

ACADEMIC DISHONESTY: THE LINK BETWEEN  
ACADEMICS AND THE LAW

by

JUDITH T. JACKSON

A DISSERTATION

Submitted in partial fulfillment of the requirements  
for the degree of Doctor of Education  
in the Department of Educational Leadership,  
Policy, and Technology Studies  
in the Graduate School of  
The University of Alabama

TUSCALOOSA, ALABAMA

2010

Copyright Judith T. Jackson 2010  
ALL RIGHTS RESERVED

## ABSTRACT

There have been many studies done and much research completed on the problem of academic dishonesty at the college and university level. However, there is a dearth of studies done on academic dishonesty as it relates to the legal issues and trends related to higher education administration. The purpose of this research is to analyze the issues, outcomes and trends in federal and state courts concerning academic dishonesty at the university level. The study also provides guiding principles for colleges and universities in situations of academic dishonesty.

This study looked at 74 court cases involving academic dishonesty from the period beginning in 1974 and ending in 2009. The research provided a 35-year record of court cases that were analyzed to determine which policies and procedures would yield higher education administrators the desired results. The issues of due process rights (including First Amendment rights and equal protection rights), breach of contract, immunity, negligence, libel, slander, conflict of interest, Americans with Disabilities, defamation, tort, retaliation, discrimination, and general legal procedural issues (including Article 78 issues specific to the state of New York and Tennessee Code issues specific to the state of Tennessee) are the prevalent issues concerning litigation. By a large margin, the two top issues found by this research were procedural issues (37%) and due process rights issues (34%).

Of the 74 cases analyzed, 48 occurred in a public institution and 26 occurred in a private institution. Thirty-three of the 74 cases, or 45%, involved students pursuing a professional degree

to become a medical doctor, nurse, veterinarian, engineer, dentist, lawyer or pharmacist. Forty-five of the 74 cases analyzed, or 61%, involved graduate students.

The courts have consistently ruled that students are to be given full due process rights in general, and that they are to be treated with decency and fairness specifically. Of the 74 cases analyzed in this study, 59 of the verdicts were in favor of the institutions, 12 were in favor of the student, and 3 were split decisions between the institution and the student. Academic dishonesty is treated by the court system as a mixture of purely academic matters and disciplinary matters. If the court deems the action taken by the university is based on a purely academic matter, it generally will not interfere, unless there is evidence of arbitrary and capricious behavior on the part of the institution. The main issue involved in cases stemming from public universities has historically been the issue of due process rights; the main issue involved in cases stemming from private universities has historically been breach of contract issues. However, the court system is now intermingling the obligations of public and private universities when it comes to due process rights and breach of contract rights.

## ACKNOWLEDGMENTS

It is impossible to finish a dissertation without prevailing on numerous people during the process. I did the research and the writing, but numerous other people provided the fertile ground and the circumstances for me to do so. Therefore, I express my deepest appreciation and gratitude to the following:

To Dr. David Dagley, who agreed to serve as the chair of my committee during a time when the higher education program did not have an abundance of professors who could perform the duties of a chairperson. Although I hailed from the Higher Education Administration side, Dr. Dagley took me on as his own anyway, and I am deeply thankful for his insights and guidance along the way.

To Dr. Beverly Dyer, Dr. David Hardy, and Dr. Margaret Rice, who agreed to serve on the committee and offer constructive advice and criticism, thanks for taking the time out of your schedule to read and edit my lengthy dissertation and keep me on the straight and narrow path. I could not have chosen a better group to be associated with.

To Dr. Priscilla Holland, who agreed to be the “outside” person on my committee, thanks for traveling to Tuscaloosa on my behalf, and offering support and encouragement. Thanks, too, for being my friend and brewing up de-stress tea the night before the final defense. We share some wonderful and humorous memories of my long journey.

To my Mother, Louise Thompson, for being my biggest cheerleader and asking weekly where I was in the process and when I would finish writing. To my Dad, Jack Thompson, I’m so sorry you missed seeing me complete the degree requirements. You and Mom would have

enjoyed having a Doctor in the family to brag about. Thanks to all my family and close friends for extending the proper amount of sympathy when I moaned and groaned about the process.

To my editor, Sherri Edwards, for honing my dissertation and having the legal expertise to put all the writing in the correct format. Thanks so much for your help.

To my husband, Joe Jackson, for taking this seven-year journey with me and not giving up when I was ready to throw in the towel. This is your accomplishment as much as it is mine. Thanks for being quiet and patient when you could have been a distraction. To my children, Joey Jackson and Jamie Scroggins, for having the wisdom and discernment to not question my sanity when the sheer logistics of the whole process was crazy. To my grandchildren, Sarah and Ethan Scroggins, and Julie and Maddox Jackson: you are my inspiration and my joy. My prayer for you is that you have a lifelong love of learning and writing.

And probably most importantly, thanks to my Savior, Jesus Christ, for allowing me to dream the dream and giving me daily the wisdom to write. Thanks for the grace of knowing that once you began the journey in me you would not let me quit before it was completed. Your faithfulness brought the project to fruition.

## CONTENTS

ABSTRACT .....	ii
ACKNOWLEDGMENTS .....	iv
LIST OF TABLES .....	ix
LIST OF FIGURES .....	x
1 INTRODUCTION .....	1
Statement of the Problem.....	6
Significance of the Problem.....	7
Statement of Purpose .....	8
Research Questions.....	8
Limitations of the Study.....	9
Assumptions of the Study .....	9
Definitions.....	10
Organization of the Study .....	14
2 REVIEW OF RELATED LITERATURE .....	16
Current Trends .....	16
Why Students Cheat.....	18
Term Paper Mills and the Internet .....	21
The Role of Honor Codes .....	23
A Distinction: Academic Issues v. Disciplinary Issues .....	25
How Faculty Members Respond to the Issues .....	26

Resolving the Dichotomy .....	29
The Student-Institution Relations From <i>in loco parentis</i> to Due Process .....	30
From a Legal Perspective.....	34
Summary.....	42
3 METHODOLOGY AND PROCEDURES.....	43
Introduction.....	43
Research Questions.....	43
Data Production .....	44
Data Analysis.....	46
Conclusions.....	47
4 CASE BRIEFS.....	48
Analysis of Case Briefs.....	260
Due Process.....	266
Breach of Contract .....	277
Article 78 .....	281
Procedural Issues and Breach of Contract Issues .....	282
Other Issues.....	283
Private v. Public Institutions.....	297
Legal Trends .....	305
5 SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.....	311
Introduction.....	311
Summary.....	311
Guiding Principles .....	316

Academic v. Misconduct Issues.....	316
Due Process.....	317
Procedural .....	320
Student-Institution Relationship .....	321
Private v. Public Institutions .....	321
Breach of Contract .....	322
Immunity.....	322
General.....	323
Conclusions.....	323
Recommendations for Further Study .....	324
Final Remarks .....	325
<b>BIBLIOGRAPHY.....</b>	<b>326</b>

LIST OF TABLES

1 Cases 1974-2009: Verdict Favor .....261

2 Cases 1974-2009: Institution Type .....263

3 Issues and Court Level.....265

## LIST OF FIGURES

1	Issues in court cases .....	294
2	Number of cases by institution type.....	297
3	Cases by verdict .....	300
4	Cases by decade and most relevant issue.....	305
5	Professional v. non-professional degree .....	306
6	Graduate and non-graduate students .....	308

## CHAPTER 1

### INTRODUCTION

Dishonest behavior can be traced back to the original Olympic games in Ancient Greece where competitors and judges who were found guilty of cheating were fined, and to ancient China, when applicants for civil service jobs found ways to cheat on civil-service exams even when faced with a death sentence if they were caught (Callahan, 2004, p. 15). Brickman's (1961) research concerning those civil-service test takers informs us that they created "cribbing garments" upon which they penned "722 essays containing "Confucian writing" and rented such garments to candidates so they could "sew it into" the coat they were wearing (p. 412).

Cheating is prevalent in all aspects of today's society. In the 21st century, sports enthusiasts regularly read the behavior of professional athletes who cheat by betting on sports, or by trying to enhance their performance with illegal substances. High profile authors and journalists make the headlines when they claim authorship for pieces they actually copied from other sources. Even in the business world, CEOs and their accounting consultants are convicted for using creative bookkeeping to inflate profit gains each quarter (Callahan, 2004). Similarly, Cizek (1999) reports his findings that people representing all professions, from cosmetologists to reverends, cheat to get ahead (pp. 71-73).

Sadly, research shows us that the area of higher education also reflects dishonest behavior. A historical look at academic dishonesty shows the behavior is increasing, or at the very least, not diminishing (Baird, 1980; Davis & Ludvigson, 1995; Haines, Diekhoff, LaBeff, & Clark, 1986; Jendrek, 1992; McCabe & Trevino, 1993; Stern & Havlicek, 1986). Cizek (1999)

affirms that cheating within higher education may not be diminishing because “society holds that those who possess knowledge are more esteemed than those who do not” (p.3), which enables students to justify employing any means in order to reach the end result of receiving a degree. As far back as 1941, Drake reported that cheating at the college level involved 30 out of 126 students, which translated to 23% of the students surveyed (p. 419). By 1960, the rate of cheating students had risen to 38% (Goldsen, Rosenberg, Williams, & Suchman, 1960). In a study done in 1964, Bowers reported the percentage of students who self-reported cheating by taking part in one or more of four forms of academic dishonesty (listed as “copying on an exam,” “plagiarizing on a paper,” “turning in another student’s work,” and “using crib notes on an exam”) to be 50%, and the percentage of students who self-reported participating in one or more of the 13 specific acts (as listed in Table 4.6 on page 47) as 75% (p. 234). In Baird’s (1980) study, which collected data from 200 students, 75.5% of students admitted to cheating in college (p. 516). In 1981, Elizabeth Nuss reported 79% of the survey respondents in her study “participated at least once in some form of dishonesty” (p. 91). In 1986, Stern and Havlicek reported 82% of college students reported they cheated while in college (p. 136).

Twelve years later, McCabe and Trevino (as cited in McCabe, 1993) reported that academic dishonesty in college, as reported by students, was at a level of 67%. Another McCabe and Trevino (1996) study indicated that though the *number* of students who cheat has not risen specifically, the ones who do cheat do so by engaging in more than one dishonest behavior (p. 29). They also reported that students who self-reported “collaborative work” on written and lab assignments jumped from 11% in 1963 to 49% in 1993 (p. 31).

As dishonest behavior becomes more ubiquitous in our institutions of higher education, society as a whole begins to question the value of a college degree. Students who have cheated

their way through school may find themselves unable to function in an increasingly complex society, because they do not have an ethical foundation upon which to build skills that allow them to solve complex problems, analyze critical data, or even communicate effectively with their peers (Hesburg as cited in Nuss, 1988, p. 2). As a consequence, the constituencies and supporters associated with institutions of higher education are expressing a lack of confidence in students as they graduate from college (Nuss, 1988). McCabe and Trevino (1993) shed a different light on why it is important for us to address academic dishonesty as they evaluate the fact that “18.5% of . . . CEOs of the nation’s top 1000 firms earned a degree” at one of the higher education institutions that participated in their 1990 survey, which “provides a unique opportunity to understand the academic environments that help to shape the leaders of this nation,” (*Business Week*, 1991 as cited in McCabe & Trevino, 1993, p. 536).

There are different theories as to why academic dishonesty occurrences are on the upswing. Levine (1980) believes that our society manifests two types of dominant focus at different times. The first focus is based on a futuristic approach. This is manifested when people behave responsibly and exhibit a sense of duty for the community at large, typically denying self at the expense of others. The second focus is based in the present, and primarily is concerned with living for the moment and not denying the self anything that is pleasurable. In college students surveyed in the 1980s, Levine (1980) believed our society manifested an individual focus, based in a present tense orientation. In 1993, Levine updated his study of college and university students and determined they were still very concerned with their future, and believe they will do less well than their parents did. However, he also saw a guarded optimism and an orientation toward the community at large. In that 1993 study, Levine noted that six of eight undergraduates stated that the being well-off financially was very important, but five of eight

said it was very important to have a career that would make a meaningful contribution to society. Levine concluded the students interviewed in the study believe they must choose between “doing good and doing well” (p. 14).

As we seek to characterize the current generation of students, we look toward studies such as those done by the Cooperative Institutional Research Program at the Higher Education Research Institute at University of California in Los Angeles (UCLA), which annually has tracked the attitudes and demographics of college freshman since 1966 via a standard questionnaire. In the first surveys done in the late 1960s, less than 50% of college students believed being well-off financially was very important, and just over 50% believed the chief benefit of a college education was to increase learning potential. By the mid 1980s, 70% of college students responding to those same questions believed being well-off financially was very important. During that same time period, “developing a meaningful philosophy of life” dropped from first place to eighth place on the list of college freshmen values (Astin, 1984, p. 12). Callahan’s (2004) research supports that hypothesis, stating that being well-off financially ranks among the top two or three goals of college freshmen (p. 116). In a recent comprehensive study spanning the 40-year trends (from 1966-2006) of incoming freshman students done by the Higher Education Research Institute at UCLA, the most important belief held by a freshman student is raising a family (75.5 %), followed by “being well-off financially (73.4 %) (HERI, 2008, p. 2).

Even the professional schools are not immune to unethical student behavior. In a study conducted at the University of Toronto’s pharmacy school, the survey of both senior-level pharmacy students and pharmacist teaching assistants/clinical preceptors revealed that more than 90% of both groups indicated they had participated in one or more acts of academic dishonesty

(Austin, Simpson, & Reynen, 2005). The study reported the most common cheating occurrences to be “handing down old exams and lab books (100% of educators and 95% of students); lying about lab data (92% of educators and 83% of students); and asking for information about an exam (87% of educators and 85% of students” (p. 148).

This particular study confirmed earlier studies that dishonest behavior is common in undergraduate education. The study also raises the question as to whether college students are merely discovering their sense of morality by engaging in academic dishonesty, and that the undesirable behavior may be a perfectly normal and expected part of college life (p. 154).

Although most research focuses on single-campus studies, McCabe and Trevino (1996) did a multi-campus study in 1993 on the subject of cheating in college. They surveyed 1,800 college students at the same nine state universities that were surveyed 30 years earlier in a study done by Bowers in 1964. The survey found the percentage of admitted cheating instances only rose 7% in that time period (from 63% to 70%), but the disturbing trend was that of those who did cheat admitted to cheating more than three times, indicating a pre-meditated decision to cheat on a regular basis (McCabe & Trevino, 1996, p. 30). The study also found that women are cheating at a higher level than previously noted, and students are performing collaborative assignments more often. International students often bring a whole new level of cheating to institutions of higher education, particularly in the area of plagiarism, where they often do not understand issues of ownership of the written word (Meleis, 1982). In fact, Thompson and Williams (1995) expand on that thought when they say that “learning *not* to cheat is more difficult . . . because it is a cultural hurdle” for students who speak English as a second language (p. 27). Bricault (1998) says students cheat because cheating is “a crime of opportunity” (p. 5).

Pavela (1981) says the first step in dealing with academic dishonesty is to develop a definition of what academic dishonesty is before developing policies to deal with the issues. A general definition for this researcher's purposes is that academic dishonesty is considered to be any premeditated act perpetrated to gain credit for work not actually completed (Finn & Frone, 2004; Fricker, Armstrong, & Carty, 2003; Gehring, Nuss, & Pavela, 1986). Specifically, academic dishonesty includes cheating in any form, copying from another student, having access to test questions prior to an exam, misrepresentation of authorship in written assignments, lying about laboratory results, taking a test for another student, and intentionally helping other students commit such fraud (Barnett & Dalton, 1981; Bricault, 1998; Cizek, 2003; Fox, 1988; Maramark & Maline, 1993; Nuss, 1988; Pincus & Schmekin, 2003). Academic dishonesty can also involve destroying segments of library materials or resource equipment, or introducing viruses to computer software in order to keep other students from benefitting from the use of such materials (Moeck, 2002, p. 481).

Plagiarism is the term used when referring to the theft of written material. The term has as its roots the word "plagiary," which was derived from the Latin word, "plagium," and the word designated someone who had kidnapped a child or slave (Mallon, 1989, p. 6); Waltman's study (as cited in Hawley, 1984; Stavisky, 1973, p. 446).

### Statement of the Problem

Inevitably, all professors and administrators who work within post secondary education will become aware of an instance of academic dishonesty. Those faculty members, as well as the deans, department chairs, and higher education administrators, will have to decide on a course of action that reflects the best interest of the college or university. Each situation of academic

dishonesty will have to be analyzed on its own merits. Policies, procedures, and plans will have to be created, and the resulting guiding principles will have to be communicated from the top of the hierarchy to the front-line faculty who have direct contact with students in the classroom. As these policies are formulated, the institution will have to be cognizant of decisions that best represent the institution's values and culture as well as the legal ramifications of failure to consider certain inalienable rights afforded to the student. The only way these higher education personnel can make an informed decision is by having access to studies that correlate academic policies with legal responsibility.

### Significance of the Problem

Administrators and faculty in institutions of higher education must have a thorough understanding of existing case law as it relates to academic dishonesty. The current legal procedural process has certainly allowed higher education to set and enforce reasonable standards for student conduct, but not at the expense of neglecting due process rights.

Nuss (1981) succinctly states the problem that academic dishonesty poses when she concludes her dissertation with the thought that unless students recognize cheating as "a moral issue" instead of an "achievement dilemma," inappropriate behavior will continue (p. 96). Pavela (1981) and Gehring (1986) believe academic dishonesty is a behavioral issue.

As we ponder the earlier-referenced studies of Austin et al. (2005), we notice they conclude that education must do its job by administering "appropriate consequences through reasonable, consistent rewards and punishments to ensure learning" (p. 154).

Administrators and faculty in institutions of higher education must continue to have the right and responsibility to enforce school policies upholding academic integrity standards, while

affording the student the right to due process proceedings, even as they protect the institution's legal interests. Both the community and the individual need the "affirmation of values" that disciplinary measures uphold so that graduates of higher education continue to grow morally (Pavela, 1988, p. 56). Indeed, with any less diligence, higher education will fail in its mission of graduating responsible, contributing citizens who are guided by internal moral values.

### Statement of Purpose

The purpose of this study was to examine the legal issues and ramifications of case law associated with the enforcement of institutional policy in the area concerning acts of academic dishonesty by students in institutions of United States higher education (postsecondary education). These legal issues should be of utmost concern to faculty and administrators, as they create and enforce policy that regulate student conduct.

### Research Questions

1. What are the issues arising in federal and state courts concerned with academic dishonesty in colleges and universities?
2. What are the outcomes in federal and state courts concerning academic dishonesty in colleges and universities?
3. What are the trends in federal and state courts about academic dishonesty in colleges and universities?
4. What principles exist for colleges and universities in situations of academic dishonesty?

### Limitations of the Study

1. The cases introduced represent litigation pertaining to academic dishonesty issues by faculty, students, and all other persons associated with higher education institutions from 1974 through 2009.

2. Cases were confined to those heard at the state appellate court, federal district court, federal appellate court, and United States Supreme Court levels.

3. Court cases introduced were categorized by West Publishing Company into the area of academic dishonesty, and therefore may be subject to prejudice on the part of West's editors. The cases were further classified by Keynumbers and subheadings.

4. The author of this study frames the material in this study within the perspective of a trained and experienced educator and administrator. The author makes no representation of being a legal expert.

### Assumptions of the Study

1. All court cases were conducted according to the rules of civil and criminal proceedings, and adjudicated under the compliance of local, state, and federal guidelines.

2. The pertinent cases were provided by Westlaw's electronic database. The author searched on Keynumbers and subheadings provided by Westlaw for cases that would contribute knowledge to the educator's legal understanding of how to deal with academic dishonesty issues.

3. The cases represented litigation arising from academic dishonesty in higher education from 1974 to 2009.

4. Case brief summaries may be used as learning tools for administration and faculty in institutions of higher education.

5. Higher education administration and faculty will see the relevance of the study and will incorporate the findings into best practices.

### Definitions

*Abuse of discretion:* “An adjudicator’s failure to exercise sound, reasonable, and legal judgment; an appellate court’s standard for reviewing a decision that is deemed to be grossly unsound, unreasonable or unsupported by evidence” (Black, 2004, p. 11).

*Adjudicate:* “To rule upon judicially” (Black, 2004, p. 45).

*Appeal:* A legal proceeding that considers whether another court’s legal decision was right or wrong. After a court has ruled for one side, the losing side may seek review of that decision by filing an appeal before a higher court (Kerr, 2007, p. 4).

*Appellant:* “A party who appeals a lower court’s decision, usually seeking reversal of that decision” (Black, 2004, p. 107). The appellant is the party who lost at the original court trial (Kerr, 2007, p. 4).

*Appellant or appeals court:* The court that hears the appeal after the trial court has ruled. Appellate cases are decided by a panel of several judges (Kerr, 2007, p. 4).

*Article 78:* To use the term Article 78 refers to “a type of lawsuit . . . created by the New York legislature in 1937. Generally, Article 78 proceedings are used to challenge action (or inaction) by agencies and officers of state and local government.” (De Castro, 2001, p. #).

*Bad faith:* A willful failure to cooperate or bargain with another party according to the terms of the bargain (Black, 2004, p. 149).

*Breach of contract*: “Violation of a contractual obligation by failing to perform one’s own promise, by repudiating it, or by interfering with another party’s performance” (Black, 2004, p. 200).

*Bi-furcated trial*. A trial divided into two stages; ex., guilt and punishment or liability and damages (Black, 204, p. 1543).

Case brief (also called a case note): “A short statement summarizing a case, especially the relevant facts, the issues, the holding, and the court’s reasoning” (Black, 2004, p. 229).

*Certiorari*: A writ issued by an appellate court, at its discretion, directing a lower court to review the case (Black, 2004, p. 241).

*Citation*: “A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position” (Black, 2004, p. 260).

*Conditional privilege (also called qualified privilege)*: “A privilege that immunizes an actor from suit only when the privilege is properly exercised in the performance of a legal or moral duty” (Black, 2004, p. 1235).

*Defendant*: “A person sued in a civil proceeding or accused in a criminal proceeding” (Black, 2004, p. 450).

*Demurrer*: Commonly referred to as a “motion to dismiss”; in California, Nebraska, and Pennsylvania the term is still used to state a pleading that while the facts in the case may be true, they are insufficient for the plaintiff to state a claim for relief (Black, 2004, p. 465).

*Disposition*: The action the court took (Kerr, 2007, p. 5).

*District court*: “A trial court having general jurisdiction within its judicial district” (Black, 2004, p. 380).

*Due process:*

The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case--Also termed due process of law or due course of law. (Black, 2004, p. 539)

*Due process clause:* “The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty or property” (Black, 2004, p. 539).

*Enjoin:* “To legally prohibit or restrain by injunction” (Black, 2004, p. 570).

*Evidence:* “Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact” (Black, 2004, p. 595).

*Ex parte Young:* A 1908 US Supreme Court case that “allows suits in federal courts against officials acting on behalf of states of the union to proceed despite the State’s sovereign immunity when the State acted unconstitutionally” (<http://en.wikipedia.org>, downloaded on July 27, 2009).

*Federal court:* “A court having federal jurisdiction, including the U.S. Supreme Court, courts of appeals, district courts, bankruptcy courts, and tax courts” (Black, 2004, p. 381).

*Holding:* “A court’s determination of a matter of law pivotal to its decision; a principle drawn from such a decision” (Black, 2004, p. 749). “Applying a clear rule of law that is new to a particular case” (Kerr, 2007, p. 6).

*In loco parentis:* “In the place of a parent.” The Supreme Court has recognized that during the school day, a teacher or administrator may act *in loco parentis*. The term can also apply to the “supervision of a young adult by an administrative body such as a university” (Black, 2004, p. 803).

*Injunction:* “A court order commanding or preventing an action” (Black, 2004, p. 800).

*JNOV* (judgment notwithstanding the verdict): “A judgment entered for one party even though a jury verdict has been entered for the other party” (Black, 2004, p. 860).

*Litigation*: “The process of carrying on a lawsuit” (Black, 2004, p. 952).

*Opinion*: “A court’s written statement explaining its decision in a given case, usually including the statement of facts, points of law, rationale, and dicta” (Black, 2004, p. 1125).

*Plaintiff*: “The party who brings a civil suit in a court of law” (Black, 2004, p. 1188).

*Plenary review*: A full review of a case in its entirety (Black, 2004, p. 1193).

*Precedent*: “A decided case that furnishes a basis for determining later cases involving similar facts or issues” (Black, 2004, p. 1214).

*Procedural due process*: “The minimum requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and Fourteenth Amendments, especially if the deprivation of a significant life, liberty, or property interest may occur” (Black, 2004, p. 539).

*Remand (or vacate)*: When an appeals court decides a lower court made a bad decision, and instructs the lower court to proceed further (Kerry, 2007, p. 5).

*Respondent*: The party that won in the original trial, but is having to respond to the appeal in the higher court (Kerr, 2007, p. 4).

*Substantive due process*: The doctrine that the Due Process Clauses of the 5th and Fourteenth Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective (Black, 2004, p. 539). Judges have interpreted it to mean “the administrative action cannot be unreasonable, regardless of how much due process is allowed. The fairness of the result factors into due process rights” (Pavela, 1978, p. 58).

*Supreme Court:* “An appellate court existing in most states, usually as the court of last resort; Supreme Court of the United States” (Black, 2004, p 1481). U. S. Supreme Court cases are decided by 9 judges, called justices (Kerr, 2007, p. 4).

*Trial Court:* The original court where the trial occurred. A single judge presides over the trial court (Kerr, 2007, p. 4).

*TRO--Temporary Restraining Order:* A court order that preserves the status quo until the application for an injunction can be heard; it can be granted without advance notice to the opposing party (Black, 2004, p. 1505).

*Trial de novo:* A new trial on the entire case--on both questions of fact and issues of law--conducted as if there had never been a trial. (Black, 2004, p. 1544).

*Writ of Mandamus:* Latin for “we command”. May be used to correct an “abuse of discretion.” This term originated in England during Edward III’s reign, and was issued from the King to compel subjects to “perform at the royal will.” American courts recognize it as an appropriate remedy for arbitrary or capricious action, especially against educational administration. (Pavela, 1978, p. 61).

### Organization of the Study

Chapter 1 contains the introduction to the study. Included in this chapter are the problem statement, the significance of the problem, the purpose of the study, the research questions, definitions of associated terms, the limitations encountered in the research, and the assumptions of the study. Chapter 2 contains the literature review as it relates to the purpose of the study. Chapter 3 describes the methodology employed in the study. Chapter 4 includes a brief of court

cases, case analysis, and summary. Chapter 5 details the summary, conclusions, and guidelines for higher education administrators, and recommendations for further study.

## CHAPTER 2

### REVIEW OF RELATED LITERATURE

#### Current Trends

There are many studies on academic dishonesty at the college level. In John Baird's 1980 study, conducted with 200 students in two different settings (classrooms and dormitories), 75.5% of the student respondents admitted to some form of cheating during their college years. Forty-three percent of the respondents to the study said they were cheating in one or more of the courses in which they were presently enrolled. Forty percent of the students in the survey said they did not disapprove of cheating. Even more alarming, 29% said they never felt guilty for cheating, and over 75% felt cheating was a "normal part of life" (Baird, 1980, pp. 516-517). Further, 40.5% of students said they would not be upset to see someone else cheating and would not report the incident, 40% said they would be upset but would still not report anything, and only 1% would actually report a cheating incident they personally observed (p. 517). The same study also revealed the most frequently used form of cheating was to receive advance information from peers about test content (p. 517).

Wright and Kelly (1974) conducted a study that compared students' views of cheating with faculty's views of cheating. The study included 275 students in entry-level psychology and science classes, and ranked their responses according to grade-point average. At the medium-sized liberal arts college, 81% of faculty considered not citing a reference source as cheating, whereas, only 51% of the students considered that same action to be cheating. Falsifying lab

work was not considered to be cheating by 43% of the students, but only 13% of the faculty did not think it was cheating (p. 31).

Even acknowledging some conflicting survey responses (Jordan, 2001), in general it can be stated that young, undergraduate students are most likely to cheat in college (Baird, 1980; Dawkins, 2004; Haines, Diekhoff, LaBeff, & Clark, 1986; McCabe & Trevino, 1997). Students involved in extracurricular groups are more likely to participate in and admit to dishonest behavior than those who do not participate in group activities, with the extracurricular group most likely to cheat being Greek-affiliated students (Baird, 1980; Haines et al., 1986; McCabe & Trevino, 1993, 1997). Stannard and Bowers (1970) concur that Greek-affiliated students cheat more often than do independent students, but suggest that the fraternity groups may simply recruit students who are predisposed to cheat, or that fraternity members are usually upper classmen who have had the occasion to have already been involved in a cheating incident (p. 376). Interestingly, Bowers (1964) says that student bodies with a composition of both male and female students are more likely to cheat than are student bodies of the same sex. Men are generally more likely to cheat than women (Baird, 1980; Bowers, 1964; Davis, 1992; Davis, Grover, Becker, & McGregor, 1992), although McCabe and Trevino (1996) provide research that shows the number of women cheaters is on the rise. Stannard and Bowers (1970), among others, found a positive relationship between students who cheated in high school and those who cheated in college (Davis & Ludvigson, 1995). Dawkins (2004) introduced some new research when his studies from a student body with approximately 8,300 students indicated that “dorm occupancy” and “attending campus events with friends” are positively related to cheating (pp. 7, 12). Trevino completed a study in 2006 that declared business school students are more likely to cheat than their non-business school peers (as reported in *BusinessWeek*, September 25, 2006).

In her doctoral dissertation, Nuss (1981) did a study of 146 undergraduates at a large public university. Seventy-nine percent of the subjects acknowledged “some personal participation in at least one dishonest behavior” (p. 70); 58% of the respondents said they “obtained questions or answers from someone who has already taken the same exam” (p. 70); and 43% “indicated they would ignore an observed cheating incident” (p. 74). Those same students reported that if the school required students to report observed incidents of cheating, “15% would report the incident, 28% would ignore the incident, and 28% would report the incident if they considered it to be somewhat serious” (p. 74). Davis and Ludvigson (1995) studied 2,153 juniors and seniors at public and private institutions and found that 40-60% of college students cheat, with nearly 50% of those students admitting to cheating more than once.

### Why Students Cheat

Several researchers cite the number one reason students cheat is to get good grades in response to increasing competition and pressure to perform well (Ashworth, Banister, & Thorne, 1997; Baird, 1941; Drake, 1941; McCabe, 2001; McEwan, 2005; Meade, 1992; Nuss, 1981; Wright & Kelly, 1974). Davis and Ludvigson (1995) agree, as reported in their study of 2,153 upperclassmen, that the number one reason for cheating was cited as the need to enhance test scores (1995). Nuss (1981) goes on to say that 45% of the students surveyed and 37% of the faculty surveyed in her research said “cheating was necessary in order to avoid failing.” In addition, 23% of the faculty and 21% of the students said the main reason students cheat is because they do not get punished for doing it (p. 142).

Other researchers report dishonest activities increasing because students rank the ability to succeed higher than either learning for its own sake or contributing to society (Gehring, Nuss,

& Pavela, 1986, p. 3). Baird (1941) expands on the reasons students cheat by sharing his research that showed that the second and third reasons students cheat is insufficient study time (33%) and a large work load (26%). As mentioned in Chapter 1, Bricault (1998) declares cheating is a “crime of opportunity” (p. 5). In her 1988 research, Nuss reported that 48% of the students in her study indicated the reason they cheat was “to avoid failure” (p. 95). Also in her 1988 research, Nuss stated that student endorsement of the value entitled “being well off financially” has increased from 40% to 71%, and therefore contributes to increased academic dishonesty (p. 4).

Gehring et al. (1986) say students cheat for various reasons: they truly do not understand the definition of academic dishonesty and, furthermore, believe the topics they are required to master in college do not relate to “future career goals” (p. 4); being successful is more important than being honest; the presence of heightened competition forces them to cheat; careless faculty members perpetuate cheating by not changing assignments over time and by not properly monitoring exams; and, no one gets in serious trouble for cheating (p. 5). Roberts and Rabinowitz (1992) discuss the concept of cheating due to frustration, indeed even “provocation,” caused by a difficult and demanding professor (p. 181). They also consider the opportunity factor that Bricault (1998) mentioned as a contributing cause of cheating.

Citing a slightly different motivation, Haines et al. (1984) found that students sometimes employ a behavior called “neutralization” to justify cheating. In a study conducted at a small southwest university, the researchers surveyed 380 undergraduates, and found that 54.1% of students admitted to cheating, with only 1.3% of those students saying they had ever been caught (p. 345). The authors tested the concept of neutralization, as introduced by Sykes and Matza (1957), as a justification for cheating, with the results showing high levels of neutralization behavior on all 11 items tested (p. 346). In other words, students defended their cheating based

on denial of responsibility for their own actions. The other two variables in this particular study that contributed to academic dishonesty were “immaturity” and “a lack of commitment to academics” (p. 352).

The conclusion of the authors of the Canadian pharmacy-school study was that students, particularly students studying in professional disciplines, cheat as part of the normal developmental process in order to learn how to develop moral judgment in the social order (Austin, Simpson, & Reynen, 2005, p. 154).

In another dual study, this one done by Roig and Ballew (1992), students and professors were surveyed about their attitudes toward cheating. A total of 404 students and 120 professors responded to a 34-statement questionnaire. Each student completed two copies of the questionnaire, one based on their personal opinion and one based on their perception of a professor’s opinion. The professors also completed two questionnaires, one based on their own opinion and one based on their perception of a student’s opinion. As expected, the student attitudes toward cheating were much more tolerant than the professors’ attitudes toward cheating. Students also reported that they perceived faculty attitudes to be less tolerant of cheating. Professors reported that their perception of student attitudes toward cheating was much higher than the tolerance of cheating actually reported by the students themselves (p. 3).

McCabe, Trevino, and Butterfield (1999) found that some students justified cheating in order to maintain “GPA scores for financial aid” (p. 231). In the previously-referred to study by Wright and Kelly (1974), of the 82% of the student group surveyed, those who fell in the lowest GPA group cited “pressure to obtain grades” as the greatest reason to cheat (p. 34).

In qualitative interviews conducted with 19 masters-level students, one research study reached several interesting conclusions. The first conclusion is that students consider cheating a

moral issue, and are particularly loath to commit a dishonest act that will negatively affect their peers. On the other hand, if the classmate who might be offended is simply another student, one who has no relationship to the cheater, many times the cheater does not feel guilty. The students in this study considered cheating on exams much more serious than cheating on class work or cheating in the form of plagiarism. Although students in the study defended the learning process as a lofty goal in itself, they were willing to cheat when failure in a significant area meant serious consequences. Students also noted that if the university did not adequately establish the correct testing atmosphere (i.e., sufficient proctoring and maintaining spaces between desks) they perceived that the university was actually facilitating dishonest behavior (Ashworth et al., 1997, p. 198).

#### Term Paper Mills and the Internet

Term paper mills offer two distinct services to students who decide to buy papers instead of writing original papers: providing a copy of a paper that is on file, or tailoring a paper to fit explicit course requirements (Hawley, 1984, pp. 35-36). Typically, a term paper company requires a signed release form from the author of the paper releasing all rights to the material in return for financial reward, and relinquishing rights to hold the term paper company responsible from actions that question authorship (Stavisky, 1973, p. 447).

Term paper mills were at one time a lucrative business. Termpapers Unlimited initially set the standard for the fledgling industry by producing over 10,000 papers and grossing \$1.2M in their first year of operation (Stavisky, 1973, p. 448). Some of the other firms who trafficked in term papers were Enjay Termpapers of New York City, later called Academic Marketplace (Rosenberg, 1973); Term Paper Arsenal of Los Angeles; Termpaper Research, Inc. of Maryland;

Educational Research, Inc. of Maryland; Paper, Inc. of Connecticut; D & D Research of New York; New York City Termpapers of New York; Minuteman Research; and Champion Research Company of Boston (Stavisky).

In a study conducted by the Bureau of Applied Social Research, 425 undergraduate students responded to a survey about paper mills. Forty percent of the respondents reported seeing announcements for paper mill companies. Almost 3% said they had tried to acquire a catalog for such a service, and 5.6% said they had submitted a paper acquired from a term paper mill (Hawley, 1984).

New York State has shown the most success in ruling against paper mill companies (Hawley, 1984). Although New York State began legislative processes against term paper companies in December of 1971, the first legal action took place in February of 1972 when the New York State Attorney General filed action against five defendants: Kathleen Saksniit, Termpapers, Inc.; New York City Termpapers, Inc.; Termpapers Unlimited of New York, Inc.; and Termpapers Unlimited of New York. The court granted a motion for a temporary injunction barring the defendants from “engaging in term-paper operations, conducting business under these trade names, or paying out any corporate money or transferring property” (Stavisky, 1973, p. 458). When the final judgment was issued in October of that year, the corporations were dissolved, and all defendants were permanently enjoined from engaging in term-paper operations. They also were ordered to make restitution of \$35,416 and ordered to pay \$10,000 in fines (p. 459). After the New York state assembly approved legislation, and with the State Senate in concurrence, Gov. Nelson Rockefeller signed a bill, known as Chapter 963 of the Laws of 1972, establishing New York as the first state in the nation to ban the sale of term papers to students. Stavisky goes on to state that “parallel action has been undertaken in other states.” On

July 1, 1972, a new law took effect in Maryland making the sale of term papers illegal.

California's law to ban the "commercial preparation, sale, and distribution of term papers and other academic materials" became effective on March 7, 1973 (p. 461).

Bricault (1998) mentions several websites that still attract and cater to students seeking to purchase such papers: School Sucks ([www.schoolsucks.com](http://www.schoolsucks.com)), Evil House of Cheat ([www.cheathouse.com](http://www.cheathouse.com)), and Other People's Papers ([www.oppapers.com](http://www.oppapers.com)).

### The Role of Honor Codes

Some colleges and universities have incorporated honor codes into their school policy manuals with the expectation that students who sign such agreements will think twice before cheating. McCabe et al. (1999) say that an honor code is the "most important contextual factor" at controlling cheating because it allows faculty to "influence behavior across the entire student body" (p. 212). The most difficult part of adhering to such a code is the peer-reporting aspect (McCabe et al., 1999).

Traditional honor codes typically consist of a "written pledge of academic honesty, a student-faculty judiciary structure for handling honor code violations, peer reporting of academically dishonest activities, and un-proctored exams." Modified honor codes usually consist of "a written pledge and some form of judiciary structure for honor code violations" (Roig & Marks, 2006, p. 164). One of the predominant researchers and proponents of university honor codes is Donald McCabe, who is the founding resident of the Center for Academic Integrity, now located on the Clemson University campus. He has authored numerous papers, both alone and with others, concerning the influence that honor codes at the university level have on deterring academic dishonesty. Many researchers, including McCabe, believe that an

institution that incorporates an honor code, either traditional or modified, will observe fewer incidents of academic dishonesty than those institutions who do not integrate an honor code into the school policy (Bowers, 1964; Cizek, 2003; McCabe & Trevino, 1993; Melendez as reported in McCabe et al., 2001; McCabe et al., 2002; McCabe & Pavela, 2000; Pavela & McCabe, 1993; Saterlee, 2002).

Recently Roig and Marks (2006) conducted a study at a private university with approximately 20,000 students that implemented an honor code in 2004. The study involved two separate sample groups: the first group was surveyed before the implementation of the honor code and involved all classes of students; the second group was surveyed after the implementation of the honor code and involved only freshmen, because they were the only ones asked to sign the honor code pledge. The results of the surveys that measured an Attitude Toward Cheating (ATC) scale (as introduced by Gardner and Melvin in 1988) were interesting in that no significant difference was observed in the perception of students' attitude toward cheating between the two groups. In other words, the second group of students did not have any different attitudes toward cheating than did the first group of students who were surveyed. Those recent survey results parallel with the conclusions of other researchers that indicate that campus culture and the visibility of an existing honor code is at least as important as the actual honor code itself, if the administration is to be successful in discouraging academic dishonesty (McCabe, 2005; McCabe & Makowski, 2001; McCabe et al., 2001; Pavela, 1981). A cautionary note is extended by McCabe and Trevino (1993) when they suggest that the successful management of academic dishonesty cannot depend solely on an adopted honor code, but must include a concerted effort on the part of the university to "develop a shared understanding and acceptance of its academic integrity policies" (p. 533).

## A Distinction: Academic Issues v. Disciplinary Issues

Faculty members at higher education institutions typically view academic dishonesty in a different light than students view the same behavior. One of the most divisive issues among faculty and administrators is that many professors do not agree on exactly what behaviors constitute academic dishonesty (Schmelkin, Pedhazur, Kaufman, & Liebling, 2001).

Part of the problem that faculty have with reporting incidents of academic dishonesty is that they do not understand what exactly is the difference between an academic issue and a misconduct issue. In his explanation of the difference between the two issues, Dutilleul (2003) categorizes four court rulings: *Board of Curators of the University of Missouri v. Horowitz* (1978) and *Regents of the University of Michigan v. Ewing* (1985) are classified as academic; and *Goss v. Lopez* (1975) and *Ingraham v. Wright* (1977) are classified as examples of disciplinary cases (pp. 619-625). Horowitz was dismissed from medical school for poor evaluations in her clinical performance, patient relations, peer relations, and personal hygiene (Dannells, 1997, p. 78). Because the court concluded her performance was academic, it did not rule that she was entitled to a hearing. The court reasoned she knew the academic requirements upon entering the program, and when she failed to meet the requirements, she could be dismissed without excessive due process. In *Ewing* (1985), the student was dismissed because he scored the lowest score on the NBMEB Part I exam in the program's history. Both cases clearly involved a student not attaining the required academic standard in order to continue in the program. The *Board of Curators of the University of Missouri v. Horowitz* (1978) actually set the benchmark on the legal definition of the difference between the two issues:

- a. an "academic evaluation" is by its nature more subjective and evaluative than the typical proceedings encountered in the "average disciplinary decision," and
- b. disciplinary proceedings 'automatically' bring an 'adversarial flavor' to the normal student-teacher relationship. The same conclusion does not follow in the academic

context. (Gehring et al., 1986, p. 10; Pavela, 1988, p. 38; Grossi & Edwards, 1997, p. 838)

In *Goss* (1975), a student was given the punishment of suspension for 10 days for destroying school property, but not allowed a hearing. Previously, students had only been allowed a hearing if the punishment was expulsion. The courts ruled that the student had both a property and liberty interest in the suspension, and was therefore entitled to some form of hearing and a chance to tell his side of the story. In *Ingraham* (1977), a student filed suit after being paddled. The courts relied on *Mathews v. Eldridge* (1976) while considering: the nature of the private interest, the risk of error and probable value of additional or substitute procedures, and the burden such procedures would present to the state (Dutile, 2003, p. 621). The court concluded that the teacher witnessed the incident that led to the paddling, there was sufficient protection against paddling the student in error, and additional safeguards would burden the state.

It is clear in its holdings that the Supreme Court made a distinction between academic issues and disciplinary issues (Dutile, 2003, p. 625; Gehring et al., 1986; Kaplin & Lee, 1995, p. 494; Pavela, 1988, pp.37-38). Pavela boldly states “allegations of academic dishonesty are premised upon past actions rather than present competency” (p. 38). Gehring et al. (1986) believe that “most academic cases seem to involve disciplinary decisions rather than academic judgments” (p. 10).

### How Faculty Members Respond to the Issues

Professors and instructors often believe cheating and plagiarism are issues that need to be handled at the lowest level, without involving department chairs, deans, and/or disciplinary boards (Wright & Kelly, 1974, p. 34). Maramark and Mindi (1993) concur by reporting that

“only 33% of faculty reported cheating at the administrative level; but only 6 of those faculty members who reported cheating incidents to a higher level of administration actually complied with university policy” (p. 6). Still another researcher, Jendrek (1989), substantiates those figures by reporting that of the 60% of faculty members who observed cheating in her study, a “maximum” of 12 of them “actually complied with university policy and followed the mandated procedure to the point of meeting with the student and the department chairperson.” She further noted in her results,

Most faculty members (67%) who had witnessed cheating during an examination discussed the incident with the student . . . only 33% reported the incident to the department chairperson . . . fewer still (20%) met with the student and the department chairperson. . . only 8% of the faculty members who had witnessed cheating reported the incident to the dean, and only 5% notified the provost . . . eight percent said they ignored the incident altogether. (p. 404)

Schmelkin et al. (2001) found similar responses with 91% of full-time and adjunct faculty stating that they had observed one or more academic dishonesty occurrences. In addition,

Only 41% of faculty included the University’s policy on academic dishonesty on their syllabus. Ninety percent feel that a faculty member who encounters an incident of academic dishonesty is the most appropriate individual to handle the case. . . the faculty members conclude that only 1/3 of professors actually confront students, and even fewer report violations to higher authorities. (pp. 4-5)

The three reasons how faculty can justify not reporting incidents of academic dishonesty include: lack of proof; difficult experiences with reporting previous incidents; and little support from administration (p. 5).

In Kibler’s (1994) study of 300 four-year public and private colleges and universities, he found the need for a framework to evaluate how institutions are addressing academic dishonesty (p. 93). His survey showed that “barely half of the institutions who responded sent written correspondence to faculty and students about academic dishonesty” (p. 95); “less than half the institutions offered any kind of training on academic dishonesty” (p. 96); “while 90% reported providing case assistance or consultation to faculty members when they encountered academic

dishonesty, less than 5% provided recognition for faculty members who properly handle such cases (pp. 96-97); and finally, "almost 65% of the respondents had no office on campus that claimed responsibility for coordinating efforts to reduce or control dishonesty" (p. 98).

Even when faculty and administration can agree on the behaviors that are considered academic dishonesty, institutions differ greatly on the appropriate procedures and sanctions that should be followed when an incident of academic dishonesty is observed. Many faculty members fear the negative repercussions and even formal litigation that can arise from a situation in which a student has been confronted and accused with academic dishonesty (Maramark & Maline, 1993; Simon, Carr, McCullough, Morgan, Oleson, & Ressel, 2003). Some faculty members fear "personal liability for violating a student's due process rights" (Pavela, 1988, p. 52). Pavela also states that the risk of liability for defamation keeps some faculty members from reporting academic dishonesty occurrences (p. 53). Due process etiquette is one of many factors that cause faculty to under-report academic dishonesty incidents, along with perceived lack of administration support, time-consuming procedures, and lack of general agreement on school policies (Burke, 1997, as reported in Gerdeman, 2000). Jendrek (2001) believes it is ironic that when faculty members choose to confront a student in a one-on-one situation, they are actually denying the student true due process by serving as the "judge and juror" (p. 405). Barnett and Dalton (1981) found that faculty fail to report cheating if they believe the student faces a severe penalty or "high probability of suspension or expulsion" (p. 546). Conversely, Nuss (1981) found that faculty members were less likely to take action when the academic dishonesty incident was not serious (p. 142).

## Resolving the Dichotomy

Clearly, there are many reasons why faculty choose not to enforce institutional policy when dealing with occurrences of academic dishonesty. The issue remains, then, for the institution to create a culture where faculty members feel safe and comfortable in adhering to university guidelines. Department chairs, along with other higher administrative personnel, should initiate discussion of “policy and practice” that will engage faculty in the process of uniform guidelines (Robinson-Zanartu, Pena, Cook-Morales, Pena, Afshani, & Nguyen, 2005, p. 334). Student handbooks should be drafted with caution so that the student understands the institutional policy concerning academic or misconduct infractions, and the subsequent sanctions that can be administered. In addition, each course syllabus should include information about “appropriate and inappropriate behavior as well as the consequences” (Bricault, 2007, p. 19). Kibler (1993b) suggests a three-pronged approach, creating an “ethos” promoting academic integrity, having a written documentation policy on academic integrity, and implementing an educational program on academic integrity that provides training and awareness beyond the mere existence of such policy (p. 12). McCabe and Pavela (2004) published 10 principles of academic integrity for faculty members to use. The guidelines include the following: make academic integrity a core value of the institution, affirm the role of teacher as a mentor, help students understand the proper use of the Internet as a resource, encourage student responsibility for maintaining academic integrity, clarify expectations in all written material given to the student, and minimize opportunities for students to cheat (pp. 12-15). In recent research, McCabe and Katz (2009) state that if an institution focuses on “the culture and not the phenomenon of cheating” some honor code programs have achieved success. However, they concede that implementing an honor code requires “patience and hard work” (p. 17).

## The Student-Institution Relationship: From *in loco parentis* to Due Process

In order to understand the student-institution relationship as it relates to matters of academic dishonesty at the university level, one must understand how the student-institution relationship has historically evolved. As defined in Chapter 1, *in loco parentis* means a teacher or administrator in a school setting can act on behalf of the parent during the school day. Although it originally applied to the relationship between teachers and their minor students, it eventually was applied to higher education students (Grossi & Edwards, 1997; Bowden, 2007, p. 482; Melear, 2003, p. 175). Early college students were young men and the founding principles of the early institutions were based on Biblical principles. Students were not viewed as adults, and the institution “assumed the role of parent” (Bowden, 2007, p. 482; Dannells, 1997). The church-dominated private schools at the higher education level evolved into numerous public institutions where the rules and regulations were more informal, and any objections the students had to a rule was addressed by the Dean of Men, or Dean of Women, or Dean of Students (Dannells, 1997; Grossi & Edwards, 1997). The Dean’s office served as the informal courtroom where incidents were heard and adjudicated. The Dean was fundamentally charged with acting as the parent in determining what best served a student’s well-being (Bowden, 2007). A few early court cases made the journey to a formal courtroom, and one of the earliest cases in which the *in loco parentis* doctrine was applied in the courtroom was in 1866 in *The People v. Wheaton College*. In that case, the court ruled that the university could act with parental authority to forbid a student’s membership in a secret society, that the student-institution relationship was equal to the parent-child relationship, and that the court should not interfere with either relationship (Grossi & Edwards, 1997). The doctrine was briefly challenged again in 1887 with the *Commonwealth ex rel Hill v. McCauley* case when the court ruled that a student had not been

given “fundamental fairness” rights when he was suspended, and ordered the student be reinstated. However, as Grossi and Edwards (1997) so succinctly stated, this notion that a college student had rights was “the clear minority view” for almost a century to come (p. 831). In 1913, *Gott v. Berea College* endorsed the *in loco parentis* concept when it ruled that the university was responsible for acting in place of the parent when it attempted to further moral development by banning students from certain eating establishments. The only restriction that the court put on the university in that case was to refrain from doing anything illegal or from violating “human decency” (Grossi & Edwards, 1997, p. 831; Bowden, 2007, p. 482; Kaplin & Lee, 1995, p. 5). Students did initiate court suits challenging the parental authority university administrators exercised, but until the 1960s, courts did not routinely reward students with favorable verdicts.

The diversity of students who enrolled in higher education in the 1960s and the ratification of the 26th Amendment to lower the voting age to 18, would forever change the context of the *in loco parentis* doctrine. Returning veterans, greater numbers of minority students, greater numbers of women students, growing ranks of part-time students, and the growing awareness of individual rights within the society as a whole, contributed to changing the student-institution relationship (Bowden, 2007; Dannells, 1997, p. 22; Grossi & Edwards, 1997; Kaplin & Lee, 1995; Melear, 2003).

Four cases, in particular, set precedents. The first case was *Dixon v. Alabama State Board of Education* (1961), and it involved African American students who were expelled for participating in a civil rights rally. The court ruled the students were deprived of due process rights under the Fourteenth Amendment because they were not given the chance to participate in a hearing before being sentenced. *Dixon* said the students were entitled to due process if the

disciplinary sanction was severe enough to include suspension or expulsion (Grossi et al., 1997, p. 835).

The next landmark case that impacted higher education was *re Gault* (1966), which actually involved a 15-year-old who was arrested for making an obscene telephone call. The court ruled that Gault's Fourteenth Amendment rights were violated because Gault was given inadequate notice of the charges, Gault's parents were not notified of the charges, and Gault was not given the right to retain counsel. Although the case involved a juvenile, it is important to higher education because it reflects the court's growing concern that young people had rights previously only afforded to adults, and it indirectly challenged the *in loco parentis* doctrine in its entirety (Grossi & Edwards, 1997, p. 836).

The next case that helped define the student-institution relationship within the context of higher education was *Esteban v. Central Missouri State College* (1969), which introduced a 10-step procedure that would help guarantee students were given due process rights. The procedures were further refined to create the "General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax-Supported Institutions of Higher Education" of 1968 (Rutherford & Olswang, 1981, p. 14). The due process rights highlighted by this case will be discussed in more detail in another section of this chapter.

The final landmark case that was important to the student-institution relationship within higher education was *Goss v. Lopez* (1975). This case further defined due process requirements that have to be followed by state educational institutions (Grossi & Edwards, 1997, p. 837).

The term "due process" originated with the Magna Carta document, and referred to the fact that King Edward III could not seize property or kill someone before exhausting the common man's right and access to common laws of the land to be used to defend himself. In this

respect, “due process” and “law of the land” were often used interchangeably, and was first referred to in the U.S. in the Constitution which took effect in 1789, within the Supremacy Clause, which said that there would be a supreme law of the land (<http://en.wikipedia.org>).

The due process clause in the Fifth Amendment of the U.S. Constitution states, “no person shall be deprived of life, liberty or property without due process of law” and applies to the actions of the federal government. The due process clause contained in the Fourteenth Amendment of the U.S. Constitution says basically the same thing, but applies to the states. These laws are interpreted to restrain all three branches of the government, executive, judicial and legislative, from denying a person his or her rights under the law (<http://en.wikipedia.org>).

In an essay to his class of law students, law professor Kerr (2007) explains the significance of the different kinds of law. Common law refers to the rulings that society shares in general; therefore, it is common to most people, and mostly deals with torts, contracts, and property issues. Criminal law interprets common law and statutes, which are laws passed by legislative bodies (such as Congress). Civil procedural law interprets statutory laws and Constitutional law. In the hierarchy of laws, constitutional law takes precedence over statutory or common law rulings (p. 5).

Pavela (1978) clarifies for us that “substantive” due process comes from the Fourteenth Amendment clause that says a person cannot be deprived of “life, liberty, or property” without due process of law. He goes on to explain that judges have construed the clause to mean that even if the judicial proceedings were conducted in a fair manner, courts have the responsibility to examine the “fairness of the result” as well as the “sufficiency of the procedure” (p. 58). Fox (1988) differentiates substantive and procedural due process by saying procedural due process

concerns the processes used to guarantee “fundamental fairness,” while substantive due process “imposes a limit on what government can do regardless of the procedures provided” (p. 689).

### From a Legal Perspective

Bricault (1998) explains the major differences in legal requirements of private and public institutions in dealing with academic dishonesty. He explains that public institutions, which include the faculty and administration that represent the institution, are bound by the university’s rules and regulations as well as state and federal statutes, the state constitutions, and the United States Constitution. Private colleges and universities are not bound by constitutions, but typically are bound by contract law in their dealings with students who commit academic dishonesty. Bricault goes on to say that the “key federal provision in dealing with cases of misconduct is the due process clause of the Fourteenth Amendment, which guarantees the accused party’s right to hear and respond to charges made against him/her” (p. 7). However, a private institution will be held to the same standard as a public institution if its published literature promises to sanction due process rights in connection with disciplinary action ([www.eric.gov](http://www.eric.gov)), thereby contractually obligating itself to a higher standard.

The legal standard in academic dishonesty is found in *Board of Curators of the University of Missouri v. Horowitz* (1978) (Pavela, 1988, p. 38). As noted above, the court used the case to define “academic evaluations” and “disciplinary proceedings.” Horowitz also held that the due process clause will be satisfied in cases of academic dishonesty dismissals if students are “fully informed” that they are in jeopardy and if the final decision to dismiss them is “careful and deliberate” (Pavela, 1978, p. 57).

Gary Pavela (1978), Director of Judicial Programs at the University of Maryland at College Park, has written extensively about higher education and the law. In his discussion about a writ of mandamus, Pavela states that no court has relied on mandamus to reverse an educational institution's good faith evaluation of academic performance (p. 61). However, in the state of New York, an Article 78 proceeding, which is an exercise in administrative law specifically created by the General Assembly, can replace a writ of mandamus and is frequently based on a breach of contract (p. 63). Pavela goes on to explain that both state and federal courts have held that the basic legal relationship between a university and a student is contractual in nature, as decided in the 1959 case *Bd of Ed v. Allen*. Usually technical contract law is not applied to the university setting. *Greenhill v. Bailey* (1975) determined that students at public universities may have a "property interest" in their education, or a "liberty interest" in pursuit of future career opportunities. If those interests exist, then the Fourteenth Amendment may require that due process be afforded to the student. To act contrary to such a ruling may subject the faculty member to personal liability (Pavela 1978, p. 66).

As previously mentioned, two of the landmark constitutional due process cases involving student disciplinary cases are *Dixon State Bd of Education v. Alabama* (1961) and *Goss v. Lopez* (1975). In *Dixon*, the court held that when a group of African American students were expelled from a tax-supported college for staging a civil rights rally at a restaurant. Their due process rights should have included an opportunity for a hearing in a timely manner (Grossi & Edwards, 1997, p. 840; Pavela, 1978, p. 391).

In *Goss* (1975), the Supreme Court ruled that a student who has been suspended for 10 days or less is entitled to notice, either orally or written, and if that student denies he did anything wrong, he is entitled to an explanation of the evidence and a chance to tell his or her

side of the story (Grossi & Edwards, 1997, p. 392). However, as referenced in the Grossi and Edwards discussion, the *Dixon* (1961) case reminds us that students do not necessarily have the right to cross-examine witnesses (p. 845). Another one of the landmark precedents introduced in *Goss* was the court ruling that the greater the consequences faced by the defendant, the greater the amount of due process must be afforded to the defendant. An important distinction in the two cases is that *Dixon* (1961) allowed the courts to intervene in university-student relationships, whereas both *Goss* and *Horowitz* introduced more “stringent” due process requirements for students (Grossi & Edwards, 1997, p. 839). In his research that investigates how due process has evolved since the landmark *Dixon* case in 1961, Thomas Baker (1992) states that one of the important ways in which due process has developed, as it relates to higher education, is that it “reduces the risk of error” (p. 3). By that, he means that to the extent that due process is required by the court system, it helps protect the rights of the student from “three presumptions:”

- (1) that a student may be wrongly accused of misconduct;
- (2) that an administrator may make a hasty and inaccurate judgment on the merits of a complaint; and
- (3) that an adversarial hearing will help determine the truth (p. 4).

Baker (1992) goes on to explain the presumptions by saying that, in theory, an administrator will be more “thorough” before making a charge of misconduct and then investigating that charge if he knows that all the facts and surrounding details will be shared with the student and an impartial hearing board, and that any adversarial and unfair actions committed by the institution will be out in the open (pp. 4-5).

In *Nebbia v. New York* (1934), the court ruled that due process requirements demand only that the law or regulation shall not be unreasonable, arbitrary, or capricious. *Connelly v. U. of Vermont* (1965), the most widely cited case applying the “arbitrary and capricious” standard in an academic setting, did not distinguish it from the “bad faith test” (Pavela, 1978, p. 59). *Jenkins*

*v. Louisiana State* (1975) noted that the courts make a distinction between college disciplinary hearings and criminal trial proceedings (Grossi & Edwards, 1997, p. 843). Grossi and Edwards reiterated that *Gault* (1966) is important for higher education because the U.S. Supreme Court for the first time reflected a growing trend of recognizing that juveniles had just as much a right to due process as do adults, which included Fourteenth Amendment rights (p. 835).

In general, the law gives faculty and administration “qualified privilege” in cases pertaining to academic dishonesty, providing they follow campus policies, do not make up rules as they go along, and do not discuss the particulars with anyone who does not have an interest in the case (Gehring et al., 1986; Pavela, 1988, p. 54). The United States Supreme Court has developed a “strict test” in using 42 U.S.C. Section 1983 as a sword in liability claims in that educators will not be held personally liable for violating a student’s constitutional rights unless they have acted with “impermissible motivation” or with disregard to “clearly established constitutional rights” so that their actions cannot be “reasonably characterized as being in good faith” (Pavela, 1988, p. 52).

Pavela (1988) recommends that educators clarify the difference between academic judgments and disciplinary decisions (p. 70). In order to make that clarification, Pavela reviews *Horowitz* (1978), and analyzes the holding in *Sofair v. State University* (1978): *Horowitz* (1978) set forth that if students are “subject to suspension or dismissal, or to the imposition of the significant stigma of being found guilty of academic dishonesty,” and that “past actions” rather than “present competency” are at issue, then the administrative action is probably disciplinary in nature; *Sofair* (1978) held that if “resolution of a factual dispute will determine the outcome of the case,” the administrative action is probably disciplinary in nature. He also cautions faculty members not to succumb to the temptation to resolve such matters on “subjective” academic

judgment without giving the student the right to tell his or her side of the story (p. 70). Kaplin and Lee (1995) propose that when a serious sanction depends more on “disputed factual issues concerning conduct” than on “expert evaluation of academic work” the institution should consider the infraction a disciplinary one rather than an academic one (p. 495). Academic dishonesty cases are a “hybrid” of purely academic issues and disciplinary cases, according to Fox (1988), because they involve “academic performance,” but are also “disciplinary in nature” (p. 671). Gehring et al. (1986) caution that both faculty members and administration must understand that “most academic dishonesty cases involve disciplinary decisions rather than academic decisions” (Pavela, 1988, p. 37). Pavela (1988) goes on to say that because these charges are equated with disciplinary proceedings, rather than academic proceedings, courts have held that students involved in an academic dishonesty court case are entitled to “due process protection” (p. 40). A dichotomy exists, according to Pavela, because there is a need to “rigorously punish” students who commit academic dishonesty so that higher education continues to be respected for legitimacy, but at the same time some faculty members still believe the offense to be an academic matter. Students fear a severe penalty because they believe if the occurrences are made a permanent part of their record, the recording of such facts will reflect negatively on their career opportunities (p. 39).

Yearly, Gary Pavela (1997) reviews and analyzes the decisions made through the legal system that affect higher education. Looking at the cases in 1996 in particular, colleges and universities were consistently successful in defending their actions in academic dishonesty cases. Pavela goes on to say that one of the most important cases settled that year was *Reilly v. Daly* (1996), because it provided “instruction” on many crucial issues found in academic dishonesty cases at the university level (p. 213). In *Reilly*, Therese Reilly was given a failing grade in a

pharmacology class because two professors believed she cheated on a final exam. The plaintiff was allowed to have her attorney present during questioning, although she was not able to directly question the two professors who reported that she had cheated. Among other issues, Reilly sued the university based on her claim that her due process rights had been denied, and that she was judged by proof that was not clear and convincing, based on a statistician's report that there was a 1 in 200,000 chance her answers would have exactly matched the answers of the student sitting next to her. The appellate court's decision favoring Indiana University Medical School provides the following lessons: (1) Giving the student an opportunity to present his or her side of the case is a valuable safety net against making a statistical error; (2) The appellate court found that an academic setting provided "careful, informal decision making" that might be just as protective to the students as more formalized procedures might demand in a civil or criminal court setting (Pavela, 1997, p. 215); (3) Due process requires only that universities base their suspension or dismissal decisions on "substantial evidence" (Pavela, p. 216); (4) Equal protection claims can be rejected because the court found it reasonable and rational "that each school at Indiana University is permitted to adopt its own procedures for suspensions and dismissals, consistent with its individual needs and policies" (Pavela, p. 216).

In a similar ruling involving a private college, *Fraad-Wolfe v. Vassar College* (1996), the court referred to the *Tedeschi v. Wagner College* (1980) ruling when it held that once a private institution "has adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion that procedure must be substantially observed" (Pavela, 1997, p. 217).

Stoner and Schupansky (1998) reviewed court cases from 1997 that had an impact on higher education. In *Hernandez v. Overlook Hospital* (1997), a resident medical student was terminated for academic reasons. The trial court ruled the student should have been allowed

counsel to be present at her hearing. The Supreme Court of New Jersey reversed, saying that the procedural rights of a terminated medical student do not include the right to a formal hearing that duplicates a trial-like atmosphere. In so ruling, the court highlighted the “danger of allowing trial-like procedures to infiltrate the academic review process” (p. 295).

In another case reviewed by Stoner and Schupansky (1998), *Brown v. U. of Texas Health Center* (1997), a medical resident was terminated for academic reasons, based on improper procedural due process rights. The Court of Appeals of Texas ruled, however, that a student who is dismissed for academic reasons is not “entitled to as much procedural protection under the Fourteenth Amendment as employees who are terminated from a job.” The Texas Court referred to Horowitz (1998) and said “far less stringent procedural requirements” were required in an academic dismissal (p. 297).

In the case of *Roach v. U. of Utah* (1997), a student was dismissed two different times and for two different reasons. The first dismissal was for unethical behavior with a female patient and the second dismissal was for falsifying admission forms. The court ruled that when a student is dismissed for academic failure, the “full procedural safeguards” of the Fourteenth Amendment do not apply. Specifically, if the student had prior notice that the professor was unhappy with his/her performance, he/she understood the possibility of being dismissed, therefore the decision to dismiss the student was “careful and deliberate” (Stoner & Schupansky, 1998, p. 301). The court upheld the unethical behavior dismissal, but said the dismissal for the improper admissions form was purely disciplinary and not academic, and therefore the student was not afforded sufficient due process rights.

In *Van de Zilver v. Rutgers University* (1997), the student was denied entry into the medical school because of poor academic performance. He sued based on procedural due process

claims, but he lost the case because the court ruled that in academic dismissals, a hearing only has to be informal and the termination must be “careful and deliberate,” again referring to the *Horowitz* (1978) decision (Stoner & Schupansky, 1998, p.303).

In a review of 1998 cases that involved academic and disciplinary rulings in higher education, Stoner and Detar (1999) discussed the case of *Rossomando v. Board of Regents of the University of Nebraska* (1998). In that case, Rossomando, who was in a postgraduate orthodontics program, received a memo outlining deficiencies in academic performance. She was enrolled in a remedial program and she met with faculty members periodically to review her progress. The faculty unanimously agreed that she did not successfully complete the program, and suspended Rossomando. Rossomando was given a list of requirements that must be completed before she could be readmitted, but she did not complete them satisfactorily. She was advised by letter of her dismissal from the program, along with advice on how to file an appeal. The Grade Appeals Committee found that the remedial process was fair and equitable, as did the Dean, and upheld the decision to dismiss her from the program. The student filed suit alleging due process violations. The Eighth Circuit held that it would not reverse the University’s academic judgment unless Rossomando could prove the dismissal was based on bad faith or ill will (pp. 3-4).

In a 1999 ruling in the case of *Swartley v. Hoffner* (1999), the Pennsylvania Superior Court considered a breach of contract claim filed by a student who was enrolled at Lehigh University as a doctoral student. An academic committee voted to fail her based on the poor quality of her dissertation, and Swartley sued the university, based on arbitrary and capricious behavior. The court held that the committee based its decision on a purely academic reason, and

said that it was not in the position to “second-guess” academic decisions (Stoner & Martineau, 2000, p. 6).

Gehring (2001) cautions that if an institution is so focused on the legalistic requirements of due process, it will lose its ability to create a teaching environment when administering student discipline. An incidence of academic dishonesty should result in “enhancing student ethical development” and allowing an institution to “accomplish its developmental mission” (p. 468). He reminds us that *Dixon* (1961) does not hold that a student has the right to be represented by counsel, the right to cross-examine witnesses, or the right to appeal the decision (p. 474). Gehring also admonishes institutions to facilitate hearings that do not maintain an adversarial flavor, but instead seek to uncover the facts and issues in a non-threatening, straightforward manner (p. 478).

### Summary

Academic dishonesty in higher education is an issue that has to be addressed in the context of the student-institution relationship. Administrators and faculty have to move through the stages of prevention, awareness, confrontation, and, ultimately, consensus on how to create policy that best serves the institutional mission while protecting student rights. Because legislative mandates have already set precedents in cases of academic dishonesty, administrators and faculty must understand the challenges they face on behalf of the institution. In order to meet those challenges, it is prudent that previous litigation be examined and analyzed from the perspective of higher education.

## CHAPTER 3

### METHODOLOGY AND PROCEDURES

#### Introduction

This study is a qualitative study based on case law review. Court cases from 1974-2009 were scrutinized so that a trend analysis could be determined.

The basis of this research included all pertinent cases heard in the United States Supreme Court, the United States Court of Appeals, the United States Federal District Courts, and the state appellate court cases from 1974-2009. Several landmark cases concerning academic dishonesty in higher education were included in the literature discussion in Chapters 1 and 2. The beginning date of 1974 for the cases analyzed only signifies that the researcher searched back that far to include data for this paper so that trends might be identified over a 35-year period.

The researcher utilized case analysis based on court cases at the United States Supreme Court level, the United States Court of Appeal level, the United States Federal Court level, and the state appellate court level. The court rulings were submitted to a case briefing process, reduced to data, and the data was then subjected to qualitative analysis in order to answer the research questions.

#### Research Questions

1. What are the issues arising in federal and state courts concerned with academic dishonesty in colleges and universities?

2. What are the outcomes in federal and state courts about academic dishonesty in colleges and universities?
3. What are the trends in federal and state courts about academic dishonesty in colleges and universities?
4. What guiding principles exist for colleges and universities in situations of academic dishonesty?

### Data Production

In this discussion of court case law, the meaning of the rulings of the courts and the opinions of the presiding justices can be interpreted by looking at the citations, key facts, issues, holdings, reasonings, and dispositions (Statsky & Wernet, 1995).

