Academic and Disciplinary Dismissal in Dental Education: The Legal Basis

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Abstract. The courts have traditionally granted universities absolute discretion in determining whether a student has met the academic requirements of the institution and have not interfered in dismissals unless there was a clear indication that the action was arbitrary, capricious, or in bad faith. Recent court cases are cited that indicate that the courts are now beginning to require that students be informed of academic (including clinical) deficiencies and be provided the opportunity to correct the problem. When the dismissal is for disciplinary rather than academic reasons, more procedural due process is required. Although a formal judicial hearing is unnecessary, the dental administrator should be given an opportunity to hear both sides of the issue in considerable detail and the student should be given the essential elements of procedural due process of law.

Suspension or dismissal of students from educational programs may be for academic or disciplinary reasons, or both. In the health science professions students may also be suspended or dismissed for clinical reasons. In view of the present student-as-a-consumer movement, it is extremely important that the dental educator be aware of (1) the proper procedures to follow in suspending or dismissing a student and (2) the circumstances under which these procedures are required. This article discusses the legal basis of academic and disciplinary dismissal in dental education. A future article will present an account of a recent United States Supreme Court case dealing with academic dismissal for clinical reasons to illustrate the interrelationships of these three types of dismissal.

In recent years university students have won impressive judicial support for their rejection of much of the paternalism that has characterized the administration of higher education in the United States.¹ The concept of in loco parentis, where the student is viewed as a legal infant and university authorities are considered to fulfill the role of a parent, is no longer tenable and has been replaced with a broad concept of constitutional rights for university students.² The constitutional restraints on authority apply on the campus of a state-supported university with as much sanction as on public streets and parks.³ The Fourteenth Amendment to the United States Constitution, which states that no state shall deprive any person of life, liberty, or property, is frequently the mainstay of litigation involving university students' rights.

The disciplinary process of a university is not equivalent to the criminal law process, for while the student may suffer damaging effects, sometimes irreparable to his or her educational, social, and economic future, he or she may not be incarcerated, fined, disenfranchised, or subjected to probationary supervision.⁴ Thus, dismissal is not a deprivation of life or liberty. However, the right of a student not to be arbitrarily denied a status of good standing has been determined to be a property right as in Dixon v. Alabama State Board of Education.⁵

The facts of this 1961 case indicate that the plaintiff was suspended from Alabama State College because he was a Negro out of place, not because he was student out of place. However, the case served to convey a broad spectrum of individual rights to all university students. It allowed federal court review, without prior resort to state courts, for students who had been disciplined by university officials in the alleged absence of procedural safeguards adequate to satisfy the due process requirements of the Fourteenth Amendment. Dixon held that notice and a hearing were required in university disciplinary expulsion proceedings, but today the issue has become complex and

¹For the purposes of this article the terms "college" and "university" are considered to be synonymous.

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a discussion of the types of dismissal and their legal implications in both private and public universities is indeed pertinent.

**Private and Public Institutions**

The major factor used in determining whether a university is private or public is its origin. If the institution was founded by private individuals and is supported by private funds, it is considered to be private. Its charter is a contract that, where there is no reserved power of alteration, cannot be altered by the legislature without the consent of the trustees. Similarly, the university’s relationships with the students are much more contractual in nature and are less dependent upon state and federal statutes. If it was founded and is supported by the state, a university is public and its charter may be changed by the legislature.

With the advent of federal funding for most aspects of education, however, it has become more difficult to determine if an institution functions as a public or private organization. The fact that a private university receives state or federal money does not, of itself, make it a public school. Under the ‘state action’ doctrine, a private institution may retain its intrinsic private nature, but because of various governmental nexuses, usually financial or regulatory, the school may be deemed to be acting under the color of state law. In such a situation the requirements of the Fourteenth Amendment and derivative civil rights legislation can be applied to private institutions. The court has discussed this concept and has developed the following guidelines to determine whether a private university is acting under the color of state law: (1) governmental participation in determining the composition of the board of trustees, (2) review of the expenditure of private funds by a state official, (3) onerous reporting requirements, (4) a legislative history that discloses that the state desired to use the educational facilities of an existing institution rather than create new ones itself, and (5) whether or not the university is an instrument of the state.

