded that Jones was negligent in failing to refer Daniel to someone qualified in suicide prevention or to someone who could prescribe medication...that would reduce his suicidal tendencies."⁷² The duty owed to Daniel fell under the special relationship duty as established between doctor and patient, and Daniel's comments to Jones were evidence sufficient to "put Jones on notice of Daniel's potential for suicide."⁷³

3. No Applicable Exception. Parents suing universities, generally not thought to have custody of their students, and university administrators and employees, who are nontherapists, run into the problem depicted by the *Nally* case – the law's reluctance to extend a duty to prevent suicide to noncustodial, nontherapist individuals.⁷⁴ Decades before *Nally* was decided, parents of students who committed suicide at school began bringing wrongful death suits against employees of academic institutions, people who did not fall within the generally recognized exceptions to the no-duty-to-prevent-suicide rule. These parents urged the courts to recognize that universities and their employees had a duty to prevent student suicide.

In 1960, in the case of *Bogust v. Iverson*, Jeannie Bogust's parents sued the full time director of student personnel services at Stout State College for negligent performance of duties because he failed to get their daughter emergency psychiatric help after he knew or should have known that she was unable to care for herself and failed to provide her proper student

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ See *supra* notes 29-33 and accompanying text.

guidance.⁷⁵ Jeannie “was under the direct guidance and supervision of the defendant...[who] administered to her aptitude and personality tests” and who was “well aware of her emotional disturbances, social conflicts, scholastic difficulties and personal problems.”⁷⁶ Although he noted Jeannie was in need of professional guidance, he terminated his visits with her, and Jeannie committed suicide the following month.⁷⁷ The court affirmed the trial court’s decision that “to hold that a teacher who has no training, education or experience in medical fields is required to recognize in a student a condition the diagnosis of which is in a specialized and technical medical field, would require a duty beyond reason.”⁷⁸ The defendant was not a member of a class that had a recognized special relationship duty, and the court refused to expand the special relationship duty to a non-licensed college counselor.⁷⁹ In addition to saying that a teacher “cannot be charged with the same degree of care...as a person trained in medicine or psychiatry could exercise,”⁸⁰ the court also discussed that there were issues of proximate cause to consider in such a case, especially in light the “practically unanimous rule” that suicide “does not come within and complete a line of causation...and does not render defendant liable for the suicide.”⁸¹

Like the defendants in *Bogust*, the defendants in *White v. University of Wyoming* (1998) included university employees who were not medically licensed professionals. The parents of Chauncey White sued their son’s Hall Director and a volunteer of the University Counseling Center’s Crisis Intervention Team (CIT) (in addition to the University itself); these two defendants

⁷⁵ *Bogust v. Iverson*, 102 N.W.2d 228, 229 (1960). The Bogusts also alleged that the defendant failed to advise them or contact them, which prevented them from obtaining proper medical treatment for their daughter. *Id.* See *infra* notes 185-97 and accompanying text for a discussion of confidentiality of student records.

⁷⁶ *Bogust*, 102 N.W.2d at 229.

⁷⁷ *Id.*

⁷⁸ *Id.* at 230 (quotations omitted).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 233.

had talked to White and assessed his risk of committing suicide after he inflicted superficial cuts on his wrists in 1990.⁸² The CIT volunteer discussed counseling with White, but after deciding he was at low risk of harming himself, concluded the intervention.⁸³ When White committed suicide two years later, his parents brought their action claiming that the University and their employees “were negligent and breached a fiduciary duty to the Whites by failing to adequately monitor, treat, counsel, or give notice to the Whites” after his 1990 suicide attempt.⁸⁴ Because the University was a public, state-run university, it and its employees were protected by immunity under Wyoming’s Governmental Claims Act, according to the trial court.⁸⁵ The Supreme Court affirmed this judgment. Although the Whites argued on appeal that the defendants were not immune under an exception that said liability attaches if wrongful death is the result of negligence of “health care providers” employed by the entity, the Supreme Court held that the defendants were not “health care providers” under the Act because they were not in a position that either involved treating or diagnosing illness or required medical training or licensure.⁸⁶ The defendants in this case were not medical professionals and thus were immune from liability.⁸⁷

In the case *Jain v. State*, the parents of Sanjay Jain, a student who committed suicide in his dorm room, sued the University of Iowa,⁸⁸ a defendant whom did not fit one of the recognized exceptions. Sanjay was an academically successful student in high school who began having difficulties at the University in his first semester there including personal problems, academic

⁸² *White v. Univ. of Wyo.*, 954 P.2d 983, 985 (1998).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 987.

⁸⁷ *Id.* Presumably, the Act did not exempt health care professionals from liability because a recognized special relationship duty already was established between a medical professional and his patient.

⁸⁸ *Jain v. State*, 617 N.W.2d 293, 294 (Iowa 2000).

troubles, and experimentation with drugs and alcohol.⁸⁹ In fact, Sanjay was put on a year of probation and ordered to attend drug and alcohol education classes after his hall coordinator found him smoking marijuana in his room.⁹⁰ Sanjay's parents did not know anything about any of his problems.⁹¹ On November 20 of that year, resident assistants attended to a call to Sanjay's apartment where he and his girlfriend were arguing.⁹² His girlfriend claimed, and Sanjay admitted, that Sanjay was planning to kill himself by inhaling the fumes of his moped and that she was fighting with him to get the moped's keys.⁹³ After his resident assistant (RA) met with Sanjay on the following day, he was evasive about the plan and refused to consent to having the RA contact his parents.⁹⁴ The RA suggested Sanjay seek counseling and told him to remove the moped from his dorm room because school policy did not allow for it to be stored there.⁹⁵ The RA met with the assistant director for residence life who agreed with the RA's actions and did not take any further action on the matter.⁹⁶ On December 5, after a dorm-mate noticed an "unusual" smell, Sanjay was discovered unconscious in his room with his moped running.⁹⁷ He died from "self-inflicted monoxide poisoning."⁹⁸

Sanjay's father claimed that his son's death resulted from negligence caused by the university employees' "failure to exercise care and caution for his safety" and "the university's

⁸⁹ *Id.* at 295.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 295, 296.

⁹⁵ *Id.* at 295.

⁹⁶ *Id.* at 296.

⁹⁷ *Id.*

⁹⁸ *Id.*

failure to notify his parents of his earlier suicide attempt.”⁹⁹ The trial court granted the University summary judgment on grounds including that “no special relationship existed between the university and Sanjay that would give rise to an affirmative duty to prevent his suicide” and that the facts did not “establish an exception to the general rule that suicide is an intentional intervening act which supersedes any alleged negligence by the defendant.”¹⁰⁰ The Supreme Court affirmed the trial court’s decision to grant the University summary judgment.¹⁰¹

Although the Supreme Court of Iowa in *Jain* continued the pattern of refusing to impose a special relationship duty on a University, a Virginia District Court judge in *Schieszler v. Ferrum College* found that the aunt and legal guardian of a student who committed suicide “alleged sufficient facts to support her claim that a special relationship existed between [her nephew] Frentzel and defendants [including the school, the dean of student affairs, and the student’s resident assistant] giving rise to a duty to protect Frentzel from the foreseeable danger that he would hurt himself.”¹⁰² In this case, Frentzel was a first year student at Ferrum College when he had to comply with certain conditions to continue to attend the college as a result of disciplinary action taken against him.¹⁰³ Because of his compliance, Frentzel was allowed to return for a second semester, during which campus police and Frentzel’s resident assistant (RA) were

⁹⁹ *Id.* “The record reveals that an unwritten university policy dealing with self-destructive behavior dictates that, with evidence of a suicide attempt, university officials will contact a student’s parents.” *Id.* Such decisions were to be made by the dean of students, who never received information about Sanjay’s previously reported attempt at suicide. *Id.*

¹⁰⁰ *Id.* at 296-97. The third ground on which the trial court granted summary judgment was that the university policy of notifying parents of a student’s suicide attempt was not indicative of a voluntary assumption of a duty to prevent Sanjay’s suicide. *Id.* at 297. See *infra* notes 185-97 and accompanying text.

¹⁰¹ *Jain*, 617 N.W.2d at 300.

¹⁰² *Schieszler v. Ferrum Coll.*, 236 F. Supp.2d 602, 609 (2002).

