

February 21, 2024

Jessica Bowen Gall
Special Assistant
Office of Post Secondary Education
U.S. Department of Education
400 Maryland Avenue SW, Room 4C212
Washington, DC 20202

RE: Request for Information Regarding Mental Health in Higher Education

Dear Special Assistant Gall,

The Consortium for Constituents with Disabilities (CCD) Education Task Force monitors federal legislation and regulations that address the educational needs of children and youth with disabilities and their families, including regulatory efforts under federal law such as the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act (ADA). We advocate for high expectations for children with disabilities under these and other laws. We appreciate the opportunity to provide information, research, and other suggestions to the U.S. Department of Education (ED), Office of Post Secondary Education (OPE) regarding supporting student mental health and/or substance use disorder (behavioral health) needs in higher education.

As CCD told the U.S. Congress in 2022,

Students with mental health, emotional, or behavioral disorders are just like all students in their need for an education...so that as adults they can enjoy the same professional opportunities available to others, and to be understood and appreciated for their strengths and talents....Special services, targeted intervention, guidance and other support may be needed for a student with mental health, emotional or behavioral disorder to succeed in school. National data indicate that approximately 40 percent of children will experience a mental health concern by 7th grade; each year, one in five students are and will continue to experience a mental and behavioral health concern and, research shows that students are more likely to receive mental health supports if they are offered at school. Unfortunately, the vast majority of students do not receive the mental health care they need, and of those who do, most receive it at school.¹

In addition, an estimated 8% of students on US college campuses have ADHD, accounting for 25% of students with disabilities. College students with ADHD experience significant academic impairment, including lower grade point averages (GPA's); increased frequency of probation, medical leave, and required withdrawal; and lower graduation rates. Significantly higher rates of additional (comorbid) diagnoses, including anxiety and/or depression, were found among college students with ADHD, with 55.0% exhibiting at least one comorbid diagnosis and 31.8% displaying two or more, compared to the corresponding rates of diagnoses among students without ADHD, which were 11.2% and 4.0%, respectively.²

¹ See: CCD Letter to Senate Health, Education, Labor and Pensions Committee, April 7, 2022 at:

https://c-c-d.org/fichiers/CCD-Ltr-to-Murray_Burr-Re_-Mental-Health-Recs.pdf

² Anastopoulos, A.D., et al., *Rates and Patterns of Comorbidity Among First-Year College Students With ADHD*. J Clin Child Adolesc Psychol, 2018. 47(2): p. 236-247.

Poor executive self-management is increasingly recognized as a central characteristic of ADHD and a major cause of functional impairment at school and at work. Executive dysfunction in ADHD is typically manifested as deficient self-management with respect to time, organization, and planning, and correlates with worse academic performance in children with ADHD³, and greater occupational impairment in adults⁴.

Recent studies, including one sponsored by NIMH⁵, have demonstrated that cognitive-behavioral interventions targeted to treat executive dysfunction in college students were successful not only in reducing core inattentive symptoms of ADHD, but also in significantly improving time-management, organization, and learning and study skills⁶. Of note this treatment was delivered on the college campus in a cost-effective group modality.

Given these data, and the fact that 21 percent of undergraduates and 11 percent of post baccalaureate students reported having a disability⁷, we believe there is great need and urgency for OPE to help institutions of higher education (IHEs) to: improve access to mental health and/or substance use disorder and other behavioral health needs; and, to improve how they provide direct access to reasonable accommodations under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973. Given this, we offer the following recommendations according to the questions posed by OPE.

OPE Question 3: How do you conduct universal assessments of your student body (or support institutions in their assessments) to determine their behavioral health needs?

CCD Recommendation: ED must encourage and support IHEs in developing and implementing assessments that are appropriate and relevant across a diverse student population.

Rationale: Given the known intersection of disability within and across a diverse population, including those matriculating into postsecondary education, it is imperative that OPE promote and support assessments designed to examine and understand such diversity. CCD notes findings from the [2022 National Healthy Minds Study](#), e.g.: “In 2020–2021, >60% of students met criteria for one or more mental health problems, a nearly 50% increase from 2013. Mental health worsened among all groups over the study period. American Indian/Alaskan Native students experienced the largest increases in depression, anxiety, suicidal ideation, and meeting criteria for one or more mental health problems. Students of color had the lowest rates of mental health service utilization. The highest annual rate of past-year treatment for Asian, Black, and Latinx students was at or below the lowest rate for White students. Although Arab American students experienced a 22% increase in prevalence, there was an 18%

³Biederman, J., et al., *Impact of executive function deficits and attention-deficit/hyperactivity disorder (ADHD) on academic outcomes in children*. Journal of Consulting and Clinical Psychology, 2004. 72: p. 757-766.

