MISREPRESENTATION BY STUDENTS IN ADMISSION APPLICATIONS AND STUDENT ACADEMIC DISHONESTY

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Admission Fraud:

1. The Student-University Relationship:

The student applies to a college or university in order to gain an education, the culmination of which is a degree. The student and institution have a relationship that is based in large part on contract theory. Contract theory is not to be rigidly applied to this relationship. It is to be understood as providing a framework only. Other areas of law are also used by courts to determine the elements of the unique relationship of the student and the university. [1] If the student abides by the university's rules, the student will gain the education and the degree which is sought. [2]

The application and subsequent acceptance of a student by a college is the "contract"; it is binding upon both parties and creates duties which can be legally enforced. [3] What will constitute the terms of the admission contract? Courts will look to the written materials provided to the applicant. These materials may include catalogues, bulletins, advertisements, material about specific studies, correspondence to the student, and the university rules and guidelines. [4] For the contract to exist, the basic requirements of offer and acceptance need to be fulfilled. The offer is the college's general offer to admit students who meet the criteria of the institution. The acceptance is the student's assertion that he or she meets the criteria and agreement to attend the university and abide by its guidelines. [5]

What happens when the student is not forthright in the information provided to the university for determination of acceptance? The contract was made based upon the assumption of honest information. By being dishonest in providing information, the student has committed an act of fraud. Basic contract law provides that fraud in the procurement of a contract negates the right to receive the benefits of the contract. [6] The Supreme Court of Appeals of West Virginia has gone so far as to suggest there is a compelling argument for university action from the proposition that "no rule or formalized written regulation is required to expel a student who

gains admission to a college or university by lies and deceit." [7]

While one court may agree with this basic precept, more substantial support for the university position is required. The status of the institution, either public or private, will have an impact on the process the institution needs to follow in order to discipline or potentially expel the fraudulently admitted student.

A) The Private University:

The private institution is bound by the contractual agreement formed by the offer and acceptance of admission. As such, the private college is required to follow the rules outlined in the university materials provided to the student. [8] In a disciplinary proceeding, the private college must follow the procedures set forth in those rules, for the only safeguards the student is entitled to are those provided rules. [9]

In Tedeschi v. Wagner College, [10] the court asserted the student-plaintiff could advance her rights based on elements of both contract and associations law. The court held the student had a right, as provided for in the school guidelines, to have her case heard before a Student-Faculty Hearing Board and to have her case reviewed by the university president. The decision was not academic, and the court was able to go beyond the question of whether the school acted in good faith. The court held that the informal review of the student's case did not substantially comply with the guidelines and ordered reinstatement if a proper hearing was not held within ten days. The student was not provided the university's safeguards and was entitled to all applicable safeguards.

The student of the private college is not entitled to the Constitutional protection of "due process" that the public university student is entitled to. Therefore, the protection that is contractually agreed to between the student and college becomes that much more important as that protection is all there is for the student.

B) The Public University:

The public institution has the student-college contractual relationship as well.

Additionally, the public institution is bound by constitutional requirements of "due process." Yet, the college may not be under an obligation to provide these safeguards to a student who is suspected of fraud if the fraud is discovered prior to the student's acceptance. "The potential enrollee. . . has no constitutional or 'civil right' to a 'due process' hearing to prove his qualifications." [11] This rule changes once the student is formally admitted; it would seem that justice requires there be an opportunity for the student to prove the pedigree of his or her qualifications. [12]

The university is bound to provide "due process" because the accepted student has a good argument that a property interest is created by the contractual relationship between the student and the university. While property interests are created by state law, the college would do well to enforce procedures that would satisfy the mandates of the Fourteenth Amendment on the assumption that a property interest does exist. [13] The assumption of a property interest is a proper one. Without the interest, the university would be able to decide if the student had committed fraud and deny outright any hearing based upon the assumption. Thus, even without the support of state law, it is prudent to provide the safeguards for courts may feel the potential deprivation is too great to risk not providing a hearing.

Academic Dishonesty :

University disciplinary decisions fall into one of two categories: academic or misconduct. Academic dishonesty, or "cheating", should be placed into the latter of the two; although, there are courts that reason that because the activity is coursework or academically related, the decision is an academic one. It has long been judicial interpretation that academic decisions, i.e. those regarding grades, advancement, etc. . ., were better left to those with the necessary expertise to decide those particular cases. Thus, the judiciary has allowed the university to retain more control over academic decisions.

The act of misconduct is another matter. It is the student's actions, i.e. dishonest actions, that should categorize the decision, not the subject matter involved. Discipline is a realm in

which the court is all too familiar, and the judiciary is not hesitant to involve itself. As with admissions decisions, there is a difference in what is required from private and public institutions.

