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May 14, 2015

MENTAL HEALTH SCREENING IN SCHOOLS

I. INTRODUCTION

The problem regarding the prevalence mental health disorders in child and adolescent populations is one that is growing. The effects of a mental health disorder, especially one that is untreated,will last long into a child's adult life. While 15 million children in the United States struggle with emotional or behavioral mental disorders, less than 25 percent of children who need mental health services are able to access them.[1] These mental disorders, if left untreated, have negative impacts on a child's educational output, his or her social interactions, and future chances of success. Ten percent of children and adolescents are personally affected by mental illness.[2] The Surgeon General defines mental health as "a state of successful performance of mental functioning, resulting in productive activities, fulfilling relationships with other people, and the ability to adapt to change and cope with adversity."[3] A mental disorder is defined as one of many "health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[4]

One approach to combatting the issue of mental health issues among children and adolescents is to implement school-wide mental health screenings in schools. The concept of in-

[1] Orange County Department of Education, *Mental Health Screening and Early Intervention in Schools*, available at http://www.cdph.ca.gov/programs/cclho/Documents/LERNER%20Mental%20Health%20Screening%20and%20Early%20Intervention%20in%20Schools%20CCLHO%20presentation.pdf.
[2] Alexis L. Toma, *Identifying the Unidentifiable: How Washington's Public Education System Can Aid in the Prevention and Detection of Childhood Mental Illness,* 33 SEATTLE U. L. REV. 255, 259 (2009).
[3] *Id.* at 258.
[4] *Id.*

school mental health screening has found strong federal support, especially through the US Surgeon General's reports on mental health generally and on child and adolescent mental health.[5] These mental health screenings would be similar to those already undertaken in schools to deal with common health problems, such as for lice or hearing and sight issues. These mental health screenings would focus on the identification of children and adolescents who may be at risk for a mental health diagnosis, especially depression and suicidality.[6] In addition, these screenings will also gauge a student's risk for behavioral disorders or attention-deficit/hyperactivity disorder (ADHD).[7]

In this paper I will propose that, though there are potential complications to mental health screening being conducted in an educational settings, there is enough demonstration of need to necessitate such screenings if they are done in an appropriate fashion. Acceptable mental health screenings would include parental consent, privacy assurances, and a variety of solutions and resources for students who indicate a mental health need.

II. A PUBLIC HEALTH ISSUE: ASSESSING THE NEED FOR MENTAL HEALTH SCREENINGS IN SCHOOLS

Statistic evidence and current events both demonstrate a growing problem regarding the mental health of children and the need to create a system to discover a mental illness diagnosis and to provide children with appropriate treatment as soon as possible. For example, tragedies involving in-school violence later attributed to potential forms of mental illness, such as those

[5] Mark D. Weist, et al., *Mental Health Screening in Schools*, 77 J. of Sch. Health 53, 54 (2007). Recommendations by federal health officials regarding mental health screenings were issued nearly a decade ago. Kelli Kennedy, *Controversy plagues school mental health screening*, USA TODAY, January 13, 2014, available at http://www.usatoday.com/story/news/nation/2014/01/13/school-mental-health-screening/4454223/.
[6] UCLA Center for Mental Health in Schools, *Screening Mental Health Problems in Schools* 1, available at http://smhp.psych.ucla.edu/pdfdocs/policyissues/mhscreeningissues.pdf.
[7] Alexandra Sifferlin, *Why Schools Should Screen Their Students' Mental Health*, TIME.COM, available at http://time.com/3479351/mental-health-schools/.

that have taken place at Columbine, Virginia Tech, and Northern Illinois University,[8] have shed light on how certain students have been underserved as to their mental health needs, which leads one to question if such tragedies may have been averted if a system for early detection and response had been in place.

The numbers regarding the growing presence of mental illness in child and adolescent populations speak for themselves. Ninety percent of teenaged youths who complete suicide are dealing with a mental health issue at the time of their death and are not receiving treatment for that illness.[9] Ten percent of children are personally affected by mental illness.[10] The school-aged population is an underserved one:

> About 75 [percent] of adults who access mental health treatment had a diagnosable disorder when they were under age [eighteen], but in high-income countries, only 25 [percent] of kids with mental health problems get treatment…. By prioritizing mental health in a child's early years, more people will get the treatment they need early on."[11]

Another study noted that 16.9 percent of students had considered suicide, while 16.5 percent had attempted suicide.[12] This study also indicated that 8.5 percent of these students had attempted suicide more than once, and 2.9 percent had to seek medical treatment after a suicide attempt.[13] In addition, "the vast majority of teens who attempt suicide give no warning to parents, siblings, and friends."[14]