⁴ Barkley, R.A. and K.R. Murphy, *Impairment in occupational functioning in adult ADHD: the predictive utility of executive function (EF) ratings vs. EF tests*. Archives of Clinical Neuropsychology, 2010. 25(3): p. 157-173.

⁵ Solanto, M.V. and A. Scheres, *Feasibility, acceptability, and effectiveness of a new cognitive-behavioral intervention for college students with ADHD*. J Atten Disord, 2021. 25(25): p. 2068-2082.

⁶ Solanto, Supra; Anastopoulos, A.D., et al., *A randomized controlled trial examining CBT for college students with ADHD*. J Consult Clin Psychol, 2021. 89(1): p. 21-33.

⁷ National Center for Education Statistics. (2023, TBA). Table 311.10. Number and percentage distribution of students enrolled in postsecondary institutions, by level, disability status, and selected student characteristics: Academic year 2019–20 [Data table]. In Digest of education statistics. U.S. Department of Education, Institute of Education Sciences, at: <https://nces.ed.gov/fastfacts/display.asp?id=60>

decrease in treatment.” Of additional note are research findings that 70% of LGBTQ+ high school students reported persistent feelings of sadness and hopelessness.⁸

OPE Questions: 6-8

6. What steps have you taken to help ensure that all students are aware of, and can easily access (including in ways that protect their privacy), mental health and substance use disorder supports? What steps have you taken to educate and train relevant staff (e.g., faculty, coaches, housing/resident directors) about student behavioral health supports? How have you tailored outreach activities to meet the specific needs of particular student populations?

7. What steps have you taken to encourage students to seek mental health and substance use disorder supports, including any specific activities to address stigma? For students, what barriers or fears do you or your peers have with engaging with behavioral health treatment at your institution and to what extent, if any, has your institution sought to address these fears and barriers?

8. What steps have you or the institutions you support taken to tailor behavioral health interventions to the specific needs of particular student populations, including students from underserved communities and primarily off-campus populations, if applicable? What evidence (e.g., summaries of local outcomes data, locally conducted evaluation studies) suggests these interventions are effective? If not already provided above, please consider including any evidence here.

CCD Recommendations:

1. ED must help IHEs actively integrate Disability Support Services (DSS) with other campus services and to also promote collaboration with and among program directors to promote accessibility to mental health services where all students —including those with disabilities — may seek help.
2. ED must fund research regarding the mental health status and help-seeking behaviors of students with disabilities.

Rationale: Given the important, but under-utilized role disability support services (DSS) plays on college campuses, and the fact that researchers have identified measures ED can take to help IHEs identify and support the mental health needs of students with disabilities the recommendations are designed to help IHEs both support *and* understand the complex behavioral and mental health needs of students with disabilities. As ED knows, IHEs are required to provide reasonable accommodations as well as auxiliary aids and services to students with disabilities under the ADA, and Section 504 of the Rehabilitation Act of 1973 respectively.⁹ As documented by researchers, DSS offices on many college campuses play an integral role in assisting students with disabilities in accessing accommodations, can help serve as an advocate for students with disabilities through various partnerships with campus programs, and also focus on enhancing disability awareness through comprehensive disability training of [IHE] staff members.¹⁰ Of note by researchers in 2021 is the following:

Students with disabilities have unique and additional challenges in navigating and adjusting to college (Ford et al., 2019). Compared to their peers, students with disabilities report greater academic-related concerns, distress, and self-harming tendencies (Coduti et al., 2016). Extant

⁸ Centers for Disease Control, Youth Risk Behavior Survey Data Summary & Trends Report: 2011-2021, at: https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.

⁹ See: P.L. 101-336 and PL. 93-112. See also Reasonable Accommodation, U.S. Department of Justice, at: <https://www.justice.gov/imsd/reasonable-accommodation>, and, Auxiliary Aids and Services for Postsecondary Students with Disabilities, U.S. Department of Education, Office for Civil Rights, at: <https://www2.ed.gov/about/offices/list/ocr/docs/auxaids.html>

¹⁰ Aguilar and Lipson, *A Public Health Approach to Understanding the Mental Health Needs of College Students with Disabilities: Results From a National Survey*, *Journal of Postsecondary Education and Disability*, 2021, 34(3), 273-285, at: <https://files.eric.ed.gov/fulltext/EJ1325421.pdf>

research suggests that students with disabilities are at increased risk of experiencing emotional, academic, and behavioral challenges (Hendrickson et al., 2017). However, the few existing studies in this area rely on small sample sizes of college students with disabilities (Coduti et al., 2016; Fleming et al., 2018). From a population-level perspective, even less is known about students with disabilities seeking disability support and mental health services, and the degree to which their needs are being met by the campus mental health system (Carter, 2017).¹¹

Yet, despite [these] federal requirements and the role DSS can or may play, we also know DSS offices are often under-resourced and are often administered separately from other student supports.¹² Therefore, ensuring that IHEs work to integrate DSS with other support services where collaboration can occur with and among [campus] program directors will better ensure that all help-seeking students have increased access to mental health services.