A person in his or her capacity as a citizen may have the right to do many things that a student enrolled in a private university may not do without incurring penalties contained in the institution’s rules and regulations. For example, the university may prescribe a uniform and require it to be worn or require attendance at religious services. Whether university rules or regulations are wise or expedient or their aim totally worthy is a matter left solely to the discretion of the authorities; the court will not interfere with the exercise of such discretion in the absence of a clear showing that the authorities have abused their power.

The concept that a private educational institution may prescribe rules and regulations is limited only by the constitutional rights of the student and, as discussed before, by the amount of state action that is associated with the function of the institution. Where a private university’s catalog states that the institution reserves the right, and the student concedes to the university the right, to require the withdrawal of any student at any time for any reason deemed sufficient to the university, the student has no constitutional, statutory, or contractual right to a notice of charges or a hearing before he or she is dismissed. It is entirely within the discretion of the university authorities to grant or hold a hearing.

The use of a contract theory in public universities is less clear. By the act of matriculation, together with payment of the required tuition fees, a contract between the university and the student is created containing at least two implied conditions: (1) no student shall be arbitrarily expelled therefrom, and (2) the student will submit herself or himself to reasonable rules and regulations for the breach of which, in a proper case, he or she may be expelled. Implicit in the student’s contract with the university upon matriculation is the agreement to comply with the university’s rules and regulations. The university has the right to expect its students to adhere generally to accepted standards of conduct commensurate with their approaching maturity. The university clearly is entitled to modify its rules and regulations so as to properly exercise its educational responsibility. The court has determined that the concept of a binding, absolutely unchangeable contract is particularly anomalous in the context of training professional teachers at a postgraduate level.

**Academic Dismissal**

No student has a constitutional right to remain in attendance at a private or public university irrespective of his or her academic performance. Failure to maintain a prescribed scholastic rating has been held to be a justifiable cause for dismissal. Absolute discretion is permitted to the school authorities to determine whether a student has failed to meet the school’s academic requirements. The assignment of grades in a particular examination must be left to the discretion of the instructor and he or she should be given unfettered opportunity to assess a student’s performance and determine if it attains a standard of scholarship required for a satisfactory grade. The court has held that the federal judiciary should not adjudicate the soundness of a professor’s grading system nor make a factual determination of the fairness of the individual grades.

Academic dismissal in a private institution encompasses both the concepts of judicial nonintervention and contract law. A private institution may set forth terms under which it will admit and subsequently graduate students. The terms and conditions for graduation from the private school are those offered by the publications of the college at the time of enrollment. As such they have some of the characteristics of a contract between the parties and are
sometimes subject to civil remedies in courts of law. Such a contract between a private educational institution and a student confers duties on both parties that cannot be arbitrarily disregarded and may be judicially enforced.15,22

Earlier court decisions have stated that the public university is not required to give students notice or to allow them to appear before the school authorities to present matters in support of their contention that they should not be dismissed from school. Promotions or increases in rank are considered to be fully within the discretion of the faculty. The courts also have not interfered with the management of a school's internal affairs unless there has been a manifest abuse of discretion or where the action has been unlawful, arbitrary, capricious, or in bad faith. The student is required to prove that his or her substantive due process rights were violated by one of these actions. Recently, Caspar v. Brudon substantiated that students in a public higher education institution have a protected property interest as an entitlement rather than as a right. Before a student is suspended for academic deficiencies, he or she must be informed of impending failure.

**Academic Deficiency.** The following three recent court cases involving health sciences or graduate students indicate that, even for pure academic dismissal, there is a growing indication that some form of procedural due process is necessary. However, at present there is no strict definition of what is required.

