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December 10, 2009
Corrected enclosure

CHANCELLORS

Dear Colleagues:

Enclosed is the *Model Policy for Involuntary Withdrawal of a Student*, which we discussed at the December 2nd Council of Chancellors' meeting.

The model policy was developed by the Office of the General Counsel in response to a request from the Campus Security Task Force that the President's Office consider a policy to address campus authority for students with serious mental health problems who have not violated the Code of Conduct but whose behavior have raised concerns. As discussed, the decision whether to adopt the policy will be determined at the campus level.

The assessment, review, and revision process was coordinated by the office of Student Affairs and included broad consultation with the campuses, including the Council of Vice Chancellors for Student Affairs, the Council of Assistant/Associate Vice Chancellors for Student Life (Deans of Students), and other campus administrative units.

The policy can be accessed online at:
<http://www.ucop.edu/ucophome/coordrev/ucpolicies/involuntary.pdf>

If you have questions about the policy, please direct them to Deputy General Counsel David Birnbaum at David.Birnbaum@ucop.edu.

With best wishes, I am,

Sincerely yours,

/s/ Mark G. Yudof

Mark G. Yudof
President

Enclosure

cc: Members, President's Cabinet
Deputy General Counsel Birnbaum
University Policy Office
bcc: Vice Chancellors for Student Affairs
Associate/Assistant Vice Chancellors for Student Affairs/Deans of Students
Campus Student Affairs Policies Coordinators

Model Policy for Involuntary Withdrawal of a Student

A. Introduction

This Involuntary Withdrawal Policy shall apply when an Appropriate Administrative Official reasonably believes that a Student has engaged, threatens to engage, or is likely to engage, in behavior that poses a significant risk: of physical harm to oneself or others, of significant property damage, or of substantially impeding the lawful activities of others, or the educational process or the orderly operation of the University.

B. Definitions

Appropriate Administrative Official

The term "Appropriate Administrative Official" ("Official") includes the Dean of Students, Vice Chancellor of Student Affairs, Chancellor or their designees.

Medical Evaluation (ME)

A "medical examination" comprises an unbiased review by a qualified physician or licensed psychotherapist, other than the Student's treating physician or therapist, at a University health or counseling center or by an outside physician or therapist, of all health care data, notes and conclusions for the purpose of providing information about the examinee to a third party. As used in this Policy, the focus of the ME will be upon the Student's health in order to provide the information necessary to determine whether or not the Student poses a "direct threat". The University shall request that the physician or licensed psychotherapist conducting the ME comply with the provisions of the HIPAA Privacy Rule, including obtaining the written authorization(s) of the Student to disclose protected health information of the Student, and the opinions of the person conducting the ME, to the extent such information is relevant to a determination whether or not the Student poses a "direct threat".

"Direct Threat"

A Student poses a direct threat when the Student's behavior poses a "significant risk" to the health or safety of the Student or others, or of significant property damage, or of substantially impeding the lawful activities of others, or the educational process or the orderly operation of the University, and reasonable modifications of policies, practices, or procedures will not sufficiently mitigate the risk.

Significant Risk

A "significant risk" constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk.

C. Grounds For Involuntary Withdrawal

In accordance with University policy, and with applicable federal and state laws prohibiting discrimination based on disability, a Student may be involuntarily withdrawn from the University and/or University housing, either temporarily or permanently, if:

1. The Student poses a direct threat; or
2. The Student has allegedly violated the student conduct code or the residential conduct code and it is reasonably believed that the alleged misconduct was involuntary or the Student lacked(s) the capacity to comprehend the nature of the act or to participate in the disciplinary process.

D. Preliminary Review

When made aware of a situation which could warrant involuntary withdrawal , an Appropriate Administrative Official, , will work with the campus/University legal counsel, director of residence life, and other appropriate persons knowledgeable about the Student's condition (including, as appropriate, the University's section 504/ADA coordinator, the campus counseling center director, parents and healthcare providers) to determine whether the Student poses a direct threat.

If the Appropriate Administrative Official decides to proceed under this Policy, the Official will conduct a Preliminary Review. After informing the Student of the allegations that may warrant involuntary withdrawal, of the potential adverse actions which may be imposed by the University, and of his or her opportunity to respond to the allegations, the Official will schedule a meeting with the Student. The Official is permitted, but not required, to review all educational records and to conduct interviews with staff, employees, students and others. The Student may have an advisor or support person present for the meeting with the Appropriate Administrative Official.

At the end of this Preliminary Review, the Appropriate Administrative Official may:

1. Determine that the Student does not meet the standard for involuntary withdrawal and terminate this process. If warranted, the Official may request that Student Judicial Services handle the Student's conduct under the regular disciplinary process.
2. Request that the Student schedule a Medical Evaluation within five calendar days to address any health-related circumstances which may be pertinent to the situation. The Official will discuss with the Student the reasons for and the scope of the ME, allowing the Student an opportunity to contest the need for and/or scope of the ME

3. Should the Official still believe the ME is necessary, the Official shall identify a qualified licensed health professional to conduct the ME. The University will be responsible for any costs associated with the ME should the Student's health care insurance not cover the ME costs. The Student shall provide a signed authorization(s) to release all information reviewed in the course of the ME relevant to a determination as to whether the Student poses a direct threat. Request that the Vice Chancellor of Student Affairs institute a Hearing under this Policy.
4. Take any other actions deemed appropriate to a determination of whether the Student poses a direct threat.

