THE CUBIT: A Comprehensive Behavioral Intervention and Threat Assessment Model

By: Brett A. Sokolow, J.D. ¹

CUBIT is an acronym for College and University Behavioral Intervention Team. Colleges and universities utilize a variety of models to respond to students in distress. From CARE teams to BIT models, higher education has recognized the need for more effective intervention functionality. If the shootings at Virginia Tech in April of 2007 prompt nothing else from other campuses, our hope is that this tragedy will be a catalyst for other campuses to formalize and revise their current behavioral intervention efforts.

While it is conceivable that many models can be effective in addressing the rising tide of student mental health issues and disruptive behavior, the CUBIT model elaborated in this article is a direct response to the Governor’s Panel Report on the Virginia Tech shootings and other panel and internal review recommendations that have been made nationally. This model addresses the myriad concerns about students in distress and synthesizes the range of panel recommendations cohesively, while translating some of their ill-fitting outsider’s recommendations into the language and capacities of institutions of higher education.

We recognize that not all of the elements of this model will translate to every college campus, and we expect some variation in implementation as you adjust the model to suit the needs, constraints, resources and capacities of your community. Regardless, we offer this model in our idealized conception, as the most far-reaching, comprehensive and engaged model of its kind.

What sets this model apart from common intervention models can be succinctly summarized in four key elements:

1. CUBIT incorporates a formalized protocol of explicit engagement techniques and strategies;
2. CUBIT is undergirded by sophisticated threat assessment capacity, beyond what typical colleges currently possess;
3. CUBIT facilitates a comprehensive reporting culture within the institution, supported by accessible data collection software with integrated threat assessment tools;

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4. CUBIT intentionally integrates with campus and community resources such as crisis management plans, emergency response procedures, CISDT protocols, and existing campus risk management programs addressing sex offenders, criminal background checks and admissions screenings.

Virginia Tech Panel Recommendations

**IV-4 :**
**“Incidents of aberrant, dangerous, or threatening behavior must be documented and reported immediately to a college’s threat assessment group, and must be acted upon in a prompt and effective manner to protect the safety of the campus community”** (Report of the Virginia Tech Review Panel, 2007).

Easy for them to say. Harder for us to do. Here is our roadmap. Each of the bullet points below is an element we have identified of CUBIT functionality. Each bullet identifies the goal, and explains how to implement it.

**CUBIT Model Goals**

- **Establishing a Behavioral Intervention Team composed of key administrators.**

At present, efforts on many campuses to support and respond to students with mental health needs or other crises are ad hoc or compartmentalized. By, ad hoc, we mean that a key team may convene as crises arise. This is inherently reactive. By contrast, CUBIT envisions a team permanently constituted, that meets on a regular basis, and has as part of its function the tracking of “red flags” long before a crisis arises. Who should serve on this team? It will differ from campus to campus, but we recommend a student affairs administrator chair the team, and we prefer that administrator to be someone who has authority within or over student conduct. Often, students who should be referred for conduct violations by those who witness them are not referred. Within a CUBIT, behaviors that should be referred will come to the attention of the CUBIT, and may then be acted upon by the conduct office at the behest of the CUBIT, even if not referred formally for conduct action by the witness, victim or complainant.

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2 Red flags are warning signals raised by student or staff behaviors that come to the attention of members of the campus community.

3 For example, it was alleged in the Virginia Tech Panel Report that Cho took pictures under his desk of female students, using a camera phone. His professor did not refer this behavior for conduct action. But, a CUBIT, receiving information about this behavior as a red flag, would know to act upon it, and follow-up with a conduct complaint.

