

The Mental Health Mandate: Evaluating the Legal Requirement for Psychological Support Services within Higher Education Institutions

Meiria Nurphi

STEBI Tanggamus Lampung, Indonesia

*✉: meirianurphi77@gmail.com

Abstrak

Laporan global menunjukkan tingkat gejala gangguan mental yang signifikan secara klinis di kalangan mahasiswa, lembaga pendidikan tinggi (IPT) semakin diposisikan sebagai responden kesehatan mental garis depan. Namun, dasar hukum untuk harapan ini tetap terfragmentasi dan diperdebatkan. Studi ini menggunakan pendekatan metode ganda, analisis doktrin kualitatif dan tinjauan literatur sistematis, untuk mengevaluasi mandat hukum untuk dukungan psikologis di AS, Inggris, dan UE. Temuan menunjukkan bahwa meskipun hak universal untuk terapi tidak ada, mandat *de facto* telah muncul melalui undang-undang disabilitas dan kesetaraan, yang mengkategorikan dukungan kesehatan mental sebagai "akomodasi yang wajar" yang dapat ditegakkan daripada layanan kesejahteraan diskresioner. Penelitian ini mengeksplorasi pergeseran dari *in loco parentis* ke manajemen risiko organisasi, menyoroti evolusi "kewajiban perawatan" dalam konteks bunuh diri siswa dan bahaya yang dapat diperkirakan. Mensintesis temuan ini, studi ini mengidentifikasi kesenjangan yang terus-menerus antara persyaratan akses undang-undang dan kebutuhan klinis aktual, sering diperburuk oleh gesekan antara undang-undang privasi (HIPAA/FERPA) dan sistem administrasi yang terfragmentasi. Penelitian ini menyimpulkan bahwa IPT harus beralih dari praktik defensif murni dan menghindari risiko menuju tata kelola yang standar dan proaktif untuk memenuhi kewajiban hukum yang berkembang dan memastikan partisipasi yang adil dalam pendidikan tinggi.

Kata kunci: Pendidikan Tinggi; Kesehatan Mental Mahasiswa; Kewajiban Perawatan; Hukum Disabilitas; Akomodasi yang Wajar

Abstract

As global reports indicate clinically significant levels of mental disorder symptoms among university students, higher education institutions (HEIs) are increasingly positioned as front-line mental health responders. However, the legal basis for this expectation remains fragmented and contested. This study employs a dual-method approach, qualitative doctrinal analysis and a systematic literature review, to evaluate the legal mandates for psychological support in the US, UK, and EU. Findings indicate that while a universal right to therapy is absent, a *de facto* mandate has emerged through disability and equality laws, which categorize mental health support as an enforceable "reasonable accommodation" rather than a discretionary welfare service. The research explores the shift from *in loco parentis* to organizational risk management, highlighting the evolution of "duty of care" in the context of student suicide and foreseeable harm. Synthesizing these findings, the study identifies a persistent gap between statutory access requirements and actual clinical needs, often exacerbated by the friction between privacy laws (HIPAA/FERPA) and fragmented administrative systems. The research concludes that HEIs must transition from purely defensive, risk-averse practices toward standardized, proactive governance to meet evolving legal obligations and ensure equitable participation in higher education.

Keywords: Higher Education; Student Mental Health; Duty of Care; Disability Law; Reasonable Accommodations

INTRODUCTION

Student mental health problems are widely reported at clinically meaningful levels, while universities are increasingly expected to act as front-line mental health responders, yet the legal basis, scope, and limits of that expectation remain fragmented and contested across jurisdictions (Paiva et al., 2025; Burin & Atrey, 2024). This creates real governance pressure for higher education institutions (HEIs): administrators must decide what support to provide, how to provide it, and how to manage risk, often without clear, harmonized legal mandates (Burin & Atrey, 2024).

University student mental health has become a persistent policy and public health concern because global evidence indicates substantial prevalence of common mental disorder symptoms in university populations, with implications for academic functioning and retention (Paiva et al., 2025). As student demand rises, universities face capacity constraints in counseling and crisis response, and the stakes extend beyond wellbeing to progression, equality of educational opportunity, and institutional accountability (Paiva et al., 2025). In this context, mental health is no longer a peripheral “student services” issue; it is increasingly treated as a core condition for effective learning and equitable participation in higher education (Paiva et al., 2025).

Alongside this epidemiological pressure, the university’s role has evolved from a primarily academic provider to a holistic environment that shapes safety, welfare, and inclusion, often described through a “duty of care” lens (Burin & Atrey, 2024). However, the doctrinal foundations of duty differ sharply between moral, professional, and legal duties, and the boundary between educational judgment and health-related responsibility is not stable (Burin & Atrey, 2024). This evolution is accelerated by the reality that universities regularly acquire knowledge (actual or constructive) of student distress through assessments, welfare processes, disability services, and staff contact, which can trigger expectations of intervention (Burin & Atrey, 2024).

