

In Loco Parentis or Just Plain Loco?
 The University's Changing Legal
 Relationship with Its Students

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What's Ahead

- ▶ Background
 - ▶ *In loco parentis*
 - ▶ legal liability principles
- ▶ Student suicide
- ▶ Student organizations
- ▶ Criminal activity
- ▶ What can we do?



Background – *In Loco Parentis*

- ▶ *In loco parentis* = in place of a parent
- ▶ Mid-1800s through 1960s
- ▶ "A discretionary power has been given [to college authorities] to regulate the discipline of their college in such a manner as they deem proper, and so long as their rules violate neither divine nor human law, **we have no more authority to interfere than we have to control the domestic discipline of a father in his family.**" *People v. Wheaton College* (1866).

Background – *In Loco Parentis*

- ▶ Expel students who eat at restaurants not owned by institution ✓
- ▶ Expel students who ring cow bells, parade the halls of the dormitory at forbidden hours, and turn off the lights ✓
- ▶ Expel students who are rumored to cause trouble and are not "a typical UNC Charlotte girl" ✓

No notice or hearing required!

Background

- ▶ *Dixon v. Alabama* (5th Cir. 1961)
 - ▶ Several African American males were summarily expelled from Alabama State College after participating in a civil rights demonstration
 - ▶ Court held that constitutional due process applies at public universities and requires "notice and some opportunity for hearing" prior to expulsion



Background

- ▶ 1970s and 1980s = bystander era
- ▶ "The university's responsibility to its students, as an institution of higher education, is to properly educate them. It would be unrealistic to impose upon a university the additional role of custodian over its adult students and to charge it with the responsibility for assuring their safety and the safety of others." *Rabel v. Illinois Wesleyan University*, 1987.

Background

▶ 1990s = duty era

▶ "In sum, although the University no longer stands *in loco parentis* to its students, the relationship is sufficiently close and direct to impose a duty [for tort analysis purposes]. The university is not an insurer of the safety of its students nor a policeman of student morality, nonetheless, **it has a duty to regulate and supervise foreseeable dangerous activities occurring on its property.**" *Furek v. University of Delaware*, 1991.

Background – Legal liability principles

▶ Four elements of negligence:

- ▶ Duty to behave in accordance with a defined standard of care,
- ▶ Breach of that duty,
- ▶ Breach was the cause of the injury, and
- ▶ Damages/injury actually resulted

Background – Legal liability principles

▶ Duty

- ▶ What is expected of a reasonably prudent person in a similar situation?
- ▶ Generally, no affirmative duty to protect others
 - ▶ In other words, people are not liable for *failure to act* (like not preventing another person's criminal activity, suicide, etc.)
- ▶ However, some courts have found a *special relationship* that creates a duty where there otherwise would not be one



Student suicide

- ▶ Traditional view: *Jain v. Iowa* (2000)
 - ▶ No special relationship
 - ▶ "[T]he university's limited intervention in this case neither increased the risk that Sanjay would commit suicide nor led him to abandon other avenues of relief from his distress. Thus no legal duty on the part of the university arose[.]"
- ▶ *Schieszler v. Ferrum College* (2002) / *Shin v. MIT* (2005)
 - ▶ Special relationship (based on particular facts)
 - ▶ Universities are not insurers of student safety, but "[p]arents, students, and the general community still have a reasonable expectation, **fostered in part by colleges themselves**, that reasonable care will be exercised to protect resident students from foreseeable harm." (from *Schieszler*)

Student suicide

- ▶ *Nguyen v. MIT* (2018)
 - ▶ No special relationship (in part because not foreseeable)
 - ▶ Court's reasons:
 - ▶ He never communicated by words or actions to any MIT employees that he had plans or intentions to commit suicide,
 - ▶ Any prior suicide attempts occurred well over a year before matriculation,
 - ▶ He was a 25 year old adult living off campus, rather than a young student living in a campus dormitory under daily observation,
 - ▶ He repeatedly made clear his desire to keep his mental health issues separate from his academic issues and his desire to seek professional help off campus.