E. Interim Withdrawal From University Or University Housing

At any time prior to the conclusion of the hearing process, should immediate action appear warranted the Official may withdraw the Student on an interim basis from the University and/or University housing. The official should consult with persons knowledgeable about the Student's condition (including, as appropriate, the University Section 504/ADA coordinator, the campus counseling center director, parents, and healthcare providers). In such cases, campus procedures for adjudicating interim suspensions or housing withdrawals/relocations should be followed. The focus of the interim withdrawal review process shall be whether the Student poses a direct threat.

F. Hearing Procedures

Notwithstanding and in addition to the rights provided to the Student under Sections D and E above, the Student shall be provided a Hearing in accord with campus procedures for adjudicating disciplinary cases or involuntary withdrawals.

1. The purpose of the hearing is to make a "direct threat analysis," i.e., a determination as to whether the Student's behavior poses a significant risk to the health or safety for the Student or others, or of significant property damage, or of substantially impeding the lawful activities of others or the educational process or the orderly operation of the University, and reasonable modifications of policies, practices, or procedures will not sufficiently mitigate the risk.

This "direct threat analysis determination" shall be based on an individualized assessment of the individual's present ability to safely function at the University, taking into account reasonable medical judgments relying on the most current medical knowledge and/or the best available objective evidence. In determining whether an individual poses a direct threat, the factors to be considered include:

- a. The nature, duration and severity of the risk of harm;
- b. The likelihood that the potential harm will occur; and
- c. If the Student contends he suffers from a legally protected disability entitled to reasonable accommodation, whether reasonable modifications

of university policies, practices or procedures will sufficiently mitigate the risk.

2. The findings resulting from the hearing shall be forwarded to the Vice Chancellor for Student Affairs, who will make the final determination as to whether the Student poses a “direct threat,” taking into account the hearing findings and using the same criteria set forth in paragraph F1, above.
3. If it is determined through the above process that the Student poses a “direct threat,” the Vice Chancellor may involuntarily withdraw the Student from the University and/or University housing. However, if the Student contends and the Vice-Chancellor determines, in consultation with the applicable campus disability office and/or 504/ADA coordinator, that the grounds for involuntary withdrawal are the result of the Student’s legally-protected disability and such grounds may be properly mitigated through reasonable accommodation without undue hardship on the University and without undue risk to the Student or others, the Vice Chancellor should resolve the matter through means other than involuntary withdrawal.
4. The Vice Chancellor shall render a written decision within five business days after receipt of the findings from the Hearing. The written decision, which will be mailed or personally delivered to the Student, will contain a statement of reasons for the decision.
5. Whenever possible, the Vice Chancellor should include in the written decision any conditions for the Student's return to the University. The conditions may include, but are not limited to the following:
 - a. Submission of a Medical Evaluation by a qualified health professional, indicating readiness to return to school, and that the Student does not pose a significant risk: of physical harm to self or others, of significant property damage, or of substantially impeding the lawful activities of others or the educational process or the orderly operation of the University. Note: this is a requirement in all cases of involuntary withdrawal. See paragraph H, below.
 - b. A signed authorization permitting the Vice Chancellor/health professional or other designee to discuss with the Student's treating health professional(s), if any, and/or with any assessing health professional, the Student's readiness to return to college and assistance in whether or what reasonable accommodation(s) may be appropriate.
 - c. Continued counseling or therapy.
 - d. Continued medication.
 - e. Successful completion of college courses at another college or university.
 - f. Any other condition reasonably believed to be appropriate and necessary to demonstrate that the Student can return safely to the University community and will no longer pose a direct threat.

G. Right to Appeal

The Student may file a written appeal in accord with campus procedures for the appeal of student disciplinary decisions.

The grounds for overturning the decision are: University procedures were not followed and the Student's case was adversely affected by the failure to follow such procedure; or the decision was arbitrary or capricious, i.e., not supported by substantial evidence.

H. Reenrollment

When a Student requests readmission or reenrollment at the University following an involuntary withdrawal, he or she shall provide the Vice Chancellor with evidence and documentation of compliance with any decision or agreement rendered or entered into under this Policy, including but not limited to a Medical Evaluation. In cases where the Vice Chancellor has imposed and/or the Student has agreed to other conditions for readmission, it is the responsibility of the Student to provide documentation of compliance with these conditions. The Vice Chancellor should consult as appropriate with the director of the campus counseling or health centers or others. Any request by the Student for reasonable accommodation of a disability should be referred, as deemed appropriate, to the applicable campus disability office and/or 504/ADA coordinator.

Reenrollment is not guaranteed. After reviewing the case and conferring as appropriate, including meeting with the Student at the Vice Chancellor's option, the Vice Chancellor will make a decision on the Student's request for reenrollment, designate any further conditions for reenrollment and notify the Student in writing within five calendar days after meeting with the Student of his or her decision regarding reenrollment. The Vice Chancellor's decision shall be based on a determination as to whether the Student can return safely to the University community and will no longer pose a direct threat.