

Student Challenges to Academic Decisions

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It is incumbent upon colleges and universities to examine the nature of their legal relationship and obligations to students so that procedures in response to student challenges to academic decisions are legally appropriate and congruent with the institution's mission.

A college or graduate education is essential to success in many fields. A student's failure at this level can mean opportunities are foreclosed. Consequently, it is not surprising that students and, in particular, professional and graduate students who are dismissed for academic reasons, may turn to the courts in an effort to overturn the school's evaluation of their academic performance.¹

Students seeking to challenge academic decisions through the courts have encountered the longstanding principal of judicial deference to the academic evaluations of educational institutions. The landmark Supreme Court cases relating to judicial deference to academic decisions, *Board of Curators of the University of Missouri V. Horowitz*², and *Regents of the University of Michigan v. Ewing*³ arose

¹ Thomas A. Schweitzer, "Academic challenge Cases: Should Judicial Review Extend to Academic Evaluations of Students?" 41 *American University Law Review* 267 (1992). This comprehensive discussion of academic challenges, relied upon throughout this paper, provides a compilation of relevant cases.

² 435 U.S. 78 (1978) (Horowitz was dismissed from medical school despite her excellent academic record because of clinical performance problems including clinical competence, peer and patient relationships and personal hygiene. Horowitz sued, claiming breach of contract and violation of her constitutional rights to due process and equal protection. The Supreme Court granted cert. on the due process claims. The Court, in addressing the due process claims, stated that it did not need to decide whether the University's actions deprived Horowitz of a protected liberty or property interest which would trigger due process protection. Instead, the Court held that assuming Horowitz had liberty or property interest, she had received at least as much procedural due process as required by the 14th amendment. The Court declined to formalize the academic dismissal process by requiring a hearing and distinguished it from disciplinary dismissals which are more suited to judicial procedures and do require hearings. With regard to substantive due process, the Court assumed without deciding that an arbitrary and capricious standard could be applied to determine if substantive due process had been afforded. The Court found that there had been no showing of

at public institutions and were examined on constitutional claims of violation of due process. However, they are also cited by courts examining contract claims as standing for judicial deference to academic decision making.⁴ Absent bad faith, an arbitrary and capricious judgment by the institution or violation of a constitution or statute, the courts have not usually substituted judicial judgment for professional academic judgment.⁵

Student legal challenges to academic decisions most often arise in public or private institutions in actions for breach of contract, or at public institutions for denial of due process (either the student was not given adequate procedures or the substance of the decision was unfair). Academic challenges in tort, such as claims for negligence or breach of fiduciary duty, have historically been dismissed by the courts, though there may now be indications of changing judicial attitudes with regard to such claims.⁶

This paper explores the basis in contract and due process for academic challenges.

arbitrariness or capriciousness in the University's actions and again warned of judicial intrusion into academic decision-making.)

³ 474 U.S. 214 (1985) (In *Ewing* a university student enrolled in a 6 year program culminating in an undergraduate and medical degree sued the regents of the University of Michigan when he was dismissed from the program because he failed to pass the test required for the final two years of the program. His complaint cited breach of contract (denied below) as well as violation of substantive due process in violation of the 14th amendment. The question before the Supreme Court regarded the substantive due process (i.e. whether the action by the university was arbitrary). The Court held that if *Ewing's* property interest gave rise to a right to due process before continued enrollment could be denied, the record showed no arbitrary state action. The review of the substance of the University's decision precludes concluding that it was a substantial departure from accepted academic norms so as to demonstrate a failure of considered professional judgment).

⁴ *Olsson v., Board of Higher Education*, 49 N.Y.2d 408, 413; 426 N.Y.S.2d 248, 251; 402 N.E.2d 1150. 1152 (App. Div. 1980). (*Olsson* attempted to have the college estopped from denying him a diploma arguing that his failure to fulfill requirements for the master's degree diploma was due to his reliance on the his professor's misstatement of the number of questions which must be answered on the comprehensive examination. The court, citing the *Horowitz* case and the principle of academic deference (unless the action is arbitrary or irrational or made in bad faith) concluded that the college was not obliged to issue a diploma to *Olsson* before *Olsson* demonstrated his competence in accordance with the institution's academic standards).

⁵ See *Sharick v. Southeastern University of the Health Sciences, Inc.*, 780 So.2d 136(Fla. 3rd DCA 2000)

⁶ *Hendricks v. Clemson University*, 529 S.E.2d 293 (S.C. Ct. of App 2000).

