

ACADEMIC FAILURE
vs.
ACADEMIC DISHONESTY:
The Legal View

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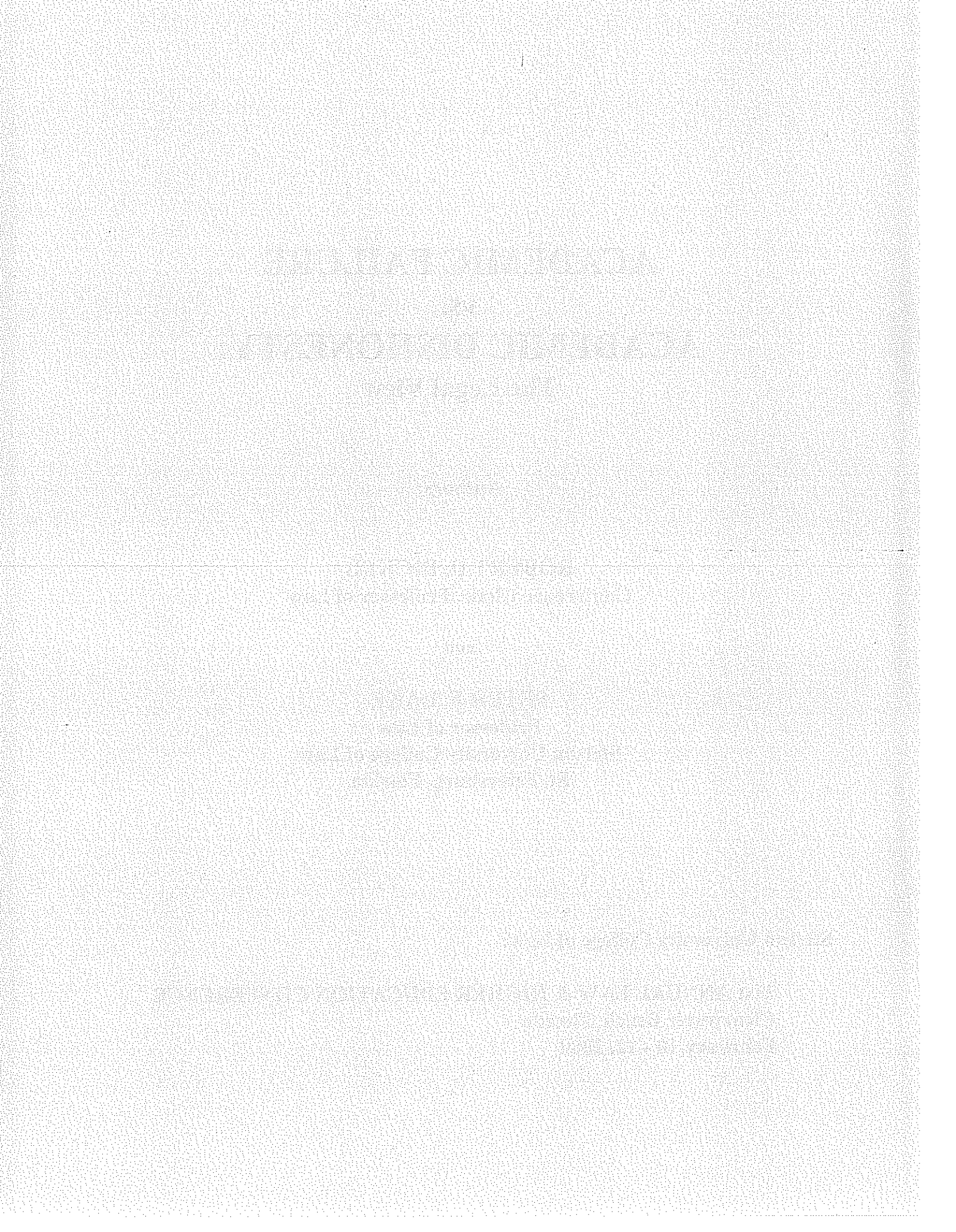
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ACADEMIC FAILURE VS. ACADEMIC DISHONESTY: THE LEGAL VIEW

A brief paper prepared by

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THE DEFINITION OF ACADEMIC DISHONESTY

In Board of Curators of the University of Missouri v. Horowitz, 435 U.S. 78 (1978), the United States Supreme Court explained the fundamental distinction between academic dismissal and student misconduct. Horowitz was admitted to the university's medical school in 1971. During her first year, several faculty members expressed dissatisfaction with her clinical performance during a pediatrics rotation. The faculty members mentioned specifically that: (1) Horowitz's performance was below that of other students in all clinical patient-oriented settings; (2) her attendance was erratic in all clinic sessions; and (3) she lacked a critical concern for personal hygiene.

