



Position Statement

Involuntary Withdrawal Best Practices

The National Behavioral Intervention Team Association (NaBITA) is committed to making our campuses, schools, and workplaces safer environments by fostering and encouraging development, education, and caring intervention. As the leading organization in the field of behavioral intervention teams (BITs), NaBITA provides education, best practice recommendations, and on-going trainings through two annual conferences, several certification trainings yearly, a weekly newsletter, and frequent online trainings. NaBITA serves as a best practices clearinghouse for over 1,550 members by providing BIT-related model policies, training tools, and templates. For more information, visit www.nabita.org.

NaBITA is committed to supporting its member institutions including developing practical takeaways from recent court cases and incidents of violence. Details on the recent Northern Michigan University (NMU) case can be reviewed here,¹ and this case offers NaBITA a timely opportunity to address best practices for colleges and schools with respect to the involuntary leave or withdrawal of students who are a legitimate safety risk to self or a direct threat of harm to others.

The NMU case centers on a student who sent a chat message to a friend about her major depression and her doctor's concern regarding her risk for suicide. Following NMU's policy relating to Student Self-Destructive Behavior, the school required the student to complete a psychological assessment and sign a behavioral agreement requiring the student to refrain from talking to others about her potential suicidal ideation. NMU also reportedly "threatened to disenroll" the student. Three other students were identified during the Department of Justice (DOJ) investigation who were also required to complete similar agreements with NMU.

Separation from the Institution

The NMU case offers valuable insight for addressing harm-to-self concerns as the DOJ explains in the agreement that separation for such concerns is possible under certain conditions. Since 2011, schools have been restricted from applying the direct threat standard in harm-to-self cases given the language change in the Title II regulations.² In the NMU agreement, the DOJ

¹ https://www.ada.gov/nmu_sa.html

² Title II regulations are intended to parallel those in Title III; <https://www.federalregister.gov/documents/2010/09/15/2010-21821/nondiscrimination-on-the-basis-of-disability-in-state-and-local-government-services>. The controversy in the field around the Title II changes and harm-to-self involved a misreading or miscommunication by the Department of Education (ED) of the changes by DOJ. When DOJ made changes in 2010, ED interpreted those changes to mean that schools could not separate a student for harm-to-self behaviors outside of narrow conduct code options. This was a misinterpretation of DOJ's intent. The changes to the Title II regs were meant by DOJ to recognize that the case law supporting the direct



outlines a standard for imposing safety requirements when there is a legitimate safety risk based on the severity and likelihood of potential harm. While the direct threat standard still applies in situations of threat of harm to others, the standard of legitimate safety risk can be applied in situations of harm-to-self. The DOJ explains that this legitimate safety concern should be based on assessment of actual risk and not on “speculation, stereotypes, or generalizations about students with disabilities”³.

Schools must first assess the risk in an objective way by considering the unique elements of each case and what interventions or accommodations could mitigate the risk. The standard outlined here by the DOJ requires that schools respond to an actual safety risk and not one that is assumed or that could be reasonably accommodated. In cases like the NMU case, which centered on an isolated instance of sharing concern for *potential* suicidality — not *current and imminent* suicidality — there is no legitimate safety risk. Schools must not impose any action in such cases which may limit the student’s access to their education without evidence of an actual safety risk. The process must be fundamentally fair.

Assessing Risk and Deploying Interventions

To avoid speculation and generalizations, schools should apply the NaBITA Risk Rubric, and deploy interventions based on the level of risk assessed including access to existing services on campus that support student well-being. The use of psychological assessments is a common practice by schools as an intervention when there is concern about a student’s risk for self-harm. For those who follow NaBITA’s model process, the intervention of a psychological assessment is suggested when a student’s behavior crosses the “elevated” threshold on the NaBITA Risk Rubric⁴. While all the details of the NMU case are not available, it appears the central issue in this finding was NMU’s application of the heightened intervention practice of an assessment for a student presenting at the lower range (mild/moderate) of risk behavior.

Interventions are helpful to address student risk but must be tailored to the risk present in the case⁵. “Once the team has received and assessed information, it can consider whether or not

threat determination was never meant to apply to harm-to-self, and thus DOJ limited the regulations accordingly. This was not meant to suggest that there was not a legitimate route for schools under the regs to address harm-to-self, only that direct threat was not the appropriate provision under which to do so, given the caselaw that gave rise to the direct threat standard to begin with. The NMU case outlines that path more clearly, giving schools two clear routes: direct threat for harm-to-others, and legitimate safety risk for harm-to-self. Conduct code options to address disruptive conduct, while still narrow, also continue to be viable. They can be applied when the disruption is severe, and when the school can show a clear track record of previous separations for similar disruption in conduct cases not involving students with disabilities.

³ https://www.ada.gov/nmu_sa.html

⁴ NaBITA 2014 Whitepaper: Threat Assessment in the Campus Setting <http://nabita.org/wordpress/wp-content/uploads/2017/01/2014-NaBITA-Whitepaper-redesigned-April-2016.pdf>

⁵ National Threat Assessment Center (2018). Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence. U.S. Secret Service, Department of Homeland Security.



further action or monitoring is needed — and what form it should take.”⁶ Interventions should not be under- or over-used. Interventions, including a determination of whether a reasonable accommodation/modification exists, should be identified by persons who are qualified to make such an assessment on your campus. Deep dive interventions should be saved for more serious behavioral issues.