Also, due to stigma and school policies focused on limiting risk or that seem to penalize mental health disabilities, rather than support them, many students with whom CCD member organizations work report fear of seeking accommodations and disclosing their mental health challenges, due to fear of reprisal, forced leave, or being forced out of school. See Response to Questions #9 and #24 below.

Additionally, a distinct and sharper focus on research regarding the mental health status and help-seeking behaviors of students with disabilities will improve IHEs' understanding of student needs and inform how resources can be allocated to support students. Researchers and stakeholders have identified particular gaps in research regarding students with what have been traditionally termed serious mental illness (SMI) and serious emotional disturbance (SED), and on the intersectionality of race and mental health at IHEs. We have included specific research recommendations in response to Question #25 below.

OPE Question 9. What actions or partnerships have you formed (or helped institutions form) (*e.g.*, with parents/guardians, law enforcement to prevent unintentional harm to students in distress) to ensure continuity of care for students with mental health disorders as they transition to, between, and from college? What steps have you taken to involve parents/guardians in the event of an emergent behavioral health concern? Have you encountered challenges (for example, privacy concerns or other challenges/barriers) or developed successful strategies to engage parents/guardians to ensure continuity of care and services for students entering with behavioral health disorders, or those with previously undetected, undertreated, or untreated behavioral health concerns?

CCD Recommendations:

1. ED must help IHEs embrace and use model policies designed to prevent discrimination and legal violations with regard to crisis response.
2. ED must help IHEs develop comprehensive, non-discriminatory policies for responding to students with mental health disabilities when they are in crisis.
3. ED must help IHEs embrace model policies that seek to reduce barriers to [an] appropriate crisis response. Documented barriers to address include:
 - a. Failure to prioritize crisis support over threat identification: many schools focus on identifying risks over supporting students in crisis. This approach does not provide appropriate support and also causes disproportionate harm to BIPOC students.

¹¹ Id.

¹² Id.

- b. Lack of transparency and fear of consequences: students are often unsure about the potential consequences of seeking help, which can deter students from reaching out, "fearing involuntary hospitalization, housing removal, or disciplinary actions."¹³
- c. Lack of alternatives to law enforcement response or hospitalization: IHEs' existing policies and procedures "too often involve serious civil rights violations and are only appropriate in rare circumstances."¹⁴

Rationale: As reported in 2023, gaps in support and resources mean that students who experience a mental health crisis may face a police response and/or an involuntary leave of absence. As a result, they are removed from classes, often prohibited from returning to campus, including on-campus housing.¹⁵ This is a traumatic experience that can result in the loss of community support and income, derailed educational and career trajectories, expensive medical bills, and family conflict. Despite the fact that legal organizations, in partnership with students and university stakeholders, have proposed model policies for years to prevent discrimination and legal violations in these situations so that the punitive nature of these responses does not impact a student's academic, extracurricular, social life, and general well-being, the actual experiences of students on college campuses have not improved.

After conducting a year-long project to identify student priorities to make higher education more supportive and inclusive of students with mental health disabilities, researchers concluded that universities must develop comprehensive, non-discriminatory policies for responding to students with mental health disabilities when they are in crisis. They found that some schools respond to mental health challenges in discriminatory or punitive ways, including charg[ing] students with disciplinary violations for suicidal gestures or thoughts. Such measures discourage students from seeking help. They isolate students from social and professional supports—friends and understanding counselors and teachers—at a time of crisis, increasing the risk of harm.¹⁶ Researchers also found that IHEs' approach to various other situations, like bullying and intimate partner violence, can be problematic. As researchers note:

"[U]niversity responses frequently result in over escalation including the removal of students from housing, involuntary hospitalization, or even law enforcement involvement. This highlights the necessity for educational institutions to refine and humanize their crisis intervention strategies, ensuring they are equipped to sensitively and effectively address a broader spectrum of mental health needs."¹⁷

Students and stakeholders have underscored the need for improvement in these areas, pointing to significant opportunities for research and development in campus mental health crisis response strategies.¹⁸

OPE Question 11: What steps have you taken to ensure that students with mental health disabilities receive academic accommodations and other reasonable modifications under the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973 to give them each a meaningful opportunity to participate in and benefit from the school's academic and non-academic programs? How have you integrated your disability services offices into initiatives to develop strategies to meet the

¹³ Jones, N., Thompson, D., & Davis, K. (2023). *The Campus Mental Health Crisis: Convening Stakeholders to Drive Research and Change* [Unpublished report]. Patient-Centered Outcomes Research Institute.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ Jones, N., Thompson, D., & Davis, K. (2023). *The Campus Mental Health Crisis: Convening Stakeholders to Drive Research and Change* [Unpublished report]. Patient-Centered Outcomes Research Institute.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

mental health needs of students on your campus? What steps have you taken to address any bias—by professors, staff, or other students—against students with mental health disabilities?