The medical school's academic protocol provided for periodic review of student performance by a Council on Evaluation – a faculty/student panel – which was authorized to recommend academic probation or exclusion. The recommendations of the Council were subject to review by a faculty Co-ordinating Committee, which in turn made recommendations to the Dean. Students were not generally allowed to appear before the Council or the Committee.

Faculty members continued to be dissatisfied with Horowitz's performance during her second year, and the Council recommended that, absent 'radical improvement' in her performance, she should be 'dropped' from the school. Despite the absence of a formal provision for a hearing or appeal, the faculty allowed Horowitz to 'take a set of oral and practical' examinations as an 'appeal' of the decision not to allow her to graduate 'on time.' As a part of this *de facto* procedure, Horowitz was reviewed by seven practicing physicians, five of whom recommended that she be continued on probation, or academically dismissed. Noting these evaluations, and a 'low-satisfactory' evaluation of

her most recent surgery rotation, the Council recommended that – absent radical improvement – Horowitz be dismissed. When a subsequent evaluation of her ‘emergency’ rotation was unsatisfactory, the Council unanimously recommended dismissal.

Citing its prior decisions in Perry v. Sindermann, 408 U.S. 593 (1972), and Board of Regents v. Roth, 408 U.S. 564 (1972), the Court held that a student enrolled at a public, tax-supported college or university might well have a property or liberty interest in her continued enrollment¹; however – even assuming arguendo that Horowitz’s interests in continued enrollment were protected by the Fourteenth Amendment – the university’s actions were appropriate.

In upholding the dismissal of a public employee in Bishop v. Wood, 426 U.S. 341 (1976), the Court had held that a person is not deprived of a liberty interest (for Fourteenth Amendment purposes) simply because he is not rehired in one job, but remains free to seek other employment – where there is no publication of the reasons for the termination. In Horowitz, the Court declined to pursue the question whether the same rule applies to the academic dismissal of a student seeking to pursue a medical career – holding instead that Horowitz had been afforded at least as much due process as the Constitution requires in any event. The Court observed that the school’s decision to dismiss Horowitz was ‘careful and deliberate,’ and its procedures were sufficient to allow Horowitz to demonstrate her academic ability and correct the deficiencies in her performance. More specifically, the Court held that its seminal decision in Goss v. Lopez, 419 U.S. 565 (1975), on the subject of student due process rights, does not require a formal hearing on the subject of a student’s academic ability and performance prior to dismissal: **There is a “significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct.”** This difference, the Court held, calls for “far less stringent procedural requirements in the case of an academic dismissal.” For more than 60 years, the Court observed, federal courts have consistently recognized that there are distinct differences

¹ Horowitz did not allege that her interest in continued enrollment constituted a property interest, subject to the Fourteenth Amendment’s due process clause. She did, however allege that her dismissal deprived her of a ‘liberty’ interest by impairing her opportunities to continue her medical education and employment.

between decisions to suspend or dismiss a student for disciplinary reasons, and similar actions taken for academic reasons – reasons which may call for hearings in the former, but not the latter. Misconduct is very different from the failure of a student to meet a standard of academic excellence in her studies.²

The Court explained that the educational process is not by its nature adversarial but is based upon the relationship between student and teacher. This is especially true, the Court continued, as the student advances through the program of study and instruction becomes more individualized and specialized. Disciplinary proceedings, in which it must be determined whether to punish a student for insubordinate or disruptive behavior, is more appropriately the subject of an adversarial hearing – but is inappropriate and perhaps even harmful in assessing the student’s scholarship, or academic ability. In sum, the Court held, a quasi-judicial, or judicial hearing is not an appropriate way to evaluate academic performance because courts (and administrative hearing bodies) are not qualified to evaluate academic performance. Simply put, courts should not intervene into academic decision-making.³

HELD: The failure of a student to meet purely academic requirements calls for less stringent procedural requirements than situations of student misconduct; so long as the college’s decision to academically dismiss a student is not arbitrary or capricious, a court will not substitute its judgement for that of faculty or academic administrators. When judges are asked to review the substance of a genuinely academic decision, they should show great respect for the faculty’s professional judgement, and should not overturn a faculty decision unless it is such a departure from accepted academic norms that it is not a ‘professional’ decision.