A) The Private University:

The burden of the private institution for academic fraud cases is similar to the burden for admissions cases. The relationship is in essence contractual: the terms to be followed are found in the materials of the university. The private college is recognized to have broad discretion in the policies of discipline. In Dehaan v. Brandeis,[14] the court upheld a misconduct suspension where the institution "reserved the right to sever the connection of any student with the university for appropriate reason." [15] In jurisdictions where the courts view the relationship in contractual terms, the student's recourse rests on proving the university breached an agreed upon right, i.e. breached a stated or understood policy. [16]

Yet, a private university's discretion is not boundless. The court in Clayton v. Trustees of Princeton University [17] characterized that the right held by a student of a private college can be a judicially protected interest. The value of the degree from the attended university is important, and the impact of a suspension would tarnish the value and the impact of expulsion would deny the value outright. [18] By characterizing the student's right in this manner, the Clayton court was able to delve into the appropriateness of the school's disciplinary procedures, in addition to determining if the procedures were followed. Princeton University's procedure provided notice of the disciplinary process through extensive literature, adequate notice of the charges, a full hearing -- with a defense advisor and right of cross-examination, and review by the President . The court held these to be adequate to safeguard the student's rights.

The private college must outline its rules and regulations with sufficient specificity for the rules to be valid. Courts look to whether the regulations are reasonable and if the regulations are known to the student, or should have been known. [19] If the rules meet these criteria, the court looks next to see if there was substantial evidence to support the disciplinary

action of the school. [20] If the evidence is present, the university decision will be given a presumption of correctness. [21]

The private university is not bound by the constraints of providing "due process." The institution is only bound by the guidelines it chooses to provide. Yet, as caselaw demonstrates, the college's policies may be scrutinized by a court. Thus, the wise decision for a private university would be implement a system that does provide due process safeguards to its students.

B) The Public University:

The public university has similar powers to effect disciplinary sanctions. The right of public institutions to discipline a student is subject to the Constitutional limitations of procedural due process. [22] A decision based upon disciplinary reasons is afforded more stringent procedural requirements than a decision made for purely academic reasons. [23] How is an act of academic dishonesty categorized? Most courts have held that the dishonest act is an act of misconduct and should fall into the discipline category, even though the context of the act is academic in nature. [24] There are some courts that hold that because the context is academic, so too is the nature of the offense; this is probably an incorrect reading of the Horowitz decision, for the act of cheating is different than failure to achieve the minimum academic standards required for scholastic fitness. [25]

It is understood that process is due the disciplined student. Yet, exactly how much? The Supreme Court's ruling in Mathews v. Eldridge [26] provides the three factors for considering how much process is due: first, the private interest affected; second, the risk of an incorrect deprivation of rights and the value of additional safeguards; and third, the government's interest and the burden from additional procedural requirements. [27] The requirements of procedural due process were outlined in detail in the landmark case of Dixon v. Alabama State Board of Education [28]:

> The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the board of education. The nature of the hearing should vary depending upon the circumstances of the particular case. . . By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the . . . college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. . . [T]he rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. . . He should also be given the opportunity to present to the . . . college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. [29]

Thus, students should be provided sufficient notice of the offense(s) charged, and a hearing in which to present a defense.

What constitutes sufficient notice? Conceivably, there are two facets to notice: timing and content. When the student receives the notice of charge is as important as the details of the charge. Notice should be provided to the student to give sufficient time to prepare to rebut the charges. In some cases, as little as two days advance notice of a hearing has been held sufficient. [30] In other cases, a long delay in presenting the charges may improperly disadvantage the student. In University of Texas Medical School v. Than, [31] the date of the alleged offense was February 22. The school gave the student a detailed charge on April 4. The court held that the time delay prejudiced the student in his ability to adequately prepare a defense because the delay impaired witnesses' ability to recall specific details necessary to the student's defense. [32]

The content of the charges should be detailed enough to support the potential sanction to be imposed. [33] The student has no Constitutional right to more than a statement of the charge(s) against them. [34] A list of potential witnesses or the evidence to be presented against the student is not a necessary part of the notice. [35] While it is not necessary to fully explain the totality of the evidence the university has obtained, the student should be provided enough information to prepare a defense.