4 This will require your conduct officer to have the authority to initiate conduct action without a formal complaint from a reporter of the incident/behavior. Your conduct office should have that authority already, but if it does not, implementing the CUBIT should also include embracing this function. Its importance can be seen in the multiple allegations of harassment—the media called the incidents stalking—by Cho of members of the VT community. In at least two instances, the complaining students decided not to pursue conduct action. Perhaps action might have been pursued by the conduct office irrespective of the willingness of the alleged victims? After all, VT could have connected the dots that there were two allegations involving the same perpetrator within two weeks. His alleged victims did not have this information and could not have been expected to see the pattern. A functioning CUBIT is designed to detect such patterns and act upon them.
In addition to a student affairs administrator, we recommend a psychologist from the campus counseling center (if not the Director) as a permanent member of the CUBIT. Beyond these two key personnel, each campus will determine who additional members should be. Some campuses have a permanent representative from campus law enforcement, though law enforcement intervention is not needed in a majority of CUBIT cases. Others need a representative from Health Services, the Director of Housing/Residence Life, the Office of Public Information, or someone like the Special Assistant to the President, who often coordinates crisis management efforts. Don’t bloat the CUBIT staff. Keep it lean, agile and easy to assemble. A team of 3-5 members is sufficient. You can “deputize” others as needed, on a case-by-case basis. The BIT at the University of South Carolina can call on staff from the disability services program as needed. The CARE team at Virginia Tech often consults with the Women’s Center for needed expertise. A wider circle of administrators and community resources should be reachable, but need not form the core of CUBIT membership.

When we say that traditional efforts can be compartmentalized, we can express what we mean with an example. The University of Illinois, Urbana-Champaign has a suicide intervention model that has been widely touted for its success. Yet, suicidal students represent only one facet of the continuum of students in need. UIC relies on recognizing student suicidality, and then responding. CUBIT, functioning at its best, may bring to light lesser disruptive or distressed behaviors that may allow support and/or intervention earlier, before the crisis of suicidal threats would enable a UIC-style response. We are not critiquing that model. In fact, its underlying reliance on mandated assessment is also a key element of CUBIT. We see CUBIT as building upon that model, and others, with broader scope and reach. For example, some have speculated that mandating assessment of potentially suicidal students might drive those who are truly suicidal underground, for fear of early detection. CUBIT anticipates this effect, to the extent it may be happening, and empowers earlier detection potential by those not looking for signs of suicide. Put another way, if your model is set up only to identify signs of suicidality, it may be looking for the wrong clues. But, CUBIT may pick up such clues from the monitoring of alcohol transports or excessive class absenteeism—for example—that other models might miss.

It is appropriate to note here in more than a parenthetical way that we do not expect that administrators acting on our recommendations will use them to create a level of Big Brother vigilance on campus that seeks to obtain information on red flags at the cost of the privacy of individual members of the community. Nothing in this model suggests security cameras, facial recognition software, or key card readers for accessing every campus building 24-7. College campuses are traditionally open, accessible communities. We hope that will not change. Locking out the threat is a false flag. The threat is usually from within. A security apparatus enabling colleges to monitor a bank of hundreds of security cameras for constant vigilance may sound appealing to some, but it is not the right solution. It would fundamentally alter the nature of the college experience, mostly for the worse. It would put civil rights at risk, and transform an open environment into a police state. Spend the money to form and train a CUBIT.

We do not intend the CUBIT model as license to stigmatize mental health issues and mental illness on college campuses. CUBIT is intended as much for early support as for early intervention. Campuses with functioning behavioral intervention models often find, for example,
increases of referrals of students with disabilities. As a result, students receive needed accommodations that they may not have realized they needed, or were available. From there, enhanced coping with the stresses and pressures of academic life can lead to a story of student success rather than a downward spiral.

CUBIT is not intended to enable profiling, which is the use of guesswork about a person’s characteristics to expose them to enhanced scrutiny and suspicion. While research indicates that mental illness correlates to a slightly higher risk for perpetration of violence, that link may be explained by other factors and does not in itself justify a conclusion linking increased violence and mental illness. Instead, CUBIT intends to empower skilled threat assessment, which is the addressing of risks based upon the observation of measurable objective criteria. And, CUBIT expands on mostly reactive threat assessment capacity with an even more proactive element – aggression management™. Aggression management involves getting out ahead of violence with a proven system that can be taught, easily understood and implemented by key constituents on college and university campuses. More on this aspect of CUBIT is detailed below.