¹⁰³ *Id.* at 605.

summoned to his dorm where he was fighting with his girlfriend on February 20, 2000.¹⁰⁴ At that time, his girlfriend showed campus police and the RA a note Frentzel had sent her containing his plans “to hang himself with a belt.”¹⁰⁵ In response, they went to Frentzel’s room where they found him with self-inflicted bruises on his head.¹⁰⁶ The incident was reported to the dean of student affairs, who had Frentzel sign a statement that he would not hurt himself.¹⁰⁷ A few days later, Frentzel’s girlfriend contacted defendants on two additional occasions after Frentzel wrote two more notes revealing his continued suicidal tendencies.¹⁰⁸ On February 23, 2002, defendants found Frentzel who had killed himself in his dorm room by hanging himself with his belt.¹⁰⁹

Frentzel’s aunt and legal guardian sued Ferrum College, the dean of student affairs, and her nephew’s RA on allegations that they “knew or likely should have known that Frentzel was likely to attempt to hurt himself if not properly supervised” and were “negligent by failing to take adequate precautions to insure that [he] did not hurt himself.”¹¹⁰ The defendants moved for summary judgment claiming, *inter alia*,¹¹¹ that they “had no legal duty” to prevent his suicide.¹¹² The judge did not grant summary judgment because he found that the special relationships listed

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* One note written to a third party stated “tell Crystal [his girlfriend] I will always love her,” and another note stated “only God can help me now.” *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* (quotations omitted).

¹¹¹ Defendants argued both that a wrongful death action could not be brought against them because suicide is “an unlawful act” and that causation was absent. *Id.* They also argued procedural faults such as lack of subject matter jurisdiction and plaintiff’s lack of capacity to sue. *Id.*

¹¹² *Id.*

in the Restatement (Second) of Torts Section 314A “are not considered exclusive”¹¹³ and because he believed that, although “it is unlikely Virginia would conclude that a special relationship exists as a matter of law between colleges and universities and their students, it might find that a special relationship exists on the particular facts alleged in this case.”¹¹⁴ The judge cited a Fourth Circuit case¹¹⁵ decided under Virginia law that concluded a school who accepted “a student with special problems created a corresponding duty to take reasonable steps to cope with the problems.”¹¹⁶ He also cited many cases from other jurisdictions considering whether universities had a duty to protect voluntarily drunk students, in which most courts decided no special relationship existed based on conclusions that the danger was not foreseeable to the school.¹¹⁷ Although the danger in these cases was not danger of a suicidal nature, the judge applied the foreseeability of danger test to the facts before him and decided that “a trier of fact could conclude that there was ‘an imminent probability’ that Frentzel would try to hurt himself, and that the defendants had notice of this specific harm.”¹¹⁸

The judge also addressed the issue of whether the defendants could have foreseen that they were expected to take action to help the student, to which he reasoned that, despite the fact that the University did not stand *in loco parentis* to any of its students, there is a “reasonable expectation, fostered in part by colleges themselves, that reasonable care will be exercised to protect resident students from foreseeable harm.”¹¹⁹ Despite the judge’s refusal of summary judgment on the ground that a reasonable jury might conclude that a special relationship existed

¹¹³ *Id.* at 607.

¹¹⁴ *Id.* at 609.

¹¹⁵ See *Seidman v. Fishburne-Hudgins Ed. Found.*, 724 F.2d 413, 418 (1984) (private boarding school returned firearm to troubled student upon his dismissal from school after which he shot himself).

¹¹⁶ *Schieszler*, 236 F.Supp.2d at 608.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 609.

¹¹⁹ *Id.* at 610 (quoting *Mullins v. Pine Manor College*, 389 Mass. 47, 52 (1983)).

between Ferrum College and its student, the case did not go to trial but settled out of court when “Ferrum College chose to acknowledge a share of responsibility for the student’s death.”¹²⁰ This was the first time an American college had made such an acknowledgement.¹²¹

The most recent case of school liability for student suicide is *Shin v. Massachusetts Institute of Technology*, in which parents are suing MIT alleging that the University had a responsibility to protect their suicidal daughter Elizabeth Shin.¹²² On June 27, 2005, Justice Christine McEvoy of the Superior Court of Massachusetts denied the motions for summary judgment of MIT employees including the Counseling and Support Services (CSS) Dean Henderson, Shin’s dorm housemaster Davis-Millis, and MIT psychiatrists.¹²³ She cited *Ferrum* in support of her conclusion that “there was a ‘special relationship’ between MIT Administrators, Henderson and Davis-Millis, and Elizabeth imposing a duty on [them] to exercise reasonable care to protect Elizabeth from harm.”¹²⁴

Elizabeth Shin started her freshman year at MIT in September 1998.¹²⁵ In February 1999, Elizabeth overdosed on Tylenol with codeine and was admitted to a psychiatric hospital following the incident.¹²⁶ At that time, Elizabeth admitted that she had mental health problems including cutting behavior, which she had engaged in since high school, and she consented to having her housemaster Davis-Millis call her parents.¹²⁷ After this suicide attempt, Elizabeth began seeing

¹²⁰ Peter F. Lake, *Private Law Continues to Come to Campus: Rights and Responsibilities Revisited*, 31 J.C. & U.L. 621, 652 (2005).

¹²¹ Eric Hoover, *Judge Rules Suicide Suit Against MIT Can Proceed*, CHRON. HIGHER EDUC., Aug. 12, 2005, at A1.

¹²² The case has been resolved since I wrote this Note. The resolution will be discussed *infra* notes 185-88 and accompanying text.

¹²³ *Shin v. Mass. Inst. of Tech.*, 2005 WL 1869101, *1 (2005).

¹²⁴ *Id.* at *13.

¹²⁵ *Id.* at *1.

¹²⁶ *Id.*

¹²⁷ *Id.*

MIT psychiatrist Dr. Girard once every two to three weeks.¹²⁸ At the beginning of her sophomore year, when Elizabeth reported to CSS Dean Mtembu that she was considering suicide, Mtembu sent her immediately to MIT mental health, where she attended a fifty minute session with Dr. Egler.¹²⁹ On November 9, 1999, Elizabeth told Dean Arnold Henderson about her habit of intentionally cutting herself, and Henderson observed self-inflicted cuts on Elizabeth's arms.¹³⁰ Henderson arranged for Elizabeth to meet with an MIT psychiatrist.¹³¹ On December 6, 1999, Henderson received an email from Elizabeth's biology professor who wrote Henderson to inform him that Elizabeth discussed suicidal thoughts with her teaching assistant.¹³² Henderson relayed the information to Davis-Millis and Girard.¹³³

Elizabeth experienced further mental health issues in March of 2000 during the second semester of her sophomore year.¹³⁴ When a friend found Elizabeth disturbed and cutting herself in her dorm room, the friend notified Davis-Millis, who persuaded Shin to go to MIT's mental health clinic.¹³⁵ Elizabeth told an MIT physician "she did not feel safe alone."¹³⁶ The physician contacted a psychiatrist, who admitted and tranquilized Shin, but on the following day gave

¹²⁸ *Id.*

¹²⁹ *Id.* at *2.

¹³⁰ *Id.* Elizabeth described her habit of self-mutilation to counselors "as a way of forcing herself to feel something when she otherwise felt hollow or to distract herself from emotional pain." Sontag, *supra* note 1. She wrote graphic descriptions about the cutting in her journal, in which she described her fascination with watching her arms bleed in a "moment of absolute interest and fascination, peace and beauty." *Id.*

¹³¹ *Shin*, 2005 WL 1869101, at *2.

¹³² *Id.* The Shins' attorney believes the email is "one of many cries for help that went ignored." Sontag, *supra* note 1.

¹³³ *Shin*, 2005 WL 1869101, at *2.

¹³⁴ *Id.* at *3.