Statsky and Wernet (1995) describe a digest as follows:

a set of volumes that contain small-paragraph summaries of court opinions. The largest publisher of digests is West Publishing Company. The millions of summaries in its digests are organized by key numbers. A key number consists of a topic and a number. Once you locate a key number on the subject of your research, you can use the main digest volumes to locate court opinions summarized under that key number. (p. 26)

The researcher perused the Eleventh Decennial Digest, Part I, to become familiar with which subjects were addressed under the headnotes “81K: Colleges and Universities.” Within the headnote of 81K, Subsection 9 is titled “Students.” The delineations under “Students” are 9.1 General, 9.15 Admission or matriculation; 9.20 Tuition and fees; 9.20(1) In general; 9.20(2) Residence; 9.25 Financial aid; 9.25(1) In general: scholarships; 9.25(2) Loans and loan guarantees or insurance; 9.30 Regulation of conduct in general; 9.30(1) In general; 9.30(2) Speech and assembly: demonstrations; 9.30(3) Dormitories or other accommodations; 9.30(4) Expulsion, suspension, or other discipline; 9.30(5) in general; 9.30(6) grounds; 9.30(7)

Proceedings and review; 9.40 Records, transcripts and recommendations; 9.45 Extracurricular activities; 9.45(1) In general; 9.45 (2) Student organizations and government.

As noted, Key Number 9 involves issues pertaining to Students, and Subsections 9.1 thru 9.35, contain student-related issues that the researcher found to be relevant to the topic of academic dishonesty. All referenced cases were perused and studied, but only those cases whose holdings would form guiding principles for higher education administration were chosen for inclusion in chapter 4.

The researcher chose to use electronic sources rather than the digest source to locate relevant case law on the subject of academic dishonesty. Again, relying on Statsky and Wernet's discussion of legal writing, they advise that the primary services that allow you to find opinions electronically are WESTLAW (West Publishing Company) and LEXIS (Mead Data Co.). Both services provide court opinions as well as cross-referenced sources (p. 27). Each Headnote is assigned a Key Number by West (p. 31). Using the Headnotes at the beginning of every opinion, the researcher could reference the Key number to find issues in other cases that were similar to the cases being briefed (p. 133).

The researcher looked for cases under the Key Number of 9 (Students); Subheadings 9.10 Students in general; 9.15 Admission or matriculation; 9.20 Tuition and fees; 9.20(1) Tuition and fees in general; 9.30(1) Regulation of conduct in general; 9.30(5) Expulsion, suspension, or other discipline in general; 9.30(6) Expulsion, suspension, or other discipline--grounds; 9.30(7) Expulsion, suspension, or other discipline/proceedings and review; 9.35(1) Curriculum, degrees, grades, and credits in general; 9.35(2) Curriculum, degrees, grades and credits--/grades and review thereof; 9.35(3.1) Academic expulsion, suspension, or probation in general; and 9.35(4) Academic expulsion, suspension, or probation--proceedings and review.

The majority of this research was conducted on the campus of The University of Alabama at Tuscaloosa at the Bounds Law Library. Other court cases were gathered from the campus of the University of Alabama at Birmingham at the Mervyn H. Sterne Library, and from the campus of Jacksonville State University in the Houston Cole Library. Other research was conducted on a personal computer through the Internet via West Law. The information found at these sources was analyzed in order to provide clarity and direction for higher education administrators whose goal is to fairly and wisely administer university policies and procedures so that litigation over academic dishonesty is avoided. Specifically, cases pertaining to due process rights were analyzed and discussed.

Statsky et al (1995) describe a thumbnail brief of an opinion as including citation, key facts, issues, holdings, reasonings, and dispositions (p. 138). That is the model that the researcher used instead of the comprehensive brief.

### Data Analysis

In this study, the researcher treated the rulings of the courts and opinions of the justices in those rulings as qualitative interviews, based in part on “making meaning of a phenomenon,” as discussed by Arminio and Hultgren (2002, p. 450). The researcher was also guided by Crotty’s (1998) definition of *meaning* as what is “constructed by human beings as they engage with the world” (p. 43). In analyzing the court cases from 1974-2009 concerning academic dishonesty, the researcher presented the findings as they related to current trends in the legal system as they affect higher education.

The best way to discuss, interpret, and answer the research questions as posed by the researcher of this paper was to use case law analysis. Case history analysis is best accomplished

by using a qualitative perspective rather than a quantitative one. Jones (2002) says that a researcher must use inductive analysis to interpret the data so that the reader can understand the exact nuances and behaviors intended by the participants in a study. She goes on to say that the suitable way to analyze is to produce “themes and findings” that communicate a better understanding of the “phenomenon” being investigated in a way that those who study it will be able to recognize (p. 468).

### Conclusions

Administrators of higher education institutions must examine and evaluate the issues pertaining to academic dishonesty as they relate to due process rights of students. A thorough understanding of court rulings as they relate to higher education is crucial if administrators are to avoid wasting both human and fiscal resources by causing undue litigation due to ignorance of current legal trends. The researcher focused on primary and secondary case law as presented in rulings at the Supreme Court level, the United States Court of Appeals level, the United States District Court level, and the state appellate court level. The majority of the research occurred on The University of Alabama at Tuscaloosa in the Bounds Law Library, with other research conducted at the Mervyn H. Sterne Library at the University of Alabama at Birmingham, and the Houston Cole Library on the Jacksonville State University campus.

## CHAPTER 4

### CASE BRIEFS

This chapter provides a synopsis of 74 court cases concerning academic dishonesty in higher education from 1974 to 2009.

The cases are noted using the format established by Statsky and Wernet (1995) in their book *Case Analysis and Fundamentals of Legal Writing*. The cases are in alphabetical order within chronological order. The cases are briefed by citation, key facts from testimony, and analysis of case rulings.

Citation: *McDonald v. Bd. Of Trustees of U. of Illinois (def. R. Marshall) v. Bd. Of Trustees of U. of Illinois* (U.S.Ct. of Apl, Seventh Circuit, Ill. 1974).

Key Facts: Plaintiffs' cases were consolidated because they were trying to answer the same questions about how much evidence a tax-supported institution of higher education must have in order to expel a student for cheating. All pre-med students had to take an aptitude test, and the plaintiffs had the lowest aptitude scores in their class. In the fall of 1971, McDonald, Marshall, and Sullivan, who are African American, enrolled in the College of Medicine as first-year students. Each was accepted as a participant in the Medical Opportunities Program, which was intended to increase minority group participation in the medical profession by providing a different standard of admission for that group of students. In June, 1972, each plaintiff failed the freshman orientation exam. McDonald scored 29, Marshall scored 40, and Sullivan scored 39 on a scale of 100.

The College of Medicine offered a tutorial course in the summer of 1972 for those who had failed the June freshman comp exam, and then allowed those students to retake the exam in September 1972. None of the plaintiffs took the tutorial course. Each plaintiff took the September repeat exam and failed again. The second time around, McDonald's score was 38, Marshall scored 42, and Sullivan scored 44. They were given the opportunity to repeat their freshman year, which they did. They organized a study group, which included two other repeating students; the other two students dropped out of school later that year. The plaintiffs changed their study methods to include reviewing their own notes, reviewing other students' notes, discussion-based meetings, and attendance at a 2-week review session offered to first-year medical students, which was offered at the Urbana campus. They were the only three students from the Chicago campus to attend the review session at the Urbana campus. During the repeat year, they took approximately 10 short quiz-type exams and diagnostic exams, which were similar to the freshman comp exam. On the diagnostic exams, McDonald's scores were 73 and 92, Marshall's were 81 and 86, and Sullivan's were 87 and 94. In June 1973, the three students took the freshman comp exam again and scored as follows: McDonald 82, Marshall 87 and Sullivan 94. The highest score recorded by any other student was 83. Four days after taking the freshman comprehensive exam, all three plaintiffs took the national board exam, which was a much more intensive test. Out of a possible score of 1000, McDonald and Marshall scored a 250, and Sullivan received the minimum passing score of 380. The Student Appraisal Committee became aware of the plaintiffs' outstanding performance on the comp exam, and realized the performances were not consistent with their past performances. Further investigation led to charges of cheating by the Executive Dean, and the case was referred to the College Committee for hearings. The transcript of the hearings was 825 pages long, and stated that no one observed

the plaintiffs cheating at any time. However, testimony was given that questioned whether test scores on the national board exam were consistent with performances on the freshman comp exams. If so, then McDonald should have scored 662, Marshall should have scored 719, and Sullivan should have scored 799. Conversely, had they scored on the freshman comp exam consistent with their national board scores, McDonald and Marshall should have scored a 52 and Sullivan should have scored a 59. Each plaintiff was compared with 12 other classmates who also repeated the freshman year. The student in the other group who performed the best on the freshman comp exam made an 83 and scored 660 on the national board exam. Prior freshman results on the comp exam showed that in the previous 5 years, not one student scored higher than 83; however, in one exam, McDonald scored 87 and Sullivan scored 94.

The answer key contained three incorrect answers, which were corrected after the exam was given. Each plaintiff marked the original wrong answer in two out of the three questions to which they related. The College Committee concluded that the plaintiffs had obtained access to the exam or the answer key or both prior to taking the exam, and expelled them.

Issue: When the students were expelled for cheating, did the evidence to support the charges have to be at the “some” evidence level for an academic decision, or must the evidence be at the “substantial level” of evidence to support a misconduct decision and satisfy due process?

Holding: The U.S. District Court for the Northern District of Illinois, Eastern Division, denied the students’ motions for preliminary injunctions and granted the university’s motion for summary judgment.

Reasons: The General Order on Judicial Standards of Procedure and Substance in Review of Student Discipline in Tax Supported Institutions of Higher Education, issued by the U. S.

District Court for the Western District of Missouri, stated that disciplinary action could be taken on grounds which are not supported by any substantial evidence. However this Court referred to *Thompson v. City of Louisville* (1960) as the final authority that “some” evidence is sufficient for satisfying the due process clause. This case fit the “some” evidence rather than “substantial” evidence because the nature of the offense was unique to the academic community. Each plaintiff was given a full and fair hearing, was represented by counsel of his choice, was given the opportunity to confront and cross-exam witnesses, and was allowed to testify on his own behalf. This ruling stated that because cheating falls under the category of an academic matter, this case did not require as high a level of evidence as would a behavioral matter.

Disposition: The U.S. Court of Appeals, Seventh Circuit, affirmed the judgment of the lower court and ruled for the university.

Citation: *Garshman v. Pennsylvania State U.*, 395 F.Supp. (912, U.S. Dist. Ct., M.D. Pennsylvania, 1975).

Key Facts: On May 2, 1975, Dean and Provost Harry Prystowsky wrote to Mitchell Garshman, a first-year student in the college of medicine, that he was dismissed due to academic dishonesty. At some point, Mr. Garshman admitted to Dean Prystowsky, Professor Berlin, and Professor Quattropani that he cheated on an exam in Anatomy 512. On May 6 of that year, Mr. Garshman met with professor Dr. Cheston Berlin and then with Dean Prystowsky to request the reconsideration of his dismissal. On May 8, Dean Prystowsky wrote a letter to Garshman stating he had revisited his position and that his previous decision remained unchanged. On May 9, Garshman was not allowed to attend a scheduled laboratory class, which was the only class he was not permitted to attend (Garshman had since been given the opportunity to make up the May 9 class he missed). On May 9, following consultation with legal counsel, Dr. Berlin sent a memo

to the Dean stating his desire to refer the matter to a University Hearing Board. On May 10, in response to an inquiry from Garshman's legal counsel, the university legal counsel informed Garshman's legal counsel that the letter of dismissal from Dean Prystowsky resulted from a misunderstanding of the proper procedure under the university discipline system for handling cases of academic dishonesty. In that same letter, Garshman's counsel was also informed that the matter was being referred to a University Hearing Board pursuant to the discipline system, and that Garshman was not dismissed from the college of medicine, but remained a student in good standing until the matter was finally disposed of. The communication also stated that legal counsel from outside the university would not be permitted to represent Garshman before the student discipline boards, but that Garshman could be assisted by an advisor of his choice who is a member of the university community. Garshman was permitted to return to class on May 12, after being informed by Dr. Berlin that his attendance was acceptable until the Hearing Board convened. On May 16, Garshman received a memo detailing that a pre-hearing interview (for the purpose of advising Garshman of his rights with Dr. Berlin) was scheduled for May 19, and Garshman was given a document entitled "You Have a Disciplinary Problem." On May 19, Garshman met with Dr. Berlin and gave him a letter from his legal counsel stating he advised Garshman not to participate in the interview since he could not be represented by legal counsel of his choice, and also refused to receive any materials which would have been presented to him during the interview. On the same afternoon, Garshman appeared at Dr. Berlin's office and was given the following documents: a copy of the letter dated May 16 to Garshman from Dr. Berlin, a statement of charges and Notification of Administrative Summons, Waiver or Acceptance of Board Hearing, University Sanctions for Violation of Regulations, University Procedures for Disciplinary Hearings, and Procedures for Appeal or Review. Mr. Garshman signed a receipt for

the above documents. The letter dated May 16 explained to Garshman the Waiver or Acceptance of Board Hearing form, advised him that if he requested a hearing in the Office of Student Affairs rather than before the University Hearing Board, the sanction would be expulsion from the university, advised Garshman to read all of the documents he received before completing the Waiver of Acceptance of Board Hearing, and directed him to return the Waiver of Acceptance of Board Hearing form with 48 hours.

The Statement of Charges and Notification of Administrative Summons informed Garshman that he was formally charged with the following violations: On April 25, Mr. Garshman did commit academic dishonesty by copying on the Embryology examination in Lecture Room A at 9:00 a.m., and that he did submit the copied examination to the University for academic credit, and, finally, that he did furnish false information to the university. The form stated the charges against Garshman and permitted him to choose one of the following options: contest the validity of the charge and request a hearing before the University Hearing Board; not contest the validity of the charges, and waive a board hearing, but request an immediate hearing before the Assistant Dean for Student Affairs; not contest the validity of the charges, waive a board hearing, and request a hearing before the Assistant Dean for Student Affairs at a later date; or, not contest the validity of the charges and request a hearing before the University Hearing Board. Mr. Garshman signed the form and indicated his preference was to contest the validity of the charges and to request that a hearing be scheduled before the University Hearing Board. In addition, Garshman also indicated on the form that he desired to have an open hearing. The date for the University Hearing Board hearing has not been established. At the time of the hearing, Garshman was completing his third term of study as a student in the college of medicine. Mr.

Garshman asked the court to issue a preliminary injunction enjoining the university from denying him representation by legal counsel at the disciplinary hearing.

Issues: Should a preliminary injunction be issued to force the university to allow legal representation at the student's disciplinary hearing?

Holding: The court stated that the type of injunction it would consider would be one that would prohibit the university from conducting a hearing without the presence of counsel for Garshman until a decision has been reached by this court on the request for a final injunction. Garshman had to establish the following to be entitled to preliminary injunctive relief: that he has a reasonable probability of eventual success on the merits of the case; that he will suffer irreparable injury if the preliminary injunction is not granted; that his interest in the granting of the preliminary injunction outweighs the potential harm to the other parties; and, that his interest in the granting of the preliminary injunction outweighs consideration of the public interest.

Reasons: The court stated that the purpose of a preliminary injunction was to preserve the status quo in anticipation of the outcome of litigation. If a preliminary injunction were issued to force the university to allow legal representation by the student, that status quo would be changed. In addition, the court stated that Garshman was assuming that if he was separated from the University Medical School, he would suffer irreparable injury and the court concluded that Garshman was speculating on that point. The court stated that Garshman failed to carry his burden of proof with respect to the first item on the reasonable likelihood of his eventual success on the merits of the litigation. For that reason, he is not entitled to a preliminary injunction.

Garshman relied on the U.S. Supreme Court ruling in *Goldberg V. Kelly* (1970), in which welfare recipients argued that they were entitled to a hearing prior to termination of benefits, and that they were entitled to legal counsel. The Supreme Court agreed they were entitled to a

hearing but not to counsel. The Court believed that the loss of welfare benefits in *Goldberg* was more severe than the loss Garshman would experience. The Court said that since due process is variable in nature, it is legitimate for this Court to decline to extend *Goldberg* in this case because Garshman was an educated man and could understand his rights and express himself. In addition, in *Hagopian V. Knowlton* (1972), which involved a West Point cadet, the Second Circuit held that although *Hagopian* could not be denied counsel's advice and assistance in preparation of his defense, he could be denied counsel's presence at the hearing. The court stated that academic dishonesty is peculiarly within the discretion of a college administration. Because of the fact that the University followed extensive procedural safeguards in regard to Garshman, the Court cannot accept that the mere exclusion of counsel at the hearing makes the procedure susceptible to unreasonable, arbitrary, or capricious termination decisions. The Court did not believe that Garshman had a reasonable probability of successfully demonstrating he was entitled to counsel at the hearing.

Disposition: The US District Court held that the student would not be granted a preliminary injunction enjoining the university from meeting to consider charges of academic dishonesty.

Citation: *Slaughter v. Brigham Young U.*, 514 F.2d 622 (U.S. Ct. of Apl., 10th Circuit, 1975).

Key Facts: As a graduate student pursuing a doctorate degree, Hayes Slaughter was required to fulfill academic requirements as well as abide by the Student Code of Conduct. Slaughter submitted two articles for publication in a technical journal under his own name, but the articles were not published. In an effort to have the articles published, Slaughter resubmitted the articles and included the name of one of his advisors, Professor Thorne, as a co-author,

without the knowledge of the professor. Both parties agree that Professor Thorne did not contribute in any way to the article and Slaughter did most of the research on the article before he came to Brigham Young University. A hearing was held before a group consisting of the Dean, the head of the chemistry department, the assistant department head, two members of Mr. Slaughter's faculty advisory committee, and Dr. Thorne. The matter had been investigated by the University for several months, and Slaughter had been discussing the issues with faculty and friends several days before the hearing. Dr. Thorne had reprimanded the student for the publication of his first article. During the hearing, Dr. Thorne again questioned why his name had been used on the paper. The student explained that he understood he had Professor Thorne's implicit approval to name him as co-author because he was the advisor. At the conclusion of the hearing, Mr. Slaughter was expelled for violating the Student Code of Conduct. Mr. Slaughter was allowed to tape the hearing. The expelled student brought action for breach of contract arising out of his expulsion from graduate school on the grounds of academic dishonesty.

Issues: The issues are, What procedural postures fall under the purview of federal court decisions, and did a contract agreement exist between Slaughter and the University?

Holding: The US District Court rendered judgment on a jury verdict awarding the student \$88,283 in damages and the university appealed.

Reasons: The US Court of Appeals found that there was an adequate hearing based on the fact that the student was allowed to participate in the process, to present his case, and to hear witnesses

The court further stated since the fact-finding proceedings occurred before the appropriate persons with authority to act on behalf of the university, and if procedural due process was accorded, and the school administrators presented substantial facts to support their

position, then the procedure was adequate. It was clear that Professor Thorne did not give permission for his name to be used as a co-author, so the student committed a dishonest act. Because the university was a “church school,” the Student Code of Conduct refers expressly to the standards of the church sponsoring the school. Therefore, the honesty determination was the measure of the act in an academic context and also in such context at a church school. The court said it falls within the expertise of those administering the Code to apply the Code. School disciplinary problems can “inherently” be solved by the school, as demonstrated in *Speake v. Grantham* (1971) and *Esteban v. Central Missouri State College* (1969), and it was determined that Brigham Young University did so without malice toward the student.

The complaint filed by the student was based “solely” on contract theory, but no evidence was shown to support any such contract between the student and the university. The court acknowledges that some elements of the law of contracts must exist in order to form a framework within which to operate. There are other cases that refer to the relationship between the student and university, especially a private school, as contractual (*Carr v. St. John’s University*, 1962). However, this framework does not imply a rigid interpretation of contract law. The same framework also applies to church membership, union membership, and professional societies. The student-university relationship is unique and it cannot be confined to one category. When the trial court awarded monetary damages to the student, it concluded that the University had breached the contract by expelling the student because the court assumed he would have finished his academic requirements. As a result, the court instructed the jury to award the student damages based on what he would have earned had he finished his degree, which was in error. Due to his expulsion, the student could not finish the academic requirements which included a dissertation and a final oral examination. There was no contract established at trial and no breach

of contract by the University. The case established that if a federal court evaluated a similar case under the Fourteenth Amendment and the Civil Rights Acts it could not substitute its judgment for the judgment of the primary fact finders. In addition, the federal court could not decide a case if the findings contained substantial evidence. Such a determination could be made in a state court if it reviewed its own state institutions. The federal court could only decide if due process standards were met.

Disposition: The monetary judgment in favor of the student is set aside, and the case is reversed with instructions to enter judgment for the University.

Citation: *Hill v. Trustees of Indiana University*, 537 F.2d 248 (U. S. Ct. of Apl., 1976).

Key Facts: On May 14, 1970, graduate student Joseph Hill was notified by Professor Garnier that his failing grades in two classes were based on a plagiarism charge. The letter also stated that copies of the charges were sent to the Dean of the graduate school and a faculty member in the political science department. Two months after the plagiarism charge, Hill was notified that because the Student Code of Conduct had been revised on September 9, 1969, it was no longer appropriate for the ad hoc committee to review the charge, and any further consequences would be delayed until Dean Garnier returned in the fall. Hill was given an opportunity to appeal the plagiarism charge, but he never challenged the charge. Hill did not enroll at the university in the Fall of 1970, but sought judicial relief in federal court claiming that the letter notifying him of failing grades and his withdrawal from the university caused him to suffer a penalty without prior notice and an opportunity to be heard. Hill attempted to explain why he did not take advantage of the appellate process, but the proceeding in the District Court considered those facts, and they cannot be considered at this level. The District Court entered an

order dismissing the student's complaint on October 2, 1974, but the complaint was not dismissed until 15 days later.

Issues: Are certain forms of procedure guaranteed by due process rights and what procedural postures apply specifically to the state of Indiana?

Holding: The District Court for the Southern District of Indiana dismissed the suit against the university, and the student appealed.

Reason: The student claimed he received failing grades without any prior hearing or an opportunity to defend himself which deprived him of his due process rights. In *Mitchell v. W. T. Grant Co.* (1974), the Supreme Court stated due process of law guarantees no exacting form of procedure; it protects substantial rights. Hill was not suspended or expelled while he was waiting on Professor Garnier to return for the Fall semester. He was still a student in good standing. The university offered Hill an opportunity to defend the charge even after he did not re-enroll in school.

Hill attempted to recover both compensatory and punitive damages from Professor Garnier. He stated that the professor imposed a stigma on him with no prior notice and an opportunity to be heard. On May 14, 1970, Garnier sent Hill the letter stating he failed two courses. Hill received the letter on May 16; no action was brought to District Court until June 13, 1972. The District Court found the action was barred by the statute of limitations for character injury in the state of Indiana.

Hill also brought suit against the trustees as a corporate entity for money and equitable relief under §1983, which applies only to wrongful conduct by people. The court ruled a corporate entity is not a person based on *Monroe v. Pape* (1961). Also, in *City of Kenosha v. Bruno* (1973), the Court further concluded that municipal corporations and counties are equally

exempt from equitable §1983 suits. Prior to *Kenosha*, the Seventh Circuit recognized that bodies politic were “persons” for the purpose of equitable §1983 suits but not “persons” for §1983 money damage liability. *Kenosha* eliminated this decision. Therefore, based on the legislative history, case law, and the nature of Indiana University as a “body politic,” the court held that the corporate entity is not a person within §1983 either for purposes of money damage or equitable liability.

Hill also asked for equitable relief against the individual trustees, asking that they fix his academic record by substituting satisfactory grades for the unsatisfactory ones. The court ruled that Hill must first exhaust his administrative remedies before asking the court to take such action.

Disposition: The Court of Appeals affirmed the lower court’s decision when it held that the student was not denied due process, the statute of limitations kept the student from filing suit against the professor, and the student did not exhaust his administrative remedies and was therefore not entitled to have his grades altered.

Citation: *Pride v. Howard University*, 384 A.2d 31 (Dist. Of Columbia Ct. of Apl., 1978).

Key Facts: Clarence Pride, Jr., who was enrolled in the college of medicine, was accused of cheating on an exam he took in the spring semester of his sophomore year. The code of conduct established a two-tier system to deal with allegations of student conduct. The Judiciary Board is charged with conducting a trial-like proceeding to hear testimony and investigate evidence. The Board of Appeals can review decisions made by the Judiciary Board, and either agree with the decision of the Judiciary Board, impose a lighter penalty, or acquit the student. The membership of each Board is to consist of a non-voting chairman, with four faculty and four student members. The code does not dictate what number constitutes a quorum or a majority.

The Judicial Board heard the charge against Pride in June of 1973, but one of the four student members had already graduated and another student was not present. The counsel for Pride objected to the Board proceeding without those two members, but the Chairman overruled him. Four members of the Judiciary Board found Pride guilty, one abstained from voting, and the remaining member voted in favor of the student. The Judiciary Board recommended Pride's indefinite suspension. Pride appealed to the Board of Appeals. Prior to the Board of Appeals' proceedings, Pride objected to the membership composition because one of the four student members was absent. His objection was overruled, and the Board of Appeals went on to deny his counsel's request to recall witnesses who appeared at the original Judiciary Board hearing. The Board of Appeals voted six to one to accept the Judiciary Board's verdict of guilty. However, the Board of Appeals modified the penalty from indefinite suspension to suspension for the 1973-1974 academic year.

Pride was re-admitted in the Fall of 1974 with the stipulations that he repeat his entire sophomore year and he could be dismissed from the university if he failed one class. After his reinstatement, Pride failed four classes and his enrollment was terminated in January of 1975.

Issues: By re-enrolling in the university after an academic year of suspension, did the student inherently acknowledge that he agreed with the reason for suspension? Is the spirit of the law met when a university follows its own published practices? Did the University breach its contract with the student?

Holding: The Superior Court said the student had been afforded a fair hearing and that he failed to show his academic failure after being readmitted was not caused by or related to previous disciplinary proceedings. The student appealed.

Reason: The Court found the student had been given a fair hearing and any shortcoming which might have occurred in the Judiciary Board's proceedings was alleviated by the hearing before the Board of Appeals, and that the student waived any deficiency by accepting reenrollment. Also, the student failed to show that academic failure was caused by or related to the cheating incident.

*Basch v. George Washington University* (1974), established that a contractual relationship exists between a university and its students. That case also determined that the contract itself must be viewed as a whole and the court should view the language of the document from the viewpoint of a reasonable person. In this case, the Code of Conduct does not name the procedure concerning removal or replacement of members of the Board who refuse to attend or who have graduated. Part II of the Code stated that "any actions brought against the student must result in the filing of charges within 30 days after the information concerning the offense is received." The spirit of this requirement would be aggravated by a ruling that the Board only proceed if all members are present. A review of the Code reveals that the University's practice was not to replace Board members who had graduated until the following fall term. In *Greene v. Howard University* (1969), the Federal Appeal Court concluded that Howard University was obligated under contract to follow its usual practices with regard to the reappointment of non-tenured faculty members. In addition, because there were only seven voting members present, the four who voted to suspend Pride did, in fact, constitute a majority.

Disposition: The District of Columbia Court of Appeals ruled the university did not breach its contract with Pride when it did not supply eight members of the Judiciary Board, and that four members of the Judiciary Board who voted to suspend Pride represented the majority.

Citation: *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78, 98 S.Ct. 948, 55 L.Ed.2d 124, (1978).

Key Facts: Charlotte Horowitz was admitted to the Medical School of the University of Missouri in the fall of 1971. One of the requirements of the curriculum was that during the last 2 years of the program, students had to participate in rotational academic and clinical studies that covered various medical issues such as obstetrics-gynecology, pediatrics, and surgery. The student's academic performance is evaluated periodically by the Council on Evaluation, which was made up of both faculty and students. The Council had the power to recommend probation and dismissal. The recommendations of the Council are reviewed by the Coordinating Committee, which was made up of faculty members, and must finally be approved by the Dean. Traditionally, a student is not allowed to appear before either the Council or the Committee when his or her academic performance is being reviewed.

In the spring of Horowitz's first year, several faculty members expressed dissatisfaction with her clinical performance in pediatrics. Her performance was below that of her classmates, here attendance was erratic, and she did not practice appropriate personal hygiene. Upon the recommendation of the Council, Horowitz entered her second year of study on probation. The same unacceptable pattern continued into the student's second year. In the middle of the year, the Council reviewed Horowitz's academic progress and made the recommendation that she not be allowed to graduate in June of that year; in addition, the Council stated that if Horowitz's performance did not improve radically, she would be dropped from the school. Horowitz was allowed to take oral and practical examinations as an "appeal" of the decision to not allow her to graduate. During this appeal, Horowitz spent a good portion of time with seven practicing physicians in the area. The physicians maintained an esteemed reputation among their peers.

These physicians were asked to recommend whether Horowitz should be allowed to graduate on schedule; if they recommended against graduation, they were asked whether she should be dropped from the program. Two of the seven doctors recommended that Horowitz be allowed to graduate on schedule. Of the other five, two recommended that she be dropped immediately from the school, and the other three recommended that she not be allowed to graduate in June and continue on probation with further reviews on clinic progress. When the Council received the recommendations, it reiterated its position that Horowitz not be allowed to graduate in June, and that her performance must improve radically in order to stay in the program. The Council met again in mid-May, and upon seeing the surgery rotation performance rated as “low-satisfactory” it unanimously recommended that she not be allowed to stay in the program, unless it received a report of radical improvement. The Council did not make its recommendation official until receiving reports from other rotations; when a report on the emergency rotation was also poor, the Council immediately reaffirmed its recommendation. The Committee and the Dean approved the recommendation and notified Horowitz, who appealed the decision in writing to the Provost for Health Sciences. The Provost concurred in the recommendation after seeing the record. Horowitz filed an action against school officials under 42 USCS 1983 in the U.S. District Court for the Western District of Missouri. The District Court concluded that she had been given all her due process rights and dismissed her complaint. The U.S. Court of Appeals for the Eighth Circuit reversed.

Issues: Did the appellate court err in reversing the trial court’s dismissal of Horowitz based on denying due process rights?

Holding: The school board asked for a writ of certiorari from the U. S. Court of Appeals, which reversed the trial court’s dismissal of Horowitz’s due process case.

Reasons: This Court does not have to decide whether Horowitz's dismissal deprived her of a liberty interest in pursuing a medical career, or indeed, if she had any other interest constitutionally. Assuming there was a liberty or property interest, Horowitz has been afforded at least as much due process as the Fourteenth Amendment requires. The ultimate decision to dismiss Horowitz was careful and deliberate. This Court is of the opinion that the school went beyond procedural due process by giving Horowitz the chance to be examined by seven independent physicians. *Goss v. Lopez* (1975) determined that due process requires notice of the charges and, if he denies them, an explanation of the evidence and an opportunity to present his side of the story. But, as stated in *Cafeteria Workers v. McElroy* (1961), the very nature of due process "negates any concept of inflexible procedures" as it applies to every situation. The need for flexibility is well demonstrated by the major difference between the failure of a student to meet academic standards and a student violating conduct rules. The difference requires far less stringent procedural requirements for an academic dismissal. State and federal courts have recognized that there are distinct differences between decisions to suspend or dismiss a student for disciplinary purposes and academic reasons (*Barnard v. Inhabitants of Shelburne*, 1913; *Mustell v. Rose*, 1968; *Foley v. Benedict*, 1932; *Mahavongsanan v. Hall*, 1976; *Gaspar v. Bruton*, 1975).

In *Goss* (1975), this Court found that suspension of a student for disciplinary reason resembles a "traditional judicial and administrative fact-finding" to call for a "hearing." However, even in that context, the Court stops short of requiring a "formal" hearing. Academic evaluations, in contrast, bear little resemblance to judicial and administrative proceedings. A judgment based on academic requirements is much more subjective in nature than the questioning in a disciplinary case. The determination of whether to dismiss a student for

academic reasons requires an “expert evaluation of cumulative information” and is not easily adapted to the tools of a judicial hearing. We rely on *Goss* (1975) again when it holds that the “educational process is not by nature adversarial . . . it centers instead on a continuing relationship between faculty and students.”

Disposition: The U. S. Supreme Court reversed the appellate court’s decision and ruled in favor of the school board.

Citation: *Clayton v. Trustees of Princeton University*, 519 F.Supp. 802 (1981).

Key Facts: Robert Clayton was enrolled at Princeton University. On March 6, 1979, Clayton took a make-up written exam as a sophomore in Biology 204. He and three other students had missed the original test due to performing as student athletes. The students were supposed to identify laboratory specimens, slides, and model parts, which were located throughout the classroom. A teaching assistant was in the laboratory with the students taking the exam so that she could answer questions about the exam if necessary. Clayton and another student, Nelson, asked questions of the teaching assistant. The teaching assistant was not serving as a proctor on the test, and she did not require the three students to write out the honor pledge, even though she considered the exam to be under the Honor System. During the course of the exam, the teaching assistant left the room at least once, and was not in the room when the alleged incident occurred. After Clayton and Nelson finished the exam and handed in their papers, Nelson asked the teaching assistant when they could take another make-up exam in the same course. A third student was still working on the exam, because he had started after Clayton and Nelson started. The teaching assistant left the room to find out the answer to the question. Although the versions of the story vary, the general consensus of the events that transpired while the teaching assistant was out of the room are as follows: Clayton talked to Nelson, consulted a

lab manual, retrieved his exam paper, and changed his answer to question 19. The third student who was still taking the test discussed the incident with Craig Marx, who was the chairman of the Honor Committee, on March 8, 1979. Marx asked the student to prepare a written letter containing the accusation as soon as possible, which he did that same day. The student did not know the two students he was trying to identify for cheating, and spent considerable time that evening with two honor committee members. The student later commented that he would not participate in Clayton's hearing because they were both members of the swim team. Marx concurred with his decision not to participate in Clayton's hearing. On March 8, 1979, Marx contacted Clayton and told him he had been accused of violating the Honor Constitution. Marx suggested that several members of the Honor Committee meet that night with Clayton and talk about the issues. Clayton agreed and was permitted to look at the letter of accusation, but was never shown a name on the letter or was told who made the allegations. It is generally agreed that Clayton understood the infraction with which he had been charged. Clayton denied he had cheated. The two Honor Committee members advised Clayton of his right to counsel and told him in general what other rights were contained in the Honor Constitution. During the conversation, the two Honor Committee members asked Clayton the name of the other person accused of cheating during the make-up exam. Clayton gave them the name, and the Honor Committee members asked him to refrain from talking to him. Clayton tried to call the other person, Nelson, but could not get him on the phone and went to Nelson's room, and arrived before the two Honor Committee members got there. Clayton asked Nelson to remain calm and warned him the committee members were coming to see him. After Clayton left, the two committee members arrived and discussed the accusation with Nelson. Marx briefly spoke with the student who accused the other two students of cheating, and the student verified that he was

certain the cheating occurred. Marx decided to hold a hearing before the entire Honor Committee with Clayton and Nelson. On March 9, Clayton and Nelson were informed of the hearing, which was scheduled for March 10 beginning at 9:00 a.m. The other committee member, Shields, gave Clayton and Nelson names of students who were willing to serve as advisors. Clayton had been told he could utilize any resident member of the University community as a defense adviser. Clayton acknowledged that he understood he was not restricted to people on the list Shields provided. Clayton later raised the fact that even though Marx and Shields did not specifically advise him he could use a faculty member as an advisor, he contacted Professor Mahoney to talk about a strategy at the hearing. Therefore, he was not completely unaware that he could use a faculty member for help. On March 9, Clayton and Nelson contacted and met with one of the student names on the list provided by Marx and Shields. The meeting lasted about one hour. Clayton and Nelson were aware that the student advisor named Kirkland had never before acted as a defense advisor. Kirkland left Clayton's room to meet with Shields, whom he had been acquainted with over the past 4 years. Clayton was aware of the friendship between Kirkland and Shields. Kirkland spent approximately one and one half hours talking to Shields about the case and came to the conclusion he could well represent Clayton's side of the issue. Shields let Kirkland see the letter of accusation during the discussion. Kirkland bought up the idea that he wanted a second defense advisor to be involved with the case. Shields recommended Packard for the job, although Packard could not be reached until March 9. On the morning of March 9, Kirkland, Clayton, and Nelson met in the lab room where the exam took place and discussed strategy for about an hour. They all then went to Professor Mahoney's room to discuss strategy, and focused on procedural violations that might have occurred the previous day. The plan was to get Shields and Marx to recuse themselves so there would not be a quorum during the hearing.

About 5:00 pm on Friday, March 9, Kirkland met with Shields and Hamel, another member of the Honor Committee. Shields gave Kirkland a copy of the letter with the name of the accusing student blacked out. The discussion was general and basically all agreed there were not procedural irregularities. When Kirkland expressed concern that he had just received a copy of the letter, Shields and Hamel offered an adjournment of the hearing. At a later meeting, Kirkland, Packard, Clayton, and Nelson decided to refuse the adjournment, and telephoned Shields to give him the names of defense witnesses. Kirkland raised the issue of jurisdiction and Shields told him the Honor Committee had jurisdiction. Packard, a former member of both the Honor Committee and the Discipline Committee, agreed with the jurisdiction issue.

The Honor Committee hearing was held on March 10, and the court determined from the transcripts of the hearing that the proceedings were conducted with the decorum and formality expected in such a case. Following all of the testimony, the members of the Committee and defense advisors visited the lab where the exam was given. The Committee deliberated for 2 hours and then asked for some of the testimony to be repeated. Within an hour of the second presentation of testimony, the Honor Committee took its final vote. The Honor Constitution required a unanimous vote for conviction, and all five members voted to convict Clayton and acquit Nelson. At approximately 8:00 p.m., Clayton and Nelson were informed, separately, of the results of the vote. The Committee recommended a 1-year suspension to the President, which was the least severe penalty it could recommend. The guilty verdict came from the Committee believing that Clayton changed his answer after turning in his paper and obtaining the correct answer from another source.

On March 15, 1979, Clayton delivered an appeal to the President with a cover letter detailing the reasons why the Honor Committee had not functioned properly, based on failing to

follow proper procedures, and “judicial bias.” The President contacted the chairman of the committee and requested the Honor Committee respond to the letter. The President, with the concurrence of Sullivan, denied the appeal in a letter delivered to Clayton around March 25.

Issues: Did the University adhere to procedural material issues by allowing sufficient counsel for the student and hearing the dispute before the appropriate committee? Was the student required to file a claim under the Fifth Amendment in order to claim his due process rights were violated?

Holding: The U.S. District Court held that if Clayton could prove the University materially breached its procedures, Clayton would be entitled to some relief.

Reasons: Clayton relied on *Tedeschi v. Wagner College* (1980) for claiming Princeton did not follow its own rules. In that case, the Appeals Court ruled that when a university adopted a rule or guideline establishing the procedure to be followed in relation to suspension or expulsion they are obligated to follow that procedure. Princeton made the argument that the court should not be worried about whether the written procedures were followed as long as the procedures allowed basic procedural fairness as set forth in: *Sill v. Pennsylvania State University* (1972), *Wisch v. Sanford School, Inc.* (1976), and *Edwards v. Board of Regents of Northwest Missouri State University* (1975). This Court ruled that *Sill* only discussed constitutional questions challenging disciplinary procedures and was therefore not binding in this instance in consideration of the common law questions.

In trying to decide which approach to apply to this case, this Court said it was greatly influenced by the New Jersey law of associations, where situations of contract rights, property rights, and personal freedom rights create a bond similar to the relationship between a student and a university. In *Higgins v. American Society of Clinical Pathologists* (1968), the New Jersey

Supreme Court considered the case of a medical technologist whose certification by a professional society was revoked after she violated an ethical standard publicized by the society. The real issue in *Higgins* was that judicial relief needed to be granted by the judicial system because a prized personal relationship to the association and the subsequent status conferred by that relationship was destroyed. In this case, the Court decided there was a similar relationship to *Higgins*, because Clayton lost his status as a member in good standing of Princeton's academic community. Further, when the New Jersey courts have addressed the question of whether or not an association must observe its own rules in disciplining a member, the answer is always yes (*Baugh v. Thomas*, 1970).

The Court had two material dispute-of-facts issues. The first issue was the language of the Honor Constitution itself. The document stated that the student's rights included "an adviser at any hearing to speak on his/her behalf and to cross-examine witnesses." Clayton had as adviser an undergraduate student named Derek Kirkland. Kirkland testified that he had been coached by the University to stay "balanced" in his advocacy of Clayton, and that the Committee had in the past been disappointed when other advisers were too "vigorous" in their advocacy. However, the transcript showed that Kirkland cross-examined the accuser and that he spoke strongly on behalf of Clayton.

The second material dispute involved the question of whether the Honor Committee was the appropriate body to hear Clayton's case. At Princeton, there were two bodies who could adjudicate undergraduate disciplinary matters. The Honor Committee was limited to violations of the Honor System as it applies to written exams. The Faculty-Student Committee on Discipline has jurisdiction over all disciplinary matters, both academic and other, that do not come within the Honor Committee's jurisdiction. The Faculty-Student Committee had a much wider range of

punishments available, including a reprimand. At the time of acceptance to Princeton, every student is required to write a short statement displaying an understanding of the Honor Constitution, which Clayton did. In addition, the Princeton University Undergraduate Announcement of 1976-1977, which Clayton received before the cheating incident, states that “all undergraduates accept responsibility for honesty in written examinations. . . . And each examination paper will contain a statement written and signed by the student that states they have not given or received help on the exam . . . and that exams are not proctored.” Clayton argued that he did not sign a pledge before this particular exam and that a teaching assistant was present during part of the exam. The University argued that because Clayton did not bring these issues up in an appeal to the president, he waived his right to raise the issues in Court.

Disposition: The Court decided that all of the facts surrounding the Honor Committee’s hearing would best be developed during a trial (thereby denying Princeton’s motion to strike the matter from the trial calendar); and that since Clayton chose not to pursue claims under the Fifth Amendment, it would grant Princeton’s motion for summary judgment on the due process issue.

Citation: *Napolitano v. The Trustees of Princeton University*, 186 N.J.Super 548, 453 A.2d 263 (1982).

Key Facts: In the fall term of 1981, Professor Malloy taught a class called “The Spanish American Novel,” in which Gabrielle Napolitano enrolled. At the first class meeting, Malloy announced that the requirements would include a term paper, a midterm exam, and a final exam. The term paper was to consist of a critical analysis of one of the works read for the course, but the topic was to be chosen by the student and approved by Molloy. The term paper was due by January 13, 1982. Napolitano did not seek approval of her topic until December 16, 1981, the last day of class before Christmas. She told Malloy she wanted to write her paper analyzing *100*

*Years of Solitude* by Gabriel Garcia Marquez. Molloy approved the topic and suggested another work that Napolitano should read for the assignment. When Molloy compared Napolitano's paper with the suggested reading she found sections taken verbatim, but were not quoted or footnoted properly. At the end of the paper, Napolitano wrote and signed an acknowledgement of originality that was required on all work at Princeton. On January 22, 1982, after comparing Napolitano's paper with the suggested reading, Molloy telephoned Dean Onek to tell him about the suspected plagiarism. The Dean told Molloy to submit the charge of plagiarism in letter format and to report a grade of "Incomplete" in the course on Napolitano's transcript.

All undergraduate disciplinary matters at Princeton that do not involve in-class examinations come under the jurisdiction of the Faculty-Student Committee on Discipline (COD). This includes academic violations, such as plagiarism, as well as nonacademic violations, such as conduct or drug-related issues. The other disciplinary arm of the University is the Princeton Honor Committee, which governs decisions concerning examinations under the Princeton Honor System.

On January 26, Malloy sent the Dean the requested letter. He also sent a formal letter to Napolitano notifying her of a hearing on February 11. The COD found Napolitano guilty of plagiarism and voted to withhold her degree for 1 year. (This particular penalty is only imposed on second semester seniors, and is considered less serious than suspension.) Dean Onek informed Napolitano of the decision and met with her to explain her right to appeal. There are two ways to appeal from the recommendations of the COD: to the Judicial Committee or to the President of Princeton. The only appeal process referred to in Princeton's written material refers to the Judicial Committee, but a large majority of students who file an appeal do so directly to the President. Napolitano met with the president's assistant before February 18 to discuss the

appeal, which is the date she wrote to the president asking for clemency. Napolitano met with the president and his assistant on February 26. The president reviewed the file and on March 1, wrote to Napolitano to inform her he had decided to uphold the decision of the COD. A verified complaint listing 14 counts was filed on April 22, at which time the trial judge entered an order to show cause for injunctive relief. Under all counts, Napolitano sought actual and punitive damages, plus costs and attorney's fees. Under counts one through eight, she sought temporary and permanent injunctive relief to require Princeton to graduate her on June 8, 1982, to keep Princeton from notifying any of the law schools to which she had applied about the disciplinary action, and to require Princeton to clear her record. On April 22, at the request of Napolitano, the trial judge entered an order permitting "discovery with leave of court," which required Princeton to produce documents and appear for dispositions on April 27. After several procedural motions, the parties were directed to bring cross-motion for summary judgment on seven issues. The first summary hearing was held on May 24, but neither side called witnesses. After hearing oral arguments, the trial judge decided to remand the matter for a rehearing at Princeton. The judge said that a conviction on the charge of plagiarism must be based upon finding evidence of "intent to pass off the submitted work as her own" and that Napolitano must be allowed to call any witnesses she believed necessary (subject to reasonable regulation by the presiding officer). The judge also retained jurisdiction and directed counsel to prepare instructions for the COD that would outline the Committee's responsibilities, including advising the Committee it could reach the same or different conclusion, that Napolitano could call any witness, the Committee was not limited to considering only information presented at the first hearing, the conclusion must be based solely on information presented at the rehearing, the entire rehearing must be taped, and the minutes of the rehearing were to be documented by the secretary and approved by each

member of the COD. The rehearing took place on May 27. After listening to the testimonies, the COD unanimously found Napolitano guilty of plagiarism and imposed the penalty of withholding her degree for 1 year. The secretary of the COD documented the summary of the hearing as required by the judge. On May 30, Napolitano, along with her parents and Professor Doig, met with the president to discuss her appeal. On June 1, President Bowen affirmed the decision reached by the COD at the rehearing. The final summary hearing was held on June 2, and the trial judge found the decision on remand was supported by the evidence.

Issues: The issues were as follows: Did the New Jersey Constitution impose due process requirements on Princeton's disciplinary system? Did Napolitano violate Princeton's Honor Code concerning plagiarism? Did the penalty imposed on Napolitano serve an "educational purpose" or did it breach an implied or actual contract between the University and the student?

Holding: The Superior Court, Chancery Division, Mercer County, ordered a rehearing and after the rehearing, upheld the penalty of withholding Napolitano's degree for 1 year. The student appealed.

Reasons: Since there was not a precedent in this jurisdiction, the Court looked to private law, such as *Higgins v. American Society of Clinical Pathologists* (1968) and *Clayton v. Princeton University* (1981). These cases dealt with the right of private organizations versus the rights of the members. *State v. Schmid* (1980) said the relationship between a University and a student was a voluntary relationship, and that a student had to abide by reasonable rules and regulations in order to be a member of the organization. The student-university relationship is unique, and may vary from school to school. Courts have also recognized that a University must be able to deal with academic misconduct in order to assure the academic and general well-being of the academic community. Applying certain rules and regulations does not automatically

deprive the student of his or her due process rights (*Slaughter v. Brigham Young University*, 1974; *Jansen v. Emory University*, 1980).

The Court said a school was an academic institution and did not have to conduct a hearing in the same manner as a courtroom, which would include a full-fledged hearing. *Board of Curators of University of Missouri v. Horowitz* (1978) accurately stated that the trial judge in an academic misconduct case did not have to become a “super-trier” under due process deliberations. Testimony supported evidence that Napolitano did indeed plagiarize in her paper. Napolitano’s claim that the New Jersey Constitution required the courts to consider due process rights not afforded them by the federal constitution was denied. Although the trial judge disagreed with Princeton’s decision to withhold Napolitano’s degree for 1 year, he stated he could not substitute his own views for those of the University. Napolitano was one of the top scholars and athletes when she matriculated to Princeton from Stamford High School in Connecticut. In addition, she was considered to be one of the top students in her entire class at Princeton. Therefore, the Court reasoned, the University could hold her in high esteem and expect impeccable work from her. The penalty of delaying her degree for 1 year was actually very lenient, in light of the fact that she could have been expelled.

Disposition: The Superior Court of New Jersey, Appellate Division, held that the trial judge was not required to conduct a full-fledged hearing on whether or not the plagiarism was proven; the disciplinary committee properly concluded that plagiarism had indeed occurred; the State Constitution does not require the University to grant due process rights not afforded under the Federal Constitution; and, the Courts stated that the punishment did indeed have educational value as a “lesson learned.”

Citation: *Smith v. Gettysburg College*, 22 Pa. D, C.3d 607 (Pa. Com. Pl., 1982).

Key Facts: Andrew Smith, a senior at Gettysburg College, submitted a 20-page paper on November 2, 1981, as part of course requirements for Chemistry 353. At the time of the assignment, Smith ranked last or next to last in academic standing in the class under Professor Hathaway. Hathaway initially gave the paper a grade of B+, but checked the references because she did not believe Smith was capable of that kind of quality of work. She discovered the paper was accurately footnoted but also discovered many verbatim phrases without the use of quotation marks. Professor Hathaway reported the assignment as plagiarism and a violation of the Honor Code to the Honor Commission. On November 3, Smith was notified orally that he was charged with an Honor Code violation. Smith never received a written charge concerning the incident. A hearing was scheduled for November 10. Smith attended the hearing and pled guilty to the charge, while he later stated that he did so only upon the advice of his case investigator, although the investigator filed an affidavit denying that he advised Smith to plead guilty. The handbook stated that a person who pled guilty without being charged may receive a failing grade in the course and the transcript would reflect a failing grade, but no further action would be taken, if the admission of cheating was made within 24 hours of the violation. Smith received a failing grade and had certain grants converted to loans for the next semester. The penalty imposed was the lightest he could receive. Smith was aware that his financial aid agreement was subject to being changed on a yearly basis.

The 1978-1979 Honor Code Bulletin of Gettysburg defined plagiarism as an intentional act. In the 1981-1982 revised Bulletin, the word “intentional” was removed. The procedures in the Gettysburg handbook did not require written notice or detailed notice of an Honor Code violation.

Issues: Did the Court have jurisdiction over the matter even though the College filed a motion to dismiss the action based on its understanding that the Court could not rule in the case of a private school? Was the motion by the College to supplement the record by adding the affidavit of the case investigator proper? Does the Fourteenth Amendment apply to private schools?

Holding: Smith filed for a preliminary injunction to prevent the college from giving him a failing grade and changing his student grant to a student loan.

Reasons: Smith argued that his due rights were violated even though he failed to show any tax support or symbiotic relationship between the college and any governmental agency. The Court stated that, in general, Fourteenth Amendment rights are “triggered” by state actions. *Tedeschi v. Wagner College* (1979) established that performance of an educational process is not sufficient to constitute an action as an official state action. *Corr v. Mattheis* (1976) established that depriving a student of financial aid provided by a government grant *is* a state action, and that withholding financial benefits as a result of a contractual relationship involves due process (*Masonic Grand Chapter of Order of Eastern Star v. Sweatt*, 1959). Smith stated that because the financial aid was changed to a loan, he had been denied due process rights. The Court in this case decided that *Sweatt* involved financial benefits resulting from a membership, and the financial aid issue can easily be separated from the relief sought from the preliminary injunction. The Court said it could not bind the College’s right to make and enforce regulations with financial issues. They further explained that even an expelled student was not entitled to tuition refunds per *Teeter v. Homer Military School* (1914). The Court maintained that Smith had no due process rights. *Barker v. Bryn Mawr College* (1923) established that the college had the right to

change the catalogue and the definition of plagiarism. In addition, the College followed its own published procedures.

Disposition: The College's request to dismiss the motion is denied and its motion to supplement the record is granted. Smith's request for a preliminary injunction is denied.

Citation: *Jones v. University of North Carolina at Charlotte*, 704 F.2d 713 (U.S. Ct. of Apl., 4th Circuit, 1983).

Key Facts: Nancy Jones was a student at the University of North Carolina in the nursing department. In October 1982, she was suspected of cheating on a final exam by getting answers to two questions from a professor, changing her paper, and then submitting it. Five days later she was informed by the dean of the nursing school that she was accused of cheating and she could either accept a failing grade or be tried before a University Student Council made up of three students. Jones chose the Student Council hearing, where she was found guilty of academic dishonesty. In accordance with University policy, Jones appealed to the UNCC chancellor and requested a new hearing before a Chancellor's Hearing Panel made up of three faculty members. The chancellor determined, and the Chancellor's Hearing Panel concurred, that irregularities occurred in the Student Council hearing, which rendered the Council's verdict null and void. The chancellor requested the Hearing Panel to conduct another hearing that would listen to evidence from both sides. After hearing evidence for approximately 8 hours, the Hearing Panel reported to the chancellor that Jones was deemed "not guilty" of the cheating charge.

The University counsel then filed an objection with the chancellor concerning the decision of the Hearing Panel. Upon the recommendation of the chancellor, the vice-chancellor reviewed the transcript and reached a contrary decision that Jones was guilty as charged. The vice-chancellor then determined the original sanction of a failing grade and disciplinary

probation for one semester should be upheld. Consequently, the University cancelled Jones' registration for the college of nursing for the Spring 1983 semester, because she had to pass the current class in order to register for a subsequent class. Jones filed suit under U.S.C. §1983 alleging violation of procedural due process rights.

Issues: Do state-specific procedural postures take precedence over basic due process rights? Did the "balance of hardships" test favor the student or the university when the court considered allowing a preliminary injunction?

Holding: The District Court granted Jones' motion for a preliminary injunction and ordered that she be reinstated as a student in good standing. The University appealed the preliminary injunction.

Reasons: The Court said the standards by which it judges the correctness of a preliminary injunction are basically set forth in *Blackwelder Furniture Co. v. Seilig Manufacturing Co.* (4th cir. 1977). In that case, four tests are required: plaintiff's likelihood of success on the merits; the likelihood that the plaintiff will suffer irreparable injury without an injunction, the likely injury that the defendant will suffer due to the injunction, and, the public interest. If the "balance of hardships" favor the plaintiff, an injunction preserving the status quo should be issued (*North Carolina State Ports Authority v. Dart Containerline Co.*, 1979).

In light of the standards mentioned, the Court said the balance of hardships weighed heavily in favor of Jones. The District Court noted that without an injunction, Jones will suffer irreparable injury because she will not be allowed to take courses during the Spring, which will delay her graduation and cause a lapse in her education that she will have to explain throughout her professional life; and, she will not be able to continue her education with her peers. Jones would suffer far more concrete injury than the University would sustain even if she is ultimately

vindicated of all charges. The University admitted that the Student Council's hearing was so flawed that it was set aside by the University administration, and another hearing was scheduled. A second hearing resulted in the charge of not guilty and was either "reversed" or "disregarded" by a University officer.

The Court of Appeals commented that the source of procedural guarantees in this type of case appears to be found in the due process clause rather than in specific procedures provided by the state (*Hewitt v. Helms*, 1938; *Arnett v. Kennedy*, 1974). It went on to state that the Supreme Court recently recognized that the possibility exists of an interpretation of the law "so extreme" that it would ultimately violate due process rights (*Board of Education v. McCluskey*, 1982).

Disposition: The U. S. Court of Appeals for the 4th Circuit affirmed the preliminary injunction in favor of Jones because she would suffer far more concrete injury if the injunction was dissolved and then she was found innocent, than if she was ultimately found innocent and the injunction stayed.

Citation: *Lightsey v. King, Superintendent, U.S. Merchant Marine Academy*, 567 F.Supp. 645 (U.S. District Court, E.D. New York, 1983).

Key Facts: Midshipman Thomas Lightsey took an examination on February 10, 1983, that was proctored by Lt. Gay, in a course named "Deck Safety." Lieutenant Gay announced at the beginning of the exam that the exam would be conducted in a manner similar to Coast Guard exams. Although it is not clear exactly how Lt. Gay ended the exam, it is clear to this Court that he believed the exam was over when he noticed three students in the back of the room who were still writing. The professor noticed that Lightsey was filling in blanks at the bottom of his answer sheet, that his exam sheet was open and laying face up, and that to his left were a number of completed answer sheets belonging to students who had completed the exam on time. A brief

conversation ensued when the professor asked Lightsey what he was doing and Lightsey replied he was transferring answers from his exam sheet to his answer sheet. Lightsey approached Gay and told him he overheard other students speculating about what Gay must be thinking, and assured Gay he was not cheating. Gay responded that it crossed his mind that Lightsey was indeed cheating. Lightsey was awarded a grade of zero on the test. Gay filed a written charge with the Honor Board accusing Lightsey of cheating. The Academy's Honor Board determined that Lightsey was not guilty of cheating, but the Academy has refused to reinstate the actual grade of "75" he made on the test. Because of the "zero" grade, Lightsey failed the Deck Safety course and was declared ineligible for the Third Mates Licensing Examination administered by the Coast Guard.

According to chapter four of the academy's regulations, after a charge of lying, cheating, or stealing is leveled, the Honor Board notifies the accused and the investigating officer calls for evidence and witnesses. If a finding of not guilty is rendered, the matter is dismissed and all records of the proceeding are destroyed. Because Lightsey was found not guilty his case was dismissed and all records were destroyed. The matter was not referred to the Superintendent or the Executive Board, since it was considered closed. Nevertheless, when Lightsey confronted Gay with the not guilty verdict, Lt. Gay still refused to give him the computed test score. Both Gay and Lightsey related the problem to the department head and Captain Krinsky, who was the Dean of Academics. Krinsky supported Gay's refusal to credit the "75" test score, despite admitting that the Honor Board's decision was "authoritative." Lightsey filed for injunctive relief.

Issues: By not following the directives of the Honor Board's decision to reinstate the actual grade of "75," did the Academy violate the student's due process rights?

Holding: The District court of New York held that by holding an Honor Board hearing and then ignoring the result, the Academy had violated Lightsey's due process rights.

Reasons: The Court acknowledged its full support of academic institutions to set parameters of what tests to administer and how to grade them, as long as there is not a display of arbitrary, capricious, or bad faith conduct (*Hines v. Rinker*, 1981; *Gaspar v. Bruton*, 1975; *Stevens v. Hunt*, 1981; *Lesser v. Board of Education of the City of New York*, 1963). However, this is not a matter of discretionary grading and this is a disciplinary matter, not an academic one. Therefore, the Constitution imposes a greater procedural requirement on disciplinary rulings (*Board of Curators of the University of Missouri v. Horowitz*, 1978; *Sofair v. State University of New York*, 1978). The Academy argued that this case did not involve a disciplinary element and was purely academic in nature. However, the Court was convinced that the opposite was true: that it was purely disciplinary, at least until the Honor Board cleared Lightsey of cheating. The Court believed the Academy decided it was an academic matter in an attempt to circumvent the Honor Board's verdict. Had the Academy not reported the incident to the Honor Board in the beginning, and treated it like an academic issue at that time, this Court would not question its judgment. Under the Academy's Disciplinary Regulations, Lightsey could have been dismissed from the Academy had he been found guilty of cheating. While the Honor Board completely satisfied the requirements of due process by allowing Lightsey a fair hearing, informing him of the charges, and permitting him to present evidence and witnesses, the Academy ignored the Board's findings. The Court stated the procedural requirements of due process assume that the results of the required procedures will be respected. The Academy's failure to honor the "not guilty" verdict constituted arbitrary and capricious agency action.

Disposition: The U.S. District Court of New York ruled that by disregarding the decision of the Honor Board hearing, the Academy violated Lightsey's due process rights. The Academy was ordered to credit Lightsey the "75" test score as scored by the computer.

Citation: *Corso v. Creighton University*, 731 F.2d 529 (U.S. Ct. Of Apl., 8th Circuit, 1984).

Key Facts: Salvatore Corso began medical school at Creighton University in the Fall of 1981. In May 1982, he and several other students were accused of cheating on a final exam. Corso was informed of the charges in a letter from the associate dean for student affairs of the school of medicine. The associate dean also informed Corso that the acting dean of the medical school had appointed a special committee to investigate. Based on their investigation, the committee decided that Corso and another freshman had collaborated on the exams, and reported those findings to the associate dean and the advancement committee on June 22, 1982. The advancement committee unanimously passed a motion to recommend to the executive council and the dean that Corso be expelled. Corso was informed of the recommendation by telephone and by letter. He was told he could respond to the charges in person or by letter to the associate dean, who would be the liaison between Corso and the committees and the dean of the medical school. Corso responded by letter saying that he had not cheated and requested reconsideration of the matter and asked for permission to appear before any committee. On July 6, Corso met with the associate dean and received copies of all the evidence and was told to respond in writing and that it would be relayed to the committee. Corso's request to appear before the executive committee was denied and he was also informed it would not further his cause to appear before the dean. Corso again responded by letter, denying that he cheated.

Father Huff, the acting dean, conducted his own investigation, which involved interviewing approximately 25 students. Huff asked Corso to report to him on July 26 and was interviewed, by being asked the same questions the other students were asked. He did not, however, know the other students were being interviewed. During his interview, Corso again passionately denied that he had been involved in any cheating incident. Several of the students that Father Huff interviewed admitted to collaboration on the test and also implicated Corso. The students who admitted to cheating were given less harsh penalties than Corso: three were suspended, one was given the option of resigning or being expelled; one was placed on probation. Corso filed suit asserting jurisdiction based on diversity of citizenship.

Issues: Did the University breach its contract with Corso by not following proper procedures? Did the expulsion constitute a state action?

Holding: The U.S. District Court held that the University should be enjoined from expelling Corso from the school. The University appealed.

Reasons: Because the relationship between a university and a student is contractual, Corso had to prove that the University breached his contract right (*Williams v. Howard University*, 1976). For the instant case, the contract to be followed is the Creighton University Handbook. In the Handbook there were two procedural formats for student discipline issues: one format was to be followed for academic and academic-related issues, and the other format was to be followed for non-academic issues. Academic procedures should be presided over by academic deans, and non-academic issues should be presided over by the University as a whole and the University Committee on Student Discipline. The Court determined that Corso's allegations did not constitute action by the state, and was limited to a breach of contract claim. Creighton University claimed that the Student Handbook should not be considered the sole source of the

contract between Corso and the school, but should be one of many sources, which included registration forms, bulletins, and policy booklets within the medical school. The Court held that while other publications could be considered, the Handbook overruled all other points of contract. The medical school determined the matter was purely academic and handled the matter within the department. The District Court, however, held that Corso had been expelled for lying about cheating, and not the actual cheating itself. Because different students received different treatment for the actual cheating incident, and because lying could accompany any type of infraction, the Court determined the issue was actually a non-academic offense. The District Court found that Corso was denied the procedural safeguards afforded non-academic offenses and that such denials created a breach of contract.

The U. S. Court of Appeals disagreed with the District Court and said cheating was clearly an academic offense and the lying was directly related to the cheating, and the two issues could not be treated separately (*Board of Curators v. Horowitz*, 1978). However, the Court of Appeals noted the Handbook also included a section that provided students who had been charged with misconduct that resulted in “serious” penalties were entitled to the privilege of a hearing before the committee on student discipline. Creighton argued that since Corso committed an academic offense, he was not entitled to the hearing. The Court of Appeals stated that any interpretation of contract law must be governed by Nebraska law, which determined that where “general and specific terms in a contract” relate to the same issue, the specific provision overrules the general provision (*State v. Commercial Cas. Ins. Co.*, 1933). Although the Handbook does not state that the University is required to bring an academic case before the committee on student discipline, the seriousness of expulsion in the Corso case should cause the administration to offer Corso every procedural safeguard, including a fair hearing before a

committee with the right to appeal any sanction. It is clear Corso was not given the rights that his contract with the University provided him. The Court found no merit that the expulsion represented a state action.

Disposition: The U. S. Court of Appeals, 8th Circuit, held that the University could classify cheating and consequently lying about the cheating incident as an academic offense, but the University had to give Corso the right to a hearing prior to being expelled for the serious offense of cheating and lying. The District Court's order finding a breach of contract is affirmed.

Citation: *Crook v. University of Michigan*, 584 F.Supp. 1531 (U.S. Dist. Ct., E.D. Michigan, Southern Division, 1984).

Key Facts: Wilson Crook enrolled at the University of Michigan in the fall of 1975 and was awarded a master of science in geology and mineralogy degree on April 30, 1977. He worked directly with Dr. Heinrich, who was known for his work in Texas pegmatites and nuclear geology. Dr. Peacor taught Crook in a class in which he earned an "A" and was acquainted with one of Crook's undergraduate professors at Southern Methodist University (SMU). Peacor later testified that he encouraged Crook to publish a paper on a new mineral Crook had discovered. While in graduate school, Crook was a teaching assistant, took part in Friday afternoon tavern discussions with the professors from his department, became the president of a student organization, and wrote his thesis. Heinrich had three graduate students at that time, and Crook was the only master's candidate. Another professor in the department, Dr. Essene, who was an authority on electron microprobe analysis, had an adversarial relationship with Dr. Heinrich. Each professor regularly gave poor grades to the other professor's protégés, which included Crook. Crook's thesis was approved and signed by Dr. Heinrich, Dr. Peacor, and Dr. Smith (the department chair) on April 11, 1977. The three signatures on the thesis were to validate that the

thesis lab tests had been done properly. There was no requirement that the thesis be published. The only faculty member signing the thesis who was actually proficient in using the electron probe required to analyze rare earth minerals during the laboratory work performed by Crook was Dr. Essene. The lab work, which Crook claimed he performed before writing the thesis, would have required at least 600 hours of probe work. During trial testimony, Dr Peacor testified that Crook's thesis contained errors that indicated the probe work had not actually been done, and he was also concerned about scientists presenting synthetic compounds ("bathtub minerals") as naturally occurring minerals. When Crook left the university upon graduation, he left a mineral collection to add to the department's collection. Peacor noted about the same time of Crook's donation, that the synthetic compound given to him by Haschke, which was similar to Crook's newly discovered Texasite, had disappeared from the lab.

Upon graduation, Crook moved to Colorado and worked for Mobil Oil as a geologist. Dr. Peacor remained in contact with Crook after graduation. Crook published several of his writings and obtained certification of four minerals he discovered: Albrittonite, Nickelbischofite, Holdawayite, and Texasite. Crook's articles on the new minerals appeared in *The American Mineralogist*, a prestigious publication. Later that same year, Dr. Peacor visited Texas in search of Texasite but did not find any. He testified that he discovered in January of 1978 that the computer program, EMPADR, through which Crook did his thesis calculations, was flawed, which meant the tests reported in the thesis were flawed. Peacor did not notify Crook of his discovery, but he did notify others whose research was affected, and assisted them in rerunning some data.

In 1978, Crook discussed collaborating on an article with Skip Simmons, who had also worked under Dr. Heinrich. Simmons was at the University of New Orleans, and sent a vial of

Doverite to Crook to perform microprobe and carbon analyses. When the vial was returned to Simmons, he stated that no carbon testing had been done because the sample in the vial would have been destroyed by the tests. Crook replied that he certainly knew that, so he carbon-tested a different sample. Simmons returned to the University of Michigan to perform sabbatical work and notified Peacor of the Doverite analysis. Peacor decided in December of 1978 to investigate Crook's thesis, his postgraduate publications, and his academic work in general during the time he was a graduate student. Peacor obtained an analysis of Simmons' Doverite and compared it with Crook's analysis. Dr. Essene checked the University microprobe time logs and determined Crook had not spent enough time on the probe to have accomplished his thesis research. Subsequently, Crook was asked to provide the data from his original microprobe research. On January 25, 1979, Peacor wrote to Crook and advised him of the error in the EMPADR program and extended an invitation to Crook to come to the University to rerun his data or send his computer cards for someone at the University to rerun. Several students who were currently in the department were asked to contact Crook in an effort to persuade him to come back to the University to rerun the data. Members of the department conducted experiments to duplicate Crook's data on Texasite; some gave inconclusive results, and one test supported the conclusion that Texasite was a "bathtub mineral." On February 2, Crook returned to the campus for the weekend to rerun the microprobe analysis. On that day, five of the departmental faculty met with the assistant to the vice president for academic affairs and obtained permission to secretly monitor Crook's activity on the computer. The assistant referred the five faculty members to the university general counsel and advised them that the dean of the graduate school and the vice president for academic affairs must be consulted before any action could be taken on revoking the degree. Later that afternoon, Crook went to the tavern where the weekly departmental

meeting was held. Peacor talked to Crook at the tavern, but told him nothing of the investigation that was ongoing. One of the PhD candidates was assigned to maintain surveillance of Crook throughout the weekend. Another student was assigned the task of doctoring the computer terminal so that Crook's results would actually feed to other computer monitors. Crook was not able to reproduce his previous work. He did not establish his matrix, which was the precursor to rerunning the data. He, of course, did not know he was under investigation or that his article would not be published. He reported to Peacor that he did in fact rerun the data.

On March 1, three of the faculty members sent a six-page report to the assistant to the vice president of academic affairs detailing the charges against Crook. The assistant consulted with the general counsel, the dean of the graduate school, and the vice president and decided to proceed with the process. The graduate school appeals officer testified she had never been involved in such an investigation, and with the help of the dean of the graduate school and the assistant to the vice president drafted a new process whereby Crook should be heard. They determined that no students should serve on the hearing panel, since Crook was no longer a student, and decided the panel should consist of five faculty members. On April 10, the dean wrote Crook to tell him he was being charged with fabrication of data and false presentation of original data in his thesis. He also advised Crook a pre-hearing would take place on May 14, and that the consequences could include the master's degree being revoked. The hearing was held on September 22, and lasted from nine o'clock in the morning until seven o'clock that night. The transcript indicates that everyone could ask Crook questions but no one let him finish even one answer before interrupting him. Crook had 30 days to file a written rebuttal after the trial. The committee continued to investigate the issue, even though they communicated to Crook that the investigation was over. The committee met between four and six times after the hearing and

before their report was submitted on March 7, 1980. The only conclusive charge the committee made against Crook was that he falsified data in his thesis. On April 29, counsel for Crook hand delivered an appeal to the dean's office. The board met on May 7, and unanimously recommended to the Board of Regents that the degree be revoked. On July 18, the vice president forwarded his recommendation to the Board of Regents that he concurred with the committee's recommendation. At the Regents meeting on October 17, Crook's counsel argued that Crook had been denied due process but the department head assured the Regents due process had been observed, and the Regents voted to rescind the degree. Subsequently, an article was published in the local newspaper based upon a University press release that detailed the fraud charges and the revocation of the degree. Crook testified that although he continued to hold his job with Mobil Oil, he had no hope of advancement at the company. Crook had also developed stomach ulcers. Doctors Peacor and Essene testified that they both were continuing the investigation, had published articles concerning Crook's fabrication and degree revocation, and had succeeded in having the Texasite decertified as a mineral.