- Formulating a written protocol (specific and comprehensive) for operation of the Team and its inter-relation with campus and community resources

Some campus protocols can be breathtakingly brief. A one-page example of a crisis management protocol used by one campus could accurately be summarized as having one instruction: call the police. Other protocols can be mind-numbing in their detail, going on for pages that no one ever reads or consults. The key to an effective protocol is to structure a set of instructions that is long enough to be specific and short enough to be approachable and useable. The NCHERM model protocol is five pages, and covers everything from parental communication to a rubric for classifying red flag behaviors, to custodial holds, conduct intervention, interim suspensions, direct threat determinations and more. Please contact NCHERM to obtain a copy.

- Coordinating Team operation with current crisis response protocols, campus CISDT models and ERP/EOC procedures

On many campuses, emergency responses and crisis response protocols have been developed and tested. There are Emergency Response Protocols (ERPs), Emergency Operation Command (EOC) procedures, Critical Incident Stress Debriefing Teams (CISDT) and other models. As you add CUBIT functionality, it is important to integrate existing or concurrently created protocols to ensure parallel functionality, cooperation, information sharing, liaison, and jurisdictional clarity. We don’t need turf battles over who gets to help, when, and where. CUBIT members need to know about each of these protocols, who governs them, and how to activate them, if needed. Each of these protocols needs to reference how and when to contact the CUBIT Chair. Just recently, a student threatening to jump from a building was talked down based on information that the campus intervention team was able to share with the rescue team.

5 Aggression Management is a trademark of Aggression Management Solutions, Inc. It is used with permission.
6 No one wants to be caught, as the University of Washington was in the 2007 death of employee Rebecca Griego, with a moribund stalking protocol that was not activated when Griego reported threats from an ex-lover who subsequently killed Griego and himself on campus.
about the background of the student who was threatening suicide, creating a very effective collaboration.

- **Training Team members on critical intervention techniques**

  We have recommended that a counselor or the Director of Counseling serve as a permanent member of the CUBIT. In part, we make this recommendation because counselors have expertise in crisis intervention, behavioral intervention, grief counseling and assessment. However, responses from law enforcement, student conduct, health services and other campuses resources may be vital. Thus, a comprehensive set of intervention techniques and training on those techniques is necessary for all CUBIT members. This will ensure that if, for example, the student affairs administrator member of CUBIT is on-call, s/he will be familiar with the responses available from other departments, know the right modalities to bring into play, and will call on those professionals who are needed. Similarly, any other member of the CUBIT on-call will also be familiar enough with the services available from other departments to bring them to bear appropriately. Breaking down the silos of individual bailiwicks creates a comprehensive inter-operability that is a hallmark of successful CUBIT functionality.

  A note on ADA is needed here. Many students in crisis become so as the result of struggling with disabilities. These disabilities may have been unrecognized in that individual, or the individual may not have sought support or accommodations. Often, reasonable accommodations can take pressure off a student in distress, allowing them to cope successfully with the academic environment. But, information about ADA has been poorly translated and time and again, we hear administrators and academicians fear confronting a student whom they believe is a person with a disability. They incorrectly believe that ADA prohibits them from asking the student if they are disabled, or might need accommodations. ADA does prohibit colleges from requiring a student to disclose a disability in the admission process, but we are aware of nothing in the ADA that would or should stop a caring college official from inquiring as to whether a struggling student has ever considering visiting the disability services office to discuss supports that might allow them to cope better academically.

