CONTRACT LAW IMPLICATIONS OF ACADEMIC DISMISSAL OF STUDENTS AND THE USE OF CONTRACT LAW TO CHALLENGE UNIVERSITY ACTION

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I. The Contractual Relationship Between Student and University

A. Implied Contract. Since the parties do not negotiate an agreement which is found in one document, the contract depends upon mutual obligations implied by law.

1. Obligations of the University. The earliest obligations cited in case law were to act in good faith with the student while providing the knowledge necessary to obtain a degree and to award the degree if the student met all conditions satisfactorily. See People ex rel. Cecil v. Bellevue Hosp. Med. College, 14 N.Y.S. 490 (Sup. Ct. 1891), aff'd 128 N.Y. 615, 28 N.E. 253 (1891). Additional obligations have been implied in succeeding years such as:

a. To provide an atmosphere conducive to learning and free from disturbance. See Tedeschi v. Wagner College, 93 Misc. 2d 510, 402 N.Y.S.2d 967 (1978), aff'd, 70 App. Div.2d 934, 417 N.Y.S.2d 521 (1979).

b. To utilize fair and reasonable disciplinary procedures. See Swanson v. Wesley College, 402 A.2d 401 (Del. 1979).

c. To provide the curriculum promised. See Olsson v. Board of Higher Educ., 49 N.Y.2d 408, 426 N.Y.S.2d 248, 402 N.E.2d 1150 (App. Div. 1980).

d. To prevent discrimination based on race. See Sanford v. Howard Univ., 415 F. Supp. 23 (D.D.C. 1976).

2. Obligations of the Student. The student's obligations consist of paying tuition, maintaining satisfactory grades and complying with the standards of conduct set forth by the institution. See Carr v. St. John's Univ., 17 App. Div. 2d 632, 231 N.Y.S.2d 410, aff'd, 12 N.Y.2d 802, 187 N.E.2d 18 (1962); Peretti v. Montana, 464 F. Supp. 786 (D. Mont. 1979); Ross v. Pennsylvania State Univ., 445 F. Supp. 147 (M.D. Pa. 1978).

B. Determining the precise terms of the contract. Since there are a variety of representations made in both written and oral form by each party, it is often difficult to determine

the precise terms of the contract. The contract may include, but is not limited to, the college bulletin, the student handbook, the rules and regulations of the various schools, registration cards signed by students, oral statements made by faculty or other personnel, and all other relevant expressions of intent and purpose.

1. In Ross the court referred to a variety of written sources, including the University Bulletin, the Manual for Graduate Students, the "procedures for Graduate Students & Faculty Resolution of Graduate Student Problems", the Constitution and By-Laws and Standing Rules of the Faculty Senate, and "Policies and Rules for Students, 1975-76".

2. In Olsson, the court found that a professor's statements regarding examination criteria became a part of the contract.

3. In Healy v. Larsson, 67 Misc. 2d 374, 323 N.Y.S.2d 625 (Sup. Ct. 1971), the court held that guidance counselling was integrated into the contract provisions.

4. In Banerjee v. Roberts, 641 F. Supp. 1093 (D. Conn. 1986), the court acknowledged that a "contract" must examine the written and oral expressions of the parties in view of the policies and customs of a particular institution. The statements of the parties must be examined in their unique academic context.

C. Interpretive Principles Applied to this Contract

1. Rejection of the Straight Commercial Contract Model. Courts have generally agreed that commercial contract doctrine should not be rigidly applied to the student-university contract.

a. In Slaughter v. Brigham Young Univ., 514 F.2d 622, 626 (10th Cir. 1975), cert. denied, 423 U.S. 898 (1975), the court stated that "the student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category".

b. In Mahavongsanan v. Hall, 529 F.2d 448, 450 (5th Cir. 1976), the court found that the "claim of a binding, absolute unchangeable contract is particularly anomalous in the context of training professional teachers in post graduate level work".

c. "We believe that there is a valid distinction between a 'commercial case' and a case involving an implied contract between a college and a student", stated the court in Johnson v. Lincoln Christian College, 501 N.E.2d 1380, 1383 (Ill. App. Ct. 1986).