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[8] Toma, *supra* note 2, at 255, 286; Kennedy, *supra* note 5.
[9] Weist, *supra* note 5, at 55.
[10] Toma, *supra* note 2, at 259, 286; Kennedy, *supra* note 5; Katherine McKeon Curran, *Mental Health Screening in Schools: An Analysis of Recent Legislative Developments and the Legal Implications for Parents, Children and the State*, 11 Quinnipiace Health L.J. 87, 94 (2008).
[11] Sifferlin, *supra* note 7; *see also* Weist, *supra* note 5, at 54 ("Between 12 [percent] and 27 [percent] of youth might have acting-out behavioral problems, depression, and anxiety; yet, as few as one sixth to one third of these youth receive any mental health treatment.")
[12] Weist, *supra* note 5, at 55.
[13] *Id.* at 55.
[14] Curran, *supra* note 10, at 95.

The prevalence of mental health issues among school-aged children is comparable situations relating to public health, necessitating a response that is close to equal with a "public health approach to disease prevention and detection."[15] One trainer from a mental health clinic noted,

> "We have screening for all kinds of rare infectious diseases and then we don't screen for common behavioral disorders that are costly to the individual, the family and society in terms of health care utilization, crime cost and high risk of death … it doesn't make sense from a public health perspective."[16]

Additionally, mental health issues are less readily noticeable as physical sicknesses. In addition, internalizing disorders – such as depression, anxiety, or suicidal thoughts – are even less readily identifiable.[17] Untreated mental health issues can have a variety of disastrous results, such as "substance abuse, school drop outs and difficulty maintaining steady jobs or relationships.[18] In the short term, children with mental health disorders are more likely to miss school, with absences totaling as many as twenty-two days a year.[19] A mental health disorder will also have disciplinary results as well, with students struggling with mental health disorders being three times more likely to be suspended or expelled.[20] Fifty percent of teenaged students with mental health disorders drop out of school, with mental health sufferers possessing the highest dropout rate of any disability group.[21] Therefore, there is a need for a system that provides education and preparation to school staff and early detection for children and adolescents.

The school environment presents a unique opportunity to screen children efficiently and effectively.[22] Schools are already the predominant place that school-aged children access mental

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[15] Weist, *supra* note 5, at 54.
[16] Kennedy, *supra* note 5.
[17] Weist, *supra* note 5, at 55; Curran, *supra* note 10, at 93-94.
[18] Kennedy, *supra* note 5; Curran, *supra* note 10, at 95.
[19] Orange County, *supra* note 1.
[20] *Id.*
[21] *Id.*
[22] See Curran, *supra* note 10, at 96.

health services in this country.[23] While schools do not have a duty to address every need of each student, a concern that directly affects learning should be addressed by a school.[24] Testing at schools provides ready access to large numbers of children in one place, which reduces the cost to the agency running the mental health screening, with the reciprocal benefit to the school of treating students early and saving the school the dollars that would be allocated to the treatment of that child down the road. One such mental health screening program that has been named as a model program is TeenScreen from Columbia University.[25]

Currently, no consensus exists as to ideal national standards for mental health screening in schools.[26] However, successful treatment for children with mental disorders often takes the shape of the following steps: "detection of a potential mental health problem, comprehensive assessment and evaluation, diagnosis, recommendation for target intervention, and treatment."[27] The questionnaire used in these mental health screenings is meant to detect the possibility of a mental health issue, not to provide a complete diagnosis.[28] A typical mental health screening tool for children is usually a "brief, culturally sensitive instrument" used to identify children and adolescents who "may be at risk of impaired mental health and who may require immediate attention, a diagnostic assessment referral, or intervention."[29] This screening instrument is usually only one or two pages long and uses simplified terminology so that all users would be

[23] Weist, *supra* note 5, at 54 ("In fact, for youth who do receive mental health services, most receive them in schools."); Orange County, *supra* note 1.
[24] Toma, *supra* note 2, at 264-265.
[25] Weist, *supra* note 5, at 55; Curran, *supra* note 10, at 96-97; *see also Model Program: Screening Program for Youth*, National Alliance on Mental Illness, available at http://www2.nami.org/Template.cfm?Section=New_Freedom_Commission&Template=/ContentManagement/ContentDisplay.cfm&ContentID=28330.
[26] Weist, *supra* note 5, at 55.
[27] Toma, *supra* note 2, at 261.
[28] *Id.* at 262.
[29] *Id.* at 261.