- **Developing a rubric for classification of student distress into specific levels of criticality, warranting varying levels of escalating intervention and/or support.**

  Different campuses use different rubrics. We offer one example of a successful classification system of five ascending categories:

  1. Mild risk
  2. Moderate risk
  3. Elevated risk
  4. Severe risk
  5. Extreme risk

  An alternative three-level rubric is recommended by the FBI in “The School Shooter: A Threat Assessment Perspective” (National Center for the Analysis of Violent Crime, Federal Bureau of Investigation, 2000. Retrieved at http://www.fbi.gov/publications/school/school2.pdf. While helpful, it should be noted this is a violence-directed rubric, and is not intended to be as broadly encompassing of other student distress as is the CUBIT model.
In this system, the CUBIT on-call member, or the CUBIT in consultation, assigns a level of criticality to a student at the time of intervention. The CUBIT then deploys the intervention techniques and strategies appropriate to that level of the rubric. For example, one intervention strategy is interim suspension. On this rubric, interim suspension is only considered at elevated risk situations, recommended at severe risk situations and mandated for extreme risk situations where it is applicable. In this way, CUBIT members deploy responses in a quality-controlled and consistent way. All elevated risk (level three) cases are evaluated for eligibility for the same set of responses, which differ from the set of eligible interventions in severe risk cases, and so on. Checklists are utilized to ensure that all options are considered.

Where multi-pronged interventions are enlisted, different members of the CUBIT (and the expanded CUBIT, if non-permanent members are brought in for special consultation) are assigned responsibility for carrying out specific functions. The Director of Student Conduct might impose an interim suspension and no-contact order at the same time that law enforcement distributes a picture and timely warning, at the same time that the Women’s Center or Advocacy program dispatches a support person to a victim. All of this is coordinated by the CUBIT Chair or on-call member. Each CUBIT member reports back on their progress, and in real time, the CUBIT chair or on-call member can escalate or de-escalate a case based on feedback from the intervention team in the field. This real-time ability to re-assess is critical. Suppose in responding to the victim—who was classified as an escalated risk at the time of the report of an assault—the advocate on scene learns that the victim is suicidal as a result. Reporting back to the CUBIT, the risk can be escalated to severe or extreme, for deployment of additional resources. An advocate is useful to help a victim, but is not the right resource for responding to a student in a suicidal crisis.

Other utility comes from the rubric. For suicidal students, federal law will shield them from separation from the university unless they are a direct threat of harm to themselves or others. Campuses sometimes jump the gun on direct threat determinations, prematurely excluding students who may be ideating, but are not seriously considering suicide. By using the rubric, you can control the application of a direct threat determination. Only those suicide incidents meeting the highest two of the five categories, severe and extreme, are eligible to be evaluated under the direct threat standard. Coinciding with the protocol, the rubric also forces Team members to ask whether the at-risk student is a person with a disability, and whether various state and federal statutes are applicable. Other cases in the lower categories are not direct threats. Skill in appropriately classifying cases can avoid mistakes like the one made by George Washington University in prematurely expelling student Jordan Nott from housing in 2006 (de Vise, 2006).

- **Establishing clear protocols for faculty and staff on responding to students in distress in academic and residential settings**

The frontlines of any comprehensive behavioral intervention model are represented by three flanks: faculty; student staff and fellow students. On typical campuses, at least 70% of the CUBIT cases will originate from reports to these three groups. Some institutions have committed to developing protocols for every employee to follow regarding students in distress. But, where a college or university implements a protocol, it has a commensurate duty to train
employees on its appropriate use and application. For some campuses, training all employees is just too onerous (see the section below for suggestions for online training solutions). Instead, we ought to consider protocols and training aimed at the three groups most likely to be aware of red flags, in addition to what we assume is the standard practice on all campuses of making sure all police, health service staff, counseling and student affairs staff have comprehensive training on responding to students in distress.