**Sofair v. State University of New York.** E. Ezra Sofair, a medical student, was dismissed from the State University of New York, Upstate Medical Center, College of Medicine, for failure to demonstrate sufficient clinical aptitude for the practice of medicine. The academic reports during his four-and-one-half years as a student revealed uneven performance with failure of at least one major course every year. Although he repeatedly satisfied these courses, the Committee on Academic Promotions considered that having failed such major courses raised serious questions about his ability to apply essential medical knowledge to patient care. This committee required him to repeat his fourth year by following a structured program of clinical electives. After he failed one elective, the Fourth-Year Medical Grades Committee sent him a letter recommending that he be dismissed from the College of Medicine or be given the option to apply for readmission to the third year. The letter advised him that he had the right to appeal to the Committee on Academic Promotions at 3:30 p.m. that same day. After this meeting, he was informed of his dismissal and the recommendation that he be allowed to reapply was rescinded. Mr. Sofair brought New York Civil Practice Law and Rules Article 78 proceedings seeking to compel the College of Medicine to reinstate him as a student in good standing. The Onondaga Supreme Court dismissed the petition and an appeal was taken. The New York Supreme Court, Appellate Division, held that procedural due process had been denied because the hearing offered him was held within a matter of hours after the first notification to him of his dismissal. The judgement of the Onondaga Supreme Court was reversed and the matter was remanded to the proper authorities at the college of medicine. They were instructed to offer Mr. Sofair a written statement of the evidence relied upon in concluding that he lacked clinical aptitude and an opportunity for an informal hearing, with a reasonable amount of time to prepare for it. The college of medicine appealed the Appellate Division decision to the Court of Appeals of New York.

The central issue before the court was whether the procedures followed by the college of medicine when it dismissed the student for academic cause were such as to deny him due process of law. The decision of the court of appeals, that there was no substance to Mr. Sofair's claim that he was denied procedural due process, relied expressly on the decision of the U.S. Supreme Court in *Horowitz*.23

**Ross v. Pennsylvania State University.** Thomas J. Ross filed a claim pursuant to 42 U.S.C. §1983, alleging that Pennsylvania State University (PSU) had violated his due process rights pursuant to the Fourteenth Amendment because it had dismissed him as a graduate student and deprived him of a position as a graduate assistant, all without a hearing. The university has no policy that provides for unsatisfactory scholarship. The regulations of PSU do not require the expulsion of a graduate student who fails to maintain a given cumulative average, but do require that a graduate student obtain a cumulative average of 3.0 in order to graduate. The court found that Ross had a property interest in the continuation of his course of study. It stated that a student has a reasonable expectation, based on statements of policy by PSU and the experience of former students, that if he performs the required work in a satisfactory manner and pays his fees, he will receive the appropriate degree. In contrast, the court found that a graduate student does not have a property interest in the continuation of his job as a graduate assistant if he is terminated from that position because of his failure to maintain an academic standing. Ross also contended that he was entitled to protection of due process because of his liberty interests in reputation, honor, and integrity. The court disagreed, citing the fact that under the rules of PSU his termination for poor scholarship would not be made public unless it were at his request and Ross did not show that the reasons had been made public.

**Greenhill v. Bailey.** Bernard H. Greenhill was a junior medical student at the University of Iowa College of Medicine who failed two major clerkships. The Junior Promotions Committee voted to recommend his suspension.
Because personal appearances before this committee are ordinarily not permitted, he appealed the decision by letter. His appeal was rejected by the Medical Council. After the suspension became final, the assistant dean of the medical school sent a Change of Status Form to the Liaison Committee on Medical Education of the Association of American Medical Colleges indicating that the student had been dismissed due to poor academic standing and that the apparent reason was lack of intellectual ability or insufficient preparation. Mr. Greenhill filed suit under 42 U.S.C. §1983, alleging that he was denied both procedural due process by the school's failure to give him notice and an opportunity for a hearing to contest his dismissal, and substantive due process by its judging his academic performance against nonobjective standards. Following a hearing, the district court dismissed the action, concluding that the procedural safeguards of the Fourteenth Amendment have no application to the dismissal of a student for failure to meet academic standards and finding that Mr. Greenhill's dismissal was not, in fact, arbitrary.

The U.S. Court of Appeals disagreed with the trial court on the issue of procedural due process. It remanded the district court to order the college to conduct appropriate administrative hearings that would provide Mr. Greenhill with an opportunity to clear his name by attempting to rebut the stigmatizing material made available to other medical schools.

