

# **Legal Implications for U.S. Universities Enrolling International Students**

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This paper is an abbreviated version of a paper written in fall 2010 for a college course on higher education law. It explores 19 cases that have come up over the last several years and is designed to identify areas of potential legal concern for universities that seek to enroll more international students. Its purpose is to offer insight into legal issues that have arisen or may arise, and to consider how universities might avoid circumstances that could lead to grievances or lawsuits, or could undermine an institution's ability to attract more international students. It also examines emerging issues.

## **Method**

The study began with a broad search, primarily through legal databases and journals of international education and education law, for lawsuits and other potential legal conflicts. Lawsuits in which a student's nationality is largely irrelevant to the legal question were excluded, as were cases that involved international college students but in which universities were not directly involved. Cases involving both graduate and undergraduate students at public and private universities were included. The search was limited to cases occurring on domestic campuses. Finally, the search was not exhaustive - an unknown number of lawsuits or legal confrontations are settled quietly, and therefore hard to document.

Eight of the examples are lawsuits initiated by students. Five are lawsuits initiated by a university faculty or administrator in which international students play a pivotal role. Six examples involve incidents that raise legal considerations pertaining to international students but have not led to litigation (yet). Information about those incidents were found online, in local, national or international media and/or higher education trade publications.

Some issues relate specifically to a student's temporary, nonresident status, either as a nonimmigrant alien holding an F-1 or M-1 academic visa or a J-1 exchange visa. To capture some of the culturally based sources of conflict, the study also includes lawsuits involving foreign-born students who are permanent U.S. citizens, also known as immigrant, or resident, aliens. One lawsuit involves a student of Korean descent who was born in the United States. The study did not address issues related to another important topic, the immigration status of undocumented students, though some issues may be common to both groups.

## **Allegations and outcomes**

If there is a common theme among the allegations, it is, not surprisingly, discrimination -- specifically, discrimination based on national origin. In seven of eight

lawsuits, accounts of unfair or unequal treatment figured prominently. Lawsuits also typically included a panoply of other charges, such as breach of contract, due-process violations, negligent misrepresentation or discrimination based on sex, age or race. Typically, a specific, action sparked the lawsuit. In *Ikekwe v. Governing Board of Foothill-DeAnza Community College District* (2010) and *Senu Oke v. Jackson State University* (2007), the plaintiffs said they had been unlawfully dismissed, at least in part because of their national origin. In *Nguyen v University of Massachusetts* (2008), the dispute centered on whether a fellowship had been awarded properly. No student who claimed discrimination as a charge ultimately won. Most cases were either dismissed or summary judgment favored the defendant.

Often, student-plaintiffs failed to meet the legal definition of discrimination. In *Amir v. Marquette University* (2009), for example, the plaintiff, an Iran native who said he had been unfairly dismissed due to poor academic performance, appealed his case twice but could not provide evidence to satisfy any judge or jury that the Caucasian classmate to whom he compared himself was similarly situated, as required by law.

Two faculty-initiated lawsuits, at Santa Clara University and the University of Oregon, also hinged on whether international students were being treated fairly. One was a defamation suit; the other, wrongful termination. Both cases were settled. Two other faculty-initiated lawsuits, both at Ohio University, sprang from a university investigation of widespread plagiarism that found each of the professors had failed to adequately supervise large number of graduate students, nearly all of them from foreign countries. They each sued the university or principal administrators, alleging defamation, violation of due process and similar charges. Their cases, in state and/or federal courts, are ongoing.

In a case involving a vice president at Rend Lake College, the plaintiff, who is of Iraqi descent, claimed discrimination and retaliation after he was demoted. He appealed the district court ruling; the case eventually settled.

### **Key Areas of Concern**

Several common themes were identified.

**Academic integrity.** Issues of academic integrity become complex when international students are involved because views on what constitutes cheating in the United States differ in significant ways from those of other countries. In *Alkhadra v Harvard* (2010), for example, a Saudi Arabian native was dismissed for plagiarizing when, in answer to an exam question, she reproduced nearly verbatim a journal article she had memorized as preparation. She said the punishment was far too harsh; that it was an honest mistake and that rote memorization had been valued in the Saudi education system. She also argued that the student handbook did not prohibit memorization as a study aid.