We encourage specialized protocols and training for these three groups (faculty, student staff and peers) based upon a three-tiered intervention model. At the first level, the protocol should outline effective techniques for confronting problematic behavior. At the next level, the protocol should call for reporting and referral. At the highest level of problematic behavior, the need is to intervene (or call on others capable of doing so). In part, the level of involvement will be based on the 4-D concept in use at the University of South Carolina, a useful rubric for reminding us that not all classroom disruption is caused by merely disruptive students, but may be caused by students in distress, students who are disturbed, or at the highest level, students who are dysregulated. How faculty and staff respond should, in part, be determined by the level of disruptive behavior, who exhibits it, and how.

While written protocols will greatly assist faculty and student staff, training for peers ought to take a different form. Peer intervention ought to be encouraged as part of an overall campus bystander empowerment effort. At Virginia Tech, when Cho IM’d his roommate that he “might as well kill himself,” that roommate took action. He serves as an excellent example of an intervener who chose not to be a bystander. We need more empowered peers like that. While some people are natural interveners, others are naturally more reticent. But, intervention can be taught. Skill-building in successful intervention techniques and strategies can empower peers. And, where it does not, we can and should empower peer reporting through a silent witness or campus anonymous reporting system.

• To comprehensively train faculty and staff on the protocols for responding to students in distress, likely with an online training module.

Creating a culture of reporting of red flags, especially within the faculty, can be challenging for many campuses. One successful approach is to integrate faculty reporting requirements within a protocol and training on responding to student disruption of the academic environment, inside and outside the classroom. Many colleges and universities are now formalizing such protocols, but the key will be providing training to the faculty on use and implementation. Some campuses will do live trainings, often by department. Many campuses report disappointing attendance, and this an unacceptable result. Faculty members are employees, and employees have an obligation to receive training on critical employment-related skills and tasks. Failure to ensure that training is comprehensive, when life and death may literally hang in the balance, is a challenge to which we must rise. On some campuses, faculty members balk at being “trained”, but are open to “professional development” opportunities. We might need to couch the trainings in different terms, or find ways to collaborate with the office of the provost and other academic administrators to enhance attendance. For some campuses, live trainings are the best practice. For other campuses, especially where faculty members are already accustomed to online training on OSHA standards, sexual harassment and similar topics, we suggest integrating a training
module on the student distress protocol. Many campuses are already looking to develop such resources in house.8

- To equip the Team with sufficiently sophisticated means of accurate threat assessment

  First, we must distinguish between a psychological assessment and a threat assessment, which is a broader inquiry. We believe that to maximize the potency of the CUBIT model, the Team must have a sophisticated capacity for independent, objective threat assessment. Part of that assessment may take cognizance of a psychological assessment, but the predictive value of psychological assessments has not been established. In fact, the human factor weighs heavily here. Assessment providers don’t want to be sued or to lose their licenses. They may feel divided loyalties between their employers and their clients. Their screening may be brief, and their findings may amount to no more than an educated guess. This is not a critique of counselors so much as it is a caution to administrators not to expect what a therapist cannot give. We cannot rely on them to do the job of the CUBIT. So, how can we equip our Teams with the capacity for threat assessment? First, we can encourage them to follow guidelines for objective evaluation of threats established by the U.S. Secret Service and the Department of Education (Threat Assessment in Schools, 2002).

  To this, we recommend that CUBIT members couple the knowledge base of John Byrnes, and the Center for Aggression Management.9 John is a leading voice in insisting that we are often looking for the wrong person. Profiling leads us to seek out the red-faced, ready-to-explode adrenaline-driven, primal aggressor. Yet, the truly lethal person--like Seung-Hui Cho at Virginia Tech--was and is cold, detached, determined and capable of adaptive intent, unlike someone in a blind fury. Byrnes’ Center for Aggression Management teaches that when a Cognitive (intent-driven) Aggressor is prepared to give up his or her life for a cause, their body loses animation and exhibits a profound disconnection with their own wellbeing. Often, we can identify a variety of indicators like the “thousand-yard stare”, yet this person could walk right past most security and law enforcement with impunity if they are looking for someone who fits the primal aggressor stereotype.