2. Doctrine of Academic Abstention. In cases dealing with "academic" decision-making, the courts often defer to the institution's autonomy in such areas, frequently resulting in decisions which are favorable to the educational institution. Even though the landmark cases of Board of Curators of the Univ. of Mo. v. Horowitz, 435 U.S. 78 (1978) and Regents of the Univ. of Mich. v. Ewing, 474 U.S. 214 (1985) primarily focused on due process concerns relative to academic dismissals, the courts, in contract cases, often refer to these cases as indicative of the deference which is to be accorded academic decision-making.

a. For example, in Olsson, the court commented upon this point, "Because such determinations rest in most cases upon the subjective professional judgment of trained educators, the courts have quite properly exercised the utmost restraint in applying traditional legal rules to disputes within the academic community". 49 N.Y.2d at 413, 402 N.E.2d at 1152, 426 N.Y.S.2d at 251.

b. Generally speaking, decisions regarding disciplinary dismissals receive more judicial scrutiny than cases involving academic dismissals. See, e.g., Mahavongsanan; Neel v. Indiana Univ. Bd. of Trustees, 435 N.E.2d 607 (Ind. Ct. App. 1982).

c. In cases involving academic judgments, courts show great deference and often require that students demonstrate that the decision was motivated by bad faith or arbitrary or capricious action. See Connelly v. University of Vt. and State Agricultural College, 244 F. Supp. 156 (D. Vt. 1965); Nuttleman v. Case Western Reserve Univ., 560 F. Supp. 1 (N.D. Ohio 1981).

d. Some commentators (see Nordin and Schweitzer) have noted, however, that judicial deference is often ill-advised since all "academic" decisions are not alike. "But not all 'academic' decisions and 'academic' evaluations of students by professors are equally deserving of deference, and courts have both the competence and responsibility to intervene to promote fairness in some cases". (Schweitzer, p.364)

3. Reasonable Expectations of the Parties. This standard analyzes the meaning that the party making a representation, i.e. the university, should reasonably expect the student to give it bearing in mind all the facts and circumstances surrounding the relationship.

a. The court, in determining the reasonable expectations of the parties may refer to academic custom and usage. See Zumbrun v. University of So. Cal., 25 Cal. App. 3d 1, 101 Cal. Rptr. 499 (1972); Peretti.

b. In Neel a dental student unsuccessfully argued that the entire student-university relationship was governed by the student rights handbook. The court, however, used the reasonable expectations standard to interpret the school's promotion policy as contained in a variety of documents and the unwritten practices of the Student Promotions Committee.

c. In Giles v. Howard Univ., 428 F. Supp. 603, 604 (D.D.C. 1977), the court, after reviewing the Student Promotions Policy, held that "the reasonable expectation of any student is that if he fails a course and does not make up the deficiency in the Directed Student Program, he can be dismissed or can be retained upon compliance with any reasonable condition...".

d. Changes in curricular requirements after a student has begun a degree program can be reasonably expected, according to some courts. See, e.g., Mahavongsanan and Peretti.

4. Adhesion Contract. Although a number of commentators have discussed the student-university relationship as one of adhesion (See Latourette and Davenport) and have suggested that since the university possesses disproportionate power in the relationship, it may be appropriate to interpret the contract strictly against the drafter of the contract, i.e., the university, not many courts have adopted an adhesion theory.

a. See Eisele v. Ayers, 381 N.E.2d 21 (Ill. App. Ct. 1978) in which the court declined to adopt the adhesion contract rationale despite the students' argument that the imposition of a hefty tuition increase combined with their lack of bargaining power made the contract one of adhesion.

b. The court, in Corso v. Creighton Univ., 731 F.2d 529, 533 (8th Cir. 1984), did rely on the adhesion principle as it stated that when "the contract is on a printed form prepared by one party, and adhered to by another who has little or no bargaining power, ambiguities must be construed against the drafting party".