Issues: Was Crook deprived of due process rights? By rescinding the degree, did the University and its representatives act under the "color of law"?

Holding: The U. S. District Court held that Crook had property and liberty interests in his degree and he was deprived of his due process rights.

Reasons: The Court said it was clear that the University and its representatives were acting under the color of law, because those individuals were the president and the Board of Regents. The individuals were acting as agents of the University under the state laws of Michigan, and had the right to confer a degree. *Board of Regents v. Roth* (1972) established that it must be decided if someone is deprived of a property or liberty interest. The University said

that Crook had no such rights under Michigan law because Michigan says residents do not have a right to an education, only a privilege. The Supreme Court rejected that argument in *Graham v. Richardson* (1971).

The U.S. District Court said Crook had a legitimate claim of entitlement to his degree, based on meeting the requirements and the actual conferral of the degree. The University argued that Crook was not entitled to a degree because he committed fraud. However, the Court again referred to *Roth*, and said Crook was entitled to a degree as well as the right to a hearing to prove his case. Crook's claim of entitlement to hold the degree for his lifetime gave him the right to a due process hearing.

The Court held that Crook also had a liberty interest to protect his good name, reputation, and honor as set forth in *Roth*. In addition, *Wisconsin v. Constantineau* (1971) established that for a liberty interest to be entitled to procedural protection based on defamatory conduct, that conduct must impose a stigma and deprive someone of a right previously granted under state law.

The Court established that Crook was deprived of property and liberty interests, and then had to determine whether the process used by the state when they deprived Crook of his property and interest rights was constitutionally inadequate, based on *Smith v. Organization of Foster Families for Equality and Reform* (1977) and *Cleveland Board of Education v. LeFleur*, (1974). In *Matthews v. Eldridge* (1976), the Supreme Court established a three-pronged test to determine the quantity of due process required: the private interest that will be affected by the official action, the risk of deprivation through procedures used, and the fiscal and administrative burdens that procedural safeguards would require. The burden to meet the private interest portion of the test was fulfilled because even one of the witnesses for the University stated in testimony that an

advanced degree in geology is required for a successful career in the field. Crook testified that he was no longer on track to receive a promotion at Mobil Oil and in all likelihood will not be able to find a job anywhere else. The revocation of the degree has damaged Crook's good name and reputation. After research, neither this Court nor the two parties in the case could find a case in the United States where a degree had been revoked. A case in England, *Rex v. Cambridge University* (1723), represented such a case and the Court stated in that instance that an academic degree was a "great office, a dignity, and a freehold."

To meet the second part of the three-pronged test, this Court looked at the testimony that described the hearing as intrusive with an unruly atmosphere. Crook was not given adequate notice of the charges, was not allowed meaningful participation in the process, was not allowed to cross-examine witnesses, the evidence was never examined by the Board of Regents, the more than 100 letters of support were not entered into evidence, and, finally, Crook was not given an opportunity to present evidence on his own behalf.

The third prong of the test was determining whether the requirements placed on the University presented undue fiscal and administrative burdens. Because the occurrence of rescinding a degree is a rarity, the additional burden of ensuring that sufficient due process was afforded Crook was minimal to the University. This Court recognized that a University has a high interest in upholding academic integrity and making sure students do not obtain degrees fraudulently. If the University allows faculty to act arbitrarily in bad fact to rescind a degree, its reputation is damaged as much as the student's reputation is damaged. A fair hearing would make it difficult for faculty members to behave in bad faith.

In conclusion, this Court relied on *Goldberg v. Kelly* (1970) to state that only evidence presented inside the hearing could be introduced, and on *Lonzollo v. Weinberger* (1976) to state

that admitting outside evidence into a hearing would deny the accused party the right to confront, cross-examine, and rebut such evidence. The Court also concluded the University acted in an arbitrary and capricious manner.

Disposition: The Court ordered the University to restore the Master of Science degree.

Citation: *Hall v. Medical College of Ohio at Toledo*, 724 F.2d 299 ( U.S. Ct. of Appl., 1984).

Key Facts: Robert Hall was dismissed on June 26, 1978, for consulting an old exam in his student mailbox while taking an exam on February 3, 1978. Hall was notified of the facts, allowed to testify on his own behalf at a hearing, allowed to present his own witnesses and cross-examine other witnesses, and given a copy of the hearing panel's report and of the decisions of the Dean and President. He was not provided counsel at the hearing. Hall sought damages and reinstatement as a medical student. He also alleged racial discrimination and violation of due process rights.

Issues: Was the Medical College of Ohio an arm of the state, which entitled it to immunity; or was it merely a political subdivision with no immunity? Was Hall expelled based on the University's denial of his right to have counsel at the hearing?

Holding: The District Court for the Northern District of Ohio dismissed the civil rights complaints against the school and its personnel. Hall appealed.

Reasons: When a suit is filed against a public agency or institution, the Eleventh Amendment applies only if the institution is an arm of the state or if it is a political subdivision of the state. The great majority of such cases addressing the Eleventh Amendment immunity clause in public colleges and universities have held that these institutions are immune due to being "alter egos" of the state. However, each state university exists in a unique government

context and each must be considered on the basis of its own circumstances (*Soni v. Board of Trustees*, 1975). The District Court applied the two-pronged analysis set forth in *Unified School District No. 480 v. Epperson* (1978). These two prongs are (1) to what extent does the institution function with substantial autonomy from the state government; and (2) to what extent is the institution financed independently of the state treasury? The Court of Appeals said that although the two-pronged test addressed two principal factors that are most crucial in applying the Eleventh Amendment, it believed that the nine-point analysis used by the Third Circuit in *Blake v. Kline* (1979/1980) was the better approach. These nine points are as follows: defining the status and nature of the institution under the law; whether or not a judgment made against the institution would be paid for out of state funds; whether or not the institution has the funds to pay the judgment; whether or not the institution is performing its functions on behalf of the state; whether or not the institution has corporate power separate from the state; whether the institution has significant autonomy apart from the state; whether the institution has qualified immunity; whether the institution's property is immune from state taxation; and, whether the sovereign has immunized itself from responsibility for the agency's operations.

As stated in the Ohio Revised Code section 3345.12(A)(1), the Medical College of Ohio at Toledo is included in the definition of state university or college. In addition, Ohio considers such colleges and universities to be part of the state for purposes of its sovereign immunity. Although there is not a reported case that deals specifically with the status of the Medical College of Ohio, this Court said it was "highly significant" that the statute which created and governs the University of Cincinnati as a state university is virtually identical in its terms to the statute which created and governs the Medical College of Ohio. In *Collins v. University of Cincinnati* (1981), motion to certify record overruled (Ohio Su.Ct. Jan 20, 1982), the State Court

of Appeals held that after the state acquired the university in 1977, it became an instrument of the state amendable to suit only in the court of claims.

This Court established a link between the appropriated and non-appropriated revenues available to Medical College of Ohio, which had the outcome of making any judgment against the school a liability payable from the state treasury.

Several cases held that providing facilities and opportunities for the pursuit of higher education is a long-recognized governmental function (*Wolf v. Ohio State University Hospital*, 1959; *Schenkolewski v. Cleveland Metroparts System*, 1981; *Vaughn v. Regents of University of California*, 1973). In addition, the statutory rule under which the medical school exists does not support a finding that Medical College of Ohio has a “legal personality” separate from the State.

To prove the lack of autonomy, the Court of Appeals relied on the fact that all of Medical College of Ohio’s receipts and expenditures are subject to audit by the state auditor.

Hall dropped his initial claim of racial discrimination before the Court. The Court of Appeals decided that no genuine issue of fact existed as to whether the college violated Hall’s constitutional and statutory right to be free from racial discrimination. That left the charge of a violation of due process claims. In *Goss v. Lopez* (1975), the main thing to determine was “how much process was due.” The landmark case held only that oral or written notice of the charges and a chance to present his side of the argument was all that Hall was due. *Norton v. Discipline Committee* (1969) and *Jones v. State Board of Education* (1968), both addressed the fact that some form of formal hearing was required before a student could be expelled for disciplinary causes. *Dixon* also established standards in which a hearing should be conducted. The Appeals Court stated that by looking at *Norton* and *Jones* while reflecting on *Dixon*, it did not see any basis to Hall’s claim that he had a right to counsel.

Disposition: The U.S. Court of Appeals ruled that the medical school was an arm of the state and therefore immune from a suit, that school officials were immune in their official capacity, and the expulsion was not caused by due process violations.

Citation: *Jaksa v. University of Michigan and others*, 597 F.Supp. 1245 (U.S. District Ct., E.D. Michigan, 1984).

Key Facts: Christopher Jaksa was a student at the University of Michigan. After Jaksa took his final exam in statistics, Professor Rothman received an anonymous telephone call accusing Jaksa of switching his exam cover sheet with another student's exam cover sheet. When Rothman inspected the exam sheets, he found Jaksa's cover sheet attached to another student's exam. Rothman sent Jaksa a letter dated April 30, 1982, informing him that charges of cheating had been filed with the Academic Judiciary. Jaksa was given a copy of the charges, and met twice with the assistant dean of student academic affairs, Dean Nissen, to discuss the charges against him and the upcoming hearing. Nissen gave Jaksa a copy of the Manual of Procedure for the Academic Judiciary Manual and a hearing was conducted on June 16. During the hearing, Jaksa was able to present his side of the story, and to cross-examine Professor Rothman. Following the presentation of each side's story, Jaksa participated in a round-table discussion. The hearing was adjourned until the next day for the sole purpose of verifying the signature of a student who signed a statement on Jaksa's behalf. Jaksa had knowledge of the reconvened hearing, although he was not present at that session. The panel found Jaksa guilty by unanimous vote and recommended a two-semester suspension, and Jaksa was notified 5 days later in a phone call by Dean Nissen. Shortly after, he received a letter from the Academic Judiciary stating he had been found guilty. After consulting with counsel, Jaksa wrote a letter to the Academic Judiciary Appeal Board and asked for leniency. He confessed that he cheated in a

weak moment and sincerely regretted his action. The Appeal Board voted to reduce the sentence to a one-semester suspension. Jaksa sued the university, the president, the dean, and the university regents.

Issues: Were the proceedings against Jaksa fundamentally unfair, and was he denied due process?

Holding: Jaksa's motion for summary judgment is denied and the University's motion for summary judgment is granted.

Reasons: In *Horowitz*, the Supreme Court found that cheating should be treated as a disciplinary matter. Therefore, Jaksa was entitled to notice of the charge and the opportunity to be heard, at the least. Jaksa argued that the university violated his due process rights in four different ways. The first way he argued his rights were violated was because the composition of the panel and the timing of the hearing did not comply with the Manual. The Manual of Procedures for the Academic Judiciary stated that a hearing panel must hear a case within 6 weeks of the date of the charge, and Jaksa's hearing was 6.5 weeks from the date of Professor Rothman's letter. The Manual also stated that the student government would appoint the student members of the Academic Judiciary panel. In this case, the hearing was held during the summer, when many students are not on campus, so Dean Nissen appointed two students to the Academic Judiciary panel. *Bates v. Sponberg* (1976) and *Bills v. Henderson* (1980) held that a plaintiff does not have a sovereign due process right just because the University did not strictly adhere to the procedural handbook.

The second argument Jaksa presented was that he was denied the right to bring a representative to the hearing. Jaksa relied on *Henson v. The Honor Committee* (1983) to argue he had a fundamental right, not a constitutional right, for someone to assist him in the presentation

of his case. This Court relied instead on *Madera v. Board of Education* (1967), which stated there was no right to counsel at a hearing based on the suspension of a student, and *Everett v. Marcuse* (1977), which stated due process does not require the presence of an attorney at a formal hearing on disciplinary matters.

Jaksa's third argument was that his due process rights were violated because the University failed to record the hearing. This Court found that *Whitfield v. Simpson* (1970) and *Due v. Florida Agricultural and Mechanical University* (1963) proved otherwise.

The fourth argument Jaksa presented was that he was not able to cross-examine his accuser, who he claims was the anonymous student caller. The Court ruled the accuser was Professor Rothman. In addition, *Boykins v. Fairfield Board of Education* (1974), held that the Constitution does not confer on a plaintiff the right to cross-examine his accuser in a disciplinary proceeding. The final argument that Kapsa presented was that he was deprived of his due process rights because the Academic Judiciary panel failed to provide a detailed statement explaining how it reached its decision. In this case, there was no dispute of whether or not Jaksa's cover sheet was attached to another student's paper. The panel did not believe Jaksa when he said he did not attach his cover sheet to someone else's exam. This Court ruled that "articulating the obvious to the plaintiff would not reduce a risk of erroneous deprivation of plaintiff's rights."

Disposition: The District Court held that Jaksa was entitled to due process rights and the university's procedures afforded Jaksa his due process rights. It also said the University's procedures in the manual did not have to be followed to afford due process. In addition, Jaksa was not entitled to counsel at the hearing, the university was not required to provide Jaksa with a transcript of the hearing, Jaksa did not have a due process right to confront the anonymous

student caller; and, the panel was not required to provide a detailed statement discussing the reasons for finding Jaksa guilty.

Citation: *Mary M. v. University of New York at Cortland*, 100 A.D.2d 41, 473 N.Y.S.2d 843 (1984).

Key Facts: Mary M. (a fictitious name), a student at the University of New York at Cortland, was accused by Professor Alsen of collaborating with another student in preparing a term paper. Both students met the professor in his office and signed an admission of guilt. Later that month, Mary M. was accused of cheating on an exam by Professor Cain. Mary M. requested a hearing before the academic grievance tribunal on the second charge. A hearing was held before a panel of two faculty members, one student, and an administrator. Both Professor Cain and Mary M. testified. Mary M. was found guilty by a vote of two to one. A memo detailing the hearing along with a recommendation of dismissal was forwarded to the vice-president. He accepted the tribunal's findings and imposed a one-semester suspension with the right to readmission after reapplication and evaluation by the university. Mary M. was informed of the action in a letter dated December 17, 1982, and was also advised the decision was on file in the vice-president's office for review. Mary M. filed suit.

Issues: Did the University at New York violate its own internal rules when it suspended Mary M.? Was Mary M. entitled to a written record of the proceedings and counsel?

Holding: The Supreme Court, Special Term, Cortland County, annulled the suspension and ordered all references to the cheating and plagiarism incidents be deleted from the student's record.

Reasoning: The Special Term Court found that the procedures followed by New York University at Cortland violated the State Administrative Procedure Act, due process of law. The

Appeals Court ruled that Article 3 of the State Administrative Procedure Act (SAPA) was not intended to apply to all State agency proceedings; instead, Article 3 applies solely to adjudicatory proceedings required by law to be made on the record. There is no statute or regulation which requires these disciplinary proceedings to be on the record. The Appeals Court found that due process had been afforded under the *Dixon* (1961) test. Mary M. had received a written notice of the charges and understood the consequences as written in the handbook. She was given a hearing and an opportunity to offer evidence, she was given the opportunity to have an advisor present, she was informed of the tribunal's decision, and she was advised in writing of the sanction. The Appeals Court also found that the Special Term Court erred in finding that a written record of the proceedings and the right to counsel were due process rights. The Appeals Court also disagreed with the Special Term's conclusion that Section 41 of the General Construction Law is applicable to the disciplinary tribunal. The statute refers to persons whose duties involve the exercise of the State's sovereign power. The tribunal's members are not persons charged with performing a public duty. Rather, they were called to enforce the internal rules and regulations within the University at Cortland. Finally, the Court found no merit in the charge that the University violated its own internal rules in such a way that would render the disciplinary action null.

Disposition: The Supreme Court, Appellate Division, reversed the judgment of the Supreme Court, Special Term, and found in favor of the university.

Citation: *Patterson (Plaintiff-Appellant) v. Hunt and U.T. (Defendant-Appellant), Shaw and Melton (Plaintiffs-Appellants) v. University of Tennessee (Defendants-Appellees)*, 682 S.W.2d 508, 22 Ed. Law Rep. 627 (1984).

Key Facts: Richard Patterson, Edward Shaw, and Joseph Melton were in their first year of dental school at the University of Tennessee Center for the Health Sciences College of Dentistry. On April 22, 1983, they sat for a pathology examination. Then on April 27, they received notice from the President of the Student Honor Council that they were being charged with violating the Honor Code during that exam. They appeared before the Honor Council and were advised they had a right to a hearing before the Honor Council or before an administrative council; they subsequently signed a document stating they wanted to appear before the Honor Council. The three students were not informed of their right to counsel. After the hearing, all three students were expelled by the Dean of UT and forbidden to attend classes. On May 18, the students filed an appeal notice, asked for records of the hearing proceedings, and claimed due process violations. While waiting for the appeal to proceed, they argue that because they cannot attend classes, they will be irreparably harmed and asked for a restraining order against the University. On May 19, the Court issued a temporary restraining order allowing the students to attend class, take exams, and receive credit for any work completed; the court order also kept the University from denying the students' rights until a hearing could take place. Also on May 19, via certified mail, Chancellor Hunt acknowledged receipt of the notice of appeal. By letter on June 13, the Chancellor notified the students that he had not received a response from the students concerning his communication; therefore, the Chancellor denied the appeals. The correspondence from the Chancellor also advised the students of their right to reapply for admission to the University. The University filed a motion to dismiss the restraining order but no action was taken prior to a hearing on the merits. On June 10, the students filed another complaint stating they were never advised what the differences were between appearing before

the Honor Council or the administrative board, and that they unknowingly waived their rights by signing the waiver to appear before the Honor Council.

There is no charge that Patterson actually cheated. He went to the professor giving the pathology exam and asked if the answers would be posted and relayed this information to one of the other two students accused of cheating. Patterson was in the upper 10% of the class, and served as president of the class. He knew about the arrangement to cheat, but pled “not guilty” to the charge. Melton and Shaw pled “guilty” to the charges of cheating and there is proof that they participated in the scheme. Melton was not prepared to take the exam and he asked Shaw to make a copy of the answer sheet and slip it back into the classroom so that Melton could answer the exam questions. Shaw agreed to the scheme, and when he finished his exam, left the classroom and made a copy of the answers, and put the answer sheet inside a hollow ballpoint pen, which he gave to Melton in the classroom. Melton thereby finished the exam using the answer sheet. Patterson’s role was to find out if the answer key would be posted and then relay this information to Melton. Patterson stated to Melton before the exam that he did not want to see the answer sheet and declined during the exam to look at the answer sheet. Patterson did relay the requested information to Melton. They were isolated before the hearing, they did not hear any witnesses speak, and they were not advised of their right to have counsel. Both Shaw and Melton pleaded guilty to cheating, and Patterson pleaded not guilty to cheating, but said he knew of the plan Shaw and Melton had to cheat.

Issues: What rights did the students waive when they signed the waiver to appear before the Honor Council? Even though he pled “not guilty” and was dismissed anyway, was Patterson denied procedural due process rights?

Holding: A temporary restraining order was issued by the Trial Court that required the university to allow the three students to attend classes, take exams, and be given any credit they earned. In addition, the Trial court restrained the university from denying the students' their rights until they were granted a full hearing. The university filed a motion to dismiss the restraining order but no action was taken on the motion prior to a hearing on merit. The Chancery Court ruled in favor of the University on the case of Melton and Shaw, but reversed the ruling in favor of Patterson.

Reasons: The Chancery Court ruled that because Shaw and Melton pled guilty, they waived their rights to all non-jurisdictional and procedural defects and constitutional infirmities (*Ellison v. State*, 1976). The Court noted there was no dispute as to the fact they were guilty. In the case of Patterson, the Chancery Court found that the University did not comply with its own rules and did not afford due process to Patterson when he pled "not guilty," and it was generally acknowledged that he did not cheat.

The Appeals Court said that the students did not realize that their dismissal was only finalized by a ruling made by Chancellor Hunt; therefore, Hunt's dismissal was the final agency decision to which the students should have appealed. Each of the students was given the opportunity to make further argument or explanation to the Chancellor, and none of them took advantage of that opportunity. Counsel for the students repeatedly asserted that the due process rights of the students were violated because they "unknowingly waived their rights to an administrative board hearing." However, the ultimate decision from an administrative board hearing rests with the chancellor because he represents the last chance of appeal (Tenn. Admin.Comp. §1720-1-5). Similarly, the chancellor also possessed the power to make the final decision on the appeal from the Honor Council. The Trial Court evidently felt the actions of

Patterson were excusable, and the Appeals Court disagreed. The Court of Appeals stated that the Honor Code is clear, and Patterson's actions violated Article III of the Honor Code. The Appeals Court said in its final analysis students agreed to be bound by the Honor Code when they enter the dental school; the students breached that agreement, they acknowledge that they breached that agreement, and now they say they should not be punished under the Honor Code.

The Appeals Court concurred in the ruling laid down in *Koblitz v. Western Reserve University*, 1901), when it stated if a custom has established a rule that is applied regularly, it becomes the law. If a student registers and agrees to attend the university he agrees to abide by the rule of law. The custom was that when a student has been guilty of improper conduct that will demoralize the school, the faculty do not have to go through a formal trial process. The student can present evidence and the faculty are free to act upon it in good faith.

In closing, the Court of Appeals noted that if clear violations to the Honor Code were allowed, whether they be in the form of cheating or knowing cheating was taking place, not reporting the incident would cause Honor Codes be transformed into a "mockery."

Disposition: The Court of Appeals held that Patterson was not denied due process or equal protection, determined that Shaw and Melton did not waive any rights by signing the waiver, affirmed the injunctions against Shaw and Melton, and reversed the permanent injunction that was in favor of Patterson. The university was affirmed in the cases of all three students.

Citation: *University of Houston v. Sabeti*, 676 S.W.2d 685 (Ct. of Appl. Of Texas, 1984).

Key Facts: In April 1983, Ramin Sabeti, who was an engineering student at the University of Houston, was charged with cheating by taking credit for work that was actually completed by someone else. Sabeti was allowed two hearings. The first hearing took place before

the engineering department on April 25, and Sabeti was found guilty. Because Sabeti had been found guilty of cheating in a prior instance, the department chair recommended permanent expulsion. The second hearing took place before the college honesty board on May 4, and was presided over by a faculty member appointed by the dean. Sabeti was assisted at the second hearing by a law student, the counsel of his choosing. The law student attended the hearing, and advised Sabeti during the hearing; however, the law student was not allowed to speak, argue, or question witnesses during the hearing. Sabeti was allowed to testify and to make opening and closing statements, but was not allowed to question witnesses directly. All questions were directed to the hearing officer, who directly questioned the witness. The university was not represented by an attorney or counsel. Sabeti was found guilty and was permanently expelled. He then appealed thru the administrative process to the Provost, but his appeal failed. Sabeti then sued.

Issues: Does the Fourteenth Amendment require confrontation and cross-examination of witnesses by the accused? Does the Fourteenth Amendment require the accused be represented by counsel?

Holding: The Trial Court agreed with Sabeti that his due process rights were violated because his counsel was not allowed to present witnesses. The Court permanently enjoined the university from enacting the expulsion and required that Sabeti be allowed to enroll. It also ordered the university to remove all language regarding expulsion from the transcript and to remove all “F” grades given as a result of the expulsion. It also enjoined any rehearing of charges against Sabeti without prior court approval of the procedures to be followed in the hearing.

Reasons: At least two Circuit Courts of Appeal have held that the Fourteenth Amendment does not require confrontation and cross-examination of witnesses by the accused or his/her

counsel in expulsion hearings (*Dixon v. Alabama State Board of Education*, 1961; *Boykins v. Fairfield Board of Education*, 1974). In addition, *Wasson v. Trowbridge* (1967), established the Court's stand by rejecting the contention that a student from the United States Merchant Marine Academy was entitled to counsel in an expulsion hearing. Several federal courts have also declined to enforce the requirement that a student have counsel present: *Barker v. Hardway* (1968), *Haynes v. Dallas County Junior College District* (1974), and *Hart v. Ferris State College* (1983). Nevertheless, several federal courts before and after *Goss* have held that representation by counsel is required at the K-12 level, which involves minors. One court held that due process requires counsel to be present to advise the student at the hearing and that the student (not counsel) may question witnesses against him (*Esteban v. Central Missouri State College*, 1969). This procedure was followed in this case.

The basic elements of due process, which include notice and a hearing, were afforded Sabeti. This Court held that due process requires only fundamental fairness; it does not require that every dispute with a government agency be resolved with the same formality as a lawsuit would be. The University had no advantage over the student in this case because it was not represented by counsel at the hearing.

Disposition: The Court of Appeals held that Sabeti's due process rights were not denied and reversed the Trial Court's ruling. All relief was denied the student.

Citation: *Clayton v. Trustees of Princeton University*, 608 F.Supp. 413, U.S. District Ct., New Jersey (1985).

Key Facts: Robert Clayton was one student in a classroom taking a "lab practical" examination in which he was required to identify various parts of an amphioxus creature. Clayton was accused by another student in the classroom of cheating when he changed an

answer on his test. The Princeton Honor Committee found Clayton guilty and suspended him from Princeton for 1 year. The decision was affirmed by the President. After the year's suspension, Clayton returned to Princeton and filed suit challenging his due process rights were violated.

Issues: Did Princeton compromise Clayton's defense by instructing his student counsel to present a "balanced" defense? Did the fact that the Committee lost the written records of prior hearings violate Clayton's rights?

Holding: The U. S. District Court decided that all of the facts surrounding the Honor Committee's hearing would best be developed during a trial, and granted Princeton's motion for summary judgment on the due process issue. Clayton appealed.

Reasons: The U.S. District Court determined that the initial matter that needed to be answered in this case is how a court should review disciplinary actions taken by a university in an academic disciplinary case. The court noted that there were no current New Jersey Supreme Court decisions that directly addressed the role of law review in academic disciplinary cases. However, the Court did acknowledge that *Erie Railroad v. Tompkins* (1938) did provide guidance on the issue. In the initial trial, the Court ruled that New Jersey courts would provide protection for Clayton as a student in good standing at the University (*Clayton v. Trustees of Princeton University (Clayton I)*, 1981). In *Clayton* (1981), the New Jersey courts approached the case in a manner similar to *Tedeschi v. Wagner College* (1980), and stated that if Clayton could prove that Princeton materially breached its procedures by suspending him, he would be entitled to relief. The Third Circuit Court stated in *Becker v. Interstate Properties* (1977), that a federal court must be sensitive to the trends of the state court whose law it applies. In *Chavis v. Rowe* (1983), the Court reaffirmed that New Jersey law allows courts to inquire into the

disciplinary procedures of private entities where there might be an abuse of a protectable interest. In *Rutledge v. Gulian* (1983), the Courts said a private organization has a great interest in ruling its own affairs as set forth in the established procedures, as long as individual members were afforded protection of their interests and rights.

Two cases that have involved Princeton University are *State v. Schmid* (1980) and *Napolitano v. Princeton University Trustees* (1982). In *Schmid*, the ruling said private educational institutions fulfill a vital social role and have a vested interest in assuring the well-being of the academic community. In *Napolitano*, the Courts reaffirmed that the relationship between a university and a student is unique, and that a state appellate decision can be binding on a federal court, which relied heavily on *Higgins v. American Society of Clinical Pathologists* (1968). This ruling about adhering to a state court ruling is also apparent in *Fidelity Union Trust Co. v. Field* (1940).

Princeton's Honor Code has been in effect since 1893. The University requires all students to sign a notice declaring they are aware of and understand the Code when they matriculate to the school. The Code also provides very clearly the consequences for breaking the Code and the safeguards allowed by the Code to protect the student. All indications from testimony attest to the fact that the president of the University thoughtfully and carefully considered Clayton's appeal in the light of the consequences and safeguards outlined in the policies and procedures provided.

Article VI of the Honor Constitution required the Committee to keep written records of all cases it acted on, and to use these records as "instruction" for the Committee. The Court stated that it was "unfortunate" that the Honor Committee lost its records of hearings and decisions prior to Clayton, but that action did not violate Princeton's established procedures or

violate Clayton's rights. Appropriate records were kept of the Clayton hearing, and the Committee used sound judgment and relied on their corporate memory of "precedent" in prior cases to reach a verdict in Clayton. Concerning the charge that the student counsel (Kirkland) was coached to not speak out strongly on behalf of Clayton, this Court found that Kirkland was instructed to present questions whose answers might be favorable to Clayton, even while attempting to bring all the facts to the attention of the Committee, even if those facts were unfavorable to Clayton. Kirkland's obligations to defend the accused student were explained to both Clayton and the committee, and the directions were that Kirkland was to defend Clayton as best he could. Clayton graduated 1 year later in June of 1982, and matriculated to medical school.

Disposition: The U.S. District Court held that Princeton University treated Clayton with fundamental fairness and afforded him all his due process rights.

Citation: *Nash and Perry v. Auburn University*, 621 F.Supp. 948, 28 Ed. Law Rep. 1058, U.S. Dist. Ct., M. D. Alabama (1985).

Key Facts: David Nash and Donna Perry were freshmen in Auburn University's College of Veterinary Medicine. On June 6, 1985, they were advised in writing of charges of violating the Student Code of Professional Ethics by committing academic dishonesty in the 1984-1985 school year. The students were allowed 72 hours to prepare their defense and they were advised a hearing would be conducted by the student board of ethical relations on June 10. The students, along with counsel, attended the June 10 hearing, but protested that they were given inadequate notice and asked for a more specific notice, an additional day to prepare their defense, and a new hearing date on the evening of June 12. On June 11, the students received a notice charging them with giving or receiving assistance or communications during an anatomy exam on or about May

16, 1985, in violation of the Code. The notice listed several classmates as plaintiffs and several members of the anatomy faculty who were expected to speak against Nash and Perry. The hearing was conducted on June 12 as scheduled. Counsel for Nash and Perry was present, but was not allowed to participate directly in the hearing. The Board did not have legal counsel present at the hearing. Witnesses against Nash and Perry were allowed to speak first, and then Nash and Perry were allowed to present their own statements, respond to the charges, and rebut the statements of witnesses. Anatomy faculty members and five student witnesses testified that they observed Nash and Perry examining specimens together in lab exams and moving together from question to question in those exams. The witnesses also testified that Nash and Perry were seen signaling each other during exams and looked on each other's exam papers. They were also observed to sit in unassigned seats in the back of the room during exams. Nash and Perry were also allowed to present witnesses who spoke on their behalf. After the hearing, the Board determined that Nash and Perry were guilty of academic dishonesty. Nash and Perry were notified of the guilty verdict, the recommended penalty suspension, and were also advised they could reapply for admission to the veterinary school after 1 year had passed. They were also notified of their right to appeal to the dean of the college of veterinary medicine.

Nash and Perry did appeal to the dean and the dean referred the case to the faculty committee on admissions and standards for a recommendation. On June 19, the nine faculty members of the committee spent 1 day considering the appeal. They were given minutes and a tape of the June 12 hearing. Nash and Perry were then allowed to present oral and written statements in their defense. The committee voted unanimously to uphold the findings of the original hearing and recommended the punishment be upheld. The dean accepted the recommendation and upheld the committee's actions. Later that summer, Nash and Perry

appealed to the president of the University, who reviewed the file and affirmed the actions of the board, the committee, and the dean.

Holdings: On September 25, Nash and Perry were granted a temporary restraining order under which they were allowed to audit classes and to take tests required of other students enrolled in the School of Veterinary Medicine. On October 18, the district judge conducted a hearing on Nash and Perry's motion for preliminary injunction in addition to holding a trial on merits. On cross motions, the court granted summary judgment in favor of Nash and Perry, but later denied the students' motion for an injunction pending appeal.

Issues: Did the students receive adequate notice of the charges filed against them? Did the University have the responsibility to give the accused students a summary of the witness testimony before the hearing? Did the accused students have the right to cross-examine witnesses who testified against them? Did an atmosphere exist at Auburn, as a result of a prior cheating incident, that created bias and prejudice in this case? Was some of the testimony irrelevant and prejudicial?

Reasons: The U.S. Court of Appeals acknowledged that Auburn University is a state-supported university. The Court also acknowledged that Nash and Perry had property and liberty interests in their continued enrollment at Auburn. The actual amount of process due depends on the circumstances of the cases (*Goss v. Lopez*, 1975). *Mathews v. Eldridge* (1976) held that the primary requirement of due process is the opportunity to be heard in a timely fashion. Mathews presented three factors that had to be satisfied when considering adequate due process: (1) that a private interest will be affected by official action; (2) the risk of depriving a private interest and the value of additional safeguards; and (3) the government's interest concerning the burden of taking on the additional safeguards, including fiscal and administration burdens. Nash and Perry

suggested that the Court should look at three factors when analyzing the due process procedures: the high level of achievement they attained as freshmen, the severity of the charge of academic dishonesty, and the severity of the penalty. Although Nash and Perry now argue that they did not have adequate notice to prepare for a hearing, they acknowledge that, upon the advice of their counsel, they made no objections to the timing of the notice and hearing, nor did they request a delay in scheduling between the restated notice and the hearing. The Court of Appeals agrees with the District Court that by express agreement to the timing of the notice, Nash and Perry waived any objections to constitutional rights. Further, the Court of Appeals finds no evidence of coercion to give concern about the waiver. The students were given approximately 6 days from the notice to the hearing, which this Court says is adequate. The students argued that *Dixon v Alabama* (1961) gave them the right to have pre-hearing notice of the content of the testimony of Professor Buxton, who presented “persuasive and complex” testimony against the students. This Court said that *Dixon* did not establish that Nash and Perry were entitled to the names of witnesses who would testify against them, because in *Dixon* the students were not present at the hearing, and in this case the students were present at the hearing. The Court also stated the adequacy of the procedures should be judged subject to circumstances involved, as in *Ferguson v. Thomas* (1970).

Nash and Perry also argued that *Goldberg v. Kelly* (1970) allowed them to challenge the adequacy of their right to cross-examine the witnesses. This Court said when basic fairness is preserved, it will not require a full adversary proceeding to be conducted. Although the students chose not to question the witnesses through the chancellor, they cannot claim they were not afforded due process or denied the right to cross-examine the witnesses.

The students also claimed they should have been given a recess between the time they were allowed to question the witnesses and the end of the hearing. It was within the right of the chancellor to deny the students a recess, which he did.

*Withrow v. Larkin* (1975) established that an impartial decision-maker is essential to due process. Nash and Perry claimed they were denied impartiality due to three things: an earlier case of academic dishonesty, witnesses' testimony about behavior that did not specifically occur during the anatomy exam, and the presence of a student justice at the hearing. This Court said that none of the testimony from the earlier academic dishonesty controversy at Auburn was introduced at this hearing, so it cannot be argued that the participants were biased or prejudiced against undergraduate cheating. On the second charge, the U.S. Appellate Court used *Boykins v. Fairfield Board of Education* (1974) to state that student disciplinary hearings can be conducted according to flexible rules instead of formal rules of evidence, and the evidence of the students' conduct during previous exams was admissible. On the third charge, the Court ruled that neither the student justice's knowledge of the suspicions about the students nor his contact with potential witnesses make him biased.

This Court agreed with the District Judge that there was substantive evidence to support the board's conclusion of academic dishonesty during the May 16 anatomy exam.

With reference to the irrelevant and prejudicial testimony, the Court said all evidence could be considered prejudicial if it has any probative value. Prejudicial testimony is not allowed only if the prejudice significantly outweighs its probative value.

Disposition: The U. S. District Court for the Middle District of Alabama, denied the students' motion for summary judgment, and granted the University's motion for summary judgment. The complaint was dismissed.

Citation: *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985).

Key Facts: In the fall of 1975, Scott Ewing enrolled in a 6-year program of undergraduate and medical education, known as the Inteflex program, at the University of Michigan. To qualify for the final 2 years of the program, a student must successfully complete 4 years of study that included premedical courses and basic medical sciences courses, and pass the “NBME Part I” exam. In the spring of 1981, while struggling with various academic and personal difficulties, Ewing successfully completed the required courses. When he took the NBME exam, Ewing earned the lowest score ever recorded in the program on the exam; he failed five of the seven subjects on the exam. On July 24, 1981, the Promotion and Review Board reviewed the status of several of the students in the Inteflex program. After reviewing Ewing’s record, the Board unanimously voted to drop him from registration in the program. Ewing responded in writing to the Board, and the Board reconvened a week later to reconsider its decision. Ewing appeared personally before the Board and stated his case for why he believed his score on the test did not reflect his progress or potential. The Board reconsidered the issue and voted unanimously to drop Ewing from the program.

In August, Ewing appealed the decision to the Executive Committee of the Medical School. The Committee allowed Ewing to appeal in person, and unanimously approved a motion to deny the appeal for a leave of absence that would entitle him to take the NBME exam again. In the following year, Ewing appeared before the Committee twice, but each time he was unsuccessful in gaining readmission to the Medical School. On August 19, 1982, he filed his litigation in the District Court for the Eastern District of Michigan. Ewing’s complaint was based on both state and federal law. Concerning state law, Ewing alleged that the University’s action was a breach of contract and was barred by the doctrine of promissory estoppels. On the federal

law count, Ewing alleged that he had a property interest in his continued enrollment in the Inteflex program and that his dismissal was arbitrary and capricious.

Issues: Did the Court of Appeals err when it directed the University to allow Ewing to retake the exam, and then to reinstate him if he passed?

Holding: The U. S. Court of Appeals directed the University to allow Ewing to retake the exam; if he passed the exam, the University would have to reinstate him in the program. The University appealed.

Reasons: The record shows that Ewing's academic record consisted of several C's, a B, and an incomplete. He withdrew from a class and he was placed on an irregular program. Because of these problems, at the July 14, 1976, meeting of the Promotion and Review Board, he requested a leave of absence and when it was approved, he left the program. During the summer of 1976 while he was on leave, he took two classes at Point Loma College in California. He reentered the Inteflex program in the winter of 1977. He repeated one of the chemistry classes in which he had previously earned a C, and he passed the Patient Care course he had not been able to take before his leave due to his academic progress. He completed the regular Year II program, but again experienced difficulty in earning good grades. He appealed a grade change from an E to a D, and a make-up exam grade, but his appeal was denied by the Grade Appeal Committee; he was again placed on an irregular program for the spring of 1979. In July 1979, Ewing submitted a request to the Promotion and Review Board for an irregular program that would allow him to take his fourth year classes in 2 years, which the Board denied. The Board further directed him to finish his fourth year classes in one academic year. He made passing grades in the classes that year, and was therefore eligible to take the NBME exam. Ewing alleged that students with even greater academic deficiencies than his own were allowed to retake the NBME

Part I test. Some students were allowed to retake it more than once. Ewing claimed that a promotional pamphlet promised “second chances” to students to keep qualified students in the program. The District Court concluded that the evidence did not support Ewing’s claim that the University had breached its contract with him based on the contents of the pamphlet.

With regard to the federal claim, the District Court said Ewing had a constitutionally protected property interest in his continued enrollment and that a state university’s academic decisions concerning the qualifications of a medical student are indeed subject to substantive due process review in federal court. This Court found no evidence that the University’s decision was based on “bad faith, ill will, or impermissible ulterior motives.”

The Court of Appeals reversed the dismissal of Ewing’s federal constitutional claim. The appeals court agreed with the District Court that the implied contract to continued enrollment qualified as a property interest, but concluded that the University had arbitrarily deprived him of his rights because Ewing was a qualified student, qualified students were routinely allowed to retake the NBME Part I exam, and Ewing was the only medical student who failed the test and was not allowed to retake it. Therefore, the Court of Appeals held that the University must allow Ewing to retake the test and reinstate him in the program if he passed it.

This Court states that any substantive constitutional protection against arbitrary dismissal would not necessarily give Ewing a right to retake the test. The District Court did not find that Ewing had any separate right to retake the exam and actually rejected the contract and promissory estoppels claims. The Court of Appeals did not overturn that determination, and we accept it as reasonable, especially since neither party has challenged it. The question becomes whether the University acted arbitrarily in dropping Ewing from the program without allowing him to retake the exam. It cannot be construed that the University misjudged Ewing’s academic

record based on the findings. The faculty made a conscientious and deliberate decision based on Ewing's academic career. We cannot override the decision unless it can be proven that the Committee did not exercise professional judgment (*Youngberg v. Romeo*, 1982).

Disposition: The U.S. Supreme Court reversed the Court of Appeals ruling and remanded the judgment.

Citation: *Cosio v. Medical College of Wisconsin*, 139 Wis.2d 241 (Ct. of Apl. 1987).

Key Facts: Jose Cosio was enrolled in the Medical College of Wisconsin, Inc., in the Doctor of Medicine program during the year 1981-1982. Because his grades were documented as marginal and unsatisfactory, he was required to repeat his first year. After he repeated his first year, he advanced to his second year of study, during which he failed to meet the academic requirements. He was granted a leave of absence before he totally completed his second year. He was allowed to repeat his second year, and he again failed to meet the academic requirements. The College dismissed Cosio on June 4, 1985. Cosio filed suit in Circuit Court for breach of contract, negligence, and due process violations. Cosio claimed that the College failed to provide competitive examinations by tolerating cheating.

Holdings: The Circuit Court granted summary judgment against Cosio and he appealed.

Issue: Did the College commit a breach of contract by tolerating cheating on exams? Was the College negligent in its treatment of Corsio? Did the College behave in an arbitrary and capricious manner when it expelled Corsio? Did the College have a duty to monitor examinations?

Reasons: Cosio argued that the College committed breach of contract when it tolerated cheating by other students on exams. This Court rejected that argument because the existing student-college contracts, the 1981-1982 Bulletin, and the Handbook, expressly gave Cosio the

power to address unethical behavior by fellow students by reporting alleged honor violations to a member of the Student Affairs Committee. These documents were contractual in nature and documented part of the relationship between Cosio and the College (*Prusack v. State*, 1986; *Kraft v. William Alanson White Psychiatric Found.*, 1985). The Handbook provided a comprehensive honor system to deal with students' unethical behavior. Neither side disputes that Cosio never used this procedure. The associate dean said that in the spring of 1982, Cosio reported cheating incidents to her and that she gave Cosio a photocopy of the Handbook and offered to assist him in proceeding against the offenders, but Cosio did not pursue the matter. Later the associate dean inquired of Cosio whether he wanted to proceed with the charges and he said he did not. Cosio filed an amended complaint that alleged the College had a duty to monitor exams. Neither the Bulletin nor Handbook refer to such a duty, and this Court said no duty will be read into an ambiguous contract based on *Luterbach v. Mochon, Schutte, Hackworthy, Juerisson, Inc.*, 1978).

Cosio stated that his dismissal was arbitrary because the College tolerated cheating on exams. In reality, however, the College terminated Cosio based on unsatisfactory academic performance. The Bulletin contained procedures related to dismissals. The authority to take such action was vested in the Committee on Academic Standing, with appeals to be taken through the dean's office. The College continually monitored Cosio's performance and the Committee allowed him to repeat 2 years of academic work. Cosio was aware of the Committee's monitoring and the Committee advised him that any less than passing grade in his second repeated year would result in dismissal. When Cosio failed to meet the academic requirements, the Committee dismissed him after clearly stating the reasons why and advising him of his

appeal rights. The test for arbitrary and capricious dismissal is whether the dismissal is based on sufficient reasons (*Frank v. Marquette University*, 1932).

Cosio's complaint charged the College with negligence by failing to monitor examinations. Because this Court determined that the College had no obligation to monitor exams, they rejected this argument.

Disposition: The Court of Appeals of Wisconsin affirmed the judgment of the Circuit Court in favor of the Medical College of Wisconsin. The College did not breach a contract with the student by tolerating cheating, it did not act arbitrarily when it dismissed the student, and the College had no duty to monitor exams.

Citation: *Crook v. Various People at the University of Michigan*, 813 F.2d 88, 38 Ed. Law Rep. 81 (U.S. Ct. of App., 6th Cir., 1987).

Key Facts: Wilson Crook was awarded a master of science degree from the University of Michigan. After conferral of the degree, it was determined that Crook obtained the degree by fabricating data and the University revoked the degree. Crook was advised that he would have a hearing to determine the truth before an Ad Hoc Disciplinary Committee consisting of professors. He was given documents supporting the charges and replied to the documents. Crook and his counsel attended the hearing after which the Committee found Crook guilty of fraud but made no recommendation to revoke the degree. The finding was approved and other University authorities recommended his degree be revoked. Before the Board of Regents acted, Crook filed suit to enjoin the degree being revoked. The District Court denied a preliminary injunction and the Regents, who approved the finding of fraud and accepted the recommendation of the University officials, rescinded the degree. Crook filed suit and the U.S. District Court for the Eastern District of Michigan ruled in favor of Crook. The District Judge held a 9-day trial in

which she determined that Crook had not been afforded due process, declared the revocation of the degree to be null, and ordered the Regents to restore the degree. The District Court also awarded Crook attorney fees and costs. On appeal, the Board of Regents contended they did indeed have the authority to revoke Crook's degree, and that Crook was afforded due process.

Issues: Is a full-blown court proceeding necessary to rescind a grant of a degree? Was Crook denied procedural and substantive due process?

Holding: The District Court ruled that Crook's due process rights were violated and that the Board of Regents did not have the authority to revoke a degree that had been awarded.

Reasons: The U.S. Court of Appeals stated that the District Court should have first resolved the state law contention by Crook that the Board of Regents did not have the authority to revoke the master of science degree (*Gulf Oil v. Bernard*, 1981). The University contended that the University of Michigan and other universities had, in fact, rescinded degrees, but this Court could not find record of reported decisions. This Court did find that in the Ohio case of *Waglia v. Board of Trustees* (1986), the Ohio Supreme Court eventually stated that a college or university acting through its board of trustees does have the inherent authority to revoke an improperly awarded degree for good cause if the accused is given a fair hearing. As stated in *Regents of the University of Michigan v. State* (1975), the University is a separate constitutional body known as the "Regents of the University of Michigan" and has general supervision of the University. *State* further demonstrated that Michigan is one of the few states to give independent constitutional status to its universities. This Court concluded that there is nothing in Michigan constitutional, state, or case law that says the Regents must go to court in order to rescind a degree.

The second question that needed to be answered in this case was whether or not Crook was afforded due process rights. The District Court concluded that Crook had been denied both procedural and substantive due process. The District Court relied heavily on *Goss v. Lopez* (1975) when it stated that a high school student suspended for 10 days was entitled to oral or written notice of the charges and a chance to present evidence supporting his case either before or within a reasonable period of time after the suspension. The Regents argued that Crook was not entitled to the notice considered in *Goss*. The record contains sufficient evidence that Crook was given the opportunity to be heard, to present witnesses, to have an expert with him at the hearing, and to question witnesses. While the District Court argued that Crook's rights should be based on *Goldberg v. Kelly* (1970), the Appeals Court ruled that Crook's rights were much more closely tied to those in *Frumkin v. Board of Trustees* (1980). *Frumkin* applied the balancing test of *Mathews v. Eldridge* (1976) and concluded that *Frumkin* did not have a procedural due process right to have his attorney examine and cross-examine witnesses. It is not clear whether the District Court was trying to hold that the "defect" was the consideration of hearsay evidence, but the Appeals Court said *Richardson v. Perales* (1971) makes it clear that admission of hearsay evidence is not a denial of procedural due process.

The evidence was overwhelming that Crook had not used the microprobe for nearly enough hours to have produced the data results as he claimed. The fact that the log used by the department for the use of the microprobe supported the University's claim that Crook had not performed the original tests, and the fact that Crook testified he had not rerun the data when he returned to the University in February of 1979 both contributed to the fact that the University did not act in an arbitrary or capricious manner in revoking his degree. The Appeals Court therefore

concluded that the District Court erred when ruling Crook's substantive due process rights were violated.

Disposition: The U.S. Court of Appeals ruled that the Board of Regents of the University of Michigan had the authority to revoke Crook's master of science degree, and that Crook was not denied due process rights. The decision of the District Court ordering the Regents to restore the revoked degree and granting attorney fees to the student are vacated, and the cause is remanded with instructions to dismiss this action.

Citation: *Nash and Perry v. Auburn University*, 812 F.2d 655, 38 Ed. Law Rep. 47 (U.S. Ct. of Apl., 1987).

Key Facts: David Nash and Donna Perry were suspended from Auburn University School of Veterinary Medicine on a charge of academic dishonesty. On September 20, 1985, they filed action alleging a state law claim for breach of contract. After a hearing on September 25, the students were granted a temporary restraining order and they audited classes and took tests. On October 18, 1985, the district judge held a hearing on the motion for a preliminary injunction, consolidated with a trial on merit. Upon cross motion for summary judgment, the court granted summary judgment in favor of Nash and Perry. The court later denied the students' motion for an injunction. Nash and Perry asked the court to reverse the District Court's ruling for the University.

Issues: Did the University engage in constitutionally inadequate procedures? Was the decision to suspend Nash and Perry made with sufficient evidence?

Holding: The U. S. District Court for the Middle District of Alabama, held for the University and the students appealed.

Reasons: Nash and Perry charge that the University provided insufficient procedures on two counts: notice of the evidence to be presented against them and cross-examination of witnesses. Although this Court of Appeals acknowledges it would not be a huge burden on the University to provide a summary of the testimony to the students or allow cross-examination of the witnesses, it eventually agrees with the District Court that the potential value of adding notice of evidence and cross-examination of witnesses is doubtful. The students did not request an extension of time to present their case nor did they claim they were at a disadvantage by agreeing to the June 12 hearing. The analysis of professor Buxton in comparing the exam answers, the student's observation that Perry held up her paper so that Nash could read it, the observation by another student who said Nash looked on Perry's paper, and the observation by the monitors that Nash sat in a position where he could copy Perry's paper, constituted sufficient evidence that the students cheated.

Disposition: The U.S. Court of Appeals affirmed the ruling of the District Court that the students were given a fair hearing, adequate time to prepare, and there was substantial notice to support finding of misconduct during the exam, and ruled in favor of the University.

Citation: *Beilis v. Albany Medical College of Union University*, 136 A.D.2d 42, 525 N.Y.S.2d 932 (Sup. Ct. Appl. Div., Third Dept., N.Y., 1988).

Key Facts: In April of 1987, when Heidi Beilis was a freshman at the Albany Medical College of Union University, she was found guilty of cheating by the Honor Committee. On April 22, a hearing was held. On May 15, Beilis was placed on non-academic probation. She did not appeal the charge or the penalty. In addition, Beilis was alleged to cheat a second time on May 15. She was notified in writing of the charge and her accusers. A second hearing was held.

She was found guilty of cheating a second time and a penalty of a 1-year leave of absence was imposed. Beilis filed suit based on an Article 78 proceeding.

Issues: Did the University act in an arbitrary and capricious manner? Did the private university meet the threshold requirements for state involvement in a private activity? Was the penalty of a 1-year suspension disproportionate for two cheating offenses?

Holding: The Supreme Court of Albany County granted a temporary restraining order against Union University, which allowed Beilis to continue her studies pending determination of the suit. The university appealed.

Reasons: The Supreme Court relied on *Tedeschi v. Wagner College* (1999), and argued that the university's decision was arbitrary and capricious, and therefore violated Beilis' due process rights, and that the punishment was too severe. *Tedeschi* also argued that a private educational institution is bound by its own published guidelines.

The Supreme Court Appellate Division found that Union University complied with the Student Honor Code. Beilis was given notice of the charge, presented with evidence of the cheating incident, and was given the opportunity to confront and cross-examine witnesses. The eye-witness testimony was sufficient evidence of the cheating. There was also no evidence of constitutional due process rights. Based on *Sofair v. State Univ. of N.Y. Upstate Med. Center Coll. Of Medicine* (1990), students at public universities are entitled to due process, but students at private universities cannot invoke such rights unless they meet threshold requirements of proving that the State somehow involved itself in what would otherwise be a private activity (*Stone v. Cornell Univ.*, 1987). There was no demonstration in this case that the state had sufficient involvement to invoke state constitutional due process rights. State financial assistance

alone is insufficient to permit court involvement in a school's disciplinary proceedings (*Powe v. Miles*, 1968).

In addition, the Supreme Court Appellate Division found the penalty of a 1-year forced leave of absence was not excessively harsh or shocking. Beilis had been found guilty of cheating on two different occasions.

Any claims concerning the April 22, 1987, hearing on prior charges are not properly heard in this Court since no appeal was taken from the prior ruling. In all other respects, the requirements of the Student Honor Code were met.

Disposition: The Supreme Court Appellate Division reversed the restraining order decision, without costs. However, since Beilis was currently enrolled as a student under the temporary restraining order, it is possible that the University may reconsider and/or modify the sanction imposed. The matter is remitted to the university for further proceedings in a manner consistent with the Court's decision.

Citation: *Langston v. American College Testing Program*, 890 F.2d 380 (U.S. Ct. of Apl., Eleventh Cir., 1989).

Key Facts: Terry Langston was a star football player at Gardendale High School in Gardendale, Alabama, who took the American College Testing (ACT) exam in June 1986. He received a score of 10 on a scale of 1 to 35. The score was not adequate enough to allow him to play Division I football, under National Collegiate Athletic Association (NCAA) rules. Six months later, in December 1986, Langston took the ACT test again and received a score of 20, which was adequate for him to qualify for Division I football. He subsequently accepted a scholarship to play for The University of Alabama (UA). By June 1987, he was enrolled at UA and was attending football practice.

The ACT computers were set up to automatically flag any applicant whose score increased by more than 6 points during a 20-month period. Since Langston's score improved by 10 points, his record was flagged. In January of 1987, ACT began an internal audit of the December test results. The proctors whom ACT employs to monitor tests hand out the tests in a sequential order. ACT compared Langston's test scores with those test scores sequentially numbered who sat near him. Langston's test number was 413619 and the test contained 189 identical responses to the test taker who took test number 413620. The two tests had identical wrong answers to 70 questions. ACT determined that there was reason to question Langston, and on February 19, 1987, wrote to him to inform him they wished to further investigate. The letter offered Langston three options: provide any information you believe would validate your December test score, along with high school transcripts and documentation from school officials; retake to confirm your December scores without additional charges, and in the event the new score is the same no further action will be taken; or, cancel the December test score and receive a refund. The letter also informed Langston he could appeal any action through arbitration. Langston chose the first option, submitting in writing his denial of wrongdoing and provided several letters written in support of his position. A letter from the proctor of the December exam stated he found it very difficult to believe any cheating took place on his watch. Langston's guidance counselor, principal, coach, and two of his teachers sent letters of support. Langston refused to supply his high school transcript. ACT then offered three more options to Langston: take another test at ACT's expense, cancel the scores and receive a refund, or, arbitrate. Langston's attorney wrote ACT and demanded certification of the December score. On September 1, 1987, Langston's attorney wrote ACT requesting arbitration, which ACT refused. On June 1 and June 10, ACT wrote Langston's attorney advising that ACT was cancelling the

December score. In addition, ACT wrote the high school on June 10 telling them the December score was canceled and instructing them to destroy all copies of the scores. Langston went on to register at UA. The University did not know that the test score was cancelled and accepted Langston, relying on the December scores which were attached to the transcript from the high school. On August 18, 1987, when UA called ACT to confirm the scores, ACT refused to comment. The University declared Langston ineligible to play football, but Langston continued to take classes anyway.

Issues: Did the ACT act as an agent for the state? Did the ACT breach a contract with Langston? Were the communications between the ACT and the University privileged?

Holding: Langston filed for a preliminary injunction directing ACT to reinstate his December test score. The District Court denied Langston's request on September 28, 1987. ACT filed a motion for summary judgment on December 15, 1987.

Reasons: The Fourteenth Amendment rights to due process do not apply to private parties unless those parties are engaged in activities considered to be state action (*NBC v. Communications Workers of America*, 1988). Few courts have contemplated the question of whether a national standardized testing company acts on behalf of the State under Fourteenth Amendment due process rights. The District Court rejected the argument, based on *Johnson v. Educational Testing Service* (1985). The Supreme Court emphasized that showing that a private person performs a public function is not enough to establish State action, *Rendell-Baker v. Kohn*, (1974). In this case, ACT created its own system for validating test results, and it does not constitute State action.

Concerning the contract claim, the facts are undisputed that there is not a genuine issue whether ACT breached its obligation to act in good faith. ACT conducted an extensive

investigation into the increase in Langston's score. ACT offered the arbitration process on more than one occasion and Langston's counsel refused the offer based on Langston's lack of faith in the arbitration process. Nevertheless, ACT's actions are consistent with the actions of the Educational Testing Service in *Johnson v. Educational Testing Service* (1985), when it engaged in extensive investigation, offered a retest, and then arbitration.

On the slander and libel issues, the Court said there was no genuine issue of fact because only people who had a qualified privilege were notified of the investigation. ACT was not considered to fall within the definition of an educational institution who received any federal funds. There is no evidence that ACT notified anyone outside Langston, Langston's guidance counselor, and Langston's attorney regarding the investigation into the ACT score.

In order to sustain a charge of outrageous conduct, Langston must show intentional or reckless conduct that causes severe emotional distress or bodily harm (*Goodwin v. Barry Miller Chevrolet, Inc.*, 1989). Langston did not produce any such evidence. On the contrary, ACT offered retesting, the chance to produce evidence supporting the higher score, and arbitration.

Disposition: The Court of Appeals held that ACT was not acting on behalf of the State, ACT did not commit a breach of contract, and wrongful communications were privileged. The Trial Court's ruling was affirmed.

Citation: *University of Texas Medical Branch v. Wall and Wall*, 783 S.W.2d 615, Ct. of Apls. Of Texas (1989).

Key Facts: Wendell Wall and Forrest Wall are twin brothers of Chinese descent who are medical students at the University of Texas. During their first year of school, they were accused of cheating by collaborating in writing a paper that each of them submitted individually in different classes. When the faculty realized the papers were identical, they issued a disciplinary

complaint and suggested a penalty that could only be imposed if the brothers waived a hearing. The brothers admitted they cheated, declined to waive a hearing, and allowed the issue to go to a hearing. The hearing officer imposed the same sanction as the disciplinary complaint. The brothers appealed the sanction to the president, who modified the penalty. The brothers agreed to the modified penalty and proceeded with the assumption that they were free to continue their medical studies while remaining on probation until the sanction was satisfied. They were given a grade of “F” and were dropped from the roster of the University. They filed a lawsuit and a temporary injunction was sought to maintain the status quo. The District Court granted a temporary injunction and the University filed an appeal.

Issues: Could the students establish a protectable interest concerning the injunction by alleging a contract right? Could the students establish the likelihood or prevailing on the merits of the case? Could the student establish a case of irreparable injury if their medical careers were interrupted?

Holding: The 212th District Court granted a temporary injunction to prohibit the University from dismissing the students, and the University appealed.

Reasons: This case represents an appeal from an order granting a temporary injunction pending trial set for March 12, 1990. The students are seeking three things: declaratory judgment, damages under §1983, and a permanent injunction enjoining the University from expelling the students. The University alleges that there is no evidence to support the Trial Court findings, and that the Court overruled a disciplinary penalty. Appellate review of an order for a temporary injunction is limited strictly to determining whether there has been a clear abuse of discretion by the Court in preserving the status quo (*Davis v. Huey*, 1978; *Swanson Broadcasting, Inc. v. Clear Channel Communications, Inc.*, 1988; *Philipp Bros., Inc. v. Oil*

*Country Specialists, Ltd.*, 1986). The appellate court will not substitute its judgment for the trial court's decision, but only has to determine if the action taken was arbitrary and surpassed the limit of reasonable discretion (*Philipp Bros.*, 1986). A probable right of recovery must be shown by the party seeking the temporary injunction (*Transport Co. of Texas v. Roberson Transports*, 1953). The party who seeks to have the temporary order removed must show evidence of probable harm (*Texas State Bd. Of Educ. V. Guffy*, 1986).

The University seeks to establish that it has a legal vested right worthy of protection, that the students do not have a right to attend classes, and that the students have established a probable right to win the lawsuit. This Court of Appeals overrules those first three points presented by the University. The next two points the University seeks to prove are that the District Court overruled the penalty imposed by the University and said the University did not act capriciously or unlawfully. The Court of Appeals also overruled these two points. The next two points that the Appeals Court considered were that the University did not deny the students due process and that the University acted within the limits of the Regents' Rules as adopted by the University's Medical Branch. There is evidence that the Rules were improperly applied or that discipline was administered outside the Rules because the ultimate test of due process is the presence of fair play (*Martinez v. Texas State Board of Medical Examiners*, 1972). The University claimed the disciplinary process was administrative and does not fall under the responsibility of the faculty. However, the facts prove that the faculty played a prominent part in the disciplinary action in this case. These two points were therefore overruled by the Appeals Court. Still another point that the University argued in the case was that the failing grade penalty was not motivated by non-professional judgment. In reality, the faculty member testified that his decision to assign a failing grade was prompted by his belief that other cheating had in fact

occurred, which was a non-academic reason. A final point introduced by the University was the students presented no evidence they would be irreparably harmed by the penalty. In fact, the students would lose 1 year of class work and in all likelihood they would experience a stigma that would negatively affect their career goals. This argument was also overruled.

Disposition: The Court of Appeals held that there was sufficient evidence the students would suffer injury and could show probable right of recovery. The Trial Court did not abuse its discretion. The Trial Court's ruling in granting the temporary injunction is affirmed.

Citation: *Boehm and Stanik v. U. of Penn. School of Veterinary Medicine*, 392 Pa.Super.502 (Sup. Ct. Pn 1990).

Key Facts: In April 1989, first-year students Cheryl Boehm and Maria Stanik were notified of charges against them for alleged misconduct during exams. An exam proctor testified that he observed cheating behavior on three separate occasions and ultimately threatened to take their exam papers. Another professor observed similar behavior and separated the students. Three students also gave testimony they observed cheating behavior. On June 28, 1989, a panel of three faculty members and two students found Boehm and Stanik guilty of violating the Integrity Code. The panel recommended probation but the Dean declared the students should be suspended for 1 year, and also imposed additional sanctions. An appeal committee agreed with the Dean and suggested modified sanctions, which included the following: (1) suspension from school for 1 year; (2) probation during the balance of their matriculation upon return to the school; (3) they must sit apart for all future exams; and (4) a notation was to be made on their transcript that indicated they were found guilty of behavior that was compatible with cheating; the notation could be removed as allowed by the Code, during the senior year. The students filed a complaint asking for injunctive relief.

Issues: Did the Dean breach the contract between student and university when he imposed a more severe punishment than the one recommended by the hearing panel? Were the students entitled to injunctive relief?

Holding: The Court of Common Pleas of Pennsylvania issued a preliminary injunction against the suspension of the students. The university and Dean Andrews filed on appeal.

Reasons: Several conditions must exist before a preliminary injunction can be issued: that immediate and irreparable harm would occur which could not be compensated by damages if the injunctive relief was not granted; that greater injury would result by refusing to issue the injunction than by granting it; and that the injunctive relief restores the status quo. *Keystone Guild, Inc. v. Pappas* (1960) and *Herman v. Dixon* (1958) stated that unless the plaintiff's "right is clear and the wrong is manifest," a preliminary injunction is generally not awarded.

Boehm and Stanik argued in Trial Court that improper procedures during the hearing blemished the findings and subsequent discipline by the Dean. In general, the law says that a student has a right to attend public or private university on the condition that he/she complies with its scholastic and disciplinary rules, and that the university administration can enforce reasonable rules and regulations. The Courts generally will not interfere unless they perceive an abuse of such power (C.J.S. Colleges and Universities, Section 26, at 1360, 1939).

*Dixon v. Alabama State Board of Education* (1961) laid the ground rules that due process requires notice of charges and the opportunity for a hearing must occur before a student at a tax-supported university is expelled for misconduct. The general rule for private universities holds that as long as the university complied with its own policies and procedures, the Court would not restrain the university from suspending or expelling a student, *Tedeschi v. Wagner College* (1980). The complaint was based on contract theory alone, but this Court rejected a strictly

contractual approach to the matter. This Court said the only evidence of a contract were the Graduate School Catalogue and the honor code. The Trial Court's "rigid application" of commercial contract doctrine was in error, and the students' complaint filed in breach of contract was in error.

In *Barker v. Trustees of Bryn Mawr College* (1923), the Court held that a private university that receives no state aid has a purely contractual relationship with the student. The Court acknowledged that in *Schulman v. Franklin and Marshall College* (1988), private schools were obligated to adhere to principles of due process.

In discussing the issue of "irreparable harm," the Superior Court relied on *Cosner v. United Penn Bank* (1986) and *Schulman*, which said for harm to be irreparable, it must be irreversible. *Schulman* also held that the suspension would cause a delay in the students' education, but would not cause them from completing their education. A contrary view, in *Jones v. Board of Gov. of the University of North Carolina* (1983), held that a student could not be adequately compensated for delay in obtaining a degree caused by suspension. The Trial Court ignored *Schulman* and followed *Jones*. The Superior Court held that *Schulman* better represented the instant case.

The fact that the Dean determined a more severe penalty than did the hearing board is not a basis for relief through the court system. The Trial Court suggested that it issued a temporary injunction because the students had not received adequate notice and a meaningful opportunity to be heard. This suggestion is not supported by the record before this Court, and such an argument has not been presented by the students on appeal.

Disposition: The Superior Court reversed the order of the Trial Court and allowed the suspension of the students to prevail.

Citation: *Easley v. U. of Michigan Bd. Of Regents*, 906 F.2d 1143 (U.S. Ct. of Apl., 6th Circuit, 1990).

Key Facts: In the summer of 1979, Kendrix Easley began law school at the University of Michigan. Although Easley had been admitted to the law school as part of the policy to enroll a significant number of minority students, he earned four grades of “D” in his first term. In his second term, Easley obtained special arrangements from Dean Eklund concerning coursework and exam schedules. In the summer of 1982, he petitioned the faculty to eliminate any reference to the grade of “D+” in the class called Enterprise Organization. His petition was denied.

As Easley approached the end of his law school career, he was involved in two disciplinary incidents. The first incident happened when he met with Professor Antoine in an attempt to improve his grade of “D” in Employment Discrimination. Professor Antoine changed his grade to “D+” but noticed a cover page of the exam booklet appeared to have been changed, and brought a cheating charge against Easley. This charge caused Easley not to be able to sit for the Michigan Bar Exam in July of 1982.

The second incident occurred when Easley submitted a paper to Professor Westen in an effort to earn extra credit hours. Westen determined the paper was nearly identical to a Law Review article and he charged Easley with plagiarism. Both charges were brought before a Tribunal, in accordance with the policy. In November 1982, Easley was found not guilty of the cheating charge. In April of 1983, Easley was found guilty of the plagiarism charge.

On November 21, 1984, Kendrix Easley, who had been suspended for the plagiarism offense, filed an eight-count complaint .At the time of the suspension, the student lacked only one credit toward a law degree. The university refused to grant a law degree to Easley.

Issues: Would a reasonable person with knowledge of the facts of this case conclude the judge was impartial?

Holding: The U.S. District Court held In January 1986 that Easley failed to show any due process right that entitled him to an additional credit hour needed to satisfy the 81-hour requirement for graduation. The Court held in favor of the University. Easley moved for a new trial and, in April of 1986, the U.S. District Court ruled that Easley failed to show he was entitled to a new trial based on a central equitable claim and Easley failed to prove that he was denied his civil rights under §1983. The Court of Appeals affirmed in part and remanded for evidentiary hearing. The Court of Appeals gave the District Court three instructions on remand: to enlarge the record regarding Judge Feikens' association with the Law School, to determine whether Judge Feikens' obtained extra-judicial knowledge of Easley's case, and to decide whether Judge Feikens' impartiality might be reasonably questioned. The District Court complied by providing the necessary supplements, and the Court of Appeals held Judge Fiekens did not abuse his discretion by refusing to recuse himself.

Reasons: The one issue not resolved in the U.S. District Court for the Eastern District of Michigan was Easley's appeal of the refusal of the judge to recuse himself. The eight prior counts that Easley filed were as follows: a lack of jurisdiction and authority to rescind a degree, violation of due process rights, violation of substantive due process, race discrimination, a violation of the Elliott-Larsen Civil Rights Act, breach of contract, negligence, and intentional interference with contractual relations. Prior to trial, count one was dismissed. After denying Easley's petition for a writ of mandamus directing Judge Feikens to disqualify himself, the District Court held a bi-furcated bench trial on the equitable claim. Based on facts, the Court concluded that since Easley never completed his degree requirements, he never obtained a

property interest in a Juris Doctorate degree. The Court denied Easley's claim for injunctive relief and entered judgment of no cause of action. Easley renewed his complaint to disqualify Judge Feikens, and also moved for a new trial before an unbiased judge. Easley's counsel did not know of the complaint renewal and withdrew his representation of Easley. The Court rejected the racial bias claim as entirely unwarranted.

The District Court conducted an evidentiary hearing on the nature of Judge Feikens' association with the University Law School. The Court found that none of the issues raised in Easley's supplemental brief had any merit.

Disposition: Upon return from remand, the Court of Appeals affirmed that the judge's refusal to recuse himself was not an abuse of discretion.

Citation: *Florida State U. of College of Law v. Armesto* 563 So.2d 1080 (Dist. Ct. of Apl. Florida, 1990).