CHEATING AS MISCONDUCT

In contrast to unsatisfactory academic performance, allegations of student misconduct demand – in the public university setting – at least minimal due process, in the form of an informal ‘give and take’ – or in some states, something more.

² Citing Mustell v. Rose, 211 So.2d 489 (Ala. 1968), Foley v. Benedict, 55 S.W.2d 805 (1932), and Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1975)

³ See also Regents of University of Michigan v. Ewing, 474 U.S. 214 (1985).

CASE STUDY: Stuart Dent was enrolled in a Ph.D. program in Psychology at State University. In his first semester, he was required to take a course in psychological assessment from Dr. Kay Cerra-Cerra. The course required each student to administer field tests, including the Wechsler Intelligence Scales, to subjects not related to the student. Dr. Cerra-Cerra observed tapes of Mr. Dent's field testing practicum, and concluded that his administration of the Wechsler Intelligence Scales as one of the worst she had ever observed. She also observed that he frequently fell asleep in classes (to the point of snoring on one occasion), and that he frequently turned in assignments late. Finally, she discovered that he chose his brother as a test subject, in a "case staffing" unit in her class, representing that he was "a friend."

Academic guidelines in the program (established by faculty and distributed to each student) suggested that, when testing protocols contained errors, the student was required to administer and score a new test of a subject. Dr. Cerra-Cerra learned from her graduate student that, when Dent's protocols were returned to him with a notation of errors, he frequently returned them fifteen minutes later, with 'corrections and changes.' The graduate assistant observed that he was concerned that some of the responses in Dent's protocols were almost identical to sample answers in the appendix to the textbook.

During a subsequent faculty meeting, Dr. Cerra-Cerra expressed concern about Dent's commitment to the program and the field of psychology, and his compliance with professional practice standards. At least one other faculty member expressed concern that Dent had 'fabricated' test results, and the issue was discussed at the meeting.

At the same time, Dent's grades on oral and written exams in two other courses included a large number of "C" grades. He was placed in a remedial plan, requiring completion of certain coursework and examinations. Dent received C grades in three of these courses, and also failed a comprehensive examination in school psychology required by the remediation plan. Program requirements stated clearly that a student was subject to dismissal from the Ph.D. program if s/he earned grades of "C" or lower in two courses, regardless of the student's overall GPA. At its next faculty meeting, the faculty assessment committee voted unanimously to dismiss Dent from the program. Dent writes a memorandum to both the faculty of his program, and the Vice-President for Student Affairs, demanding an adversarial hearing on the matter of his dismissal, alleging that he was dismissed because of concerns that he cheated in various courses.

STOP: BEFORE READING FURTHER, DISCUSS THIS SCENARIO AND DECIDE WHETHER THE UNIVERSITY IS REQUIRED TO HOLD AN ADVERSARIAL HEARING ON THE MATTER OF DENT'S DISMISSAL FROM THE PROGRAM IN PSYCHOLOGY.

See Wheeler v. Texas Woman's University, 168 F.3d 241 (5th Cir. 1999), holding that – where academic officials took a series of steps to carefully and deliberately evaluate a graduate student's performance, the ultimate decision to dismiss him on the facts as generally stated in the instant scenario was the

result of his failure to comply with course and examination requirements, including the performance required by the remediation plan. The court held that the remedial plan was instituted because of Wheeler's unsatisfactory academic performance, and not because of any allegation of academic dishonesty. Moreover, the faculty members who administered the remedial course requirements that Wheeler failed were not a party to any suggestion of academic dishonesty in prior courses. Knowledge of 'rumors' of academic dishonesty do not automatically taint an academic decision, and a faculty decision on academic dismissal will be upheld where the facts show a good faith exercise of professional judgement regarding the student's academic performance.

The court's decision is based upon the facts of the case. The court made it clear that, *if the decision to place Wheeler in the remedial plan, or the decision to dismiss him were based on concerns about cheating – or allegations of cheating – he would be entitled to a disciplinary hearing to contest the allegations.* Indeed, in addition to the pronouncements of *Goss v. Lopez*, Texas law requires more than an informal 'give and take' when a student is expelled or suspended for misconduct, including alleged academic dishonesty.