Two widely publicized incidents suggest institutions have been grappling, with mixed success, with the question of how much latitude international students should be given as they adjust to a new culture, and who should be held accountable when cheating occurs. In a 2007 Duke University scandal in which 34 business students were punished for cheating, a lawyer for 16 Asian students said the penalty they received after

confessing was disproportionately harsh compared with penalties for non-Asian students, and suggested cultural bias may have played a role. In an appeal to a Duke judiciary committee, the lawyer argued that the Asian students had not understood the honor code, and had been pressured into confessing without understanding the consequences or realizing they had a right not to incriminate themselves (Stancill, 2007). An appeals committee upheld the penalties upon review.

By comparison, a 2006 investigation at Ohio University found "rampant and flagrant plagiarism" in the mechanical engineering department, and placed most of the blame on supervising faculty who had failed to catch it (Meyer and Bloemer, 2006). Most, if not all, of the plagiarism appeared in theses submitted by foreign students (Tomsho, 2006). The controversy started after a student discovered that multiple masters' theses over several years carried the same language. One student's thesis was revoked; several others were removed from the library, to be returned after they had been revised.

Also, one professor was demoted and another terminated. Both sued for defamation, among other charges. In their briefs, each plaintiff noted that the students had committed the lesser of two categories of plagiarism. For example, they failed to include quotation marks around material, but had credited the author in endnotes. (A more serious form would have been copying research or conclusions without attribution.) One plaintiff also said students had received professional writing and editing assistance, permissible under department guidelines, which "minimized [the plaintiff's] ability to detect plagiarized material and lessened any concern about plagiarism" (*Mehta v Ohio University*, 2009).

In the wake of those incidents, each university established a campus-wide campaign to raise awareness about the importance of academic integrity. Neither Duke nor Ohio officials singled out the students' nationalities or foreign status as making a difference in their handling of the cases, though Duke acknowledged that students "from three continents" had received the harshest penalties (Breedon, 2007). A year after the incident, Duke had put most of the controversy behind it, characterizing the episode as an opportunity to underscore the importance of its honor code.

The Ohio University court cases continue to garner occasional headlines. One professor won the right to a public name-clearing, which took place in September 2010. He had requested that the university publicize the name-clearing event as prominently as it had the findings of the original investigation. The student who first brought the problem to the attention of university continues to monitor developments on his blog (<http://ohiouniversityplagiarism.blogspot.com>).

**Lack of faculty buy-in.** Two cases suggest some faculty members are skeptical of university motives behind the enrollment of international students. The plaintiff in *Alkhadra v Harvard* says the underlying issue was not whether she had plagiarized but that her professor wanted to get rid of her because he believed the Saudi government had pressured Harvard into accepting unqualified students.

In *Delacroix v Santa Clara University* (2006), a business professor sued for defamation, breach of contract and bad faith, among other things, after learning he was under investigation by the university because two Chinese students had complained about him. According to his legal complaint, they said he "spoke too fast in class," assigned them to read the *National Enquirer* and singled one of them out for being seven minutes late to class. The plaintiff said the university's investigation was designed not to discover

the truth but to reach a "predetermined result ... so as not to offend Santa Clara's pipeline of foreign-based Chinese-speaking families which send their sons and daughters to be educated in the United States." He argued that the university did not conduct the investigation using proper procedures.

**Exploitation of students.** Several examples reveal the vulnerability of international students, who largely must trust in and depend on others for guidance regarding standard campus practices. The University of Oregon made changes to a graduate program after receiving a tip that the director had neglected his academic responsibility to South Korean students and charged them thousands of dollars for academic services that their tuition already covered. In 2006, in a wrongful-termination suit, a retired department chair said she had been forced to leave her job because she had blown the whistle on the program director. The university, which admitted no wrongdoing in that lawsuit, settled for \$500,000, half of what the plaintiff had sought (Gravois, 2007).

A National Collegiate Athletic Association committee penalized Texas Southern University for inadequate compliance after concluding that the men's and women's tennis coach had lied to international student athletes and misused campus funds. The coach had promised full scholarships to several students when no such scholarship existed. Initially, he covered their expenses with funds that were supposed to be used for other purposes. After the money ran dry, "serious student-athlete well-being issues arose," an NCAA report says, noting, for example, that "three of the students faced eviction from their apartments" and "were reduced to subsisting on bread and water" (NCAA, 2008).