Key Facts: Professor Stern accused Rosa Armesto of cheating on her final exam in his Constitutional Law II class on April 28, 1988. Professor Player investigated the matter upon the request of Dean D'Alemberte. On May 31, Professor Player informed Armesto of the general charges and that he was the investigator. On June 13, Player informed Armesto of the specific charges. Armesto and her attorney met with Player on July 18, where Armesto gave her version of the event. On July 25, Player submitted his report to the Dean stating he found substantial evidence that Armesto used improper notes during the exam and recommended that formal charges be filed. Although Armesto claimed she exited the exam to use the bathroom, Professor Stern and a witness, Beverly Perkins, testified they heard sounds of rustling paper from Armesto's bathroom stall. Perkins also testified that she looked under the bathroom stall and observed Armesto holding a paper with writing on it. Armesto filed a complaint in circuit court

seeking to restrain the prosecution of charges she violated the conduct code. The circuit court entered an order enjoining FSU from proceeding based on Player's investigation. The student's suit claimed the college improperly violated certain student code requirements and the violations created a condition so that the student would be falsely accused. The student further alleged that the effects of such an accusation were irreparable.

Issues: If a plaintiff claims due process rights are violated, does he/she have the right to bypass administrative remedies and go directly to the circuit court for relief?

Holding: The Circuit Court permanently enjoined the school from charging the student with academic dishonesty. The school appealed.

Reasons: Primary jurisdiction and exhaustion of remedies require circuit courts to refrain from exercising jurisdiction over administrative proceedings unless adequate administrative remedies have been exhausted (*State ex rel Dept. of General Services v. Willis*, 1977). However, in *Florida Society of Newspaper Editors v. Public Service Commission* (1989), the courts ruled that an exception exists if action is so egregious or devastating that administrative remedies are "too little or too late." However, the student did not prove her contention that she would be irreparably harmed if the Florida Board of Bar Examiners subsequently improperly barred Armesto from practicing law; that premise is speculative. The Court of Appeals found that Armesto was fully informed of the charges, fully represented by counsel, and fully given her due process rights.

Disposition: The District Court of Appeals reversed the circuit court ruling and remanded with the directions that the injunction be set aside and the complaint dismissed.

Citation: *Rauer v. State of New York, U. at Albany*, 159A.D.2d 835 (Sup. Ct. App. Div. N.Y., 1990).

Key Facts: Brian Rauer sat for an economics exam and purposely submitted an illegible blue book. After the test, he prepared another blue book with information copied from treatises on the exam subject. The next day, he asked a friend to submit the doctored blue book to the professor and to tell the professor he found the blue book on the floor. The professor recognized that the answers were taken verbatim from the treatises so he confronted Rauer, who initially denied cheating, but then admitted it. Rauer also said he could not take the final exam because his girlfriend was hospitalized due to a motor vehicle accident. He later admitted he lied about the accident and the hospitalization. Rauer then failed to show up for the make-up exam and said he thought the exam was to be administered on a different date. Brian Rauer was found guilty of academic dishonesty by the Committee on Student Conduct. He was suspended on May 18, 1989 and could reapply for admission in the spring of 1990. In addition, the disciplinary letter could be removed from his file after graduation.

Issue: Can a claim of lack of procedural due process be raised for the first time on judicial review of administrative determination? Was a penalty of a 1-year suspension harsh and excessive for a student who pled guilty to cheating and lying?

Holding: The Supreme Court, Albany County, dismissed the student's application on the merits and stated the penalty was not so severe as to shock the Court. The student appealed.

Reasons: Rauer referenced the point of law in CPLR 7804(f) and in *Matter of Miller v Regan*, 80 A.D.2d 968, 969, 438 N.Y.S.2d 622. However, the Appellate Court said those rulings only apply to the general idea that it is wrong to grant relief before a respondent has had an opportunity to respond to allegations. The undisputed facts were presented in the trial.

The claim for procedural due process cannot be raised for the first time on judicial review of the administrative determination. It must begin at the administration level (*Matter of*

*Hennekens v State Tax Comm. Of State of N.Y.*, 114 A.D.2d 600, 494 N.Y.S.2d, 208 and *Matter of Valvano v Jones*, 122 A.D.2d 300, 504 N.Y.S.2d 306).

The charge of academic dishonesty was not covered in the list of “prohibited conduct” in the section of the Rules and Regulations for Maintenance of Public Order that Rauer claimed. The Appellate Court found Rauer received adequate due process. The Court said the penalty was not harsh or excessive given the seriousness of the charge and the fact that he lied.

Disposition: The Supreme Court Appellate Division upheld the Supreme Court ruling that the university was justified in suspending the student for academic dishonesty.

Citation: *Shuman v. U. of Minnesota Law School*, 451 N.W.2d 71 (Ct. App., Mn., 1990).

Key Facts: Craig Shuman and Joseph Shasky were in a first-year contracts class and submitted virtually identical papers for a research assignment. The professor talked to the students and advised them to do their own work but took no action against them. A second research paper was assigned later in the semester and, again, the students submitted nearly identical papers. The professor notified the students he was turning the matter over to the Law School Council, which was composed of students who administer the Honor Code. The council appointed a second-year student as investigator. The investigator subsequently interviewed the professor, third-year students who were Shuman and Shasky’s legal writing teachers, and the students’ attorneys. The student investigator found no probable cause to suspend the students. The investigator gave an oral report to the Council, but did not submit a written report or show the papers in question to the Council. In late November or early December of 1985, the Council voted to uphold the student investigator’s finding of no probable cause. At that time, the Council had a written report but not the papers in question. The students petitioned the Dean for permission to honorably withdraw from school with guaranteed readmission. On November 26,

1985, the Dean met with the faculty about the request. The Dean also sent a memo to the faculty stating his opposition to the request for withdrawal, and in the memo also stated he believed they had violated the Honor Code. The faculty voted to deny the withdrawal request. On December 5, 1985, the faculty revoked the Honor Code and imposed a new Code that revoked the right of students to enforce the Code and gave that right to faculty. The Council was upset and asked the faculty committee to reinstate the old Code, which they did. A new investigator, this time a faculty member, was appointed, and he conducted his own investigation. The council met in January 1986 to focus on the proceedings against Shuman and Shasky. The students and their counsel were present at the meeting, and by a vote of eight to one, the council decided to reopen the investigation. The new faculty investigator gave the council copies of the students' papers. The council voted eight to zero to uphold the finding of probable cause. On January 13, 1986, the faculty investigator submitted a complaint to the Honor Code Review Board, which the two students sought to dismiss by a motion. By a vote of two to one, the board agreed to dismiss the case. The faculty investigator appealed to the Law School Grievance Committee. On March 20, 1987, the Grievance Committee reversed the review board and remanded the case to the review board for a hearing on merits. Two faculty members and two students voted to reverse, and two faculty members and one student voted to affirm. The committee interpreted clause 4.03(1) of the Code to mean there was finality only if the Council took no action on the investigator's recommendation. Shuman and Shasky filed suit in court and sought a restraining order to stop the hearing. The Trial Court denied the restraining order on May 12, 1987. The review board held a hearing on May 13 and 14. The two students had an attorney and were allowed to cross-examine witnesses. On June 17, 1987, the review board found the students guilty of violating the

honor code and the students were suspended for 1 year. The grievance committee affirmed and an appeal to the faculty was denied.

Issue: Did the trial court err in dismissing the claims that the University breached its contract with the students when it briefly revoked the honor code and then reinstated it? Did the trial court err when it dismissed the students' due process rights claims?

Holding: The District Court of Hennepin County granted summary judgment in favor of the law school and the students appealed.

Reasons: The due process clause protects a student's interest in attending a public university. A student is afforded more due process protection when school-imposed sanctions are for misconduct rather than academic failings (*Bd of Curators of U of Missouri v. Horowitz*, 1978). Additionally, if the sanction is imposed in bad faith or is an arbitrary and capricious act, courts may intervene. Shuman and Shasky based their breach of contract appeal on the fact that a contract was formed based on the Honor Code. However, the court ruled that in the absence of evidence of bad faith on the part of the school in revoking and reinstating the honor code with a new investigator, there can be no breach, because the Honor Code was indeed applied.

Disposition: The Court of Appeals upheld the Trial Court ruling that the student failed to establish violation of due process; and, the adoption of the Honor Code did not constitute a breach of contract. Judgment was in favor of the University of Minnesota Law School.

Citation: *Vargo v. Hunt*, 398 Pa.Super. 600, 581 A.2d 625 (Sup. Ct. of Penn 1990).

Key Facts: Christina Hunt, a student at Allegheny College, claimed that Daniel Vargo looked in the direction of a study sheet at his feet during an accounting exam. She reported the occurrence based on her compliance with the Honor Code. A hearing was conducted before the Allegheny College Judicial Board and the Board recommended that Vargo receive a failing

grade, be suspended from the College for one term, and be placed on probation for one term when he returned to school. Vargo appealed to the President of the College and the President upheld the Board's decision. Vargo filed suit.

Issue: Did the lower court err in determining that the Defendant's defamatory remarks were conditionally privileged and the defendant had immunity?

Holding: The Court of Common Pleas entered summary judgment in favor of Hunt who turned Vargo in for cheating. Vargo appealed to the Superior Court of Penn.

Reasons: The Superior Court said an occasion is conditionally privileged when the circumstances are such that one or several persons have a common interest in a particular subject matter and believe the facts should be shared with those persons (*Rankin v. Phillippe*, 1965). Furthermore, a conditional privilege exists when (1) some interest of the person who publishes the defamatory matter is involved, (2) some interest of the person to whom the matter is published or some third person is involved, and, (3) a recognized interest of the public is involved (*Keddie v. Penn State U.*, 1976). The college community had a legitimate common interest in continuing a policy of honesty in the classroom, lest its reputation for integrity and graduating students be undermined in the public and private sector. Publication would only have been excessive if it had been made to persons who did not have a common interest.

Disposition: The Superior Court affirmed the ruling of the Court of Common Pleas in favor of Christina Hunt that she was conditionally privileged, therefore having immunity, under the Honor Code of the school to disclose cheating behavior by another student.

Citation: *Abrahamian v. The City U. of N.Y.*, 170 A.D.2d 233 (Sup. Ct., App. Div., 1st Dept., N.Y., 1991).

Key Facts: Norayr Abrahamian sat for a Physics 208 exam in order to exempt the class. He had not enrolled in the course, but was trying to exempt the class by doing well on the exam. Both the supervising professor and a proctor stated that after the exam started, a door slammed. The supervising professor immediately took attendance, checked student IDs, stationed a proctor by the classroom door, and collected all unused additional exams. No other student entered or left the room during the remainder of the exam. Abrahamian returned to the classroom during the confusion at the end of the exam. He said he left the classroom to obtain a calculator and returned 10 to 15 minutes later. He took the exam paper with him when he left the room. Abrahamian was suspended for cheating.

Issue: The issue was an Article 78 procedural objection. (Does the case contain sufficient evidence of a procedural violation of Article 78 rights?)

Holding: The Supreme Court transferred the case to the Supreme Court, Appellate Division.

Reasons: There were no valid procedural objections based on Article 78. The students sitting on the Hearing Committee were properly selected by the President of the City College in accordance with §15.3(g) of the University by-laws. In addition, Abrahamian's claim that the suspension was not based on a majority vote was hearsay. Objections to disallow a transcript of the telephone conversation were proper because there were grounds to doubt the authenticity of the tape. Finally, no evidence of predetermination of guilt was attributed to the pre-hearing advice by the college's director of student services.

Disposition: The Supreme Court, Appellate Division, confirmed the findings of the Supreme Court, N.Y. County, and found Abrahamian's claims to be without merit.

Citation: *Armesto v. Florida State U. College of Law*, 615 So.2d 707 (Dist. Ct. Appl. FL, 1992).

Key Facts: Professor Nat Stern accused Rosa Armesto of cheating on her final exam in his Constitutional Law II class on April 28, 1988. Dean D'Alemberte appointed Professor Mark Player to investigate the matter. On May 31, 1988, Player informed Armesto of the specific charges and gave her information on how the investigation was proceeding. Armesto and her attorney met with Player on July 18 and responded to the charges. Player asked Armesto her version of the events but did not ask her any questions.

On July 15, Player gave his report to D'Alemberte that stated he found substantial evidence that Armesto used notes during the exam and recommended that formal charges be brought against her. Player decided that he believed the observations of student Stern and Perkins over the story Armesto told. Perkins said she heard sounds of rustling paper in the bathroom stall and looked under the stall and saw Armesto holding a paper with writing on it. Armesto had gone to the restroom after exiting the classroom during the exam.

Professor Jacobs was appointed to present the case to the hearing panel. The panel of three law school faculty members and two law students found Armesto guilty of cheating. Armesto moved to have the charges dismissed. Professor Jacobs introduced the findings of Professor Player. The panel recommended immediate suspension, and stated that Armesto must retake and successfully pass the Constitutional Law II course. They also recommended that Dean D'Alemberte's Hearing Panel place a copy of the findings in the student file and notify the relevant Bar association of the matter. Armesto filed written exceptions. Dean Weidner, D'Alemberte's successor, overruled her exceptions to the Hearing Panel's findings. Weidner affirmed the report of the panel and decreed that Player's investigation was proper, the

appointment of a new investigator cured any defects in the report, and once the hearing was held any issue that addressed the adequacy of the investigation was “moot.” Dean Weidner said Armesto would be awarded the J.D. degree as of December 1991. Armesto appealed.

Issue: Was there sufficient evidence to support a charge of cheating? Did the University follow the applicable procedures of the Florida Administrative Code?

Holding: The Circuit Court enjoined FSU from proceeding based on Player’s investigation. FSU was not precluded from initiating another investigation. FSU appealed and the First District Court of Appeal vacated the injunction and reversed, with directions to dismiss the underlying complaint. The court found that Armesto had not exhausted all of her administrative remedies.

Reasons: The student’s rights to due process were not violated because the university followed its published procedures that affect individual rights (*Morton v. Ruiz*, 1974). Professor Player interviewed the people he believed had knowledge of the facts and he interviewed Armesto. Armesto was advised in writing, in advance, of the charges against her (*Fla. Admin. Code Rule 6C 2-3.045(2)(b)2.9*). Professor Player asked Armesto for the name of some people who could assist in the investigation, and Armesto responded by submitting a bound file containing her written statement, the statement of several witnesses, and statements on behalf of her character and reputation. But she did not give Player any names. Armesto cannot now claim she had to speculate about what questions Player wanted her to answer. Unless the record shows an abuse of discretion or a violation of the law by FSU, this Court should not overturn the hearing panel’s ruling (*Butler v. Carter*, 1960; *Cohen v. School Bd. of Dade County, Fla.*, 1984).

There is nothing in the record to indicate that Player took adverse action toward Armesto based on the perceived bribe. Player never mentioned the bribe in his report or to Armesto, so he

should not disqualify himself, according to the code. The Court stated he was the investigator, not the prosecutor.

Player's report to the Dean was admitted into evidence as rebuttal to show diligence in the investigation, so it cannot be called hearsay. There was no indication in the record that the report was relied on as the truth.

Disposition: Armesto failed to demonstrate that FSU violated the law, so the order by FSU to suspend her is upheld.

Citation: *Hand v. New Mexico State U.*, 957 F.2d 791 (U.S. Ct. Apl. 10th Cir., 1992).

Key Facts: Michael Hand received his PhD in psychology in 1982. He is presently a licensed psychologist in El Paso, Texas. In the fall of 1987, someone anonymously forwarded a copy of Hand's dissertation to university officials, along with highlighted material from two literature sources, in order to reveal plagiarism. The materials were forwarded to Dean Matchett of the graduate school, who determined the issue warranted further investigation. Dean Matchett met with various members of the counseling department and they unanimously agreed that the dissertation contained plagiarized material. The entire group met with the Executive Vice President of New Mexico State to discuss a course of action. During the meeting, the group, along with Assoc. Dean Upham, decided on a nine-step degree-revocation process for the department. Before the nine-step process was presented to the Board of Regents, the dean and associate dean submitted the dissertation and other materials to two faculty members of another recognized university. The two outside consultants agreed the dissertation material was plagiarized. On March 18, 1988, the Board of Regents unanimously approved the nine-step process to be followed by the graduate school. The first notification of formal charges was sent to Hand in a letter on March 21 from Dean Matchett. Hand replied in a letter agreeing there were

“certain inadequacies” in his dissertation, but stated the inadequacies were due to reasons other than an intent to deceive. Upon receipt of Hand’s letter, Matchett formed an ad hoc committee of graduate faculty members to review the issue. On April 6, Matchett send Hand a letter informing him the committee could meet on April 18, and invited him to respond to the allegations at that time. Hand brought a colleague to the meeting who spoke on his behalf, but did not bring an attorney, although he knew he was entitled to one. Although the hearing was recorded, technical difficulties rendered the first half of the tape unintelligible. The committee ruled that the dissertation contained plagiarized material. Dean Matchett decided, with no other consultation, that revoking the PhD was the remedy, which he reported to Hand on April 27. Hand then hired an attorney. Both Hand and his attorney attended a hearing where the decision to revoke the degree was affirmed. The NMSU registrar was instructed to change Hand’s transcript to reflect the revoked degree status. Hand filed suit.

Holding: The U.S. District Court for the District of New Mexico entered summary judgment in favor of Hand. The university appealed.

Issue: Did the Board of Regents violate a New Mexico statute when they revoked Hand’s degree?

Reasons: The language of the statute stated that the Board of Regents had the exclusive power to confer or revoke degrees in New Mexico (*Crook v. Baker*, 1987; *Waliga v. Bd. of Trustees*, 1986; *Futrell v. Ahrens*, 1975). The court stated it considered it self-evident that a college or university acting through a governing board does have the inherent authority to revoke an improperly awarded degree, where good cause is shown and the degree-holder is afforded a fair hearing. The Board of Regents approved the procedures, which Dean Matchett followed. However, the Board of Regents did not have any involvement in the revocation process. It was

not consulted about the revocation of Hand's degree, nor was there any procedure identified in which the Board would oversee such a proceeding. Michael Hand was not given the opportunity to attend a hearing before the Board. To be in compliance with the statute, the Board of Regents had to exercise final authority. Since they did not, the revocation of the degree is void.

Disposition: The Court of Appeals affirmed that the Board of Regents violated New Mexico law by delegating final authority to revoke the degree.

Citation: *U. of Texas Medical School at Houston v. Than*, 834 S.W.2d 425 (Ct. of Apl, Texas, 1992).

Key Facts: In June 1992, Allan Than finished his fourth year of medical school at the U. of Texas Medical School at Houston. A portion of the medical school educational process was sitting for the national board medical exams (NBME). On February 22, 1991, Than took the surgery NBME, with other students, in a room with test proctors. During the exam, two of the proctors suspected Than was looking at another student's answer sheet. On March 21 of that year, the associate dean for student affairs contacted Than and advised him he was suspected of cheating. On April 4, the medical school sent Than a letter telling him he was charged with academic dishonesty. The letter also advised him that a hearing would occur on April 18, in accordance with the rules and regulations of the Board of Regents of the U. of Texas system. On April 28, the hearing officer recommended Than be expelled. Than appealed to President Low of the U. of Texas Health Service Center at Houston. On May 9, Than received a letter from Dean Riddle that told him he could not participate in any clinical clerkship activity at the medical school unless and until Dr. Low reversed the hearing officer's decision. On May 24, Than filed a suit seeking a temporary restraining order requiring the school to treat him as if he were in good standing.

Issues: Did the trial court abuse its discretion when it issued a temporary injunction against the University? Did the University violate Than's due process rights when it did not give notice of evidence, denied Than the right to cross-examine witnesses, and did not allow Than to visit the exam room with the hearing officer?

Holding: The 190th District Court granted the temporary restraining order allowing Than to continue his studies, and the medical school appealed. Prior to the hearing on appeal, Than filed an emergency motion to find the medical school in contempt. The case was returned to the state court level, where Than was granted a temporary restraining order, and the trial court set the date for a hearing on the temporary injunction appeal.

Reasons: The Trial Court held that irreparable harm to Than would result if the injunction was not issued. Than was accepted for residency by the U. of Virginia Health Science Center. He was required to submit a certificate of professional education as a part of the statutory provision for temporary licensure as a Virginia medical resident. The U. of Texas Medical School refused to issue the certificate. Than was also scheduled to graduate as an M.D. on June 5, 1992. He had completed all of the required studies, and was preparing for the FLEX exam that had to be passed before a medical license could be issued. In order to take the FLEX exam, Than had to present his diploma. The court said it would not rule on the contempt charge at this time, but ordered that Than be permitted to participate in graduation exercises. The medical school did not have to actually issue a diploma. If it chose to do so, it could inscribe the diploma with some form of the following language: there is litigation pending at this time between Mr. Than and the U. of Texas Medical School concerning an NBME grade. The outcome of this litigation may or may not affect Mr. Than's grade and his standing at the school.

According to the rules and regulations of the Board of Regents, Than should have been allowed to cross-examine all witnesses against him. He was denied this right when evidence against him was presented in a letter from NBME, who provided statistical analysis to Than's surgery exam. Than was not given notice that his academic record, specifically his performance on a psychiatry exam, would be presented at the hearing. After the hearing was closed and Than was no longer present, the hearing officer visited the classroom where the surgery exam was taken to determine what view Than had of another student's exam. The hearing officer relied heavily on that room visit to make her recommendations. The rules and regulations state that Than should have been notified immediately of the charges but, in reality, he was notified nearly 3 weeks later. Courts view disciplinary measures against students differently than actions taken against a student for academic reasons. If a student is dismissed for academic reasons, a reviewing court will not interfere with the decision unless it was motivated by bad faith or ill will unrelated to academic performance, or was based on arbitrary and capricious factors not reasonably related to academic criteria (see *Eiland v. Wolf*, 1989). In this case, the medical school says Than would not have been expelled for failing the exam, he would have been allowed to retake it. Instead, he was accused of academic dishonesty and given a failing grade rather than the grade he actually made, and then expelled. His punishment was disciplinary, not academic (*Goss v. Lopez*, 1974; *Morrissey v. Brewer*, 1972). A state university student accused of dishonesty concerning an exam is entitled to a higher level of procedural due process than normal. It was well within the Trial Court's jurisdiction to determine that Than offered evidence of alleged violations of his due process rights under the rules and regulations that were sufficient to taint the decision-making process.

In order for a temporary injunction to be issued, the applicant must plead a cause of action and show a probable right of recovery and probable injury in the meantime, *Sun Oil Co. v. Whitaker* (1968). At a hearing for a temporary injunction, the only issue before the Trial Court is whether the applicant was entitled to an order to preserve the status quo. Status quo is defined as the “last, actual, peaceable, non-contested status that preceded the controversy” (*State v. Southwestern Bell Tel. Co.*, 1975).

Evidence at the Trial Court hearing on the temporary injunction showed that the hearing officer was greatly influenced by the letter of recommendation from NBME, which used a statistical reference to support the cheating theory. In addition, the hearing officer was greatly influenced by an ex parte visit that Dr. Russell made to the examination room and would not let Than attend. The hearing officer also made a personal judgment that Than’s motive for cheating was a failing grade on his psychiatry exam in another class. The Court concluded that these processes were tainted by due process deficiencies.

Disposition: The motion for contempt was denied based on the fact that the court could not adjudicate the merits of his cause of action. The Court of Appeals concluded that the evidence reasonably supported the Trial Court’s finding of probably injury and right of recovery, and affirmed the judgment of the Trial Court in favor of Than.

Citation: *Weidemann v. State U. of New York College at Cortland*, 188 A.D.2d 974 (Sup. Ct. Apl Div, New York, 1992).

Key Facts: Elizabeth Bolton testified that she saw graduate student Eric Weidemann viewing unauthorized notes during a final exam in July 1991. During a break, Elizabeth questioned another student, Donald Root, about whether or not he observed Weidemann using these notes, and he said he did. Before the hearing, the Academic Grievance Tribunal requested

Root respond via fax to the issue, and he responded with a letter stating that the petitioner had papers on his desk that were not exam papers, but he could not confirm what was actually on those papers. Eight days after the hearing, a Tribunal member telephoned Root and asked for a second fax letter, in which Root replied that the papers consisted of ripped-out notebook paper, and although he could not confirm the petitioner used the papers in a dishonest manner, that was his overall impression. Weidemann did not know of the first letter until the hearing was in progress, and did not know of the second letter until after the tribunal made its decision. Bolton testified at the hearing, but Root did not. After the hearing, the tribunal found Weidemann guilty and recommended he be dismissed. The college provost dismissed Weidemann. Weidemann appealed to the board of appeals, which upheld the dismissal and the college president agreed with the dismissal. The Petitioner then filed CPLR Article 78 findings, and contended the penalty of expulsion was an abuse of discretion.

Issues: Did the University's failure to follow its own procedures published in the Student Handbook result in an Article 78 issue based on abuse of discretion?

Holdings: The Supreme Court, Appellate Division, held that the failure of the university to follow rules it established concerning academic dishonesty required annulment of Weidemann's dismissal.

Reasons: It is well-established that once a public or private university adopts rules or guidelines that establish procedures to be followed, they must substantially comply with those rules and guidelines (see *Tedeschi v. Wagner Coll.*, 1980; *Matter of Harris v. Trustee of Columbia Univ.*, 1983). In this case, the State University of New York College had established clear rules to be followed in its 1988-1990 Cortland College Handbook. The Petitioner did not receive the required 5-day advance written notice of the supporting evidence, in violation of

Handbook sections 340.03 and 340.05. He was not even aware of the existence of the first letter from Root until the hearing was in progress. He did not have an opportunity to defend against that evidence. The petitioner only learned of the second letter from Root after the tribunal had made a decision to expel Weidemann. Petitioner did not receive a copy of the supporting evidence 5 days before the hearing, and he had no opportunity to rebut or explain the evidence, as stated in the Handbook. In addition, the university admitted that Weidemann was not provided 5 days' prior written notice of the hearing date or appeal process, which meant he lost the right to have counsel participate in the process and to present additional evidence. When Weidemann's father spoke to the president's executive assistant on October 7, 1991, he was erroneously told his son had only until the next day to submit an appeal. Weidemann was thus forced to quickly prepare an appeal without adequate preparation. The Board also failed to consider the extensive letter of appeal sent by Weidemann's counsel, even though it assured Weidemann the letter would be considered. In this case, Weidemann said the University did not abide by their published rules of procedure and the court agreed. Weidemann did not receive proper notice of the evidence, he had no meaningful opportunity to prepare for defense against the evidence, and did not have a chance to offer rebuttal of the evidence.

Disposition: The Supreme Court, Appellate Division, concluded the appropriate remedy was to remit for a new hearing. Accordingly, the expulsion is annulled, with costs to be paid by the university.

Citation: *Melvin v. Union Coll.*, 195 A.D.2d 447 (Sup. Ct., Apl Div., N.Y. 1993).

Key Facts: Stacy Melvin was accused of academic dishonesty on an organic chemistry exam. After a disciplinary hearing, the Subcouncil of the Standing of Students determined Stacy should receive a failing grade and be suspended for two semesters of undergraduate classes.

Melvin filed for a preliminary injunction to cancel the suspension pending the outcome of the issue.

Issues: Did the Supreme Court err in not issuing a preliminary injunction? By not adhering to the disciplinary guidelines in the student handbook, did the College perform a breach of contract?

Holdings: The Supreme Court of Nassau County, denied the motion for a preliminary injunction enjoining the college from enforcing the suspension pending the outcome of the matter.

Reasons: CPLR Article 78 relief is available to review the actions of a university and to determine whether it abided by its own rules and whether it had acted in good faith or was arbitrary or irrational (see *Grogan v. Saint Bonaventure U.*, 1982, citing *Tedeschi V. Wagner Coll.*, 1980). This court agreed with the student that the Supreme Court improperly denied her motion for preliminary injunction. The court ruled there was a clear factual dispute as to whether the respondent conformed to the disciplinary guidelines set forth in the student handbook. Further, the appellant has shown adequate evidence of an irreparable injury and that if no injunction is imposed, monetary compensation is not adequate. The university has not shown that by allowing the student to continue her studies, it will suffer any harm.

Disposition: The Supreme Court, Appellate Division, found there was a factual dispute as to whether the College conformed to its own disciplinary guidelines. It also found that without an injunction to preserve the status quo, a suspension for two semesters will cause irreparable injury for which monetary compensation is not adequate. The College did not show it would suffer harm if the student were allowed to continue her studies until the matter was settled. A

preliminary injunction should have been granted. The appellant's remaining contentions are without merit.

Citation: *Daley v. U. of Tennessee at Memphis*, 880 S.W.2d 693 (Ct. of Appeals, Tennessee, 1994).

Key Facts: Pamela Lisa Daley was a first-year student at the University of Tennessee at Memphis College of Pharmacy. The school's honor code prohibited using, giving, or receiving any unauthorized aid during exams. The code also required students to report suspected cheating. After the spring 1990 quarter ended, four students reported they observed Ms. Daley (and three other students) giving and receiving aid during exams. On July 10, 1990, Ms. Daley was notified by the president of the honor council that she was charged with five violations. After a hearing in July 1991 before an administrative law judge, the parties were given 45 days from the date of the transcript of the hearing to file proposed findings of fact and conclusions of law. The transcript of the hearing was not available until 10.5 months later. Ms. Daley filed her proposed findings of fact and conclusions of law on May 27, 1992. The university obtained an extension, and filed its proposed findings and conclusions on June 23, 1992. On October 12, 1992, the administrative law judge issued an initial order that found Ms. Daley not guilty on three charges and guilty on two charges. The punishment was 1 year probation and Ms. Daley lost credit for the two classes in which she violated the honor code. After the initial order, Ms. Daley filed a petition for review in the Chancery Court, which affirmed the agency's action. On appeal, Ms. Daley argued that the judge violated Tenn. Code Ann. s 4-5-314(g) by not issuing his initial order within the 90 days after she submitted the proposed findings of fact, and that she was prejudiced by the delay. The court ruled that there was a lack of prejudice to Ms. Daley.

Issues: Did the administrative law judge violate Tennessee Code and thereby show prejudice against Ms. Daley when he did not issue his initial order within 90 days after the proposed findings of fact?

Holding: The Chancery court held that no prejudice occurred, the code did not require the president of the honor council to confer with the investigator, and the administrative law judge was supported by substantial and material evidence. Further appeal was taken.

Reasons: It was established in *Garrett v. State of Tennessee* (1986) that the 90-day requirement in Tenn. Code Ann. S 4-5-314(g) was to be used as a directive and not a mandate, and that the failure to meet the 90-day requirement would not automatically nullify the administrative law judge's decision. Ms. Daley alleged that she lost the chance to retake the two courses because the university switched from the quarter to semester system. However, she graduated in 1993. Thus, the court said the judge's ruling did not make any difference in Daley's graduation. The initial order was filed on October 12, 1992, which was 26 days after the transcript became available. This time period complied with the statute which said the order had to be filed within 90 days after the transcript was available. With regard to the issue concerning the procedural requirements of the honor code, the court ruled that the honor code only required that the investigator and the president come to the same conclusion that there was probable cause for the charges. The court found on the issue of evidence that substantial and material evidence was presented by other students in the classroom taking the exam.

Disposition: The Court of Appeals of Tennessee affirmed the Chancery Court ruling, and the cause is remanded to the Chancery Court for the collection of costs in the court below and for any further proceedings that might be necessary. The costs of the appeal are charged to the appellant.

Citation: *University of Texas Medical School v. Than*, 874 S.W.2d 839 (Ct. of Apl. Texas, 1994).

Key Facts: After his fourth year of medical school at the University of Texas, Allan Than sat for the national board medical exam. He was accused of cheating and had a hearing on April 18. The committee voted to expel Than, and Than appealed to the president of the University of Texas Health Center. On May 9, he was advised he could not participate in any clinical clerkship activities. The District Court granted a permanent injunction requiring the University to issue a diploma and to remove all documents showing Than was expelled. The U.S. Court of Appeals said Than's due process rights were denied, and agreed with the District Court's ruling.

Issues: Did the Trial Court err in holding that Than's due process rights were violated?

Holding: The Court of Appeals said Than's due process rights were violated and the District Court ordered the University to issue Than a diploma.

Reasons: In the first Than trial, the ruling was based on the fact that Than's dismissal from the University was disciplinary. In this appeal, the University argues Than's dismissal was academic in nature. This Court disagrees with the University's argument. Cheating is clearly a transgression. Academic dismissal is based on whether or not a student meets minimum standards (*Regents of University of Michigan v. Ewing*, 1985). *Regents* also said dismissal of a student for a misdeed is a punitive action.

Having determined that Than was dismissed for a disciplinary reason, the Court must now decide how much due process he is due. Notice of the charges, of the evidence, and a hearing are required per *Eiland*, 764 S.W.2d at 833, *Sabeti*, 676 S.W.2d at 689, and *Esteban*, 415 F.2d at 1089 (1969). Than alleges he was not informed of the charges in a timely manner. *Nash v. Auburn* (1987), states that there are no set rules as to how to measure the timeframe in which a

student is notified of charges. *Ferguson v. Thomas* (1970), says the adequacy of the due process notice must be judged on a case-by-case basis. The Trial Court ruled that Than was not notified in a timely manner of the charges against him, or given the names of the witnesses who testified against him. Therefore, this Court finds that the Trial Court is correct in its ruling that Than's due process rights were violated. In addition, the Trial Court stated that all that stood between Than and his degree was the cheating charge. The University argued that the Trial Court had no authority to order the University to award the degree, but the Court of Appeals stated that Texas law controls the issue of whether or not a Texas trial court can order a Texas university to award a degree. This Court of Appeals affirmed the trial court's ruling.

Disposition: The Court of Appeals of Texas, Houston, First District, affirmed the Court of Appeals ruling in favor of Than.

Citation: *Kalinsky v. State University of New York at Binghamton*, 214, A.D.2d 860 (Sup. Ct., App. Div., Third Dept, N.Y. 1995).

Key Facts: In January 1988, Deborah Kalinsky was charged with plagiarism on her final paper in an archaeology course with Professor Welch. The allegation originated from Kalinsky copying a paper written by her housemate Karen Bauer. The academic dishonesty committee held a hearing where testimony was heard from Kalinsky, Professor Welch, roommate Bauer, and others. The papers in question were submitted for review to the committee. Kalinsky denied any wrongdoing and said any paper similarities were due to casual conversation with Bauer concerning the assignment. The testimonies of Kalinsky and Bauer did not agree. Minutes of the hearing were sent to the Associate Dean, along with a recommendation that because Kalinsky was found guilty, that she be denied registration for the fall semester. The Associate Dean notified Kalinsky that he agreed with the recommendation of the committee, but the document

omitted two summary paragraphs detailing the deliberations and reasons for the committee's conclusions. The student appealed to the Acting Dean of arts and sciences, who met with Kalinsky and her attorney. The Acting Dean orally informed Kalinsky that her appeal was denied.

Deborah Kalinsky filed Article 78 proceedings in order to annul the ruling that she had committed plagiarism.

Issues: When did the statute of limitations in the Article 78 case begin to run? Was Kalinsky allowed proper representation by counsel?

Holding: The Supreme Court of Broome County granted Kalinsky's petition and annulled the determination, finding that Kalinsky had been denied due process. The University moved for leave to renew and reargue the case based upon its offer to submit the complete hearing minutes that the Associate Dean used to make his decision. Kalinsky cross-moved for an order seeking sanctions against the University and to be awarded legal fees. The University appealed from the denial of its post-judgment motion and Kalinsky cross-appealed from the portion of the order that denied her motion for sanctions. The Supreme Court, Appellate Division, held that the statute of limitations began to run when notice was served to Kalinsky's counsel and had therefore expired. The proper remedy in this case is remittal for a new hearing. The remaining issues raised by both parties are found to be without merit. Upon remittal, Kalinsky was once again found guilty of plagiarism. The Supreme Court, Appellate Division, found that the petition was jurisdictionally defective. Kalinsky brought Article 78 proceedings to annul the determination. The Supreme Court with Judge Mugglin presiding granted the University's motion to dismiss petition as untimely and denied Kalinsky's application for reconsideration. Kalinsky appealed.

Reasons: Kalinsky was found guilty of plagiarism in two different hearings. The student appealed the determination to the Dean of arts and sciences, who notified her by letter June 5, 1991, that she concurred with the verdict and denied Kalinsky's administrative appeal. A copy of this ruling was sent to Kalinsky's counsel on August 7.

On October 3, Kalinsky filed an Article 78 proceeding. That petition was dismissed by the court as jurisdictionally defective. This trial began on December 5, and the University sought to have it dismissed as untimely. Kalinsky claimed that because she received notice in June and her counsel did not receive notice until August, the statute of limitations did not begin to run until the time her counsel was notified. The Supreme Court rejected that charge and found the proceeding time barred. After reassessment, the Supreme Court adhered to its original decision. This court reverses that decision.

As set forth in *Dixon* (1961), the basic elements of fair play include access to a statement detailing factual findings, and access to the evidence relied upon by the decision maker. Kalinsky's counsel was with her beginning in January 1988. Throughout all proceedings of this case, the counsel was informed on all pertinent issues. Kalinsky made it clear throughout the trials that she had representation. It is a time-honored tradition in court cases that the accused be represented by counsel (*Matter of Bianca v. Frank, 1977*). This court concludes that the statute of limitations began on August 7, 1991, and that the case has been conducted in a timely manner.

Disposition: The judgment and order of the Supreme Court are hereby reversed, on the law, with costs, and Kalinsky's motion to dismiss the petition is denied.

Citation: *Siblerud v. Colorado State Bd. Of Agriculture*, 896 F.Supp. 1506 (U.S. Dist. Ct., Colorado, 1995).

Key Facts: Robert Siblingrud was a graduate student who finished the class work portion of his graduation requirements in the spring of 1988. He was scheduled to defend his dissertation in April of 1988. However, the dissertation defense was cancelled due to two committee members, Masken and Caughy, determining that more research on the topic was needed. In March of 1989, Rupert Amann took over as the physiology department chair, and he informed Siblingrud that he needed to add three new faculty members to his dissertation committee due to faculty turnover, and that one of those committee members must be Siblingrud's graduate advisor. By the fall of 1989, Siblingrud had not yet reestablished a graduate committee. On September 22, 1989, Siblingrud was notified that he had been placed on academic probation for failing to make satisfactory progress toward his graduate degree. If Siblingrud did not establish a committee and advisor by the spring 1990 semester, he was to be dismissed.

In December of 1989, Chair Amann learned that Siblingrud submitted in the spring of 1987 a paper for publication to the *Journal of Environmental Pathology, Toxicology, and Oncology (JEPTO)*. The cover page of the submitted work contained a footnote stating the paper was based on a dissertation in progress at Colorado State University. It is unclear why *JEPTO* waited 2 years to agree to publish the article. When *JEPTO* asked Siblingrud to release his copyright on the material, he refused, and therefore *JEPTO* contacted Professor Amann. Following his discussion with *JEPTO*, Professor Amann wrote Siblingrud on December 28, 1989, ordering Siblingrud to cease from representing himself as a student of the department of physiology of Colorado State University, and that he had to reapply for admission, including paying a \$30 fee, to be actively enrolled. Siblingrud allegedly violated this order when he submitted an article of the same title to the *Journal of Fundamental and Applied Toxicology (FAT)* on February 7, 1990. Siblingrud did reapply for admission and was denied because there was not a faculty member willing or able to

serve as his advisor. Professor Amann learned of the second article submission on April 10, 1990, and the next day dismissed Sibleud from CSU's graduate program by letter. Amann explained in the letter that the reason for dismissal was that Sibleud had disobeyed the Amanns's earlier instruction to cease from representing himself as a student in the Department of Physiology.

Sibleud appealed through the graduate school, but Dean Jaros upheld Sibleud's dismissal. The next appeal was to a formal review committee, which consisted of four members chosen in the following way: Sibleud chose one faculty member, Dean Jaros chose one faculty member, the Dean of the College chose one faculty member, and the graduate student council chose one student. The committee attempted to answer the questions of whether Amann followed the proper procedures in dismissing Sibleud. The decision was split two to two. The committee reported its conclusions to Dean Jaros, of the graduate school, who decided to uphold the dismissal. Finally, Sibleud appealed his dismissal to the Provost and Academic Vice President Linck. Linck informed Sibleud in a letter dated March 4, 1991, that he concurred with the dismissal. At each stage of the process, Dean Jaros offered Sibleud the opportunity to submit documentation. In addition, Professor Linck met informally with Sibleud before handing down his decision. Sibleud contends the procedures were inadequate and maintains he should have been given a pre-dismissal hearing.

Issues: Did Sibleud's appeal fall beyond the 2-year statute of limitations? Did Sibleud lose the right to file a due process claim, even though he was not given notice of the charges after he violated the directive nor given an opportunity to be heard, if the appeal did indeed fall outside the statute of limitations? Did the University violate Sibleud's First Amendment rights by dismissing him for stating his article was based on a "dissertation in process" after the

University directed him not to represent himself as a graduate student? Were the University officials entitled to immunity from civil damages?

Holdings: The United States District Court held that (1) Sibley's action accrued on the date he was notified of his dismissal from the program, and not on the date the dismissal was upheld in grievance procedures; (2) any delays in the grievance procedure did not go beyond the limitations period; (3) failure to provide a hearing prior to dismissal violated Sibley's due process rights; (4) dismissing Sibley did not violate his First Amendment rights; and (5) the administrators were entitled to qualified immunity.

Reasons: Colorado has a 2-year residual statute of limitations. Colorado State argued that there are two possible dates that could represent the day Sibley's dismissal was final: March 4, 1991, the day the Provost upheld the dismissal and the grievance process was exhausted, or, April 11, 1990, the date of Amann's dismissal letter. The court ruled the correct date was the day Sibley received the dismissal letter.

There are three reasons why the court upheld that Sibley had filed a claim outside the time constraints of the statute of limitations. The court said the purpose of Professor Amann's dismissal letter was to inform Sibley that he had been dismissed from the graduate program effective April 11, 1990, and that he could appeal the decision through CSU's established grievance procedures. Second, Sibley referred to that date in his court briefs, so he did understand that he was being expelled. In addition, the Supreme Court has stated in the context of wrongful dismissal claims the grievance procedure, by its nature, is a remedy for a prior decision, not an opportunity to influence that decision before it is made (*Delaware State College v Ricks*, 1980). Also, in *Kessler v. Board of Regents* (1984), the Court held that when allegations of discrimination involve a termination from employment, the critical date is the date of

termination; the existence of a grievance procedure does not change the importance of this date. It was clear from the court records that Sibley sought legal counsel as early as December 24, 1990. Sibley also notified CSU of his intent to sue on August 30, 1991. Thus, between September of 1991 and April of 1992, Sibley had ample opportunity to file his claims. CSU dismissed Sibley in April of 1990. In March of 1991 the Provost notified Sibley his dismissal had been upheld, and the grievance process had ended. Sibley still had over 1 year to file his claim.

The University argues that if Sibley says he was dismissed in 1991, then he admitted that the University gave him notice and a hearing; the dismissal letter would represent notice and the grievance process would represent several pre-termination hearings. If Sibley claims he was dismissed in 1990, then the statute of limitations would bar his claim. This court says Sibley cannot argue both sides at the same time.

Sibley must prove he has a property interest in order to win a claim under the Fourteenth Amendment. Property interests are created by state law (*Bd of Regents V. Roth*, 1972). In the case of *Gaspar v. Bruton* (1975), the courts ruled that because the student paid a specific, separate fee for enrollment and attendance at the school, she had a property interest. This was also upheld in *Harris v. Blake* (1986), specifically in Colorado. Property interests can only be denied if the dismissal of Sibley was based on disciplinary measures, which Sibley claims was the case. CSU claims the dismissal was based on academic issues. The court upholds that the dismissal was for disciplinary reasons. In *Goss v. Lopez*, the courts established that the fundamental requisite of due process of law is the opportunity to be heard. Sibley used two internal memos from CSU to prove his dismissal was disciplinary. One was a summary of a meeting on February 7, 1991, in which Omi, the assistant to the Provost commented that

“academic dishonesty was not an issue in the dismissal.” The other was a memoir from Dean Jaros to Linck advising him he should have referred to the dismissal as “lack of satisfactory academic progress” so that the issue could be classified as academic and not disciplinary. The court acknowledges Siblingud’s due process arguments have merit, but they are barred by the applicable 2-year statute of limitations.

The question presented by this First Amendment claim is whether a graduate school violates a student’s free speech rights by dismissing him for stating his article is based on a “dissertation in process” after the school had directed him not to represent himself as a graduate student. *Wulf v. City of Wichita* (1989) said the first question is to determine whether the written word in question is a matter of public concern. The text in this instance was the footnote on the cover of the manuscript which read “based on a Ph.D. dissertation in process in the Department of Physiology at Colorado State University.” he court ruled that CSU merely denied Siblingud the right to represent himself as a graduate student based on the school’s interest in having an affiliation with and representation by an article that was not approved by a graduate committee because the committee did not even exist; it did not deny him the right to submit the paper for publication.

In *Harlow v. Fitzgerald*, (457 U.S. 800, 1982), the courts held that government officials performing discretionary functions are generally shielded from liability in civil damages if their conduct does not violate clearly established statutory or constitutional rights that a reasonable person would believe they are entitled to. In order for Siblingud to overcome this definition of immunity, he would have to prove that Amann, Jaros, and Linck violated civil rights law by dismissing him and that those civil rights laws were “clearly established” at the time. The only clearly established law in this case is found in *Goss*, which says students facing suspension are

entitled to “some kind of hearing” and “some kind of notice.” This Court finds that the University met both requirements with regard to the Sibley case.

Disposition: Sibley’s claims were barred as a matter of law. University’s motion for summary judgment is granted and Sibley’s remaining claims for relief are denied.

Citation: *University of Texas Medical School at Houston v. Than*, 901 S.W.2d 926, 101 Ed. Law Rep. 1251, Supreme Court of Texas (1995).

Key Facts: The Trial Court held that when Allan Than was dismissed from the University of Texas Medical School at Houston, his rights were violated and granted Than a permanent injunction. The Court of Appeals affirmed.

Issues: Was Than entitled to a permanent injunction against dismissal from the University of Texas Medical School?

Holding: Both the District Court and the Court of Appeals upheld a permanent injunction for Than to continue as a student at the University.

Reasons: The Supreme Court determined that they had to analyze two areas when reviewing the case: whether Than had a liberty or property interest that was entitled to procedural due process protection; and, if so, to determine what process was due to Than (*Logan v. Zimmerman Brush Co.*, 1982; *Board of Regents of State Colleges v. Roth*, 1972). When a person’s good name, reputation, honor, or integrity is at stake because of what the government is doing to him/her, the minimal requirement for due process must be satisfied (*Goss v Lopez*, 1975). Because Than’s reputation is at stake, along with the loss of his profession as a physician, the Supreme Court concluded that the due course guarantee applies to Than.

*Mathews v. Eldridge* (1976) held that the process due depends on the circumstances of the case at hand. The three standards set forth in *Mathews* are as follows: the private interest will

be affected by the official action, what is the risk of denying the interest and the value of procedural safeguards, and what are the government's interests, including fiscal and administrative requirements. The U.S. Supreme Court has held that due process requires oral or written notice of the charges, and a chance to present evidence in his/her behalf. *Goss* stated that the hearing did not have to be formal. Because the University of Texas argued that Than's dismissal was for disciplinary and academic reasons, less stringent procedural due process is required. *Nash v. Auburn* (1987) concluded that a dismissal for academic dishonesty is a disciplinary action. Because a dismissal affected Than's choice of profession as well as the interests of being a student, more due process than normal is required here. *Davis v. Mann* (1989) cautions that an academic setting is not a formal courtroom and should not be weighed down with formalized procedures. This Court found that the University afforded Than a high level of due process. However, Than's rights were violated by his exclusion from a portion of the evidentiary proceedings. The evidence is clear that when the hearing officer moved the participants in the hearing to the classroom where the exam took place, and Than asked to accompany the group, he was denied the right to do so. The hearing officer clearly stated in testimony that part of her decision to declare Than guilty came about from sitting in the seat where he took his test. Than was never given the opportunity to rebut this portion of the testimony. There is also no record as to what transpired during the classroom visit, and it is possible that additional evidence was introduced that Than did not have an opportunity to rebut.

A final point that the Supreme Court made was that a subsequent hearing cures procedural defects in the initial hearing (*Sullivan v. Houston Indep. Sch. Dist.*, 1973). Although the University checked the record to ensure proper procedural protections were allowed, the review was not a de novo review of the merits. Therefore, Than received no additional process

on appeal that would cure the defects in the initial hearing. The hearing officer's decision was based on evidence to which Than did not have the opportunity to respond. The Supreme Court concluded that Than was entitled to a new hearing on the charge that he cheated.

Disposition: The Supreme Court of Texas modified the permanent injunction and ordered a new hearing on the charge of academic dishonesty. The University was ordered to remove the grade of "F" from the transcript, remove from Than's records the penalty of expulsion, and ordered the bond posted by Than in connection with the temporary injunction be refunded.

Citation: *Carboni v. Doctors of Virginia Polytechnic Inst.*, 949 F.Supp. 427 (Virg., Dst. Ct., 1996).

Key Facts: In her first year as a veterinary medicine student at the Virginia-Maryland Regional College of Veterinary Medicine at the Virginia Polytechnic Institute (VPI) in 1991, Deborah Ann Carboni fell below the required grade point average. The Admissions and Standards Committee allowed her to retake her first year classes. Carboni also sought counseling for "test anxiety." Carboni successfully completed her first year coursework in Spring of 1993, and her second year in Spring of 1994. In December of 1994, Carboni received failing grades on two exams in required courses. The school allowed her to retake both exams and she passed them. During the final semester of her third-year studies, Carboni failed another core class. Professor Waldron agreed to allow her to retake the test, which was scheduled for April 13, 1995. When Carboni went to the secretary's office to pick up the test, the secretary was not there, so Carboni went into the bathroom to study, even though a note on the professor's door stated all exam preparation materials must be left behind. Carboni claimed her menstrual period had begun and she was feeling ill. Carboni remained in the bathroom for a while and then went back to the secretary's desk to pick up the exam. She inadvertently left some of her notes on the bathroom

floor. She obtained the exam and started to work on it. She also left the rest of her exam preparation notes in a credenza drawer in the exam room.

Sometime after 2:00 pm, Carboni felt ill again and went back to the ladies' room, leaving a note on the conference room table telling her whereabouts. The professor became concerned after Carboni was gone for some time, and sent the secretary to the bathroom to check on her. The secretary said someone was in a bathroom stall with notes around her feet on the floor. The secretary also stated she heard the sound of "paper rustling" around the waist of Carboni when she came out of the bathroom. Upon hearing the report of the secretary, Professor Waldron confronted Carboni and asked her if she had been cheating. She denied cheating, but did state she placed her exam preparation notes in the sanitary napkin disposal between the lining and the wall without looking at them. Professor Waldron reported the incident to the Dean and directed the secretary to search the bathroom for notes. None were found at that time. The professor directed Carboni to go to the bathroom with the secretary and Ms. Armstrong for a body search. Carboni was told to lift her shirt and drop her pants to expose her waist and to remove her boots. The secretary conducted a "frisk" of Carboni's chest and legs. Carboni offered to remove her undergarments, but Ms. Armstrong said that was not necessary. No notes were found in the strip search. However, the notes in the conference room drawer and the sanitary napkin disposal had been found by the time Carboni got back to the exam room.

Carboni was not allowed to finish the exam and the incident was referred to the student Honor Board. On April 17, 1995, Carboni received written notice of the accusations against her and on April 26, 1995, she was told a hearing would take place. She was advised not to speak to anyone about the incident. The Honor Board found Carboni guilty of cheating, and she was suspended for 6 weeks. She advised the Board she would appeal to the Faculty Review Board.

Later she was told by her student counsel that he would not represent her during the appeal because the faculty advisor to the Board, Sponenberg, requested that he withdraw. The original hearing before the board was changed to accommodate Carboni's clinical schedule and reset for May 31, 1995. Meanwhile, Carboni received a failing grade in the core class Urology, which was a decision made by Professor Waldron and not the Student Honor Board. Professor Waldron advised her that she could take a second retest if her appeal to the Faculty Review Board was successful. The student counsel did represent Carboni as her counsel at the appeal. The Faculty Review Board upheld the suspension and Carboni could not retake the second test. As a result, she was dismissed from the veterinary program and later denied readmittance.

Issue: Was VPI an arm of the state for 11th Amendment immunity purposes? Were the representatives of the University who conducted the "strip search" entitled to qualified immunity? If VPI violated its own rules and procedures, could Carboni file a federal constitutional claim? Did VPI satisfy federal due process requirements? If the review board did not review the transcript of the initial hearing, was Carboni entitled to relief under federal law? Was the decision to dismiss Carboni an abuse of discretion?

Holding: The United States District Court of W. D., Virginia, held that due process rights were not violated, and the state claims were dismissed.

Reasons: Carboni referred to *Dyson v. Lavery* (1976) to make her case that the University was not an arm of the state by stating that VPI was different from other Virginia colleges and universities that have been deemed to be arms of the state. This Court found that each state university or college had to be considered on an individual basis, and that VPI was identical to William and Mary in Virginia based on *Jacobs v. College of William and Mary* (1980). In that court case, William and Mary was found to be an arm of the state of Virginia and therefore

entitled to Eleventh Amendment immunity. *Malley v. Briggs* (1986) established that qualified immunity protects everyone except that official who is plainly incompetent or who knowingly violates the law. The VPI officials suspected Carboni of cheating, and were reasonable in concluding their search of her was justified; thus, they are entitled to summary judgment based on qualified immunity.

The court ruled that Dr. Waldron and Dean Meldrum had every reason to suspect that Carboni was cheating and a search of her person was justified. The court considered it important that the search was conducted by members of the same sex. *Shaw v. Stroud* (1994) clarified that a state official sued for violating the Fourth Amendment is entitled to qualified immunity if a reasonable person with the same information would have believed the conduct engaged in was lawful. The administrators had every reason to believe Carboni agreed to the search, because she offered to take off more clothes.

In the matter of the Fourth and Fourteenth Amendments, the court held that alleged violations of due process must be measured against a federal standard of exactly what process is due. That standard cannot be defined at the state level, even if state laws afford more due process than do federal laws. Federal guarantees of due process only require that a student faced with disciplinary charges at a university be given notice and an opportunity to present her story. These conditions were met by the university.

Disposition: The United States District Court, W.D., Virginia, granted summary judgment for the university on the federal claims, and dismissed the state claims.

Citation: *Trahms v. Trustees of Columbia University*, 666 N.Y.S.2d 150 (Sup. Cot., App. Div., N.Y., 1997).

Key Facts: Wiliam Trahms was expelled in December of 1994 from the school of nursing on charges of plagiarism. A meeting was held on December 2, 1994, between Trahms, two professors, and a student to discuss the strong similarities between his paper and another student's paper. After the meeting, Trahms and the other student were informed the incident would be referred to the School Honor Board. Trahms was given 4 days' oral notice of the Honor Board hearing, and told that he had the right to call witnesses on his behalf. Trahms appeared at the hearing and "vigorously" challenged the charge, although he seemed unfamiliar with his own work. The two papers were virtually identical, and many of Trahms' statements were inconsistent with witness statements. The Honor Board concluded that Trahms' work was not original and recommended a failing grade and dismissal from the school of nursing. Trahms' appeal to the school Appeal Board was rejected. Trahms filed an instant Article 78 proceeding asking that his dismissal be reversed.

Issue: Did Trahms receive adequate notice of his hearing before the Honor Board? Did the University follow its published guidelines?

Holding: The Supreme Court of New York County, granted the petition of the student and called for a de novo hearing to be recorded verbatim. The Court ruled that the Honor Board's ruling must be vacated because Trahms had not received adequate notice of the hearing and charges. The University appealed.

Reasons: Trahms received adequate notice of the hearing before the Honor Board and the charges against him, and the university substantially complied with the published guidelines for such a hearing (see *Mu Chapter of Delta Kappa Epsilon v. Colgate Univ.* 2005, and *Matter of Harris v. Trustees of Columbia Univ.*, 1984). The Appellate Court also said a literal recording of

the Honor Board hearing was not required per *Gruen v. Chase* (1995) and *Girsky v. Touro College* (1994).

Disposition: The Supreme Court, Appellate Division, held that the student received adequate notice and the verbatim recording of the hearing was not required. This court reversed the Supreme Court's decision, and let stand the university's decision to expel Trahms for the charge of plagiarism.

Citation: *Childress v. Virginia Commonwealth U.*, 5 F.Supp.2d 384 (U.S. Dist. Ct., E.D., Virg., 1998).

Key Facts: Phillip Childress was a graduate student in the department of criminal justice. In April of 1997, he was notified via two separate letters consisting of a charge of plagiarism on a comprehensive exam paper, plagiarizing a juvenile justice reform paper, and cheating by submitting the juvenile justice reform paper for credit in more than one course. A hearing in front of the Virginia Commonwealth University (VCU) Honor Council, whose members consisted of four faculty members and three students, was scheduled for May 30, 1997. After the Honor Council found him guilty, Childress appealed to the University Appeal Board, which met on July 2, 1997. The Appeal Board found that the student had been warned by two different professors in the fall of 1996 that he needed to visit the English lab for help on his citations and, in addition, he had been warned that plagiarism and submitting the same paper for credit in more than one course with prior permission were violations of the Honor Code. The Appeal Board recommended that President Trani affirm the decision of the Honor Council and expel Childress.

In September 1997, Childress brought claims in state court alleging slander, but voluntarily dismissed his state court lawsuit 1 month later. He then filed suit in the District

Court. On May 4, 1998, Childress dropped all complaints except the state and federal statutes protecting individuals with disabilities.

Issue: Was Childress' state law claim barred by the statute of limitations? Which ADA statute best applied to Childress' claim? Did the state statutory notice period apply to the Rehabilitation Act and ADA claims? Was the expulsion of Childress considered an adverse action? Did graduate students at VCU have to comply with the Honor Code? Did the Honor Council properly consider Childress' learning disability when ruling he violated the Honor Code? Was Childress "qualified" to hold the position of graduate student in VCU's criminal justice program?

Holding: The court held that the student did not fulfill burden of proof for an ADA violation.

Reasons: The Court concluded that under the Virginia Rights of Persons with Disabilities Act the statute of limitations for claims brought under the ADA and Federal Rehabilitation Act was 180 days. Additionally, the limitations period begin when Childress received his final and definite notice of the decision, which was July 10, 1997, which was when the President notified Childress of his decision to abide by the recommendation of the Appeal Board to expel him based on *Delaware State College v Ricks* (1988). Childress failed to notify VCU that he had a claim under the Virginia Act; therefore, he failed to meet the 180-day notice requirement. The Court also said Childress did not have sufficient evidence to permit summary judgment. Because Childress could not survive summary judgment on the ADA and Federal Rehab Act claims, the Court declined to decide the constitutionality of those Acts.

The Court assumed Childress had a disability within the guidelines of the ADA and Federal Rehab Act, and met the burden of proof for a prima facie case. In addition, the expulsion

is considered an adverse action. The Court had to determine whether there was sufficient evidence that Childress was otherwise qualified for his job as a graduate student at VCU. To satisfy this provision, Childress must be able to meet all of the program requirements in spite of his handicap. This must be determined on an individual case basis. The Honor Council considered whether Childress could fulfill his graduate program requirements and become a functioning member of the criminal justice profession. The Honor Council concluded he could not. Even though two professors advised Childress that he needed help with his writing and citations, he went to the Lab only once when it was closed. Childress had violated the Honor Code, and therefore could not show the burden of proof to demonstrate he is otherwise qualified to fulfill the requirements of being a graduate student. The Court concluded that the Rooker-Feldman doctrine precluded it from reviewing the Honor Council and Appeals Board's finding (*District of Columbia Court of Appeals v. Feldman*, 1983).

Disposition: The U.S. District Court, E.D., Virginia, concluded that the Honor Council, Appeal Board, and President were fully entitled to expel Childress for violation of the VCU Honor Code, and neither state nor federal disabilities laws were violated.

Citation: *Gally v. Columbia U.*, 22 F.Supp.2d 199 (U.S. Dist. Ct., S.D., N.Y., 1998).

Key Facts: Annie Gally enrolled at the Columbia University School of Dentistry and Oral Surgery (SDOS), a highly competitive and selective dental school, in the fall of 1994. She made claims to faculty and the academic dean of "rampant cheating," and when the university did not take action on alleged cheating incidents, Gally claimed to be "deeply offended and upset," and stated that her education was devalued. Gally further stated that she was subject to the "animosity" of Dr. Hadavi, one of her professors in a core class. She missed some classroom sessions in order to observe the Jewish holidays called "Shiva," and although she claims

Professor Hadavi chided her in front of the classroom for the absence, she did not bring a claim for discrimination. At the end of her second year in 1996, Gally failed the written portion of a clinical/written exam in a core class under Dr. Hadavi. Gally asked for remedial help, was referred to a student tutor, and attended a review session run by Dr. Hadavi. She was allowed to retake the exam and failed it a second time. On October 8, 1996, Gally was notified that she could no longer treat patients in the school clinic until she passed the exam, and that she could retake the exam on December 9. However, Gally complained to the Dean of Students that waiting until December to retake the exam would mean she could not progress in the D.D.S. program, so on October 18, the Third Year Class Committee and the SDOS administrators held a hearing to discuss the appeal of the December exam. The committee gave Gally the option to retake the exam in October with Dr. Hadavi or in December with another proctor. Gally chose to take the exam on October 25 with Hadavi as proctor. Gally complained that the minimum passing score for the third retake was raised from 70% to 75%. On October 29, Gally learned that she had scored a 61% on the exam, which meant she failed again. Around November 6, 1996, Gally sought and was granted a medical leave of absence from the school for up to 1 year. In April 1997, Gally sought a tuition rebate of at least \$100,000 (based on her school-loan indebtedness) for the breach of contract claim, and over \$2.5 million for the constructive discharge claim. Gally alleged that the school administration delayed in granting the rebate. On July 9, Gally filed suit against the school.

Issue: Did the University commit educational malpractice by failing to address Gally's concerns about "rampant" cheating? Did the University breach its contract with Gally by failing to live up to "promises" made in its publications? Did the alleged "rampant" cheating by other

students deprive Gally of her contract rights with the University? Did Gally have a case for constructive discharge against the University?

Holding: The court held that Gally's claim concerning educational malpractice is not recognizable under New York law; there was no breach of contract based on university publications; the charge of cheating did not deprive Gally of the benefit of her contract with the university; and the case would not be recognized under New York law for constructive discharge from education.

Reasons: Although Gally acknowledged that there was no existing cause of action for constructive discharge from education, she asked the Court to create such a cause "based on analogies" to similar situations arising from employment discharge, eviction from housing, and constructive abandonment in domestic relations. Gally sought damages of at least \$100,000 for her breach of contract claim and over \$2.5 million for the constructive discharge claim. The university argued that the constructive discharge claim was frivolous and the breach of contract claim could only be for \$8,503.24, which was the amount of debt incurred during her third year at school. The Court disagreed by saying that although it rejected Gally's attempt to create a new cause of action for constructive discharge, it still retained jurisdiction (*Lombard v. Economic Dev. Admin. Of P.R.*, 1998). In addition, the Court said it could not be certain that Gally's damages failed to exceed \$75,000.

The university argued that Gally's grievances should have been pursued under Article 78 at a state court level of New York's Civil Practice Law and Rules. Under Article 78, Gally's claims would have been barred by a 4-month statute of limitations.. The Court replied that Article 78 provides for procedures for parties seeking relief from administrative actions by governmental agencies or groups allowed to make decisions within private entities (*Clarke v.*

*Trustees of Columbia Univ.*, 1996). Gally is attempting to recover monetary damages, and therefore, this Court has jurisdiction and is not subject to the time limitation, based on *Keles v. Manhattan College Corp.* (1994).

New York Courts have proposed that students can sue a school for breach of contract (*Clarke*, 1996; *Keles*, 1994; *Olsson v. board of Higher Educ.*, 1980). *Andre v. Pace Univ.*, (1996), said when the heart of the complaint is that the school breached its contract by failing to provide an education, the complaint must be dismissed as an attempt to avoid the New York rule that there is no claim for educational misconduct. The court stated that claims against educational malpractice recognize that universities are empowered to set their own academic standards and procedures, and that is best left to the sound judgment of the professional educators who monitor the progress of students (*Olsson*, 1980). In this case, Gally did not point to a specific promise that was breached. Gally stated that she observed cheating in her first year and that she was offended to the point she could not perform, yet she took classes for 2 more years, and did not fail any class except the core class under Dr. Hadavi. *Blaise-Williams v. Sumitomo Bank, Ltd.* (1993), established that a general statement of anti-discrimination policy in the employee handbook cannot provide a basis for a breach of contract claim.

Given the court's hesitancy to extend traditional notions of tort law to the student-university relationship, and the fact that the student offered no compelling reason to undermine legal precedent, this Court found no reason to recognize Gally's constructive discharge claim.

Disposition: The U. S. District Court, S.D., New York, granted the motion to dismiss the student's case.

Citation: *Dean v. Wissmann*, 996 S.W.2d 631 (1999).

Key Facts: On April 19, 1994, Professor Wissmann of Central Missouri State University (CMSU) sent a confidential letter to the assistant vice president for student affairs, with copies to Bryan Dean, the interim chair of the nursing department, and the dean of the college in which nursing was located. Included in the letter were allegations that while Wissmann was in the bathroom and two other students were on break, Dean stole a test which was to be given on April 11. The letter also stated that Dean and two other students attempted to steal another exam that was scheduled to be given on April 19. In addition, the letter stated that Wissmann had talked to three other students who saw and reported that Dean and the other students took the exams from Wissmann's purse. Further, Wissmann said in the letter that she had given Dean a failing grade, changed his enrollment status, and asked that Dean be removed from the nursing program. Dean filed suit against Wissmann.

Issues: Did Professor Wissman's letter to the Vice-President of Student Affairs qualify as an "intra-corporate communication"? Did Professor Wissmann have intra-corporate immunity with her superiors?

Holding: The Court of Appeals entered partial summary judgment in favor of Professor Wissmann, and Dean appealed.

Reasons: One of the essential elements of libel is publication, which is simply the statement of defamatory matter to a third person. Relying on *Walter v. Davidson* (1958), the Court said a professor's letter to superiors or administrators on the subject of a student's dishonesty did not represent a publication. The Court asserted there was no evidence to indicate anyone other than the intended recipients saw the correspondence.

Dean alleged that *Koch v. Board of Regents of Northwest Missouri State College* (1953) established that state universities are quasi-public corporations. As such, they have to carry out

their functions and duties much as a private corporate entity would. The Court ruled that statements by faculty to each other about student stealing are neither publications nor communications, and are protected by the intra-corporate community rule.

Disposition: The decision of the Trial Court stating that the intra-corporate immunity rule applied to the University, and that Professor Wissmann's communication to her superiors was protected by intra-corporate immunity was upheld by the Appeals Court.

Citation: *Lyon College v. Gray*, 67 Ark.App. 323 999, S.W.2d 213 (Ct. of App., Ark., Div. I., 1999).

Key Facts: Melissa Gray took a physics exam on October 10, 1995, and failed it. In a prior exam, she had scored a 29, with a score of 21 on the corresponding take-home test. In studying for the October 10 exam, she looked at a copy of an exam from a previous year by the same professor, Professor Sample. As it happened, the previous year's exam was identical to the October 10 exam. On October 18, Gray was notified by the Honor Council that an investigation had begun concerning the possibility of an honor violation. Ten days later, she was informed that a trial would be conducted and that she was charged with using "inappropriate information in preparation for the test administered." Even though use of the old test did not constitute a code violation, the council explored the possibility that Gray had procured a copy of the old test specifically because she had knowledge that the October 10 test would be exactly the same. Gray admitted during the hearing before the Honor Council that she studied the old exam, but denied prior knowledge that it would be the same one as the test given on October 10. However, a sorority sister testified that Gray told her she knew the October 10 test would be the same as the old test she was studying. Further, she testified that she told Gray that she was probably cheating by having knowledge that the tests would be the same, and that Gray replied that she did not care

if she was cheating because she needed to raise her low grade in physics. The Honor Council found Gray guilty of a code violation and suspended her for the 1995-1996 academic year, gave her an F in her physics course and gave her a W in her other classes. Gray appealed immediately to college president John Griffith. Griffith reviewed the evidence before the Council, including Dr. Sample's grade sheet, and upheld the sanctions imposed by the Council. Gray withdrew from Lyon College, and subsequently lost approximately \$14,000 in financial aid, which was dependent on her academic performance. She enrolled at UA-Fayetteville. Gray filed suit against the college, alleging that the Honor System in the handbook represented a contract, and that the College breached the contract by suspending her.

Issue: Did Lyon College breach its contract with Melissa Gray when it suspended her for violating the Honor Code?

Holding: The Independence Circuit Court awarded Gray \$20,644 on a breach of contract claim against Lyon College.

Reasons: Most courts recognize that an educational institution, particularly a private one, must be given some discretion in the administration of its disciplinary proceedings (*Slaughter v. Brigham Young U.*, 514 F.2d 622, 1975; *Clayton v. Trustees of Princeton U.*, 608 F.Supp. 413, 1985). In two cases in Arkansas, *Henderson State v. Spadoni* (1993) and *Smith V. Denton* (1995), a general policy was made against the courts interfering with matters best left to school authorities. Because there were not allegations of a procedural due process violation, the circuit court review should have been confined to whether or not there was substantial evidence of the honor code violation. The Honor Council believed the sorority sister's testimony as to what Gray knew about the upcoming exam over Gray's testimony. Since the university followed its own

procedural guidelines and based its disciplinary decision on substantial evidence, the case should not have gone to jury.