Contract

Relationship. There is general consensus that there is an implied contractual relationship between the student and the institution. If the student is accepted, pays tuition, and satisfies the academic and other requirements of the institution, the institution will provide the education and issue a degree to the student upon completion.⁷

Terms. Explicit terms of the contract between the student and the educational institution, which may include academic requirements and conduct, are not found in a single document but are found in the catalog, handbooks and other statements of institutional policy, including written and oral statements of administrators and professors.⁸ Representations by faculty can also be part of the contract and the institution may be held to those representations, even if they are misstatements of policy if the student relied upon the representations⁹ and enforcing the misstatement does not compromise the integrity of the institution's academic standards and degree.¹⁰

Implicit in the contract is the obligation of the institution to provide a degree if the student complies with the requirements of the institution,¹¹ and the obligation of the student to comply with the University's rules and regulations.¹²

⁷ E.g. *DeMarco v. University of Health Sciences*, 40 Ill. App. 3d 474,480, 352 N.E. 2d 356,366 (1976) (court found student had fulfilled his contract with the University and was entitled to degree), *see, University of Mississippi Medical Center v. Hughes*, 765 So.2d 528 (Miss. 2000) (discussion of the contract claim and the current law on this issue).

⁸ *See University of Miami v. Militana*, 184 So. 2w 701 (Fla. Dist. Ct. App 1966) (terms and conditions of graduation are in the College's publication available to student on enrollment).

⁹ *Blank v. Board of Higher Education*, 273 N.Y.S.2d 796 (N.Y. Sup. Ct. 1966).

¹⁰ *Olsson* at 416.

¹¹ *The Matter of Carr v. St. Johns's University*, 17 A.D.2d 632 (N.Y. Sup. Ct. 1962).

¹² *See University of Mississippi Medical Center v. Hughes*, 765 So.2d 528,535 (Mis. Sup. Ct. 2000).

Some courts have also noted the institution's implicit obligation of good faith,¹³ and ability to modify requirements as needed to fulfill educational responsibilities.¹⁴

Flexibility. While courts have recognized a contractual relationship, they usually refuse to use strict commercial contract principles, and allow for flexibility.¹⁵ For example, where there was no express provision in the catalog allowing modifications in curricula and other rules and regulations, the 5th Circuit held that implicit in the contract is the institution's ability to modify its rules and regulations in order to properly exercise its educational responsibility.¹⁶ However, where there is an express statement in the catalog regarding the institution's ability to make modifications, it is ordinarily relied upon by the courts.¹⁷ When the catalog expressly stated that a student could satisfy the requisites for a degree according to the terms of the catalog in effect at the time of matriculation or in any subsequent year, a Texas court did not permit the expulsion of a student who failed to meet the requirements of the new catalog, but was still in compliance with the terms of the catalog in effect at matriculation.¹⁸ Similarly, when catalogs contain a clause reserving the right to change the catalog and its requirements, courts have sided with the institution in response to students' arguments that the catalog in effect at the time of matriculation is the basis of the contract.

Interpretation. To interpret the contract between the student and the institution, the courts will look to the reasonable expectation of the parties.¹⁹ Words in the agreement are given their "normal every day meaning."²⁰

¹³ *Olsson* at 414.

¹⁴ *University of Mississippi Medical Center v. Hughes* at 535.

¹⁵ *Slaughter v. Brigham Young University*, 514 F.2d 622, 626 (10th Cir. 1975).

¹⁶ *Mahavongsanan v Hall*, 529 F. 2d 448,450 (5th Cir. 1976).

¹⁷ *E.g. Hammond v. Auburn University*, 699 F. Supp. 1555 (m.D. Ala. 1987), *aff'd*, 858 F.2d 744 (11th Cir. 1988), *cert denied*, 489 U.S. 1017 (1989); *Easley v. University of Mich. Bd. Of Regents*, 627 F. Supp. 580,586).

¹⁸ *University of Texas Health Science Center at Houston v. Babb*, 646 S.W. 2d 502 (Tex. Ct. App. 1982), see *University of Miami v. Militana*, 184 So. 2d. 701,704 (Fla. Dist. Ct App. 1966) (terms and conditions for graduation are in the publications available to student on enrollment).

¹⁹ Schweitzer at n.485.

Substantial Performance. The doctrine of substantial performance has been applied to the contractual relationship between the student and the institution by the First Circuit in *Russell v. Salve Regina*,²¹ a case where an obese student was dismissed from a nursing program because of her weight and not her academic performance. The court, on remand from the Supreme Court, held that the student had substantially performed her obligations under her contract with the school and was entitled to damages.