  The Center for Aggression Management teaches that because there are those who will express their conflict with violence—possibly with a weapon—it becomes essential for CUBIT to get out in front of conflict if it is to prevent violence. Current methods used to defuse aggression, including conflict resolution and anger management, are not the best tools for CUBIT. Conflict resolution presupposes conflict, eliminating any possibility of prevention. Additionally, since individuals experience and express anger differently, anger management requires sophisticated techniques and time. CUBIT depends on techniques that are more easily and quickly deployed. Through the measures provided by Aggression Management’s Primal and Cognitive Aggression Continua (PCAC), CUBIT is able to distinguish between the adrenaline-driven aggressor and the far more lethal intent-driven aggressor. The measures offered through

8 One element we suggest appending to your protocol, with permission, are the excellent written guidelines for “responding to disturbing creative writing” developed by Virginia Tech. These are adaptable to many classroom settings. Retrieved at: http://www.insidehighered.com/index.php/content/download/175802/2248407/file/DisturbingWriting_8_30_07.doc
9 www.aggressionmanagement.com
these continua give Team members the most effective corresponding means of defusing the type of aggression that is detected. PCAC offers measurable indicators even prior to conflict, enabling the CUBIT to prevent conflict and the violence that it often engenders.

- To establish a campus-wide database into which real time incident information will be submitted by all university employees, reviewed daily by the Team for red-flags, and acted upon accordingly.

Many campuses are implementing databases into which the CUBIT can upload information on student red flags, to track incidents. We are recommending an evolution of that approach, whereby employees can and will upload red flag incident information in real time to the CUBIT database, as the mechanism by which the CUBIT members will be alerted about critical incidents and can track them in a centralized fashion. The RiskAware Threat Collection and Analysis tool is an internet-based ASP (Active Server Page) solution that uses real-time technology to walk university staff, faculty and students through an online, easy-to-use and (potentially) anonymous incident reporting platform. The process flow for reporting is as follows: A reporter comes to a web page and clicks a link there to bring up the incident form to fill out. The reporter can also submit incidents through an email and voice mail (emailed as an attachment) or internal staff personnel can collect offline reports and enter them into the system through the web link. The reason for accommodating these various channels of information delivery is to ensure that over time, all incidents are aggregated into one centralized database.

Once a new incident has been submitted, the system emails the assignee(s) on the CUBIT team responsible for reviewing all new incidents. A member of the CUBIT Super User Team (or whoever has been assigned to the incident) will review the incident and assign a priority level and (if previously defined) automatically route the incident for assignment to a CUBIT Team investigator for follow-up. If there is not enough information to assign or investigate the incident without more details from the reporter, the CUBIT Super User Team reviewer can put her comments and questions in the Reporter Communications field and then change the Status to 'Waiting for Reporter Response’. This will trigger an email to the reporter, which will run the action: The system sends an email to the reporter asking for more information. In this case, if the reporter replies by email or logs in to update the incident, the assigned CUBIT team member will be notified by email once the reporter has answered the questions from the CUBIT Super User team member. Assuming enough information was provided and this initial review is done, the incident should now be assigned for investigation to the appropriate departmental (or if only going to be handled by CUBIT team members) person(s), who will receive an email notifying them about the new assignment (some Teams will prefer phone or live notification). During the course of the investigation, the investigator may add his/her running comments and notes to the Internal Notes field, which is visible only to staff users with the appropriate permissions. Once the investigator has completed the investigation, s/he may reassign this investigation back to the CUBIT Super User Team Member who originally handled the inquiry. Depending on the nature of the investigation, the investigator may alternatively set the inquiry to “closed”. In this case, the reporter, if s/he provided an email address, will receive an email notifying him or her of the status change to the incident.