Student suicide

- ▶ *Schussler v. Iowa State University* (2019)
 - ▶ Jury found university partially responsible for student's suicide
 - ▶ University might appeal
 - ▶ According to Chronicle article, student's mom suggested several ways universities can improve going forward:
 - ▶ Colleges can do more to educate students, require them to watch videos about mental illness and warning signs for students and their classmates
 - ▶ Colleges can't handle the problem of suicide by themselves and need to get parents involved
 - ▶ Colleges should communicate the limits of their services upfront with students and families

Student organizations

- ▶ *Davidson v. UNC Chapel Hill* (2001)
 - ▶ Special relationship in NC arises from "mutual dependence"
 - ▶ Factors: control over student's life (drinking, GPA), benefits to university, safety education
 - ▶ "Our holding should not be interpreted as finding a special relationship to exist between a university, college, or other secondary educational institution, and every student attending the school, or even every member of a student group, club, intramural team, or organization. We agree with the conclusion reached by other jurisdictions addressing this issue that a university should not generally be an insurer of its students' safety, and that, **therefore, the student-university relationship, standing alone, does not constitute a special relationship giving rise to a duty of care.**"

Student organizations

- ▶ *Mynhardt v. Elon University* (2012)
 - ▶ No special relationship just because university had developed conduct policies designed to dissuade or curb underage drinking
- ▶ *Hipps v. Clemson University* (2015)
 - ▶ \$25 million lawsuit; settled for \$250,000 plus non-monetary pieces
 - ▶ Failed to respond to email telling administrators about planned morning run
 - ▶ Failed to properly educate re: hazing
 - ▶ Failed to enforce hazing policies
 - ▶ Mom said she was skeptical of/not interested in fraternities, but at orientation, the school talked about all the benefits (better grades, time management skills, etc.)

Criminal activity

- ▶ Virginia Tech shooting
 - ▶ 2007 incident
 - ▶ Most families settled (\$11 million); 2 families sued for wrongful death, but court ended up not answering the "special relationship" question
 - ▶ Still, change in standard of care for universities post-VA Tech
- ▶ Rosen (2018)
 - ▶ UCLA student stabbed by fellow student in chemistry lab
 - ▶ Court held that:
 - ▶ "[P]ostsecondary schools do have a special relationship with students while they are engaged in activities that are part of the school's curriculum or closely related to its delivery of educational services."
 - ▶ "Colleges are in a special relationship with their enrolled students only in the context of school-sponsored activities over which the college has some measure of control."

Criminal activity

- ▶ Recent interpersonal violence cases
 - ▶ Students' families attempted to use Title IX to attach liability
 - ▶ Deliberate indifference standard
 - ▶ No liability yet (because perpetrators were non-students)
 - ▶ But potential liability for universities' stating that police, res life staff, etc. are trained to recognize warning signs of domestic and dating violence when they missed these



What Can We Do?

- ▶ Continue to provide prevention/awareness education (including information regarding on-campus resources)
 - ▶ Alcohol
 - ▶ Hazing
 - ▶ Interpersonal violence
 - ▶ Mental health
- ▶ Support your students!
 - ▶ Make sure to respond to safety concerns
 - ▶ Follow policies*
 - ▶ Do what's reasonable in light of the information you have
 - ▶ Collaborate with each other (and Legal Affairs)

* Review current policies – Are they appropriate? Can you expect staff to follow them?

What Can We Do?

- ▶ Don't overpromise
 - ▶ Make sure you give students options and resources
 - ▶ Never promise safety or support in a way that prevents others from being involved
- ▶ Parental notification?
 - ▶ Never required (and in some situations, not advisable)
 - ▶ But most court cases re: suicide/mental health stem from parents who thought they could have helped had they been aware
- ▶ Don't be driven by fear of a lawsuit