¹³⁵ *Id.*

¹³⁶ *Id.*

Elizabeth permission to return to her dorm.¹³⁷ When Elizabeth returned from Spring Break on March 23, 2000, she began seeing another MIT psychiatrist, Dr. Cunningham, who put her on an anti-depressant and tranquilizer without consulting with any other physician about Elizabeth's medical history.¹³⁸

Between the dates of March 2000 and April 10, 2000, Davis-Millis received "frequent reports from Random Hall students and Graduate Resident Tutors ('GRTs') indicating that Elizabeth's mental health was deteriorating."¹³⁹ On the morning of April 6, 2000, Elizabeth had a session with Cunningham at which Cunningham noted that Elizabeth "fluctuates between severe overwhelming anxiety and emptiness, both of which are unbearable and cause disturbing sudden onset of suicidal thoughts."¹⁴⁰ Cunningham mentioned the possibility of hospitalizing Elizabeth and made another appointment for Elizabeth to see her that afternoon.¹⁴¹ On the following day, April 5, Elizabeth's Spanish I professor from the previous semester relayed to Davis-Millis that Elizabeth's Spanish II professor was concerned about Elizabeth's health.¹⁴² Davis-Millis shared this information with Henderson. On April 6, the Spanish I professor called Henderson herself to

¹³⁷ *Id.* The following day was the first day of Elizabeth's Spring Break. Sontag, *supra* note 1. Shin consented to Davis-Millis calling her parents; her father picked her up from the infirmary to drive her home to New Jersey, where she spent her break. *Shin*, 2005 WL 1869101, at *3.

¹³⁸ *Shin*, 2005 WL 1869101, at *3.

¹³⁹ *Id.* On March 20, 2000, noting that Elizabeth's "condition was 'deteriorating' regarding her ability to cope with stress associated with academic pressure," the psychiatrist increased her anti-depressant dosage and continued to prescribe the tranquilizer. *Id.* At this time, Elizabeth's friends were so concerned with her well-being that they "were taking turns staying up late at night with her." Sontag, *supra* note 1.

¹⁴⁰ *Shin*, 2005 WL 1869101, at *4.

¹⁴¹ *Id.*

¹⁴² *Id.*

report that the Spanish II professor noticed cuts on Elizabeth's arms.¹⁴³ Henderson said there was no need for concern because "actions were being taken to take care of Elizabeth."¹⁴⁴

On April 8, 2000, MIT Campus Police were contacted and transported Elizabeth to the Mental Health Center after she told a dorm-mate that she planned to kill herself with a knife.¹⁴⁵ After a five minute phone conversation with Elizabeth, an MIT psychiatrist instructed her to return to the dorm.¹⁴⁶ Around 12:30 am on April 10, 2000, two of Elizabeth's dorm-mates reported to Davis-Millis that Elizabeth had informed them of her plans to commit suicide that day.¹⁴⁷ The same psychiatrist who spoke to Elizabeth on the phone on April 8 recommended that she need not go to the clinic because "(1) Elizabeth had assured him that she was fine and (2) her friends had overreacted on the April 8 episode."¹⁴⁸ When Davis-Millis spoke to Elizabeth on the morning of the 10, Elizabeth told Davis-Millis, "You won't have to worry about me anymore."¹⁴⁹ Davis-Millis conveyed this information to Henderson, who assured her everyone would be notified of her concerns at the "deans and psychs" meeting.¹⁵⁰ This meeting took place at 11:00 am that morning, after which they made an April 11 appointment for Shin at an off-campus treatment facility.¹⁵¹ Around 9:00 pm, the smoke alarm in Elizabeth's room went off, and campus police went to Elizabeth's dorm room where they found her engulfed in flames.¹⁵² Elizabeth suffered

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at *5. One of these students reported that Elizabeth had asked for help in erasing her computer files. *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

third-degree burns on 65% of her body and died on April 14 when she was taken off life support.¹⁵³

Elizabeth's parents sued MIT, MIT medical professionals, MIT administrators, and MIT campus police in a twenty-five-count complaint.¹⁵⁴ The Shins asserted claims against MIT alleging that they had an express or implied contract with the school, supported by adequate consideration, or alternatively through promissory estoppel, to provide "necessary and reasonable medical services" for their daughter's benefit.¹⁵⁵ The judge found that the brochure and By-Laws on which the Shins based their claims were "generalized representations" that were "too vague and indefinite to form an enforceable contract."¹⁵⁶ Likewise, the statement by Davis-Millis to keep the Shins informed was not specific enough to induce reliance.¹⁵⁷ Because there was no contract between the Shins and MIT, MIT was granted summary judgment on these claims.¹⁵⁸

The claims against MIT medical professionals included allegations of gross negligence and negligent infliction of emotional distress.¹⁵⁹ The judge denied a motion for summary judgment on the count of gross negligence because she believed a genuine issue of material fact existed

¹⁵³ *Id.* at *5-*6.

¹⁵⁴ *Id.* at *1.

¹⁵⁵ *Id.* at *6. The Shins argued that representations made in the Medical Department brochure and the Department's By-Laws "formed the basis of an enforceable contract." *Id.* at *7. They also argued that MIT induced reliance "as shown by Elizabeth's multiple visits to the MIT mental health services" and "point to a meeting with Davis-Millis in February 1999 where all agreed that Mr. and Mrs. Shin would be kept informed of any subsequent problems with Elizabeth" following her first suicide attempt. *Id.* The Shins believed MIT should have contacted them, but universities also have to consider FERPA and the student's privacy. Angelo, *supra* note 8. See *infra* notes 185-97 and accompanying text.

¹⁵⁶ *Shin*, 2005 WL 1869101, at *7.

¹⁵⁷ *Id.* at *8.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

as to whether they were grossly negligent since the doctors did not formulate or enact “an immediate plan to respond to Elizabeth’s escalating threats to commit suicide.”¹⁶⁰ The MIT medical staff members were granted summary judgment on the negligent infliction of emotional distress count because the Shins did not “present specific evidence of physical harm” as required by law and also failed to meet proximity requirements under a bystander theory.¹⁶¹

The Shins also sued MIT administrators Henderson and Davis-Millis on a number of counts including gross negligence, negligence/wrongful death, conscious pain and suffering, negligent infliction of emotional distress, and negligent misrepresentation.¹⁶² The judge granted summary judgment to the administrators on the negligent infliction of emotional distress claim for the same reasons she granted summary judgment to the MIT doctors.¹⁶³ She also granted the administrators summary judgment on the allegation of negligent misrepresentation because the Shins could not prove the “business transaction” element that is an essential element of such a claim.¹⁶⁴ However, the judge allowed the Shins to pursue their claims of gross negligence, negligence/wrongful death, and conscious pain and suffering at trial since they provided evidence sufficient to support that a genuine issue of material fact existed for these claims.¹⁶⁵

¹⁶⁰ *Id.* at *9.

¹⁶¹ *Id.* at *10.

¹⁶² *Id.* at *14.

¹⁶³ *Id.* See *supra* note 161 and accompanying text.

¹⁶⁴ *Shin*, 2005 WL 1869101, at *14. In order to recover under the theory of negligent misrepresentation, the following elements must be proven: “defendant ‘(1) in the course of business, (2) supplie[d] false information for the guidance of others, (3)in their business transactions, (4) causing and resulting in pecuniary loss 4 to those others[,] (5) by their justifiable reliance upon the information, and [that he] (6)...fail[ed] to exercise reasonable care or competence in obtaining or communicating the information.’” *Id.*

¹⁶⁵ *Id.*

The administrators argued they should be granted summary judgment since they had “no duty to prevent Elizabeth’s suicide.”¹⁶⁶ On the count of gross negligence, the judge said the evidence showed that Henderson and Davis-Millis were part of the “treatment team” and could be found grossly negligent for not securing a short-term safety plan on April 10, 2000.¹⁶⁷ On the count of negligence/wrongful death, the judge found the Shins had provided sufficient evidence to the question of whether the administrators “breached their duty and proximately caused Elizabeth’s death.”¹⁶⁸ Finally, the judge also found that the Shins put forth evidence suggesting that “Elizabeth experienced conscious suffering beyond sheer speculation” and, therefore, did not grant summary judgment on the conscious pain and suffering claim.¹⁶⁹

Of course, the judge’s finding that the administrators breached a duty owed to Elizabeth required that such a duty was owed, despite the administrators’ contentions otherwise; the judge did in fact find that a “special relationship” existed between the administrators and Shin based on the fact that both administrators could “reasonably foresee that Elizabeth would hurt herself without proper supervision.”¹⁷⁰ The judge discussed Massachusetts precedent supporting her finding of a “special relationship” in this context.¹⁷¹ She cited *Mullins v. Pine Manor College*, in which the college and its administrator were held to owe a duty to a resident student who was abducted from her dorm and raped.¹⁷² The court in *Mullins* “found the source for imposing such a

¹⁶⁶ *Id.* at *11. They cited both the basic tort principle of no-duty-to rescue and a Massachusetts law, which “states that persons who are not treating clinicians have a duty to prevent suicide only if (1) they caused the decedent’s uncontrollable suicidal condition, or (2) they had the decedent in their physical custody, such as a mental hospital or prison, and had knowledge of the decedent’s risk of suicide.” *Id.* (citing *Nelson v Mass. Port Auth.*, 55 Mass.App.Ct. 433, 435-36 (2002)).