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10 www.riskaware.com
The system has extensive search and analysis functionality to allow for escalation rules which may be defined to check every X minutes, X hours, or X days for some search condition to be true and then to perform any kind of action on the records that are found. For instance, it might check every day for incidents that have a status of Not Assigned and are more than 2 days old and email someone that they should be assigned. It might also be set to “red flag” every incident with a “John Doe” identified thereby ensuring that emerging threats posed by a single individual across various departmental units are not missed in the avalanche of data that might be submitted regularly.

• To engage community resources and communicate university expectations and limitations clearly to community agencies, legal entities and service providers

In addition to recommending that the CUBIT appoint a community liaison, we envision reaching out to the community to improve CUBIT functionality. Some colleges that have very good relationships with local hospitals receive tips that a student is entering or leaving the hospital. Cultivating such relationships can be valuable, within the bounds of law and privilege. If your campus counseling center does not accept mandated referrals11, local agencies, magistrates and community mental health resources need to be aware of that. They often see colleges as caring communities better suited to meeting student needs. Sometimes they face a shortage of funding and beds, and are happy just to have somewhere else to “dump” an overwhelming caseload. It is incumbent upon us to make sure community agencies and the legal establishment understand the limitations and capacities of our campuses, and that we are unwilling and unable to be the default mental health apparatus simply because their system is dysfunctional. Often, such conversations involve politics as much as practicality, but efforts to navigate those waters can bridge systems that are unaccustomed to collaboration, allowing mutual understanding and potentially more effective cooperation. Outreach can also clarify for the CUBIT what standards local law enforcement and the mental health system use for involuntary commitment, as a means of determining whether that option is available for addressing concerns about a student.

• To empower full and contextual compliance with FERPA, HIPAA and counselor confidentiality.12

FAMILY EDUCATION RIGHTS AND PRIVACY ACT OF 1974 (FERPA)

FERPA, the federal statute that protects the privacy of student educational records, applies to all schools that receive federal funds through an applicable program of the US Department of Education, which includes most institutions of higher education. Schools may disclose the contents of education records only when the student consents, when the disclosure meets a statutory exemption, or when the disclosure concerns directory information, such as name and address, and the student has not opted out.

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11 If you have the infrastructure and staff, altering counseling center policy to accept mandated referrals, for assessment and evaluative purposes, is critical to CUBIT functionality.
12 Portions of this section have been adapted with permission from seminar materials prepared by Carolyn Reinach Wolf, Esq., an expert on mental health law (www.abramslaw.com).
An institution may disclose a student’s education records without his or her consent (1) to school officials determined to have “legitimate educational interests,” (2) to officials at another institution “where the student seeks or intends to enroll,” (3) “in connection with a health or safety emergency” if “necessary to protect the health or safety of the student or other individuals, (4) in connection with a disciplinary proceeding, and (5) to the parent of a student under 21 if the student violates any federal, state, or local law, or any institutional policy concerning drugs or alcohol. Certain disciplinary records of hearing outcomes and sanctions may also be disclosed to a victim of a crime of violence and must be disclosed to the victim of a sex offense. Release ordered by a lawful subpoena is required, and permissive release may be made based upon a student’s status as a dependent for tax purposes. Institutions may release information from a student’s educational record to whomever lawfully claims that student as a dependent on their tax return. Institutions must verify dependency, which may persist until age 26.

These exceptions to disclosure provide latitude to universities in situations that may arise involving students with mental health challenges or behavioral concerns. Moreover, because FERPA does not provide a student with a private right of action, universities may opt to risk a FERPA inquiry by disclosing information to protect students and other members of the community from death or serious injury. Usually, the Family Policy Compliance Office is deferential to reasonable judgment calls by college officials, using a “good faith” standard. A number of legislative proposals currently before Congress aim to widen the latitude of colleges to construe the FERPA health and safety emergency provision broadly, rather than strictly.