Disposition: The Court of Appeals of Arkansas held that the verdict should have been granted in favor of the college and reversed and dismissed the Circuit Court's decision. Gray's attorney fee award was also reversed and dismissed.

Citation: *Than v. University of Texas Medical School at Houston*, 188 F.3d 633 (Ct. of Apl. 1999).

Key Facts: Allan Than was expelled from the University of Texas when he was convicted of cheating on an exam. The Court of Appeals, First District, and the Supreme Court of Texas all ruled in favor of the student, and the Supreme Court ordered a new hearing. In the new hearing, Than was again found guilty of the cheating charge. The decision was affirmed by the president of the University's health science center.

Issue: Did the U. S. District Court err in its ruling for summary judgment the University?

Holding: The U. S. District Court entered summary judgment for the University and Than appealed on the basis of due process violations.

Reasons: Although Than disagreed, the U.S. Court of Appeals, Fifth Circuit, said that any defects from the first hearing were irrelevant because the Supreme Court held any such defects would be cured by a second hearing and this appeal was brought forth by the second hearing. This Court focused on the procedural protections that took place in the second hearing. Than received sufficient notice of the hearing. The hearing officer was both knowledgeable and impartial; he was a professor at a medical school other than the University of Texas, where Than attended. Than's counsel was allowed to call witnesses and produce evidence on Than's behalf.

The hearing officer reached a decision based on the evidence presented. The appellate issue of qualified immunity became a moot point as determined by this Court.

Disposition: The U.S. Court of Appeals, Fifth Circuit, held that Than's disciplinary hearing met the requirements of procedural due process and the lower court was correct in entering summary judgment in favor of the University.

Citation: *Wheeler v. D. Miller, S. McCullough, Texas Woman's U.*, 168 F.3d 241 132 Ed. Law Rep. 674 (U.S. Ct. of App., Fifth Cir., 1999).

Key Facts: With the intent of obtaining a Ph.D. in school psychology, Brent Wheeler was admitted to the master's program in counseling psychology in 1992. He enrolled in a core class, psychological assessment, under Professor McCullough, where he received a C. Professor McCullough testified that Wheeler fell asleep in class and that he turned assignments in late. He also used his brother as a testing protocol, which was in violation to the syllabus. A graduate assistant expressed concern that Wheeler's responses on his testing protocol were identical to the sample responses in the back of the testing manual. Wheeler applied for admission to the Ph.D. program in counseling psychology in 1994 and was not admitted. He then applied to the school psychology Ph.D. program and was accepted, conditionally, on completion of his master's degree, retaking the psychological assessment pre-practicum, and registering for the intro-to-school-psychology course. Wheeler took the psychology course and received an A from McCullough.

The psychology graduate student handbook stated that any student who receives a C must undergo some form of remediation, and any student who earns two C's may be expelled. After admission to the school psychology program, Wheeler received a second C in the fall of 1994. The school psychology program committee (SPPC) decided to place Wheeler in a remediation

plan, and provided him with a written copy of the plan, which required the completion of course work, a comprehensive paper, and an oral exam, to be completed by predetermined dates.

Wheeler was advised he could not participate in an internship until at least the Fall of 1996. This remediation plan was based on grades, and involved no discussion of cheating or unethical behavior. On April 28, 1995, Wheeler took an oral comprehensive exam and all three attending professors gave him a failing grade. In Spring 1995, Wheeler made a third C in the graduate program. The SPPC met in June of 1995 to discuss Wheeler's status in the graduate program, decided to dismiss him from the program, and informed him of its decision a week later.

However, the school administration advised the SPPC to reinstate Wheeler. After he was readmitted, Wheeler submitted a degree plan that required the submission of a transcript from the U. of North Texas. He had received a fourth C in a graduate statistics class at North Texas. In March of 1996, Wheeler took and failed a second oral comprehensive exam. The next day Wheeler signed a document accepting a doctoral internship with the Lewisville I.S.D. On April 2, 1996, Professor Miller wrote the Lewisville school district explaining that Wheeler had not met all of the requirements necessary to accept an internship during the 1996-1997 school year.

A second remediation plan was drafted based on Wheeler's academic performance, but did not take into consideration any alleged unethical performance. Wheeler appealed the remediation plan to the dean of the graduate school and the vice president of academic affairs who both ruled in favor of the administration. After Wheeler failed to enroll in a remedial course, he was dismissed from the graduate program.

Issue: Did the University violate Wheeler's procedural or substantive due process rights when it dismissed him? Did the allegations of cheating create a stigma for Wheeler? Did the

University violate Wheeler's equal protection rights? Did the University commit defamation against Wheeler?

Holding: The U.S. District Court for the Eastern District of Texas granted summary judgment in favor of the university and Wheeler appealed.

Reasons: Due process rights were examined in *Board of Curators of U. of Missouri v. Horowitz*, when the student was dismissed for failing to meet academic standards. Applying this standard to Wheeler, the courts found that constitutional requirements of procedural due process were met. Wheeler did not offer substantial evidence that he was discharged for cheating, and the remedial plan was a result of his academic performance, according to the graduate school catalog. Wheeler was dismissed after he failed to meet the requirements of the second remediation plan. In the *Regents of U. of Michigan v. Ewing* (1985), the courts decided that academic setting decisions are subject to narrow judicial review under a substantive due process standard, and applied those findings to this case.

On the defamation charge, Wheeler had to show that any defamatory statements were publicly disclosed. The only evidence in this case of disclosure outside the University was the April 2 letter stating that Wheeler did not meet all of the program requirements to be able to fulfill an internship during the 1996-1997 school year. The record did not show that any statements made by professors concerning Wheeler's academic performance were false. Wheeler also did not provide sufficient evidence that any statements made about his academic performance were made with malice. Concerning the equal protection claim, Wheeler's charge did not allege any discrimination based on membership in a particular class.

Disposition: The U.S. Court of Appeals held that due process rights were not violated, Wheeler's dismissal did not violate equal protection clauses and defamation under Texas law

was not established. The court affirmed the ruling of the U.S. District Court in favor of the university.

Citation: *Bhandari v. Trustees of Columbia University in the City of New York*, WL 310344 (S.N.D.Y., 2000).

Key Facts: Puneet Bhandari enrolled in a class in the Fall of 1998 taught by Professor Downey. During the course of the semester, Bhandari told a series of escalating lies to gain extra time to complete some assignments. The lies he told were about a car wreck in which he and his twin brother were involved, and that his brother was on life support and ultimately died from his injuries. Bhandari even included detailed descriptions of the funeral and the reaction of family members. Professor Downey later testified that the additional time that he gave Bhandari to finish his assignments resulted in probably only a half grade higher than he would have made without telling the lies. The lies came to light in January of 2000, when Bhandari asked Professor Downey to write a letter of recommendation to medical school. Professor Downey wrote a “glowing letter” in which he “extolled the manner in which Mr. Bhandari handled his twin brother’s death.” One of the medical schools to which Bhandair applied invited him for an interview, during which the interviewer asked Mr. Bhandari a general question about his twin brother. Mr. Bhandari answered that his twin was doing very well as an investment banker. The interviewer subsequently contacted Columbia about the interview, and Columbia began an investigation into the discrepancy. When the university learned of the deceit, they initiated disciplinary proceedings by notifying Bhandari in writing concerning the lying charges. A disciplinary hearing was held on February 2, 2000, before two hearing officers, and Bhandari did not dispute the findings that he lied to Professor Downey. He did, however, ask that no discipline be imposed and that the letter to the medical school be withdrawn without explanation. On

February 8, Dean McDermott informed Bhandari that the two hearing officers decided to dismiss him from Columbia. Bhandari appealed to the dean of the college, and admitted that he lied but asked that the disciplinary action be reduced to a reprimand or probation in view of the sanction he already faced from the withdrawal of the medical school recommendation. On March 1, Dean Quigley notified Bhandari that he decided to reduce the disciplinary action from expulsion to a 2-year suspension. Bhandari filed suit for a preliminary injunction forcing the University to allow him to complete his coursework pending the resolution of the case.

Issues: Did the University improperly consider previous disciplinary charges against Bhandari when reviewing this case?

Holding: The Court is considering a preliminary injunction against the university to allow Bhandari to complete his course work until a final decision is reached by the Court.

Reasons: Mr. Bhandari asserted that the University looked at two prior incidents when they decided to suspend him for 2 years. In early 1998, Bhandari was accused of charging telephone calls to other students and found guilty. He was later exonerated, but was notified by a letter that “any report of a similar problem in the future would be examined with these circumstances as part of the relevant background.” Another incident occurred in the spring of 1998, when Bhandari was a teaching assistant in a Columbia chemistry course. Several complaints were filed by students about Bhandari’s performance. While both Deans McDermott and Quigley had knowledge of the prior incidents, they both “credibly” denied that those incidents had any effect on their decision.

In *Susan M. v. New York Law School* (1990), the Court determined that interference by New York courts in academic decisions posed a danger unless those decisions were arbitrary and capricious, or made in bad faith or contrary to federal or state law. Bhandari told lies that were

“egregious, repeated, and escalated” over the course of a semester. The court said this was clearly a case related to academic dishonesty. Bhandari received written notification of the charges, was given a hearing and an opportunity to appeal. Therefore, he received due process.

In *Harris v. Trustees of Columbia U. in City of New York* (1984), the N. Y. Court of Appeals said that the petitioner’s character was a key element in the graduate program. The university could reasonably expect honesty and fairness from its students, and acted according to its published policies in dealing with academic dishonesty.

Disposition: The U.S. District Court denied Bhandari’s request for a preliminary injunction to stop Columbia University from suspending him for 2 years. The issues not expressly discussed are without merit.

Citation: *J. Cobb, D. Cobb, and A. Cobb v. The Rector and Visitors of the U. of Virginia*, 69F.Supp.2d 815 (U.S. Dist. Ct. Virginia, 2000).

Key Facts: Professor Ronald Michener, professor of economics, suspected Jonathan Cobb of cheating on an Economics 371 exam given on March 5, 1997. Michener filed an honor violation with the Honor Committee 4 days later. A photocopy of Cobb’s exam was returned to him on March 17, with the notation “pending investigation” on it. Another African American student received a similar exam paper from Michener. Both African American students went to Michener’s office and were advised that they were suspected of cheating. They were also told to contact the Honor Committee, which they did on that day. They were advised an Honor Committee advisor would be in touch with them in order to assist them in the case. No one contacted Cobb for the rest of the semester or the following summer, so he registered for classes in the Fall of 1997, and paid approximately \$8,000 in tuition and fees. In late September or early October, Cobb was notified by Erika Werner that she had been assigned as Cobb’s advisor by the

Honor Committee. From September 26 to October 7, the Committee investigated and came to the conclusion that Cobb had cheated.

Professor Michener suspected earlier in the semester that a student had cheated on an earlier exam. For the Economics 371 exam, Michener devised two different versions of the exam, with only slight deviations in the questions. The exam consisted of three questions, each of which had subsets of questions. Professor Michener testified at the trial before the Honor Committee that many of the answers Cobb gave on his test included numbers from the other version of the test. Cobb tried to explain how he “innocently generated” the incorrect numbers. The Honor Committee, which consisted of randomly selected students, found Cobb guilty of cheating on March 5, 1997. The Committee stated they gave Michener’s testimony more weight than Cobb’s explanation of how he arrived at the test answers. After the conviction, the Honor Committee appeals panel upheld the jury’s guilty verdict on February 18, 1998. Cobb exhausted his final chance of appeal under the Honor System when his request for a Grievance Panel was denied in a letter dated October 2.

Issue: Was there sufficient evidence that the University was racially biased against Cobb? Was Cobb denied due process rights? Was Cobb defamed by the University?

Holding: Cobb filed suit against the University along with other individuals. The complaints included breach of fiduciary duty, breach of contract, violation of human rights, denial of equal protection, denial of both substantive and procedural due process, emotional distress, and defamation. On July 7, 1999, this Court granted the University’s motion to dismiss all counts except the equal protection, procedural due process, and defamation issues. Discovery resulted and the University is moving to dismiss Cobb’s parents from the suit and for summary judgment on the three remaining issues.

Reasons: In *Collin v. Rector & Bd. Of Visitors of Univ. of Va.* (1995) and *Wilson v. Univ. of Va.* (1987), this same Court decided that the Rector and Visitors of the University are entitled to absolute immunity under the 11th Amendment. However, the Court does not assume that the previous rulings apply to injunctive relief against the Honor Committee. Because the Eleventh Amendment restrains a plaintiff from bringing an action for monetary relief against the individuals in their official capacity, the Court said Cobb did not state a claim upon which relief could be granted. However, the Eleventh Amendment does not prohibit the student from suing the individual defendants in their personal capacities. The Virginia Human Rights Act provides a safeguard to all individuals within the Commonwealth from unlawful discrimination because of race. However, the Act does not create new causes of action but only applies where there is a violation of existing law.

In *Roach v. Univ. of Utah* (1997), the Court established that a violation of substantive due process can only exist if the student demonstrates the school acted in an arbitrary and capricious way by not acting on a rational basis, or that the school acted in bad faith or ill will in a matter unrelated to the academic performance. In *Michigan v. Ewing* (1985), the Court stated that in academic rulings, a court's review is limited to an inquiry as to whether the decision was an exodus from accepted academic norms to such an extent that the person or committee responsible did not exercise professional judgment. The Court said the Honor System itself did not violate Cobb's substantive due process rights, and dismissed the claim.

Cobb claimed his due process rights were violated because the Honor Committee did not provide an honor advisor immediately. The Court ruled that the By-Laws stated the initiation of proceedings must occur within 2 years of the alleged infraction, and the university did not violate

the timeframe. The Court argued that while having an honor advisor might be beneficial during the pre-trial process, due process did not require that such assistance be provided.

The Court ruled that an equal protection right was not violated simply because a professor decided to report suspected honor violations to the Honor Committee while other professors refuse to do so. The professors are not bound by the Honor System as the students are, but are encouraged to report suspected violations.

Concerning the breach of contract claim, the Court ruled that Cobb exercised his right to an appeal and did file a grievance petition. Even though Cobb stated he was not able to exercise the right to appeal to a dependable adult the Court found that statement was merely a characterization and did not constitute a breach of contract. The standard for dismissing a student was satisfied in the By-Laws when the Honor Council found the student guilty of cheating.

On the defamation claim, the Court ruled that a letter was written by the VP of Student Affairs, Harmon, to Cobb on December 16, 1997, which informed Cobb that formal notification had been received from the Honor Committee stating that he (Cobb) voluntarily terminated his enrollment in the University; they argued that Cobb basically made an admission of guilt to an honor violation in that correspondence. The letter was circulated to the Dean of Students, the Assoc. Dean of Academic Programs, and the Vice Chair for Trials. Although Cobb filed a claim against the circulation of this letter, the Court argued that a defamation claim must be based on a publication, and the letter did not qualify as a publication.

Disposition: Any and all claims of Cobb's parents are dismissed for lack of standing. The University's motion for summary judgment on all remaining claims is granted.

Citation: *Papachristou v. U. of Tennessee*, 29 S.W. 3d 487,148 Ed. Law Rep. 1079, (Ct. Apl., Tenn., 2000).

Key Facts: In December of 1997, Mark Andrew Papachristou took a final exam in Civil Procedure I. A cover sheet of instructions for the exam included a statement about the school's Honor Code. While Professor Kennedy was going over the instructions, Papachristou opened the booklet and began reading the exam. After realizing other classmates had their exam booklet closed, Papachristou closed his. The professor also stated that the exam would end in 3 hours and wrote "END 4:30" on the board at the front of the class. The professor did not stay in the room, but wrote her office number on the board. During the exam, another student, Mr. Flores, called the professor to discuss the problem he was having with his glasses, and an employee from the student records' office helped Mr. Flores repair his glasses. The professor allowed Mr. Flores an extra 15 minutes to finish his exam. At 4:30 pm, the proctor called time for the exam. After the proctor's statement, the majority of the students lined up to turn in their exams; other students sat in their seats waiting for the line to shorten. Several students, including Papachristou continued to work on the exam. Ten to 15 minutes after time was called, a student named Ms. Hudgens went back into the classroom and asked the proctor if this was a timed exam, to which the proctor responded she had called time but some students had not turned in their papers. Ms. Hudgens stated that this was unfair and left the room. Several of the students who had continued to work after time was called turned in their exams and left the room. Papachristou continued to work after Hudgens' statement and the proctor's comments. In addition, when Ms. Hudgens made her comments, Papachristou shrugged his shoulders and kept working on the exam. After Ms. Hudgens left the room, Mr. Flores asked the proctor how much time he had left, to which the proctor responded 5 minutes. According to Mr. Flores, Papachristou responded that if Flores had 5 more minutes, so did he. The proctor and Mr. Flores then explained to Papachristou why Mr. Flores had extra time to finish the test. Papachristou said in testimony that he immediately turned

in his exam, and sat down to wait on Ms. Shepherd. However, Ms. Shepherd testified that she did not see Papachristou after the exam, and that he was not waiting on her. Other students testified that Papachristou and Flores were the last two students to finish the exam. Two other students testified that Papachristou was still in the room when they left.

Upon investigation, Papachristou was charged with violating the Honor Code. He was given a hearing, and the hearing officer dismissed the charges; the Chancellor, however, reversed the hearing officer and found Papachristou guilty.

Issues: Did the Trial Court properly apply the standard of review of the Tennessee Code?

Holding: The University Chancellor ruled that Papachristou violated the Honor Code. The Chancery Court of Davidson County found that the Chancellor's findings were not supported by substantial and material evidence, and reversed the Chancellor's orders. The University appealed.

Reasons: The testimony in this case is inconsistent. The Court relied on witnesses to determine what really happened. *Clay County Manor, Inc., v. State of Tennessee* (1993), established that substantial and material evidence has been defined as such evidence that a reasonable person might accept to support a rational conclusion. The Court found that substantial and material evidence existed that supported the facts that Papachristou violated the Honor Code.

This Court's review of the Trial Court's decision is basically a ruling on whether the lower court properly applied the standard of review per *James R. Bryant v. Tennessee State Bd. of Accountancy* (1993), which cited *Metropolitan Gov't. of Nashville v. Shacklett* (1977). The University claimed the Trial Court erred in finding that the Chancellor's decision was not supported by substantial and material evidence. This Court agrees with that claim. The

Chancellor found substantial and material evidence to determine that Papachristou violated the Honor Code.

Disposition: The Court of Appeals of Tennessee held although there were conflicting testimonies, the evidence was sufficient to support the University Chancellor's finding that the student violated the Honor Code in exceeding the time limit on the exam. This Court reversed the finding of the lower Court and remanded the cause to the Chancery Court for any further proceedings.

Citation: *Basile et. al. v. Albany College of Pharmacy of Union U.*, 279 A.D.2d 770, (Sup. Ct., App. Div., Third Dept., N.Y., 2001).

Key Facts: C. Basile, D. Papelino, and M. Yu were fourth-year students who were charged with cheating in several different classes over a period of 2 years. The Student Honor Committee conducted a hearing and concurred in the guilty verdict, despite the absence of any proof as to the "specific means by which they allegedly cheated." The evidence consisted of statistical compilations by professors showing that the students gave the same incorrect answers to multiple choice questions; two anonymous notes, one of which stated that two of the students requested information concerning the exam content and the other questioning whether two of the students cheated; and similar answers to questions that required calculations, although each student used a different calculation to reach the same answer.

Issues: Did the Supreme Court err in concluding that the appropriate standard of review had been used and did the Supreme Court err in not allowing the affidavit to be admitted in testimony?

Holding: Two students were expelled and one was given a failing grade. The students filed an Article 78 proceeding to annul the University's decision. Although the petition alleged

certain procedural defects in the hearing process, the students waived the procedural defects behind the ruling by stipulation and order. Based on the conclusion that the appropriate standard of review was whether the decision was rationally based, the Supreme Court dismissed the petition. As an aside, the Supreme Court refused to consider an affidavit by the College of Pharmacy since it was not part of the administrative record underlying the determinations under review. The students now appeal to the Supreme Court's decision to dismiss the petition and confirmation of the determinations. The College of Pharmacy filed a cross-appeal for the Supreme Court's refusal to consider the affidavit.

Reasons: This Court stated that the Supreme Court of N.Y. adopted the correct standard of review. The standard for academic dishonesty cases is whether or not the determination was arbitrary or capricious (*Rensselaer Socy. Of Engrs. V. Rensselaer Polytechnical Inst.*, 1999). On the other hand, this Court did not find the Committee's determinations had a rational basis. The professor who performed the statistical analysis admitted that the statistics were valid only if the persons taking the exam had no knowledge of the exam and had not studied together. In addition, suspicion alone does not suffice as a defense (*Chiaino v. Lomenzo*, 1967). The statistical case presented by professors was based on false assumptions and does not provide a rational basis to conclude the students cheated. Basile and Papelino were charged with nine cases of cheating; Yu was charged with seven cases. Basile was found guilty of cheating in six of the nine cases; Papelino was found guilty of cheating in three of the nine cases, and Yu was found guilty of cheating in one of the seven cases. Since the same analysis was used in each case, there is no rational explanation as to why the students were not found guilty of cheating in some classes but not in others. A review of the allegations reveals the anonymous notes to be hearsay or speculation, neither of which can be viewed as rational evidence. The rational basis for cheating

becomes even more difficult to prove when you consider that the review also revealed that the three students were each in separate rooms under the supervision of a proctor when the exams were taken.

Finally, the Supreme Court correctly refused to consider the affidavit because the affidavit was not part of the administrative record that formed the basis for the administrative determinations (*Matter of Levine v. New York State Liq. Auth.*, 1969).

Disposition: The judgment was reversed with costs, determinations annulled, and the petition granted.

Citation: *Mercer v. Bd. Of Trust. For U. of N. Colorado et. al*, 17 Fed. Appx. 913, DJCAR 4363 (2001).

Key Facts: Kenna Rae Mercer enrolled in the graduate program in the Fall of 1993, at the University of Northern Colorado. On June 16, Professor Martin wrote a memorandum to the school psychology faculty stating that she had concerns about Mercer's behavior as a student, and that Mercer turned in "A District 6 Resource Guide" as her own work.

In addition, Mercer was notified by a telephone call that Professor Martin had charged her with plagiarism, and was told about a meeting to be held on June 20 to discuss the issue. In that meeting on June 20, Mercer met with professor Martin and Professor Praul to discuss the charges.

Issues: Did the proof of plagiarism preclude the claims for state law defamation and deprivation of due process rights? Did Mercer satisfy the Colorado Immunity Act's notice of claim requirement as to tortious interference?

Holdings: The U.S. District Court for the District of Colorado granted partial summary judgment for the U. of Northern Colorado, and at jury trial, dismissed the trustees from the case,

granted judgment notwithstanding the verdict to the faculty advisor on the tort contract claim, and entered judgment on a jury's verdict for the University on all other claims. The student appealed.

Reasons: After oral argument, the District Court granted the University's motions for summary judgment on June 15, 1998, on the issue of due process rights, and on the issue of defamation. The evidence that Mercer plagiarized portions of the resource guide paper precluded the defamation claim under Colorado law. The faulty advisor, Martin, who accused Mercer of plagiarism did not publish the accusation, and did not circulate the accusation beyond the psychology department faculty. A jury trial on the remaining issues began on June 15, 1998. After the evidence was presented by Mercer, the District Court granted the Board of Trustees' motion under Fed. R Civ. P. 50 and dismissed the University of Northern Colorado from the case. The jury found for the University on all claims except the seventh claim, the tort claim, and awarded Janice Martin \$7,500.00 in damages. On June 30, 1998, Martin filed a motion for judgment, notwithstanding the judgment. Nearly 2 years later, March 29, 2000, the District Court granted Martin's motion and entered judgment in favor of all the defendants.

On appeal, Mercer asked for five issues to be resolved: (1) Based on the original issue, she asked if the District Court erred in granting summary judgment on the defamation claim; (2) based on the original issue, she asked if the District Court erred in granting summary judgment on her due process claim; (3) she asked if the verdict on her procedural due process claim was accurate; (4) she asked if the award of only \$7,500.00 for tortious interference with a contract was supported by the evidence or was it inadequate; and (5) she asked whether the District Court erred in granting Martin's post-trial motion for judgment notwithstanding the verdict for failure to comply with the Colorado Governmental Immunity Act.

The law requires any person claiming to have suffered injury as a result of a tort by a public employee committed in the course of public employment to file notice of the claim within 180 days of the date of discovery of the injury. The burden of proof is on the plaintiff and failure to comply with the Act's notice requirement is considered a complete defense (*State Personnel Bd v. Lloyd*, 1988). Both parties agree that Professor Martin's memo of June 16, 1995, accusing Mercer of several wrong-doings that included plagiarism, constituted "tortious interference" is untrue. The legal injury was "discovered" by Mercer on June 20 when she met with Copeland and Praul, because that is the first time Mercer became aware that Martin accused her of plagiarism and circulated the letter to faculty. January 12, 1996, is more than 180 days from June 20, 1995. In this circumstance, the District Court was justified in concluding that the notice requirements of the Act had not been met. Therefore, this Court is not going to disturb the District Court's understanding of Colorado law.

Disposition: The U. S. Court of Appeals, Tenth Circuit, held that (1) the evidence proved the student plagiarized, and that the plagiarism allegations had not been published, which precluded the claims for state-law defamation and due process liberty issues; and (2) the student did not satisfy the Colorado Governmental Immunity Act's notice of claim requirement as to tort claim. This Court affirmed the ruling of the lower court that the University could dismiss the student from the graduate program.

Citation: *Morris v Brandeis University*, WL 1470357 (Mass, Super., 2001).

Key Facts: After Drew Morris, a second-semester senior at Brandeis University, turned in a final paper, Professor Kelikian submitted a judicial referral report stating that Morris "plagiarized verbatim from four secondary sources without proper citation." The referral report stated that sections 5.1 and 5.4 of the student handbook were violated. On May 12, 1997, the

associate director of campus life met with Morris and told him there was sufficient evidence of academic dishonesty to submit the matter to the Brandeis Student Judicial System. The letter also advised him he had 72 hours to accept responsibility for the plagiarism or to deny responsibility and have a hearing before the Board of Student Council. The associate director included a copy of the Handbook with the letter to Morris. On May 13, Morris met again with the associate dean and declared his innocence, so the issue was submitted to the Board. The associate dean told Morris he was entitled to have an advisor with him for moral support, but that the advisor could not speak. Morris asked two professors and a graduate student to serve as advisor, but all declined. On May 16, the Board, made up of three faculty members, three students, and a student chairperson, held a hearing. Morris did not have an advisor present. The Board unanimously voted that Morris had plagiarized and recommended he be given a failing grade, be suspended through December 31, 1997, and that the department of history reconsider his honors eligibility. On May 19, the associate director of student life wrote to Morris telling him of the Board's findings and recommendations, and advising Morris of his right to appeal. Morris was administratively withdrawn from Brandeis and removed from the 1997 degree list on the same day. On May 22, Morris appealed the Board's decision to the University Appeals Board. On May 30, the Appeals Board denied Morris' appeal and the sanctions went into effect. On February 20, 1998, Brandeis authorized Morris' return to class and inclusion on the May 1998 degree list after receiving a letter from Morris asking to be reinstated. In May 1998, Morris graduated with a B.A. degree from Brandeis. Morris' transcript does not contain a notation about his suspension.

Issues: Was Brandeis University contractually obligated to conduct its disciplinary proceedings in a fair and objective manner? Did Brandeis falsely represent a past or existing

material fact that resulted in negligence? Did Brandeis have a fiduciary relationship with Mercer?

Holding: Brandeis University moved for a summary judgment on each of the four counts based on Mass.R.Civ.P. 56(c).

Reasons: In the breach of contract claim, the burden of proof is on the student, Drew Morris. Morris claimed that Brandeis was contractually obligated to conduct disciplinary proceedings in a fair and impartial manner and breached that obligation by denying him the right to an advisor as provided in the Handbook, and engaging in arbitrary, capricious, and unfair conduct. Brandeis argued that the Handbook did not create a contract; it also argued, however, that even if the Handbook created a contract, Brandeis did not breach it. Brandeis also stated that even though Morris had a right to an advisor, Brandeis was not obligated to provide him with such advisor. Morris asked two professors and one graduate student to go with him to the Hearing, but all declined. Morris claimed the university intimidated the two professors and the graduate student into not assisting him. In *Madsen v. Irwin* (1985), the court ruled hearsay in an affidavit is unacceptable to defeat summary judgment. Morris also alleged that the punishment was too harsh and fundamentally unfair. Courts have been reluctant about questioning academic and disciplinary decisions made by private schools. The Court generally rules that if school officials act in good faith, any decisions to suspend or expel a student will not be subject to successful challenge in court (*Coveney v President & Trustees of the College of the Holy Cross*, 1983). There was sufficient evidence to support the Board's unanimous finding of academic dishonesty. The Court also found evidence that the sanctions imposed on Morris were consistent with sanctions imposed on other upper-class students under similar circumstances.

On the count concerning breach of contract of good faith, the Court agreed that a Handbook may create an implied contract between the university and the student. However, the implied contract may not override the express terms of the Handbook (*Dunkin Donuts, Inc., v. Panagakos*, 1998).

On the count concerning negligent misrepresentation, the Court ruled that Morris must establish several things: that the university falsely represented a material fact without any reasonable basis for thinking it to be true; that the university intended to mislead Morris into relying on that representation; that Morris was unaware that the representation was false; that Morris relied on the representation; and that Morris suffered harm due to his reliance on the representation. There are no allegations in the complaint or his affidavit that Morris relied on any such statement and suffered harm as a result. The Handbook specifically set forth the role of the advisor, and the provision contained within the Handbook should have been clear upon reading, so Morris's misrepresentation claim failed.

On the count of breach of contract for fiduciary duty, the courts ruled in *Mullins v. Pine Manor College*, 389 Mass. 47 (1983), that the relationship between students and universities are generally contractual rather than fiduciary. Brandeis claims because no such fiduciary relationship exists, so it cannot be breached. In *Williamson v. Bernstein* (1996), the courts considered and rejected a similar case.

Disposition: The motion for summary judgment by Brandeis University is allowed on all counts and final judgment is entered in favor of Brandeis University.

Citation: *Nawaz, Smajovic, and Majewski v. State University of New York University at Buffalo School of Dental Medicine*, 295 A.D.2d 944 (2002).

Key Facts: Tariq Nawaz, Seneida Smajovic, and Marek Majewski, who were third-year dental students at the State University of New York University at Buffalo School of Dental Medicine, were accused of cheating on a final exam. Two of the students were expelled and the third placed on permanent probation. At the initial hearing, members of the accused students' class were improperly included as members of the judicial council, which was in violation of the Student Handbook. As a response to the post-hearing objections by the students, the University vacated the judicial council's findings and gave the students a new hearing, where they were again found guilty. The students claim Article 78 violations.

Issues: Did the University violate procedural requirements during the hearing process? Did the University violate procedural requirements when it allowed a professor's testimony to be included in the record?

Holdings: The Supreme Court, Erie County, transferred the case to the Appellate Division.

Reasons: The students contended that the guilty verdict should be vacated because the university failed to begin formal proceedings against them within 10 business days of the incident, as required in the student handbook. The Court rejected that argument by saying the university substantially adhered to the timeframe set forth in the handbook by beginning formal proceedings with 33 days of the incident (*Al-Khadra v. Syracuse University*, 2002). The delay resulted from the fact that the university sought statistical analysis of the test scores before they proceeded on potentially baseless charges. The students also contended they were prohibited from contacting witnesses based on a provision in the student handbook, but they raised this issue for the first time on appeal, and thereby did not exhaust their administrative remedies. In addition, two of the three students contend that they were further denied due process rights

because the University failed to notify them that an informal decision concerning a prior honor code violation committed by each of them was included in their confidential files and was disclosed to the judicial council during the sentencing portion of the hearing. The Court rejected that contention, saying the students were allowed to cross-examine the professor who entered the notes in the confidential files indicating the students admitted to violating the honor code and had accepted the consequences without formal proceedings. In view of the ruling upholding the decision to expel student Seneida Smajovic for violating the honor code by cheating on a final exam, her contention that an additional charge of cheating was not proven by clear and convincing evidence is a moot point.

Disposition: The Supreme Court, Appellate Division, held that the University substantially complied with the requirements laid out in the student handbook. In addition, the students waived their claim to due process rights when they failed to exhaust their administrative remedies. Finally, students were not denied due process based on the University's failure to notify them that the informal decision concerning a prior honor code violation would be disclosed to the judicial council. The determinations stand and the same are unanimously confirmed without costs. The amended petition is dismissed.

Citation: *Chandamuri v. Georgetown University*, 274 F.Sup.2d 71, 180 Ed. Law Rep. 707 (U.S. District Ct., District of Columbia, 2003).

Key Facts: Babi Chandamuri was an American citizen of Indian descent. In the Fall of 2000, Chandamuri enrolled in an independent research course at Georgetown Hospital under Dr. Roepe as his overseeing faculty member. In that class, Chandamuri received a grade of B+. Chandamuri contested the grade by protesting to the chair of the chemistry department, Dr. Kertesz. Based on discussions with other students and his advisor, Chandamuri believed the

research class to be an “easy A,” and perceived he had been treated unfairly and differently than other students in the class because he did not receive an “A.” Dr. Kertesz and Dr. Roepe discussed the issue, and Dr. Kertesz informed Chandamuri that the grade would not be changed; and furthermore, that Chandamuri should drop the complaint because he would have to take an advanced class with Dr. Roepe. Chandamuri dropped the appeal. In the Spring of 2002, Chandamuri enrolled in the advanced biochemistry class under professor Dr. Roepe. One of the class requirements was a term paper valued at 20% of the total grade. Chandamuri submitted the paper by the required April 24, 2002, deadline. On May 2, Dr. Roepe informed Chandamuri via email that he was reporting him to the Honor Council for committing plagiarism. On May 5, an investigating officer contacted Chandamuri to discuss the events surrounding the violation. On May 7, Chandamuri was notified by the faculty chair of the Honor Council that there was sufficient evidence to send the case to a hearing board, and that the hearing would be on May 9 at 5:00 pm. At the hearing, the Honor Council concluded Chandamuri was guilty of violating the Honor Code. Chandamuri was notified that the Council recommended a one-semester suspension, requested that a notation about the suspension be placed into the official Georgetown transcript, and that noted the professor could take additional action if desired. The attorneys of Chandamuri notified the faculty chair of the Honor Council that an appeal had been filed.

A second hearing convened June 19, 2002. The new hearing was presided over by a different investigating officer and hearing board. The Honor Council notified Chandamuri that the recommended disciplinary sanctions were the same as in the first hearing.

Issues: Were Chandamuri’s state law claims adequately related to his federal claims so that the court could exercise supplemental jurisdiction in one judicial proceeding?

Holding: After being suspended, Chandamuri brought suit against the University based on national origin and retaliation. The University brought a motion to dismiss the charges.

Reasons: In order to dismiss a motion under Fed. Civ. Proc Rule 12(b) (6), the plaintiff has to properly state a claim; it is not enough that the plaintiff will prevail on merits, as demonstrated in *Scheuer v. Rhodes* (1974). The suit will be dismissed for failure to state a claim only if “it appears beyond doubt” that the plaintiff cannot prove a set of facts to support the claim (*Conley v. Gibson*, 1957). When a federal court has an independent basis for exercising federal jurisdiction, the court can also preside over claims that are so related that they are essentially the same issue under Article III of the U.S. Constitution per 28 U.S.C. Section 1467 (a) (2001). A federal court can also exercise supplemental judgment over interrelated claims that “derive from a common nucleus” and would sensibly be resolved in one proceeding (*United Mine Workers of Am. V. Gibbs*, 1966). Chandamuri’s claims under Title VI and his statutory claims meet the qualification of a common nucleus because they are based on the charge of plagiarism. Therefore, this Court can preside over both claims

Chandamuri’s claims of discrimination had to be established by demonstrating the following: he was a member of a protected class, that he was similarly situated to a student who was not a member of a protected class, and that he and the similarly situated person were not treated equally. The student claimed that the Honor Council did not provide him with a definition of plagiarism or define the procedures for the hearing and did not take into consideration the mitigating circumstances of his family crises. The court responded that the Honor Code clearly defined rules governing the proceedings of an academic dishonesty case, as well as providing the definition of plagiarism. In regard to the issue of showing leniency in the family circumstances, the Honor Code contained sanctioning guidelines that the Hearing Board may raise or lower the

sanction by one level, depending on mitigating or exacerbating circumstances. Chandamuri admitted that the Honor Council had the discretion to adjust any sanction. The court said the decision not to lower the sanction cannot be equated with a violation of the guidelines. In addition, after reviewing the mitigating family circumstances, Dean McAuliffe did reduce his punishment from a level “4” to a level “3,” meaning that Chandamuri would not be suspended for one semester but would only receive a notation of honor council violation on his Georgetown transcript.

Chandamuri also alleged that the punishment was harsh, based on a comment by an employee in the office of the Provost, who said the severity of Chandamuri’s punishment surprised her. Chandamuri interpreted this comment to mean that he was treated differently than a similiary-situated “White” student would have been treated. The courts found that the employee who made the comment had no knowledge of the particulars of Chandamuri’s case, and that she was not a member of the Honor Council hearing board; therefore, there was no factual evidence that Chandamuri had indeed been treated differently.

Chandamuri also argued in his complaint that he did not agree with Georgetown’s classification system for minor and major papers, leaving too much leeway on determining how much a term paper should count at the professor’s discretion. Chandamuir did admit that the paper in question was considered a major paper because it accounted for 20% of his grade, and acknowledged that plagiarizing on a major paper warranted a sanction for a serious violation. The D.C. Court of Appeals previously ruled that it will not second-guess an educational institution’s application of its own academic standards and procedures unless the plaintiff can provide some evidence that the decision was motivated by bad faith unrelated to the academic performance of the student (*Alden v. Georgetown University*, 1999).

Chandamuri also claimed his sanction was the result of retaliation for his complaint in the Fall 2000 class. In his complaint to Dr. Kertesz in the 2000 incident, Chandamuri alleges that he clearly stated his B+ resulted in being treated differently from a “similarly situated” student and that made it a protected activity. The Court ruled that Chandamuri never alleged that he told Dr. Kertesz he believed Dr. Roepe was discriminating against him based on race and national origin. The Court also said that Dr. Roepe was required to report the Honor Code violation to the Honor Council and could not make a judgment call on the issue. In addition, Dr. Roepe was not a member of the Hearing Board, nor did he have authority over the sanction the Board imposed. Because Dr. Roepe had no voice in either issue, there could have been no retaliation.

The DCHRA prohibits acts of discrimination that interfere with the rights of any and all individuals and makes it illegal for an educational institution to deny or restrict any facilities or services to any person who qualifies for discriminatory treatment based upon national origin.

Chandamuri claimed he was treated differently from “similarly situated White students” and that he was qualified to pass the class except for the discriminatory disciplinary action taken against him by the Honor Council. The court found no evidence that the Honor Council discriminated against Chandamuri in any way. In light of the fact that Dean McAuliffe reduced the sanction from level “4” to level “3” further proves the allegation of discrimination is non-existent.

The Court ruled that Chandamuri did not establish any causal link between his alleged protected activity and the sanction he received, so the retaliation under Title VI is dismissed. Because the claim under Title VI is dismissed, the claim for retaliation under the DCHRA cannot stand and must also be dismissed.

Dispositions: The University's motion to dismiss is granted as to Chandamuri's federal claims, and Chandamuri's state law claims are dismissed in agreement with 28 U.S.C. Section 1367. It is hereby ordered that the University's motion to dismiss is granted.

Citation: *Shepard v. George Mason University*, 77 Fed. Appx. 615, 182 Ed. Law Rep. 92 (U.S. Ct. of Appeals, Fourth Cir., 2003).

Key Facts: Amy Shepard was a student at George Mason University. Due to a disability that limited her ability to concentrate and learn, Shepard requested and received extra time to complete her assignments. In the summer of 2000, Shepard was taking her final course, an English class under Professor Irving. Initially Irving granted Shepard extra time to complete her work, but later refused to give her extra time. Shepard filed a complaint with the university resource center about her instructor. Shepard later asserted that the instructor gave her the grade of "F" and accused her of plagiarism in retaliation for filing the complaint. Shepard asked Dean Mulherin if she could appeal the grade without fear of being prosecuted before the Honor Committee for plagiarism. The Dean told her that the instructor had run out of time to file the plagiarism charge so Shepard could appeal her grade without fear of reprisal. Shepard appealed, but the instructor filed the plagiarism charge after the appeal. Shepard filed her first lawsuit in hopes of enjoining the Honor Committee from reviewing the plagiarism charge. The District Court dismissed her case and Shepard did not appeal. After the lawsuit was dismissed, the Honor Committee heard the charge against Shepard but did not allow Shepard to have her lawyer or her mother present to represent her at the hearing. The Committee found Shepard guilty of plagiarism, affirmed the grade of "F," issued a written reprimand, and ordered her to perform community service. Shepard had accepted a job contingent upon her graduation. Because of the

“F” grade, Shepard did not graduate on time and subsequently lost the job. She completed her degree several months later in May of 2001.

Shepard filed a second lawsuit, seeking injunctive relief and damages against George Mason University. She also included charges against the president of GMU in his official capacity, Dean Mulherin in his individual and official capacity, Instructor Irving in her individual capacity, and the student members of the Honor Committee in their individual capacities. The lawsuit contained six counts. The first four counts alleged due process rights violations under the Fourteenth Amendment; the fifth count alleged violation of her First Amendment right to free speech; the sixth count included several claims under Title II of the Americans with Disabilities Act (ADA), and the Rehabilitation Act of 1973.

Issues: Did the University have immunity against the charges? Did the District Court err in dismissing Shepard’s claims of free speech, the ADA Act, and the Rehabilitation Act?

Holdings: The U.S. District Court for the Eastern District of Virginia granted the motion to dismiss the case in favor of George Mason University (GMU). Shepard appealed.

Reasons: On appeal, Shepard failed to contest several of the District Court’s rulings against her. In particular, Shepard did not appeal the dismissal of the first four counts which all claimed violation of due process rights. In addition, Shepard did not appeal the following legal issues: that Honor Committee members are entitled to absolute immunity, that all defendants in their individual capacities are not subject to suit under the ADA and the Rehabilitation Act, and that all the defendants are entitled to qualified immunity for damages arising under the First Amendment. Therefore, the Appeals Court considered those issues abandoned. In *United States v. Aramony* (1999), the ruling was established that after a court decides upon a rule of law, that same decision must govern the same issues in later stages of the same case.

The three remaining issues that the Appeals Court had to decide were whether the university, President Merten, and Dean Mulherin are immune in their official capacities under the Eleventh Amendment from suit for damages until Title II of the ADA and section 504 of the Rehabilitation Act; whether Shepard's requests for prospective relief satisfy the requirements of the Ex parte Young doctrine; and, whether Shepard properly states claims upon which relief can be granted in the fifth and sixth counts.

The District Court issued two jurisdictional rulings involving Eleventh Amendment immunity. Therefore, this Appeals Court had to review those cases before it could rule on the merits of Shepard's claims. The District Court ruled that GMU is immune from suit, and the president and dean are immune in their official capacities. After the parties filed their initial appellate briefs, the Appeals Court decided *Wessel v. Glendening* (2002), which held that Congress failed to validly abrogate a State's Eleventh Amendment immunity for claims brought over Title II of the ADA. Accordingly, the Appeals Court affirms the District Court's judgment that GMU, the president, and the dean are immune in their official capacities under Title II of the ADA. The District Court also ruled that GMU waived its Eleventh Amendment immunity by voluntarily accepting \$44 million in federal funds during the year. Congress was very clear about dispensing the federal funds upon the condition that the University, which represented the state, consented to waive its Eleventh Amendment immunity by accepting the funds (*Booth v. Maryland*, 1997). Therefore, Shepard may seek damages and injunctive relief against GMU and the president and the dean in their official capacities under section 504 of the Rehabilitation Act. GMU could be sued because the statutory definition of program or activity includes universities. The president and the dean could be sued in their official capacities because a suit for damages against a state official in his official capacity is treated like a suit against the state entity.

The Ex parte Young doctrine allows private citizens to petition a federal court to enjoin state officials in their official capacity from engaging in future conduct that would violate the Constitution or a federal statute (*Antrican v. Odom*, 2002). Shepard's request for expungement would relate to an ongoing violation of federal law and the relief granted would be prospective in nature (*Wolfel v. Morris*, 1992; *Elliott v. Hinds*, 1986). Shepard's request for a new Honor Committee hearing also alleges an ongoing violation of federal law and seeks relief properly characterized as prospective. Therefore, Shepard may seek relief under Title II of the ADA against the president and the dean in their official capacities for expungement or a new Honor Committee hearing with representation under Title II of the ADA.

First Amendment rights include not only the right to free speech, but the right to be free from retaliation by a public official for the exercise of that right (*Suarez Corp. Indus. V McGraw*, 2000). Based on this, the Appeals Court reversed the District Court's dismissal of Shepard's First Amendment retaliation claim.

The District Court issued no ruling relating to Shepard's supposed retaliation claim under Title V of the ADA. Because the District Court has not yet addressed either the entrance jurisdictional issues or the merits of the issue, the Appeals Court remanded the retaliation claim back to the District Court for further review. Title II prohibits discrimination in "services, program, or activities" of a public entity. The Appeals Court found that an Honor Committee falls into that group as provided by GMU to the students. Therefore, the Appeals Court said the District Court wrongly concluded that the plaintiff failed to allege that Shepard was denied proper representation at the Honor Committee hearing, and reversed the District Court's dismissal of the claims under Title II of the ADA and section 504 of the Rehabilitation Act. And finally, the District Court did not address the merits of either of the claims on failure to

accommodate. Therefore, the Appeals Court declined to consider the merits of these claims for the first time at the appeal level, and remanded the claims to the District Court for further consideration.

Disposition: On the issue of sovereign immunity under Title II of the ADA, the case was dismissed in favor of the University. On the issue of sovereign immunity under the Rehabilitation Act, the University waived its immunity by accepting federal assistance. The Court of Appeals reversed the ruling on two issues and held for Shepard: University officials did not have immunity under ADA for expungement of the “F” she received and the plagiarism conviction; and, University officials did not have immunity under ADA for an injunction permitting a new trial for Shepard. The Court of Appeals remanded two issues back to the District Court: the retaliation claim regarding First Amendment rights to free speech, and disability discrimination claims under ADA and the Rehabilitation Act.

Citation: *Gupta v. Stanford University*, 124 Cal.App.4th 407 (Ct. of Apl., 6th Dist., Cal., 2004).

Key Facts: Abe Gupta was in his second quarter of undergraduate work at Stanford University in 2001. A computer science instructor accused Gupta of copying another student’s assignment and thus violating the Honor Code, and referred the issue to the Judicial Affairs Office (JAO). The JAO charged Gupta with “copying the computerized assignment of another student.” In November 2001, Gupta took part in a hearing during which the matter was adjudicated before a judicial panel. The panel charged Gupta with violating the Honor Code by copying two students’ work on three different assignments. The panel issued the following sanctions: a suspension to be served during the winter quarter 2001-2002, which was ultimately postponed until the spring of 2002; one quarter suspended suspension, and probation until

bestowal of the bachelor's degree. Also, Gupta was ordered to complete 80 hours of community service. In December of 2001, Gupta filed a complaint against Stanford and two university employees alleging breach of contract and intentional and negligent infliction of emotional distress. Gupta moved ex parte for a temporary restraining order and an order to show cause regarding a preliminary injunction restraining Stanford from acknowledging JAO's finding of academic dishonesty. The Trial Court denied Gupta's application for the temporary restraining order and set a briefing schedule and hearing date for the application of the preliminary injunction. Gupta withdrew his application for the preliminary injunction. On March 29, 2002, Gupta again moved ex parte for a stay of implementation of the sanction by the JAO. The Court denied Gupta's request for a stay on March 29, 2002, and the order was filed April 2, 2002. Gupta then retained new counsel and filed his first amended complaint. In June of 2003, the Trial Court sustained Stanford's formal objection to the first amended complaint. Judgment was entered against Gupta and he appealed.

Issues: Did Gupta exhaust the proper administrative remedies?

Holdings: The Court of Appeals held that Gupta failed to pursue the proper administrative proceedings before he filed civil action for damages.

Reasons: The Trial Court ruled that Gupta failed to obtain relief by petition for administrative mandamus. The Court also said that the remedy of administrative mandamus is not limited to public agencies; instead it applies to private organizations that provide for a formal hearing where the evidence is presented (*Pomona College v. Superior Court*, 1996). In this case, the Stanford Judicial Charter of 1997 required an evidentiary hearing before a judicial panel to evaluate the charge of cheating. Gupta claimed he did file a petition for writ of administrative mandamus, but the Court has no record of such filing. Even though the nature of the complaints

Gupta brought against Stanford were characterized as contract and tort claims, in reality the issues were disciplinary claims, and the appropriate process was through a writ of mandate. In *Gutkin v. University of Southern California* (2002), the Court reasoned that Gutkin's contract and tort claims were exactly the type of claims that administrative mandamus is designed to address and therefore barred his ability to bring tort and contract causes of action in Superior Court.

Disposition: Gupta's failure to seek the proper administrative remedies is a valid basis for the trial court to sustain the formal objections to the first amended complaint. The Court of Appeals affirmed the Trial Court's decision in favor of Stanford University.

Citation: *Pugel v. University of Illinois*, 378 F.3d 659 (U.S. Ct. of Apls., Seventh Circuit, 2004).

Key Facts: Diane Pugel was a graduate student in the physics department and a teaching assistant who received a stipend at the University of Illinois. In October 2000, Pugel submitted her research to the scientific journal *Nature*. On March 15, 2001, she presented the same research at a conference of the American Physical Society (APS). On April 27, the University began a disciplinary action against Pugel based on academic misconduct. The Research Standards officer sent Pugel a letter telling her the University was investigating whether Pugel had fabricated the test results in Figure 2 of the submitted paper. In accordance with University policy, a three-member inquiry team was appointed to review the facts and to determine whether enough evidence existed to conduct a full investigation. Around August 1, the inquiry team submitted a report that found sufficient "credible" evidence to proceed with a full investigation. The inquiry team recommended that events from September 2000 through April 2001 be investigated. The vice chancellor was required to review the inquiry team's report and to summarize the charges in

written format to a four-member investigation panel. Pugel was notified by the Research Standards Officer that the University was proceeding with the next phase of the disciplinary process and that an investigation panel had been appointed. The investigation panel reviewed the charges, and, on September 27, the panel held a hearing at which Pugel had the opportunity to present evidence for her case. Pugel presented testimony from her physician, who stated that Pugel could not have committed academic misconduct because she suffered from attention deficit hyperactivity disorder (ADHD). On December 14, the panel concluded its investigation and issued a report that charged Pugel with fabricating research results. On April 17, 2002, the Acting Research Standards Officer sent Pugel a certified letter telling her the chancellor concurred with the panel's findings and that the consequence was dismissal from the University. Pugel appealed to the president of the university on six grounds. On May 30, the president responded by letter denying relief with respect to five of the six issues. The president ultimately concluded, however, that the Senate Committee should review the report and decide if dismissal was a proper sanction for academic dishonesty. On September 3, the executive director and associate dean of students informed the dean of the graduate college, Pugel, and her counsel that the Senate Committee on Student Discipline had determined that dismissal was warranted. Pugel was dismissed effective August 23, 2002. The Board filed a motion to dismiss under Rule 12 (b) (6) of the Federal Rules of Civil Procedure. The magistrate judge recommended dismissal, and the District Court adopted the judge's recommendation. Because the District Court dismissed Pugel's free speech claim and her due process claim, it declined to exercise supplemental jurisdiction over Pugel's state claims.

Issues: Did the District Court err in dismissing the federal claims and declining to exercise supplemental judgment over the state claims?

Holding: The U.S. District Court for the Central District of Illinois granted the University's motion to dismiss and Pugel appealed.

Reasons: This court performs a de novo review of the District Court's motion to dismiss under Rule 12 (b) (6), based on *Gonzalez v. City of Chicago* (2001). We accept all well-pleaded facts as true, and we concur with all reasonable suppositions in Pugel's favor. If Pugel cannot prove the necessary facts that would entitle her to relief, the motion has been correctly granted.

A procedural due process claim consists of two parts: it must be determined whether the plaintiff was deprived of a protected interest, and it must be determined what process is due (*Doherty v. City of Chicago*, 1996). The features of due process are notice and an opportunity to be heard. Pugel was an employee of the university, but the Court said her employment was based on her status as a graduate student. As a general matter, the Supreme Court's case law on the adequacy of procedural protection has distinguished between employees and students. The court generally uses *Cleveland Bd. Of Ed v. Loudermill* (1985) to apply to employees, and *Goss v. Lopez* (1975) to apply to students. In *Goss*, the Supreme Court indicated that a student was entitled to oral or written notice of the charges against him, an explanation of the evidence, and a chance to present his or her side of the story. Pugel's sanction of dismissal was much more severe than *Goss's* sanction of a 10-day suspension, so the current case might merit a greater degree of due process. It is clear from the proceedings that Pugel was given written notice of the charges and a predetermination hearing in which she had the opportunity to present her case. Pugel alleges that the panel reached a conclusion that did not support the testimony of her doctor and that one of the investigation panel members left before hearing the entire case. Due process does not mean that a favorable result would occur based on the doctor's testimony, it only means Pugel should be allowed to present an explanation as to why she should not be found guilty of

academic misconduct. Although the fact that a panel member was absent may have violated Pugel's rights under university policy, a violation of state law is not necessarily a violation of due process according to *Osteen v. Henley* (1993). The Court concluded that the alleged insufficiencies did not rise to the level of a constitutional right being deprived.

On the issue of free speech, the Court concluded that Pugel's interest in speaking was outweighed by the University's interest as an employer (*Pickering v. Bd. Of Educ.*, 1968). The university determined through the disciplinary process that Pugel knowingly presented invalid data at the APS conference. The Court stated that a scientific presentation cannot be separated from the university's mission of intellectual enhancement and research, so a public presentation of false data by a graduate-level student has significant consequences on the university's business. The First Amendment did not protect Pugel from the academic and employment consequences that resulted from her presentation of fraudulent data.

Since this Court has concluded that Pugel's due process and free speech claims were properly dismissed by the District Court, we must also conclude that Pugel's claims that the court improperly declined to exercise supplemental jurisdiction over her state claims similarly fails. Relying on *United Mine Workers of America v. Gibbs* (1966), the general rule is that when all federal claims are dismissed before trial, the District Court should relinquish jurisdiction over state-law claims.

Disposition: The District Court properly dismissed Pugel's due process and free speech claims and properly declined to exercise supplemental jurisdiction over her state claims. Pugel's constitutional rights were not violated. The Court of Appeals affirmed the District Court's ruling.

Citation: *Atria v. Vanderbilt University*, 142 Fed. Appx. 246 (U.S. Ct. of Apls., 6th Cir, 2005).

Key Facts: Nicklaus Atria, a pre-med student at Vanderbilt, enrolled in organic chemistry during the Spring semester of 2002. Professor Hess' exams required students to record answers on an answer sheet. Hess would place the graded answer sheets, marked with students' names and social security numbers, in a stack on a table outside the classroom. Before the next class started, the students thumbed through the tests and presumably picked up his or her test. If a student did not pick up his or her test, Professor Hess distributed them directly to the students during the next class period. Professor Hess testified that he did not know most of the students and did not verify whether students were picking up the proper tests. Atria was absent on February 1, 2002, so he received his graded test the following Monday. Students were allowed to resubmit answer sheets if they believed the professor incorrectly marked an answer. Professor Hess kept photocopies of all the answer sheets to prevent students from changing the answers before they resubmitted the answer sheet. Atria had previously taken a class from Professor Hess, so he knew about the policy.

When Atria resubmitted his answer sheet, Professor Hess compared it with the photocopy and determined Atria changed an "a" answer to a "c" answer, in order to change his overall test grade. He subsequently reported the incident to the Honor Council. (Although most of Vanderbilt's professors never reported an Honor Code violation, Professor Hess reported 5 to 10 violations per semester.) The test in question counted 25% of Atria's overall grade in class. The Handbook stated the Honor Council would appoint two investigators to meet with the accused student and give him/her a written statement of the charges. The student was entitled to legal representation but the attorney could not be present during an Honor Council hearing. The Honor Council consisted of the president of the Honor Council and 11 other members appointed by the President. Of the 12 members, 10 must vote "guilty" and the evidence must be "clear and

convincing.” A student found guilty could appeal to an Appellate Review Board (ARB) by filing a petition with the Honor Council’s faculty advisor. Before the petition can be heard it must be determined the petition contains sufficient grounds for appeal. If the ARB hears the student’s case on the merits, it may affirm, modify, or reverse the decision by a majority vote.

On March 19, 2002, the Honor Council conducted a hearing concerning Atria’s case. Professor Hess did not attend, but submitted a written accusation and included copies of the altered original and the unaltered photocopy. Atria testified that he was not guilty, and that the answer sheet might have been smudged while in his book bag. The Honor Council found Atria guilty, and imposed a sentence of failing the class and suspension for the summer semester. Several days later Atria took a polygraph test that concluded Atria’s statements about not cheating were truthful. In April of 2002, Atria’s attorney filed a petition for appeal to Mark Bandas, the advisor to the Honor Council, and attached a copy of the polygraph results. Bandas contacted the attorney and advised him the University would not accept a petition signed by an attorney, and also would not consider the polygraph results. Atria filed a complaint in the Circuit Court for Davidson County, Tennessee, seeking a preliminary injunction requiring Vanderbilt to accept the appeal and consider the polygraph results. The Court denied relief. After the ARB refused to accept the original petition, Atria submitted a second petition containing his signature that omitted any mention of the polygraph evidence. In the petition, he argued that another student had a grudge against him because he was allowed longer on the test due to a disability, and tampered with Atria’s test. In a letter dated May 29, 2002, Chairman Francis Wells of the ARB notified Atria that his appeal was meritless. Wells testified that as Chairman, he had the power to reject the petition on insufficient grounds without allowing the full panel to hear it.

Issues: Did genuine issues of material fact preclude summary judgment for the university on a negligence claim?

Holding: The U. S. District Court granted summary judgment for the University and Atria appealed.

Reasons: This Court reviewed the District Court's grant of summary judgment de novo, based on *Williams v. Mehra* (1999). A motion for summary judgment should be granted only if the moving party can show there is no material fact genuine issue and that it is entitled to a judgment based on the law (Fed. R. Civ. P. 56 (c)). A dispute can only be called genuine if a reasonable jury would return a verdict for the non-moving party (*Anderson v. Liberty Lobby, Inc.*, 1986). The governing law is state law.

The U. S. Court of Appeals addressed the case originally from the viewpoint of educational malpractice, which the overwhelming majority of courts have held to be not cognizable (*Ross v. Creighton U.*, 1992). Applying Tennessee law, this Court stated that claims of educational malpractice are based on the student's allegation that he received insufficient educational services. The Court said Atria's claim was not for educational malpractice but rather, Atria's issue was with the method in which Professor Hess distributed graded answer sheets.

In order to prove negligence, Atria had to prove the following: a duty of care was owed by the University to Atria, there was a breach of that duty, an injury or loss resulted from that breach of duty, there was cause in fact, and there was proximate legal causation (*Camper v. Minor*, 1996). Vanderbilt owed Atria a duty to refrain from conduct that posed an unreasonable risk of harm. The facts in the case are disputed as to whether Professor Hess's method of distributing graded answer sheets posed an unreasonable risk of harm. Mark Bandis, the advisor to the Honor Council, testified that he had met with Professor Hess on a previous occasion to

discuss the risk of cheating that his answer sheet distribution system posed. A jury could reasonably conclude that Hess's system posed the risk of harming because a student could mistakenly be accused of altering an answer sheet when in reality any student had access to the answer sheets.

Atria based his negligence claim on the Family Educational Rights & Privacy Act (FERPA). The District Court concluded that the FERPA does not support a claim of negligence because it does not define a standard of care. This Court agreed with *King v. Danek Med. Inc.* (2000), when it stated a claim based on statutory rights of negligence cannot stand unless the statute first establishes a standard of care. Atria does not deny he gave Vanderbilt the authority to post his grades on the web, so he cannot then allege that he was harmed by the way Professor Hess handed out graded answer sheets.

Atria also had to prove that Vanderbilt's actions were the proximate cause of his injury. *McClung v. Delta Square Ltd. Partnership* (1996) said proximate cause would be decided by a jury unless the facts were so clear and uncontested that all reasonable persons would agree on the outcome.

The Procedures of the ARB provide that that the panel will review a petition to see if it has sufficient grounds for appeal. Vanderbilt asserted that the Student Handbook (adopted in 1999) superseded the Procedures handbook (adopted in 1995). Therefore, there is some question of factual issue as to whether the University actually complied with its own rules. Atria did not present any evidence that he was injured by Vanderbilt's rejection of his initial petition for appeal, because the University accepted his second petition.

To support a claim of promissory estoppel, Atria had to prove that his reliance on the promise the University made to him caused him economic detriment. He offered no evidence of that. This claim was dismissed on summary judgment.

Atria's breach of contract claims were based on the university's alleged failure to follow the Honor Council's procedural rules as stated in the student handbook. A breach of contract claim has three parts: an enforceable contract must exist, there must be nonperformance to the extent it creates a breach of contract, and there must be damages that were caused by the breach of contract. Specifically, Atria claims Vanderbilt breached its own procedures by dismissing his appeal without submitting the petition to the entire Appellate Review Board (ARB), by holding an Honor Council meeting without requiring the presence of Professor Hess, by refusing to consider the results of the polygraph exam, by failing to provide an unbiased appellate body, and by refusing to accept a petition that was signed by Atria's legal counsel.

Although Vanderbilt's Student Handbook states it is not a contract, its provisions may be enforced in Tennessee if it creates an implied contract (*Ku v. State*, 2002). This court has previously applied Tennessee's law by holding that the student-university relationship is contractual even though courts do not hold to a rigid interpretation of contract law (*Doherty v. Southern College of Optometry*, 1988). The District Court held that dismissal of Atria's breach of contract claim was necessary because a federal court is an inappropriate forum to challenge academic matters. This court disagrees with that because this is not purely an academic matter. This case involves a disciplinary action, not academic, and can appropriately be heard in this court.

An issue of material fact exists as to whether the university breached this implied contract when Professor Wells personally dismissed the student's petition rather than submitting it to the

entire ARB. The university has confusing rules concerning whether the ARB chairman or the entire ARB can perform the function of determining whether the petition shows sufficient grounds for appeal. Vanderbilt claims the provisions of the Student Handbook (adopted in 1999) supersede the Procedures of the Appellate Review Board (adopted in 1995). The university certainly has the right to amend its procedures; there is nothing in the record to indicate that Vanderbilt did indeed amend them. The conflict between the two outlined procedures raises a factual issue as to whether Vanderbilt complied with its own rules.

With regard to the polygraph evidence, neither the handbook nor the ARB's rules expressly prohibit polygraph evidence from being submitted. While *United States v. Scheffer* (1998) established that the reliability of polygraph exams is questionable at best, *United States v. Clark* (1994) established that hearsay evidence is also questionable. It is evident the Honor Council relied heavily on hearsay evidence (i.e., Professor Hess's written statement). A reasonable person could conclude that Vanderbilt's decision to accept some forms of unreliable evidence but not others was arbitrary and a breach of an implied contract. This court finds that a genuine issue of fact remains regarding this claim of breach of implied contract.

On the remaining contract claims this court finds the following: although the Handbook requires the presence of the accuser at the Honor Council hearing, Atria has presented no evidence that Professor Hess's absence caused him harm; the evidence that Professor Wells admitted advising Atria's mother that retaining legal counsel was not a good idea does not demonstrate actual bias; Atria could not produce evidence that he was injured by Vanderbilt's rejection of his initial appeal petition because the university accepted his second petition.

Disposition: The Court of Appeals held that genuine issues existed as to whether the manner in which the graded answer sheets were distributed posed an unreasonable risk of harm;

FERPA does not define a standard of care, so it cannot support a claim of negligence; Atria's breach of contract claim could appropriately be brought in federal court; genuine issues of material fact existed as to some of the breach of contract claims, but Atria failed to prove any remaining breach of contract claims; and Atria gave no evidence that his reliance on the Student Handbook caused him economic harm.

Atria argued that the District Court erred in excluding the testimony of two of his "expert" witnesses. While the University's motion for summary judgment was pending, the Magistrate Judge issued an order to exclude the expert testimony based on *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993). The District Court granted summary judgment without rejecting the judge's ruling and its memo does not discuss excluding the expert testimony. Because the District Court did not rule on the issue, it is not appealable on final order that can be reviewed by this Court.

Accordingly, the U. S. Court of Appeals, Sixth Circuit, reversed the District Court's ruling on the negligence claim, reversed in part the order granting summary judgment on the breach of contract claims, affirmed the District Court's order on all other respects, and remanded the case for further proceedings consistent with this opinion.

Citation: *Chalmers v. Lane*, 2005 WL 169990 (U.S. Dist. Ct., N.D.Tex., 2005).

Key Facts: Lonnie Chalmers was enrolled in the University of Texas at Austin, and had plans to become a licensed social worker. In a letter dated April 29, 2003, a person named Ronnie Mack sent a letter to Dr. Watson, assistant dean of the UTA School of Social Work, claiming to have written all the papers Chalmers turned in while attending both UTA and the University of Texas at Dallas (UT-Dallas). Ronnie Mack also sent a letter to Dr. Johnston, alleging that he had written a paper Chalmers turned in for Johnston's class. The director of the

community services clinic at the UTA School of Social Work, Dr. Cobb, sent Chalmers a letter dated May 6, 2002, informing him of Mack's allegations and requesting that Chalmers submit papers he had recently turned in for social work courses and asked particularly for the papers written for Dr. Johnston's course. On May 7, Chalmers sent a letter to the Board of Regents requesting that UTA hold a combined hearing with UT-Dallas to allow him to respond to all the accusations at one time. On May 16, Dr. Johnston submitted a disciplinary referral against Chalmers to Dr. Watson, who referred it to UTA's dean of students, Dr. Lane, on May 20. Also on May 20, the associate vice chancellor for academic affairs of the UT system, Dr. Reyes, sent Chalmers a letter explaining he had reviewed Chalmers' letter of complaint dated May 9. Reyes explained in the letter that because an official disciplinary claim had been filed, the matter was being referred to UTA. On May 21, Chalmers received a notice from the dean of the UTA graduate school that he would not receive his social work degree because the grade in Dr. Johnston's class had not been finalized. On May 22, two other professors, Dr. Granvold and Dr. Diaz, submitted disciplinary referrals to Dean Lane, along with copies of Chalmers' papers, with highlighted portions of the papers they believed were improperly cited.

On May 23, Chalmers filed a lawsuit charging UTA faculty members Johnston, Cobb, and Watson with changing his grade in Johnston's class, which prevented him from graduating. Also on that date, Dean Lane gave Chalmers two summons letters advising him of the charges Granvold and Diaz filed against him. The letter stated Chalmers could choose to resolve the matter with a formal hearing (in accordance with the UTA handbook of operating procedures), or by the discipline coordinator. At the meeting, Chalmers received a copy of the UTA handbook which described the penalties for academic dishonesty. On May 27, Dean Lane sent Chalmers a letter explaining that the allegations of dishonesty brought by Dr. Johnston could not be proven,

and that Chalmers would therefore receive no disciplinary penalty related to the grade in Dr. Johnston's course. Chalmers moved for voluntary dismissal of his suit against Cobb, Johnston, and Watson, noting that his grade had been changed and that the professors were not at fault regarding his inability to graduate.

On June 6, Chalmers filed suit against Lane, Granvold, and Diaz alleging they violated the rules and regulations of UTA regarding inquiries on academic dishonesty and prevented him from graduating with his Masters of Science degree in social work. On June 26, Dean Lane sent Chalmers a letter advising him that a formal disciplinary hearing had been scheduled per the request he made at a meeting on May 23. The hearing was scheduled for July 16. Enclosed with the letter were copies of the evidence, statements of the allegations against him, a witness list, and a copy of chapter 2 of the UTA handbook outlining authorized disciplinary actions for academic dishonesty. Chalmers responded by letter on July 9 and stated he did not plan to attend the hearing. He denied committing plagiarism in Diaz's class and said the paper submitted as evidence in Granvold's class was not his work. The hearing was conducted as scheduled, and the hearing officer declared Chalmers guilty of academic dishonesty and ordered the grades in Granvold's and Diaz's classes to be changed to "F," and imposed a suspension of one academic year to run from July 24, 2003, to July 24, 2004. Chalmers appealed the decision.

On September 23, Lane, Granvold, and Diaz moved to dismiss the appeal, and requested Chalmers be more precise in his claims. On December 23, the Court dismissed Chalmers' monetary claim for lack of subject matter jurisdiction under the Eleventh Amendment and dismissed all injunctive and declaratory claims against Dean Lane. The remaining claims against Granvold and Diaz remained. The Court ordered Chalmers to file a more definite statement of his injunctive and declaratory claims no later than January 30, 2004. Chalmers filed the first of

two such statements on January 5, 2004. On January 26, Granvold and Diaz filed a second motion to dismiss the claims against them. They argued that Chalmers failed to state a claim for retaliation. They also argued that Chalmers's claims were moot, since his 1-year suspension had expired and because they did not have the authority to reinstate the previous grades. Chalmers filed a response to this motion on January 30, along with the second definite statement, in which he alleged Granvold and Diaz filed allegations of academic dishonesty only because Chalmers had complained to the Board of Regents and filed other suits against UTA professors.

Issues: Is summary judgment an appropriate remedy for due process claims and retaliation claims?