¹⁶⁷ *Id.* at *14.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at *13.

¹⁷¹ *Id.* at *12.

¹⁷² *Id.*

duty in 'existing social values and customs.'"¹⁷³ In the case *Irwin v. Town of Ware*, the same Massachusetts court discussed that special relationships are often found where "a defendant reasonably could foresee that he would be expected to take affirmative action to protect the plaintiff and could anticipate harm to the plaintiff from the failure to do so."¹⁷⁴ The court further recognized that harm considered foreseeable "changes with evolving expectations of a maturing society."¹⁷⁵ Because none of the Massachusetts cases were factually on point, the judge in *Shin* then cited as persuasive authority *Schieszler v. Ferrum College*,¹⁷⁶ in which the judge, following an analysis analogous to *Mullins* and *Irwin*, found that the college and administrators owed a special relationship duty to their suicidal student.¹⁷⁷ The *Ferrum* court "found that a trier of fact could conclude that there was 'an imminent probability' that the decedent would try to hurt himself, and the defendants had notice of this specific harm."¹⁷⁸

The judge then applied the law she cited to the case before her and concluded the evidence supported the Shins' claim that the MIT administrators should have foreseen that Elizabeth would harm herself and that they had notice of the specific harm through observing Elizabeth from February 1999 until her death in April 2000.¹⁷⁹ The judge's denial of summary judgment to MIT medical professionals and MIT administrators thus "clear[ed] the way for a jury trial."¹⁸⁰

MIT issued a statement saying that "Shin's death was a terrible tragedy, but 'it was not the fault of MIT or anyone who works at MIT.'"¹⁸¹ On August 26, 2005, MIT filed a motion to

¹⁷³ *Id.* (citing *Mullins v. Pine Manor College*, 389 Mass. 47, 51 (1983)).

¹⁷⁴ *Id.* (citing *Irwin v. City of Ware*, 392 Mass. 745, 756-57 (1984)).

¹⁷⁵ *Id.*

¹⁷⁶ See *supra* notes 103-22 and accompanying text.

¹⁷⁷ *Shin*, 2005 WL 1869101, at *13.

¹⁷⁸ *Id.* (citing *Schieszler v. Ferrum College*, 236 F. Supp.2d 602, 605 (W.D. Va. 2002)).

¹⁷⁹ *Id.*

¹⁸⁰ Hoover, *supra* note 122.

¹⁸¹ *Suit over Suicide at MIT to Continue*, STAR-LEDGER, Aug. 2, 2005, § County News, at 28.

reconsider and asked the judge “either to dismiss the claims against the two administrators or allow an immediate Appeals Court review.”¹⁸² A pretrial conference was scheduled to be held in September of 2005.¹⁸³ The trial is set for May 2006.¹⁸⁴

Since the time that this Note was written, the nearly \$27 million dollar lawsuit filed by the Shins settled for an undisclosed amount in late April of 2006.¹⁸⁵ In an interesting turn of events, Elizabeth’s father said that the two parties had “come to understand that [his] daughter’s death was likely a tragic accident.”¹⁸⁶ The Shins’ attorney David Deluca reported to The Boston Globe that a toxicology report revealed that Elizabeth “experienced a non-lethal overdose which may have made her unresponsive when candles sparked a fire.”¹⁸⁷ One expert on higher education law was quoted as saying the fact that the Shins and MIT are now calling the suicide an accident may have the unfortunate result of “the lower court ruling on summary judgment [in *Shin* being] cited rarely, if at all.”¹⁸⁸

c. the family educational rights and privacy act (ferpa)

As seen in the recent cases of *Jain* and *Shin*, parents may claim that a university is at fault for not informing them of their child’s problems.¹⁸⁹ After the student suicides at NYU, parents

¹⁸² *MIT Asks Court to Reconsider Ruling*, BOSTON GLOBE, Aug. 27, 2005, at B2.

¹⁸³ *Suit Over Suicide at MIT to Continue*, *supra* note 181.

¹⁸⁴ Bob Braun, *When School Brings Distress, It’s Time to De-stress*, STAR-LEDGER, Dec. 15, 2005, at 17.

¹⁸⁵ Caryn Meyers Fliegler, *A Disquieting Accident at MIT*, U. BUS., May 1, 2006, at 13; *MIT Settles Suit on Student’s Suicide*, WOMEN IN HIGHER EDUC., May 1, 2006, at 5.

¹⁸⁶ Fliegler, *supra* note 185.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* (quoting Gary Pavela, professor at the University of Maryland).

¹⁸⁹ See text accompanying note 100; note 155.

“lamented the fact that they might have been able to take some kind of action, had they only known more about their children’s states of mind.”¹⁹⁰

The issue, however, is complicated for college and university administrators because students are entitled to their privacy, as recognized by the enactment of the Family Educational Rights and Privacy Act (FERPA).¹⁹¹ FERPA was enacted in 1974¹⁹² and gives students who have reached the age of eighteen privacy rights with respect to their educational records.¹⁹³ Educational records include academic records, records of conduct, and records of “informal counseling or educational sessions between the student and campus officials, such as student housing staff, student judicial affairs, and academic advisors.”¹⁹⁴ Under FERPA, a college or university is not at liberty to disclose any of these records to a student’s parent or guardian unless either the student has given the school permission to do so or the disclosure would be allowed under one of the FERPA exceptions.¹⁹⁵ One exception that the Act provides is for “disclosures made in a health or safety emergency.”¹⁹⁶ In an emergency situation, a school is allowed (but *not* required) to share information with “appropriate persons, if the knowledge of such information is

¹⁹⁰ Angelo, *supra* note 8. Although “the tension between the parents’ right to know and a student’s right to privacy has always existed,” the tension is at a high because the baby-boomer parents “are a generation of parents involved in every aspect of their children’s lives, say boomer-watching experts.” *Id.* Higher education analysts also contribute parental involvement to the higher cost of financially supporting their children through school: “As consumers, [parents] feel entitled to know about campus life and how their children are faring.” *Id.*

¹⁹¹ *Id.* The act can be found at 20 U.S.C. § 1232g.

¹⁹² *Id.*

¹⁹³ Family Educational Rights and Privacy Act (FERPA), <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html> (last visited Oct. 15, 2005).

¹⁹⁴ Lake and Tribbensee, *supra* note 5, at 138.

¹⁹⁵ *Id.* at 137-38.

¹⁹⁶ *Id.* at 138.

necessary to protect the health and safety of the student or other persons.”¹⁹⁷ Thus, schools can try to obtain student’s consent to get around FERPA or can contact parents in an emergency situation.¹⁹⁸ Although schools choosing the latter route may face a FERPA violation if a disclosure action is successfully challenged, the United States Supreme Court ruled that universities that violate FERPA “will be liable for administrative fines, not large personal settlements.”¹⁹⁹ In light of that decision, many schools are favoring safety over privacy.²⁰⁰ While this decision may be good news to parents who want to stay informed of their child’s well-being, a school that does not favor privacy may risk discouraging students from seeking help.²⁰¹

d. student suicide and mental health statistics

As the Introduction notes, suicide of college-aged students has recently reached new heights.²⁰² In fact, suicide is the “second leading cause of death in college-aged students.”²⁰³ 7.5

¹⁹⁷ *Id.* at 138 (citing 20 U.S.C. 1232g(b)(1)(I) (2000)).