CCD Recommendations:

1. ED must issue a notice of proposed rulemaking to update regulations implementing Section 504 of the Rehabilitation Act of 1973 (Section 504), including clarifying:¹⁹
 - IHEs’ responsibilities to prohibit discrimination against students with mental health disabilities in higher education,²⁰ including to provide auxiliary aids and services as required;
 - How IHEs should update policies regarding involuntary medical leaves of absence and voluntary medical leaves of absence to comply with federal civil rights laws; and
 - That deference to IHEs must be limited to only academic decisions.
2. OPE must also encourage and support IHEs to increase counseling and mental health services to meet students’ needs, including by ensuring a diverse mental health service staff that reflects the diversity of the student body.

Rationale: CCD has advocated for robust 504 regulations that more fully articulate the law’s requirements that IHE’s (and other recipients of federal funding) must do all they can to prohibit discrimination against students with mental health disabilities, provide necessary aids and services, implement best practices with a high standard of care regarding both involuntary and voluntary medical leaves of absence, and assure deference to IHEs is limited to only to academic decisions. The experience of our members shows that reasonable accommodations are often not understood by IHEs, or explained and provided to students with mental health disabilities—hence the need for updated and clarified regulations reflecting these well-established and long-standing obligations under the law. It is important that regulations make clear that this is not a new requirement; it is longstanding and recognized by federal courts. There is a large body of case law on the requirements under the ADA and the Rehabilitation Act of IHEs to provide reasonable modifications and accommodations to students in higher education. The regulations should make clear that the obligations on IHEs are the same as other public and private entities covered by these laws. As discussed below, the regulations should also clarify that decisions about the need for accommodations and what accommodations to provide are not academic in nature, and thus IHEs are not due any special deference for their decisions regarding these disability-related decisions. See Response to Question #25 below.

OPE Question 24. What unmet needs remain and what barriers have institutions encountered in providing mental health and substance use disorder supports for their students? How can the Department assist in helping to meet these needs and overcome barriers?

CCD Recommendations:

Many unmet needs remain regarding student mental health in higher education with which the Department could assist. OPE can help support students by assuring IHEs address the following:

1. Student Mental Health Needs Exceed Available Resources

¹⁹ U.S. Department of Education, *U.S. Department of Education Announces Intent to Strengthen and Protect Rights for Students with Disabilities by Amending Regulations Implementing Section 504*, <https://www.ed.gov/news/press-releases/us-department-education-announces-intent-strengthen-and-protect-rights-students-disabilities-amending-regulations-implementing-section-504> (May 2022).

²⁰ Consortium for Constituents with Disabilities, *CCD Response to 504 Regulations*, <https://www.c-c-d.org/fichiers/CCD-Response-to-504-Regulations.pdf> (July 2022).

CCD Recommendation: ED must address the funding and other resource issues to support IHEs in implementing the recommendations identified in questions previously addressed.

Rationale: In the year before the COVID-19 pandemic, 87.3% of counseling center directors reported an increase in college students seeking assistance and that, on average, only 13.3% of the campus was served by their school's counseling center.²¹ During the early days of the pandemic, 80% of college students reported that COVID-19 had negatively impacted their mental health, and 1 in 5 reported that their mental health had significantly worsened.²²

In 2022, though 84% of students with anxiety or depression reported needing mental health services, only 37.8% were able to access them.²³ In another survey, more than half of students (55%) reported that, if they or someone they knew needed immediate mental health services, they would not know where to go.²⁴

2. Students Ask for More and Better Trained Staff

CCD Recommendation: OPE must encourage and support IHEs to:

- Better train professors to understand mental health and disability accommodations;
- Provide more education and outreach about the availability of disability support services for mental health disabilities;
- Dedicate staff to provide or support students in the accommodations process to remove financial barriers to registration; and
- Offer staff or peer navigators to support students in the registration process.

Rationale: In a national study conducted by Mental Health America in October 2020 regarding students' experiences and needs during the COVID-19 pandemic, the top suggestions from students with mental health disabilities regarding how colleges can improve accessibility were to:

- Train professors to understand mental health and disability accommodations (73%);
- Provide more education and outreach about the availability of disability support services for mental health disabilities (69%);
- Dedicate staff to provide or support students in the accommodations process to remove financial barriers to registration (58%); and
- Offer staff or peer navigators to support students in the registration process (42%).²⁵

3. Reasonable Accommodations

²¹ The Association for University and College Counseling Center Directors, *Annual Survey: 2019*, <https://www.aucccd.org/assets/documents/Survey/2019%20AUCCCD%20Survey-2020-05-31-PUBLIC.pdf> (May 2020).