Holding: In the first motion to dismiss the lawsuit, Lane, Granvold, and Diaz jointly moved to dismiss Chalmer's complaint for lack of subject matter jurisdiction and failure to state a claim. The Court dismissed all injunctive and declaratory claims against Lane, which left the claims against Granvold and Diaz. In the light of a 12(b) (6) motion, the Court had to accept as true the alleged facts and look at the pleadings in a manner favorable to Chalmers. Under this standard, Granvold and Diaz did not meet their burden of proving Chalmers could not prove his claim. Chalmers was ordered to file a more definite statement of his claim by January 20, 2004. He filed the first of two such statements on January 5, and the second one on January 30.

On January 6, 2004, Granvold and Diaz filed a second motion to dismiss Chalmer's complaint as supplemented by the new statement filed on January 5. They argued that Chalmers failed to prove they had knowledge of the previous lawsuit when they filed disciplinary referrals. They also argued that Chalmers' 1-year suspension had expired which rendered his claims moot. The Court denied Granvold's and Diaz's motion to dismiss on April 16. The Court also rejected the moot argument.

Reasons: Chalmers relied solely on the order of events stating the professors' referrals of academic dishonesty were filed shortly after Chalmers complained to the Board of Regents.

*Richardson v. McDonnell* (1988) found that chronology alone did not support a claim for retaliation when protected activity and adverse action took place on the same day. Also, *Roberson v. Alltel* (2004) stated that the fact that an adverse action is taken after an employee engages in some protected activity will not always be enough for a prima facie case. Chalmers failed to create a fact issue regarding the issue of retaliation (*Thaddeux-X v. Blatter*, 1999).

By sending the letters from Dean Lane, UTA met its burden to provide Chalmers with meaningful notice of the charges against him. By scheduling a formal hearing with a neutral factfinder, where Chalmers could present evidence and have a witness to testify on his behalf, UTA met its burden to provide Chalmers with a meaningful opportunity to be heard.

*Burlington Northern and Santa Fe Ry. Co. v Brotherhood of Maintenance of Way Employees* (2000) established that summary judgment is the proper method for resolving law issues "arising from a materially complete factual record." In addition, disputes over the conclusions drawn from the facts will not prevent summary judgment. *Little v. Liquid Air Corp.* (1994) further established that when looking at facts, summary judgment is appropriate when the pleadings and evidence show no genuine issue of material fact exists, and that the movant is entitled to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.* (1986) said the substantive law will distinguish which facts are material.

Disposition: No genuine issue of material fact was found with respect to Chalmers' claims. Summary judgment was granted for the University.

Citation: *O'Connor v. The College of Saint Rose*, 3:04-cs-0318 (U.S. Dist. Ct. for No. Dist. Of N.Y., 2005).

Key Facts: John O'Connor applied for graduate school at Saint Rose to earn a master's degree. He attended classes during the Fall 2002 and Spring 2003 semesters. On January 15, 2003, O'Connor met with the assistant director of special services, Kelly Hermann, to register his disabilities. O'Connor completed only a portion of the student data sheet, and Hermann completed the rest of the sheet. O'Connor claimed disabilities relating to his neck, lower back, and wrist on that data sheet. O'Connor also said he told Hermann about hearing difficulties, asthma, and his inability to sit on hard surfaces. O'Connor also requested rest breaks during class, non-rigid seating, and accommodations for his hearing loss. After reviewing the completed data sheet, O'Connor voiced concern to Hermann regarding the seating in the classroom, whereas Hermann advised him to contact her if there were any problems with the seating. O'Connor never complained about seating to Herman during his time at the college. Hermann was aware that O'Connor used a prescription inhaler, but told him the school required additional documentation concerning asthma before it could be listed on the student data sheet. O'Connor admitted that he did not follow up on the issue because he understood the campus was a smoke-free facility.

During the Spring 2003 semester, O'Connor enrolled in a class taught by Professor Abelson. Hermann sent a confidential memo to Abelson stating that O'Connor required extra time for testing and the use of a computer for essay exams, as accommodations. Although the college provided O'Connor with extra testing time and the use of a computer, O'Connor complained he was not given access to several different aids: a computer program called Dragon Speaking Naturally, a classroom that contained non-rigid seating, and regular class breaks. O'Connor also claimed he was not given extra time to complete a graded class assignment, which was a poster presentation. There is no evidence to support that O'Connor asked for

additional time on the poster project; testimony shows he was not given a computer for essay exams since there were no such exams in the class.

Abelson moved his class from a basement location to an amphitheater-style room on the third floor. No students complained about the move. After the third or fourth class, O'Connor complained about the seating, and Abelson advised him he could get up and move around as needed, and sit anywhere he wanted to sit. Abelson did not have a formal policy on taking breaks, but preferred to work through break and let the class go early. He stated, however, that he would provide a break if the class preferred. O'Connor claimed that when he stood up to stretch, that Abelson made fun of him and gave the class a break. The ridicule consisted of Abelson saying "we're stopping here and taking a break because O'Connor wants a break."

One of the class exercises consisted of four students wearing a label on their head, which was unknown to the wearer, but the rest of the class could see. O'Connor was picked to participate in the exercise, although he said he did not want to, and considered being singled out as a result of the exercise. In addition, O'Connor was paired with two other students for the poster project, although one student dropped the course. On April 9, O'Connor sent Abelson an email saying he needed more time on the poster project and that he did not plan to quit his poster presentation in class even if Abelson called "time" on the presentation. Abelson responded that he would give the group time to finish, but told O'Connor his diplomacy was very inadequate. On the last day of class, as a sort of celebration, Abelson wanted the class to meet at Washington Tavern in Albany, New York. O'Connor said he could not go because of smoking in the establishment, and Abelson contends he did not reduce O'Connor's grade for not coming to the final class. The course also required a research paper, which was due on March 19. Abelson said the due date was flexible as long as the students communicated their intentions to him. On March

29, O'Connor sent Abelson an email stating he was still working on the paper. Abelson graded the late paper, but O'Connor said he never received the paper back, and complained that he was denied the chance to make corrections and resubmit. O'Connor received a final grade of B+. On May 17, O'Connor sent a letter to the vice president of the college stating that Abelson discriminated against him because of his disability. The Dean investigated the matter and filed a report on her findings. The vice president directed O'Connor's grade grievance to the department chair. The department chair set up a meeting between O'Connor, Abelson, and herself, to be held June 2. The resolution of the meeting was that O'Connor would submit his paper to the department chair for review, and would be given an opportunity to revise and resubmit it. Abelson agreed to provide O'Connor with the criteria used to grade the poster presentation. Finally, Abelson agreed to review O'Connor's class participation points in light of how O'Connor's disability impacted his class participation. O'Connor e-mailed his paper to the department chair, who noticed different writing styles in the paper, and submitted it to [plagiaserve.com](http://plagiaserve.com) to locate any plagiarized articles. The department chair personally reviewed the articles and found O'Connor had plagiarized. The department head concluded that plagiarism was a serious charge and therefore did not return the paper to O'Connor to revise. Abelson said he gave full credit to O'Connor for the poster presentation and class presentation. However, O'Connor received an "F" on the paper and a failing grade in the course. O'Connor was notified of his failing grade in a letter dated June 25, 2003. O'Connor appealed to the grade grievance committee. The committee recommended a third party review the research paper. The vice president determined that neither Abelson nor the department chair should be involved in the grievance, so he identified three professors who would be available to review the matter and allowed O'Connor to choose one of the three. O'Connor chose Dr. Ramos. After reviewing the

paper, Ramos concluded that O'Connor had indeed committed plagiarism, that a grade of "F" was appropriate, and O'Connor was dismissed from the college.

Issues: Did the College discriminate against O'Connor because of his disabilities? Was the College entitled to a summary judgment? Can O'Connor recover monetary damages under his ADA claim?

Holding: O'Connor sued alleging disability discrimination and the College moved for summary judgment. O'Connor contested the motion.

Reasons: It is evident from the record that the college made every effort to accommodate O'Connor's disabilities. Even though O'Connor said the college did not accommodate his asthma, it is clear that Abelson asked the tavern where he held the last class period to provide a smoke-free room for the classroom, and it did. O'Connor also claimed that the college failed to provide him with non-rigid seating. The evidence is clear that O'Connor was permitted to stand and move around as necessary, and he never complained to the registrar when Abelson suggested he do so if he was unhappy with the seating arrangements. O'Connor also argued that the college did not accommodate his hearing disability, but is not claiming discrimination on his hearing. In fact, O'Connor stated that Abelson spoke louder when asked to do so. O'Connor also claimed that the college failed to accommodate his need to take periodic breaks. The undisputed testimony shows the college did in fact allow O'Connor to take periodic breaks. The fact that Abelson let the entire class take a break when O'Connor indicated he wanted a break was not discrimination but an attempt to accommodate his disability. O'Connor also claimed he was discriminated against because he was not allowed to resubmit the paper. However, another non-disabled student was not allowed to resubmit her paper so it cannot be said that O'Connor was deprived because of his disability. O'Connor claimed he was discriminated on his poster project

grade, but the Courts held it is difficult to ascertain what goes into determining a grade (*Branum v. Clark*, 1991). However, Abelson revised both his poster project grade and his class participation grade. After O'Connor filed the grade grievance, the college provided three unbiased professors to grade the paper, and one of the professors was chosen by O'Connor.

When the department head suspected the material in the research paper had been plagiarized, she submitted it to a neutral outside source, [plagiserve.com](http://plagiserve.com), which verified her suspicions. There is no evidence that proves that O'Connor was not allowed to resubmit his plagiarized paper.

Indeed, the record shows other students with no disabilities on record have also been denied the right to resubmit plagiarized papers. The college was aware of O'Connor's protected activity but there is not a causal connection between the protected activity and the adverse actions. The Court said it recognized that discrimination is usually proven with circumstantial evidence instead of direct evidence. Just because a person with disabilities experienced an adverse action does not mean that discrimination was a factor.

There is also insufficient evidence that the College retaliated against O'Connor. If we assume that O'Connor engaged in a protected activity, and that the College was aware of that activity, O'Connor would have to have suffered from an adverse action. The only adverse action he could have suffered from is a lower grade. Testimony supported that O'Connor's grades for the poster and classroom participation were actually raised. If the adverse action is the failing grade on the paper and the course, the College has offered a legitimate, non-retaliatory reason for the failing grade: plagiarism.

*Tenenbaum v. Williams* (1999) states that, on a motion for summary judgment, the Court must consider the evidence more favorable toward the non-moving party, and may grant summary judgment only when there is not genuine issue of material fact. In this case, that means

the court must look at the evidence for granting a summary judgment in favor of O'Connor, the non-moving party. An issue is genuine if the relevant evidence is such that a reasonable jury could return a verdict for the non-moving party (O'Connor; *Anderson v. Liberty Lobby*, 1986).

Finally, O'Connor may not recover monetary damages for an ADA claim under Title III, according to *Powell v. National Bd. of Medical Examiners* (2004), *Steir v. Girls Scouts of the USA* (2004), and *Wander v. Kaus* (2002). Damages can only be recovered if it is proven that the defendant acted with deliberate indifference.

Disposition: The U. S. District Court for the Northern District of New York granted the college's motion for summary judgment and dismissed the complaint.

Citation: *Brown v. State ex rel. State Bd. of Higher Educ.*, 711 N.W.2d 194 (N.D., 2006).

Key Facts: In August of 2003, Richard Brown received a Ph.D. in Teaching and Learning from the University of North Dakota, based on the completion of his dissertation and upon the review and recommendation of the Dissertation Committee. One of the requirements set forth to earn a Ph.D. is that the dissertation must be an original based on research and study by the student. As a graduate student, Brown was subject to the academic policies in the Code of Student Life. The policy concerning ethical conduct in research, scholarship, and creative activity stated that allegations of misconduct had to be reported to the VP for Academic Affairs, who had the authority to decide whether the complaint was handled under the Code of Student Life, or under the auspices of the office of research, development, and compliance.

Brown was also employed by the University as an Assistant Professor of Nursing and the Director of the Nurse Anesthesia Program for a 12-month contract to end June 30, 2005. Brown voluntarily resigned before the end of the contract.

On October 7, 2004, Brown received an email message from Dr. Allison-Jones, a nursing professor, who claimed portions of Brown's dissertation were identical to her own dissertation. The same day, Brown sent a letter to the chair of his dissertation committee and to Professor Olson, a professor in the department of teaching and learning, outlining Allison-Jones' claim. During a meeting, Olson advised Brown to thoroughly research all of the materials he had that were related to his dissertation and to try and find out how this similarity could have occurred. In addition, Olson told Brown to contact the online dissertation service and have it delay the publication and sale of the paper, as well as any needed amendments. Dr. Allison-Jones contacted Olson directly, which caused Olson to compare the dissertations; upon comparison of the two papers, Olson referred the matter to the University graduate school for a ruling on how to handle the matter.

After a discussion with the dissertation committee, the Dean of the graduate school, Joseph Benoit, sent Brown a letter advising him that at least 14 pages of Brown's dissertation were identical to Dr. Allison-Jones' dissertation, and, that other pages were identical to a dissertation by Judith Scanlan. Based on these findings, Dean Benoit advised Brown that he would begin the process of revoking Brown's degree. The process included Brown's right to a hearing before the Graduate Committee. Brown also received a letter advising him that a hearing was scheduled for February 7, 2005. On February 2, Brown's counsel informed the Graduate Committee that neither Brown nor his counsel would be present at the hearing.

During the hearing, Dean Benoit presented his case in support of the decision to revoke the degree. After questioning, Dean Benoit was excused and the committee began deliberating. All voting members of the committee participated in the process. A non-voting student member

of the committee participated in the deliberations, but did not vote. The Committee voted unanimously, with one abstention, to revoke Brown's Ph.D. due to plagiarism.

On February 11, 2005, the Graduate Committee notified Brown of its decision and told him further review was available to him via the Student Academic Standards Committee. Brown never filed an appeal with the Committee. Brown did file suit against the State, by and through the State Board of Education, alleging that the Dean was without authority to revoke his doctoral degree. The State moved to dismiss the case on the basis that the District Court lacked subject matter jurisdiction because Brown did not exhaust his administrative remedies. The State also moved for summary judgment, claiming Brown's due process rights were not violated.

Issues: Did the District Court have jurisdiction to hear Brown's complaint? Did the University have the power to revoke the degree?

Holding: The District Court granted the state's motion to dismiss for lack of subject-matter jurisdiction. Brown appealed.

Reasons: *Tracy v. Central Cass. Pub. Sch. Dist.* (1998) established that when appellate processes are available and the remedies will provide adequate relief, those remedies must be exhausted before seeking judicial remedies. *Thompson v. Peterson* (1996) also held that remedies before the proper administrative agency must be exhausted before a plaintiff can make a claim in court. The reason the courts require that internal remedies be exhausted is so that an organization is allowed to assess through its administrative procedures whether or not an error has been committed in finding all of the relevant facts; if an error has occurred, the organization has the opportunity to minimize any damage that was done before the issue ultimately gets to the courtroom. *Tracy* (1998) also stated that "the purpose of requiring exhaustion of remedies has its basis in the separation of powers doctrine" (§ 14). In this case, that ruling is especially

appropriate because the North Dakota Constitution grants the State Board of Higher Education full authority to control and administer the higher education institutions. With that authority comes the power to award academic degrees. The authority to award degrees “naturally” comes with the implied authority to revoke a degree with good cause and a fair hearing (14A C.J.S., *Colleges and Universities*, §41, 1991; 15A Am.Jur.2d *Colleges and Universities* §29, 2000). *Waliga v. Bd. of Trustees of Kent St. Univ.* (1986) confirmed that ruling by holding it is self-evident a university has inherent authority to revoke an improperly awarded degree.

The Supreme Court went on to say that the exhaustion of remedies doctrine is usually applied to the employment law context, but equally applies to a grievance between a student and a university because a student is subject to the institution’s written code that provides internal grievance procedures. Brown was allowed to appeal and have a hearing, but he chose to take advantage of neither opportunity. Brown argued that an appeal would be “futile” because Dean Benoit had already decided to revoke the degree. This court disagrees. Because Brown failed to exhaust the administrative remedies, he was disqualified from making a claim in court, and the District Court was without jurisdiction to hear the complaint.

Disposition: The Supreme Court held that Brown failed to exhaust administrative remedies and that prohibited him from bringing action against the state.

Citation: *Leiby v. U. of Akron*, 2006 WL 1530152 (Ct. of Apl., Ohio, 2006).

Key Facts: Todd Leiby attended the University of Akron from the fall semester of 1994 through the spring semester of 2000, and received a Bachelor of Arts degree in sociology and law enforcement. Leiby earned a Masters Degree in science management/human resources in 2003. On November 4, 2004, Leiby initiated suit against the University alleging breach of contract by reusing exams from previous years. The Court of Claims of Ohio issued summary

judgment for the University, and Leiby appealed and filed an amended claim on December 10, 2004. In the second claim, Leiby asserted that he entered into a contract with the University, that the University breached that agreement, and that the alleged breach of contract rendered Leiby unable to complete his educational goals.

Issues: Did the lower court err in granting summary judgment on behalf of the University?

Holding: The Trial Court held that the University did not breach its contract with the student by allowing the reuse of exams; therefore, the University was entitled to summary judgment on all of the student's claims. The Court also held that Leiby was not damaged by the alleged breach.

Reasons: Leiby alleged that Akron breached its contractual obligations by reusing examinations from one semester to the next, and by handing back to the students graded exams. Leiby realized as early as the fall of 1995 that professors reused exams, but he never expressed his concern to his professors or the dean. He had ample opportunity to express his concerns on instructor evaluations and through UA's graduate grievance procedures, but he never shared his concerns. Leiby never reported another student reusing an exam, even though he acknowledges that the UA honor code stated each student had a responsibility to report any dishonest behavior. In March of 2003, Leiby emailed an anonymous letter to the president, vice president, and general counsel of UA, in which he mentioned UA's reckless default on its contractual obligations. In the email he did not mention reuse of exams or failure to protect the integrity of exams. UA filed an answer to Leiby's complaint on January 21, 2005, and on October 5, UA filed a motion for summary judgment, which Leiby answered on October 12.

The Court acknowledged it was not disputing that a contractual relationship existed between Leiby and UA, as set forth in *Bleicher v. Univ. of Cincinnati College of Med.* (1992). The terms of the contract are found in the catalog and handbook (*Embrey v. Central State Univ.*, 1991). In this particular case, the terms of the contract were contained in the undergraduate and graduate bulletins. In his amended complaint, Leiby's specific allegation of breach of contract is that the professors' reused prior exams, which devalued the education and degrees Leiby received from UA. The Court concluded that University publications did not expressly prohibit the reuse of examination materials and did not expressly prohibit returning graded exams. Moreover, the Court said the implied contract does not expressly require UA or its faculty to guarantee the integrity of the exams. Therefore, they concluded, studying from previous exams does not fall with UA's definition of academic dishonesty. In addition, since Leiby received two degrees from UA, and potential employers have not refused to hire him because he holds degrees from UA, the Court ruled he had suffered no economic damages.

Even though Leiby knew as early as the Spring semester of 1995 that professors at the University of Akron reused exams and that students studied from previous exams, he never expressed any concerns. He had an opportunity to voice those concerns on instructor evaluations at the end of each semester, but he never used that outlet to do so. In addition, Leiby understood that the UA Honor Code gave him a duty to report any dishonest behavior that he knew about, yet he never reported another student for using a previous exam as a study aid. Leiby first reported his allegations of breach of contract in March of 2003, when he emailed anonymously to the University president, vice president, and general counsel that the University "intentionally and recklessly defaulted on its contractual obligations," but did not specifically mention reusing exams or failure to protect the authenticity of exams.

Before looking at Leiby's appeal, this Court must address the University's motion to strike certain additions to Leiby's brief. The University requested that (1) Exhibit 4, the affidavit of Dr. John Herbert; (2) Exhibit 5, a document called "Academic Integrity Defined"; (3) Exhibit 6, a Yahoo email list; and (4) Exhibit 7, a document called "Responses to Plaintiff's Request for Production and Other Things," all be struck from the proceeding, based on the fact they were not part of the original trial. This Court is not allowed to add to the record that was not part of the Trial Court's proceedings and then decide an appeal based on the new matter, as set forth in *McAuley v. Smith* (1998). Appellate review is limited to the record as it existed at the time the Trial Court delivered judgment (*Chickey v. Watts*, 2005). This Court finds that neither the affidavit nor the Yahoo email list were in the Trial Court's records prior to judgment. In addition, the email list was not part of the original trial material. Therefore, this Court finds that it can allow Exhibits 5 and 7 to be entered, but cannot allow Exhibits 4 and 6 to be entered into the instant case.

Disposition: The judgment of the Ohio Court of Claims was upheld by the Court of Appeals of Ohio, which found summary judgment for the University of Akron.

Citation: *Bisong v. The University of Houston*, 493 F.Supp.2d 896 (U. S. Dist. Ct. for So. Dist. Of Tex., Houston Div., 2007).

Key Facts: Angela Bisong entered the PhD program in English Literature at the University of Houston in the Fall of 2002. In the Fall of 2003, she enrolled in English 8360 taught by Professor Lynn Voskuil. When Bisong submitted her first paper in that class, Voskuil expressed concerns that Bisong did not understand how to properly cite scholarly sources. Dr. Voskuil detailed her concerns in a written memo to Bisong and met with Bisong on at least five occasions to provide personal instruction in the proper use of citing sources. In addition, Voskuil

helped Bisong find a tutor. Dr. Voskuil also expressed her concerns informally to the chair of the English department, Dr. John McNamara. The extra instruction hindered Bisong's progress in the class, so Bisong and Voskuil agreed the student would accept a grade of "I," which stood for Incomplete, in the course. They also agreed Bisong could complete the course after additional tutoring in the use of properly citing sources.

In the Spring of 2004, Bisong enrolled in two classes taught by Voskuil and an independent study taught by Dr. Gonzalez. Dr. Gonzalez provided the chair, Dr. McNamara, formal notice of academic dishonesty committed by Bisong in her independent study class. On June 9, 2004, McNamara presided over a hearing in the English department at which Gonzalez presented evidence that Bisong quoted extensively without properly citing sources in the independent study class. At the hearing, Bisong was allowed to question Gonzalez, present her own evidence, and accept advice from two attorneys. Following the hearing, McNamara decided that Bisong had plagiarized. McNamara explained to Bisong that only Gonzalez had the authority to decide her grade, and even though the penalty for plagiarism could be total withdrawal from the doctoral program, McNamara decided that Bisong should be suspended from the program for 1 year. Bisong appealed to the College of Liberal Arts and Sciences. On August 11, 2004, Bisong's appeal was considered by the Academic Honesty Panel made up of three graduate students and two faculty member from the College. On August 12, Associate Dean Fishman informed Bisong that the Panel determined she committed plagiarism, and the penalty would be a grade of "F" in the course, and academic probation beginning with the Fall 2004 semester and continuing until graduation.

On August 14, Voskuil met with Bisong to discuss registration for the fall semester, and Bisong informed her that she did not intend to complete the class where she earned the grade of

“I,” and that she was aware the “I” would be changed to an “F.” Bisong also told Professor Voskuil that she would enroll in “replacement classes” instead of finishing the English class and the independent study class. She said someone in Academic Affairs told her she could replace those two classes with other choices. Voskuil said she had never heard about the replacement class option and reminded Bisong that the grades of “F” would remain on her record, and showed her the portion of the graduate school handbook that said a graduate student was allowed to make only four grades of “C” before dismissal from the program. Bisong said she understood the “4-C” rule. On August 23, Voskuil documented a meeting with Bisong where Bisong assured her she understood the handbook rules concerning grades, but reiterated that she would not finish the English class. On August 25, Bisong sent McNamara a “petition for grades grievance” asking for an independent panel to reevaluate the grades of “I” and “F” from Gonzalez’s class and the grade of “C” from Voskuil’s class. On August 27, Bisong sent the same letter to the new chair of the English department, Dr. Herendeen. On December 9, Herendeen presided over a departmental hearing on Voskuil’s allegation that Bisong plagiarized. On December 10, Herendeen notified Bisong that he decided she had plagiarized on a significant portion of her paper, and he recommended a grade of “F” in the class. He also informed her that his decision could be appealed to the College. Bisong appealed and Associate Dean Fishman notified her that the appeal would be heard on January 28. On January 12, 2005, Dr. Herendeen notified Bisong that an independent panel met on January 10 to review the grade grievance, and decided that the grievance was based on allegations of racism and discrimination. Based on Article 2 of the departmental guidelines, the panel decided the allegations were out of their jurisdiction, and forwarded the grievance to the Executive Director of Affirmative Action. On February 14, Dean

Fishman told Bisong the College Academic Honesty Panel determined she had plagiarized and the sanction would be expulsion.

Issues: Was the University entitled to summary judgment?

Holding: After Bisong filed suit against the University of Houston and Professor Voskuil alleging a violation of her civil rights, breach of contract and tortious interference, the Court dismissed several of the claims. The University of Houston moved for summary judgment.

Reasons: The University argued that it was entitled to summary judgment on the Title VI claims for race and national origin discrimination because Bisong was unable to produce evidence by which a reasonable person could conclude the decision to expel the student was motivated by either discriminatory action or retaliation for filing a grade grievance. *Fabela v. Socorro Independent School District* (2003) defined direct evidence as evidence that proves the fact without inference or presumption. Bisong alleged that she did not have to provide direct evidence, but instead could provide circumstantial evidence based on *McDonnell Douglas Corp. v. Green* (1973), which requires a plaintiff to establish a *prima facie case*. Once a *prima facie case* is established, the burden of proof shifts to the defendant. To establish a *prima facie case*, Bisong must demonstrate the following: she belongs to a protected class; her performance met the University's legitimate expectations; she suffered an adverse action; and, that others not in her protected class received more favorable treatment or that she was expelled because of her race and/or national origin. Although Bisong made no effort to establish a *prima facie case*, the Court assumed she could do so, and said the University rebutted any presumption of discrimination when they provided a compelling reason, academic dishonesty, for expelling her.

To establish a *prima facie case* of unlawful retaliation, Bisong must show that she engaged in protected activity, she suffered a material adverse action, and, a causal link exists

between the protected activity and the adverse action (*Medina v. Ramsey Steel Co., Inc.*, 2001). In order to establish a causal link, Bisong must show that the University knew about the protected activity (*Manning v. Chevron Chemical Co.*, 2004). The evidence was undisputed that Dr. Voskuil's charge of plagiarism could not have been filed in retaliation because the grade grievance did not include a charge of discrimination protected by Title VI, and Bisong did not file such a charge until 3 days after Voskuil had formally charged her with the second case of plagiarism. Bisong relied on the sequence of events to establish the causal link between her exercise of protected activity of filing a discrimination complaint and the adverse action of expulsion. However, the Court relied on *Richardson v McDonnell* (1988), which said chronology alone does not support a retaliation claim. The argument that the University retaliated fails because Dr. Voskuil was not a member of the Academic Honesty Panel, nor did she have authority over the penalty imposed. Bisong attempted to apply the "cat's paw" theory to establish a causal link. The "cat's paw" theory states that the decision maker can be charged with discriminatory action if it can be proven that he or she acted as a "rubber stamp" (i.e., the "cat's paw") on behalf of the University. It is undisputed that Dr. Voskuil did not recommend expulsion and therefore could not have rubber-stamped the panel's decision to take action against Bisong.

Finally, on the charge of tortious interference, the Court relied on *City of Lancaster v. Chambers* (1994), to argue Dr. Voskuil had official immunity from Bisong's claim for tortious interference with a contract. The Court also reasoned that since Bisong failed to present any evidence from which a reasonable fact-finder could conclude Voskuil tortuously interfered, Voskuil is entitled to summary judgment.

Disposition: The U. S. District Court for the Southern District of Texas, Houston Division, granted the University of Houston's motion for summary judgment.

Citation: *Kerr v. Board of Regents of University of Nebraska*, 19 Neb.App. 907, 739 N.W.2d 224, 224 Ed. Law Rep. 892 (Neb.App.2007).

Key Facts: Michael M. Kerr was a law student at the University of Nebraska. He was brought up on charges of four cases of "exceedingly flagrant" plagiarism on September 10, 2004, before the Honor Committee. The Honor committee consisted of three law professors and two students. Kerr and his counsel attended the hearing. The committee found that almost none of the work in three papers submitted was original, and that a fourth violation occurred when Kerr presented the same work in two different classes without permission of either professor. Kerr did not dispute the evidence, but said he did not have any intention of plagiarizing because he did not understand what exactly constituted plagiarism. The Honor Committee found "overwhelming" evidence that Kerr should have known what plagiarism was: he received a syllabus in the Fall of 2003 that contained a section entitled "Plagiarism: What it is and how to avoid it"; he received a email on July 2, 2003, from Professor Shavers regarding plagiarism; he was assigned to read specific passages about plagiarism in a legal writing class. By a vote of four to one, the committee decided that Kerr should be dismissed from the college, and that a notation should be made on his transcript about the dismissal. Kerr appealed to Dean Willborn, who reviewed the record, found the evidence did not support Kerr's claim of disparate treatment based on race or national origin, and affirmed the decision of the committee.

Kerr filed an "Amended Petition for Review" with the district court on December 10, 2004, and asked the district court to reverse and vacate the decision of the committee and the Dean. The Board of Regents, the honor committee, and Dean Willborn filed an answer on

January 6, 2005, objecting to the subject matter jurisdiction of the district court based on their belief that the proceedings before the honor committee were not subject to the APA, and that the proceedings did not qualify as a “contested case.” In the order of June 30, 2005, the district court noted that Kerr brought the appeal under the APA, alleging that the honor committee and Dean Willborn were agencies for the APA. The district court went on to say the committee and Dean were not agencies of the APA, and that Kerr had not identified a constitutional right regarding the honor code hearing or his dismissal from law school. The court said Kerr’s right to an honor code hearing “stems from the Code itself,” not from a statute or constitution.

Holding: Kerr filed petition under the Administrative Procedure Act (APA) for review of the honor committee and law school dean’s decision to dismiss him from law school based on four instances of plagiarism. The District Court dismissed the petition for lack of jurisdiction. Kerr appealed.

Issues: Did the District Court err in finding that neither the Honor Committee nor the dean is an agency for purposes of the APA? Did the District Court err in finding that the Honor Committee hearing is not an agency hearing?

Reasons: *Gabel v. Polk City Bd. of Comrs.* (2005) held that the question of jurisdiction is a question of law, upon which an appellate court reaches a conclusion independent of the trial court. If there is no factual dispute issue, the appellate court is required to make a ruling independent of the trial court (*Chrysler Corp. v. Lee Janssen Motor Co.*, 1995).

It is the duty of the appellate court to determine whether it has jurisdiction over the matter that appears before it (*State v. Silvers*, 1998). *State* goes on to say that if a lower court does not have jurisdiction over the case before it, an appellate court also lacks jurisdiction to review the merits of the claim. Initially, Kerr named the “Board of Regents” on his petition. However, in

paragraph 2, he alleges the respondent is the “University of Nebraska, College of Law” and, in particular, “the honor committee and dean.” Therefore, Kerr made no allegations of any action by the Board that is subject to judicial review. *Lee Sapp Leasing v. Ciao Caffè & Espresso, Inc.* (2002) held that the “character of a pleading is determined by content, not by its caption.” Kerr alleges that the committee and the dean are the “agencies,” which is the deciding factor as to whether the jurisdiction exists under the APA. Kerr was dismissed by the Honor Committee, not the Board of Regents. The statutory provision says that a person hurt by a final decision in a contested case is entitled to judicial review under the APA. Under the APA guidelines, a “contested case” is a proceeding before an “agency” where the legal rights are determined after an “agency” hearing. The statutory provision defines an “agency” as a board, commission, department, officer, division, or other administrative unit of the state government which is authorized to create rules. This court finds no basis that the committee or the Dean can make rules. Therefore, neither the committee nor the Dean can be considered an agency for purposes of the APA.

Disposition: The Court of Appeals dismissed Kerr’s appeal.

Citation: *Marten v. University of Kansas*, 499 F. 3d 290, 224 Ed. Law Rep. 639 (2007).

Key Facts: Craig Marten enrolled in the University of Kansas School of Pharmacy nontraditional program in August of 2001. During his participation in the program, Marten lived and worked in Pennsylvania. He did not actually begin the program until the Spring of 2002. Ronald Regan was director of the program, Harold Godwin was a professor, and James Kleoppel was an associate clinical professor. Marten frequently complained, via email communication, that he was not happy with his grades and the program’s 3-year time limit. Marten was also unhappy with Regan’s response to his complaints, and made that comment to a Dean Sorenson.

(The School of Pharmacy claims they do not have an employee named Dean Sorenson). The student claims that Regan threatened to have him expelled and Marten told the Ombudsman and the Better Business Bureau of Northeast Kansas of his concerns. In the fall, Marten enrolled in a course taught by James Kleoppel, which required several written assignments. Kleoppel accused Marten of plagiarism in that course, and again in another course several months later. Kleoppel alerted his colleagues of the incidents, and recommended to Regan that Marten be expelled from the program. Regan agreed with the expulsion and told Professor Godwin, who made the recommendation to Dean Fincham. Dean Fincham sent Marten a letter informing him he was expelled on the grounds of academic misconduct. Marten filed a two-count complaint in the District Court alleging retaliation and defamation. The defendants filed a motion to dismiss the complaint due to a lack of personal jurisdiction.

Issues: Did the District Court err in granting summary judgment?

Holding: The District Court denied the motion without issuing an opinion. After discovery, the University moved for summary judgment based on the District lacking jurisdiction. The District Court granted summary judgment because Marten did not meet his burden to establish jurisdiction.

Reasons: The District Court had subject matter jurisdiction based on federal statute 28 *U.S.C. §1331 and 1367*. This Appeals Court has jurisdiction based on federal statute 28 *U.S.C. §1291*. This court exercises plenary review in determining whether summary judgment should have been granted by the previous court. The District Court relied on *Rule 56 of the Federal Rules of Civil Procedure* when it stated that summary judgment is the correct remedy if adequate time since discovery has passed and the plaintiff fails to meet the burden of proof rule. The

Appeals Court said *Rule 12(b)(2) of the Federal Rules of Civil Procedure*, rather than *Rule 56*, better fits a case in which the court dismisses a claim for lack of personal jurisdiction.

*Ball v. Metallurgie Hoboken-Overpelt* (1990) held that if a defendant claims through a *Rule 56* motion that undisputed facts show the lack of jurisdiction, the court then must decide if the undisputed facts can justify the summary judgment. The due process clause requires that nonresident defendants have “certain minimum contacts with the forum state” in such a way that the suit does not offend the concept of fair play and justice (*Int’l Shoe Co. v. Washington*, 1945). *Burger King Corp. v. Rudzewicz* (1985) held that having minimum contacts with another state provides “fair warning” to a defendant that he or she may be subject to a suit in that state.

These basic due process rules are mirrored in the two recognized types of personal jurisdiction: general and specific, as stated in *Helicopteros Nacionales de Columbia, S.A. v. Hall* (1984). General personal jurisdiction exists when a defendant has maintained systematic and continuous contacts with the forum state per. Specific jurisdiction exists when the claim arises from or relates to conduct purposely directed at the forum state. Marten did not argue that the District Court had general jurisdiction, so this court is looking only at whether the court had specific jurisdiction, based on *Pennzoil Prods. Co. v. Colelli Associates, Inc.* (1998).

A case must pass a three-part test to qualify for specific jurisdiction based on *O’Connor v. Sandy lane Hotel Co., Ltd.* (2007): the defendant must have “purposefully directed” his activities at the forum; the plaintiff’s claim must arise out of or relate to at least one of those specific activities; and, the courts may consider additional factors to make certain the assertion of jurisdiction meets the “fair play” and “substantial justice” requirements. *Remick v. Manfredy* (2001) held that in order to analyze the three-part test for jurisdiction, the relationship between the claims and contacts have to be evaluated on a case-by-case basis. Marten argued that the

District Court had specific jurisdiction based on *Calder v. Jones* (1984). This court said *Calder* can apply if the plaintiff demonstrates the defendant committed an intentional tort, the plaintiff felt the impact of the damages done in the forum state, and the defendant expressly directed the tortious conduct at the forum in such a manner that the forum is the focal point of the action. To establish that the defendant “expressly” directed his conduct, the plaintiff has to show that the defendant knew the plaintiff would suffer the main effects of the actions in the forum state. *ESAB Group, Inc., v. Centricut, Inc.* (1997) stated that if the plaintiff fails to prove express intent, the plaintiff fails to establish jurisdiction under the effects test. This court concludes that Marten failed to establish jurisdiction over the defamation claim because he could not provide proof that the letter was targeted at anyone in Pennsylvania except Marten himself. These principles also apply to the retaliation claim and this court finds that Marten has not established his burden of proof in either claim. The Appeals Court said a defendant can commit First Amendment retaliation without “expressly” directing his conduct at the location where the plaintiff resides, or even “knowing where” the plaintiff would most likely suffer. Therefore, a plaintiff merely demonstrating residence in the forum state at the time of the retaliation does not meet the effects test.

Disposition: Marten alleges that the University harmed him while he resided in Pennsylvania. When claiming defamation and retaliation, it is not enough to establish personal jurisdiction. The Court of Appeals held that the court lacked jurisdiction over the University on both the defamation claim and the retaliation claim. Marten has not proven that the University targeted Pennsylvania, so this Court affirms the District Court’s holding of summary judgment for the University.

Citation: *Reardon v. Allegheny College*, 926 A.2d 477, 222 Ed. Law Rep. 246, PA Super 160 (2007).

Key Facts: Laura Reardon was a student majoring in music with a minor in biology at Allegheny College. In the Spring of 2004, Reardon enrolled in a biology class taught by Professor Nelson. Professor Nelson assigned Reardon, S. Miller, and M. Reilly to do group work in the laboratory. Each student had to submit individual papers analyzing the results of the lab work. Professor Nelson suspected plagiarism when she saw the papers from Reardon and Reilly, and came to the conclusion that Reardon is the student who actually copied her classmate's paper. Nelson notified the administration of Allegheny of the situation. A panel of the Honors Committee met and determined there was a good chance Reardon violated the Honor Code. Then the College Judicial Board (CJB) conducted a lengthy hearing where Reardon was given the chance to present evidence and confront witnesses. The CJB found Reardon guilty of plagiarism and gave her a failing grade in the class, revoked her Latin Honors, ordered her to complete community service, and placed her on academic probation until she graduated. Reardon was told she had the right to appeal to the President, who had already affirmed the findings and rulings of the CJB.

On April 7, 2006, Reardon filed a written complaint alleging breach of contract against the college and Professor Nelson; she also claimed defamation against the college, the professor, and the two students who were in her laboratory experiment group. After all the defendants objected to the charges, Reardon filed an amended complaint alleging all the original complaints along with a negligence claim against the college and the professor. The defendants again filed objections to the charges, and the amended complaint was dismissed. Reardon then filed an appeal with the Superior Court of Pennsylvania.

Issues: Did the lower court err when it dismissed the original suit?

Holding: Reardon brought action against a professor, the college, and two former classmates. The Court of Common Pleas, Allegheny County, dismissed the case and Reardon appealed.

Reasons: The standard of review requires that an appeal from a court order that upheld a ruling sustaining preliminary objections must accept as true all material facts as set forth in the appellant's complaint. The standard also applies in the review of preliminary objections in the form of demurrer. All doubt concerning recovery by the plaintiff must be cleared before the suit is dismissed. This court, therefore, will do a plenary review of the case.

*Barker v. Trustees of Bryn Mawr College* (1923) held that a relationship between a privately funded college and a student is traditionally defined in this Commonwealth as strictly contractual. *Ross v. Pennsylvania State Univ.* (1978) reaffirmed that ruling. Looking at those two cases, we review the agreement between the parties, which in this case is the student handbook named *The Compass*. This court looks at *Murphy v. Duquesne University of the Holy Ghost* (2001), which established that "when a contract so specifies, generally applicable principles of contract law will suffice to insulate the institution's internal, private decisions from judicial review." Therefore, Reardon cannot invoke due process concerns and questions of fundamental fairness. Reardon does not claim that the language of *The Compass* was unclear. Rather, she claims she was not notified of a preliminary hearing. She was indeed notified of a hearing held on May 1, 2004, and she attended said meeting. However, she claims she was not notified of a meeting on September 1, 2004; that hearing concerned plagiarism charges against her classmates Miller and Reilly, and Reardon was, in fact, not entitled to attend that meeting. Reardon also contended Allegheny committed numerous other breaches concerning the hearing in May;

however, this Court concludes The Compass did not provide for procedural or evidentiary rules that Reardon claims were violated. The College provided all rights promised to Reardon in the handbook. The Compass also stated, “The decision of the President is final.” We believe this statement is adequate to insulate the merits of Allegheny’s decision from intensive review. We conclude the Trial Court properly dismissed Reardon’s breach of contract claims.

Reardon’s claim against Professor Nelson was that she was a third-party beneficiary of any existing employment contract with Allegheny. *Burks v. Fed. Ins. Co.* (2005) said that in order for a third party beneficiary to be able to recover on a contract, both parties must have expressed intent that the third party was a beneficiary, and that intention must appear in the contract. In this case, there was no such clause in the contract. Reardon failed to address how Professor Nelson damaged disciplinary procedures as set forth in The Compass.

On the slander charges, Reardon has the burden of proving that Professor Nelson and her classmates Miller and Reilly made defamatory comments, that they communicated those comments and the recipient understood the nature of the comments, that the comments harmed Reardon, and that the comments were an abuse of a conditionally privileged occasion (*42 Pa. C.S.A. §8343*). “The initial determination of whether a communication is slanderous is a question of law for the Court to decide” (*Walker v. Grand Central Sanitation*, 1993). The first two statements that Reardon alleged was slander were nothing more than opinions stated by Professor Nelson; a third statement that Reardon challenged merely suggested one possibility that Reardon “might have” copied Miller and Reilly’s work; a final comment was a statement of fact that Reardon’s work was identical to her classmates’ work. This Court agrees with the Trial Court’s dismissal of the slander claims.

In alleging the negligence claim, Reardon relied on the “gist of the action doctrine.” Although the Supreme Court has not explicitly reviewed the “gist of the action” concept under appeal, it recognizes that allowing a plaintiff to claim both tortious and contractual theories of recovery from the same damages is problematic. In *Glazer v. Chandler* (1964), this Court, along with other federal courts, stated that confusion would arise if the law allowed new methods of proof and recovery to be introduced into breach of contract cases. The Supreme Court of Pennsylvania is aware that the “gist doctrine” has been used on at least three occasions, and has not tried to bar its application to a case. Therefore, we consider the “gist of action” doctrine to be viable. The negligence charges are based on the concept that the College owed Reardon additional duties apart from any contractual duty that was raised. The only duties Allegheny owed Reardon were outlined in *The Compass*, which represents the sole basis for the relationship. Those terms were as follows: Reardon would abide by the Honor Code in exchange for an education, and the college and Professor Nelson would abide by *The Compass* policies.

The final claim was based on emotional distress. This Court must assume that a tort for the intentional infliction of emotional distress exists in the Commonwealth. The Supreme Court of Pennsylvania is unsettled in this area (see *Taylor v. Albert Einstein Medical Center*, 2000; *Kazatsky v. King David Mem’l Park*, 1987; *Hoy v. Angelone*, 1998; *Johnson v. Caparelli*, 1993). Reardon alleged that the college, the Professor, and her classmates exhibited outrageous conduct that went beyond all decency. This court did not find the actions met the criteria in *Hoy* of being “clearly desperate and ultra extreme.”

Disposition: The Superior Court held that Allegheny College did not breach its contract with Reardon concerning disciplinary procedures in the handbook; Professor Nelson did not breach his contract by failing to uphold Allegheny’s policies; neither Professor Nelson nor the

classmates committed slander against Reardon; the “gist of the action” doctrine applied to the dismissal of Reardon’s negligence claims; and the conduct of the College, professor and classmates was not severe enough to support a tort claim. We conclude the Trial Court properly dismissed Reardon’s claims and affirm the order.

Citation: *Webster v. The University of Tennessee*, M2007-01975-COA-R3-CV (Ct. of Apl. Of Tenn. at Nashville, 2008).

Key Facts: Alanna Webster was a fourth-year student in the College of Veterinary Medicine at the University of Tennessee. She enrolled in a required class called Small Animal Orthopedics in the academic year of 2004-2005 and took the final exam on April 5, 2005. Sixty-eight other students took the exam with Webster. Dr. Sims filed charges against Webster alleging academic dishonesty that consisted of looking at another student’s paper.

Issues: Did the Trial Court properly apply the standard of review under Tenn. Code Ann. Section 4-5-322(h)?

Holding: In a proceeding held before an Administrative Law Judge, Webster was charged and found guilty of copying answers from a classmate’s paper on the final exam. Webster appealed to the Chancery Court and the Chancellor reversed the decision. The University appealed.

Reasons: Dr. Sims, the first witness to testify, stated that he taught a physiology class in 2002 in which he observed Webster looking at a student’s paper during the first exam. He consulted Dr. Brace about the issue, and they decided Webster should sit at a seat in the room where she could not observe another student’s paper again. No action was taken against Webster. Sims used statistical analysis and expert opinion to bolster his charge that Webster had cheated.

The Trial Court noted under Tenn. Code Ann. Section 4-5-322(h), that judicial review of an agency decision is confined to the administrative record. It also found that it could only reverse the agency's decision for errors that affected the merits of the decision. In addition, it found that UT erred by relying on statistical analysis and the prejudicial testimony of Dr. Sims. UT alleged that the Court applied Section 4-5-322(i) which says the Court can reverse the decision, but neglected to apply Section 4-5-322(h) which outlines the parameters under which such errors can occur. Tennessee Rules of Evidence 403 state that evidence can be excluded if it introduces prejudice. The Court held that Dr. Sims' testimony should have been withheld under Rule 403.

Disposition: The Court of Appeals vacated the judgment of the administrative proceedings and remanded for a new administrative proceeding before another administrative law judge. Dr. Sim's testimony could not be admitted into the new hearing nor could it be considered.

Citation: *Hall v. St. Mary's Seminary & University*, 608 F.Supp. 2d 679 (U.S. District Ct., Dist. of Maryland, 2009).

Key Facts: Lynne Hall matriculated in September of 2001 in pursuit of a Master of Arts degree at St. Mary's University. Ms. Hall claimed she was a qualified individual with an unspecified mental and physical disability that entitled her to reasonable accommodations, but that St. Mary's denied her those accommodations. Hall failed to specify the nature of her "physical and mental impairments" in her complaint. Specifically, Hall claimed that (1) St. Mary's denied her the right to inspect and amend her student records; (2) did not extend her time limit on academic work; (3) treated her with abusive and hostile conduct; (4) imposed disciplinary actions; (5) circulated "false" allegations of academic dishonesty; (6) placed her on

probation and suspension; (7) expelled her; and, (8) and circulated correspondence with false allegations of plagiarism. Hall also claimed gender discrimination by Dean Gorman, Fosarelli, and Grega. Ms. Hall also claimed that her expulsion had damaged her future career in the field of ethics.

In trying to establish a pattern of harassment, Hall asserted that in December of 2004, Dean Gorman traumatized her by publicly questioning her in a “loud and abusive tone” about her need for a service dog. On May 24, 2005, Hall alleged that Dean Gorman verbally abused her in front of faculty and administrators. On December 19, 2005, Hall alleged that Gorman interrupted a meeting between Hall and Professor Fossarelli in a public place on campus. In a letter dated November 15, 2006, Dean Gorman advised members of the faculty that Hall had committed plagiarism on a final paper.

Issues: Did the U.S. District Court err when it applied *res judicata* to determine the preclusive (disqualifying) effect of dismissal of Hall’s state suit?

Holding: Hall initially filed suit in the Baltimore City Circuit Court, seeking millions in damages based on defamation, libel, intentional infliction of emotional distress, and negligence. In addition, Hall made similar allegations against the University and Dean Gorman as those in the instant case. The Baltimore City Circuit Court dismissed the suit with prejudice on January 15, 2008, without written opinion. Hall brought suit in this Court against St. Mary’s, although she excluded the original individual defendants from this suit, alleging three federal causes of action and one additional state cause of action for breach of contract. St. Mary’s moved for dismissal of the Federal Complaint on grounds of *res judicata* and failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Reasons: Hall filed the original suit in the Baltimore City Circuit Court and sought millions of dollars in damages based on defamation, libel, emotional distress, and negligence. After the Circuit Court dismissed the claim, Hall filed the claim in the District Court on three federal causes of action and one additional state cause of action for breach of contract.

In order to survive a motion to dismiss under Fed. R. Civ. P. 12(b) (6), a plaintiff must state credible facts in support of the claim. Generally, a preclusive, or disqualifying, effect of a judgment in a state court is determined by state law. In Maryland, a party asserting defensive claim preclusion must demonstrate the following elements: the parties in the present litigation are the same or in concurrence with the parties in the earlier litigation; the claim presented in the current action is identical to the claim in the prior litigation; and, there was a final judgment on merits in the earlier suit.

This doctrine of preclusion is known as *res judicata* and it exists to prevent litigation for grounds of recovery that was previously available in the original courtroom. The purpose of *res judicata* is to encourage confidence in prior court proceedings so that the courts and courtroom participants are available to resolve other disputes.

Regarding the issue of identical claims, the standard in Maryland is whether the same evidence would sustain both suits (*Kutzik v. Young*, 1982). *Kutzik* also established that two suits that rely on the same facts will share an identity of claims . . . even if the suits are based on different legal theories.

In *Church v. Maryland* (2002), a dismissal with “prejudice” qualifies as a final judgment on merits, therefore satisfying the necessary requirement of *res judicata*.

In addition, Hall stated she filed her complaint to the Office for Civil Rights of the U.S. Department of Education (OCR) on October 13, 2006. OCR determined there was merit to her

claim under Section 504, but found no violation based on retaliatory conduct. Hall then submitted a request for reconsideration, which was denied on March 17, 2008. On May 12, 2008, Hall appealed to the Acting Deputy Secretary for Enforcement. On October 17, 2007, when she filed her state complaint, Hall could have raised both state and federal claims at the same time, but chose not to do so. Hall asked the Court to consider the general principles of “equity and fairness” and create an exception to the *res judicata* holdings. However, the Supreme Court made clear in *Federated Department Stores, Inc. v. Moitie* (1981) that “there is no general equitable exception” to the doctrine of *res judicata*.

Disposition: The U. S. District Court granted the University’s motion to dismiss the suit based on *res judicata*.

#### Analysis of Case Briefs

The researcher analyzed 74 cases in this study to determine first the issues, outcomes, and trends for court cases about academic dishonesty. In Table 1, the cases are itemized according to verdict favor. In Table 2, the type of institution is listed. In Table 3, the most significant legal issues are listed for each case. In Figure 1, the issues are shown by percentage within each decade. Figure 2 depicts a bar graph by type of institution with each decade. Cases by verdict with each decade are shown in Figure 3. Finally, Figure 4 shows the cases by issues with each decade.

Table 1

*Cases 1974-2009: Verdict Favor*

Year	Case Name	Verdict favor
1974	McDonald v. University of Illinois	Institution
1975	Garshman v. Penn State University	Institution
1975	Slaughter v. Brigham Young University	Institution
1976	Hill v. Indiana University	Institution
1978	Bd of Curators of U. of Missouri v. Horowitz	Institution
1978	Pride v. Howard University	Institution
1981	Clayton v. Princeton University	Institution
1982	Napolitano v. Princeton University	Institution
1982	Smith v. Gettysburg College	Institution
1983	Jones v. University of North Carolina	Student
1983	Lightsey v. U.S. Merchant Marine Academy	Student
1984	Corso v. Creighton University	Student
1984	Crook v. University of Michigan	Student
1984	Hall v. Medical College of Ohio	Institution
1984	Jaksa v. University of Michigan	Institution
1984	Mary M. v. University of New York	Institution
1984	Patterson v. University of Tennessee	Institution
1984	University of Houston v. Sabeti	Institution
1985	Clayton v. Princeton University	Institution
1985	Regents of the U. of Michigan v. Ewing	Institution
1985	Nash & Perry v. Auburn University	Institution
1987	Cosio v. Medical College of Wisconsin	Institution
1987	Crook v. University of Michigan	Institution
1987	Nash & Perry v. Auburn University	Institution
1988	Beilis v. Albany College of Union University	Institution
1989	Langston v. American College Testing	Institution
1989	University of Texas Medical v. Wall	Student
1990	Boehm and Stanik v. University of Pennsylvania	Institution
1990	Easley v. University of Michigan	Institution
1990	Florida State University v. Armesto	Institution
1990	Rauer v. University of New York	Institution
1990	Shuman v. University of Minnesota	Institution
1990	Vargo v. Hunt (Allegheny College)	Hunt (Institution)
1991	Abrahamian v. City University of New York	Institution
1992	Armesto v. Florida State University	Institution
1992	Hand v. New Mexico State University	Student
1992	University of Texas Medical v. Than	Student
1992	Weidemann v. State University of N.Y. College	Student
1993	Melvin v. Union College	Student
1994	Daley v. University of Tennessee	Institution

*(table continues)*

Year	Case Name	Verdict favor
1995	Kalinsky v. State U. of New York	Institution
1994	University of Texas Medical v. Than	Student
1995	Siblerud v. Colorado State University	Institution
1995	U. of Texas Medical School at Houston v Than	Student
1996	Carboni v. Doctors of Virginia Polytechnic Inst.	Institution
1997	Trahms v. Columbia University	Institution
1998	Gally v. Columbia University	Institution
1998	Childress v. Virginia Commonwealth U.	Institution
1999	Dean v. Wissmann (CMSU)	Institution
1999	Lyon College v. Gray	Institution
1999	Than v. U. of Texas Medical School at Houston	Institution
1999	Wheeler v. Texas Woman's University	Institution
2000	Bhandari v. Columbia University	Institution
2000	Cobb v. University of Virginia	Institution
2000	Papachristou v. University of Tennessee	Institution
2001	Basile. <i>et al</i> v. Albany College	Student
2001	Mercer v. University of Northern Colorado <i>et al</i>	Institution
2001	Morris v. Brandeis University	Institution
2002	Nawaz <i>et al</i> v. University of New York	Institution
2003	Chandamuri v Georgetown University	Institution
2003	Shepard v. George Mason University	Split
2004	Gupta v. Stanford University	Institution
2004	Pugel v. University of Illinois	Institution
2005	Atria v. Vanderbilt University	Split
2005	Chalmers v. Lane of University of Texas	Institution
2005	O'Connor v. The College of Saint Rose	Institution
2006	Brown v. State ex rel. State Bd. of Higher Ed	Institution
2006	Leiby v. University of Akron	Institution
2007	Bisong v. The University of Houston	Institution
2007	Kerr v. Board of Regents of U. of Nebraska	Institution
2007	Marten v. University of Kansas	Institution
2007	Reardon v. Allegheny College	Institution
2008	Webster v. University of Tennessee	Split
2009	Hall v. St. Mary's Seminary & University	Institution

Table 2

*Cases 1974-2009: Institution Type*

Year	Case name	Type
1974	McDonald v. University of Illinois	Public
1975	Garshman v. Penn State University	Public
1975	Slaughter v. Brigham Young University	Private
1976	Hill v. Indiana University	Public
1978	Pride v. Howard University	Private
1978	Bd of Curators of U. of Missouri v. Horowitz	Public
1981	Clayton v. Princeton University	Private
1982	Napolitano v. Princeton University	Private
1982	Smith v. Gettysburg College	Private
1983	Jones v. University of North Carolina	Public
1983	Lightsey v. U.S. Merchant Marine Academy	Private
1984	Corso v. Creighton University	Private
1984	Crook v. University of Michigan	Public
1984	Hall v. Medical College of Ohio	Public
1984	Jaksa v. University of Michigan	Public
1984	Mary M. v. University of New York	Public
1984	Patterson v. University of Tennessee	Public
1984	University of Houston v. Sabeti	Public
1985	Clayton v. Princeton University	Private
1985	Regents of the U. of Michigan v. Ewing	Public
1985	Nash & Perry v. Auburn University	Public
1987	Cosio v. Medical College of Wisconsin	Private
1987	Crook v. University of Michigan	Public
1987	Nash & Perry v. Auburn University	Public
1988	Beilis v. Albany College of Union University	Private
1989	University of Texas Medical v. Wall	Public
1989	Langston v. American College Testing	Public
1990	Boehm and Stanik v. University of Pennsylvania	Public
1990	Easley v. University of Michigan	Public
1990	Florida State University v. Armesto	Public
1990	Rauer v. University of New York	Public
1990	Shuman v. University of Minnesota	Public
1990	Vargo v. Hunt (Allegheny College)	Private
1991	Abrahamian v. City University of New York	Public
1992	Armesto v. Florida State University	Public
1992	Hand v. New Mexico State University	Public
1992	University of Texas Medical v. Than	Public
1992	Weidemann v. State Univ. N.Y. College at Courtland	Public
1993	Melvin v. Union College	Private
1994	Daley v. University of Tennessee	Public

*(table continues)*

Year	Case Name	Type
1994	University of Texas Medical v. Than	Public
1995	Kalinsky v. State U. of New York	Public
1995	Siblerud v. Colorado State University	Public
1995	U. of Texas Medical School at Houston v. Than	Public
1996	Carboni v. Doctors of Virginia Polytechnic Inst.	Public
1997	Trahms v. Columbia University	Private
1998	Gally v. Columbia University	Private
1998	Childress v. Virginia Commonwealth U.	Public
1999	Dean v. Wissmann (CMSU)	Public
1999	Lyon College v. Gray	Private
1999	Than v. U. of Texas Medical School at Houston	Public
1999	Wheeler v. Texas Woman's University	Public
2000	Bhandari v. Columbia University	Private
2000	Cobb v. University of Virginia	Public
2000	Papachristou v. University of Tennessee	Public
2001	Basile <i>et al</i> v. Albany College	Private
2001	Mercer v. University of Northern Colorado <i>et al</i>	Public
2001	Morris v. Brandeis University	Private
2002	Nawaz <i>et al</i> v. University of New York	Private
2003	Chandamuri v Georgetown University	Private
2003	Shepard v. George Mason University	Private
2004	Gupta v. Stanford University	Private
2004	Pugel v. University of Illinois	Public
2005	Atria v. Vanderbilt University	Private
2005	Chalmers v. Lane of University of Texas	Public
2005	O'Connor v. The College of Saint Rose	Private
2006	Brown v. State ex rel. State Bd. of Higher Educ.	Public
2006	Leiby v. University of Akron	Public
2007	Bisong v. The University of Houston	Public
2007	Kerr v. Board of Regents of U. of Nebraska	Public
2007	Marten v. University of Kansas	Public
2007	Reardon v. Allegheny College	Private
2008	Webster v. University of Tennessee	Public
2009	Hall v. St. Mary's Seminary & University	Private

Table 3

*Issues and Court Level*

Year	Case name	Court level	Issue
1974	McDonald v. University of Illinois	Fed. Ct. of Appeals – 7th	Due Process
1975	Garshman v. Penn State University	Fed. U.S. Dist – Penn.	Due Process
1975	Slaughter v. Brigham Young University	Fed. Ct. of Appeals -10Th	Due Process, Procedural, Breach of Contract
1976	Hill v. Indiana University	Fed. Ct. of Appeals – 7th	Due Process, Procedural
1978	Bd of Curators of U. of Missouri v. Horowitz	U.S. Supreme Ct.	Procedural
1978	Pride v. Howard University	State Appellate-Dist. Of Col.	Breach of Contract
1981	Clayton v. Princeton University	Fed. U.S. Dist.-New Jersey	Due Process, Procedural
1982	Napolitano v. Princeton University	St. Supreme Ct. – New Jersey	Due Process, Breach of Contract, Procedural
1982	Smith v. Gettysburg College	St. Claims Court – Penn.	Due Process, Procedural
1983	Jones v. University of North Carolina	Fed. Ct. of Appeals – 4th	Due Process, Procedural
1983	Lightsey v. U.S. Merchant Marine Academy	Fed. U.S. Dist. –New York	Due Process
1984	Corso v. Creighton University	Fed. Ct. of Appeals – 8th	Breach of Contract
1984	Crook v. University of Michigan	Fed. U.S. Dist. – Michigan	Due Process
1984	Hall v. Medical College of Ohio	Fed.Ct. of Appeals -6th	Due Process, Immunity
1984	Jaksa v. University of Michigan	Fed. U.S. Dist. – Michigan	Due Process
1984	Mary M. v. University of New York	Fed. Ct. of Appeals – 3rd	Due Process
1984	Patterson v. University of Tennessee	State Appellate-Tennessee	Due Process
1984	University of Houston v. Sabeti	State Appellate – Texas	Due Process
1985	Clayton v. Princeton University	Fed. U.S. Dist. – New Jersey	Due Process
1985	Nash & Perry v. Auburn University	Fed. U.S. Dist. – Alabama	Due Process
1985	Regents of the U. of Michigan v. Ewing	U.S. Supreme Court	Procedural
1987	Cosio v, Medical College of Wisconsin	Fed. Ct. of Appeals – 8th	Due Process, Negligence
1987	Crook v. University of Michigan	Fed. Ct. of Appeals – 6th	Due Process
1987	Nash & Perry v. Auburn University	Fed. Ct. of Appeals – 11th	Due Process
1988	Beilis v. Albany College of Union University	Fed. Ct. of Appeals – 3rd	Due Process
1989	Langston v. American College Testing	Fed. Ct. of Appeals – 11th	Due Process, Libel, Slander, Breach of Contract
1989	University of Texas Medical v. Wall	State Appellate – Texas	Due Process, Breach of Contract
1990	Boehm and Stanik v. Univ. of Pennsylvania	State Supreme Ct. – Penn.	Breach of Contract
1990	Easley v. University of Michigan	Fed. Ct. of Appeals – 6th	Conflict of Interest
1990	Florida State University v. Armesto	State Appellate – Florida	Due Process
1990	Rauer v. University of New York	Fed. Ct. of Appeals – 3rd	Due Process
1990	Shuman v. University of Minnesota	State Appellate – Minn.	Due Process, Breach of Contract
1990	Vargo v. Hunt (Allegheny College)	State Supreme Ct. – Penn.	Immunity
1991	Abrahamian v. City University of New York	Fed. Ct. of Appeals – 1st	Article 78
1992	Armesto v. Florida State University	State Appellate – Florida	Due Process, Procedural
1992	Hand v. New Mexico State University	Fed. Ct. of Appeals – 10th	Procedural
1992	University of Texas Medical v. Than	State Appellate – Texas	Due Process
1992	Weidemann v. State Univ. N.Y. College at Courtland	Fed. Ct. of Appeals – 3rd	Article 78

*(table continues)*

Year	Case name	Court level	Issue
1993	Melvin v. Union College	Fed. Ct. of Appeals – 2nd	Breach of Contract, Article 78
1994	Daley v. University of Tennessee	State Appellate – Tenn.	Tenn. Code
1994	University of Texas Medical v. Than	State Appellate – Texas	Procedural
1995	Kalinsky v. State U. of New York	Fed Ct. of Appeals – 3rd	Due Process, Article 78
1995	Siblerud v. Colorado State University	Fed. Dist. Ct. – Colorado	Due Process, 1st Amendment
1995	U. of Texas Medical School at Houston v. Than	St. Supreme Ct. – Texas	Procedural,
1996	Carboni v. Doctors of Virginia Polytechnic Inst.	Fed. Dist. Ct. – Virginia	Due Process, Immunity
1997	Trahms v. Columbia University	State Supreme Ct. – N. Y.	Article 78
1998	Childress v. Virginia Commonwealth U.	Fed. Dist. Ct. – Virginia	ADA
1998	Gally v. Columbia University	Fed. Dist. Ct. – N.Y.	Breach of Contract
1999	Dean v. Wissmann (CMSU)	Fed. Appellate – Missouri	Libel, Immunity
1999	Lyon College v. Gray	Fed. Appellate – Arkansas	Breach of Contract
1999	Than v. U. of Texas Medical School at Houston	State Appellate – 5th	Procedural
1999	Wheeler v. Texas Woman’s University	State Appellate – 5th	Due Process, Equal Protection
2000	Bhandari v. Columbia University	Fed. Dist. Ct. – N.Y.	Procedural
2000	Cobb v. University of Virginia	Fed. Dist. Ct. – Virginia	Due Process, Equal Protection, Defamation
2000	Papachristou v. University of Tennessee	Fed. Appellate – Tenn.	Tenn. Code
2001	Basile <i>et al</i> v. Albany College	State Supreme – N.Y.	Article 78
2001	Mercer v. University of Northern Colorado <i>et al</i>	State Appellate – 10th	Due Process, Tort, Defamation
2001	Morris v. Brandeis University	State Supreme Ct. – Mass.	Breach of Contract, Negligence
2002	Nawaz <i>et al</i> v. University of New York	Fed. Appellate – 4th	Article 78
2003	Chandamuri v Georgetown University	Fed. Dist. Ct. – Dist. Of Col.	Procedural, Retaliation
2003	Shepard v. George Mason University	Fed. Appellate – 4th	Immunity, Procedural
2004	Gupta v. Stanford University	Fed. Dist. Ct. – California	Procedural
2004	Pugel v. University of Illinois	Fed. Appellate – 7th	Procedural
2005	Atria v. Vanderbilt University	Fed. Appellate – 6th	Procedural
2005	Chalmers v. Lane of University of Texas	Fed. Dist. Ct. – Texas	Breach of Contract
2005	O’Connor v. The College of Saint Rose	Fed. Dist. Ct. – N.Y.	Procedural, Discrimination
2006	Brown v. State ex rel. State Bd. of Higher Educ.	State Supreme – N. Dakota	Procedural
2006	Leiby v. University of Akron	Fed. Appellate – 10th	Procedural
2007	Bisong v. The University of Houston	Fed. Dist. Ct. – Texas	Procedural
2007	Kerr v. Board of Regents of U. of Nebraska	Fed. Dist. Ct. – Nebraska	Procedural
2007	Marten v. University of Kansas	Fed. Appellate – Kansas	Procedural
2007	Reardon v. Allegheny College	State Supreme Ct. – Penn.	Procedural
2008	Webster v. University of Tennessee	Fed. Dist. Ct. – Tenn.	Tenn. Code
2009	Hall v. St. Mary’s Seminary & University	Fed. Dist. Ct. – Maryland	Breach of Contract

### *Due Process*

There were 74 cases researched in this study and 59 of those decisions were in favor of the institution, 12 were in favor of the student, and 3 were split decisions between the institution

and the student (Table 1). In the 12 cases that were ruled in favor of the student, 8 were classified as having due process issues: *Jones v. University of North Carolina* (1983), *Lightsey v. U.S. Merchant Marine Academy* (1983), *Crook v. University of Michigan* (1984), *University of Texas Medical v. Wall* (1989), and *University of Texas Medical v. Than* (1992, 1994 & 1995); and *Mercer v. University of Northern Colorado* (2001). Three of the student-won cases involved the New York court system and Article 78 issues: *Weidemann v. State University of N.Y. College* (1992), *Melvin v. Union College* (1993), and *Basile et al v. Albany College* (2001). *Corso* (1984), *Wall* (1989), and *Melvin* (1993) dealt with breach of contract issues. One case with a verdict in favor of the student involved the issue of due process rights as well as the issue of a statute of limitations: *U. of Texas Medical School v. Than* (1995). *Jones v. U. of North Carolina* (1983) dealt with procedural issues. In addition to due process issues, *Mercer v. University of Northern Colorado* (2001) contained tort and defamation issues.

*Goss v. Lopez* (1975) dealt with high school students, and at least one junior high school student, who were suspended from the Ohio public school system for a minimum of 10 days for participating in widespread unruly activities. The activities that the students allegedly participated in did not all occur on the property where they actually attended school, but because no one from the schools testified concerning the incidents, the records do not reveal exactly what actions the students committed that were unruly, nor what process the principals used to make decisions. The nine students filed action under 42 U.S.C. §1983 against the Columbus Board of Education and various administrators. The complaint sought to enjoin the officials from issuing future suspensions and to require them to remove references to the past suspensions from the students' records. None of the students were given an opportunity to attend a hearing, nor were they allowed to tell their side of the story or question witnesses. The U.S. Supreme Court ruled

that the student's due process rights were violated, and the case became a precedent for requiring that educational institutions afford students due process rights during misconduct proceedings.

In *Jones* (1983), the student won because the balance of hardships were in her favor. The U. S. Court of Appeals for the 4th circuit affirmed the District Court's preliminary injunction in favor of Jones because she would suffer far more substantial injury if the injunction were dissolved and she was found innocent, than if she were ultimately found innocent and the injunction stands. The ruling stated that Jones had to be allowed to register for a subsequent semester.

In *Lightsey* (1983), the District Court said the matter at hand was disciplinary in nature, not academic in nature. Therefore, the procedural requirement was greater in this case than it would have been in an academic procedure. While the Honor Board satisfied the due process requirements by allowing a fair hearing, informing Lightsey of the charges and allowing him to present evidence and witnesses, the Academy chose to ignore the Board's findings. Therefore, the Academy acted in an arbitrary and capricious manner, and the student won.

A third case involving due process in which the student won is *Crook v. University of Michigan* (1984). In that case, the U. S. Court of Appeals applied the three-pronged test to establish how much due process was required. The first test was whether a private interest would be affected. Crook testified that his future promotions were in jeopardy because of the revocation of the degree. Crook's dignity and reputation were destroyed by the University's action. The second prong of the test was to measure the risk of deprivation caused by the procedures. Crook was not given adequate notice of the charges, he was not allowed to cross-examine witnesses, and he was not given the chance to present evidence on his behalf. The third prong was to measure the burdens of the safeguards the action would require. The Court found that rescinding

a degree did not present a fiscal or administrative burden to the University. It also stated that if the University were to allow faculty to act arbitrarily, or in bad faith, its reputation would be damaged as much as the student's reputation was damaged by losing his degree.