¹⁹⁸ *Id.*

¹⁹⁹ Tavernise, *supra* note 5. See *Gonzaga Univ. v. Doe*, 536 U.S. 273, 279 (2002) (“[W]e have never before held, and decline to do so here, that spending legislation drafted in terms resembling those of FERPA can confer enforceable rights.”).

²⁰⁰ Tavernise, *supra* note 5. FERPA was amended in 1998 by the Higher Education Reauthorization Act, which allowed schools to contact parents of children under the age of 21 if the student was found to be in violation of school alcohol or drug policies. Angelo, *supra* note 8. The amendment also allowed (but did not require) schools to adopt a parent notification policy. *Id.*

²⁰¹ Angelo, *supra* note 8.

²⁰² See *supra* note 5 and accompanying text; see also Cristi Hegrans, *Walking the Edge*, VILLAGE VOICE, Sept. 22, 2004, at 34 (“According to the Centers for Disease Control, suicide rates among young people nearly tripled between 1952 and 1995.”).

²⁰³ Morton M. Silverman, *College Student Suicide Prevention: Background and Blueprint for Action*, SPECTRUM, Mar. 2004, at 13, available at <http://www.chickering.com/uploads/documents/spectrum/2004%20Spring%20-%20Mental%20Health%20On%20Campus.pdf>.

of every 100,000 college students commit suicide.²⁰⁴ The Jed Foundation and the National Mental Health Association projected that approximately 1100 student suicides occur every year on college and university campuses.²⁰⁵ Young adult suicide rates peak at the age range of twenty to twenty-four.²⁰⁶

Suicidal students are, sadly, not rare on today's university campuses. A 1995 Centers for Disease Control and Prevention (CDC) study revealed that more than one in ten college students had seriously considered suicide in the past year.²⁰⁷ The CDC research also revealed that 6.7% of the students had planned suicides and 1.5% had attempted suicide at least once during the previous year.²⁰⁸ At least 70 to 75% of people who attempt or commit suicide have given either verbal or nonverbal warnings of their plans to do so.²⁰⁹

Clinical depression is most likely to emerge in young adults between the ages of eighteen and twenty-four.²¹⁰ "Ten percent of college students are formally diagnosed with depression."²¹¹

²⁰⁴ *Suicide and America's Youth*, The Jed Foundation, available at <http://www.jedfoundation.org/articles/SuicideStatistics.pdf>.

²⁰⁵ *Id.* See also Silverman, *supra* note 199, at 13 (discussing American College Health Association survey conducted in 1970s did not indicate difference in suicide rates according to school's selectivity, competitiveness, or prestige and scarcity of newer statistics because of limited epidemiological data on college suicide rates in 1990s).

²⁰⁶ Silverman, *supra* note 199, at 14.

²⁰⁷ *Id.*

²⁰⁸ *Id.* A more recent study conducted in 2000 by the American College Health Association revealed comparable statistics. *Id.*

²⁰⁹ RALPH L. V. RICKGARN, PERSPECTIVES ON COLLEGE STUDENT SUICIDE 87 (John D. Morgan, ed., Baywood Publ'g Co. 1994). Rickgarn tries to dispel the myth that people who speak of suicide rarely attempt or do kill themselves. *Id.*

²¹⁰ *Id.* at 15.

²¹¹ Susan Herzberger, *Depressed Teens: A Thorny Problem*, ADVANCE FOR NURSES, Oct. 24, 2005, at 28.

However, 40% of college students have admitted to being “too depressed to function at least once a year.”²¹² The number of college-student psychological hospitalizations has increased approximately 35% in that past five years.²¹³ The increased number of students with depression and of students seeking counseling on college campuses may be the result of a variety of reasons including improvements in medical treatment, the decreased stigma associated with depression and other mental illnesses, and increased insecurity in the modern world.²¹⁴

Some researchers have suggested that college campuses can play a role in exacerbating stress disorders, including suicidal behaviors, because of academic pressures to succeed and to do so quickly; economic pressures also often create stress.²¹⁵

Mental disorders, which include depression and anxiety disorders, are among the risk factors for suicide.²¹⁶ Another risk factor for suicide is alcohol and substance abuse.²¹⁷ According to the CDC’s 1995 study, more than 75% of the college students who had contemplated suicide in a year²¹⁸ were also drinkers.²¹⁹ Other biopsychological risk factors include hopelessness, impulsive tendencies, suicide attempts, and family history of suicide.²²⁰

Another behavior that may emerge in conjunction with or as a result of depression is self-injury: self-injuring behavior is not necessarily a sign that a person is suicidal,²²¹ but the person

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Silverman, *supra* note 199, at 15. *See also supra* note 10 and accompanying text.

²¹⁵ Silverman, *supra* note 199, at 15.

²¹⁶ *Id.* at 17 (Table 1).

²¹⁷ *Id.*

²¹⁸ *See supra* note 203 and accompanying text.

²¹⁹ Silverman, *supra* note 199, at 14.

²²⁰ *Id.*

²²¹ Lisa Voigt, University of Wisconsin-Eau Claire Counseling Services, Explaining Self-Injurious Behaviors, <http://www.uwec.edu/counsel/pubs/selfinj.htm>.

exhibiting such behavior is most likely experiencing extreme stress²²² and/or emotional pain, including anxiety and depression.²²³ Because there is a strong correlation between depression and suicide, a link between self-injurious behavior and suicidal tendencies does exist.²²⁴ One example of self-injurious behavior includes cutting, which is the self-mutilation of one's skin.²²⁵

The rates of college student suicide and depression are a cause for alarm – not only to student's parents but also to college and university administrators and counseling services.

e. college and university reaction thus far

The current statistics and the threat of liability have propelled colleges and universities to consider adopting policies and programs to improve campus counseling services.²²⁶ One of the earlier programs was developed by the University of Illinois. Under the Illinois program, any "suicidal gesture" requires the filing of an incident report and a follow-up response.²²⁷ The student must undergo four weeks of mandatory sessions.²²⁸ The program has proved to be successful: in

²²² Mary Kuhn, Behavioral Health, Cutting,

http://www.mainlinehealth.org/mlh/centprog/bhealth/article_8410.asp.

²²³ Voigt, *supra* note 217.

²²⁴ *Id.*

²²⁵ Kuhn, *supra* note 218. Cutting has been recently "called the 'new age anoerexia.'" What Is Self-Mutilation and Other Destructive Behaviors, Pagewise,

http://ct.essortment.com/whatisselfmut_rfyb.htm. The number of people engaging in cutting behavior is on the rise, and "[i]t is estimated that one out of every 200 teen girls between the ages of 13 and 19 regularly practice self-abusive behavior with a reported 2 million cases in the US alone." *Id.*

²²⁶ Shelby Oppel Wood, *Suicides Lead Universities to Tighter Intervention Rules*, OREGONIAN, Oct. 6, 2004, at B9.

²²⁷ Sontag, *supra* note 1.

²²⁸ *Id.* Some students continue to attend therapy sessions after the mandatory four weeks. *Id.* The program made the first four weeks mandatory because "[s]tudents who make attempts don't

the first seventeen years of the program, none of the 1500 students that went through the program committed suicide.²²⁹

In 2004, the University of Oregon proposed a new policy, based on the University of Illinois' program,²³⁰ which would require students who threaten suicide to seek professional help or to be removed from the school.²³¹ The University's proposed policy would replace the policy that allows University staff merely to encourage students to seek medical attention.²³² The University offers services ranging from a crisis hotline to free counseling.²³³ In 2004, the University hosted its first suicide-awareness week, as a way to reduce the social stigma associated with suicide and to encourage students who need help to take advantage of the programs offered by the school.²³⁴

voluntarily seek help...[because] [t]hey are usually too busy reassuring everybody that they didn't mean it and won't do it again." *Id.* (quoting the University's counseling center director Tom Seals).²²⁹ *Id.*

²³⁰ See *supra* notes 223-25 and accompanying text. The University of Illinois program contemplates a variety of punishments, including expulsion, in the case that a student refuses to undergo the mandatory sessions. Hegranes, *supra* note 198. However, only one student, who actually complied with the program but remained suicidal, was withdrawn from the school. *Id.*