The student has the right to a response or a defense in the form of a hearing. The hearing itself must meet with the guarantees of due process with "fairness and integrity in the fact

-finding process." [36] In addition, the hearing officer or adjudicator should be independent and impartial. [37] The student has the right to put forth evidence to rebut the accusations made against him. If the evidence of the university is in the form of witness statements or testimony, the student does not have the right of cross-examination, although that right may be provided. [38] The hearing is to provide due process, but it need not equate with the rights provided a defendant in a criminal trial. [39] In Nash v. Auburn University,[40] the students were provided the opportunity to direct questions to the witnesses through the presiding chancellor. The fact that the student-defendants did not use the provided method was not a denial of due process. [41]

The student may be provided with an advisor or counselor to help the student with the preparation for the hearing. The right to counsel during the hearing may not be a necessary part of due process. Courts have found that there is a right to counsel, but the majority of cases find that an attorney is not an essential part of due process. [42] The situation is changed if there is the potential for criminal proceedings against the student for their actions, although this is unlikely for academic misconduct. In Gabrilowitz v. Newman,[43] the student faced criminal charges stemming from misconduct. The court held that the presence of an attorney, if only to provide advice to the student, would not be too intrusive to disallow the attorney's presence. [44]

The public universtiy's obligation to provide due process rights to its students is heavily monitored by the courts. The due process that the institution provides need not rise to the level found in a criminal court proceeding, but it must satisfy the basic tenets outlined above. The clearer the college drafts the regulations, and the greater the effort the college makes to ensure its students have access to those regulations, the better the college will be for its efforts. Equally as important as protecting the institution is the protection the college policies will provide to the institution's students.

Endnotes

1. Slaughter v. Brigham Young University, 514 F.2d 622, 626 (10th Cir. 1975).
2. Carr v. St. John's Univesity 231 N.Y.S.2d 410, affirmed, 187 N.E.2d 18 (1962).
3. Steinberg v. Chicago Medical School, 69 Ill. 2d 320, 332, 371 N.E.2d 634.
4. "The Admissions Process: New Legal Questions Creep Up the Ivory Tower", 60 Ed. Law Rep. 691.
5. Id.
6. North v. West Virginia Board of Regents, 332 S.E.2d 141, 145 (W.Va. 1985).
7. Id.
8. Tedeschi v. Wagner College, 404 N.E.2d 1302, 1305 (1980).
9. Holbert v. University of Chicago, 751 F.Supp. 1294, 1301 (N.D.Ill. 1990).
10. Tedeschi, at 1305.
11. Brookins v. Bonnell, 362 F.Supp. 379, 383 (E.D. Penn. 1973).
12. Id. at 384.
13. Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78, 83-85 (1978).
14. Dehaan v. Brandeis University, 150 F.Supp. 626, 627 (D.C.Mass. 1957).
15. Id.
16. Corso v. Creighton University, 731 F.2d 529, 531 (8th Cir. 1984).
17. Clayton v. Trustees of Princeton University, 608 F.Supp. 413, 436 (D.C.N.J. 1985).
18. Id.
19. Slaughter, at 625.
20. Id.
21. Id.
22. Goss v. Lopez, 419 U.S. 565, 576 (1975).
23. Horowitz, at 86.
24. University of Texas Medical School v. Than, 874 S.W.2d 839 (Tex. Ct. App. 1994).
25. Corso v. Creighton University, 731 F.2d 529.
26. Mathews v. Eldridge, 424 U.S. 319, 335 (1976).
27. Id.
28. Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961).
29. Id. at 158-9.
30. Jones v. Tennessee State Board of Education, 279 F.Supp. 190 (M.D. Tenn. 1968), affirmed, 407 F.2d 834 (6th Cir. 1969).
31. University of Texas Medical School v. Than, 874 S.W.2d 839.
32. Id.

33. Dixon v. Alabama State Board of Education, 294 F.2d 150.

34. Nash v. Auburn University, 812 F.2d 655, 663 (11th Cir. 1987).

35. Id. at 662-3.

36. Boykins v. Fairfield Board of Education, 492 F.2d 697, 701 (5th Cir. 1974).

37. Gorman v. University of Rhode Island, 837 F.2d 7, 15 (1st Cir. 1988).

38. Nash v. Auburn University, 812 F.2d 655, 663 (11th Cir. 1987), citing, Boykins v. Fairfield Board of Education, 492 F.2d 697, 701 (5th Cir. 1974).

39. Goss v. Lopez, 419 U.S. 565, 583 (1975)

40. Nash v. Auburn University, 812 F.2d 655, 664.

41. Id.

42. For cases declining counsel: Wasson v. Trowbridge, 382 F.2d 807; Garshman v. Pennsylvania State University, 395 F.Supp. 912; for cases allowing counsel: Givens v. Poe, 346 F.Supp. 202,209; Esteban v. Central Missouri State College, 277 F.Supp. 649, 651.

43. Gabrilowitz v. Newman, 582 F.2d 100 (ist Cir. 1978).

44 .Id. at 106-7.