able to understand it.[30] The questions asked during a screening focus on the child's home and family background, and the screening instrument usually includes questions regarding any family history of mental health issues.[31]

III. The opposition to mental health screenings in schools

While mental health screening in schools has been encouraged by the federal government, it has also been met with opposition and controversy throughout the country. There are several major arguments against instituting mental health screenings in schools.[32] First, mental health screening may not be entirely objective due to cultural or language bias or lack of training.[33] Second, the screening instruments might not be age appropriate.[34] Third, the instruments may not be reliable, leading to misdiagnoses or over-diagnosis.[35] Fourth, the cost of a school-wide mental health screening may outweigh the benefits of such a program.[36] Fifth, the use of these screening in an educational environment may violate the privacy rights of either the children or their parents.[37] Finally, concerns exist regarding the potential for stigmatization for children who do end up indicating the risk for a mental health diagnosis.[38]

The first three concerns relate to the accuracy and reliability of the screening process itself. There is also a concern that school-wide screenings will over diagnose mental illnesses.[39]

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[30] *Id.*
[31] *Id.*
[32] See UCLA, *supra* note 6, at 5; *see also* Weist, *supra* note 5, at 54-55 (listing the barriers to school mental health programs – including 'insufficient funding, inadequate training and supervision of staff, difficulty coordinating a full continuum of prevention and intervention services, maintenance of quality and empirical support of services, [and] limited evaluation of outcomes of services to improve programs and contribute to policy improvements," as well as challenges regarding a school's facilities and personnel).
[33] Toma, *supra* note 2, at 262; Orange County, *supra* note 1.
[34] Toma, *supra* note 2, at 262.
[35] *Id.* at 262; Kennedy, *supra* note 5.
[36] UCLA, *supra* note 6, at 1.
[37] *Id.* at 1, 2; Weist, *supra* note 5, at 55.
[38] UCLA, *supra* note 6, at 1; Kennedy, *supra* note 5; Orange County, *supra* note 1.
[39] UCLA, *supra* note 6, at 1; Orange County, *supra* note 1.

In response to these concerns, it is important to recognize that these screenings will not be a one-stop shop for a diagnosis of a mental health issue. Rather, these screenings are a means to access a greater pool of mental health resources if it is indicated that such a referral is necessary.[40]

The fourth and fifth concerns relate to the implementation of mental health screenings in school, such as questions regarding who will shoulder the cost of such an endeavor and how parents will be involved. As to the costs of these programs, there is the potential that mental health screenings will be able to reduce future costs through minimizing the need for future special education referrals for behavioral disorders.[41] In addition, these mental health screenings will only be as effective as the follow-up resources available to students who indicate the risk of a mental health disorder.[42] Care should be taken that the funds contributed to the actual screening process do not take away from those needed to foster quality follow-up resources.[43] As to concerns regarding potential invasions of a child's or familial privacy rights, there has never been a recommendation, federal or otherwise, that these screening programs be mandatory.[44] Developing a structure of active consent from both parents and children is essential to a screening program.[45]

The final concern, regarding the potential for stigmatization, is perhaps the most important. Even if it takes time to iron out the details of making mental health screenings available to children and adolescents, the dialogue surrounding the recognition that such issues exist in these age groups is paramount in working toward normalizing mental health concerns

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[40] Curran, *supra* note 10, at 135.
[41] UCLA, *supra* note 6, at 1; Curran, *supra* note 10, at 95-96.
[42] UCLA, *supra* note 6, at 1; Orange County, *supra* note 1; *see also* Kennedy, *supra* note 5.
[43] UCLA, *supra* note 6, at 2.
[44] Weist, *supra* note 5, at 55.
[45] *Id.*

and wiping away the stigma currently associated with a diagnosis of a mental health disorder.[46] These screening programs would entwine mental health services into the culture of the nation's schools, showing that mental health is a priority.[47] If mental health concerns were made "part of the usual health system of a school, then it becomes more normal … and hopefully it will then be easier to access it."[48]

Presumably the greatest force behind the opposition to mental health screening for children is led by the Church of Scientology, who are extremely vocal about their stance against psychological diagnoses and the use of psychotropic medications.[49] The Church of Scientelogy created the Citizens Commission on Human Rights[50] to lobby against the future use of mental health screening in schools.