²² Active Minds, *COVID-19 Impact on College Student Mental Health*, <https://www.activeminds.org/wp-content/uploads/2020/04/Student-Survey-Infographic.pdf> (Spring 2020).

²³ Samantha G. Auty, et al., *Mental health service use in a national sample of college students with co-occurring depression or anxiety and substance use*, <https://www.sciencedirect.com/science/article/pii/S2772724622000038> (March 2022).

²⁴ Active Minds, *COVID-19 Impact on College Student Mental Health*, <https://www.activeminds.org/wp-content/uploads/2020/04/Student-Survey-Infographic.pdf> (Spring 2020).

²⁵ Mental Health America, *Disability and Campus Mental Health: Understanding the experiences of college students during the COVID-19 pandemic*, <https://mhanational.org/sites/default/files/Disability%20and%20Campus%20Mental%20Health%20Survey%20FINAL.pdf> (Oct. 2020).

CCD Recommendation: We thank the Department for its joint guidance with the Justice Department regarding Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19.²⁶ We recommend the Department issue further guidance responsive to the needs reported by students, including:

- Making clear that students with mental health disabilities have the right to reasonable accommodations at school and in housing, including dormitories;
- Making clear that IHEs are responsible for adequately staffing disability service offices to centrally process all accommodation requests, including for students with mental health disabilities;
- Recommending IHEs make accommodations processes streamlined and clearly available for students to find and navigate;
- Clarifying that accommodation requests need not be made in any particular form or in writing²⁷ and should not be subject to burdensome documentation requirements; and
- Listing examples of the types of accommodations that could be provided,²⁸ including:
 - Modified timelines for requesting and approving accommodations (i.e., allowing for retroactive withdrawal as an accommodation due to a later-diagnosed disability);
 - Accommodations related to professionalism policies and codes of conduct; and
 - Reduced courseloads.

Rationale: A national survey of college students regarding their experiences during the COVID-19 pandemic found that “70% of students with mental health disabilities did not register for disability accommodations.”²⁹ The top reasons they cited were:

- 41% did not think they were “sick enough” to get accommodations;
- 33% did not know they could get accommodations;
- 30% did not know what accommodations are; and
- 26% were afraid to talk to professors about accommodations.³⁰

4. Leaves of Absence

CCD Recommendations: We recommend the Department issue guidance, file amicus briefs, open investigations, issue findings, and bring or intervene in litigation that focuses on IHE leave of absence policies and practices. Guidance should include that:

²⁶ U.S. Department of Education Office for Civil Rights & U.S. Department of Justice Civil Rights Division, *Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19*, https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-students-self-harm-covid-19.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= (Oct. 2021).

²⁷ Bazelon Center for Mental Health Law, *Supporting Students: A Model Policy for Colleges and Universities*, <https://www.bazelon.org/wp-content/uploads/2017/04/SupportingStudentsCampusMHPolicy.pdf>, paragraphs 17-23.

²⁸ For examples of accommodations, see Bazelon Center for Mental Health Law, *Supporting Students: A Model Policy for Colleges and Universities*, <https://www.bazelon.org/wp-content/uploads/2017/04/SupportingStudentsCampusMHPolicy.pdf>, paragraphs 17-23; National Council on Disability, *Mental Health on College Campuses: Investments, Accommodations Needed to Address Student Needs*, <https://www.ncd.gov/report/mental-health-on-college-campuses-investments-accommodations-needed-to-address-student-needs/> (July 2017), Appendix F: Common Modifications.

Nev. Jones PhD, et al., *Back to School: Toolkits to Support the Full Inclusion of Students with Early Psychosis in Higher Education: Campus Staff & Administrator Version*, [www.nasmhpd.org/sites/default/files/Toolkit-Back to School Support for Full Inclusion of Students with Early Psychosis in Higher Education.pdf](http://www.nasmhpd.org/sites/default/files/Toolkit-Back%20to%20School%20Support%20for%20Full%20Inclusion%20of%20Students%20with%20Early%20Psychosis%20in%20Higher%20Education.pdf), sections 5 & 6.

²⁹ Mental Health America, *Disability and Campus Mental Health: Understanding the experiences of college students during the COVID-19 pandemic*, <https://mhanational.org/sites/default/files/Disability%20and%20Campus%20Mental%20Health%20Survey%20FINAL.pdf> (Oct. 2020) (emphasis added).

³⁰ Mental Health America, *Disability and Campus Mental Health: Understanding the experiences of college students during the COVID-19 pandemic*, <https://mhanational.org/sites/default/files/Disability%20and%20Campus%20Mental%20Health%20Survey%20FINAL.pdf> (Oct. 2020).