²³¹ Wood, *supra* note 222. The goal of the proposed policy and is to "equip students to care for themselves again." *Id.* This "policy with teeth" already exists at Salem, Oregon's Willamette University, and the Oregon Institute of Technology's policy purports to subject suicidal students to removal if they refuse to undergo professional evaluation. *Id.* As of 2004, parents of a student who committed suicide had filed a tort claim against the state, a requirement that must be fulfilled before a lawsuit can be filed against one of Oregon's state schools. *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.*

The policies that attempt to force withdrawal²³⁵ if a student rejects intervention can be problematic. Some experts believe the choice between undergoing therapy or taking a medical leave a suicidal student faces will dissuade him from seeking help and will discourage the student's friends from reporting the student's problem.²³⁶ Furthermore, if the student is forced to withdraw, the student's feelings of isolation and alienation will simply be reinforced and could potentially exacerbate the suicidal tendencies of the student.²³⁷

In addition to withdrawal policies having negative effects on students and their well-being, recently, such policies are having negative legal consequences for higher education institutions. A September 2006 Associate Press article discussed examples of legal implications of implementing withdrawal policies.²³⁸ At the end of August 2006, in a settlement agreement with a student who sued Hunter College after she was evicted following a suicide attempt in her dorm room, the College agreed to abandon its three-year-old suicide policy and paid the student

²³⁵ Columbia University sent home a student after medical evaluation without giving the student a choice in the matter. See Arenson, *supra* note 4 (describing how Columbia gave bipolar student struggling with drug and alcohol problems four days to move out of dorm room). Cornell University administrators "say that forced medical leave is rare. However, that may be because students are given a 'choice' by the school: six months of voluntary leave or 12 months of involuntary leave." Jason Feirman, *The New College Dropout: Universities Ship Emotionally Troubled Students Back Home*, PSYCHOLOGY TODAY, May 1, 2005, at 38.

²³⁶ Arenson, *supra* note 4. "[T]here may be attempts [by students] to cope with their emotional turmoil independently," which "is usually not a successful endeavor" and may cause a "deterioration of their psychological state resulting in a more serious attempt or an actual suicide." RICKGARN, *supra* note 205, at 212.

²³⁷ RICKGARN, *supra* note 205, at 212.

²³⁸ David B. Caruso, *Some Colleges Evicting Suicidal Students*, ASSOCIATED PRESS, Sept. 2, 2006, available at http://articles.news.aol.com/news/_a/some-colleges-evicting-suicidal/20060901233209990001?ncid=NWS00010000000001.

\$65,000.²³⁹ In a similar lawsuit, a student is suing George Washington University claiming they violated his rights under federal disability law when he was “barred from campus and threatened with expulsion” after he received treatment at a hospital for depression.²⁴⁰

Most schools have reacted by increasing not only the number of counselors on campus but also the number of hours the counselors are available.²⁴¹ A number of colleges are also requesting that faculty and staff report to the dean or counseling services if they notice a student is showing signs of depression or possible suicidal tendencies.²⁴² MIT began offering training sessions for identifying students in trouble not only for school faculty and staff but also for athletic coaches, dorm personnel, fraternities, and sororities.²⁴³

Schools have also begun to request student information through questionnaires. Emory University and the University of North Carolina invite students anonymously to fill out mental health surveys.²⁴⁴ As part of an “extensive mental health and wellness program,” NYU has sent a medical history questionnaire that students are “required” to fill out.²⁴⁵ NYU faces possible legal

²³⁹ *Id.*

²⁴⁰ *Id.* The article juxtaposes a recent case in which a Pennsylvania jury found that Allegheny College was not liable for the 2002 suicide of a student who was permitted to continue to attend the college while battling serious depression. *Id.* The parents suing the college contended that the school “should have contacted [them] and put him on a mandatory leave of absence.” *Id.* The article highlights the competing pressures that higher education institutions are facing in their efforts to protect suicidal students.

²⁴¹ Arenson, *supra* note 4.

²⁴² *Id.*

²⁴³ *Id.* This training program was one of many recommendations set forth by the mental health task force that was established in response to Elizabeth Shin’s suicide. *Id.*

²⁴⁴ *Id.*

²⁴⁵ Hegranes, *supra* note 198.

problems because of the required questionnaire as it “appears to some to have run afoul of federal laws about individual privacy and fair treatment for people with handicaps.”²⁴⁶

Mental-health issues are even “starting to filter into admissions conversations at various colleges.”²⁴⁷ Admissions officials from two colleges during the 2003-2004 admissions period informed a private high school counselor that they were looking for potential students who were “‘rock solid’ emotionally.”²⁴⁸ For example, MIT Dean of Admissions Marilee Jones admitted that she wants to admit students who are “emotionally resilient”: Jones said, “If you need a lot of pharmaceutical support to get through the day, you’re not a good match for a place like MIT.”²⁴⁹

III. Analysis

The *Shin* case has instigated conversations in the legal, medical, and social science fields. Most discussions are focused on the effects that the *Shin* decision might have and should or should not have. As noted above, the *Shin* case settled after this Note was written.²⁵⁰ Although the following discussion is no longer pertinent to the *Shin* case itself in light of that settlement, the following discussion does emphasize important issues pertinent to future suits that may be brought against higher education institutions for a student’s suicide.

a. effects of the *shin* decision

1. Effects on the Shin Case. As seen above, the immediate effect of the decision is that the Shins’ case against MIT doctors and administrators will move forward in the litigation stages.²⁵¹ However, the proliferation of the case past the summary judgment stage does not

²⁴⁶ *Id.* “Courts have found that questions about mental health may violate the law if they lead to discrimination.” *Id.* One attorney says the policy is troubling “[a]s a civil rights matter...and appear to violate the ADA [Americans With Disabilities Act].” *Id.*

²⁴⁷ McGinn and DePasquale, *supra* note 9.

²⁴⁸ *Id.*

²⁴⁹ *Id.* Such an attitude from college admissions officers is likely to keep families from disclosing a child’s history of mental illness both before and after the college has accepted the student. *Id.*

²⁵⁰ See *supra* notes 185-88 and accompanying text.

²⁵¹ See *supra* notes 180, 184 and accompanying text.

guarantee that the Shins will collect any of the \$27.7 million²⁵² they are asking the court to grant them. At present, the issues to go to trial are whether the MIT medical professionals and administrators were grossly negligent for not immediately responding to Elizabeth's continued suicide threats.²⁵³ The administrators also face liability on claims of negligence/wrongful death and conscious pain and suffering.²⁵⁴ There are a few possible ways that the case will end: the Shins may either lose or win on the merits of the case or the defendants may choose to enter into a settlement with the Shins.

In order to obtain a favorable judgment from the court, the Shins' attorney will have to prove the elements that comprise each claim the Shins have brought against the defendants. For example, on the claims against the administrators for negligence, although the trial court judge found that defendants had a duty toward Elizabeth, plaintiffs still must prove that the duty was breached and that the breach was the proximate cause of Elizabeth's suicide.²⁵⁵ Unless the plaintiffs prove these additional elements, they will not prevail. If courts "begin to reexamine the duty requirement in suicide situations[, rather] than base its decision on a finding of 'no duty,' a court may instead find that the college or university had a duty but is not liable either because it did not breach that duty or because the plaintiff has failed to establish causation."²⁵⁶ Some scholars speculate that "[u]niversities and colleges are likely to continue to win suicide cases, albeit on other grounds."²⁵⁷ It may be that courts reluctant to impose liability will scrutinize these elements carefully.

²⁵² Hoover, *supra* note 122.

²⁵³ See *supra* notes 159-69 and accompanying text.

²⁵⁴ See *supra* notes 162-69 and accompanying text.

²⁵⁵ See *supra* note 25 and accompanying text.

²⁵⁶ Lake & Tribbensee, *supra* note 5, at 150. See also Lake, *supra* note 121, at 655-56 (noting "[c]ausation law in higher education portends significant development in the next several decades.")

²⁵⁷ Lake & Tribbensee, *supra* note 5, at 150.