II. A Review of Cases Dealing with a Contract Analysis of Various Academic or Academic-Administrative Issues.

A. Admissions/Tuition Cases.

1. In Steinberg v. Chicago Medical School, 371 N.E.2d 634 (Ill. 1971), a prospective student prevailed when he alleged that the college failed to evaluate applicants according to the stated criteria in the school's informational brochure. The court found that a contract was created, for the sole purpose of evaluating an application, when the college accepted the application fee from the student. The student had alleged that students were admitted according to their ability to generate contributions to the school and based on their relationship to the school's faculty and board, criteria not listed in the brochure.

2. In Eisele, a court upheld a medical school's tuition increase of 57.6%. Although the students argued that the school was bound by a standard of reasonableness in increasing tuition, the court refused to adopt this position. The court reasoned that the students' "expectations" of future conduct by the school were not sufficient to be a contractual obligation. See also Basch v. George Washington Univ., 370 A.2d 1364 (D.C. App. 1977).

B. Academic Dismissal/Failure to Award Degree.

1. In Ross, a graduate student was dismissed during his second semester of coursework on the basis that his grade point average was below the average necessary to graduate. The court, using the "reasonable expectations" principle of interpretation, found that the 3.0 grade point requirement was a graduation requirement and there was no indication to a student that a failure to maintain a certain average before graduation was grounds for dismissal. The court also noted that the student's contract gave him a property right under state law in his graduate

education.

2. In Love v. Duke Univ., 776 F. Supp. 1070 (M.D. N.C. 1991) a graduate student was discharged from a university's biochemistry program. The student, who had been terminated from the program because of failing grades, was readmitted to the program. When the student was readmitted, a policy was in effect which stated that all doctoral students had to take their preliminary exams by the end of their third year in residence. The plaintiff did not complete his exams timely and was terminated according to program guidelines. The student argued that he should have had 3 years from the date of his readmittance to take the exams yet the court noted that he admitted that he was considered a second year student upon his readmittance. Further, the court held that there was no binding contract created by the academic bulletin. But see, University of Texas Health Science Center at Houston v. Babb, 646 S.W.2d 502 (Tex. Ct. App. 1982), in which the court held that a nursing student was entitled to rely upon the terms of the catalog under which she entered.

3. In DeMarco v. University Health Sciences, 352 N.E.2d 356 (Ill. App. Ct. 1976), the court ordered the institution to award a medical degree, 30 years after the student completed all but 6 weeks of his medical training. The student had been expelled for a mis-statement of fact on his application form. The court based its analysis on the fact that the student had fulfilled the conditions for graduation set forth in the catalogue.

4. In Sofair v. State Univ. of New York, 388 N.Y.S.2d 453 (App. Div. 1976), rev'd on other grounds, 406 N.Y.S.2d 276 (1978), a medical student was deprived of a degree "solely upon the faculty's genuine doubt concerning the student's fitness". Id. at 457. The student attempted to argue that he was entitled to a degree since his grades and the dean's letter of recommendation were sufficient to ensure his status to receive a degree. The court, in a display of academic abstention, commented upon a professional school's responsibility to take extraordinary measures to assure the competence of its graduates and held in favor of the school.

5. In Easley v. University of Mich. Bd. of Regents, 627 F. Supp. 580 (E.D. Mich. 1986), a law student argued that he was entitled to a J.D. degree because he had attained 80

credits, the number of credits indicated in the law school bulletin when he matriculated. During his first term, the number had been changed to 81. The court rejected the student's contract claim, as it reasoned that the bulletin stated that the number was subject to change and was not a contract term.