It should also be noted that of great assistance to the cause of behavioral intervention is the fact that FERPA only covers student educational records when they are in a written or recorded medium. What university officials observe or hear through personal knowledge about a student is not protected by FERPA, because it does not meet the definition of an educational record. Moreover, psychiatric treatment records of students over the age of 18, made in connection with providing treatment, that are not available to anyone other than the provider, are not educational records, and are not subject to FERPA. Once shared with administrators, however, the copy kept by administrators is subject to FERPA. More confusing can be the applicability of HIPAA, and its relationship to FERPA.

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

HIPAA is the federal law governing the use and disclosure of private health information, broadly defined as any information, in any format, created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, that relates to past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or past, present, or future payment for the provision of health care to an individual.

Universities may be subject to HIPAA regulations if they offer health care services in departments, units, or schools whose staff make electronic transactions. Usually, in the context of a university health service, these transactions might include electronic transmission of insurance and billing information. Though an odd interrelation of FERPA and HIPAA, most college health services will not be HIPAA-covered entities, unless they treat (and engage in

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electronic transactions regarding) staff or community members. If they only treat students, the law treats FERPA as the governing law.

However, student medical records are excluded from the definition of educational records under FERPA, creating the anomalous result that while FERPA is the governing law for the privacy of student health records, those records are not subject to the protections of FERPA. We are left with applicability of the privilege of mental health and health providers, and state statutes to govern release of information from student health records.

**SUMMARY**

We thought we would conclude with a summary of the objectives of CUBIT. Each of the sections above enables and empowers the accomplishment of the goals below.

- To balance the educational needs of the student and the mission of the university
- To intervene early and provide support and behavioral response to students displaying varying levels of disruptive, disturbed, distressed and/or dysregulated behaviors
- To respond with support first and sanctions as a last resort
- To predict with accurate individualized assessment the potential for violent, homicidal and/or suicidal behaviors while avoiding stigmatizing mental health issues and stereotype-based profiling
- To enable adherence to a formalized protocol of instructions for communication, coordination and intervention
- To balance FERPA, HIPAA and counselor privilege with university need-to-know and emergency communication needs
- To centralize collection and assessment of red flags raised by student behavior and connect the dots of disparate problematic actions involving one student that may be known to various faculty, staff and administrators
- To engage faculty and staff in effective response with respect to disruptive and/or distressed students
- To coordinate follow-up to ensure that services, support and resources are deployed effectively
- To coordinate mandated psychological assessment, conduct actions, disability services, accommodations, hospitalization and/or medical leave/withdrawal, as needed, and eliminate fragmented care

We hope that the recommendations of this article help to give direction and content to your campus efforts at successfully engaging, supporting and intervening with the growing number of campus community members who are exhibiting distress and creating the strong need for coordinated institutional engagement.

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****NCHERM will be offering a number of events in late 2007 and early 2008 to help you implement or improve your campus behavioral intervention capacity.****
December 7\textsuperscript{th} & 8\textsuperscript{th} 2007 – NCHERM Behavioral Intervention & Threat Assessment Institute at Kean University in Union NJ. Details are posted at [www.ncherm.org](http://www.ncherm.org)

April 10\textsuperscript{th} & 11\textsuperscript{th} 2008 – NCHERM Behavioral Intervention & Threat Assessment Institute at Illinois State University in Normal, IL. Details are posted at [www.ncherm.org](http://www.ncherm.org)

Events are tentatively planned in San Antonio, Texas for March and in New Hampshire for April. More details will be posted when dates are finalized.

We will also be providing a four-part webinar series covering behavioral intervention and threat assessment topics in January and February 2008. The series will be hosted by MAGNA Publications. Details will be available soon at [www.magnapubs.com](http://www.magnapubs.com)
REFERENCES


Lisak, D. & Miller, P. M. (2002). Repeat rape and multiple offending among undetected rapists. *Violence and Victims*, 17, 73-84