- Students have the right to request reasonable modifications to the rules and regulations governing leaves of absence,³¹
- Disability-related inquiries must be limited to what is appropriate and necessary, and any information gathered must be kept confidential;
- Tuition and housing costs should be refunded for students who go on a leave on a pro-rated basis;
- IHEs should allow students on leave to maintain contact with and visit campus, friends, staff, as well as attend campus events;³² and
- Students should be allowed to maintain access to campus resources, including health insurance.

a. Voluntary Leaves of Absence

Guidance related to voluntary leaves of absence should include that:

- Students are permitted to take voluntary leaves of absence for mental health reasons; and
- Voluntary leaves of absence must be truly voluntary.³³

b. Involuntary Leaves of Absence

Guidance related to involuntary leaves of absence should include that:

- Involuntary leaves of absence must be based on an individualized assessment;³⁴
- IHEs must first seriously consider whether reasonable modifications would allow the student to meet academic standards and remain safely in school; and
- Processes should be readily available in writing and must follow due process procedures including notice, hearing, appeal, and prompt and equitable grievance procedures.³⁵

c. Returning from a Leave of Absence

Guidance related to returning from leaves of absence should include that:

³¹ U.S. Department of Justice, *Agreement Between the United States of America and Princeton University Under the Americans with Disabilities Act*, https://archive.ada.gov/princeton_sa.html (Dec. 2016).

³² Miriam Heyman, PhD, *The Ruderman White Paper Reveals: Ivy League Schools Fail Students with Mental Illness*, https://rudermanfoundation.org/white_papers/the-ruderman-white-paper-reveals-ivy-league-schools-fail-students-with-mental-illness/ (Dec. 2018).

³³ Lucia Geng, "A Really Interesting Confidence Thing: What It's Like to Take a Leave of Absence," <https://chicagomaroon.com/26810/grey-city/really-interesting-confidence-thing-like-take-leave/> (April 2019) (including the experience of a student who "was put in an exam room with the door closed, by [themselves] and with...voluntary leave of absence forms, with the understanding that if [they] didn't sign those then [they] would be put on a forced leave").

³⁴ U.S. Department of Education: Office for Civil Rights, U.S. Department of Justice: Civil Rights Division, *Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19*, https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-students-self-harm-covid-19.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= (Oct. 2021);

U.S. Department of Justice, *Agreement Between the United States of America and Princeton University Under the Americans with Disabilities Act*, https://archive.ada.gov/princeton_sa.html (Dec. 2016); U.S. Department of Justice, *University of Tennessee Health Science Center - Settlement Agreement*, <https://www.justice.gov/crt/case-document/university-tennessee-health-science-center-settlement-agreement> (July 2016).

³⁵ U.S. Department of Education: Office for Civil Rights, *Letter to National University*, <https://www.bazelon.org/wp-content/uploads/2017/01/OCRComplaintNationalU-2014.pdf> (2014); U.S. Department of Education: Office for Civil Rights, *Letter to St. Joseph's College*, <https://www.bazelon.org/wp-content/uploads/2017/01/1.24.11-St.-Josephs-College-OCR-Letter.pdf> (2011).

- IHEs should allow students to return when they and their health providers submit that they are ready to meet academic requirements, with or without reasonable accommodations;³⁶ and
- IHEs should impose no more onerous return requirements on leaves for mental health reasons than on leaves for physical health reasons.³⁷

Rationale: Many colleges and universities maintain leave of absence policies that unlawfully exclude students with mental health disabilities. In addition to ending a student’s coursework, leaves of absence can result in loss of housing, health insurance, employment, financial aid, and critical support systems. Such policies disproportionately impact BIPOC students, LGBTQIA+ students, students from economically disadvantaged backgrounds, and international students. They also breed campus climates where students are afraid to seek mental health services.³⁸

OPE Question 25: Are there any resources you would like the Department to provide?

CCD Recommendations: There are several defenses often raised by colleges and universities in litigation enforcing the ADA and Section 504 – defenses that are harmful for students with disabilities and that are contrary to the purpose of both statutes. It would be helpful for the Department to issue clarifying regulations or guidance on two of these defenses, in particular:

1. the deference that courts should afford to a university’s decisions related to disability-related determinations; and
2. the scope of accommodations for disability related conduct. Therefore, we offer the following:

Regarding the first issue, the Department should clarify that questions about a student’s disability are not academic questions, and the opinions of medical professionals familiar with the student’s diagnoses and personal circumstances should be given substantial weight.

On the second issue, the Department should clarify that the ADA requires universities, like K-12 schools, to provide reasonable modifications or accommodations related to “conduct” and other behaviors that are the direct result of a disability.

We also recommend undertaking a national study as detailed below and issuing a public report and findings.