Institutional Breach. Courts have supported breach of contract actions by students in academic challenges when the institution acted in bad faith or in an arbitrary or capricious manner; or when a specific contract obligation, which would not require a review of an academic evaluation, was allegedly breached.²² The Supreme Court of Idaho stated that a valid cause of action could exist if the college had not complied with the implied terms of the contract with the student. Though the facts did not support a finding of breach in the Idaho case, there would have been a breach if the college had not provided students seeking to acquire qualification as a journeyman with the fundamentals necessary to attain qualification as an entry-level journeyman.²³

²⁰ *Lyons v. Salve Regina*, 565 F. 2d 200 (1st cir. (1977), rev'g 422 F. Supp. 1354 (D.R.I. 1976) cert. denied, 435 U.S. 971 (1978) (The provision at issue in the student manual was for a recommendation by the grade appeals committee. A recommendation could not be read as requiring mandatory action. Thus, the dean's rejection of this recommendation was not a breach of contract).

²¹ *Russell v. Salve Regina College*, 649 F. Supp. 391, aff'd 890 F.2d 484(1st Cir. 1989), rev'd on other grounds, 111 S. Ct. 1217 (1991), 938 F.2d 315 (1991).

²² Daniel P. Rafferty, "Technical Foul! Ross v. Creighton University Allows Courts to Penalize Universities Which Do Not Perform Specific Promises Made to Student-Athletes." 38 *S.D. L. Rev.* 173, 1993 (discussing *Ross v. Creighton University*, 957 F.2d 410 (7th Cir. 1992) where the 7th Circuit allowed a claim for breach of contract against the University for failing to provide a meaningful education by providing adequate tutoring); *Andre v. Pace University*, 655 N.Y.S.2d 277 (1996) (university failed to deliver the basic computer programming course promised); *Elliot v. University of Cincinnati*, 730 N.E.2d. 996 (1999) (court found breach when committee of professors conducting Elliot's oral examination was composed of four members instead of five, as mandated by the bulletin and handbook).

²³ *Wickstrom v. North Idaho College*, 725 P.2d 155,158 (Idaho 1986).

Due Process

In public institutions an academic judgment may be challenged on a constitutional basis for denial of due process as well as on a contract basis. While private institutions cannot be challenged on constitutional grounds unless they are deemed to be state actors, some courts have held private schools to common law requirements which are similar to due process requirements.²⁴

The 14th amendment to the Constitution prohibits the state from denying a person the right to life, liberty or property without due process of law. Due process requirements may be procedural (the process should be fair involving notice and opportunity to be heard) and/or substantive (the decision must be reasoned, i.e. it cannot be arbitrary or capricious).²⁵ Academic deference affects the due process required by courts.

Procedural Due Process. Procedural due process claims by students challenging academic judgments of the institution are not likely to succeed. While a hearing is required in the case of expulsion for misconduct,²⁶ there is strong and consistent precedent that the requirement of a hearing does not apply to an expulsion for academic reasons.²⁷ Constitutional procedural due process has been deemed to be satisfied if the student is on notice of the dissatisfaction with his or her academic performance, and the institution's action is based on a careful and deliberate decision.²⁸ Most institutions' policies and procedures provide students with enough due process to satisfy these requirements. Even when public institutions do not fully follow their own rules and procedures, courts have sometimes found no violation of due process because the procedures provided were

²⁴ See, e.g. *Lekutis v. Univ. of Osteopathic Medicine and Health Sciences*, 524 N.W.2d 410,413(Iowa 1994); *A and B v. C College*, 863 F. Supp. 156,159 (S.D.N.Y. 1994).

²⁵ *Horowitz* at 91.

²⁶ *Dixon v. Alabama*, 294 F.2d 150 (5th Cir, cert. Denied, 368 U.S. 930 (1961).

