A recent decision by Massachusetts’s highest court unanimously recognized that, under some circumstances, colleges and universities have a duty to protect students from suicide that, if violated, could result in tort liability. While the court’s opinion provides a framework for determining the scope of this potentially expansive new duty, its precise contours remain unclear and raise important questions for educational institutions. Notably, the decision marks a departure from several prior cases that have not recognized this duty, and it is unclear whether other states will follow Massachusetts’s lead. Nevertheless, the decision counsels that all educational institutions should review their policies and practices related to students at risk of self-harm.
Nguyen v. MIT\(^1\) involved the 2009 death of a 25-year-old MIT graduate student who died by suicide immediately after he was scolded during a phone call with a professor concerning the tone of an email that he sent.\(^2\) The student, who lived off campus, had a lengthy history of mental health issues that included two prior suicide attempts in 2002 and 2005, and he regularly sought help for depression from professionals outside of MIT during his time as a student. Although some of his mental health issues were known to MIT employees, including a dean who knew of his prior suicide attempts, the student repeatedly made clear that he wished to keep those issues separate from his academic work. Accordingly, the professors in his program were unaware of his history of depression or suicide attempts.

In determining if these facts could support a negligence claim, the court analyzed whether there is a duty to prevent suicide. This “duty” analysis is critical because it serves as a gatekeeping role for the court (not a jury) to decide the extent to which the law can reasonably impose liability for the consequences of certain forms of conduct. While the question of whether a duty exists is one for the court to decide, generally a jury must decide whether that duty has been breached. And the reality is that once a case gets to a jury, schools face a substantial risk justifying their conduct against the horrors of a tragic event — even when schools act with the best of intentions.

The court in Nguyen explained that ordinarily there is no duty to prevent suicide, but one can arise if there is a “special relationship” between the parties. These are typically found in the context of custodial relationships, such as hospitals to patients or jails to inmates.\(^3\) Indeed, the lack of custody in the educational context has been one reason why some courts have previously declined to identify a special relationship and thereby a duty to prevent student suicide.\(^4\) In Nguyen, however, the court reasoned that, while higher education institutions lack the parent-like relationship that educators of younger students have, they “are clearly not bystanders or strangers in regard[] to their students.”\(^5\) Accordingly, when a “university has actual knowledge of a student’s suicide attempt that occurred while enrolled at the university or recently before matriculation” or “stated plans or intentions” to die by suicide, then it must take reasonable measures to protect the student. When an institution has a suicide prevention protocol, reasonable measures include initiating it. In the absence of a protocol, reasonable measures require employees to contact the appropriate campus resource to obtain clinical care when they learn of a student’s plans or recent attempt to die by suicide. If the student refuses care, his or her emergency contact must be notified. Applying that duty to the facts before it, the court ruled that, at the time of the student’s suicide, there was no duty because no MIT employee had actual knowledge of present suicidal ideation or prior suicidal acts that were sufficiently recent to the student’s matriculation.\(^6\)
The decision marks the second state high-court decision this year broadening the duties owed to college and university students through the finding of a special relationship. The *Nguyen* court’s recognition of the existence of this duty and the extensive discussion regarding the contours of the duty and how it is satisfied are also somewhat remarkable, given that the facts of the case clearly came outside the scope of the duty that the court created. Thus, while the decision has some sweeping discussion, it is almost all dicta, and the precise circumstances under which the duty will arise and its reach will require extensive future development by courts.

For instance, is the duty truly triggered in every case involving a somewhat recent suicide attempt regardless of other factors? While the court viewed this as a substantially narrowing feature of the duty, sadly, prior suicide attempts by university students are not unusual. Does the duty apply even when the student has been found by a treating physician to be stable? Does the duty apply to other potentially self-harming behaviors, like eating disorders? Moreover, while MIT was able to avoid liability because the faculty did not have actual knowledge of the student’s plans or a recent suicide attempt, the ruling does not fully develop what constitutes “actual knowledge.” The court sought to rein in the obligation nonclinician faculty and staff may have to identify suicidal tendencies by emphasizing the limited nature of the duty. But in the complicated situation of a distressed student communicating suicidal thoughts to a nonclinician employee, where “should have known” stops and “did know” begins may itself generate litigation.

What is the precise scope of the duty if it exists? A narrow reading of the case may only require institutions to initialize an existing protocol to avoid liability. But a broader reading invites adjudication of the protocol itself. This in turn may require juries to grapple with complex policy questions (and expert testimony) concerning mental health treatment as they assess the reasonableness of a particular protocol. Is there a duty to ensure that the health professional who is contacted is competent? What happens when the emergency contact does not agree that the student’s behaviors exhibit a substantial risk?

*Nguyen*’s concern with the problem of suicide on campus is spot on. But the reality is that most colleges and universities take the problem incredibly seriously, including making use of teams of professionals who are well-trained in this field. The question is not whether the issue is an important one, but whether the appropriateness of a response should be put in the hands of a jury, potentially subjecting schools to huge monetary awards. Schools already are navigating several laws in this area, including the obligation not to discriminate against those with mental health disabilities — itself an evolving area of the law awaiting clarification from the Department of Education and the Department of Justice. Indeed, the *Nguyen* court implicitly recognized its holding opens the door to
the issue of discrimination under the Rehabilitation Act. While the court was sympathetic to the burden the duty may put on institutions that learn an incoming student has recently attempted suicide or plans doing so, the court still recognized that colleges and universities cannot discriminate against students on this ground. As the court remarked later in its opinion, “[t]he burden on the university is not insubstantial, but so is the financial benefit received from student tuition.”

The contours of potential tort liability will become clearer as the ruling is analyzed in future cases. And other states may well decline to follow Massachusetts’s lead. In the meantime, the decision calls for colleges and universities to take a critical look at their existing suicide prevention and other self-harm protocols to make sure they incorporate best practices. Just as important, the decision’s focus on employee and faculty knowledge of a student’s suicide attempt or plan means it is vital to ensure employees are well-educated on how to identify at-risk students and are given clear guidance on how to quickly call to action professionals on campus to address these complex questions.

Endnotes

2. Id.

3. Id. at *22-23.

4. See, e.g., Rogers v. Christina Sch. Dist., 73 A.3d 1 (Del. 2016) (“Since [the student’s] suicide took place while he was at home and not on school grounds, the School no longer had custody[,]”); see also Jain v. State, 617 N.W. 2d 293, 297 (Iowa 2000) (noting that plaintiff conceded that “university’s relationship with its students is not custodial in nature” and thereby no duty could be established on that ground); but see Schieszler v. Ferrum Col., 236 F. Supp. 2d 602 (4th Cir. 2002) (plaintiff alleged sufficient facts to support claim that a special relationship existed between decedent and defendants where student lived on campus and defendants knew decedent threatened suicide); Shin v. MIT, 2005 Mass. Super. LEXIS 333 (Mass. Super. Ct. 2005) (finding that special relationship existed between MIT administrators and decedent and that defendants could reasonably foresee that decedent would hurt herself without supervision).

6. *Id.* at *36.

7. *Regents of Univ. of Calif. v. Sup. Ct.*, 413 P.3d 656, 660 (Cal. Mar. 22, 2018) (reversing lower court and holding "that universities have a special relationship with their students and a duty to protect them from foreseeable violence during curricular activities").


9. *Id.* at *27 n.15.

10. *Id.* at *33.