1. Deference to universities must be limited to purely academic decisions.

³⁶ U.S. Department of Education: Office for Civil Rights, U.S. Department of Justice: Civil Rights Division, *Supporting and Protecting the Rights of Students at Risk of Self-Harm in the Era of COVID-19*, https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-students-self-harm-covid-19.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term= (Oct. 2021); U.S. Department of Justice, *Settlement Agreement Under the Americans with Disabilities Act Between the United States of America and Brown University*, https://archive.ada.gov/brown_sa.html (Aug. 2021).

³⁷ U.S. Department of Education: Office for Civil Rights, *Voluntary Resolution Agreement: Georgetown University*, <https://www.bazelon.org/wp-content/uploads/2017/01/10.13.11-Georgetown-OCR-Letter.pdf> (Oct. 2011) (“Ensure that students are not required to engage in employment or volunteer positions or to submit letters of recommendation from an employer as a condition for return; Ensure that students are not required to demonstrate a decrease in or amelioration of their disability-related behavior or symptoms, but allow the University to require students to demonstrate their readiness to resume studies and be a successful member of the campus community, with or without accommodations”).

³⁸ See, e.g., William Wan, ‘What if Yale finds out?’, <https://www.washingtonpost.com/dc-md-va/2022/11/11/yale-suicides-mental-health-withdrawals/> (Nov. 2022); Anemona Hartocollis, *Feeling Suicidal, Students Turned to Their College. They Were Told to Go Home.*, <https://www.nytimes.com/2018/08/28/us/college-suicide-stanford-leaves.html> (Aug. 2018).

First, the Department should clarify its interpretation of the academic deference standard and how it applies to disability-related determinations outside of the university's expertise.

IHEs regularly argue that courts should defer to all of their decisions, even when experts disagree with them. They incorrectly cite to cases about the "great" deference due to academic institutions outside of the context of the ADA and Section 504 and that do not apply to disability-related decisions about, for example, reasonable accommodations. Four Circuits correctly limit deference to "purely academic" decisions and find that decisions related to the ADA are not purely academic.³⁹ However, some IHEs still mislabel disability-based decisions as academic decisions.

Deference would be appropriate, for example, if the issues in dispute concerned what a student must learn or master to earn a degree or work in a given field. However, IHEs often disregard recommendations from a student's treating physician and substitute in their own judgment about whether a requested accommodation will address a disability-related need or whether a student can return safely to school after a medical leave of absence. A court should not defer to an academic institution, rather than an expert in disability or a student's treating doctor, when the issue is the impact of a disability, how to treat or mitigate the disability, or whether the student can succeed after treatment or mitigation with or without an accommodation.

2. IHEs must accommodate disability-related misconduct.

The Department should also clarify that the ADA requires universities, like K-12 schools, to provide reasonable modifications or accommodations related to "conduct" and other behaviors that are the direct result of a disability.

As an example, in one case, a student struggled to meet professionalism requirements because of undiagnosed and untreated ADHD – the student had on occasion arrived late, "seemed" disorganized, or struggled with deadlines for administrative tasks. Shortly thereafter, the student was diagnosed with ADHD and requested a leave of absence to get treatment. The school's learning specialist, the psychologist who evaluated the student, and her treating physician all agreed the previous behaviors were due to ADHD and could be resolved with treatment. Yet, the university placed the student on probation and ultimately dismissed them as unqualified, without first providing accommodations. The university falsely asserted that the ADA does not apply to such issues of "misconduct," even when entirely related to a disability for which treatment or an accommodation could resolve the concern. The university further asserted that accommodations cannot resolve behavioral concerns or "misconduct"—a belief that is clearly based on misperceptions and stereotypes about disabilities.⁴⁰

This damaging and harmful perspective draws primarily from EEOC guidance on "misconduct." But here we are concerned with students, not employees, and the role of schools is to help their students learn and succeed. Based on this EEOC guidance from the employment context, a few courts have incorrectly found that universities do not need to provide additional "chances" or reasonable accommodations to students for disability-related behavior resulting in code of conduct violations, even if the student can

³⁹ *Wynne v. Tufts Univ. Sch. of Med.*, 932 F.2d 19 (1st Cir. 1991); *Wynne v. Tufts Univ. Sch. of Med.*, 976 F.2d 791 (1st Cir. 1992); *Pushkin v. Regents of Univ. of Colo.*, 658 F.2d 1372 (10th Cir. 1981); *Wong v. Regents of the Univ. of Cal.*, 192 F.3d 807 (9th Cir. 1999); *Argenji v. Creighton Univ.*, 703 F.3d 441 (8th Cir. 2013).

