

Reimagining In Loco Parentis

Submitted by Michael Patrick Rutter on May 20, 2019 - 2:47pm

Blog: [Higher Ed Gamma](#) ^[1]

What is a college's duty to protect students from harm, including self-inflicted harms?

Should colleges require a student who attempts suicide, or exhibits suicidal thoughts, to withdraw?

Do colleges have a duty to warn parents or others -- including classmates and dorm mates -- about a student's mental health problems, behavior, or criminal record that might conceivably threaten their safety?

For the first six decades of the twentieth century, the courts treated colleges and universities with great deference ^[2]. The courts did not interfere in college-student affairs and administrators did not have to worry about possible litigation. Colleges were largely free to regulate student lives as they saw fit, whether by imposing curfews or dress codes or restricting free speech, assembly, or the press.

We often speak of this as the era of *in loco parentis*, with colleges acting in the role of parents. But it is important to recognize that the courts did not impose on colleges a legal duty to protect or supervise students. Administrators were not deemed responsible for student injuries nor were they required to provide students with due process in disciplinary cases.

During the Civil Rights era, the courts began to recognize college students' constitutional rights to free speech, freedom of assembly, and due process, and to provide for judicial review over disciplinary proceedings. At the same time, colleges' legal immunity for injuries eroded.

The result was a welter of contradictions.

In certain respects, students were to be treated as fully functioning adults, with the same rights as any adult. Colleges largely ended their efforts to control students' morals and behavior.

But at the same time, the standards of care that colleges were expected to provide rose. Courts and legislatures took the position that colleges had a legal obligation to provide a safe learning environment for their students and to protect them against foreseeable threats to their safety and hostile and offensive behavior that interfered with their education.

If, on the one hand, the courts tended to regard colleges as incapable of monitoring or restricting certain forms of student behavior, such as underage alcohol consumption or illicit drug use – concerned that such policing would “produce a repressive and inhospitable environment, largely inconsistent with the objectives of modern education” [3] – colleges also had an affirmative duty to address other forms of misbehavior, including hazing, sexual harassment, and sexual assault.

Then there were issues related to student privacy and mental health. For example, whether colleges could or should inform parents about disciplinary, academic, and mental health issues. Or institutions’ responsibility for addressing issues involving anxiety, depression, binge drinking, substance abuse, self-mutilation, eating disorders, and suicidal ideation or attempts.

Further complicating these legal issues was a profound change in the way that parents regarded their children.

Beginning in the 1980s, parenting practices and family dynamics underwent a profound shift, as the permissive parenting associated with Dr. Benjamin Spock increasingly gave way to more hands-on approaches that were intended to protect children from risks to their physical health or mental well-being, build up their self-esteem, enrich them academically, and insulate them from disappointment and even boredom. This “new protectionism” resulted in an upbringing, for a growing proportion of children, that micromanaged and sheltered, “structured, supervised, and stuffed with enrichment.” [4]

Meanwhile, many parents became more actively involved in their children’s college experience [5] than before, and many claimed a right to be informed about their children’s lives and felt free to intervene in matters relating to discipline or academic performance.

At the same time, developmental psychologists, sociologists of emerging adulthood, and neuroscientists viewed late adolescence and early adulthood as a transitional stage both in terms of brain development and social and emotional maturation, when youth received new freedoms in an environment less structured and supervised than most had ever experienced.

Given the somewhat contradictory demands that colleges should not police students' behavior or infringe upon their rights, but should protect their privacy and physical and psychological well-being, what should these institutions do?

Some steps are easy. Enforce prohibitions on hazing. Close down campus-affiliated spaces and organizations that facilitate improper behavior and to punish those involved.

But those steps are insufficient.

My personal view is that colleges should, first of all, recognize that traditional aged undergraduates occupy a transitional stage that requires structure, guidance, and mentoring. A laissez-faire, hands-off approach does not serve these students well. Office hours are not enough. Faculty need to reach out to students and recognize that advising, coaching, and mentoring are essential elements of the professorial role.

Second, institutions need to take a more active role in their students' development, academic and non-academic. The academic side is the easiest to address. Institutions need to identify students at risk of failure and take proactive steps to help them and keep them on track, through tutoring, study groups, supplemental instruction, peer mentoring, and outreach.

But institutions should not shy away from facilitating students' ethical development [6], not by preaching or moralizing or merely distributing information (for example, that not all students engage in binge drinking), but rather by promoting active, academically-informed campus conversations and debates about timely issues. These might include race and class on campus, free speech, and sexual harassment and sexual assault, with faculty experts on these topics involved. Institutions should expose all students, regardless of their major, to the latest scholarly findings about issues relating to safety, psychological well-being, and abuse.

Over the past generation, the role of parent has shifted profoundly. So, too, must the role of college. It should be not a babysitter or bystander [7], but facilitator, partner, and mentor.

Steven Mintz, who directed the University of Texas System's Institute for Transformational Learning from 2012 to 2017, is professor of history at the University of Texas at Austin.

Steven Mintz [8]

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[3] <https://law.justia.com/cases/colorado/supreme-court/1987/85sc391-0.html>

[4] <https://www.theatlantic.com/magazine/archive/2001/04/the-organization-kid/302164/>

[5] <https://www.law.uh.edu/ihelg/monograph/11-12.pdf>

[6] <https://cap-press.com/books/isbn/9781594608988/The-Rights-and-Responsibilities-of-the-Modern-University-Second-Edition>

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