IV. Considerations for conducting mental health screening in schools

In order to implement an appropriate and effective mental health screening process in a school, several factors must be considered. A non-exclusive list of these factors include: the role of parental consent,[51] previous legislation that would affect the implementation of a screening program, potential effects of the screening program on children, and the resources that can be made available to children and parents after the screening, including training for educators and school staff.[52]

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[46] *See Id.* at 54.
[47] Sifferlin, *supra* note 7.
[48] *Id.*
[49] Toma, *supra* note 2, at 255; Curran, *supra* note 10, at 101-103.
[50] See generally Citizens Commission on Human Rights, *Facts About the Dangers of Mental Health Screening in Schools*, available at http://www.cchr.org/sites/default/files/downloads/facts_about_mental_health_screening_in_schools.pdf. (outlining the group's reasoning against the use of mental health screening in schools.)
[51] Toma, *supra* note 2, at 257.
[52] *Id.* at 257.

a. The role of the parent

The implementation of mental health screening in schools has also been attacked because of the possibility that it will infringe upon parents' fundamental rights under the Fourteenth Amendment. If a fundamental right is infringed upon, the government must justify such an interference by showing that "the action is necessary to achieve a compelling government purpose."[53] One of these fundamental rights is that of a parent to control the upbringing of his or her child.[54] This fundamental right is addressed and reinforced by case law.

The Supreme Court has often upheld the right of parents to make decisions regarding the upbringing and education of their children. For example, in Meyer v. Nebraska, the Supreme Court found that it was unconstitutional for a state to prohibit a public school from teaching in any language other than English.[55] Two years later, the Court found a state law requiring children to attend public schools to be unconstitutional in Pierce v. Society of Sisters.[56] However the Supreme Court has also placed limitations on a parent's ability to control the upbringing of a child. For example, in Prince v. Massachusetts, a nine-year-old girl was made by her parents to miss school to distribute religious literature.[57] The Court found that, despite a parents fundamental rights regarding the upbringing of his or her own children, this was a violation of child labor laws.[58] In other words, the court or government may step in if the well-being of the child or the public interest is in jeopardy.[59]

[53] *Id.* at 269-270.
[54] *Id.* at 270; Curran, *supra* note 10, at 112-114.
[55] Toma, *supra* note 2, at 270; Curran, *supra* note 10, at 114; Meyer v. Nebraska, 262, U.S. 390, 402-03 (1923).
[56] Toma, *supra* note 2, at 270; Curran, *supra* note 10, at 114-115; Pierce v. Soc'y of Sisters, 268 U.S. 510, 534 (1925).
[57] Toma, *supra* note 2, at 271; Prince v. Massachusetts, 321 U.S. 158, 166-71 (1944).
[58] Toma, *supra* note 2, at 271; Prince, 321 U.S. at 166-71.
[59] Toma, *supra* note 2, at 271.

Two cases, Gruenke v. Seip[60] and C.N v. Ridgewood Board of Education,[61] show how parents' fundamental rights might limit the use of mental health screening in an educational environment. In Gruenke, a school coach made a student take a pregnancy test. The court found that this was an "intensely personal issue" and was a violation of the parents' rights. The court commented on how psychological testing used in a school can "pry into family activities" and may "overstep the boundaries of school authority and impermissibly usurp the fundamental rights of parents to bring up their children."[62] In C.N., the use of a survey that asked personal questions was held to be constitutional if the information was gathered from students on a voluntary basis and with a legitimate purpose, with an opportunity for the students to opt out of participating in the survey.[63] Since these mental health screenings would be undertaken with a legitimate purpose and are for the public good, the programs would likely be constitutional if they are accompanied with an opportunity for parents to actively consent to their child's participation in the screening or opt-out.

A mental health screening process should be accompanied by a mechanism to foster communication with parents and families. This mechanism should educate parents on the impact of mental health issues on students and how to recognize common signs of mental health issues, as well as providing information and details regarding any screening process used in schools.[64] Active consent from parents should also be required for a student's participation in a screening program.

b. Previous legislation

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[60] Gruenke v. Seip, 225 F.3d 290 (3d Cir. 2000).
[61] C.N. v. Ridgewood Bd. of Educ., 319 F. Supp. 2d 483 (D.N.J. 2004).
[62] Gruenke, 225 F.3d at 307; Toma, *supra* note 2, at 273.
[63] C.N., 319 F. Supp. 2d at 498; Toma, *supra* note 2, at 273-74.
[64] Orange County, *supra* note 1.

Several pieces of legislation affect a school's ability to undertake mental health screening. These laws are: The Protection of Pupil Rights Act (PPRA), the Individuals with Disabilities Act (IDEA), and the Family Educational Rights and Privacy Act (FERPA).