⁴⁰ Compl., *Jane Doe v. Brown Univ.*, No. 1:19-cv-00100 (D.R.I. Feb. 27, 2019), ECF No. 1; Mem. and Order, *Jane Doe v. Brown Univ.*, No. 1:19-cv-00100 (Mar. 11, 2020), ECF No. 22 (order denying Brown University's motion to dismiss).

demonstrate that they can be successfully treated for (or otherwise learn to manage) their disability and will be able to meet conduct standards in the future.⁴¹

This issue poses a significant barrier to accessing educational opportunities for students with mental health disabilities in particular, as well as students with other mental disabilities. This is another opportunity for the Department to clarify its prior position and findings. Allowing universities to continue to act with impunity whenever there is a conduct violation and disregard the reasonable accommodation requirements of the ADA denies students with disabilities full and equal access to educational opportunities.

These are important legal issues of statutory and regulatory interpretation of the ADA. We urge the Department to issue guidance, file amicus briefs, open investigations, issue findings, and bring or intervene in litigation that centers these two issues.

3. A National Study

CCD Recommendation: ED must collect data regarding compliance with federal laws that protect students with mental health disabilities. Upon completion, the study and a report on the findings must be made publicly available.

Rationale: Similar to the study and report outlined in the Student Mental Health Rights Act⁴² reintroduced in 2023, ED has an opportunity to ensure data is collected regarding compliance with federal laws that protect students with mental health disabilities. The core components of the study outlined include:

“(A) using the information voluntarily reported⁴³ by students..., the prevalence of such disabilities and disorders, disaggregated by type of disability or disorder (including disabilities and disorders related to hearing, vision, cognition, ambulatory, self-care, independent living, mental health, and any other category determined appropriate by the Secretary), among students at institutions of higher education and policies to support students with respect to such disabilities and disorders;

(B) the policies of institutions of higher education with respect to students who, due to such a condition, are considering a voluntary leave of absence or are required to take a mandatory or involuntary leave of absence, or return from such an absence, and compliance by institutions of higher education with such policies; and

(C) best practices for supporting students at institutions of higher education in managing such disabilities and disorders, including the effect such practices have on graduation rates and degree completion.”⁴⁴

⁴¹ See, e.g., *Halpern v. Wake Forest University Health Sciences*, 669 F.3d 454 (4th Cir. 2012); *Neal v. E. Carolina Univ.*, 53 F.4th 130, 153 (4th Cir. 2022); *Profita v. Regents of the Univ. of Colo.*, 709 F. App'x 917, 921-24 (10th Cir. 2017); *Zimmeck v. Marshall Univ. Bd. of Governors*, 106 F. Supp. 3d 776, 781 (S.D.W.V. 2015).

⁴² Student Mental Health Rights Act, S. 2163, HR 3726, 118th Cong. (2023).

⁴³ The Department should "solicit from students at institutions of higher education, on a voluntary basis and in a manner that protects the confidentiality of such students, information with respect to mental health disabilities and substance use disorders at such institutions of higher education." Student Mental Health Rights Act, S. 2163, HR 3726, 118th Cong. §3(a) (2023).

⁴⁴ Student Mental Health Rights Act, S. 2163, HR 3726, 118th Cong. §3(b) (2023).

A new study is necessary and would complement an ongoing study, also sponsored by NIMH⁴⁵ which is underway and continues to document the effectiveness of the intervention while simultaneously developing a program to train providers in college counseling centers to deliver the intervention. In that study, the researchers will also survey college disability service providers across the country (via the “Disabled Student Services in Higher Education Listserv”) to ascertain the scalability of their intervention nationally with respect to resources, staffing, and training. Given this information, the researchers expect to be able to generate interim projections about the feasibility of a full-scale multi-site, controlled trial of the intervention, and its potential scalability to college campuses nationally.

Supplementing the NIMH study with the above proposed study by ED would provide a complete picture of existing resources and gaps in services to better meet the needs of students and IHEs across the country.

OPE Question 26. If the Department were to hold a convening or other event, what specific topics or information would be most helpful to include in supporting institutions and the work of the field?

CCD Recommendations:

1. We support and appreciate the Department’s interest in holding a convening and encourage the Department to ensure all relevant stakeholders are invited, including students with mental health disabilities and people with lived/living experience of the topics at issue, people who identify as BIPOC, disabled, and/or LGBTQIA+; as well as disability rights advocates.
2. We also strongly encourage ED to write to and meet with administrators at IHEs to encourage them to be leaders on these important issues, by adopting policies and practices, conducting research and trainings, and engaging with students and stakeholders on these issues and the recommendations contained herein. The benefits of doing so are many and the risks and harms from not doing so are great.

We appreciate your consideration of our recommendations. We look forward to working with you so that students with disabilities have access to the mental health supports and services they need in postsecondary education.

Sincerely,

Doug Towne

⁴⁵ Solanto, M.V. and A.R. Rostain, *Refinement and Testing of a New Cognitive-Behavioral Intervention to Treat Executive Dysfunction in College Students with ADHD*. Supported by NIMH Grant R34MH122219, 2024.