²⁷ *Horowitz*, at 88; *Mahavongsanan v. Hall*, 529 F.2d 448 (5th Cir. 1976).

deemed to be constitutionally adequate for academic matters.²⁹ If, however, an issue of discrimination against the student is involved, more process will be required. An Oklahoma appeals court reversed a lower court determination that prior notice and careful and deliberate academic decision was adequate procedure, because the student raised an issue of fact concerning whether the decision was truly academic or was the result of impermissible gender discrimination.³⁰

Substantive Due Process. The courts are unlikely to scrutinize the substance of academic evaluations which they feel are better left to the academic experts unless that judgment is a substantial departure from academic norms or arbitrary and capricious. Academic evaluations require expert judgment based on cumulative information and are not readily adapted to judicial decision making. Disciplinary cases resulting in punishment are more analogous to the focus of the judicial setting. In the *Horowitz* case, where the claim was an infringement of a liberty (reputational interest), the Court, without deciding that academic decisions are subject to a substantive due process review, determined that the medical school's decision to drop Ms. Horowitz was not arbitrary or capricious, and concluded that there was no need to remand the case to determine whether there was a deprivation of substantive due process.³¹ In *Ewing*, the other landmark case in this area, the Court, in examining a property right claim, agreed that Ewing had a constitutionally protected property right to continuing enrollment in the program, based on an implied contract. The Court once again held that if Ewing's assumed property interest gave rise to a substantive due process right to continued enrollment free from arbitrary action, there was no arbitrary action. The decision of the University was conscientious and made with careful deliberation. The Court states that such a decision would not be overridden unless it was a substantial

²⁸ E.g. *Schuler v. University of Minnesota*, 788 F.2d 510 (8th Cir. 1986).

²⁹ E.g. *Trotter v. Regents of the University of New Mexico*, 219 F.3d 1179 (10th Cir. 2000).

³⁰ *Gossett v. State of Oklahoma*, 245 F.3d 1172,1181 (10th Cir. 2001) (summary judgment was rev'd because the school's action may have been based on gender discrimination rather than on careful and deliberate evaluation of the student's academic ability).

departure from academic norms and professional judgment.³² Cases with such a substantial departure from norms are rarely found.³³ However, a finding of impermissible discrimination as the underlying reason for the challenged decision would probably constitute a departure from academic norms and professional judgment.³⁴

Academic v. Disciplinary matters. The line between academic and disciplinary matters is not always clear. For example, students will often characterize cases where the issue is cheating or unprofessional behavior during a clinical course (internship) as misconduct, while the institution will say it is an academic matter.³⁵ Some courts have considered cheating an academic offense³⁶, while others have considered it misconduct³⁷. With regard to clinical courses, the institution's characterization of misbehavior as academic ordinarily prevails when the decision is based on a subjective judgment related to student competency, and not factual (whether the student did it). In such cases, less stringent procedures are required and the court's focus will be whether the institution's action was arbitrary or capricious, and overturn the decision only if it was such a substantial departure from academic norms as to demonstrate the absence of professional judgment.³⁸

Physical Characteristics. Physical characteristics have at times been considered part of an academic evaluation. In the Horowitz case, Ms. Horowitz's unkempt appearance contributed to her failure in clinical courses and her dismissal

³¹ *Horowitz* at 84-85

³² *Ewing* at 222.

³³ One such case is *Maitland v. Wayne St.*, 257 N.W. 195 (1977) where a student was not given one part of the examination and was then dropped from the school because he failed to achieve the required score on the examination.

³⁴ *Gossett* at 1182.

³⁵ E.g. *Corso v. Crieghton University*, 731 F.2d 529(8th Cir. 1984); *Hennesy v. the City of Melrose*, 194 F.3d 237 (1st Cir 1999)

³⁶ E.g. *Corso* at 532.

³⁷ See, *Wheeler v. Miller*, 168 F.3d 241 (5th Cir. 1999).

³⁸ E.g. *Hennesy* at 250-252.

from medical school. The Court treated this evaluation as academic.³⁹ On the other hand, in *Russell v. Salve Regina*, Russell, a nursing student, similarly failed a clinical course in nursing because of obesity and the court ruled that she had substantially met her obligations under the contract with the school and was entitled to damages for expulsion.⁴⁰

Court Support. Institutions, when making academic evaluations, will most often be supported by the courts. This is because colleges and universities, in an attempt to serve students well, usually have some reasoned basis for action and ordinarily afford students procedures to respond to academic judgments. Students succeed in breach of contract claims and due process challenges only when the courts feel the action by the institution is discriminatory, lacks good faith, or has no reasoned basis.

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³⁹ *Horowitz* 435 U.S. 78 (1978).

⁴⁰ 938 F2d. 315 (1st Cir. 1991). Schweitzer has said that the decision to dismiss Russell was more arbitrary than the decision regarding Horowitz because Russell had been obese on matriculation, was rated highly by other clinical instructors, and had successfully completed all academic courses. Schweitzer at n. 344