



Northern Michigan University settles with DOJ regarding treatment of students with mental health disabilities

November 6, 2018

On October 18, 2018, the U.S. Department of Justice (DOJ) [announced a settlement agreement](#) with Northern Michigan University (NMU) resolving a complaint alleging discrimination on the basis of mental health disabilities. NMU agreed to make significant changes to its policies, train its faculty and staff, and pay \$173,500 in damages to four current or former students who had alleged discrimination on the basis of mental health disabilities.

The complaint and investigation

The complaint under which the settlement agreement arose was brought by a student who alleged that NMU had discriminated against her under its “Policy Relating to Student Self-Destructive Behavior” when it learned that she told another student that her doctors were concerned about her risk for suicide due to her depression. The alleged discriminatory actions included threatening to disenroll her, requiring her to submit to psychological assessments, and requiring her to sign a fairly severe behavioral agreement that barred her from discussing suicidal thoughts or actions with any other students of the university. NMU had previously publicly admitted it had warned 25 to 30 students per semester that involving other students in “suicidal or self-destructive thoughts or actions” could result in conduct/disciplinary action.

During its investigation, the DOJ substantiated the student’s allegations and identified three other current and former students who alleged similar treatment by NMU due to having shared suicidal or self-destructive thoughts with other students. It further found that “NMU’s Policy Relating to Student Self-Destructive Behavior did not reflect or impose legitimate safety requirements

within the meaning of Title II of the ADA,” that “NMU’s Dean of Students office took adverse action against NMU students with mental health disabilities who did not pose an actual risk of serious self-harm,” and that “[t]his action was precipitated, in some cases, by information the office received through the ‘Behavioral Concerns’ section of the Dean of Students’ webpage, where anyone may anonymously report concerns.”

Required revisions

NMU voluntarily agreed to revise several policies and is required to submit each policy to the DOJ for review and approval. The DOJ proscribed several items in NMU’s revisions. For example, within its newly revised ADA/non-discrimination policy, NMU must include a statement that it will not discriminate against applicants or students on the basis of disability, *including mental health disabilities*. Within its reasonable accommodation policy, NMU must detail the right to request disability accommodations as well as its responsibility to engage in the interactive process with students regarding their request. NMU is also required to remove its Policy Relating to Self-Destructive Behavior, under which it threatened to remove the student in this case. If NMU wishes to implement any new policy regarding student self-destructive behavior during the duration of the three-year agreement, it must submit it to the DOJ for prior approval.

The DOJ emphasized that “[w]hile a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities, the public entity must ensure that its safety requirements are based on *actual risks*, not on *mere speculation, stereotypes, or generalizations* about students with disabilities.” (Emphasis added.)

With respect to its withdrawal policies, practices and procedures, NMU must revise its policies to include the length of voluntarily psychological withdrawals, the conditions for a student’s return, as well as the fact that individualized assessment for a return will be based on the best medical evidence available. The withdrawal policies must also include an appeal process that includes a detailed written description of the reasons for denied readmission.

Required training

NMU was also required to develop an ADA training program that addresses, among other topics, mental health in the post-secondary context. The curriculum for such training must be submitted to the DOJ for review and approval prior to delivery. The initial round of training must be delivered to particular persons in a live presentation and by an individual with substantive knowledge of the ADA and its requirements.

Key takeaway

This case serves as a powerful reminder that, when it comes to students with mental health conditions and threats of self-harm, decision-makers must consider each situation on a case-by-case basis, examine multiple risk factors, and incorporate the best objective evidence and medical advice available. These requirements track the individualized assessment rubric found within the ADA’s implementing regulations.

While colleges and universities have an interest in ensuring the safety of their students, including those experiencing mental health crises and who may be at risk of self-harm or suicide, the DOJ has made it explicitly clear that imposing discipline on students for merely expressing that they have had thoughts of self-harm, without conducting an individualized assessment of the immediacy or legitimacy of the actual risk, is a violation of the anti-discrimination provisions of the ADA. Reviewing the policies, practices and procedures at your institution regarding mental health, self-destructive behavior and disability accommodations to ensure that action is not taken against students with mental health disabilities without evidence of an actual safety risk may prevent a costly settlement.

Authors



Melissa Martinez Bondy

Partner

Columbus

614.227.8875

mbondy@bricker.com

Copyright © 2023 Bricker & Eckler LLP. All rights reserved.