In *U. of Texas Medical v. Wall* (1989), the Trial Court ruled that the University denied due process when it told the student he could agree to the penalty and continue to be enrolled, but then assigned him a grade of "F" and suspended him for one semester. The University also improperly applied its written policies and procedures by basing the "F" grade on non-academic reasons. The Court of Appeals affirmed the lower court ruling in favor of the student.

Three of the trials in which the verdict was held in favor of the student involved the parties of *University of Texas Medical v. Than* and were tried in different years (1992, 1994, & 1995). In the first appeal of *University of Texas Medical v. Than* (1992), the Court of Appeals ruled that Than had to be allowed to participate in graduation exercises because Than was denied the right to cross-examine all witnesses against him, and was not given notice that his performance on a psychiatry exam would be presented at the hearing. After the hearing was over, the hearing officer visited the classroom where the exam took place and then relied heavily on that visit to make his recommendation on the case. The Court of Appeals ruled Than was denied due process.

In the next Than trial (1994), the University medical school appealed the District Court's opinion, and the Court of Appeals affirmed the ruling of the District Court.

In the 1995 *Than* trial, the issue concerned proceedings where the University argued on appeal that Than was dismissed from the University for academic reasons instead of disciplinary reasons, and that the lower court erred in ruling in favor of the student. The Court of Appeals disagreed. The Court said Than was denied due process when he was not notified of the

charges against him in a timely manner, or given the names of witnesses who testified against him.

In *Mercer v. University of Northern Colorado* (2001), the issues were due process, tort, and defamation. The evidence proved the student plagiarized, and that the plagiarism allegations had not been published, which precluded the claims for state-law defamation and due process liberty issues. In addition, the student did not satisfy the Colorado Governmental Immunity Act's notice of claim requirement as to tort claim. This Court affirmed the ruling of the lower court that the University could dismiss the student from the graduate program.

There were five non-due process issue cases that students won. In the case of *Jones v. University of North Carolina* (1983), the court said if the "balance of hardships" favor the plaintiff, an injunction preserving the status quo should be issued. In light of the standards mentioned, the Court said the balance of hardships weighed heavily in favor of Jones. The District Court noted that without an injunction, Jones would suffer irreparable injury because she would not be allowed to take courses during the Spring, which would delay her graduation and cause a lapse in her education that she will have to explain throughout her professional life; and, she will not be able to continue her education with her peers. Jones would suffer far more concrete injury than the University would sustain even if she is ultimately vindicated of all charges. The University admitted that the Student Council's hearing was so flawed that it was set aside by the University administration, and another hearing was requested. A second hearing resulted in the charge of not guilty and was either "reversed" or "disregarded" by a University officer.

In *Corso v. Creighton University* (1984), the U. S. Court of Appeals affirmed the District Court's ruling that a breach of contract had occurred because Corso was not allowed a hearing

before he was expelled. Corso had to prove the University breached its contract with him by proving that the University did not follow its own handbook. The District Court also held that Corso was expelled for a non-academic offense, lying, instead of the actual cheating offense. The Court of Appeals disagreed, and said the two issues could not be separated. The Court of Appeals also ruled any interpretation of contract law must be governed by Nebraska law. An injunction was filed against the University to keep them from expelling Corso.

A second non-due process case, which was filed on procedural matters, occurred in *Hand v. New Mexico State University* (1992), where the issue was whether or not the Board of Regents violated a New Mexico statute when they revoked the degree. The court considered it self-evident that a university acting through a Board of Trustees or Regents does have the inherent authority to revoke an improperly awarded degree where good cause is shown and the degree-holder is afforded a fair hearing. The Board of Regents approved the procedures that were followed but did not have any involvement in the revocation process. The Board was not consulted about the revocation of Hand's degree, nor was there any procedure identified in which the Board would oversee such a proceeding. In addition, the student was not given the opportunity to attend a hearing before the Board. To be in compliance with the statute, the Board of Regents had to exercise final authority. Since they did not, the revocation of the degree was void.

In a third non-due process case, *Weidemann* (1992), the issue was an Article 78 proceeding. Article 78 of the New York Civil Practice Laws and Rules gives someone the right to file an appeal in the New York court system on decisions made by government agencies. In this case, Weidemann said the University did not abide by their published rules of procedure and the court agreed. Weidemann did not receive proper notice of the evidence, he had no

meaningful opportunity to prepare for defense against the evidence, and he had no chance to offer rebuttal of the evidence.

A fourth non-due process case, *Melvin* (1993), involved the issue of a breach of contract and Article 78 procedures. The court ruled that the University did breach the contract with the student by failing to conform to the disciplinary guidelines set forth in the student handbook.

The fifth non-due process case, *Basile et al. v. Brandeis University* (2001), also dealt with the issue of Article 78. As mentioned in *Weidemann* (1992), Article 78 proceedings occur in the state of New York. In *Basile*, the Supreme Court of New York, Appellate Division, held that the Supreme Court did not have a rational basis on which to conclude the students cheated. The statistical case presented by the professors was based on false assumptions, and a review of the allegations revealed the anonymous notes to be hearsay or speculation. The review also revealed that the three students were each in separate rooms under the supervision of a proctor when the exams were taken.

There were 29 cases with due process issues that were won by the institution: *McDonald v. University of Illinois* (1974), *Garshman v. Penn State University* (1975), *Slaughter v. Brigham Young University* (1975), *Hill v. Indiana University* (1976), *Clayton v. Princeton University* (1981), *Napolitano v. Princeton University* (1982), *Smith v. Gettysburg College* (1982), *Hall v. Medical College of Ohio* (1984), *Jaksa v. University of Michigan* (1984), *Mary M. v. University of New York* (1984), *Patterson v. University of Tennessee* (1984), *University of Houston v. Sabeti* (1984), *Clayton v. Princeton University* (1985), *Nash & Perry v. Auburn University* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Crook v. University of Michigan* (1987), *Nash & Perry v. Auburn University* (1987), *Beilis v. Albany College of Union University* (1988), *Langston v. American College Testing* (1989), *Florida State University v.*

*Armesto* (1990), *Rauer v. University of New York* (1990), *Shuman v. University of Minnesota* (1990), *Armesto v. Florida State University* (1992), *Kalinsky v. State U. of New York* (1995), *Siblerud v. Colorado State University* (1995), *Carboni v. Doctors of Virginia Polytechnic Institute* (1996), *Wheeler v. Texas Women's University* (1999), *Cobb v. University of Virginia* (2000), and *Mercer v. University of Northern Colorado* (2001).

As we reflect on the discussion in chapter 2, by Bricault (1998), of the legal perspective of public v. private institutions, we would expect to see the due process issues appearing in cases involving only public universities and colleges. However, the reality of our analysis shows us that due process allegations also appear as issues in private institutions, as evidenced by the seven court case proceedings in this analysis that occurred at private schools.

In *Slaughter v. Brigham Young University* (1975), the student submitted two articles for publication under his own name that were not published. He resubmitted the same articles and included the name of his advisor, Professor Thorne, as a co-author, without the knowledge of the professor. A hearing was held and the student was expelled for violating the Student Code of Conduct. The student filed suit for due process rights, breach of contract rights, and procedural postures. The U.S. Court of Appeals found that there was an adequate hearing based on the fact that the student was allowed to participate in the process, present his case, and hear witnesses. The court further stated that the appropriate university authority acted on behalf of the institution and procedural due process was afforded. There was no evidence to support the breach of contract complaint, because the lower court had assumed the student would have finished his academic requirements. However, upon expulsion, the student could not finish his oral examination or his dissertation, so no contract existed. The procedural issues were dismissed

because the Appeals Court held that the federal court could only review due process decisions, and the federal court could not decide a case if the findings contained substantial evidence.

In *Clayton v. Princeton University* (1981), the student was found guilty of cheating on a “lab practical” examination by the Princeton Honor Committee. Clayton was suspended for 1 year, and, upon his return, filed suit challenging that his due process rights were violated by not being able to utilize his advisory counsel sufficiently and appearing before an inappropriate committee for his hearing. The Appeals Court said its decision was greatly influenced by the New Jersey law of associations, where situations of contract rights, property rights, and personal freedom rights create a bond similar to the student-university relationship. The two material disputes involved whether or not the student had sufficient representation by his appointed advisor and whether the Honor Committee was the appropriate body to hear the dispute. The Court decided that all the facts presented concerning the hearing before the Honor Committee would best be developed during a trial, and that because the student chose not to pursue claims under the Fifth Amendment, the University was granted summary judgment on the due process issue.

In *Napolitano v. Princeton University* (1982), Gabrielle Napolitano was accused of plagiarism. The Faculty-Student Committee on Discipline (COD) found her guilty and voted to withhold her degree for 1 year, which was considered a less-severe penalty than suspension. Upon appeal, the president of Princeton upheld the decision of the COD, and Napolitano filed suit seeking injunctive relief. The issues involved New Jersey Constitutional limits on due process rights and breach of contract. The court looked at private law for this case based on the rights of members of private organizations, and determined that an academic institution did not have to conduct a courtroom-like hearing. The court also held that Napolitano was not entitled to

extra due process rights provided by the state constitution that were not provided by the federal constitution, and the university could hold her to a high standard due to her being one of the top students in her class.

In the case of *Smith v. Gettysburg* (1982), the student was accused of plagiarism and pled guilty to the charge. The handbook stated that a student who pled guilty may receive a failing grade in the course and the transcript would reflect that failing grade, but no further action would be taken, if the student rendered the plea within 24 hours of the charge. The status of Smith's financial aid agreement was changed from a student grant to a student loan, causing Smith to argue that his due rights were violated, even though he could not produce evidence of tax support or a mutually-beneficial relationship between the college and any governmental agency. The Court stated that due process rights are triggered by state action, and that performance of an educational process was not sufficient to constitute an action considered to be an official state action. The Court further ruled that the financial aid issue could be separated from the due process issue, and that the Court had no right to bind the college to make and enforce financial aid regulations. The Court also ruled that the college had the right to change catalogue information and the definition of plagiarism as it saw the need to do so.

The Courts revisited *Clayton v. Princeton* in 1985, and stated that the courts should review disciplinary actions taken by institutions of higher education in an academic disciplinary case. The Court agreed it was "unfortunate" that the Honor Committee lost its records of the hearings and decisions prior to Clayton, but that did not violate Princeton's established procedures or Clayton's rights. Appropriate records were kept of the Clayton hearing, and the Committee relied on its corporate memory of past proceedings to reach a verdict for Clayton, while using sound judgment. Clayton's appointed advisor presented all of the pertinent facts, and

defended Clayton as best he could. The U.S. District Court held that Princeton treated Clayton with fundamental fairness and afforded him all his due process rights.

In the case of *Cosio v. Wisconsin* (1987), Cosio was dismissed for failing to meet academic requirements. He filed suit alleging breach of contract, negligence, and due process violations. Cosio claimed due process violations based on his dismissal, which he claimed was arbitrary since the college tolerated other students' cheating on examinations. In reality, however, the termination was for unsatisfactory academic performance. The Court ruled the test for arbitrary and capricious dismissal is based on whether or not the dismissal has its roots in sufficient evidence of poor academic performance. The breach of contract issue was rejected by the court because it said the college had no obligation to monitor exams; therefore, a contract did not exist.

In *Beilies v. Albany Medical College* (1988), the female student was accused of cheating on two separate occasions. She was found guilty on both counts. She was given a penalty of a 1-year leave of absence, and subsequently filed suit alleging due process violations. The Supreme Court of Albany County found that the university's decision was arbitrary and capricious and therefore violated Beilies' rights. The Supreme Court Appellate Division found that the college complied with the Student Honor Code. She was given notice of the charge, presented with evidence at a hearing, and was allowed to confront and cross-examine witnesses. The Appellate Court ruled that students at a public university are entitled to due process rights, but students in a private university are only entitled to such rights if they prove the State involved itself in what would otherwise be deemed a private activity. There was no demonstration in this case of such action to invoke state constitutional due process rights. State financial assistance alone was not sufficient to permit court involvement in a school's disciplinary proceedings. In addition, the

Supreme Court Appellate said because Beilis was found guilty of cheating on two separate occasions the punishment of a 1-year leave was neither harsh nor shocking.

In chapter 2, the researcher established that *Goss v. Lopez* (1975) was a landmark case in considering due process cases involving student disciplinary action. Although it was not included in the 74 cases directly analyzed in chapter 4, because it did not involve students in higher education, the precedent it set is crucial to the foundation of analyzing a 35-year trend. In *Goss*, the court held that a student is entitled to oral or written notice of a charge, an explanation of the evidence, and a chance to present his or her side of the story. In disciplinary cases, which can include academic dishonesty cases, some type of hearing must be held before a student is suspended or dismissed, and the hearing needs to be conducted as soon as possible after the action occurs. Conversely, it should be noted that *Bd. of Curators v. Horowitz* (1978) held that a hearing is not required prior to the dismissal of a student for academic reasons.

### *Breach of Contract*

There were 15 cases involving breach of contract, 12 of which were won by the institutions. The three cases won by students were *Corso v. Creighton University* (1984), *University of Texas Medical v. Wall* (1989), and *Melvin v. Union College* (1993). In *Corso* (1984), the District Court found that Corso was expelled for a non-academic reason and that the University breached its contract with Corso by not adhering to its own procedures for a non-academic offense. The Appeals Court held that the expulsion was based on lying about cheating, not the actual cheating offense, but the two issues could not be treated separately; therefore, the reason should have been academic. However, the Appeals Court agreed that the University breached the contract because it did not adhere to the policies published in the Creighton

University Handbook for Students, which stated that any student who commits a misconduct that results in a serious penalty is entitled to a hearing before the University Committee on Student Discipline. The University argued that the Handbook allowed non-academic misconduct cases to be handled differently than academic misconduct cases, and they had the right to deny Corso a hearing. However, the Court of Appeals ruled that where general and specific terms of a contract may relate to the same issue, the more specific provision should be followed.

In *Wall* (1989), the students were seeking three things: declaratory judgment, damages under §1983, and a permanent injunction enjoining the University from expelling the students. The University alleged that there was no evidence to support the Trial Court findings, and that the Court overruled a disciplinary penalty. Appellate review of an order for a temporary injunction is limited strictly to determining whether there has been a clear abuse of discretion by the Court in preserving the status quo.

The University sought to establish that it has a legally vested right worthy of protection, that the students do not have a right to attend classes, and that the students have not established a probable right to win the lawsuit. The Court of Appeals overruled those first three points presented by the University. The next two points the University sought to prove were that the District Court overruled the penalty imposed by the University and said the University did not act capriciously or unlawfully. The Court of Appeals also overruled these two points. The next two points that the Appeals Court considered were that the University did not deny the students due process and that the University acted within the limits of the Regents' Rules as adopted by the University's Medical Branch. There is evidence that the Rules were improperly applied or that discipline was administered outside the Rules because the ultimate test of due process is the presence of fair play. The University claimed the disciplinary process was administrative and

does not fall under the responsibility of the faculty. However, the facts prove that the faculty played a prominent part in the disciplinary action in this case. These two points were therefore overruled by the Appeals Court. Still another point that the University argued in the case was that the failing grade penalty was not motivated by non-professional judgment. In reality, the faculty member testified that his decision to assign a failing grade was prompted by his belief that other cheating had in fact occurred, which was a non-academic reason. A final point introduced by the University was the students presented no evidence they would be irreparably harmed by the penalty. In fact, the students would lose one year of class work and in all likelihood they would experience a stigma that would negatively affect their career goals. This argument was also overruled. The Court of Appeals affirmed the Trial Court's ruling in favor of the student.

In *Melvin* (1993), the student originally alleged breach of contract, but the University moved to have the action classified as an Article 78 issue, and the New York State Supreme Court agreed. Melvin was accused of academic dishonesty on a chemistry exam. A disciplinary hearing was held which resulted in Melvin receiving a failing grade and a two-semester suspension. She filed suit alleging breach of contract due to the University's failure to follow the disciplinary guidelines in the student handbook, and asking for a preliminary injunction barring the suspension. Melvin won the case but it was ultimately based on an Article 78 issue and not breach of contract.

Again, as referenced in chapter 2, when we consider the premise that public institutions are bound by state and federal statutes, state constitutions, and the United States constitution, but private institutions are typically bound by contract law instead of constitutions, we see a pattern emerging whereby both public and private institutions are dealing with the legal issue of breach

of contract. In this case analysis, there were two public universities that faced the issue of alleged breach of contract: *University of Texas Medical v. Wall* (1989), and *Shuman v. University of Minnesota* (1990). In *Wall* (1989), the case involved twin brothers who were accused of cheating by collaborating in writing a paper that they both turned in for separate credit. They admitted they cheated, but declined to waive a hearing. The brothers appealed the sanction imposed by the hearing officer, and the sanction was reduced by the president. They were given a grade of “F” and were dropped from the University’s roster. They filed suit asking for an injunction. The District Court granted the injunction and the university appealed. The brothers sought to establish a protectable interest by alleging the university had breached a contract with them to finish school. The university sought to establish that it had a legally vested right of protection and that the students did not have a right to attend class. The Appellate Court said it would not substitute its judgment for the Trial Court’s decision, but only had to determine whether the action taken was arbitrary and exceeded the limit of reasonable discretion. In addition, the Appellate Court ruled that there was sufficient evidence the students would suffer injury and could show probable right of recovery. The Trial Court’s ruling in granting the temporary injunction was affirmed.

In the case of *Shuman v. U. of Minnesota* (1990), Craig Shuman and Joseph Shasky submitted identical papers for a research assignment. The professor advised the students to do their own work, but the students submitted identical papers for another assignment at a later date. The professor turned the matter over to the Law School Council who found no probable cause to suspend the students. The students petitioned the Dean for permission to honorably withdraw from school with guaranteed readmission. The faculty denied the request. The faculty revoked the Honor Code, and imposed a new Code that revoked the right of students to enforce the Code

and gave the right of enforcement to faculty. The Council asked the faculty to reinstate the old Code, which they did. The Council met again to address the cheating issue, this time with the students and their counsel present. The new faculty investigator gave the Council copies of the papers in question, and the Council voted 8t to 0 to uphold the finding of probable cause. The Honor Review Board dismissed the case. Upon appeal, the Grievance Committee reversed the review board and remanded the case to the Review Board for a hearing on merits. After the Trial Court denied a restraining order, the Review Board found the students guilty of violating the honor code and they were suspended for 1 year. Shuman and Shasky based their breach of contract claim on the fact that a contract was formed based on the Honor Code. However, the court ruled that in the absence of evidence of bad faith on the part of the school in revoking and reinstating the honor code with a new investigator, there can be no breach. Therefore, the adoption of a new Honor Code did not constitute a breach of contract.

#### *Article 78*

There were 7 cases based on the issue of Article 78, which provides for procedures for parties seeking relief from administrative actions by governmental agencies or groups allowed to make decisions within private entities. Three of those cases were won by the student:

*Weidemann* (1992), *Melvin* (1993), and *Basile* (2001).

As previously stated, Article 78 of the New York Civil Practice Laws and Rules gives someone the right to file an appeal in the New York court system on decisions made by government agencies. It provides a review of actions to determine whether an agency abided by its own rules and acted in good faith. In *Weidemann* (1992), the student said the University did not abide by their published rules of procedure and the court agreed. Weidemann did not receive

proper notice of the evidence, he had no meaningful opportunity to prepare for defense against the evidence, and had no chance to offer rebuttal of the evidence. The determination to dismiss the student was annulled and remitted for a new hearing.

*Melvin* (1993) involved the issues of a breach of contract and Article 78 procedures. The court ruled that the University did breach the contract with the student by failing to conform to the disciplinary guidelines set forth in the student handbook. The Supreme Court improperly denied the student her motion for a preliminary injunction. There was also a factual dispute as to whether the University followed the disciplinary guidelines as set forth in the Student Handbook.

In *Basile* (2001), the determination of the student's guilt was based solely on statistical evidence presented by an expert statistician. The Supreme Court, Appellate Division, held that the standard for breach of contract violation is whether or not a decision was based on arbitrary or capricious action. The judgment of expelling the student was ordered reversed and the petition granted.

#### *Procedural Issues and Breach of Contract Issues*

There were several other issues in the academic dishonesty cases that were all awarded to the institution. Twenty-one cases won by the institutions concerned only procedural issues:

*Slaughter* (1975), *Hill* (1976), *Horowitz* (1978), *Clayton* (1981), *Napolitano* (1982), *Smith* (1982), *Armesto* (1992), *Ewing* (1985), *Than* (1999), *Bhandari* (2000), *Chandamuri* (2003), *Gupta* (2004), *Pugel* (2004), *Chalmers* (2005), *O'Connor* (2005), *Brown* (2006), *Leiby* (2006), *Bisong* (2007), *Kerr* (2007), *Marten* (2007), and *Reardon* (2007).

Fourteen cases involved breach of contract and 10 of them were won by the institution: *Slaughter* (1975), *Pride* (1978), *Napolitano* (1982), *Langston* (1989), *Boehm & Stank* (1990),

*Shuman* (1990), *Gally* (1998), *Lyon College* (1999), *Morris* (2001), and *Hall* (2009). One case involving both procedural and breach of contract issues, *Atria* (2005), contained a split verdict.

### *Other Issues*

Two cases were won by the institutions based on procedural issues specific to the Tennessee Code: *Daley* (1994) and *Papachristou* (2000). In *Daley*, the issue before the court was that the administrative judge did not issue his initial order within 90 days after the proposed finding of fact. The Court of Appeals of Tennessee affirmed the Chancery Court ruling that said the 90-day requirement in Tennessee Code Ann. §4-5-314(g) was to be used as a directive and not a mandate, and that the failure to meet the 90-day requirement would not automatically nullify the administrative law judge's decision. In *Papachristou*, the issue before the court was that the student claimed the Trial Court did not properly apply the standard of review of the Tennessee Code. The Court of Appeals of Tennessee ruled that Trial court erred in finding that the Chancellor's decision was not supported by substantial and material evidence. The Chancellor found enough evidence to determine that Papachristou violated the Honor Code.

Four verdicts were awarded to the institution based on immunity claims: *Hall* (1984), *Vargo* (1990), *Carboni* (1996), and *Dean* (1999). In *Hall*, the issue was whether or not the Medical College of Ohio was an arm of the state and thereby entitled to immunity or was it merely a political subdivision with no immunity. The U.S. Court of Appeals found that the Medical College of Ohio did not have a "legal personality" separate from the State, was in fact an arm of the state, and was entitled to immunity. The school officials were also entitled to immunity in their official capacity. In *Vargo*, the immunity issue was one of immunity on the part of a fellow student who turned Vargo in for cheating. The Superior Court said an occasion is

conditionally privileged when the circumstances are such that one or several persons have a common interest in a particular subject matter and believe the facts should be shared with those persons. The college community had a legitimate common interest in continuing a policy of honesty in the classroom. The Superior Court affirmed the ruling that student Christina Hunt was conditionally privileged and had immunity under the Honor Code to disclose the cheating behavior of another student. In *Carboni*, the issues were whether or not Virginia Polytechnic Institute (VPI) was an arm of the state and if the representatives of the University who conducted a strip search entitled to qualified immunity. The court found that VPI was identical to William and Mary College based on a prior ruling, and therefore was considered an arm of Virginia. In addition, the U.S. District Court found that since the representatives of the University had every reason to suspect that Carboni cheated, they were reasonable in conducting a search. The Court ruled that VPI was entitled to summary judgement based on qualified immunity. Finally, in *Dean*, the issue was whether Professor Wissman's letter to the Vice-President of Student Affairs qualified as intra-corporate communication protected by immunity. One of the essential elements of libel is publication, and both the Trial Court and the Appeals Court ruled that a professor's letter to a superior administrator did not represent a publication. The Court further held that there was no evidence that anyone other than the intended recipient saw the correspondence.

Four cases based on procedural law specific to the state of New York and Article 78 were won by institutions: *Abrahamian* (1991), *Kalinsky* (1995), *Trahms* (1997), and *Nawaz* (2002). In *Abrahamian*, the question was whether the case contained sufficient evidence of a procedural violation under Article 78. The Supreme Court, Appellate Division, confirmed the finding of the Supreme Court, N.Y. County, that found the students sitting on the Hearing Committee were properly selected by the President in accordance with the by-laws. In addition, *Abrahamian's*

claim that the suspension was not based on a majority was hearsay. There was also no evidence of predetermination of guilt attributed to the pre-hearing advice by the director of student services. In *Kalinsky*, the issue involved the statute of limitations in Article 78. Kalinsky filed an Article 78 proceeding on October 3 and the petition was dismissed as jurisdictionally defective. The trial began December 5, and the University sought to have it dismissed as untimely. Kalinsky claimed that because she received notice in June and her counsel received notice in August, that the statute of limitations did not begin to run until her counsel was notified. The Supreme Court rejected that charge and found the proceeding time barred. After reassessment, the Supreme Court adhered to its original decision, but the Supreme Court Appellate Division reversed that decision. In *Trahms*, the issues under Article 78 were did Trahms receive adequate notice of his hearing before the Honor Board and did the University follow its published guidelines. The Supreme Court of New York County ruled that Trahms did not receive adequate notice of the hearing and the University appealed. The Supreme Court, Appellate Division, said that Trahms did in fact receive adequate notice and that a literal recording of the Honor Board hearing was not required. The higher court reversed the decision of the Supreme Court and let the university's decision to expel Trahms for plagiarism stand. In *Nawaz*, the issue was whether the university violated procedural requirements during the hearing process. The students in the case alleged that the University failed to begin formal proceedings against them within 10 business days of the incident, as required in the student handbook. The Supreme Court, Appellate Division, ruled that the University substantially adhered to the timeframe set forth in the handbook by beginning formal proceedings within 33 days of the incident. The delay resulted from the fact that the university sought statistical analysis of the test scores before they

proceeded on potentially baseless charges. In addition, the students waived their claim to due process rights when they failed to exhaust their administrative remedies.

One case based on American Disabilities Act (ADA) claims was won by the institutions: *Childress* (1998). In *Childress*, the student was charged with plagiarism in April and found guilty in July by the Virginia Commonwealth University (VCU) Honor Council. In September, Childress brought claims in state court alleging slander, but dropped his lawsuit 1 month later and filed suit in District Court. In May of 1998, Childress dropped all complaints except the state and federal statutes protecting individuals with disabilities. The Court concluded under the Virginia Rights of Persons with Disabilities Act the statute of limitations for claims brought under ADA and the Federal Rehabilitation Act was 180 days. Additionally, the limitations period began when Childress received final and definite notice of the decision, which was July of 1997. Childress failed to notify VCU that he had a claim under the Virginia Act, and therefore failed to meet the 180-day notice requirement. In addition, Childress did not have sufficient evidence to permit summary judgement. Because Childress could not survive summary judgment on the ADA and Federal Rehab Act claims, the Court declined to decide the constitutionality of those Acts.

Two cases based on a negligence claim were decided in favor of the institution: *Cosio* (1987) and *Morris* (2001). In the *Cosio* case, the student argued that the College was negligent by failing to monitor examinations. The Court of Appeals ruled that the College had no obligation to monitor exams, so they rejected that argument. In *Morris*, the student claimed that the University falsely represented a material fact concerning his advisor that resulted in negligence. The Court ruled that Morris must establish several things before prevailing on a claim of negligence: that the university falsely represented a material fact without any reasonable

basis for thinking it to be true, that the university intended to mislead Morris into relying on the representation, that Morris was unaware that the representation was false, that Morris relied on the representation, and that Morris suffered harm due to his reliance on the representation. There are no allegations in the complaint or affidavit that Morris relied on any such statement and suffered harm as a result. The Handbook specifically set forth the role of advisor and the provision contained with the Handbook was clear.

One case, *Mercer v. University of Northern Colorado* (2001), involved a tort claim that was won by the university. In *Mercer*, the issue was whether the student satisfied the Colorado Immunity Act's notice of claim requirement as to tortious interference. The law requires that any person claiming to have suffered injury as a result of a tort by a public employee committed in the course of public employment to file notice of the claim within 180 days of the date of discovery of the injury. Both parties agreed that Professor Martin's memo of June 16, 1995, did not constitute tortious interference. Mercer claimed she "discovered" the tortious interference on June 20, January 12, 1996, which is when Mercer filed suit, is more than 180 days from June 20, 1995. In this circumstance, the U.S. Court of Appeals said it would not disturb the District Court's understanding of Colorado law.

There were two cases whose issues involved libel that were won by the institution: *Langston* (1989) and *Dean* (1999). In *Langston*, the libel issue was whether the communication between American College Testing Program (ACT) and the University was privileged. The Court of Appeals held that there was no genuine issue of fact on the libel issue because only people who had a qualified privilege were notified of the investigation. ACT was not considered to fall within the definition of an education institution who received any federal funds. There was no evidence that ACT notified anyone outside Langston, Langston's guidance counselor, and

Langston's attorney about the score. In *Dean*, the issue involved intra-corporate communication. Libel is simply the statement of defamatory matter to a third person. The Court said a professor's letter to his or her superiors on the subject of a student's dishonesty did not represent a publication. The Court asserted that there was no evidence to indicate that anyone other than the intended recipients saw the correspondence.

A case based on slander was won by the university: *Langston* (1989). As noted above, *Langston* involved both a libel and slander issue. The Court of Appeals held that there was no genuine issue of fact on the slander issue because only people who had a qualified privilege were notified of the investigation. ACT was not considered to fall within the definition of an education institution who received any federal funds. There was no evidence that ACT notified anyone outside Langston, Langston's guidance counselor, and Langston's attorney about the score.

There were three cases based on defamation that were awarded to the institution: *Wheeler* (1999), *Cobb* (2000), and *Mercer* (2001). In the *Wheeler* case, the student was required to show that defamatory statements were publicly disclosed. The only evidence showing disclosure outside the University was the April 2 letter stating that Wheeler did not meet all of the program requirements to be able to fulfill an internship during the 1996-1997 school year. The record did not show any statements made by his professors were false. Wheeler also failed to provide evidence that any statements made about his academic performance were made with malice. In *Cobb*, a letter written by the Vice President of student affairs to the student informing him of the decision of the Honor Committee stating he voluntarily terminated his enrollment in the University. The letter was circulated to the dean of students, the associate dean of academic programs, and the vice chair for trials. The Court determined the letter was not a publication. In the case of *Mercer*, the U.S. Court of Appeals ruled that the evidence that Mercer plagiarized

portions of the resource guide paper precluded the defamation claim under Colorado law. The faculty advisor who accused Mercer of plagiarism did not publish the accusation, and did not circulate the accusation beyond the psychology department faculty.

One case with the issue of retaliation was won by the institution: *Chandamuri* (2003). In the *Chandamuri* case, the student claimed that his sanction was the result of his complaint in an earlier classroom. In his earlier complaint, Chandamuri alleged that he was treated differently than another “similarly situated” student and that made his activity protected. The Court ruled that Chandamuri never alleged that he told Professor Kertesz he believed Professor Roepe was discriminating against him based on race and national origin. The Court also said that Professor Roepe was required to report the Honor Code violation to the Honor Council and could not make a judgment on the issue. In addition, Dr. Roepe was not a member of the Hearing Board, nor did he have authority over the sanction the Board imposes, so there could have been no retaliation.

One case with the issue of conflict of interest was won by the institution: *Easley v. University of Michigan* (1990). In *Easley*, the issue was whether the judge was impartial. The student claimed the sitting judge had an association with the Law School and should recuse himself from the trial. The District Court conducted an evidentiary hearing on the nature of the judge’s association with the University Law School and determined that none of the issues raised in *Easley*’s complaint had any merits. Upon return from remand, the Court of Appeals affirmed the judge’s refusal to recuse himself was not an abuse of discretion.

Finally, a case based on discrimination was won by the institution: *O’Connor v. College of Saint Rose* (2005). In the case of *O’Connor*, the issue was whether the College discriminated against the student based on disabilities. It was evident from the record that the College made every effort to accommodate the student’s disabilities. He was provided with a smoke-free room

for the last classroom meeting at a tavern, he was allowed to stand and move around as necessary instead of staying in an uncomfortable seat, and he was allowed to take periodic breaks during class. The Court stated just because a person with disabilities experiences an adverse action does not mean that discrimination was a factor.

There were 49 public institution cases, 8 of them were won by the student, and 1 was a split verdict. The 7 cases won by the student were *Jones v. University of North Carolina* (1983), *Crook v. University of Michigan* (1984), *University of Texas Medical v. Wall* (1989), *Hand v. New Mexico* (1992), *University of Texas Medical v. Than* (1992), *Weidemann v. State Univ. N.Y. College at Courtland* (1992), *University of Texas Medical v. Than* (1994), and *U. of Texas Medical v. Than* (1995). Five of the cases involved due process, one involved procedural issues and one involved an Article 78 procedural issue. *Hand* (1992) was the case involving procedural issues and in that case the Board of Regents was determined to have the power to revoke a degree under state law. However, Michael Hand was not given the opportunity to attend a hearing before the Board, and the Board of Regents delegated the authority to revoke the degree to the University but did not properly outline the procedure to be followed. Since they did not, the revocation of the degree was void. In *Weidemann* (1992), the issue was Article 78 and the University did not follow its published procedures. The split verdict case was *Webster v. University of Tennessee* (2008), and the issue was procedural. The Court of Appeals held that the statistical evidence which the University relied on to find the student guilty violated Tennessee Code Section 4-5-322(h), which states that judicial review of an agency decision is confined to the administrative record. The Court held that Dr. Sims' prejudicial testimony should have been withheld under Rule 403, and that expert testimony could not be considered or reintroduced into the new hearing that was remanded.

Of the 28 cases involving private institutions, 4 were won by the student and 2 were split verdicts. The 4 cases won by the student were *Lightsey v. U.S. Merchant Marine Academy* (1983), *Corso v. Creighton University* (1984), *Melvin v. Union College* (1993), and *Basile v. Albany College* (2001). *Lightsey* (1983) was a due process case, and *Corso* (1984) and *Melvin* (1993) were breach of contract cases. *Melvin* (1993) and *Basile* (2001) involved Article 78 issues.

The 2 split verdict cases won by students were *Shepard v. George Mason University* (2003) and *Atria v. Vanderbilt University* (2005). The issues in *Shepard* (2003) were ADA claims, immunity claims, retaliation claims, and discrimination claims. The Court of Appeals held that the student failed to properly appeal the allegations of due process rights, immunity issues under the ADA, and the Rehabilitation Act, so they abandoned those issues. The Court also held that the University waived its sovereign immunity by accepting federal funds. On the two issues of whether the President and Dean had immunity and whether or not there was disability discrimination under the ADA and Rehabilitation Act, the Court remanded the case back to the District Court. In *Atria* (2005), the issues were breach of contract and negligence. Concerning the breach of contract issues, the Court of Appeals held that some of Atria's claims could be appropriately heard in federal court, while other breach issues could not be heard through that venue. Regarding those breach of contract issues that were not appropriate for the federal court, the Courts of Appeals remanded them to District Court. On the issue of negligence, the Court of Appeals held that Atria based his negligence claims on the Family Educational Rights and Privacy Act (FERPA); however, FERPA does not support claims of negligence because it does not define a standard of care, so that issue was dismissed. In addition, the Court

of Appeals ruled that the student provided no evidence to say that his reliance on the Student Handbook caused him economic harm.

Regarding the breach of contract issues in *Atria* (2005), Atria's claims were based on the university's alleged failure to follow the Honor Council's procedural rules as stated in the student handbook. A breach of contract claim has three parts: an enforceable contract, nonperformance to the extent it creates a breach of contract, and damages that were caused by the breach of contract. Specifically, Atria claimed Vanderbilt breached its own procedures by dismissing his appeal without submitting the petition to the entire Appellate Review Board (ARB), by holding an Honor Council meeting without requiring the presence of Professor Hess, by refusing to consider the results of the polygraph exam, by failing to provide an unbiased appellate body, and by refusing to accept a petition that was signed by Atria's legal counsel.

Although Vanderbilt's Student Handbook states it is not a contract, its provisions may be enforced in Tennessee if it creates an implied contract. This court previously applied Tennessee's law by holding that the student-university relationship is contractual, even though courts do not hold to a rigid interpretation of contract law. The District Court held that dismissal of Atria's breach of contract claim was necessary because a federal court is an inappropriate forum to challenge academic matters. This court disagreed with that because this was not purely an academic matter. This case involved a disciplinary action, not an academic one, and can appropriately be heard in this court.

An issue of material fact existed as to whether the university breached this implied contract when Professor Wells personally dismissed the student's petition rather than submitting to the entire ARB. The university has confusing rules concerning whether the ARB chairman or the entire ARB can perform the function of determining whether the petition shows sufficient

grounds for appeal. Vanderbilt claimed the provisions of the Student Handbook (adopted in 1999) superceded the Procedures of the Appellate Review Board (adopted in 1995). The university certainly has the right to amend its procedures, but there is nothing in the record to indicate that Vanderbilt did indeed amend them. The conflict between the two outlined procedures raises a factual issue as to whether Vanderbilt complied with its own rules.

With regard to the polygraph evidence, neither the handbook nor the ARB's rules expressly prohibited polygraph evidence from being submitted. While *United States v. Scheffer* (1998) established that the reliability of polygraph exams is questionable at best, *United States v. Clark* (1994) established that hearsay evidence is also questionable. It is evident the Honor Council relied heavily on hearsay evidence in the form of Professor Hess's written statement. A reasonable person could conclude that Vanderbilt's decision to accept some forms of unreliable evidence but not others was arbitrary and a breach of an implied contract. This court found that a genuine issue of fact remains regarding this claim of breach of implied contract.

On the remaining contract claims, the court found that although the Handbook required the presence of the accuser at the Honor Council hearing, Atria presented no evidence that Professor Hess's absence caused him harm; the evidence that Professor Wells admitted advising Atria's mother that retaining legal counsel was not a good idea does not demonstrate actual bias; and, Atria could not produce evidence that he was injured by Vanderbilt's rejection of his initial appeal petition because the university accepted his second petition.

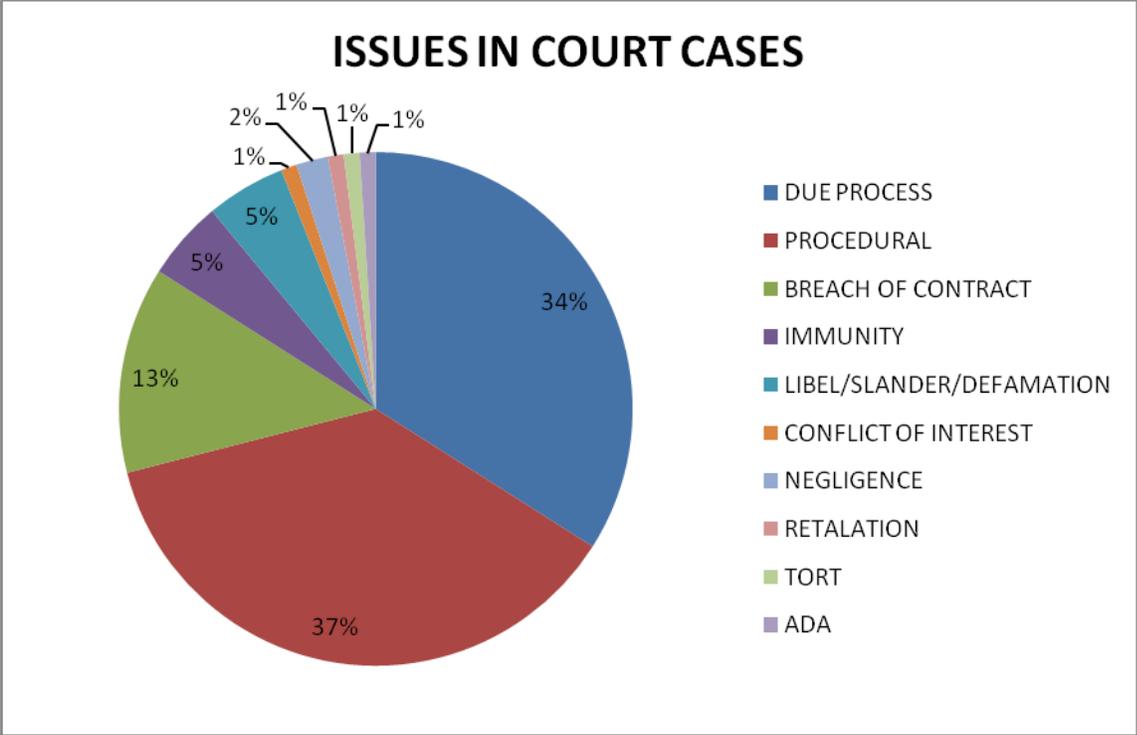


Figure 1. Issues in court cases.

As shown in Figure 1, two issues dominated the 74 academic misconduct cases briefed in this study. Procedural issues comprised 37% of the cases, and due process issues comprised 34% of the cases. The next biggest issue is breach of contract, which makes up 13% of the cases. The other issues combined contribute a total of 16% of the total cases.

The cases that involved procedural issues were *Slaughter v. Brigham Young* (1975), *Hill v. Indiana University* (1976), *Bd. of Curators of U. of Missouri v. Horowitz* (1978), *Clayton v. Princeton University* (1981), *Napolitano v. Princeton University* (1982), *Smith v. Gettysburg College* (1982), *Jones v. University of North Carolina* (1983), *Regents of Univ. of Michigan v. Ewing* (1985), *Armesto v. Florida State University* (1992), *Hand v. New Mexico State University* (1992), *University of Texas Medical v. Than* (1994), *U. of Texas* (1995), *Than v. Univ. Of Texas Medical* (1999), *Bhandari v. Columbia University* (2000), *Chandamuri v. Georgetown Univ.*

(2003), *Shepard v. George Mason Univ.* (2003), *Gupta v. Stanford U.* (2004), *Pugel v. Univ. of Illinois* (2004), *Atria v. Vanderbilt University* (2005), *Chalmers v. Lane of U. of Texas* (2005), *O'Connor v. The College of Saint Rose* (2005), *Brown v. State ex rel State Bd of Higher Ed.* (2006), *Leiby v. Univ. of Akron* (2006), *Bisong v. The Univ. of Houston* (2007), *Kerr v. Bd. of Regents of U. of Nebraska* (2007), *Marten v. Univ. of Kansas* (2007), *Reardon v. Allegheny College* (2007).

The cases that were based on a due process claim include *McDonald v. Univ. of Illinois* (1974), *Garshman v. Penn State Univ.* (1975), *Slaughter v. Brigham Young* (1975), *Hill v. Indiana Univ.* (1976), *Clayton v. Princeton U.* (1981), *Napolitano v. Princeton Univ.* (1982), *Smith v. Gettysburg College* (1983), *Lightsey v. U.S. Merchant Marine Academy* (1983), *Crook v. Creighton Univ.* (1984), *Hall v. Medical College of Ohio* (1984), *Jaksa v. Univ. of Michigan* (1984), *Mary M. v. Univ. of New York* (1984), *Patterson v. Univ. of Tenn.* (1984), *Univ. of Houston v. Sabeti* (1984), *Clayton v. Princeton Univ.* (1985), *Nash & Perry v. Auburn Univ.* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Crook v. Univ. of Michigan* (1987), *Nash & Perry v. Auburn Univ.* 1987), *Belilis v. Albany College of Union Univ.* (1988), *Langston v. American College Testing* (1989), *University of Texas Medical v. Wall* (1989), *Florida State Univ. v. Armesto* (1990), *Rauer v. Univ. of New York* (1990), *Shuman v. Univ. of Minnesota* (1990), *Armesto v. Florida State Univ.* (1992), *Univ. of Texas Medical v. Than* (1992), *Kalinsky v. State U. of New York* (1995), *Siblerud v. Colorado State U.* (1995), *Carboni v. Doctors of Virginia Polytechnical Inst.* (1996), *Wheeler v. Texas women's Univ.* (1999), *Cob v. Univ. of Virginia* (2000), *Mercer v. Univ. of Northern Colorado et al.* (2001).

The breach of contract cases were *Slaughter v. Brigham Young* (1975), *Pride v. Howard Univ.* (1978), *Napolitano v. Princeton Univ.* (1982), *Corso v. Creighton Univ.* (1984), *Langston*

*v. American College Testing* (1989), *U. of Texas Medical v. Wall* (1989), *Boehm and Stanik v. Univ. of Penn* (1990), *Shuman v. Univ. of Minnesota* (1990), *Melvin v. Union College* (1998), *Lyon College v. Gray* (1999), *Morris v. Brandeis Univ.* (2001), *Hall v. St. Mary's Seminary & University* (2009).

Cases with an issue involving Article 78 of the New York Code include *Abrahamian v. City Univ. of New York* (1991), *Weideman v. State Univ. N.Y. College at Cortland* (1992), *Melvin v. Union College* (1993), *Kalinsky v. State U. of New York* (1995), *Trahms v. Columbia Univ.* (1998), *Basile et al. v. Albany College* (2001), and *Nawaz et al. v. Univ. of New York* (2003).

Immunity claim cases were *Hall v. Medical College of Ohio* (1984), *Vargo v. Hunt (Allegheny College)* (1990), *Carboni v. Doctors of Virginia Polytechnic Inst.* (1996), *Dean v. Wissmann (CMSU)* (1999), *Shepard v. George Mason Univ.* (2003).

The two cases with a negligence claim were *Cosio v. Medical College of Wisconsin* (1987) and *Morris v. Brandeis U.* (2001). There were two libel issue cases, *Langston v. American College Testing* (1989), and *Dean v. Wissmann (CMSU)* (1999). *Langston v. American College Testing* (1989) dealt with the issue of slander. *Easley v. Univ. of Michigan* (1990) dealt with conflict of interest. *Vargo v. Hunt (Allegheny College)* (1990) dealt with immunity. These cases dealt with the Tennessee Code procedures as an issue: *Daley v. Univ. of Tenn.* (1994), *Papachristou v. Univ. of Tenn.* (2000), and *Webster v. Univ. of Tenn.* (2000). *Silblerud v. Colorado State U.* (1995) dealt with the issue of First Amendment rights. *Childress v. Virginia Commonwealth U.* (1998), dealt with the Americans with Disabilities Act. *Wheeler v. Texas Women's Univ.* (1999) dealt with the issue of equal protection. There were two cases that dealt with the issue of defamation: *Cobb v. Univ. of Virginia* (2000) and *Mercer v. Univ. of Northern Colorado et al.* (2001). *Morris v. Brandeis Univ.* (2001) dealt with negligence. *Chandamuri v.*

*Georgetown Univ.* (2003) dealt with the issue of retaliation. *O'Connor v. The College of Saint Rose* (2005) dealt with discrimination.

As demonstrated in these cases, the court system generally will not interfere with the relationship between a student and an institution of higher learning unless liberty and properly interests have been denied the student, or unless the institution acted capriciously, arbitrarily, or in bad faith.

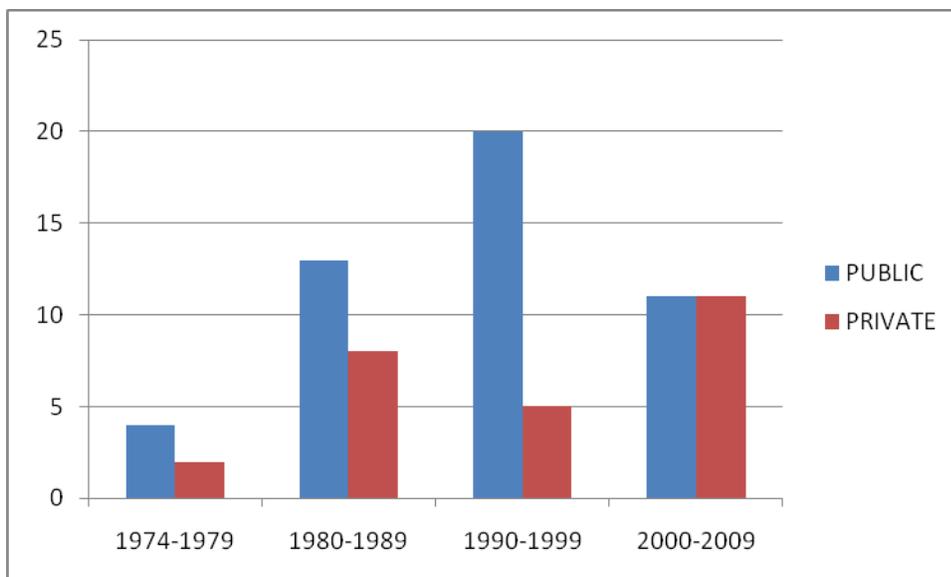


Figure 2. Number of cases by institution type.

#### *Private v. Public Institutions*

As noted in Figure 2, during the time period from 1974-1979, cases from public institutions (4) were double the cases from private schools (2). The cases from public institutions were *McDonald v. Univ. of Illinois* (1974), *Garshman v. Penn State* (1975), *Hill v. Indiana Univ.* (1976), and *Bd. of Curators of U. of Missouri v. Horowitz* (1978). The cases that were filed

within private schools during the 1970s were *Slaughter v. Brigham Young* (1975) and *Pride v. Howard* (1978).

During the 1980s, there were 13 cases from public institutions and 8 cases from private institutions. The cases from 1980-1989 that occurred in public institutions were *Jones v. Univ. of N. Carolina* (1983), *Crook v. Univ. of Michigan* (1984), *Hall v. Medical College of Ohio* (1984), *Jaksa v. Univ. of Michigan* (1984), *Patterson v. Univ. of Tenn.* (1984), *Mary M. v. Univ. of New York* (1984), *University of Houston v. Sabeti* (1984), *Nash & Perry v. Auburn U.* (1985), *Crook v. Univ. of Michigan* (1987), *Nash & Perry v. Auburn* (1987), *U. of Texas Medical v. Wall* (1989), and *Langston v. American College Testing* (1989). The cases in private schools from 1980-1989 included *Clayton v. Princeton* (1981), *Napolitano v. Princeton Univ.* (1982), *Smith v. Gettysburg College* (1982), *Lightsey v. U.S. Merchant Marine Academy* (1983), *Corso v. Creighton Univ.* (1984), *Clayton v. Princeton* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Beilis v. Albany College of Union Univ.* (1988).

During the 1990s, there were 20 cases in public institutions and 5 cases from private institutions. The cases from public institutions in the 1990s were *Boehm & Stanik v. Univ. of Penn.* (1990), *Easley v. Univ. of Michigan* (1990), *Florida State Univ. v. Armesto* (1990), *Rauer v. Univ. of New York* (1990), *Shuman v. Univ. of Minnesota* (1990), *Abrahamian v. City Univ. of New York* (1991), *Armesto v. Florida State U.* (1992), *Hand v. New Mexico State* (1992), *Univ. of Texas Medical v. Than* (1992), *Weidemann v. State Univ. N.Y. College at Cortland* (1992), *Daley v. Univ. of Tenn.* (1994), *Univ. of Texas Medical v. Than* (1994), *Kalinsky v. State U. of New York* (1995), *Siblerud v. Colorado State Univ.* (1995), *U. of Texas Medical v. Than* (1995), *Carboni v. Doctors of Virginia Polytechnic Inst.* (1996), *Childress v. Virginia Commonwealth U.* (1998), *Dean v. Wissmann (CMSU)* (1999), *Than v. U. of Texas Medical* (1999), and *Wheeler v.*

*Texas Women's Univ.* (1999). Those cases from the private institutions from 1990-1999 included *Vargo v. Hunt (Allegheny College)* (1990), *Melvin v. Union College* (1993), *Trahms v. Columbia Univ.* (1997), *Gally v. Columbia Univ.* (1998), and *Lyon College v. Gray* (1999).

In the decade from 2000-2009, there were 12 cases from public institutions and 11 from private institutions. The cases involving public schools during this decade were *Cobb v. Univ. of Virginia* (2000), *Papachristou v. Univ. of Tenn.* (2000), *Mercer v. Univ. of Northern Colorado et al.* (2001), *Pugel v. Univ. of Illinois* (2004), *Chalmers v. Lane of Univ. of Texas* (2005), *Brown v. State ex rel. State Bd. of Higher Ed.* (2006), *Leiby v. Univeristy of Akron* (2006), *Bisong v. The Univ. of Houston* (2007), *Kerr v. Bd of Regents of U. of Nebraska* (2007), *Marten v. Univ. of Kansas* (2007), and *Webster v. Univ. of Tenn.* (2008). The 11 cases involving private schools during this decade were *Bahndari v. Columbia Univ.* (2000), *Basile et al. v. Albany College* (2001), *Morris v. Brandeis Univ.* (2001), *Nawaz et al. v. U. of New York* (2002), *Chandamuri v. Georgetown Univ.* (2003), *Shepard v. George Mason Univ.* (2003), *Gupta v. Stanford Univ.* (2004), *Atria v. Vanderbilt Univ.* (2005), *O'Connor v. The College of Saint Rose* (2005), *Reardon v. Allegheny College* (2007), and *Hall v. St. Mary's Seminary & University* (2009).

The trends show that from 1974 to 1999, cases of academic dishonesty that ended in litigation within the public higher education institutions rose from a low of 5 to a high of 20, and then began tapering off. In the 2000-2009 range, the number of cases for public and private institutions was nearly equal.

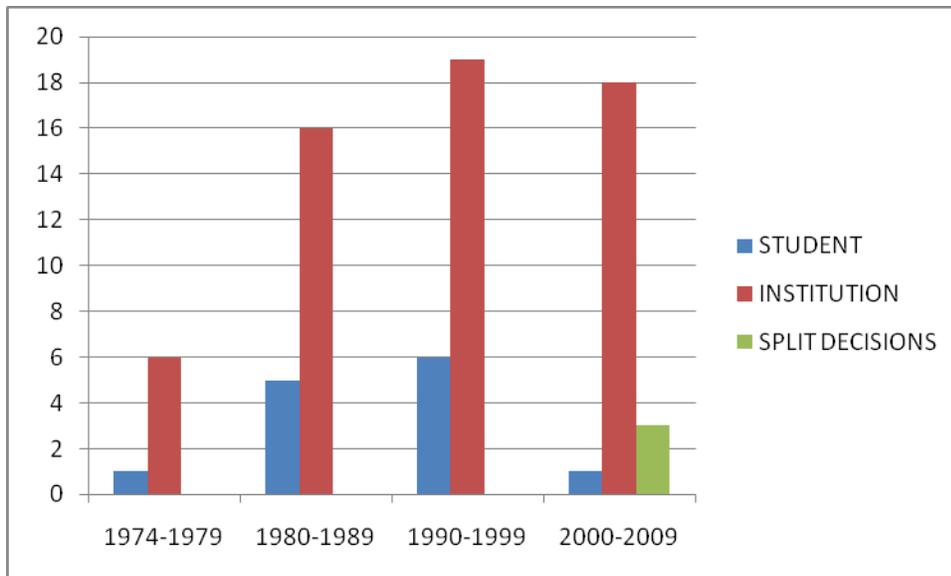


Figure 3. Cases by verdict.

As we look at Figure 2, we see the developing trends in how the courts are awarding verdicts. From 1974-1979, the institution won all 6 cases: *McDonald v. U. of Illinois* (1974), *Garshman v. Penn State U.* (1975), *Slaughter v. Brigham Young* (1975), *Hill v. Indiana Univ.* (1976), *Bd. of Curators of U. of Missouri v. Horowitz* (1978), and *Pride v. Howard Univ.* (1978).

From 1980-1989, the institutions won 16 of the 21 cases, with the students being awarded the verdict in 5 cases. The institutions won the following cases: *Clayton v. Princeton U.* (1981), *Napolitano v. Princeton U.* (1982), *Smith v. Gettysburg College* (1982), *Hall v. Medical College of Ohio* (1984), *Jaksa v. U. of Michigan* (1984), *Mary M. v. U. of New York* (1984), *Patterson v. U. of Tenn.* (1984), *Univ. of Houston v. Sabeti* (1984), *Clayton v. Princeton U.* (1985), *Regents of the U. of Michigan v. Ewing* (1985), *Nash & Perry v. Auburn U.* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Crook v. U. of Michigan* (1987), *Nash & Perry v. Auburn U.* (1987), *Beilis v. Albany College of Union U.* (1988), and *Langston v. American College Testing* (1989). The student-won cases from this decade were *Jones v. U. of N. Carolina* (1983), *Lightsey*

*v. U.S. Merchant Marine Academy* (1983), *Corso v. Creighton U.* (1984), *Crook v. U. of Michigan* (1984), and *U. of Texas Medical v. Wall* (1989).

From 1990-1999, students won 6 cases, and the institutions won 19 cases. The cases that were awarded for the student in this era were *Hand v. New Mexico State U.* (1992), *U. of Texas Medical v. Than* (1992), *Weidemann v. State U. of N.Y. College* (1992), *Melvin v. Union College* (1993), *U. of Texas Medical v. Than* (1994), and *U. of Texas Medical v. Than* (1995). The cases won by the institution included *Boehm & Stanik v. U. of Penn.* (1990), *Easley v. U. of Michigan* (1990), *Florida St. U. v. Armesto* (1990), *Rauer v. U. of New York* (1990), *Shuman v. U. of Minnesota* (1990), *Vargo v. Hunt (Allegheny College)* (1990), *Abrahamian v. City U. of New York* (1991), *Armesto v. Florida St. U.* (1992), *Daley v. Univ. of Tenn.* (1994), *Kalinsky v. State U. of New York* (1995), *Siblerud v. Colorado State Univ.* (1995), *Carboni v. Doctors of Virginia Polytechnic Inst.* (1996), *Trahms v. Columbia Univ.* (1997), *Gally v. Columbia U.* (1998), *Childress v. Virginia Commonwealth U.* (1998), *Dean v. Wissmann (CMSU)* (1999), *Lyon College v. Gray* (1999), *Than v. U. of Texas Medical* (1999), and *Wheeler v. Texas Women's U.* (1999).

By 2000-2009, the number of cases won by students had dropped to one (*Basile et al. v. Albany College*, 2001), but an interesting trend had begun: courts were splitting the verdict, awarding some issues to the student and other issues to the institution. The split-verdict cases during that decade were *Shepard v. George Mason U.* (2003), *Atria v. Vanderbilt U.* (2005), and *Webster v. U. of Tenn.* (2008).

Nine of the cases won by students were classified as having due process issues: *Goss v. Lopez* (1975); *Jones v. University of North Carolina* (1983), *Lightsey v. U.S. Merchant Marine Academy* (1983), *Crook v. University of Michigan* (1984), *University of Texas Medical v. Wall*

(1989), and *University of Texas Medical v. Than* (1992, 1994 & 1995); and *Mercer v. University of Northern Colorado* (2001).

Three of the student-won cases involved the New York court system and Article 78 issues: *Weidemann v. State University of N.Y. College* (1992), *Melvin v. Union College* (1993), and *Basile et al v. Albany College* (2001). *Corso* (1984 ), *Wall* (1989) and *Melvin* (1993 ) dealt with breach of contract issues.

In the three cases that had split verdicts, none of them involved due process claims. *Shepard v. George Mason University* (2003) involved immunity claims and retaliation claims. *Atria v. Vanderbilt University* (2005) involved procedural and breach of contract claims. *Webster v. University of Tennessee* (2009) involved a procedural claim involving the Tennessee Code.

In *Shepard* (2003), the U.S. Court of Appeals ruled in favor of the University on the issue of sovereign immunity under Title II of the ADA. On the issue of sovereign immunity under the Rehabilitation Act, the University waived its immunity by accepting federal assistance. The U.S. Court of Appeals reversed the prior ruling on two issues and held for Shepard: the first issue was that University officials do not have immunity under ADA for expungement of the “F” grade given the student, and the same applied to the plagiarism conviction; and the second issue was the University officials did not have immunity under ADA for an injunction permitting a new trial for Shepard. The U.S. Court of Appeals remanded two issues back to the District Court: the retaliation claim regarding First Amendment rights to free speech, and disability discrimination claims under ADA and the Rehabilitation Act.

In *Atria* (2005), whose issues were a breach of contract and negligence, the Court of Appeals held that genuine issues existed as to whether the manner in which the graded answer sheets were distributed posed an unreasonable risk of harm; FERPA does not define a standard

of care, so it cannot support a claim of negligence; Atria's breach of contract claim could appropriately be brought in federal court; genuine issues of material fact existed as to some of the breach of contract claims, but Atria failed to prove any remaining breach of contract claims; and Atria gave no evidence that his reliance on the Student Handbook caused him economic harm. The breach of contract claims that Atria failed to prove were based on the university's alleged failure to follow the Honor Council's procedural rules as stated in the student handbook. Specifically, Atria claimed Vanderbilt breached its own procedures by dismissing his appeal without submitting the petition to the entire Appellate Review Board (ARB), by holding an Honor Council meeting without requiring the presence of Professor Hess, by refusing to consider the results of the polygraph exam, by failing to provide an unbiased appellate body, and by refusing to accept a petition that was signed by Atria's legal counsel.

Although Vanderbilt's Student Handbook states it is not a contract, its provisions may be enforced in Tennessee if it creates an implied contract. Courts have previously applied Tennessee's law by holding that the student-university relationship is contractual even though courts do not hold to a rigid interpretation of contract law. The District Court held that dismissal of Atria's breach of contract claim was necessary because a federal court is an inappropriate forum to challenge academic matters. The Court of Appeals disagreed with that because they held this case was not purely academic, but involved a disciplinary action and could be heard in the present courtroom.

An issue of material fact existed as to whether the university breached this implied contract when Professor Wells personally dismissed the student's petition rather than submitting to the entire ARB. The university has confusing rules concerning whether the ARB chairman or the entire ARB can perform the function of determining whether the petition shows sufficient

grounds for appeal. Vanderbilt claimed the provisions of the Student Handbook (adopted in 1999) superseded the Procedures of the Appellate Review Board (adopted in 1995). Although the university has the right to amend its procedures, there is nothing in the record to indicate that Vanderbilt did indeed amend them in this instance. The conflict between the two outlined procedures raised a factual issue as to whether Vanderbilt complied with its own rules.

With regard to the polygraph evidence, neither the handbook nor the ARB's rules expressly prohibit polygraph evidence from being submitted. While *United States v. Scheffer* (1998) established that the reliability of polygraph exams is questionable at best, *United States v. Clark* (1994) establishes that hearsay evidence is also questionable. It is evident the Honor Council relied heavily on hearsay evidence (i.e., Professor Hess's written statement). A reasonable person could conclude that Vanderbilt's decision to accept some forms of unreliable evidence but not others was arbitrary, and a breach of an implied contract. This court finds that a genuine issue of fact remains regarding this claim of breach of implied contract.

On the remaining contract claims the court found that although the Handbook required the presence of the accuser at the Honor Council hearing, Atria presented no evidence that Professor Hess's absence caused him harm, the evidence that Professor Wells admitted advising Atria's mother that retaining legal counsel was not a good idea did not demonstrate actual bias, and, Atria could not produce evidence that he was injured by Vanderbilt's rejection of his initial appeal petition because the university accepted his second petition.

Accordingly, the U. S. Court of Appeals, Sixth Circuit, reversed the District Court's ruling on the negligence claim, reversed in part the order granting summary judgment on the breach of contract claims, affirmed the District Court's order on all other respects, and remanded the case for further proceedings consistent with the case.

In *Webster* (2008), the issues were also procedural. In the courtroom, the Court of Appeals vacated the judgment of the administration proceedings, and remanded for a new administrative proceeding before another administrative law judge. The trial court found that under Tennessee Code Section 4-5-322(h) that judicial review of an agency decision is confined to the administrative record. It also found that it could only reverse the agency’s decision for errors that affected the merits of the decision. The Court also said the testimony from a professor (Dr. Sims) that Webster had in a class in 2002 should not have been admitted to the record. The costs of the appeal were to be split between Webster and the University.

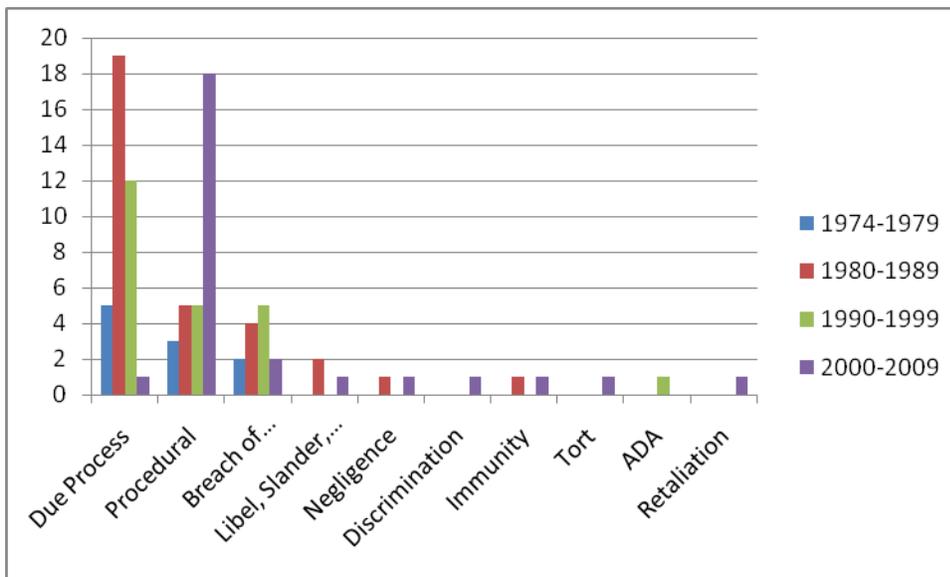


Figure 4. Cases by decade and most relevant issue.

### Legal Trends

As noted previously in Figure 1 and again in Figure 4, the two prominent issues are due process and procedural processes. The trend here is that due process issues peaked during the time period from 1980-1989, and during the time from 2000-2009 that particular issue virtually

disappeared. Conversely, procedural issues have gradually increased from 1974 to now, and are the prominent issue for the time period 2000-2009.

In this study of 74 cases, there were 6 cases during the decade of the 1970s, 21 cases from the decade of the 1980s, 25 cases from the decade of the 1990s, and 22 cases came from the 20th century. Out of the total 74 cases, 12 were won by the student and 3 cases carried a split verdict. Since 2000, only 1 case has been won by a student, and it was against a private institution. Three cases contained split verdicts, two of which were against private institutions, and one of which was against a public institution.

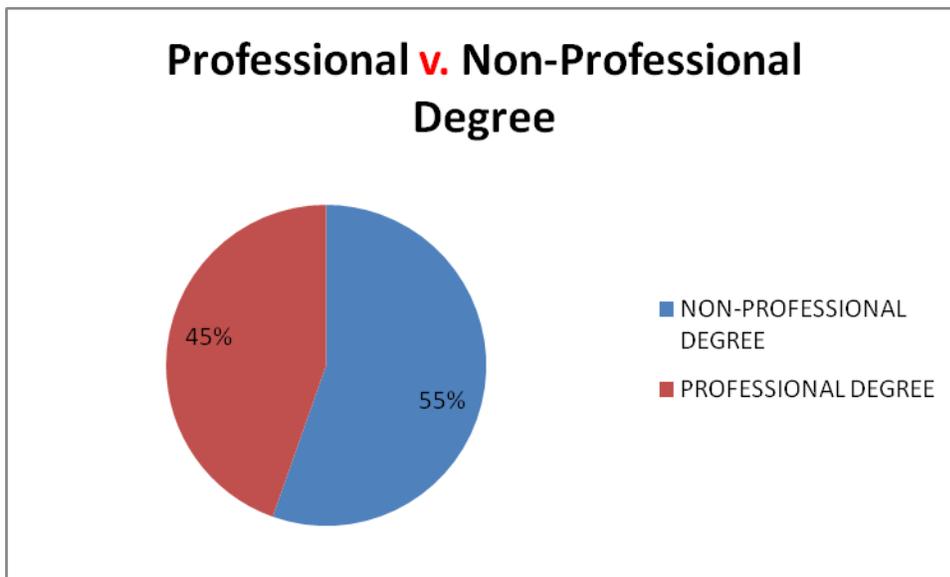


Figure 5. Professional v. non-professional degree.

As the researcher compared the cases by the type of degree that students are pursuing, it was interesting to note that a large portion of the cases, 45%, involved students who were pursuing degrees involved in professions. Of the 74 cases, 15 involved students pursuing a medical degree: *McDonald v. University of Illinois* (1974), *Garshman v. Penn. State University* (1975),

*Bd. of Curators of U. of Missouri v. Horowitz* (1978), *Pride v. Howard University* (1978), *Corso V. Creighton University* (1984), *Hall v. Medical College of Ohio* (1984), *Regents of the U. of Michigan v. Ewing* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Beilis v. Albany College of Union University* (1988), *University of Texas Medical v. Wall* (1989), *University of Texas Medical v. Than* (1992), *University of Texas Medical v. Than* (1994), *U. of Texas Medical School v. Than* (1995), *Carboni v. Doctors of Virginia Polytechnic Institute* (1996), and *Than v. U. of Texas Medical School* (1999). There were three students pursuing nursing degrees: *Jones v. University of North Carolina* (1983), *Trahms v. Columbia University* (1997) and *Dean v. Wissmann (CMSU)* (1999). One student pursuing an engineering degree filed suit: *University of Houston v. Sabeti* (1984). Four veterinary students filed suit: *Nash & Perry v. Auburn University* (1985), *Nash & Perry v. Auburn University* (1987), *Boehm & Stanik v. University of Penn.* (1990), and *Webster v. U. of Tenn.* (2008). There were three suits filed by students pursuing a degree in pharmacy: *Daley v U. of Tenn.* (1994), *Basile et al. v. U. of New York* (2002), and *Marten v. University of Kansas* (2007). The remaining cases filed by students seeking a professional degree involved law degrees: *asley v. University of Michigan* (1990), *Florida State University v. Armesto* (1990), *Shuman v. University of Minnesota* (1990), *Armesto v. Florida State University* (1992), and *Kerr v. Board of Regents of U. of Nebraska* (2007). Three cases involved a student seeking a degree in dentistry: *Patterson v. U. of Tenn.* (1984), *Gally v. Columbia University* (1998), and *Nawaz et al. v. University of New York* (2002). A total of 34 cases out of the 74 cases reviewed involved students pursuing a professional degree.