6. In Russell v. Salve Regina College, 649 F. Supp. 391 (D.R.I. 1986), aff'd, 890 F.2d 484 (1st Cir. 1989), rev'd on other grounds, 111 S. Ct. 1217 (1991), a federal district court and the First Circuit upheld a jury award against the institution which had dismissed a nursing student because of her extreme obesity. The First Circuit noted that the student had completed 124 out of 128 credits successfully and that her only failing grade, in a clinical course, was related to her obesity. Although the nursing department contended that it required nurses to be models of health for their patients, in addition to performing competently, the appellate court held that the health provisions "are not a license for administrators to decide late in the game that an obese student is not a positive model of health" (Id. at 1220).

C. Promissory Estoppel Cases. In a number of situations, courts have used promissory estoppel theory to analyze the student-university relationship. Promissory estoppel is a quasi-contractual doctrine in which: 1) one party (Party A) says or does something that he intends or expects another party to rely upon; 2) a second party (Party B) does reasonably rely upon the words or conduct of Party A; and 3) as a result of the reliance, Party B suffers injury or loss. These cases often arise in the context of oral representations by faculty or advisors concerning requirements for graduation.

1. In Blank v. Board of Higher Education, 51 Misc.2d 724, 273 N.Y.S.2d 796 (Sup. Ct. 1966), the court held that the college was estopped from denying the student a degree. Oral waivers of residency requirements by a number of faculty members were sufficient, reasoned the court, to cause the student to reasonably rely upon their advice. The court concluded, therefore, that the student did not have fair warning that certain courses did not count toward his degree plan.

2. A student fulfilled all the requirements for graduation which had been conveyed to him by a guidance counselor at a public community college in Healy. The court held that the

statements by the counselor formed the terms of the contract with the student, and since he had met them, he was entitled to his degree.

3. In Olsson, the student failed his candidacy exam for a master's degree in Criminal Justice and argued that his failure was based upon a misunderstanding of the scoring system as explained by a professor in a review session for the exam. Instead of making it clear that students needed to score 3 out of 5 points on 4 out of 5 questions, the professor stated that the students needed to score only 3 out of 5 on 3 of the questions and attain an overall score of 2.8. The student failed the exam because he received a passing score on only 3 of the questions. He asserted that he would have allocated his time differently had he known the actual scoring system. In another endorsement of academic abstention, the court held that it was essential that the decisions surrounding the issuance of academic credentials be left to the judgment of those who monitor the progress of students on a professional basis and found for the institution.

4. In Wilson v. Benedictine College, 445 N.E.2d 901 (Ill. App. Ct. 1983), a student claimed that because of his reliance upon a faculty advisor to advise him of the consequence of unsatisfactory grades in 2 courses, he was unable to graduate. The court noted that the student's reliance upon the advisor's lack of warnings was unreasonable because the college bulletin was clear on the requirements for graduation. The bulletin's recommendation that students "meet with their faculty advisors for counseling at least once a semester" did not create an obligation to meet and did not impose a duty upon the advisor to advise students of their deficiencies.

5. In Shields v. School of Law, Hofstra Univ., 431 N.Y.S.2d 60 (App. Div. 1980), a student failed moot court at the end of her first year of law school making her cumulative average go below 2.0, which meant automatic dismissal. However, the assistant dean of students allegedly represented to her that if she successfully rewrote her moot court brief, her failing grade would not be calculated in her cumulative average. She was allowed conditional second-year standing, but when she submitted her rewritten brief in the next fall semester and received a passing grade, her failing grade was still put into the cumulative average. As a result her

cumulative average was still below 2.0 at the end of that semester. Although she received a one semester extension, she was unable to bring her average to a 2.0 and was dismissed at the end of her second year. The court, in granting summary judgment for the institution, held that the student did not assert the necessary element of prejudice in making her estoppel claim.