In a class-action grievance against Yale in October 2005, the Graduate Employees and Students Organization (GESO), a campus group, took up the cause of international students, urging the university to end "a pattern of discrimination against Chinese scholars." One complaint: that faculty overworked Chinese graduate students in part because professors knew those students likely wouldn't object for fear of losing funding and their visa eligibility. "If we are fired, we cannot find a job and cannot stay in the U.S. ... Faculty members know we only have this choice," according to one graduate student (Jackson, 2006, Funding Security, para. 4). Another student was at risk of losing a fellowship because no professor in her department would agree to serve as her adviser. "It takes more time to advise a Chinese student," she says she was told by one professor (Jackson 2006, para. 2). Shortly after that demonstration, the student learned she would not lose her fellowship or her visa eligibility (Marsden, 2005).

**Cross-cultural miscues.** A 2010 incident at Stevens Institute of Technology involving a Chinese student offers a cautionary tale of how cultural differences can make a difficult situation even worse. The school had suspended the student, Zhai Tiantian, in March for disciplinary problems. A month later, following a confrontation with a professor, Zhai called the campus switchboard and said, "I am going to burn that building." That led to his arrest on charges of making "terroristic threats," and landed him in jail (Semple, 2010), upon which Chinese diplomats became involved. Then, Chinese media reported that he had been arrested on terrorism charges and in some cases, that he had attempted to set fire to a building (China Press USA), and some foreign reports seemed "to indicate that Zhai was arrested for questioning authority or clashing with a teacher" (Associated Press, 2010). Some Chinese publications quoted a spokesman with the Chinese Consulate-General in New York as saying "what the Chinese regard as

acceptable language may be deemed by Americans as a threat" (e.g. China Daily, 2010) The case was eventually dismissed -- a grand jury found no evidence to support the charge, says his lawyer, Hai Ming, who handles immigration cases. Hai says Zhai has decided against suing the university, though he believes his due-process rights were violated (personal communication, Nov. 8, 2010).

Court documents for *Shakir v Rend Lake College* (2010) provide evidence that 9/11-inspired fears continued to present challenges in 2008. The plaintiff, who is Iraqi, sued for retaliation and discrimination after he was passed over for a promotion in favor of a Caucasian man. The catalyst for the lawsuit was an anonymous letter to college officials raising suspicions about the plaintiff's motives and conduct, including whether he had allowed foreign students to enroll despite their earning lower-than required scores on exams assessing their English-language skills. The letter-writer asked, "Why are they interested in registering at a community college in Ina, Illinois?" according to the complaint. The author also accused the plaintiff of unethical behavior for practicing his Muslim religion, for speaking Arabic during school hours and for hiring a non-English speaking computer programmer. The plaintiff alleged that college officials "encouraged a hostile and discriminatory atmosphere," giving as one example an administrator who locked herself in her office and requested extra security at the campus daycare facility "due to her safety concerns stemming from the presence of Saudi Arabian students at the college."

**Institutional policy.** International students on several campuses have raised questions about fairness in policies affecting students, such as access to a wellness center, health insurance and adequate housing (e.g., Keaton, 2010; Wolf, 2010). Most complaints didn't lead to litigation; indeed, organized student protests led to improvements in some cases. Yale's graduate student union says its campaign to improve housing conditions for Chinese students has prompted administrators to make some positive changes, albeit incrementally (Jackson, 2006). A group calling itself Stanford Discriminates against International Students in April was credited by university officials for a change in Stanford's health-insurance requirements (Harris, 2010). The group had argued that the school had unfairly required the insurance only of international students -- domestic students could choose their own insurance provider. Students also argued that the required policy was inferior to and costlier than plans some students already had.

Colleges have run into legal challenges when they don't enforce or comply with their own or state policies. A U.S. District Court, in *Ahmed v University of Toledo* (1986), said universities should be allowed to single out nonresident aliens if the action meets "a reasonable goal of the university" -- in this case, health insurance coverage. The university won that case; however, the court noted that the policy had been on the books since 1972, but was not enforced "with any vigor" until 1986, when several uninsured foreign students were hurt in a car accident. Two days after the car accident, the administration informed international students by letter that the mandatory policy would be "strictly enforced" and set a deadline about three weeks later. Students who didn't show proof of insurance would be dropped from classes and lose university assistance.