Degree Withheld. Universities are vested with the power to graduate and to confer degrees and diplomas on students who have complied with the requirements imposed by the regulations of such universities. When a student matriculates, a contractual relationship is established under which, upon compliance with all the requirements for graduation, the student is entitled to a degree or diploma. The faculty or governing board that is authorized to examine the students to determine whether they have performed all the prescribed conditions exercises quasi-judicial functions. In this capacity the decisions of the faculty or governing board are conclusive except when a degree or diploma is refused arbitrarily. The following case is suggestive of such an arbitrary action.

Tanner v. Board of Trustees of the University of Illinois.25
Gerard E. Tanner was a Ph.D. candidate in the Department of Business Administration of the University of Illinois. A committee of five professors from the department was formed to evaluate his dissertation and to conduct comprehensive oral and written examinations. Even though he had completed his examinations and had submitted his dissertation to a committee member in August 1973, he was informed in December 1973 that he would have to be reexamined in a single written examination. Mr. Tanner alleged that he agreed to take the single examination, but the university thereafter informed him that the examination would be in two parts, both oral and written. In June 1975, he was informed by the dean of the graduate college that the committee, the examinations, and the dissertation were all unacceptable because the committee was never formally recognized by the graduate college and that he would have to be reevaluated.

Mr. Tanner commenced his action in circuit court seeking a writ of mandamus compelling the university to award him a Ph.D. degree or, alternatively, award him $100,000 in damages for breach of an implied contract to issue the degree. The circuit court dismissed the complaint finding that no set of facts could be proved to support his stated theories of mandamus and contract. Mr. Tanner appealed and the appellate court reversed the decision in part and remanded the case to the trial court for repleading on the mandamus theory. The claim for monetary damages against the university was denied because the university is an arm of the State of Illinois and can only be sued for damages in the Illinois Court of Claims.

Disciplinary Dismissal

University officials have inherent general power to maintain order and to enforce reasonable rules of student conduct.26 They also have responsibility to control and regulate conduct and behavior of students who tend to impede, obstruct, or threaten achievements of the university’s educational goals.27 The court has determined that these rules and regulations should not be treated by the same requirements of specificity as are statutes28 or criminal codes.29 School officials must be given wide authority in maintaining discipline and university disciplinary problems must first be resolved within the institution by its authorities.30 It is not necessary to have specific regulations providing for disciplinary action for every specific act of misconduct.31

In the private university some elements of the law of contracts should be used in analyzing the relationships between the student and the university. This will provide a framework for the problem of expulsion for disciplinary reasons. However, contract law must not be rigidly applied in all its aspects. If university disciplinary regulations are reasonable, if they are known to the student or should have been known, if disciplinary proceedings are conducted by appropriate persons with the authority to act, and if procedural due process is given to the student, then the findings of the committee, when supported by substantive evidence, must be accorded some presumption of correctness by the courts.32 It must also be stressed, however, that the power to govern the university and to discipline students may not be exercised with immunity to application of constitutional standards of vagueness and overbreadth.33

In public universities the legislature has the right to enact measures for student discipline and to impose upon the trustees the duties of enforcing these requirements. Where
the power is delegated to them to do so, university authorities may make all necessary and proper rules and regulations for the orderly management of the institution and the preservation of discipline. Authority in matters of student conduct and discipline may in turn be properly and constitutionally delegated by the university board of trustees to established agencies of student government. The standard of conduct that an educational institution seeks to impose on a student must be one that is relevant to a lawful mission, process, or function of the institution and cannot prohibit the exercise of a right guaranteed by the Constitution or by a statute. Use of the term ‘misconduct’ as a standard for imposing disciplinary penalties is improper due to unconstitutional vagueness.

University rules that require students to conduct themselves in a manner compatible with the university’s functions and missions as an educational institution, and to observe generally accepted standards of conduct, are not, on their face, unconstitutionally vague or overbroad, though such rules do invest university officials with some flexibility and discretion. Examples of conduct contravening such rules are obstruction of university teaching, research, administration, or other activities; indecent conduct or speech; failure to comply with requests of university officials in the performance of their duties; and violations of the laws of city, state, or nation.

The appropriate university official is the expert to whom the court will defer in the absence of a clear case of constitutional infringement. Student discipline is a matter requiring considerable flexibility and a first-hand appreciation of the facts and individuals involved. In deciding what sanctions to impose, the official should not be constrained by narrow alternatives as long as the reasons behind the choice of sanctions are not invidious or arbitrary.