6. In Cuddihy v. Wayne State Univ., 413 N.W.2d 692 (Mich. Ct. App. 1987), a student was dismissed from a master's program in special education. Because she was having academic difficulties, her advisor suggested that she switch from the doctoral track to the clinical track, which required student teaching with 3 public school teachers and a comprehensive exam, instead of a research thesis. The student did so but failed the comprehensive exam and received less than satisfactory grades from 2 of the 3 teachers. The student asserted that her advisor had promised that she would finish the program by September, 1978 and that she had relied upon that promise. The court declined to give her relief as it held that: 1) the "promise" was merely an opinion; and 2) the statement by the advisor could not be the basis for reasonable reliance since the student must have been cognizant that she could not graduate without maintaining her grades and passing her examinations.

D. Failure to Deliver Educational Services. Although courts have consistently rejected attempts to re-package educational malpractice claims as breach of contract actions, some courts have been receptive to contract actions in situations where students were able to allege that the university has reneged on specific representations made to students.

1. In Ross v. Creighton Univ., 957 F.2d 410 (7th Cir. 1992), a former student-athlete brought an action against the university which had recruited him, alleging that it recruited him despite its knowledge that he was not educationally prepared to perform college work. Further he alleged that the university failed to provide any real access to its academic curriculum. His action against the university raised a tort claim of educational malpractice and breach of contract. The district court dismissed the complaint for failure to state a claim but the Seventh Circuit, while affirming the dismissal of the educational malpractice claim, held that the plaintiff had stated a breach of contract claim. The court reasoned that a claim alleging that the academic services he

received was deficient would not be cognizable since it would simply be a re-packaging of an educational malpractice claim, a cause of action not recognized by the jurisdiction. However, since the student alleged that he was barred from any participation in and benefit from the university's academic program, that claim may be adjudicated by the district court without "second-guessing the professional judgment of the University faculty on academic matters" (p.417). (This matter was settled by the parties before it was heard on remand by the district court.)

2. In Jackson v. Drake Univ., 778 F. Supp. 1490 (S.D. Iowa 1991), a student-athlete who was unhappy regarding the way he was treated and the way in which the men's basketball program was run, brought an action against the university based on: 1) breach of contract; 2) negligence; 3) negligent misrepresentation; 4) fraud; 5) negligent hiring; and 6) violation of his civil rights. The court granted summary judgment on the breach of contract claim as it disagreed with the student's contention that the financial aid agreement contained an implicit right to play basketball. The court, however, found that the university had performed the obligations imposed by the financial aid agreement and there was no implicit right to play basketball to be found within the document. See also Hysaw v. Washburn Univ., 690 F. Supp. 940 (D. Kan. 1988).

E. Elimination/Accreditation of Programs.

1. In Behrend v. State, 379 N.E.2d 617 (Ohio Ct. App. 1977), the students' breach of contract claim was successful in a case in which a group of architecture students were promised that their program would be accredited by the time of graduation. The students had been repeatedly reassured that if they attended and worked diligently, they would receive an accredited degree. However, the program was eliminated for financial reasons. The appellate court, in ruling for the students, held that accreditation was an implied-in-fact contractual term for study in a professional field.

2. In Peretti, a student prevailed when a vocational education center discontinued its aviation technology program. Since this technical program required 6 quarters of consecutive enrollment before a student could receive a certificate, any period shorter than that would be

useless for employment purposes or for transfer to another program. Therefore, the court held that there was an implied contract that any student who enrolled would be given the opportunity to complete the training.