CASE STUDY: Stuart Dent and Sophie Moore were enrolled in a statistics course taught by Professor Peter Roberts. Students in the course were issued individual computer accounts and confidential passwords. At the end of the third week of the course, Dr. Roberts distributed a 'take-home' examination, containing four problems. The written instructions clearly indicated that, in completing the exam, students were allowed to refer to their own class notes, manuals, and prior homework. They were also allowed to consult with Dr. Roberts. However, the instructions clearly indicated that "It is considered cheating to give or receive any unauthorized assistance on this exam." When Dr. Roberts graded the exams submitted by Dent and Moore, he discovered that the papers contained identical wrong answers. No other student made similar errors. He asked for a meeting with Dent and Moore and asked for their user names and passwords. A printout of the data entries compiled by the two students showed an omission of three numbers in the exact sequence in a set of ninety numbers. A second data entry showed identical repetitions of three numbers resulting in an incorrect total of 48 data sets rather than 45. Other common errors, format incongruencies, and common peculiarities appeared uniquely on the two exams. At Dr. Roberts request, the university's student conduct officer conducted a hearing at which it was also shown that the students had entered rows of data in the exact reverse order; used the numbers 1 and 2 instead of M and F for male and female entries; omitted the same requested key term in two questions. Each of these errors was apparent only in the papers submitted by Dent and Moore. At the hearing, Dent and Moore were allowed to explain the apparent misconduct. They alleged that the errors were simply the result of coincidentally similar habits, or were the result of computer or printer 'glitches.' They denied collaborating on the exam. Dent and Moore were placed on indefinite disciplinary suspension. **QUESTION: What standard should be applied to the judicial review of the university's action?**

DUE PROCESS IN ACADEMIC MISCONDUCT CASES

Constitutional law would require a hearing characterized by notice, reasonable opportunity to respond and confront a summary of the evidence, and to present explanations, and a record, in this situation. State law, including administrative procedures acts, may require a more elaborate hearing. In Tatum v. University of Tennessee, 1998 WL 426862 (Tenn. App. 1998), the state appellate court upheld the decision of an administrative hearing officer [under Tenn. Code Ann. § 4-5-322(h)] that the facts described above supported a conclusion that the students had collaborated in violation of the instructor's guidelines regarding academic integrity. The court held that, under the state's administrative procedures act, the hearing officer's determination of cheating must be supported by evidence which is both substantial and material in light of the entire record. The court found the evidence of cheating sufficient under this standard and affirmed the university's suspension of the two students.⁴

COMMUNICATION OF CHARGES – ALLEGATIONS OF DEFAMATION: In Dean v. Wissmann, 1999 WL 311310 (Mo. Ct. App. 1999)(unpublished and subject to rehearing), a nursing student alleged that he was falsely accused by a professor of stealing or attempting to steal tests before exams (The accusation was made in a confidential letter to the nursing school dean). The university's handbook provided for a two stage procedure in cheating cases: (1) A private meeting between professor and student; (2) A written report by the professor to the vice-president for student affairs. The professor sent copies of his report to the *assistant* vice-president for student affairs, the chair of the nursing school, and the dean of the college, as well as the vice-president for student affairs. **HELD:** The report was not published beyond the appropriate 'need to know chain,' and was thus privileged under defamation law. A faculty member at a state university is entitled to 'intra-corporate immunity' under state law, where the officials who received copies of her report had a direct interest in the matter.

⁴ The court defined 'substantial and material evidence' as such relevant evidence as a reasonable mind might accept to support a rational conclusion and furnish a reasonably sound basis for the action questioned. The state's APA provided that an agency's decision could be overturned by the court if found to be in violation of constitutional and statutory procedures; in excess of the statutory authority and discretion of the agency; or characterized as arbitrary or capricious.

**THE DUE PROCESS STANDARD IN ACADEMIC DISHONESTY CASES
AT PRIVATE COLLEGES**

As more fully discussed in our paper on the student disciplinary process, the relationship between the private college and its students is contractual, not constitutional. Thus, the private college may prescribe the ethical and academic standards that its students must observe. It is not the function of a court, in these instances, to decide whether a student should be punished or to select the appropriate punishment for violations of a private university's ethical or academic standards. See Holert v. University of Chicago, 751 F.Supp. 1294 (N.D. Ill., 1990). In *Holert*, the federal court observed that the findings of a private university's disciplinary committee will be upheld by a court, unless it is proven that the decision was made arbitrarily, or in bad faith. The court explained that a decision is arbitrary and capricious only if it is without any discernible rational basis, citing *People, ex rel. Tinkoff v. Northwestern University*, 77 N.E.2d 345 (Ill. App. 1947), and *Wilson v. Illinois Benedictine College*, 445 N.E.2d 901 (Ill. App. 1983).