A third possible conclusion to this case is settlement. In 1999, Richard Guy, Jr., an MIT student, died after inhaling nitrous oxide from a tank kept in his dorm.²⁵⁸ Guy had been treated and counseled by MIT doctors at the school's health center for his drug abuse problems. His parents brought suit complaining that "MIT's lack of dormitory supervision and poor coordination among Health Services, psychiatric staff and others" caused their son's death.²⁵⁹ In 2002, MIT settled a wrongful death suit out of court with the family although the institution initially denied the allegations brought against it.²⁶⁰ MIT also settled claims with the parents of Scott Kreuger who died at his fraternity house from alcohol poisoning after denying responsibility for a period of time.²⁶¹ After Shin's suicide, MIT denied responsibility in her death, also.²⁶² The cases of Guy and Kreuger are not wholly analogous to the *Shin* case since both deaths were accidental even though self-inflicted. Because MIT's motive in settling, whether to win favor with the public, to save money that would otherwise be spent on trial expenses, or to avoid the risk of an adverse judgment, is not clear, it is hard to predict whether these previous cases foreshadow a settlement in this case.

It may, however, be influential that another suicide case is pending against MIT. In 2001, MIT sophomore Julia Carpenter killed herself by ingesting cyanide.²⁶³ Her father is suing MIT alleging that the institution did not respond appropriately when Julia reported that another student was stalking and harassing her, events which caused her to kill herself.²⁶⁴ MIT's counsel issued a statement saying "[t]he allegations in the complaint...do not accurately portray" the circumstances

²⁵⁸ Kelley Rivoire, *Guy Family and MIT Settle Lawsuit*, Plan New Memorial Fund, TECH, July 6, 2005, available at <http://www-tech.mit.edu/V125/N29/guy.html>.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ See *supra* note 6.

²⁶² See *supra* note 181 and accompanying text.

²⁶³ *MIT Denies Liability in Carpenter Lawsuit*, MIT TECH TALK, June 12, 2003, available at <http://web.mit.edu/newsoffice/2003/carpenter-0612.html>.

²⁶⁴ *Id.*

surrounding her death and that MIT would respond to the allegations “in the court proceedings.”²⁶⁵ Because two suicide cases are pending against MIT or its administrators and doctors, there is perhaps a chance of settlement in the stronger case against them. One cannot speculate as to whether the statements by counsel are indicative that the *Carpenter* case is weaker than the *Shin* case. But if so, such a fact may play into how both cases proceed. As past cases reveal, an initial denial of responsibility by MIT does not rule out the possibility of settlement.

2. Effects on Other Cases. At this early stage of litigation in *Shin*, the ultimate effect the case will have on future cases is not yet apparent.²⁶⁶ Although the judge’s decision in *Shin* was a significant success for the Shins, the ruling does not bind other courts to follow suit. Of course, just as the judge in *Shin* cited to *Schieszler*, if other jurisdictions choose to rely on both cases as persuasive authority, this may mark the beginnings of a new legal trend. The effects on other cases will not be clear until more cases go to court and other judges decide whether or not to change “with evolving expectations of a maturing society”²⁶⁷ by imposing a special relationship duty on college and university employees. If this is the beginning of a legal trend, the finding of a special relationship will allow many more cases charging school liability for student suicide to survive motions for summary judgment.

3. Effects on College and University Campuses. As seen in Part **II.e.**, the *Shin* decision and the possible liability schools may face when a student commits suicide has already triggered a variety of reactions among American colleges and universities nationwide.²⁶⁸ At least one has proven successful, but others chartering new ground seem to be venturing into areas that have their own legal ramifications.²⁶⁹ A survey of the different programs already begun and those

²⁶⁵ *Id.*

²⁶⁶ See *supra* note 188 and accompanying text.

²⁶⁷ See *supra* note 175 and accompanying text.

²⁶⁸ See *supra* notes 222-42 and accompanying text.

²⁶⁹ See, e.g., *supra* notes 232-33, 238-40 and accompanying text.

proposed to begin begs the questions, what *should* be done? The answer to this question may depend on what the person responding views as the mission of the college and university.

b. what *should* be done?

A comprehensive look at the case law and the medical research conducted on suicide risk factors can be instructive to colleges and universities as to the kinds of behavior that demands the attention of campus mental health employees. Mental health research reveals that depression, anxiety, alcohol and substance abuse, hopelessness, and suicide attempts are factors that should put an observing party on notice that the person experiencing any or a combination of such factors is at risk of committing suicide.²⁷⁰ The case law on the matter of student suicide reveals similar findings. The factor most common to the cases reviewed is suicidal ideation. The students in *Hoeffner* and *Klein* relayed their suicidal thoughts to their doctors.²⁷¹ In *Jain* and *Schieszler*, the student's girlfriend informed school personnel of the student's intent to commit suicide.²⁷² In *Shin*, the school administrators and doctors received a variety of reports of Elizabeth's suicidal thoughts behavior from other students, professors, and even the administrators and doctors themselves observed such behavior.²⁷³ Even beyond suicidal thoughts and behaviors, such as Elizabeth's cutting, the students in *White*, *Schieszler*, and *Shin* all attempted suicide while attending the school.²⁷⁴

All of the students in the cases were also experiencing another problem in addition to mental disturbances whether an academic problem or personal problem or both. The students in *Bogust*, *Jain*, and *Shin* were experiencing scholastic difficulties.²⁷⁵ For examples of personal problems, the student in *Jain* was experimenting with drugs and alcohol, for which the school put

²⁷⁰ See *supra* notes 212-16 and accompanying text.

²⁷¹ See *supra* notes 57, 67 and accompanying text.

²⁷² See *supra* notes 93, 94, 105-09 and accompanying text.

²⁷³ See *supra* notes 126-49 and accompanying text.

²⁷⁴ See *supra* notes 83, 107, 126 and accompanying text.

²⁷⁵ See *supra* notes 77, 90 and accompanying text; *supra* note 139.

him on probation.²⁷⁶ The student in *Schieszler* also had a disciplinary action brought against him by his school.²⁷⁷

The facts of the cases in combination with medical research reveal that schools should be paying more attention to students who are having difficulties whether academically, socially, or mentally. Expressions of suicidal thoughts or incidents of suicide attempts should never go unnoticed and demand immediate attention.

The question following identification of a troubled student becomes what to do with that troubled student. In the *Shin* case, there was no problem identifying Elizabeth as a suicidal student. The point of contention came at MIT's decisions as to what to do after such discovery.

As stated above, concerns for student confidentiality as protected by FERPA present obstacles to colleges and universities.²⁷⁸ Colleges and universities should try to obtain student consent upon the student's acceptance to the school so that the school may disclose the student's records to his parents. In the absence of such consent, schools legally are permitted to report to parents within the confines of FERPA in the event of a safety or health emergency.²⁷⁹ In order to enlist the help of the student's parents in his/her treatment program, colleges and universities would be well-advised to inform parents of suicidal tendencies or suicide risk factors.²⁸⁰ One such risk factor, as mental health research shows, is alcohol and drug use.²⁸¹ In

²⁷⁶ See *supra* notes 90-91 and accompanying text.

²⁷⁷ See *supra* note 104 and accompanying text.

²⁷⁸ See *supra* notes 185-97 and accompanying text.

²⁷⁹ See *supra* notes 192-93 and accompanying text.

²⁸⁰ Although many suicidal or otherwise troubled students may prefer to keep their parents uninformed, it may be that the student is not thinking rationally, fears what their family will think, or underestimates the importance of family support. In fact, "[m]odern [suicide] prevention theory clearly demonstrates that involvement of parents and notification of loved ones may be a key factor in preventing or lowering risk of harm, particularly for students of traditional college age." Lake & Tribbensee, *supra* note 5, at 142. Colleges and universities may also consider that running the risk of paying fines for informing the parents if the action was successfully challenged

1998, Congress passed the Higher Education Reauthorization Act, an amendment to FERPA, which allowed schools to contact parents in the event that a student under the age of twenty-one violated school alcohol or drug policies.²⁸² Presumably, Congress amended the Act in such a way believing that students below the age of twenty-one experiencing drug and alcohol problems would benefit if their parents were informed of such issues. If the case law is any indication, often students on campus under twenty-one are experiencing mental health issues.²⁸³ Furthermore, research shows that depression is most likely to appear in people during their late teens and early twenties.²⁸⁴ Parental involvement in the lives of students under twenty-one experiencing suicidal thoughts and behaviors would be equally beneficial to the student and perhaps even more appropriate since the threat to the student is arguably greater in a suicide situation as compared to a substance use situation. In light of the 1998 amendment and the reasoning behind passing it, Congress may want to consider amending the FERPA age from eighteen to twenty-one.