III. A Review of Recent Cases Dealing with a Contract Analysis of Various Academic or Academic-Administrative Issues

A. Admissions Cases.

1. In Betts v. Rector and Visitors of Univ. of Va., 939 F. Supp. 461 (W.D. Va. 1996), a student who participated in a state university's Medical Academic Advancement Post-Baccalaureate Program (MAAP) designed for economically disadvantaged and minority students was denied admission to the medical school. Suit was filed by the student claiming violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, due process and breach of contract. The motion for a preliminary injunction was denied. The MAAP program granted admission to the university's medical school for applicants who: 1) completed the program with a minimum grade point average of 2.75 per semester; 2) received no grade below a C; and 3) met the requirement of "satisfactory performance" to be judged by a "faculty committee". The student, who failed to maintain the necessary GPA in the summer and fall semesters of 1995 and received a D- in physics, was allowed, by a faculty committee, to continue in the program if he received tutoring and tested for a learning disability. A mild learning disability was discovered and the student was given double time for his exams. At the end of the spring semester, the student received a 2.838 GPA but his cumulative GPA was still below the necessary 2.75. The faculty committee decided that the student had failed to demonstrate his preparation for medical school and rescinded his offer of admission under the MAAP program. On the breach of contract claim, the student argued that the university had waived the GPA and low grade requirements when it allowed the student to continue in the program. The court, however, stated that even if the university waived the requirements by allowing the student to remain in MAAP, the university had specifically reserved the right to deny entry upon reevaluation by a faculty committee and the

university did not deviate from this promised course of action. Therefore, there was no breach of contract by the university in this situation.

2. In Keles v. Yale Univ., 889 F. Supp. 729 (S.D. N.Y. 1995), a prospective doctoral student whose application for admission was denied, brought suit against the university alleging fraud and breach of contract. On the first occasion that he was denied entry, a professor offered the student a position as a research assistant. Subsequently, the student's next three applications were denied and the student asserted that the position as a research assistant was evidence that he had been accepted to the doctoral program. The court disagreed as it commented that the student's contract claim was so lacking in plausibility that no reasonable fact finder could reach a verdict for the student on his contract claim. The court noted that the plaintiff must have been aware that a student must comply with an educational institution's rules and regulations in order to be admitted as a doctoral student. The plaintiff, reasoned the court, could not have reasonably believed that he had been admitted to a doctoral program without complying with the university requirements.

B. Academic Dismissal/Failure to Award Degree.

1. In Banks v. Dominican College, 42 Cal. Rptr. 2d 110 (Ct. App. 1995), a student enrolled in a one-year graduate program leading to a teaching credential. The student's first semester performance in the classroom was satisfactory but she exhibited several unacceptable behaviors during her student teaching in an elementary school in the second semester, leading to an "Incomplete" grade in student teaching and her inability to complete her course of study. The student had several difficulties with parents, she exhibited angry behavior with her students, and she left second graders unsupervised for several minutes at a time. The student brought her suit based on: 1) fraud; 2) breach of contract; 3) defamation; 4) misrepresentation; and 5) infliction of emotional distress. The court held that there was no evidence of fraud or breach of contract and affirmed summary judgment for the college. The court also found all her claims to be frivolous and awarded sanctions against her.

2. A student in a 7-week phlebotomy program was expelled for poor performance

in Haynes v. Hinsdale Hospital, 872 F. Supp. 542 (N.D. Ill. 1995). The student did poorly in her first 4 exams and was sent a memo that she would not be able to pass the course and she was on academic probation unless she achieved a passing grade in 5 areas, including her ability to relate to patients and draw blood properly. The student received negative reviews by two phlebotomists after her rounds and she was expelled. The court noted that the school did not promise to certify her regardless of her performance. The memo set out certain criteria to qualify and the evidence shows that she did not achieve the conditions of her probation. Further, the dismissal was made based on all the facts surrounding the probation and was not arbitrary nor capricious. The defendant was, therefore, entitled to summary judgment.

3. In Benson v. Trustees of Columbia Univ., 626 N.Y.S.2d 495 (App. Div. 1995), a doctoral candidate who failed her final oral exam sought an order directing the university to change its determination or to grant her a second oral defense. The appellate court affirmed the denial of the order. The court held that there was no breach of contract since the student's allegations that the faculty violated certain provision of the Ph.D. guidelines were contradicted by the guidelines themselves.