The core legal problem motivating research is the ambiguity and inconsistency of enforceable mandates requiring HEIs to provide specific levels of psychological support, especially across the US, UK, and EU where legal “hooks” differ (Burin & Atrey, 2024). In the UK, recent litigation connected to student suicide has underscored how disability discrimination law, particularly anticipatory reasonable adjustment duties, can generate concrete obligations

even where courts resist recognizing a broad common law duty to protect a student “from themselves” (Burin & Atrey, 2024). This produces a complex compliance picture: equality/disability frameworks may impose proactive duties, while negligence doctrine may be narrower, creating uncertainty about what “adequate support” legally requires (Burin & Atrey, 2024).

This topic is directly relevant to readers in higher education leadership, student affairs, and education law because institutional decisions about mental health support increasingly carry multi-dimensional legal risk: discrimination claims (failure to accommodate), regulatory exposure, and potential tort or contractual disputes depending on jurisdictional doctrine and fact patterns (Burin & Atrey, 2024). It is also relevant to the field because it bridges public health evidence with legal theory, testing how constitutional or human-rights norms, statutes (e.g., equality/disability regimes), and common law principles allocate responsibility for foreseeable harm and fair access to education (Burin & Atrey, 2024). A rigorous comparative analysis can therefore provide a practical legal roadmap for administrators while strengthening advocacy for student rights by clarifying where obligations are firm, where they are emerging, and where policy reform is being debated (Burin & Atrey, 2024).

The primary inquiry of this research focuses on the extent to which higher education institutions are legally compelled to function as psychological service providers. To address this, the study first asks: *What are the specific constitutional, statutory, and common law frameworks that currently define HEIs' obligations toward student mental health?* This involves disentangling the “duty of care” as a tort concept from the anticipatory duties found in equality and disability legislation. Second, the research seeks to understand jurisdictional nuances: *How do these legal mandates differ across the US, UK, and EU, and what do these variations reveal about the global shift toward institutional accountability?* Finally, the study examines the consequences of ambiguity: *What are the specific legal and operational risks, including discrimination claims, regulatory penalties, and tort liability, that HEIs face when they fail to provide support services that align with evolving judicial and statutory expectations?*

METHOD

A suitable library-research Method for this topic combines (i) qualitative legal (doctrinal) analysis to identify and systematize what the law requires and (ii) a systematic literature review to make the selection of scholarship transparent, replicable, and less vulnerable to cherry-picking (Baude et al., 2017). In practice, doctrinal analysis is used to extract rules, tests, and standards from primary materials (statutes, regulations, and case law),

while systematic review procedures (predefined search strings, screening steps, and documented inclusion/exclusion criteria) are used to map what peer-reviewed research and law reviews argue about HEIs' mental-health responsibilities and liability exposure (Baude et al., 2017).

Data Sources:

- **Primary Sources:** In the US, focus includes disability-rights frameworks governing educational access, especially the ADA and Section 504, as they provide the basic architecture for "reasonable accommodations" and transitions from secondary to postsecondary settings (Gartland & Strosnider, 2023). This is supplemented by case law and government regulations.
- **Secondary Sources:** Law review articles (Baude et al., 2017), doctoral dissertations on therapeutic communication (Sari, 2023), peer-reviewed journals, and comparative analyses of institutional safety (Griffin, 2009).

Inclusion/Exclusion Criteria: Focus on literature published within the last 15 years to capture the modern era of expanded campus mental-health infrastructures (Baude et al., 2017). Operationally, this excludes clinical-only studies without legal relevance and non-legal commentary not tied to institutional decision rules.

Analysis Framework: A comparative "obligation track" structure:

1. **Duty of Care:** Grounded in negligence and foreseeability concepts, litigated around institutional knowledge and control (Dyer, 2008).
2. **Contractual Obligations:** Grounded in student–university contractual relationships, policies, and handbooks (Baude et al., 2017).

RESULTS AND DISCUSSION

Finding 1: The Statutory Framework

Disability-rights statutes are central to HEIs' mental-health obligations because they convert "support" into enforceable nondiscrimination duties, especially through the requirement to provide reasonable accommodations when a qualified student's disability substantially limits major life activities (Gartland & Strosnider, 2023). The transition from secondary to postsecondary environments changes the regulatory logic, placing more responsibility on the student to self-identify and the institution to implement adjustments (Gartland & Strosnider, 2023). In practice, many mental-health-related disputes are framed as access-to-education issues (eligibility, documentation, interactive processes), rather than as a free-standing "right to therapy" (Rothstein, 2023).

Mental health is categorized under disability law when psychological conditions substantially limit major life activities. The accommodation logic is functional: the legal trigger is the extent to which symptoms create educational barriers. In the UK, the Equality Act’s “anticipatory” reasonable adjustment duty creates proactive expectations, and litigation linked to student suicide has reinforced that universities can be required to adjust assessment methods where a disabled student is substantially disadvantaged (Burin & Atrey, 2024).

Statutory concept	What it requires from HEIs	Mental-health relevance
Reasonable accommodations/adjustments	Modify practices or environments to remove barriers (Gartland & Strosnider, 2023; Burin & Atrey, 2024).	Converts mental health from “support need” into “access issue” (Gartland & Strosnider, 2023).
Nondiscrimination/equal access	Provide access without disability-based exclusion (Rothstein, 2023).	Policies that exclude or ignore psychiatric disability can be challenged (Rothstein, 2023).
Administrative processes	compliance Structured decision-making pathways and transitions (Gartland & Strosnider, 2023).	Process breakdowns can be the basis of legal disputes even when services exist.