The Protection of Pupil Rights Act (PPRA), enacted in 1974, both protects student privacy and mandates parental consent to surveys and evaluations administered in the school setting. Though screening instruments are only meant to refer students to mental health resources, they are likely to be identified as "survey" under the PPRA.[65] Therefore, schools will likely have to comply with the PPRA's mandates regarding parental consent.[66] Similarly, the Family Educational Rights and Privacy Act grants parents access to student records and requires third parties, in the majority of circumstances, to obtain parental consent before accessing these records.[67]

Any subsequent use of medication after a child's referral to a psychiatrist would fall under provisions in the Individuals with Disabilities Act (IDEA). The IDEA includes a "Prohibition on Mandatory Medication," under which "state and local educational personnel" cannot require "a child to obtain a prescription … as a condition of attending school."[68] Therefore, should a student be prescribed medication for a mental health condition, the child and his or her parents will still be able to explore other treatments or therapies that do not require medication. In addition, the IDEA allows teachers to share classroom-based observations with

[65] Toma, *supra* note 2, at 267.
[66] *Id.* at 267.
[67] 20 U.S.C. § 1232 (2008); Curran, *supra* note 10, at 129-130.
[68] Toma, *supra* note 2, at 268; Individuals with Disabilities Education Improvement Act, Pub. L. No. 108-779 (2004).

parents.[69] This same type of transparent and collaborative communication should be implemented in a school's mental health program.

c. The effect of screening on the student

Further research must be done to ensure that screening programs are done in an appropriate, sensitive, and effective way. The questions asked in a screening questionnaire must be age-appropriate for various education levels.[70] It must also be decided if the screening should be conducted yearly or if it should only be conducted at "transitional years," such as sixth, seventh, ninth, and tenth grades, all of which are years in which students have been found to be more at risk for suicidal ideation.[71] Data from local sources, such as emergency rooms and clinics, may also be used to gauge at-risk times in children's lives in a particular community.[72] Furthermore, a private space must be allocated in which to conduct the screening to promote confidentiality.[73]

d. The resources available after screening

As stated previously, mental health screenings are only effective if there are resources available after a student has been identified as being at risk for a mental health disorder.[74] Without developing an adequate pool of reliable and professional resources that children and parents can access, these programs will just be pointing out a problem without providing any solution. The resources made available to children and their families after there is an identification of risk for a mental health disorder should be varied. There are concerns that large-

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[69] Toma, *supra* note 2, at 268.
[70] Weist, *supra* note 5, at 56.
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] UCLA, *supra* note 6, at 1; Weist, *supra* note 5, at 56.

scale screening will lead to the overmedication of children.[75] While medication is undoubtedly helpful in some instances, non-medication treatments like cognitive behavioral therapy should also be included.[76]

In addition, changes within the school and classroom setting should also be implemented. Teachers should be trained on how to identify the potential for mental health issues and how to communicate with children and parents about such observations. In addition, teachers and educational staff should be trained on how to recognize and deal with signs and symptoms of bullying. In addition, "altering a child's classroom environment and reinforcing positive academic accomplishments – rather than altering a child's unstable and dysfunctional home environment – may minimize disruptive and isolative behaviors."[77] Training teachers as well as school counselors as to spotting the signs of a mental health disorder, such as visual signs like weight fluctuation, should also be implemented in coordination with the larger screenings.[78]

V. CONCLUSION

Ultimately, while there is much still to be considered and decided when it comes to implementing mental health screenings in schools, these types of programs have the potential to do quite a bit of good as to the public health issue regarding mental health disorders in children and adolescents. The type of early detection and access to services that could result from in-school screening will help children achieve more in school and will likely save countless lives.[79] Each of the major arguments and legislative barriers to mental health screening in schools can be

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[75] Curran, *supra* note 10, at 88. *See* Kennedy, *supra* note 5.
[76] Sifferlin, *supra* note 7.
[77] Toma, *supra* note 2, at 260.
[78] Sifferlin, *supra* note 7; Orange County, *supra* note 1; *see also* Weist, *supra* note 5, at 56 ("All staff should have a clear understanding of referral procedures and know how to determine when a youth is in crisis and needs an immediate intervention.")
[79] See Curran, *supra* note 10, at 87.

overcome by tailoring these programs to encouraging early detection and evaluation rather than an outright diagnosis,[80] by providing students with a variety of resources including both behavioral and medication therapy, and through the inclusion of parental consent and communication with families.

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[80] *See* Toma, *supra* note 2, at 262 ([T]he purpose of these instruments is to promote early detection of possible mental health issues, not to diagnose a child with a mental health disorder.")