In *Shim v Rutgers* (2007), the Supreme Court of New Jersey found that Rutgers acted too hastily in denying the resident-tuition rate to a student. The plaintiff was born in Pennsylvania but moved as a child with her family to Korea, where her parents still live, then lived with relatives in New Jersey for most of her high school years. Rutgers, noting

that the plaintiff listed her parents as dependents, charged the higher, nonresident rate. She sued, arguing that she had provided the documentation required by the state to qualify for the lower rate. The court ordered Rutgers to review the request, and that this time it must "fully, fairly and dispassionately consider all submitted evidence." The court also said its ruling was not meant to imply that the plaintiff should be granted the resident rate.

**SEVIS compliance.** Since 2003, universities have been required by federal law to collect certain data on international students for inclusion in the Student and Exchange Visitor Information System, or SEVIS, a database that helps immigration officials monitor the activities of foreigners who entered the United States on a student visa. SEVIS requires universities to appoint a "designated school official" who is responsible for maintaining and updating information on certain visa holders. For example, a student with an F-1 visa can stay in the country as long as he or she is enrolled full time in an educational program and attends classes at least 18 hours a week.

Arrests in California in connection with a visa fraud scheme raise questions in 2010 about whether a university could be held liable should another act of terrorism involve a student visa-holder. A U.S. citizen who had posed as a foreign student to take tests and, in some cases, take classes on behalf of student visa-holders who wanted to stay in the country pleaded guilty and was sentenced to jail (Hernandez, 2010). He was suspected of providing services for at least 119 students, at least 16 of whom have been arrested and questioned. Officials detected no suspicious activity and said the students merely wanted to extend their stay (Carcamo, 2010).

Universities were not directly faulted for failing to catch the imposters, but a deputy special agent in charge of Immigration and Customs Enforcement investigations in Los Angeles, said immigration officials plan to educate college and university officials about visa fraud "so they can guard themselves and protect themselves of such abuses in the future" (Carcamo, 2010, para. 39-40).

*Sethunya v. Weber State University* (2010) serves as a reminder that colleges can't predict how students will react to every circumstance. Victoria Sethunya, a South African student, sued her university after learning from campus officials that a computer "glitch" had dropped her name from the school's roster of international students. The university allowed her to enroll despite the lapse and offered to pay for an attorney to help straighten out her situation with immigration officials, but she refused. Instead, she sued the university and nine campus officials, seeking \$890,000 and non-monetary relief, on several charges, including discrimination, defamation, negligence and libel. In court documents filed in 2008, Sethunya, acting as her own counsel, said she was unable to work, use health services, or travel outside the United States because of the error; also, she suffered loss of financial support and damage to her credit reports. All charges were eventually dismissed; an appeals court affirmed in 2010.

**Reverse discrimination.** A discrimination claim against Bowdoin College hints at simmering tensions regarding higher education's efforts to recruit foreign students. *Goodman v Bowdoin* (2004) was initiated by George Goodman, a white U.S. student who had been dismissed indefinitely by a judicial board after being held responsible for a fight with a Korean student, Namsoo Lee (who also was employed by the university as a bus driver). Lee, who was injured in the fight, also was subject to a hearing, and cleared of all charges. Goodman argued that the university favored Lee because Lee added to

campus diversity, an established priority of the college. Bowdoin won the case, but only after legal entanglements lasting more than five years, including a seven-day jury trial and an appeal to the Supreme Court, which declined to hear the case.

### **Emerging Issues**

Some of the concerns raised in *Goodman v Bowdoin* resonate today, particularly on public campuses where international students are becoming more prominent. One driving issue is financial. The federal government touts the economic benefits of international students, who typically pay higher nonresident tuition rates and last year pumped nearly \$19 billion into the U.S. economy (NAFSA, 2010). As state higher education budgets face continued cuts, international students are becoming increasingly attractive to public universities not only because they add diversity but also because they pay a higher tuition rate (e.g. Keller, 2008; Marklein, 2009).