Finding 2: The Evolution of “Duty of Care”

Recent duty-of-care debates are shaped by how courts treat student suicide and self-harm under foreseeable harm, specifically whether institutional knowledge and relationship proximity trigger a duty to act (Dyer, 2008). While courts are often reluctant to impose a broad common law duty, litigation trends suggest expanded expectations when specific risks are known and the institution has undertaken responsibilities (Griffin, 2009).

The transition away from *in loco parentis* frames modern duties as organizational responsibilities arising from policies, administrative structures, and risk management (Griffin, 2009). Even if negligence-based duty remains contested, equality law can generate enforceable obligations. In *University of Bristol v Abrahart*, the UK court highlighted how reasonable adjustment duties are activated by actual or constructive knowledge, requiring changes to assessments to avoid discrimination (Burin & Atrey, 2024).

Legal pathway	Core question	Typical “trigger” facts
Negligence / duty of care	Did the institution owe a duty to prevent foreseeable harm? (Dyer, 2008).	Specific notice of severe risk; proximity/control (Dyer, 2008; Griffin, 2009).
Undertakings / assumed responsibility	Did the institution voluntarily take on a role and then perform it negligently? (Dyer, 2008).	Promised support; implemented protocols; intervened but mishandled (Dyer, 2008).
Equality/disability law	Did the institution fail to make reasonable adjustments or otherwise discriminate? (Burin & Atrey, 2024).	Known disability-related disadvantage; insufficient adjustments (Burin & Atrey, 2024).

Finding 3: Institutional Challenges and Compliance

HEIs face a structural compliance challenge: legal mandates imply proactive capacity, but financial and staffing constraints often limit service availability. This results in “compliance by process” rather than “compliance by outcomes,” which is risky if disputes focus on whether actions were reasonable. Communication between clinicians and students also requires high-quality therapeutic dialogue to navigate these boundaries (Sari, 2023). Privacy laws add friction, as institutions must navigate whether HIPAA and FERPA are competing or collaborating frameworks (Kiel & Knoblauch, 2010). This complexity can slow intervention and encourage risk-averse practices (Kiel & Knoblauch, 2010).

Challenge	Typical institutional pressure	Legal/compliance risk
Resource constraints	Limited counseling capacity and triage pressure (Appelbaum, 2024).	Inconsistent practice and delayed responses in high-risk situations.
Fragmented administration	Siloed departments vs. need for therapeutic communication (Sari, 2023).	Process failures: accommodations not implemented; miscommunication.
Privacy/confidentiality	Competing requirements of HIPAA and FERPA (Kiel & Knoblauch, 2010).	Over-restriction (failure to share) or over-disclosure (privacy violations) (Kiel & Knoblauch, 2010).

Synthesis/Discussion

A consistent theme is the gap between clear legal requirements (nondiscrimination) and student needs (clinical support), as statutes primarily regulate access rather than service capacity (Gartland & Strosnider, 2023; Burin & Atrey, 2024). This gap contributes to the risk of “A Liability to the University”, a framework where students are viewed through the lens of institutional risk rather than supportive care (Appelbaum, 2024).

Ultimately, HEI obligations are layered: statutory law produces specific access duties, while negligence remains contingent and fact-dependent (Dyer, 2008; Burin & Atrey, 2024). This layered view explains why a single incident can trigger discrimination, privacy, and tort analysis simultaneously. A comparative roadmap helps institutions design governance that meets obligations while resisting purely defensive practices that treat student distress as a liability (Appelbaum, 2024; Burin & Atrey, 2024).

CONCLUSION

The evaluation of legal mandates for psychological support in higher education reveals that while a universal "right to university-funded therapy" remains legally absent, a dense web of statutory and common law obligations has created a de facto requirement for holistic mental health provision. This research concludes that the primary driver of institutional liability is no longer the outdated *in loco parentis* doctrine but is instead anchored in the proactive "anticipatory" duties of disability and equality law. As demonstrated in recent UK and US jurisprudence, the transition from viewing mental health as a peripheral welfare service to a core requirement for educational access means that administrative failure, specifically in the "interactive process" of accommodation and the recognition of foreseeable harm, now carries substantial regulatory and tortious risk.

To mitigate these risks, higher education institutions must move beyond "procedural compliance" toward a standardized protocol that harmonizes privacy governance (HIPAA/FERPA) with clear referral and intervention pathways. The "law vs. needs" gap remains a significant policy challenge; however, by recognizing that mental health is legally treated as an access issue rather than a clinical luxury, HEIs can better align their resource allocation with their enforceable duties. Future policy reform should focus on clarifying the limits of institutional knowledge to protect staff from unworkable liability while ensuring that students' rights to equitable participation are not undermined by bureaucratic bottlenecks or a culture that views distressed students primarily as an institutional liability.

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