While students at a tax-supported institution are not entitled to the formality of a trial prior to being disciplined, they must be given a fair and reasonable opportunity to respond to the charges and to receive such hearings as meet the requirements of justice to both the school and the student. The court has ruled that students who were granted the opportunity to discuss a disciplinary matter with school officials but did not receive a notice of the hearing because they failed to keep the university advised of their change of address were not deprived of any constitutional rights when the university refused to readmit them.

Because of the small size of most dental school faculties, the situation frequently occurs where the same professor involved with the initial dismissal may also be on the review committee. The court has held that the fact that the same committee that initially considered the academic record of the student and recommended dismissal was also allowed to serve as an appeal body was not such as to establish a violation of procedural due process. There is no reason for the dean to disqualify himself or herself merely because of his or her position as a member of the administration that formally initiated the disciplinary proceedings.

In cases of disciplinary dismissal that also involve criminal actions, students are not presented with an unconstitutional choice in deciding whether to testify at the student disciplinary hearing and risk self-incrimination at a criminal trial arising out of the same facts, or not to testify and risk expulsion from school. However, students would be deprived of due process of law if they were denied the right to have counsel of their own choice during these disciplinary proceedings. In addition, university officials are not enjoined from proceeding with expulsion hearings until the termination of criminal actions.

In the health sciences disciplinary dismissal is uncommon; when it occurs, it is usually associated with academic dismissal as illustrated by the following two cases.

**Brookins v. Bonnell:** Henry Brookins was a nursing student at the Community College of Philadelphia who was expelled because of alleged failure to submit a report of a physical examination required for matriculation, failure to report prior attendance at a hospital school of nursing and to submit a transcript of that attendance, and failure to attend class regularly. At the time of his dismissal, Mr. Brookins was passing all his courses and had not violated any school regulations by engaging in a prohibited activity. He allegedly failed to comply with school regulations for admission and class attendance by passively ignoring them. While these failures did not constitute misconduct in the sense that he was subject to disciplinary procedures, they did constitute misconduct in the sense that he failed to do something that was required by the regulations. Like the traditional disciplinary case, the determination of compliance with the regulations is a factual question where scholastic standards are not involved. The court concluded that these issues readily adapt themselves to determination by a fair and impartial due process hearing and the college was ordered to grant the student such a hearing to determine whether he should be discharged.

**Navato v. Sletten:** Dr. Jose R. Navato, a Filipino, brought action against officials of the Missouri Institute of Psychiatry, et al., seeking injunction and declaratory relief and money damages under 42 U.S.C. §§1981, 1983, and 1985. Dr. Navato signed a five-year contract that provided that he was to receive three years of training required for certification in the specialty of psychiatry and in turn was to render two years of service in state mental health hospitals. Near the end of this third year, an instructor became concerned about his work and the issue was brought before the Residency Training Committee one week later. The criticisms included scheduling too many patients at once, lack of concern about clinic patients, poor record keeping, poor clinic procedures and judgement, failure to
take advantage of consultation, failure to give adequate notice prior to his absence from clinic, and involvement in private practice contrary to the provisions of his contract.

By virtue of this contract, Dr. Navato had a property interest cognizable under the Fourteenth Amendment. The psychiatry institute argued that he was afforded the due process to which he was entitled since he was placed on probation for academic, rather than disciplinary reasons; the district court agreed with this contention. Under those circumstances little procedural due process is required. However, the decision of the committee was based not only on the grounds of the issues raised by the instructor alone, but on events that had occurred during the last 18 months of training. Dr. Navato was not given notice that the committee would consider this and was not given the opportunity to respond to these allegations. The circuit court of appeals found that he was not given procedural due process, reversed the district court decision, and remanded the case to the district court with instructions to order the institute to (1) expunge from all records any reference to the actions taken against Dr. Navato, (2) give him adequate notice as to the charges against him, and (3) provide him with a hearing before the committee that would determine whether he should be issued a certificate of completion for three years of training and whether he should be reinstated in the program.