4. In Bilut v. Northwestern Univ., 645 N.E.2d 536 (Ill. App. Ct. 1994), a doctoral candidate in speech and language pathology alleged that the university breached a contract by failing to award her the Ph.D. degree. After 5 years of her candidacy (the time period set forth in the handbook for completion of the dissertation), the student had not yet completed an acceptable prospectus, the first stage of her dissertation. Therefore, the faculty voted not to grant her an extension of time to complete her dissertation. The appellate court, after making it clear that a mandatory injunction would not be an appropriate remedy in this type of case, held that it would not overturn a decision by the defendant in regard to the student's academic qualifications in deference to the university's ability to handle its own academic affairs. The university did not act arbitrarily or capriciously and therefore, the student was unable to show that her dismissal was without any discernible rational basis.

5. In Seare v. University of Utah School of Medicine, 882 P.2d 673 (Utah Ct.

App. 1994), a fifth year surgery resident alleged that the university breached a contract with him in not certifying him to sit for the general surgery board exam. The plaintiff, who had agreed to and had received training suitable to entering an additional two years of plastic surgery residency, did not prevail. The court noted that there was no express covenant or promise to train the plaintiff to become a general surgeon nor to automatically certify him to sit for the general surgery board exam. The university did not breach a contract with the student when it, in good faith, determined that the plaintiff lacked the necessary training to be certified as competent to take the exam.

C. Elimination/Accreditation of Programs.

1. In Cooper v. Peterson, 626 N.Y.S.2d 432 (Sup. Ct. 1995), a university wrestling program was dropped and students who had been recruited to come to the school to wrestle, sought an injunction to keep the university from eliminating this program until the plaintiffs had graduated. The students based their claims on fraud, misrepresentation, and breach of contract. The contract claim was barred by the Statute of Frauds, stated the court, as an unwritten contract which could not be performed within one year. The students argued that their partial performance of the contract removed it from the Statute of Frauds but the court disagreed. The court reasoned that the acts performed by the students, in coming to the university, were not "unequivocally referable" to the purported wrestling agreement. Further, even if there was no problem with the Statute of Frauds, the court acknowledged that it would have recognized a university's right to have flexibility to make changes in furtherance of its educational responsibilities.

D. Failure to Deliver Educational Services.

1. In Gundlach v. Reinstein, 924 F. Supp. 684 (E.D. Pa. 1996), a law school graduate sued the university and its law school alleging breach of contract and interference with contractual relations. The student alleged that, during his final semester of study, he was forced to withdraw from all but one of his classes and was allowed to visit the campus only to attend the class and take the exam. Therefore, he was denied access to law school facilities such as the library and career placement center. The court held that the breach of contract claim failed to state a

claim for relief because the complaint did not identify the specific manner in which the university allegedly breached the contract. Although the student alleged generally that he was not provided with the full benefits and privileges of enrollment, the court noted that the student failed to identify the specific benefits he was allegedly promised, the means by which he was promised them, and the manner in which the university allegedly reneged on these promises. The court granted the university's motion for summary judgment.

2. In Cencor, Inc. v. Tolman, 868 P.2d 396 (Colo. 1994), a number of students who had attended the defendant's vocational school, which trained students for technical jobs as medical and dental assistants, brought claims based on educational malpractice, misrepresentation, and breach of contract. The Colorado Supreme Court reversed summary judgment for the defendant on the breach of contract claim since the plaintiffs had alleged "specific contractual obligations the defendant owed", based on representations in the catalog. For example, the students alleged that the equipment and instruments used for training were not "up to date" as promised and the students were not working "under the supervision of qualified faculty" as indicated in the catalog. The court held that summary judgment on the contract claim was not appropriate since there was a material issue of fact regarding whether the school provided what it said it would in the catalog.

3. In Andre v. Pace Univ., 161 Misc.2d 613, 618 N.Y.S.2d 975 (City Ct. 1994), two students brought malpractice and breach of contract claims against the university after a course which was listed in the catalog as a basic computer programming course, requiring only basic math skills, was actually taught from a textbook targeted toward computer science majors, scientists, and engineers. The court held that the school breached its educational contract with the students in such a manner as to strike at the very heart of the transaction.

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