At this point in time, although FERPA and the Higher Education Reauthorization Act allow schools to contact parents in emergency situations, FERPA does not require schools to take any action. Another action Congress could take to afford suicidal students more protection is to make the emergency reporting exception a requirement. Of course, affording greater protection consequently diminishes student privacy, which was the original purpose of passing FERPA.

in court would be worth getting the student the best help available and would be cheaper than paying for legal representation in the case of a wrongful death suit brought against the school by a parent in event of the student's suicide.

²⁸¹ See *supra* notes 213-15 and accompanying text.

²⁸² See *supra* note 196.

²⁸³ Because the special relationship duty would have to be established for a case to survive summary judgment, it is likely that the student would live on the school's campus so that school administrators would have the requisite contact and a close relationship with the student. That being said, many of the students living on campus are likely to fall in the age range of eighteen to twenty.

²⁸⁴ See *supra* note 206 and accompanying text.

Although some worry a decrease in a respect for privacy will cause a decrease in the number of students willing to seek help,²⁸⁵ much of the case law suggests that suicidal students do not customarily identify themselves by voluntarily seeking out help but often are brought to the attention of the administration through reports of other concerned students or through observed suicidal behaviors.²⁸⁶ Contacting the student's parents in event of an emergency therefore would likely *not* have an effect on the number of students choosing to seek help from school mental health professionals. Also, if schools are conservative in choosing what emergencies to report to parents, they may avoid such a chilling effect. In order to encourage conservative reporting and conversely to prevent overreporting and invasions of student privacy, colleges and universities would still face fines for doing so and perhaps such fines could be used towards improving mental health programs on college and university campuses. Ultimately, while respecting student privacy is important for schools to retain the trust of students, saving a student's life should take precedence over privacy.

In addition to getting parents involved, colleges and universities must establish programs and policies to reach a student once the school discovers the student needs help. One of the earlier and highly successful programs was the University of Illinois' program, which requires a student who threatens suicide to undergo mandatory counseling for four weeks.²⁸⁷ Although such a program arguably would have made a difference to the student in *Scheiszler* or *Jain*, for instance, since they never received medical attention after their suicidal behaviors were reported to school officials, the program may not have made a difference for a student like Elizabeth Shin. MIT professionals had been counseling Elizabeth over a period of more than a year and were counseling her regularly in the few months prior to her death.²⁸⁸ If counseling treatment does not have the intended results, colleges and universities should have another option.

²⁸⁵ See *supra* note 197 and accompanying text.

²⁸⁶ See also *supra* note 224.

²⁸⁷ See *supra* notes 223-25 and accompanying text.

²⁸⁸ See *supra* notes 128-40 and accompanying text.

Some schools have withdrawal policies if a student rejects intervention. Withdrawing a student at the signs of suicidal tendencies carries its own legal implications,²⁸⁹ and it does seem ethically wrong for schools to send home a student without first trying to provide help to him. Thus, all colleges and universities should look into adopting a program similar to the one the University of Illinois has established, ordering the student to receive counseling. However, it seems equally wrong for schools not to have a back-up plan for that student if the counseling is not improving his mental state. Careful consideration of the facts, including continued suicidal tendencies despite consistent medical attention, may reveal that temporary leave is the best choice for the health of the student.

However, “[i]f administrators overreact to these cases by routinely removing students, then they are jumping out of the frying pan and into the fire.”²⁹⁰ Thus, higher education institutions would have to make withdrawal decisions carefully and cautiously. Colleges and universities can lessen the isolationist effect of such an action and encourage the student to get better if they allow students to return after private treatment is handled by the student with the help of his family. Any legal implications that may be involved in temporary leave of the student should give way to the number one priority of the student's well-being.

What seems to be a more dangerous action than temporary withdrawal is the trend of college admissions officers trying to assess the mental stability of applicants before the officers will consider accepting them as students.²⁹¹ Temporary medical leave in the event counseling proves unsuccessful is preferable to rejecting students outright, which prevents them from achieving a higher education level regardless of whether they are academically qualified to do so.

²⁸⁹ Gary Pavela, director of judicial programs at the University of Maryland at College Park says forcing medical leave is “ethically wrong and illegal. The Americans with Disabilities Act requires schools to carefully consider the facts in an individual case before sending a student home.” *Suit over Suicide at MIT to Continue*, *supra* note 181. See also *supra* note 188 and accompanying text.

²⁹⁰ *Id.*

²⁹¹ See *supra* notes 240-42 and accompanying text.

This possible effect seems more discriminatory than the forced medical leave option; at least in the case of temporary withdrawal, students are not being prohibited from coming back and earning a college degree. If the college or university has adopted a mental health program in response to their moral duty to serve their students, then they should be confident that applicants with mental health issues will get the treatment they need through the school's program and will prove to be academic successes at the school.

c. should schools be held liable for student suicide?

Only American judges and juries will be able to answer this question in a way that will have a binding effect on our legal system. In deciding the liability of higher education institutions, the facts and circumstances of the case will be of great importance. Whether or not the school or any of its employees was in breach of the duty owed to the student will depend on the reasonableness of its reaction to the factual situation at hand. The mental health resources offered to suicidal students should play a central role in defining the reasonableness of the reactions of the school and its employees.

There is one competing factor that has been overlooked in the discussion of school's liability for student suicide that demands the attention of both higher education institutions in making decisions upon discovery of a suicidal student and of the courts in deciding whether or when imposing liability is appropriate: the fact that colleges and universities have a duty to protect its students from third party harm cannot be ignored. Whereas the *Shin* decision is an extension of a duty that is not widely recognized, the duty to protect students from third party harm is settled law.²⁹² As seen in the comparison of the case law above, the suicidal student often commands attention of other students. For example, about a month before Elizabeth Shin successfully committed suicide, her friends took turns staying up with her at night.²⁹³ Sometimes, as in the *Jain* and *Shin* case, the action of the student in attempting or committing suicide can pose a

²⁹² See *supra* notes 21-22 and accompanying text.

²⁹³ See *supra* note 139.

physical threat to other students in campus dorms.²⁹⁴ The institution thus faces another tension – one between protecting the suicidal student and the other students on campus – and the tension should be taken into account by both the school and the courts. The duty of colleges and universities to protect their students from third party harm is a key consideration in student suicide cases (and perhaps arguably deserves more attention in light of the fact that it is a legally recognized duty): when a factual situation presents itself, this duty is a factor that should be balanced against the duty owed to the student who puts others in danger while endangering himself.

IV. Conclusion

Colleges and universities can learn a lesson from the growing number of cases parents are bringing after a student commits suicide. The lesson is less about legal liability and more about moral responsibility. Instead of preparing legal strategies for fear they might be named defendants in a future complaint, colleges and universities should present a socially proactive response. Such a response begins with noticing warning signs including not only suicidal behaviors and threats but also failing grades, drug and alcohol abuse, and signs of depression. Beyond recognizing such signs, college and university administrators and doctors must take these signs seriously.

To ensure their response to a student exhibiting any of these signs will be effective, colleges and universities need to have strong programs and policies already in place and staff members who are familiar with these programs and policies. Thoroughly researching what other schools are doing and what has proven successful so far is advisable. Also, to bolster the strength of their mental health programs, colleges and universities should consider both mandatory counseling and parental involvement in dangerous and emergency situations.

Despite the tensions that colleges and universities face in attending to students with mental health issues, they must remember their mission is to promote “student development and

²⁹⁴ Jain chose to poison himself with carbon monoxide. *See supra* note 99 and accompanying text. Shin self-immolated in her dorm room. *See supra* notes 152-53 and accompanying text. Both methods of suicide posed danger to other students in nearby dorm rooms.

the well-being of the student.”²⁹⁵ Thus, the development and well-being of their students should be their number one priority.

The question of whether or not colleges and universities should be liable for student suicide will eventually be determined by judges and juries. The question of whether colleges and universities have an ethical duty to ensure that their students are safe and mentally healthy should be answered affirmatively, and schools should demonstrate their commitment to their students and to their missions by establishing an environment in which students, even those with mental health issues, can flourish.

²⁹⁵ Lake & Tribbensee, *supra* note 5, at 146.

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