Implications for Dental Education

Historically, the courts have permitted schools absolute discretion in determining whether students have met the academic requirements of the institution. The courts now consider that a hearing to allow a student to explain any reasons for his or her poor scholarship would permit university officials to better determine whether he or she can achieve the intellectual level necessary to pursue a particular program. The courts consider that the administrative burden of holding such a hearing appears to be minimal. Full adversary proceedings are not required and the student must only be given an opportunity to (1) explain the reasons for his or her poor scholarship and (2) provide any information that might lead the administration to conclude that his or her performance in the future would be satisfactory. This is not to say that a due process hearing is required every time a student is terminated for poor scholarship. When the decision is based on the failure to achieve a stated grade point average and the student is always terminated for failure to achieve that average, no purpose would be served by such a hearing. 46

It must also be kept in mind that this is a decision of a federal circuit court of appeals. The U.S. Supreme Court has stated that, considering all the relevant factors including the evaluative nature of the inquiry and the significance and historically supported interest of the school in preserving its present framework for academic evaluations, a hearing is not required by the due process clause of the Fourteenth Amendment when the school dismisses a student for academic reasons.

The courts have also established that flexibility is the key component in the application of due process to academic dismissal. 47 This creates a problem for the dental administrator in that there are no specific guidelines to follow. Furthermore, the due process requirements may well be covered by the traditional practices of most schools. A term of probation with prior notification of the consequences of dismissal if the appropriate academic standards are not attained is, at present, sufficient due process. Notification of academic deficiencies should be given to the student in writing and the institution's academic due process must be followed.

More stringent procedures are required when the dismissal is based on disciplinary reasons. The nature of such due process procedures will also vary depending upon the particular circumstances, but something more than an informal interview with an administrative official is required. A charge of alleged violation of disciplinary rules and regulations, as opposed to scholastic failure, depends upon a collection of facts easily colored by the point of view of the witness. Although a formal judicial hearing is again unnecessary, the dental administrator should be given an opportunity to hear both sides of the issue in considerable detail.

The student should be given the following essential elements of due process: 48

1. written charges
2. adequate notice of the hearing
3. the right to inspection of the university's affidavits or exhibits prior to the hearing
4. the right to counsel of his or her choice at his or her own expense
5. the right to an unbiased hearing tribunal
6. the right to call witnesses and introduce affidavits and exhibits
7. the right to confront and cross examine witnesses
8. the right to a determination of the case solely on the evidence in the record
9. the right to written findings and disposition of the case
10. the right to a written record of the hearing at his or her own expense

As a point of law it must be noted that the extent of procedural due process required at the administrative level also has not been established. 49 Pending an opinion from
the U.S. Supreme Court, *Dixon" is the authoritative precedent with its provision for notice and a rudimentary hearing of an adversary nature. The student's rights outlined above have been tentatively established by *Estaban*, which is an Eighth Circuit Court of Appeals decision with certiorari denied by the U.S. Supreme Court.

For a court to overturn a student's dismissal on procedural grounds, it must find that such dismissal was a deprivation of due process, invidious discrimination (e.g., racial), or a denial of federal constitutional or statutory rights that are protected in the academic community. For a reversal on substantive grounds, the court must find that the dismissal was arbitrary or capricious. The latter standard is a narrow one that is to be applied only when the administrative action is not supportable on any rational basis or where it is a willful and unreasoned action, without consideration and in disregard of the facts or circumstances of the case.

The dental educator is at the far end of what has been called the "continuum of subjectivity." At the graduate or professional level evaluation tends to become more subjective as instruction becomes increasingly individualized and the student's competencies in specialized areas are evaluated by professors considered to be experts in their particular discipline. Although the potential for unfair treatment exists at all levels of education, there is a greater opportunity for discrimination at the higher levels. Certain professors in graduate and professional schools may be recognized as leading authorities in an area of study and it would be difficult for their evaluations to be challenged judicially.

**Conclusion**

Educationally sound due process requires that students be treated fairly. They must understand as precisely as possible what is required of them, receive an explanation as soon as possible when they are not meeting those requirements, be informed of what steps might be taken to correct their noncompliance, and be aware beforehand of the possible outcomes of their actions or nonactions pertaining to academic matters.  

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**REFERENCES**

15. Wright v. Texas Southern University, 392 F. 2d 728 (5th Circuit 1968).