Voluntary and less stringent interventions are best deployed for the lower end of the behavioral issue spectrum. The school must also identify if there are reasonable accommodations/modifications that would enable the student to remain enrolled and/or on campus. It is vital to ensure that any intervention corresponds to the level of severity of the behavior. NaBITA created rubrics with well-defined risk levels because of the expectation that the courts would second-guess and the government would intervene in cases like this. There was a clear need for objective assessment criteria to prevent over- or under-reaction. In this case, the requirement of a suicide assessment for a single incident of sharing a treatment history and her doctor’s concern about suicide is an over-reach. A more reasonable intervention would have been a meeting with the student using a case management and advocacy approach, rather than a conduct-based approach and an adversarial mandate from the school.

Use of Behavioral Agreements

A secondary concern is the use of behavioral agreements to address mental health concerns. A behavioral agreement often outlines the institution’s expectations as articulated in the school’s code of conduct regarding student behavior. This kind of agreement should never precede or supplant the conduct process, as it did in the NMU case. Using a behavioral agreement in this way implies that select students are held to different standards and are not afforded due process regarding their compliance with the terms of the agreement. Instead, if schools want to use a behavioral agreement, it should be an advocacy-based set of expectations, including a focus on helping the student understand any sanctions administered through the conduct process and a roadmap of how they can behave differently in the future to avoid further conduct actions.

NaBITA also prefers the term “statement of expectations” over a “behavioral contract” or “behavioral agreement,” as the contract terminology can imply a binding legal relationship or duty. There is no effectiveness data to support framing the document as a contract, with respect to compliance, and a contract raises the risk that a court will ask at some point whether the institution failed to uphold its end of the bargain, and whether *all* students are held to the same expectations and standards for behavior. Typically, these expectations can and should be elaborated upon as part of the conduct sanctioning process, not as a diversion around it.

⁶ National Threat Assessment Center, 2018, p. 23.



With the statement of expectations, the student does not need to sign the document as it is designed as a collaborative process and a further explanation of what has resulted from the conduct process. An example of this may be a student with a developmental disorder or Autism Spectrum Disorder who has frequently approached members of the community with a desire to hug them and then repeatedly asked them out. If this behavior continued over time, the student would be in clear violation of the code of conduct, and the student would have a set of sanctions resulting from the conduct process.

Following the conduct process, it could benefit the student to have an advocacy-based case management meeting in which the student and the staff member outline ways the student could avoid this behavior in the future and engage in appropriate conduct when interacting with others on campus. An interactive dialogue with the student could also help to ensure they understand the school's expectations and sanctions resulting from the conduct process.

In the example referenced above, such a discussion might include how to ask permission prior to hugging someone and setting limits around asking someone out more than once if they said no the first time, etc. In this way, the statement of expectations is a collaborative brainstorming of how to have positive interactions on campus rather than another sanction. This is an interactive process, not a singular event. As such, case-by-case accommodations should be explored with the student as well as the parent(s)/guardian(s) when appropriate.

Moving Forward, NaBITA Suggests:

1. Use an evidence-based risk rubric to ensure each case is reviewed based on objective criteria to assess severity of behavior and immanency of risk, and to assure that interventions applied line up with the gravity of the concern.
2. Use a collaborative, case-management^{7,8} centered process that works with the student, family, and emergency contact to identify what is in the best interests of the student.
3. Avoid threatening a student with separation (or conduct code action) for airing suicidal thoughts, and don't threaten or leverage involuntary withdrawal as a condition of non-compliance.
4. Take a stance of working with the student through an interactive process, and develop a plan based on a good-faith desire for the student to be successful at the college or university.
5. Collaborate with disability services, or the school's ADA Coordinator as a middle circle member of the BIT who is invited to meetings as needed and consults on specific cases.

⁷ NaBITA Case Management Training & Certification Course <https://www.nabita.org/news/certification-courses/case-management-intervention-certification-course/>

NaBITA/ACCA 2012 Whitepaper: Case Management in Higher Education <http://nabita.org/wordpress/wp-content/uploads/2016/07/2012-NaBITA-ACCA-Whitepaper-Case-Management-in-Higher-Education.pdf>

⁸ Higher Education Case Managers Association <http://www.hecma.org>



6. Use the conduct process appropriately, rather than as an arbitrary agreement or contract, to address and sanction behavior that violates the code of conduct. The BIT is not supposed to be a diversion from student conduct consequences.
7. Review and revise disciplinary, conduct, and withdrawal policies to bring them into compliance with the requirements of Title II and the standard of a legitimate safety risk⁹.
8. Carefully weigh any restrictions placed on students discussing mental health issues with others on a case-by-case basis with an eye to reasonable accommodations and how to help the student be successful and remain on campus. Preventing a student from talking about suicidal ideation with others may be a way to prevent copycatting, but it can also deprive the student of the lifeline relationships that are known protective factors in the prevention of suicide.
9. When addressing cases of harm to others, NaBITA recommends a mandated violence risk or threat assessment, rather than a mental health assessment, when the behavior crosses the “elevated” threshold on the NaBITA Risk Rubric. A mental health assessment does not typically include an assessment of factors related to the potential for violence as found in workplace violence literature, but rather a focus on hospital level of care, medication referral, and treatment recommendations. While these may be helpful for the student, they do not give an adequate assessment of risk and development of a threat management plan.

Ratified by the NaBITA Advisory Board February 4th, 2019.

⁹ The Book on BIT 2nd Edition <https://www.nabita.org/resources/bookstore/bookstore-info/#BookOnBIT>