The Supreme Court has said, most recently in *Grutter v Bollinger*, 539 U.S. 306 (2003) and *Gratz v Bollinger*, 539 U.S. 244r (2003), that student diversity is a valid goal for highly selective public universities. Those cases focused on U.S. minority students, but some analysts suggest growing efforts to woo international students could fuel a new kind of challenge by U.S. students who perceive they're being denied seats or financial aid in favor of foreign students. Much of the debate today about tuition eligibility centers on undocumented students. But conditions may be ripening for a challenge to enrollments of foreign students, not at selective institutions but at community colleges, which traditionally admits any student who wants to enroll. In recent years, some community colleges have had to turn away students, mostly as a consequence of state budget cuts combined with growing demand (Whoriskey, 2010). Meanwhile, many community colleges are recruiting abroad (Marklein 2009, Sept. 24). Last year the Houston Community College System enrolled 6,125 foreign students, the most of any two- or four-year college in Texas (IIE, 2010).

In 2007 testimony to House foreign affairs and higher education subcommittees, Jessica Vaughan, a former foreign service officer and senior policy analyst for the nonprofit Center for Immigration Studies, suggested that community colleges, which were founded to serve their local constituents, could face public pressure:

Community colleges are heavily subsidized by local taxpayers in order to make the programs accessible to members of the community. It is unclear if residents of these communities would support extending these subsidies to foreign students, who traditionally have been expected to pay their own way. ... In addition, it makes little sense to provide job training, often supplemented by local internships, to foreign students, who are unlikely to qualify to eventually work here afterwards, and may possibly displace members of the community in those same programs (Vaughan, 2007).

Moreover, she says, even though they pay higher tuition, foreign students "are not a free lunch" because campuses devote resources to full-time staff and programs to help foreign students adapt to their new surroundings.

A storm also may be brewing around the fast-growing population of college-bound professional athletes recruited from foreign countries -- often with handsome institutional scholarships -- to play on U.S. college teams. In 2008-09, international students overall represented 3.6% of all U.S. college students (IIE 2009, 2010), while international student-athletes represented 6.0% of male and 7.4% of female student athletes in Division 1 teams (NCAA, May, 2010). Those students are helping to build winning teams, but some critics argue that they're also crowding out U.S. students who have maintained amateur status. In some instances, an entire team is made up of foreign students (Abbey-Pinegar, 2010). As one parent of a disappointed student-athlete put it:

"The bitter pill for me is that my kid, who chased the dream and did everything right and was honest on all the paperwork, was told no... . . . As an American taxpayer, it seems we're educating a lot of foreign kids who chased the dream, too, and didn't have it work out, but they're getting the benefit of the doubt" (Drape, 2006).

In her analysis of the controversy, Abbey-Pinegar (2010, p. 361) urges administrators to create a level playing field. If they don't, she says, "the reality will be a large amount of litigation on behalf of both (international student-athletes) and domestic student-athletes."

## **Discussion and Conclusions**

Many of the cases identified in this paper add context to research suggesting that a fair number of international students believe they are treated poorly on campus, both in and outside the classroom. Only occasionally do their experiences appear to lead to litigation. Universities have tended to win discrimination lawsuits filed by international students. But the goal for universities should be to avoid the circumstances that led to the lawsuit in the first place. Even if an incident never escalates into a court battle, it's in the best interest of colleges and universities to anticipate the unique needs of international students.

That's not just to avoid a costly lawsuit. An institution's reputation abroad may also be at stake. A study of international students at one public university found that the perception of having received fair and equal treatment "was the most important influence leading [an international] student to recommend the host university to others" (Lee, 2010, p.77). That sentiment is expressed, in the other direction, in a court document submitted by the plaintiff in *Shakir v Rend Lake College*. It was written by a Saudi Arabian student who, with two other Saudi men, had registered for spring 2008 classes at the school. His problems started with an eight-hour delay by U.S. immigration officials; apparently, the registrar had removed his name from registration rolls without telling him. His problems did not end there:



My current plan is to leave at the end of the semester too and I wanted to inform of the unfair treatment we all suffered and lack of customer service from the registrar. Because of this unjust treatment and other events happened to us many of our friends who are on full scholarship from the government wanted to attend Rend Lake College have changed their mind. ... I hope you see this matter looked into and not to occur to other foreign students (sic) (Shakir v Rend Lake College, document 84-28, exhibit D).

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