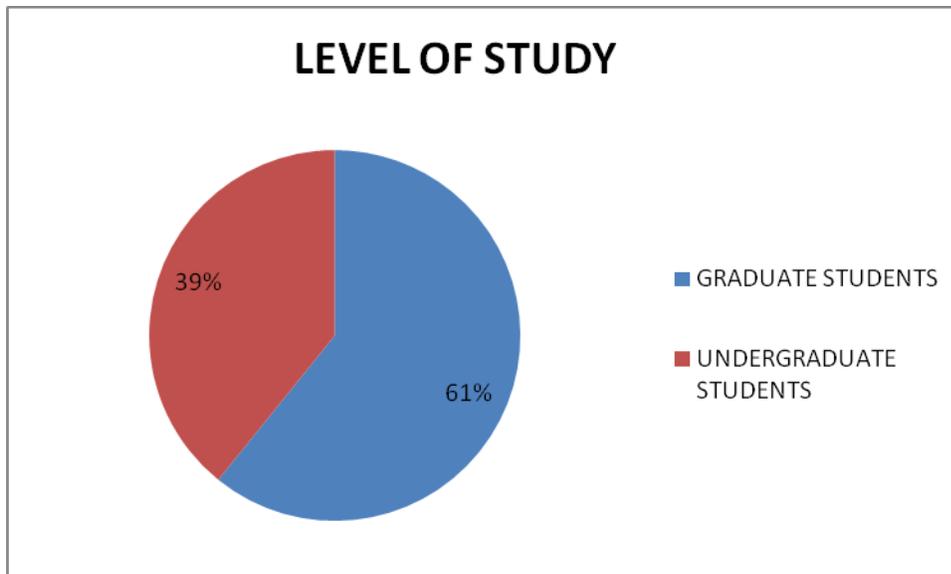


Figure 6. Graduate and non-graduate students.

As shown in Figure 6, there were 45 cases (or 61% of the total cases) involving graduate students, and there were 29 cases (or 39% of the total cases) involving undergraduate students. The graduate student cases were *McDonald v. University of Illinois* (1974), *Garshman v. Penn State University* (1975), *Slaughter v. Brigham Young University* (1975), *Hill v. Indiana University* (1976), *Bd. of Curators of U. of Missouri v. Horowitz* (1978), *Pride v. Howard University* (1978), *Corso v. Creighton University* (1984), *Crook v. University of Michigan* (1984), *Hall v. Medical College of Ohio* (198), *Patterson v. University of Tenn.* (1984), *Regents of U. of Michigan v. Ewing* (1985), *Nash & Perry v. Auburn University* (1985), *Cosio v. Medical College of Wisconsin* (1987), *Crook v. University of Michigan* (1987), *Nash & Perry v. Auburn University* (1987), *Beilis v. Albany College of Union U.* (1988), *University of Texas Medical v. Wall* (1989), *Boehm & Stanik v. University of Penn.* (1990), *Easley v. University of Michigan* (1990), *Florida State U. v. Armesto* (1990), *Shuman v. University of Minnesota* (1990), *Armesto v. Florida State University* (1992), *Hand v. New Mexico State University* (1992), *University of*

*Texas Medical v. Than* (1992), *Weidemann v. State University of N.Y. College* (1992), *Daley v. University of Tenn.* (1994), *University of Twxas Medical v. Than* (1994), *Siblerud v. Colorado State University* (1995), *U. of Texas Medical v. Than* (1995), *Carboni v. Doctors of Virginia Polytechnic Inst.* (1996), *Gally v. Columbia University* (1998), *Childress v. Virginia Commonwealth U.* (1998), *Than v. U. of Texas Medical* (1999), *Wheeler v. Texas Woman’s University* (1999), *Papachristou v. U. of Tenn.* (2000), *Mercer v. Univerity of Northern Colorado et al* (2001), *Nawaz et al v. U. of New York* (2002), *Pugel v. University of Illinois* (2004), *O’Connor v. The College of Saint Rose* (2005), *Brown v. State ex rel. State Bd. of Higher Ed.* (2006), *Bisong v. The University of Houston* (2007), *Kerr v. Board of Regents of U. of Nebraska* (2007), *Marten v. University of Kansas* (2007), *Webster v. University of Tenn.* (2008), and *Hall v. St. Mary’s Seminary & University* (2009). The 29 undergraduate cases were *Clayton v. Princeton U.* (1981), *Napolitano v. Princeton U.* (1982), *Smith v. Gettysburg College* (1982), *Jones v. University of North Carolina* (1983), *Lightsey v. U.S. Merchant Marine Academy* (1983), *Jaksa V. University of Michigan* (1984), *Mary M. v. University of New York* (1984), *University of Houston v. Sabeti* (1984), *Clayton v. Princeton University* (1985), *Langston v. American College Testing* (1989), *Rauer v. University of New York* (1990), *Vargo v. Hunt (Allegheny College)* (1990), *Abrahamian v. City University of New York* (1991), *Melvin v. Union College* (1993), *Kalinsky v. State U. of New York* (1995), *Trahms v. Columbia University* (1997), *Dean v. Wissmann (CMSU)*, (1999), *Lyon College v. Gray* (1999), *Bhandari v. Columbia University* (2000), *Cobb v. University of Virginia* (2000), *Basile et al v. Albany College* (2001), *Morris v. Brandeis University* (2001), *Chandamuri v. Georgetown University* (2003), *Shepard v. George Mason University* (2003), *Gupta v. Stanford University* (2004), *Atria v. Vanderbilt*

*University* (2005), *Chalmers v. Lane of University of Texas* (2005), *Leiby v. University of Akron* (2006), and *Reardon v. Allegheny College* (2007).

## CHAPTER 5

### SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

#### Introduction

The purpose of this study was to research and examine issues pertaining to academic dishonesty as they relate to higher education policies and procedures. The researcher chose cases from 1974-2009 for the study so that a 35-year record of court cases could be analyzed to determine legal trends. In particular, this research provides a narrative of 74 court cases during the specified timeframe that were briefed so that the research questions could be addressed and answered. This final chapter is a summary of how the researcher's findings apply to the research questions, guidelines for higher education administrators and other higher education employees, and recommendations for future studies.

#### Summary

The following research questions directed the data collection and case analysis:

1. What are the issues arising in federal and state courts concerned with academic dishonesty in colleges and universities?

According to the findings in this research, the issues of due process rights (including First Amendment rights and equal protection), breach of contract, immunity, negligence, libel, slander, conflict of interest, Americans with Disabilities, defamation, tort, retaliation, discrimination, and general legal procedural issues including issues specific to the state of New

York litigation (Article 78) and Tennessee litigation (Tennessee Code) are the prevalent concerns in litigation. By a large margin, the two top issues found by this researcher were procedural issues (37%) and due process rights issues (34%). The third issue found most often was breach of contract (13%). The remaining issues of immunity, libel, slander, defamation, conflict of interest, negligence, retaliation, tort, and ADA, accounted for 16% of the total cases.

A common issue in the majority of cases included in this study is that the students themselves admitted they were guilty of participating in academic dishonesty. Even after disclosing that they violated honor code agreements or otherwise breached a code of conduct, the students proceeded to file suit against the institutions. As discussed in the outcomes included in Research Question 2 below, some of the students who admitted guilt or who were found guilty following investigation by a fact-finding body won the legal verdict because the institution erred in applying policies and procedures. The researcher believes that it is a significant finding that guilty students can take advantage of loopholes in the legal system and win judgments against institutions of higher education.

2. What are the outcomes in federal and state courts about academic dishonesty in colleges and universities?

In the 35-year span of court cases briefed by this researcher, beginning with *McDonald v. University of Illinois* (1974), the courts have consistently ruled that students are to be afforded full due process rights in general and that they are to be treated with decency and fairness specifically. The 74 cases that were briefed and analyzed revealed that 59 of the verdicts were in favor of the institutions, 12 were in favor of the student, and 3 were split decisions between the institution and student. Further analysis showed the two major issues in the court cases are procedural issues and due process issues. The procedural issue category includes general

procedural matters as well as issues specific to the state of New York through Article 78 proceedings, and issues specific to the state of Tennessee through the Tennessee State Code. The analysis of court decisions in this study reinforces the literature in chapter 2, which states that a case involving purely academic issues requires less due process and procedural consideration than does a case involving academic dishonesty issues. As defined in chapter 2 and further highlighted in this research, academic dishonesty is treated by the court system as a mixture of academic and disciplinary matters. If the courts define an issue as purely academic in nature, they generally will allow the institution to make decisions concerning outcomes and sanctions without interference, unless there is evidence of arbitrary and capricious behavior on the part of the institution.

Of the 74 cases analyzed, 48 occurred in a public institution of higher education, and 26 occurred in a private institution. For the time period of 1975 until 1999, more students in public institutions filed suit than did students in private institutions. However, beginning in 2000 and continuing through 2009, the number of suits filed by students attending public institutions equaled the number of suits filed by students attending private institutions.

In the time period between 1974 and 2009, the frequency of due process issues in the litigation have decreased and the frequency of procedural issues have increased. In summary, the court system has held it will not interfere with decisions made within the academic community as long as a higher education institution follows its own policies and affords students due process rights. As demonstrated by the disposition of the cases analyzed, the court system generally will not interfere with the relationship between a student and an institution of higher learning unless it believes liberty and property interests have been denied the student, or the institution acted capriciously, arbitrarily, or in bad faith.

A significant outcome uncovered by this research, as shown in Figure 5, is that professional schools are not immune from student cheating and students filing suit against the institution of higher education. Thirty-three out of 74 cases, or 45% of the cases analyzed, involved students pursuing a professional degree in order to become medical doctors, nurses, veterinarians, engineers, dentists, lawyers, or pharmacists. This is a disconcerting trend in that nearly half of the total cases analyzed involved students seeking a professional degree.

Another significant outcome in this study is that the cases involved more graduate students than undergraduate students (see Figure 6). Of the 74 cases included in the study, 45 of them involved graduate students who filed suit versus 29 undergraduates who filed suit. This means that 61% of the students filing suit were graduate students.

3. What are the trends in federal and state courts about academic dishonesty in colleges and universities?

Traditionally, the courts have taken a hands-off approach when dealing with academic institutions in purely academic cases. The legal system has acknowledged that academic matters are best left in the hands of educators who can evaluate a student's academic progress. If the administrator determines the student's performance and progress is below the academic benchmark, or that the student has allegedly committed academic dishonesty, the court has allowed the institution the freedom to deal with the matter internally, as long as the student is given full due process rights and the situation has not been handled in a capricious, arbitrary or malicious manner. If, however, the court classifies the case as being one of academic misconduct, it requires a higher standard of due process and will intervene to ensure the student is afforded proper liberty and property rights. The courts are treating academic dishonesty cases

as a mixture of academic and disciplinary issues, and will require the institution to adhere to all of the precedents established in prior cases.

As reflected in chapter 4 in past court cases, the court holdings have been that public institutions of higher education generally have to be concerned with and provide due process rights to students, whereas private institutions should be more concerned with breach of contract issues. However, as this case analysis confirms, the court system is intermingling the obligations of public and private schools. Although public institutions of higher education should still be primarily concerned with providing due process rights to students, they now have to pay attention to the creation of implied contracts that can exist in Student Handbooks, Honor Code documents, and bulletins. Although the cornerstone of the bond between a student and a private institution of higher education has traditionally been a contractual relationship, private institutions must now be diligent about protecting students' due process rights. This new trend demonstrates that neither a public nor private institution will remain unscathed by conducting business with a student in an arbitrary or capricious manner, or by denying the student property and liberty interests.

A significant trend discovered during this research is that there were no court cases involving academic dishonesty at the community college level reported in the West Law database. Although the rationale supporting this trend is the topic of another study, it must be noted that such cases were not found.

Another trend that was discovered is that only one case included in this study went all the way to the Supreme Court level (*Bd. of Curators of U. of Missouri v. Horowitz*, 1978). The briefs of the court rulings tell us that the issues are being settled in lower courts and are not being referred to the highest court for a ruling.

4. What guiding principles exist for colleges and universities in situations of academic dishonesty?

Administrators and faculty members in institutions of higher education will certainly one day be confronted with a situation of academic dishonesty. As leaders and policy makers, they must have access to a body of research that has studied and analyzed the legal issues that affect higher education, so that with thoughtful consideration they can create and enforce school policies that reinforce academic integrity standards.

### Guiding Principles

There were several guidelines that resulted from studying these 74 cases of academic dishonesty.

#### *Academic v. Misconduct Issues*

1. The courts have held that academic dismissal requires the “evaluation of an expert” and the decision is best left to University administrators rather than judicial proceedings (*Bd. of Curators of U. of Missouri v. Horowitz*, 1978).

2. Several cases sought to define the difference between an academic case and a misconduct case. Cheating and plagiarism are reasonably and properly characterized as misconduct (*Slaughter v. Brigham Young*, 1975; *Bd. of Curators of U. of Missouri v. Horowitz*, 1978; *Jaksa v. University of Michigan*, 1984). *Napolitano* (1982) held that academic cases involve “academic standards” and disciplinary cases allude to a “violation of rules of conduct.” *Hall* (1982) also contributed to the distinction between academic cases and dishonesty cases, when it held that academic decisions are based on “established academic criteria.” *Nash & Perry v. Auburn University* (1987) said dismissal for academic dishonesty is a disciplinary action.

*University of Texas Medical School at Houston v. Than* (1995) stated that “academic dismissals arise from a failure to attain a standard of excellence” whereas disciplinary dismissals arise from “acts of misconduct.” *Cobb* (2000) held that cheating was “indisputably a disciplinary matter.”

3. If a University handbook provides for different policies and procedures concerning academic and misconduct issues, the incident can be considered an academic issue if the operative facts are academic and the two issues are so closely related that they cannot be separated (*Corso v. Creighton*, 1984).

4. In a case of academic dishonesty, the evidence only needs to be substantial, not clear and convincing (*Kalinsky v State U. of N.Y. at Binghamton*, 1990).

5. Private colleges and universities may punish students for academic misconduct without having to make the distinction between an academic issue and a misconduct issue if the institution follows its own rules (*Slaughter v. Brigham Young U.*, 1975).

### *Due Process*

1. Due process rights entitle a student to oral or written notice of a charge, an explanation of the evidence, and a chance to present his or her side of the story (*Goss v. Lopez*, 1975).

However, there is no specific timeframe as to what constitutes notifying a student in a timely manner about charges against him or her (*Nash v. Auburn*, 1987).

2. In disciplinary cases, some type of hearing must be held before suspension or dismissal of a student, or as soon as possible after the action (*Goss v. Lopez*, 1975).

3. A hearing is not required prior to dismissal of a student for academic reasons (*Bd of Curators v. Horowitz*, 1978).

4. The procedural requirement is greater in a disciplinary case than in a case of an academic nature (*Lightsey v. U.S Merchant Marine Academy*, 1983; *Bd. of Curators of U. of Missouri v. Horowitz*, 1978). The Constitution imposes a greater procedural requirement on disciplinary rulings. The rulings established that the very nature of due process demands flexibility and that each situation be evaluated on its own merits because there is a major difference between the failure of a student to meet academic standards and a student violating conduct rules. The difference demands far less stringent procedural requirements for an academic dismissal. There is no difference between failing to provide a due process hearing and providing a hearing but ignoring the outcome (*Lightsey*, 1983). This ruling in essence states that if an institution holds a due process hearing, it must abide by the findings of the appropriate body.

5. When the courts are looking at allowing or denying a preliminary injunction against a student in an academic dishonesty case, they will make a decision based on which party will be most harmed by the balance of hardships (*Jones v University of North Carolina*, 1983).

6. Disciplinary decisions made in an academic setting are subject to narrow judicial review under substantive due process proceedings (*Regents of the U. of Michigan v. Ewing*, 1985).

7. Students must be allowed due process at all stages of proceedings in an academic dishonesty case (*Crook v. University of Michigan*, 1984).

8. An institution of higher education must adhere to its own policies and procedures (*University of Texas Medical Branch v Wendall Wall and Forrest Wall*, 1989).

9. The amount of due process given to a student should be dictated by the seriousness of the charge and consequences, and not necessarily by a policy and procedures manual (*Corso v Creighton University*, 1984).

10. The due process clause requires fundamental fairness rather than a full-blown trial that would be conducted like a courtroom trial (*University of Houston v. Sabeti*, 1984).

11. A student has a property interest in continuing his education (*U. of Texas Medical School v. Than.*, 1995; *Crook v. U. of Michigan*, 1984). A student has a liberty interest in maintaining his or her good name, reputation, and integrity (*Crook v. U. of Michigan*, 1984).

12. If a stigma is attached to a suspension or expulsion or revocation of the degree, the student may be due more procedural protection (*Jaksa*, 1984).

13. The University does not have the responsibility of providing a student with an advisor (*Morris v. Brandeis* 2001) or allowing them to appear at a hearing with counsel (*Hall v. Medical College of Ohio*, 1984; *Nash v. Auburn*, 1987). However, *Garshman v. Penn State. University* (1975), *Mary M. v. University of New York.* (1984), *Jaksa v. University of Michigan* (1984), *Crook v. University of Michigan* (1987), *Nash and Perry v. Auburn University* (1985) stated that although the student can have a faculty advisor present at the hearing, private counsel at the hearing is not required.

14. A student does not have the right to directly cross-examine an adverse witness (*Nash v. Auburn*, 1987). But he or she can be allowed to cross-examine witnesses (*Clayton v. Princeton University*, 1981).

15. A recording of the hearing is not required (*Jaksa*, 1984).

16. In *Clayton v. Princeton University* (1985), the Courts said an advisor assigned to a student involved in an alleged academic dishonesty case does not have the same obligations that

defense counsel would have in a court of law. A University does not have to abide by a full array of legal regulations in providing students who serve their peers as advisors in hearings. The advisors are only charged with being direct, clear, and helpful and not misleading to either the Committee or the University.

17. A university has the right to revoke a degree if it determines that academic dishonesty occurred in the course of earning the degree. However, due process rights must be afforded the student (*Crook*, 1984).

18. When basic fairness is afforded to a student, the courts do not require a full adversarial proceeding to be conducted (*Nash & Perry v. Auburn University*, 1985).

### *Procedural*

1. The evidence used to convict a student of cheating must be based on real facts and not on suspicion (*Basile et.al v. Albany College of Pharmacy of Union University*, 2001).

2. During the proceedings of an academic dishonesty case, a student must exhaust his administrative remedies before asking the court to take action (*Hill v Trustees of Indiana University*, 1976).

3. Evidence against a student can be excluded if it introduces prejudice (*Webster v. The University of Tennessee*, 2008).

4. When a governing body has the inherent authority to revoke a degree, they cannot delegate that authority to another entity (*Hand v. New Mexico State University*, 1992).

5. In *Napolitano v. Princeton University* (1982) and *Clayton v. Princeton University* (1985), the Courts ruled that a state appellate decision can be binding in a federal court in a situation in which state law supplies the rule of decision.

6. When reviewing administrative decisions, the courts will generally not second-guess the integrity of witnesses (*Papachristou*, 2000).

7. The courts defined “substantial evidence” as more than a “scintilla . . . it is that quantum of proof” which would cause a judge to direct a verdict (*McDonald v. Bd. of Trustees of the U. of Illinois*, 1974).

8. In Michigan, there is no state law that says the governing board of the University must go through the legal system to rescind a degree (*Crook v. University of Michigan* , 1987).

### *Student-Institution Relationship*

1. The relationship between a student and an institution of higher education can generally be classified as contractual rather than fiduciary (*Morris v. Brandeis University*, 2001).

### *Private v. Public Institutions*

1. Concerning contractual relationships between a student and a university, there is generally no dispute that a contractual relationship exists between the private college or university and the student (*Bleicher v. Univ. of Cincinnati College of Med.*, 1992). The contractual relationship is found in the university catalog and handbook, or the graduate/undergraduate bulletin, according to *Embrey v. Central State Univ.* (1991) and *Leiby v. The Univ. of Akron* (2006).

2. When an institution has created a culture that embraces an honor code, the code creates a custom in the culture, which, in turn, creates a rule of law within a contract between the student and the university (*Patterson v. University of Tennessee*, 1984).

3. The relationship between a university and a student is unique and courts will generally not interfere unless egregious or arbitrary action is taken (*Napolitano v. Princeton University*, 1982).

4. Both private and public institutions are required to follow their own procedures and policies (*Clayton v. Princeton University*, 1981).

5. If a student registers and agrees to attend an institution of higher education, he or she agrees to abide by its laws and customs (*Patterson v. University of Tennessee*, 1984).

6. A private university is given much discretion in its administration of disciplinary proceedings (*Slaughter v. Brigham Young U.*, 1975; *Clayton v. Princeton University*, 1985).

#### *Breach of Contract*

1. In *Clayton v. Princeton University (1981)*, the New Jersey court stated that if the student can prove that the institution materially breached its procedures suspending him, he is entitled to relief.

2. A handbook may create an implied contract between the university and the student (*Morris v. Brandeis U.*, 2001).

#### *Immunity*

1. Disclosures of a peer committing an act of academic dishonesty are conditionally privileged (*Vargo v. Hunt*, 1990).

2. A faculty member has immunity from libel claims when he or she notifies other faculty members about student disciplinary issues (*Dean v. Wissmann*, 1999).

3. Members of an academic community have “absolute privilege” to communicate information or opinions pertaining to cases during the proceedings (*Webster*, 1986).

4. A corporate entity is not a person with the meaning of §1983 for purposes of recovering monetary damages on equitable liability (*Hill v. Indiana University*, 1976).

### *General*

1. A university should beware of creating damaging, internal written communications in anger, which includes letters of dismissals to the student (*Siblerud*, 1995).

2. Establishing personal jurisdiction is not enough to win a claim of defamation or retaliation (*Marten v. U. of Kansas*, 2007).

### Conclusions

Administrators of higher education institutions must examine and evaluate the issues pertaining to academic dishonesty as they relate to possible litigation. As higher education administrators look at the trends revealed in this research, it is important to understand that the court system will generally not interfere with the educational system as long as students are being treated fairly. This trend has been very stable over the past 35 years of court cases briefed in this research. The issues being litigated in the courtroom have changed from due process issues to procedural issues. Students at private institutions file suit as often as students at public institutions.

Donald Gehring (2001) succinctly states the desired outcome when he says, “When both sides win . . . the students win by enhancing their ethical development, and the institution wins by accomplishing its developmental mission” (p. 468).

## Recommendations for Further Study

Although this study offers a compilation of 35 years of case history on academic dishonesty and provides a trend analysis that can be used as a viable resource for administrators of higher education, it should become part of a larger body of work. University administrators should continue to scrutinize all legal issues resulting from court cases that relate to higher education so that they may continue to utilize best practices in creating and enforcing policy. Therefore, the researcher recommends the following initiatives for further study:

1. Research should be conducted on court cases involving academic dishonesty after *Hall v. St. Mary's Seminary & University* (2009) to determine whether they have an influence on higher education policies.

2. Studies should be done at individual institutions of higher education to determine whether current policies, procedures, and handbooks utilize available research and reflect best practices.

3. Further study should be conducted in the development of student character and moral development in higher education. Higher education administrators should take a proactive role in fostering student integrity so that academic dishonesty is less likely to be considered a viable option for a student.

4. Further study should be conducted to determine why a greater percentage of graduate students cheat versus undergraduate students who cheat. Higher education faculty members who administer graduate programs must be aware of the outcomes and trends and be prepared deal with adjusting programs and policies accordingly.

## Final Remarks

Although it is imperative that higher education administration and faculty members understand the complex issues that surround academic dishonesty as related to the court system, it is also necessary that administration keep a practical perspective on how to effectively deal with the reality that some students will continue to cheat. One theme that resonated with the researcher throughout this study is that a student can be found guilty of academic dishonesty and still be awarded a favorable final verdict through the court system. Another theme that resonated with the researcher is that the presence of an honor code within a university's policies does not necessarily mean that the administration is better protected or immune from academic dishonesty occurrences or from facing litigation by a student. Many of the institutions in this study function within a culture that includes honor codes pledges being signed by students and peer-reporting of cheating incidents, and the institution still ended up in the courtroom because of poorly executed policies and inadequately trained administrators. Administrators should focus on retaining a thorough understanding of potential legal snares that might entrap the incautious institution, while keeping abreast of the current laws and trends that are relevant to higher education. The savvy higher education administrator or faculty member will also be well-versed in campus and departmental policy and procedures, and make a career-long commitment to develop and maintain unambiguous written communications that clarify the institutional relationship to the student.

## BIBLIOGRAPHY

42 Pa. C.S.A. §8343.

Abrahamian v. The City University of N.Y., 170 A.D.2d 233 (Sup. Ct., App. Div., 1st Dept., N.Y. 1991).

Alden v. Georgetown University, 734 A.2d 1103, 1009 (D.C.1999).

Al-Khadra v. Syracuse University, 291 A.D.2d 992, 993, 689 N.Y.S.2d (2002).

Antrican v. Odom, 290 F.3d 178, 184, 4th Cir. 2002.

Anderson v. Liberty Lobby, Inc. 477 U.S.242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

Armesto v. Florida State U. College of Law, 615 So.2d 707 (Dist.Ct. Appl. FL 1992).

Armstrong v. Manzo, 380 U.S. 545, 550 (1965).

Anti-Facist Committee v. McGrath, 341 U.S. 123, 168-169 (1951).

Arnett v. Kennedy, 416 U.S. 134, 185, 40 L.Ed.2d 15, 94 S.Ct. 1633 (1974).

Arminio, J. L., & Hultgren, F. H. (2002). Breaking out from the shadow: The question of criteria in qualitative research. *Journal of College Student Development*, 43(4).

Ashworth, P., Banister, P., & Thorne, P. (1997). Guilty in whose eyes? University students' perceptions of cheating and plagiarism in academic work and assessment. *Studies in Higher Education*, 22(2), 187-203.

Astin, A. W. (1984). Student values: Knowing more about where we are today. *AAHE Bulletin*, May, 10-13.

Atria v. Vanderbilt University, 142 Fed. Appx. 246 (U.S.Ct. of Apls., 6th Cir. 2005).

Austin, Z., Simpson, S., & Reyana, E. (2005). The fault lies not in our students, but in ourselves': Academic honesty and moral development in health professions education--results of a pilot study in Canadian pharmacy. *Teaching in Higher Education*, 10(2), 143-156.

Baird, Jr., J. S. (1980). Current trends in college cheating. *Psychology in the Schools*, 17(4), 515-522.

Baker, T. R. (1992). The meaning of due process 30 years after Dixon: Rhetoric but little research. *NASPA Journal*, 30(1).

Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir.1990).

Barker v. Trustees of Bryn Mawr College, 278 Pa. 121, 122 A.220, 221 (1923).

Barker v. Hardway, 283 F.Supp. 288 (S.D.W.Va. 1968).

Barnard v. Inhabitants of Shelburne, 216 Mass. 19, 102 N.E. 1095 (1913).

Barnett, D. C., & Dalton, J. C. (1981). Why college students cheat. *Journal of College Student Personnel*, 22(6), 545-551.

Basch v. George Washington University, D.C.App., 37-A.2d 1364 (1974).

Basile et al. v. Albany College of Pharmacy of Union U., 279 A.D.2d 770 (Sup. Ct., App. Div., Third Dept., N.U. 2001).

Bates, v. Sponberg, 547 F.2d 325, 329-30 (6th Cir. 1976).

Baugh v. Thomas, 56 N.J. 2031 265 A.2d 675, (1970).

Bd. Of Curators of the U. of Missouri v. Horowitz, 435 U.S. 78, 86, 98 S.Ct. 948 953 55 l.Ed.2d 124 (1978).

Bd. Of Education v. McCluskey, 458 U.S. 966, 102 S.Ct. 3469, 3472, 73 L.Ed.2d 1273 (1982).

Becker v. Interstate Properties, 569 F.2d 1203, 1204-06 (3rd Cir. 1977).

Beilies v. Albany Medical College of Union University, 136 A.D.2d 42, 525 N.Y.S.2d 932 (Sup. Ct. Appl. Div., Third Dept., N.Y. 1988).

Bernstein, P. (1985). Cheating--the new national pastime? *Business*, 35(4), 24-33.

Bhandari v. Trustees of Columbia University in the City of New York, WL 310344 (S.N.D.Y. 2000).

Bills v. Henderson, 631 F.2d 1287, 1298 (6th Cir. 1980).

Bisong v. The University of Houston, 493 F.Supp.2d 896 (U.S. Dist. Ct. for So. Dist. Of Tex, Houston Div., 2007).

Blackwelder Furniture Co. v. Seilig Manufacturing Co., 550 F.2d 189 (4th Cir., 1977).

Blaise-Williams v. Sumitomo Bank, Ltc., 189 A.D.2d 584 (1993).

Blake v. Kline, 612 F.2d 718 (3rd Cir., 1979), cer. Denied, 447 U.S. 921, 1000 S.Ct. 3011, 65 l.Ed.2d 1112 (1980).

Bleicher v. Univ. of Cincinnati College of Med. (1992), 78 Ohio App. 3d 302.

Board of Regents v. Roth, 408 U.S. 564, 1972.

Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Boehm and Stanik v. U. of Penn. School of Veterinary Medicine, 392 Pa.Super.502 (Sup. Ct. Pn. 1990).

Booth v. Maryland, 112 F.3d 139, 145, 4th Cir., 1997.

Bowers, W. J. (1964). *Student dishonesty and its control in college* (Cooperative Research Project No. OE 1672). New York: Bureau of Applied Social Research, Columbia University.

Boykins v. Fairfield Bd. Of Ed., 492 F.2d 697, 701-02 (5th Cir. 1974).

Bowden, R., (2007). Evolution of responsibility: From in loco parentis to ad meliora vertamur. *Education, 127*(4), 480-489.

Branum v. Clark, 927 F.2d 698, 705 (2nd Cir. 1991).

Bricault, D. (1998). Legal aspects of academic dishonesty: Policies, perceptions, and realities. Retrieved June 7, 2007, from <http://personal.northpark.edu/dbricault;dishnst.html>.

Bricault, D. (2007). Legal bases for dealing with academic dishonesty. *College & University, 82*(4), 15-17, 19-21.

Brickman, W. W. (1961). Ethics, examinations, and education. *School and Society, 89*, 412-415.

Brown v. State of N. Dakota, 711 N.W.2d 194, 207 Ed. Law Rep. 367 (N.D., 2006).

Buckton v. NCAA, 366 F.Sup. 1152 1156, D.Mass. 1973).

Burger King Corp. v Rudzewicz, 471 U.S. 462, 472, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985).

Burks v. Feb. Ins. Co., 883 A.2d 1086, 1088 (PA.Super. 2005).

Burleson v. Callanan Industries, 151 A.D.2d, 949, 1 950, 543 N.y.S.2d 225).

Burlington Northern and Santa Fe Ry. Co. v. Brotherhood of Maintenance of way Employees, 93 F. Supp.2d 751, 756 (N.D.Twx.2000).

*Business Week Online*. (2006, September 26). A crooked path through b-school?

Butler v. Carter, 123 So.2d 313 (Fla. 1960).

Cafeteria Workers v. McElroy, 367 U.S. 886, 895 (1961).

Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984).

Callahan, D. (2004). *The cheating culture*. Orlando, FL: Harcourt Books.

Camper v. Minor, 915 S.W.2d 437, 446 (Tenn. 1996).

Carboni v. Doctors of Virginia Polytechnic Inst., 949 F.Supp. 427 (Virg. Dist. Ct., 1996).

Carr v. St. John's University, New York, 17 A.D.2d 410, affirmed, 12 N.Y.2d 802, 187 N.E.2d 18 (1962).

Chalmers V. Lane, WL 169990 (U.S.Dist.Ct. N.D.Tex. 2005).

Chandamuri V. Georgetown University, 274 F.Supp.2d 71, 180 Ed. Law Rep. 707 (U.S. District Ct., District of Columbia, 2003).

Chavis v. Rowe, 93 N.J. 103, 459 A.2d 674 (1983).

Chiaino v. Lomenzo, 26 A.D.2d 469, 473, 275 N.Y.S.2d 658, 1967).

Chickey v. Watts, Franklin App. No. 04AP-818, 2005-Ohio-4974, at Page 14.

Childress v. Virginia Commonwealth U., 5 F.Supp.2d 384 (U.S. Dist. Ct., E.D. Virg. 1988).

Chrysler Corp. v. Lee Janssen Motor Co., 248 Neb. 281, 534 N.W.2d 568 (1995).

Church v. Maryland, 180 F.Supp.2d 708 748 (D.Md. 2002).

City of Kenosha v. Bruno, 412 U.S. 507, 93 S.Ct. 2222, 37 L.ed.2d 109 (1973).

City of Lancaster v. Chambers, 883 S.W.2d 650 (Tex. 1994).

Cizek, G. J. (1999). *Cheating on tests: How to do it, detect it, and prevent it*. Mahwah, New Jersey: Lawrence Erlbaum Associates.

Cizek, G. J. (2003). Detecting and preventing classroom cheating--promoting integrity in assessment. In T. R. Guskey & R. J. Marzano (Eds.). Thousand Oaks, CA: Corwin Press.

Clarke v. Trustees of Columbia Univ., 1996.

Clay County Manor, Inc., v. State of Tennessee, 849 S.W.2d 755, 759 (Tenn. 1993).

Clayton v. Trustees of Princeton University, 519 F.Supp. 802, 805 (D.N.J. 1981).

Cleveland Bd. Of Ed. V. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

Cleveland Board of Education v. LeFleur, 414 U.S. 632, 639-40, 94 S.Ct. 791, 795-96, 39 L.Ed.2d 52 (1974).

- Cohen v. School Bd. of Dade County, Fla., 450 So.2d 1238 (Fla. 3d DCA2984).
- Collin v. Rector & Bd. Of Visitors of Univ. of Va., 873 F.Supp. 1008, 1013 (W.D.Va. 1995).
- Collins v. University of Cincinnati, 3 Ohio App.3d 183, 444 N.E.2d 459 (1981), motion to certify record overruled, No. 81-1841 (Ohio Su.Ct. Jan. 20, 1982).
- Corr v. Mattheis, 407 F.Sup. 847 (D.R.I., 1976).
- Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99, 2L.Ed.2d 80 (1957).
- Corso v. Creighton University, 731 F.2d 529 (U.S.Ct. of Apl., 8th Circuit, 1984).
- Cosio v. Medical College of Wisconsin, Inc., 139 Wis.2d 241 (Ct. of Apl. 1987).
- Cosner v. United Penn Bank, 358 Pa.Super, 484, 492, 517, A.2d 1337, 1341 (1986).
- Coveney v. President & Trustees of the College of the Holy Cross, 388 Mass. 16, 19 (1983).
- Crook v. Baker, 813 F.2d 88, (1987).
- Crook v. Various People at the University of Michigan, 584 F.Supp. 1531 (U.S. Dist. Ct. Michigan, 1984).
- Crook v. Various People at the University of Michigan, 813 F.2d 88, 38 Ed. Law Rep. 81 (U.S. Ct. of Apl., 6th Cir., 1987).
- Crotty, M. (1998). *The foundations of social research: Meaning and perspective in the research process*. Thousand Oaks, CA: Sage.
- Daley v. U. of Tennessee at Memphis, 880 S.W.2d 693 (Ct. of Apl., Tenn. 1994).
- Dannells, Michael. 1997. *From discipline to development: Rethinking student conduct in higher education*. ASHE-ERIC Higher Education Report Volume 25, No. 2. Washington, DC: The George Washington University Graduate School of Education and Human Development.
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).
- Davis v. Huey, 571 S.W.2d 859, 862 (Tex. 1978).
- Davis v. Mann, 882 F.2d 967. 974 (5th Cir. 1989).
- Davis, S., Grover, C., Becker, A., & McGregor, L. (1992). Academic dishonesty: Prevalence, determinants, techniques, and punishments. *Teaching of Psychology*, 19(1), 16-20.
- Davis, S., & Ludvigson, H. (1995). Additional data on academic dishonesty and a proposal for remediation. *Teaching of Psychology*, 22(2), 119-121.

Dawkins, R. (2004). Attributes and statuses of college students associated with classroom cheating on a small-sized campus. *College Student Journal*, 38(1).

Dean v. Wissmann, 996 S.W.2d 631 (1999).

De Castro, S. (2001). *What is an Article 78?* Retrieved February 6, 2007, from <http://article78.com/primer>.

Delaware State College v. Ricks, 449 U.S. 250, 1980.

District of Columbia Ct. of Apl. V. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

Dixon v. Alabama State Board of Education, 294 F.2d 150, 159, 5th Cir., 1961.

Doherty v. City of Chicago, 75 F.3d 318, 322 (7th Cir., 1996).

Doherty v. Southern College of Optometry, 862 F.2d 570, 577 (6th Cir. 1988).

Drake, C. A. (1941). Why students cheat. *The Journal of Higher Education*, 12(8), 418-420.

Dunkin Donuts, Inc., v. Panagakos, 5 F.Supp.2d a 64 (D.Mass 1998).

Due v. Florida Agricultural and Mechanical University, 233 F.Supp 396 403 (N.D.Fla. 1963).

Due process and higher education: A systemic approach to fair decision making. *ERIC Digest*, Retrieved July 19, 2007, from [www.eric.gov](http://www.eric.gov).

Dutile, F. (2003). Disciplinary vs academic sanctions in higher education: A doomed dichotomy? *The Journal of College and University Law*, 29(3), 619-653.

Dyson v. Lavery, 417 F.Supp. 103 (E.D.Va.1976).

Easley v. U. of Michigan Bd. Of Regents, 906 F.2d 1143 (U.S.Ct. of Apl., 6th Cir., 1990).

Edwards v. Board of Regents of Northwest Missouri State University, 397 F.Supp. 822, W.D.Mo. 1975).

Eiland v. Wolf, 764 S.W.2d at 833 (1989).

Elliott v. Hinds, 786 F.2d 298, 302 7th Cir., 1986.

Ellison v. State, 549 S.W.2d 691, Tenn. Crim. App., 1986.

Erie Railroad v. Tompkins, 304 U.S. 64, 58, S.Ct. 817, 82 L.Ed. 1188 (1938).

ESAB Group, Inc. v Centribut, Inc., 126 F.3d 617, 625 (4th Cir.1997).

Esteban v. Central Missouri State College, 290 F.Supp. 622 (1969).

- Everett v. Marcuse, 426 F. Supp. 397 (E.D.Pa. 1977).
- Fabela v. Socorro Independent School District, 329 F.3d 409 415 (5th Cir., 2003).
- Fass, E. M. (1988). Academic dishonesty--a contemporary problem in higher education. In D. D. Gehring & D. P. Young (Eds.), *Academic integrity and student development: Legal issues and policy perspectives* (pp. 1-5). Ashville, NC: College Administration Publications.
- Federated Department Stores, Inc., v. Moitie, 452 U.S. 394, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981).
- Ferguson v. Thomas, 430, F.2d 852, 856 (5th Cir. 1970).
- Finn, K., & Frone, M. (2004). Academic performance and cheating: Moderating role of school identification and self-efficacy. *The Journal of Educational Research*, 97(3), 115-122.
- Florida Society of Newspaper Editors v. Public Service Commission (543 So.2d 1261, 1989).
- Florida State U. of College of Law v. Armesto, 563 So.2d 1080 (Dist. Ct. of Apl. Florida, 1990).
- Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932).
- Fox, K. H. (1988). Due process and student academic misconduct. *American Business Law Journal*, 250(4), 671-701.
- Frank v. Marquette University, 209 Wis. 372, 377, 245 N.W. 125, 127 (1932).
- Fricker, B., Armstrong, W., & Carty, H. (2003). The proposed UCSD academic integrity tutorial pilot project – a formative evaluation.
- Frumkin v. Board of Trustees, 626 F.2d 19 (6th Cir. 1980).
- Futrell v. Ahrens, 540 P.2d 214, 1975.
- Gabel v. Polk Cty. Bd. of Comrs., 269 Neb. 714, 695 N.W.2d 433 (2005).
- Gally v. Columbia U., 22 F.Supp.2d 199 (U.S.Dist.Ct. S.D., N.Y. 1998).
- Garrett v. State of Tennessee, 717 S.W.2d 290, 1986.
- Garshman v. Pennsylvania State U., 395 F.Supp. (912, U.S.Dist.Ct., M.D. Pennsylvania, 1975).
- Gaspar v. Bruton, 513 F.2d 843, 10th Cir., 1975.
- Gehring, D. D. (2001). The objectives of student discipline and the process that's due: Are they compatible? *NASPA Journal*, 38(4).
- Gehring, D, Nuss, E. M., & Pavela, G. (1986). *Issues and perspectives on academic integrity*. Columbus, OH: National Association of Student Personnel Administrators.

Gerdeman, R. (2000). Academic dishonesty and the community college. *ERIC Digest*, 4 pages. Retrieved on 11-03-06 (ED447840).

Girsky v. Touro College, 1994.

Goldberg v. Kelly (397 U.S. 254, 90 S.Ct., 1970).

Goldsen, R., Rosenberg, M., Williams, Jr., R., & Suchman, E. (1960). What college students think. Princeton, NJ: D. van Norstrand Company.

Gonzalez v. City of Chicago, 239 F.3d 939, 940 (7th Cir. 2001).

Goodwin v. Barry Miller Chevrolet, Inc., 543 So.2d 1171, 174 (Ala. 1989).

Goss v. Lopez, 419 U.S. 565, 577, 95 S.Ct. 729, 738 42 L.Ed.2d 725 (1975).

Gott v. Berea College, 161, S.W. 204, 206 (Ky. 1913).

Graham v. Richardson, 403 U.S. 365, 374, 91 S.Ct. 1848, 1853, 29 L.Ed.2d 534 (1971).

Grannis v. Ordean, 234 U.S. 385, 394 (1914).

Greene v. Howard University, 134 U.S.App.D.C. 81, 86, 412 F.2d 1182, 1133 (1969).

Grogan v. Saint Bonaventure U., 91 A.D.2d 855, 1982.

Grossi, E. L., & Edwards, T. D. (1997). Student misconduct: Historical trends in legislative and judicial decision-making in American universities. *The Journal of College and University Law*, 23(4), 829-852.

Gruen v. Chase, 1995.

Gulf Oil v. Bernard, 452 U.S. 89, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981)

Gupta v. Stanford University, 124 Cal.App. 4th 407 (Ct. of Apl., 6th Dist., Cal., 2004).

Gutkin v. University of Southern California, 101 Cal. App. 4th 967, 125 Cal.Rptr.2d 115 (2002).

Hagopian v. Knowlton, 470 F.2d 201 (1972).

Haines, V. J., Diekhoff, G. M., LaBeff, E. E., & Clark, R. F. (1986). College cheating: Immaturity, lack of commitment, and the neutralizing attitude. *Research in Higher Education*, 25(4), 342-354.

Hall v. Medical College of Ohio at Toledo, 724 F.2d 299 (U.S.Ct. of Appl, 1984).

Hall v. St. Mary's Seminary & University, 608 F.Supp. 2d 679 (U.S. Dist. Ct., Dist. Of Maryland, 2009).

Hand v. New Mexico State U., 957 F.2d 791 (U.S.Ct. Apl. 10th Cir. 1992).

Harlow w. Fitzgerald, 457 U.S. 800, 1982.

Harris v. Trustees of Columbia U. in City of New York, 468 N.E.2d 54 (N.Y. 1984).

Harris v. Blake, 798 F.2d 429, 1986.

Hart v. Ferris State College, 557 F.Supp. 1379 (W.D.Mich. 1983).

Hawley, C. S. (1984). The thieves of academe: Plagiarism in the university system. *Improving College & University Teaching*, 32(1).

Haynes v. Dallas County Junior College District, 386 F.Supp. 208 (N.D.Tex. 1974).

Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 414-15 & N. 8, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

Henderson State v. Spadoni, 41 Ar. App. 33, 848 S.W.2d 951, 1993.

Henson v. The Honor Committee, 719 F.2d 69, 73 (4th Cir., 1983).

Herman v. Dixon, 393 Pa. 33, 141 A.2d 567 (1958).

Hewitt v. Helms, 459 U.S. 460, 103 S.Ct. 864, 74 L.Ed.2d 67 551 U.S. 4124, 4126-27 (1938).

Higgins v. American Society of Clinical Pathologists, 51 N.J. 191, 238 A.2d 665 (1968).

Hill v. Trustees of Indiana University, 537 F.2d 248 (U.S.Ct. of Apl., 1975).

Hines v. Rinker, 667 F.2d 699, 8th Cir., 1981.

Hoy v. Angelone, 554 Pa. 134, 151 N.10, 720 A.2d 745, 753 N. 10 (1998).

[http://en.wikipedia.org/wiki/due\\_process](http://en.wikipedia.org/wiki/due_process). Retrieved August 14, 2007.

<http://plagiarism.org>. Retrieved 04-09-2007.

Ingraham v. Wright, 430 U.S. 651, 682 (1977).

Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

J. Cobb, D. Cobb, and A. Cobb v. The Rector and Visitors of the U. of Virginia, 69 F.Supp.2d 815 (U.S. Dist.Ct. Virginia, 2000).

Jacobs v. College of William and Mary, 495 F.Supp. 183 (E.D.Va 1980).

Jaksa v. U. of Michigan and others, 597 F.Supp. 1245 (U.S. Dist. Ct. E.D. Michigan, 1984).

James as President of the University of Texas Medical Branch v. Wendell Wall and Forrest Wall, 783 S.W.2d 615 (Ct. of Apl. Of Texas, 1989).

James R. Bryant v. Tennessee State Board of Accountancy, No. 01A01-9303-CH-00088 (1993).

Jendrek, M. P., (1989). Faculty reactions to academic dishonesty. *Journal of College Student Development*, 30.

Johnson v. Educational Testing Service, 754 F.2d 20, 24 (1st Cir.) cert. denied 472 U.S. 1029, 105 S.Ct. 3504, 87 L.Ed.2d 625 (1985).

Johnson v. Caparelli, 425 Pa. Super. 404, 625 A.2d 668, 671-673 (1993).

Jones v. Board of Gov. of the University or North Carolina, 557 F.Supp. 263 (W.D.N.C. 1983).

Jones v. State Bd. Of Ed., 279 F. Supp. 190 (M.D.Tenn. (1968).

Jones v. University of North Carolina at Charlotte, 704 F.2d 713 (U.S. Ct. of Apl., 4th Cir., 1983).

Jones, S. R. (2002). (Re)Writing the word: Methodological strategies and issues in qualitative research. *Journal of College Student Development*, 43(4).

Jordan, A. E. (2001). College student cheating: The role of motivation, perceived norms, attitudes, and knowledge of institutional policy. In P. Keith-Spiegel & B. E. Whitley, Jr. (Eds.), *Ethics & behavior* (pp 233-247). Mahwah, NJ: Lawrence Erlbaum.

Kalinsky v. State of N.Y. at Binghamton, 161 A.D.2d 1006 (Sup. Ct. App. Div., 3rd Dept., N.Y. 1990).

Kaplin W., & Lee, B. (1995). *The law of higher education: A comprehensive guide to legal implications of administrative decision making*. San Francisco: Jossey-Bass.

Kazatsky v. King David Mem'l Park, 515 Pa. 183, 527 A.2d 988, 995 (1987).

Keddie v. Penn State U., 412 F.Supp. 1264 (M.D.Pa. 1976).

Keles v. Manhattan College Corp. 1994.

Kerr v. Univ. of Nebraska, 1 Neb. App. 907, 739 N.W.2d 224, 224 Ed. Law Rep. 892 (Neb. App. 2007).

Kerr, O. S. (2007). How to read a legal opinion: A guide for new law students. Essay submitted for publication.

Kessler v. Board of Regents, 738 F.2d 751, 1984.

Keystone Guild, Inc., v. Pappas, 399 Pa. 46, 159 A.2d 681 (1960).

- Kibler, W. (1993a). Academic dishonesty: A student development dilemma. *NASPA Journal*, 30(4).
- Kibler, W. (1993b). A framework for addressing academic dishonesty from a student development perspective. *NASPA Journal*, 31(1).
- Kibler, W. (1994). Addressing academic dishonesty: What are institutions of higher education doing and not doing? *NASPA Journal*, 32(2).
- Kibler, W., Nuss, E., Paterson, B., & Pavela, G. (1988). Academic integrity and student development: Legal issues, policy perspectives. In G. Pavella (Ed.), *Chapter IV: The law and academic integrity*. Ashville, NC: College Administration Publications.
- King v. Danek Med., inc., 73 S.W.3d 429, 460 (Tenn. Ct. App. 2000).
- Koch v. Board of Regents of Northwest Missouri State College, 256, S.W.2d 785, 788 (Mo. 1953).
- Kraft v. William Alanson White Psychiatric Found., 498 A.2d 1145 (D.C.App. 1985).
- Ku v. State, 104 S.W.3d 870, 876 (ten. Ct. App. 2002).
- Kutzik v. Young, 730 F.2d 149 (4th Cir. 1982).
- Langston v. American College Testing Program, 890 F.2d 380 (U.S.Ct. of Apl. Eleventh Cir. 1989).
- Lee Sapp Leasing v. Ciao Caffe & Espresso, Inc., 10 Neb.App. 948, 640 N.W.2d 677 (2002).
- Leiby v. U. of Akron, WL 1530152 (Ct. of Apl., Ohio, 2006).
- Lesser v. Board of Education of the City of New York, 18 A.D.2d 388, 239 N.Y.S.2d 776 (1963).
- Levine, A. (1980). *When dreams and heroes died: A portrait of today's college student*. SanFrancisco: Jossey-Bass.
- Levine, A. (1993). The making of a generation. *Change*, September/October, 8-15.
- Lightsey v. King, Superintendent, U.S. Merchant Marine Academy, 567 F.Supp. 645 (U.S.District Court E.D. New York, 1983).
- Little v. Liquid Air Corp. 37 F.3d 1069, 1075 (5th Cir.1994).
- Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982).
- Lombard v. Economic Dev. Admin. Of P.R., 1998.

Lonzo v. Weinberger, 534 F.2d 712, 714 (7th Cir. 1976).

Luterbach v. Mochon, Schutte, Hackworthy, Juerisson, Inc., 84 Wis.2d 1, 267 N.W.2d 13, 15 (1978).

Lyon College v. Gray, 67 Ark.App. 323 999, S.W.2d 213 (Ct. of App., Ark., Div. I 1999)

Madera v. Bd. Of Ed., 386 F.2d 778 (2nd Cir., 1967).

Madsen v. Irwin, 395 715, 721 (1985).

Mahavongsanan v. Hall. 529 F.2d 48 (CA5 1976).

Malley v. Briggs, 475 U.S. 335, 344-45, 106 S.Ct. 1092, 1098, 89 L.Ed.2d 271 (1986).

Mallon, T. (1989). *Stolen words*. San Diego, CA: Harcourt.

Manning v. Chevron Chemical Co., 332 F.3d 874, 883 (5th Cir. 2003), cert. denied, 540 U.S. 1107, 124 S.Ct. 1060, 157 L.Ed.2d 892 (2004).

Maramark, S., & Maline, M. (1993). *Academic dishonesty among college students. Issues in education*. Washington, DC: Office of Educational Research and Improvement.

Marten v. University of Kansas, 499 F.3d 290, 224 Ed. Law Rep. 639 (C.A.3 Pa., 2007).

Martinez v. Texas State Bd. Of Medical Examiners, 476 S.W.2d 400, 405 (Tex. Civ.App. San Antonio, 1972, writ referenced n.r.e.) appeal dismissed 409 U.S. 1020, 93 S.Ct. 463, 34 L.Ed.2d 312.

Mary M. v. University of New York at Cortland, 100 A.D.2d 41, 473, N.Y.S.2d 843 (1984).

Masonic Grand Chapter of Order of Eastern Star v. Sweatt, Tex. Civ. App., 329 S.W.2d 3334 (1959).

Mathews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893 (1976).

Matter of Bianca v. Frank, 43 N.Y.2d 168, 173, (1977).

Matter of Harris v. Trustee of Columbia Univ., 62 N.Y.2d 956, 1983.

Matter of Hennekens v. State Tax Comm. Of State of N.Y., 114 A.D.2d 600, 494 N.Y.S.2d, 208.

Matter of Levine v. New York State Liq. Auth, 23 N.Y.2d 863, 864 (1969).

Matter of Valvano v. Jones, 122 A.D.2d 300, 504 N.Y.S.2d, 306.

Matter of Miller v. Regan, 80 A.D.2d 968, 969, 438 N.Y.S.2d 622).

Matthews, C. O. The honor system. *The Journal of Higher Education*, 70(5), p. 504-509.

- Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)
- McAuley v. Smith, 82 Ohio St.3d 393, 396, 696 N.E.2d 572 (1998).
- McCabe, D. (1993). Faculty responses to academic dishonesty: The influence of student honor codes. *Research in Higher Education*, 34(5), 647-657.
- McCabe, D. (2001). Cheating: Why students do it and how we can help them stop. *American Educator*, 25(4), 38-43.
- McCabe, D. (2005). It takes a village--academic dishonesty. *Liberal Education*, Summer/Fall, 26-31.
- McCabe, D., & Katz D. (2009). Curbing cheating. *Education Digest: Essential Readings Condensed for Quick Review*, 75(1), 16-19.
- McCabe, D., & Makowski, A. (2001). Resolving allegations of academic dishonesty. Is there a role for students to play? *About Campus*, March-April, 17-21.
- McCabe, D., & Pavela, G. (1998). The principal pursuit of academic integrity. In T. J. Marchese (Series Ed.), *AAHE Bulletin, 1997-1998* (pp. 60-61). Washington, DC: American Association for Higher Education.
- McCabe, D., & Pavela, G. (2000). Some good news about academic integrity. *Change*, Sept./Oct., 32-38.
- McCabe, D., & Pavela, G. (2004). The (updated) principles of academic integrity. *Change*, May/June, 10-14.
- McCabe, D., & Trevino, L. (1993). Academic dishonesty: Honor codes and other contextual influences. *The Journal of Higher Education*, 64(5), 522-538.
- McCabe, D., & Trevino, L. (1996). What we know about cheating in college: Longitudinal trends and recent developments. *Change*, 28(1), 28-33.
- McCabe, D., & Trevino, L. (1997). Individual and contextual influences on academic dishonesty: A multicampus investigation. *Research in Higher Education*, 38(3), 379-396.
- McCabe, D., Trevino, L., & Butterfield, K. (1999). Academic integrity in honor code and non-honor code environments: A qualitative investigation. *The Journal of Higher Education*, 70(2), 211-234.
- McCabe, D., Trevino, L., & Butterfield, K. (2001a). Cheating in academic institutions: A decade of research. *Ethics and Behavior*, 11(3), 219-232.
- McCabe, D., Trevino, L., & Butterfield, K. (2001b). Dishonesty in academic environments: The influence of peer reporting requirements. *The Journal of Higher Education*, 72(1), 29-45.

McCabe, D., Trevino, L., & Butterfield, K. (2002). Honor codes and other contextual influences on academic integrity: A replication and extension to modified honor code settings. *Research in Higher Education*, 32(3), 357-378.

McClung v. Delta Square Ltd. Partnership, 937 S.W.2d 891, 905 (Tenn. 1996).

McDonald v. Bd. Of Trustees of U. of Illinois (def. R. Marshall) v. Bd. Of Trustees of U. of Illinois (U.S.Dist.Ct., N.D. Ill. 1974).

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d a688 (1973).

McEwan, E. K. (2005). I didn't do it. An article in *guiding students from cheating and plagiarism to honesty and integrity: Strategies for change*, by A. Lanthrop and K. Foss. Westport, Connecticut: Libraries Unlimited.

Medina v. Ramsey Steel Co., Inc., 238 F.3d 674, 684 (5th Cir. 2001).

Melear, K. B. (2003). The contractual relationship between student and institution: Disciplinary, academic, and consumer contexts. *Journal of College and University Law*, 30(1).

Meleis, A. I. (1982). Arab students in western universities: Social properties and dilemmas. *Journal of Higher Education*, 53(4), 439-447.

Melvin v. Union Coll., 195 A.D.2d 447 (Sup. Ct., Apl. Div . N.Y. 1993).

Mercer v. Bd. Of Trust. For U. of N. Colorado, 17 Fed. Appx. 913, DJCAR 4363 (2001).

Metropolitan Gov't. of Nashville v. Schacklett, 554 S.W.2d 601, 601 (Tenn. 1977).

Michigan v. Ewing, 474 U.S. at 215-17 (1985).

Mitchell v. W. T. Grant co., 416 U.S. 600, 610, 94 S.Ct., 1895, 1901, 40 L.Ed.2d 406 415 (1974).

Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5L.Ed 492 (1961).

Moeck, P. G. (2002). Academic dishonesty: Cheating among community college students. *Community College Journal of Research and Practice*, 26, 479-491.

Moore, B. J. (2002). Truth or consequences, *About Campus*, September-October.

Morris v. Brandeis University, WL 1470357 (Mass., Super., 2001).

Morrissey v. Brewer, 408 U.S. at 481 (1972).

Morton v. Ruiz, 415 U.S. 199, 94 (1974).

Mu Chapter of Delta Kappa Epsilon v. Colgate Univ., 2005.

Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950).

Mullins v. Pine Manor College, 389 Mass. 47 (1983).

Murphy v. Duquesne University of the Holy Ghost, 565 Pa. 571, 777 A.2d 418 (2001).

Mustell v. Rose, 282 Ala. 358, 367, 211 So. 2d 489, 498 , cert. denied, 393 U.S. 936 (1968).

Napolitano v. The Trustees of Princeton University, 186 N.J.Super 548, 453 A.2d 263 (1982).

Nash v. Auburn, 812 F.2d 655, 661 (11th Cir. 1987)

Nawaz, Smajovic, and Maewski v. State University of New York University at Buffalo School of Dental Medicine, 295 A.D.2d 944 (2002).

NBC v. Communications Workers of America, 860 F.2d 1022 (11th Cir. 1988).

Nelson v. Coughlin, 188 A.D.2d 1071, 591, N.Y.S.2d 670, appeal dismissed 81 N.Y.2d 834, 595 N.Y.S.2d 396, 611 N.E.2d 297.

Nonis, S., & Swift, C. (2001). An examination of the relationship between academic dishonesty and workplace dishonesty: A multicampus investigation. *Journal of Education for Business, November/December*.

North Carolina State Ports Authority v. Dart Containerline Co., 592 F.2d 749, 750 (4th Cir., 1979).

Norton v. Discipline Committee, 419 F.2d 195 (6th Cir. 1969).

Nuss, E. M. (1981). Academic Integrity: Comparing faculty and student attitudes. *Improving College & University Teaching, 32, 3*.

Nuss, E. (1982). *Undergraduate moral development and academic dishonesty*. (Doctoral dissertation, University of Maryland, 1981).

Nuss, E. (1988). Academic dishonesty--a contemporary problem in higher education. In D. D. Gehring and D. P. Young (Eds.), *Academic integrity and student development: Legal issues and policy perspectives* (pp. 1-5). Ashville, NC: The Higher Education Administration Series College, Administration Publications.

O'Connor v. Sandy Lane Hotel Co., Ltd., 496 F.3d 312, 317 (3d Cir. 2007).

O'Connor v. The College of Saint Rose, 3:04-cs-0318 (U.S.Dist.Ct. for No. Dist. Of N.Y., 2005).

Olsson v. Board of Higher Educ., 1980.

Osteen v. Henley, 13 F.3d 221, 225, 7th Cir. (1993).

Papachristou v. U. of Tennessee, 29 S.W.3d 487, 148 Ed. Law Rep. 1079 (Ct. Apl. Tenn., 2000).

- Patterson (Plaintiff-Appellee) v. Hunt and U.T. (Defendants-Appellants), Shaw and Melton (Plaintiffs-Appellants) v. University of Tennessee (Defendants-Appellees), 682, S.W.2d 508, 22 Ed. Law Rep. 627 (1984).
- Pavela, G. (1978). Judicial review of academic decisionmaking after *Horowitz*. *NOLPE School Law Journal*, 8(1), 55-75.
- Pavela, G. (1981, February 9). Cheating on the campus: Who's really to blame? *The Chronicle of Higher Education*, p. 64.
- Pavela, G. (1988). The law and academic integrity. In D. D. Gehring and D. P. Young (Eds.), *Academic integrity and student development: Legal issues and policy perspectives* (pp. 37-63). Ashville, NC: The Higher Education Administration Series, College Administration Publications.
- Pavela, G. (1997). Disciplinary and academic decisions pertaining to students: A review of the 1995 judicial decisions. *Journal of College and University Law*, 23(3), 391-401.
- Pavela, G. (1997). Disciplinary and academic decisions pertaining to students: A review of the 1996 judicial decisions. *Journal of College and University Law*, 24(2), 213-224.
- Pavela, G., & McCabe, D. (1993). The surprising return of honor codes. *Planning for Higher Education*, 21, 27-31.
- Pennzoil Prods. Co. v. Colelli & Associates, Inc., 149 F.3d 197, 200-01 (3d Cir.1998).
- Phillip Bros. Inc. v. Oil Country Specialists, Lt., 709 S.W.2d 262, 265 (Tex. App. Houston 1st Dist. 1986) writ dismissed.
- Pickering v. Bd. Of Ed., 391 U.S. 568, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).
- Pincus, H., & Schmelin, L. (2003). Faculty perceptions of academic dishonesty: A multidimensional scaling analysis. *The Journal of Higher Education*, 74(2), 196-209.
- Ponoma College v. Superior Court 45 Cal.Ap. 4th 1716, 1722-1723, 53 CalRptr.2d 662 (1996).
- Powe v. Miles, 407 F.2d 73 (2nd Cir. 1968).
- Powell v. National Bd. of Medical Examiners, 364 F.3d 79, 86 (2d Cir. 2004).
- Pride v. Howard University, 384 A.2d 31 (Dist. Of Columbia Ct. of Apl., 1978).
- Prusack v. State, 117 A.D.2d 729 (N.Y. App.Div. 1986).
- Pugel v. University of Illinois, 378 F.3d 659 (U.S.Ct. of Apl., Seventh Cir., 2004).
- Puka, B. (2005). Student cheating. *Liberal Education, Summer/Fall*, 32-35.
- Rankin v. Phillipe, 206 Pa.Super. 27, 30, 211 A.2d 56, 58 (1965).

- Rauer v. State of New York University at Albany, 159 A.D.2d 835 (Sup. Ct. App. Div. N.Y. 1990).
- Rearden v. Allegheny College, 926 A.2d 477, 222 Ed. Law Rep. 247, (PA Super 160, 2007).
- Regents of U. of Michigan v. Ewing, 474 U.S. 214, 216, 106 S.Ct. 507, 508, 88 L.Ed.2d 523 (1985).
- Regents of the University of Michigan v. State, 395 Mich. 52, 235 N.W.2d 1 (1975).
- Remick v. Manfredy, 238 F.3d 248, 255-56 (3d Cir.2001).
- Rendell-Baker v. Kohn, 457 U.S. 345, 353, 95 S.Ct. 449, 454, 42 L.Ed.2d 477 (1974).
- Rensselaer Socy. Of Engrs. V. Rensselaer Polytechnical Inst., 260 A.D.2d 992, 993, 689 N.Y.S.2d 292n (1999).
- Rex v. Cambridge University, 92 Eng. Rep. 818 (1723)
- Richardson v. McDonnell, 841 F.2d at 122-123 (1988),
- Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971).
- Roach v. Univ. of Utah, 968 F. Supp. 1446 (D.Utah, 1997).
- Roberson v. Alltell, 373 F.3d, 647, 655 (5th Cir., 2004).
- Roberts, D., & Rabinowitz, W. (1992). An investigation of student perceptions of cheating in academic situations. *The Review of Higher Education*, 15(2), 179-90.
- Robinson-Zanartu, C., Pena, E., Cook-Morales, V., Pena, A., Afshani, R., & Nguyen, L. (2005). Academic crime and punishment: Faculty members' perceptions of and responses to plagiarism. *School Psychology Quarterly*, 20(3), 318-337.
- Roig, M., & Ballew, C. (1992, April). *Attitudes toward cheating by college students and professors*. Paper presented at the annual meeting of the Eastern Psychological Association, Boston, MA.
- Roig, M., & Marks, A. (2006). Attitudes toward cheating before and after the implementation of a modified honor code: A case study. *Ethics & Behavior*, 16(2), 163-171.
- Rosenberg, P. (1973). Why Johnny can't flunk. *Esquire*, April, 134-137.
- Ross v. Creighton U., 957 F.2d 410,414 (1992).
- Ross v. Pennsylvania State Univ. 445 F.Supp. 147, 152 (M.D.Pa. 1978).
- Rossomadno v. Board of Regents of the University of Nebraska, 2 F.Supp. 2d 1223 (D.Neb. 1998).

Rutherford, D., & Olswang, S. (1981) Academic misconduct: The due process rights of students. *NASPA Journal*, 19(2), 12-16.

Rutledge v. Gulian, 3 N.J. 113, 459 A.2d 680 (1983).

Sabeti, 676 S.W.3d at 688, 689.

Saterlee, A. G. (2002). *Academic dishonesty among students: Consequences and interventions*. Washington, DC: U.S. Department of Education.

Saunders, E. J. (1993). Confronting academic dishonesty. *Journal of Social Work Education*, 29(2), 224-231.

Schenkolewski v. Cleveland Metroparts System, 67 Ohio St.2d 31, 36 & n.4, 426 N.E.2d 784, 787 & N.4, 1981.

Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974).

Schmelkin, L, Kaufman, A., & Liebling, D. (2001, August). *Faculty assessments of the clarity and prevalence of academic dishonesty*. Paper presented at the Annual Meeting of the American Psychological Association, San Francisco, CA.

Schulman v. Franklin and Marshall College, 371 Pa.Super, 345, 538, A.2d (1988).

Shaw v. Stroud, 13 F.3d 791 (1994).

Shepard v. George Mason University, 77 Fed. Appx. 615, 182 Ed. Law Rep. 92 (U.S. Ct. of Appeals, Fourth Cir., 2003).

Shuman v. U. of Minnesota Law School, 451 N.w.2d 71 (Ct. app., Mn. 1990).

Siblerud v. Colorado State Bd. Of Agriculture, 896 F.Supp. 1506 (U.S. Dist. Ct. Colorado 1995).

Sill v. Pennsylvania State University, 462 F.2d 463, 3rd Cir. 1972).

Sims, R. (1993). The relationship between academic dishonesty and unethical business practices. *Journal of Education for Business*, 68(4), 207-211.

Slaughter v. Brigham Young U., 514 F.2d 622 (U.S.Ct. of Apl., 10th Circuit, 1974).

Smith v. Denton, 320 Ark, 253 895 S.W.2d 550, 1995.

Smith v. Gettysburg College, 22 Pa. D.C.3d 607 (Pa. Com. Pl., 1982).

Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816, 847, 97 S.Ct. 2094, 2111, 53 L.Ed.2d 14, (1977).

Sofair v. State University of New York, 44 N.y.2d 475, 478, 406 N.Y.S.2d 276, 377 N.E.2d 730 (1978).

Soni v. Board of Trustees, 513 F.2d 347, 352, 6th Cir., 1975).

Speake v. Grantham, 317 F.Supp. 1253 (1971).

Stannard, C. I., & Bowers, W. J. (1970). The college fraternity as an opportunity structure for meeting academic demands. *Social Problems*, 17, 371-390.

State ex rel Dept of General Services v. Willis, 334 50.2d 580l, Fla. 1st DCS (1977).

State v. Schmid, 84 N.J. 535, 423 A.2d 615 (1980).

State v. Silvers, 255 Neb. 702, 587 N.W.2d 325 (1998).

State v. Southwestern Bell Tel. Co., 526 S.W.2d 526, 528 (Tex. 1975).

State Personnel Board v. Lloyd, 752 P.2d 559, 562 (Colo. 1988).

Statsky, W., & Wernet, R. John (1995). *Case analysis and fundamentals of legal writing*. New York: West Publishing Company.

Stavisky, L. (1973). Term paper "mills," academic plagiarism, and state regulation. *Political Science Quarterly*, 88(3), 445-461.

Steir v. Girls Scouts of the USA, 383 F.3d 7, 12 (1st Cir. 2004).

Stern, E. B., & Havlicke, L. (1986). Academic misconduct: Results of faculty and undergraduate student surveys. *Journal of Allied Health*, May, 129-142.

Stevens v. Hunt, 646 F.2d 116, 6th Cir., 1981.

Stone v. Cornell Univ., 126 A.d.2d 816, 818, 510 N.Y.S.2d 313.

Stoner, E. N. II, & Detar, C. (1999). Disciplinary and academic decisions pertaining to students in higher education: Higher education and the courts: 1998 in review. *Journal of College and University Law*, Fall.

Stoner, E. N.II, & Martineau, B. (2000). Disciplinary and academic decisions pertaining to students in higher education: Higher education and the courts: 1999 in review. *Journal of College and University Law*, Fall.

Stoner, E. H., & Schupansky, S. P. (1998). Disciplinary and academic decisions pertaining to students: A review of the 1997 judicial decisions. *Journal of College and University Law*, 25(2), 293-312.

Suarez Corp. Indus. V. McGraw. 202 F.3d 676 (4th Cir. 2000).

Sullivan v. Houston Indep. Sch. Dist., 475, F.2d 1071, 1077 (5th Cir. 1973).

Sun Oil v. Whitaker, 424 S.W.2d 216, 218 (Tex. 1968).

Susan M. v. New York Law School, 556 N.E.2d 1104, 1106-07 (N.Y. 1990).

Swanson Broadcasting, Inc., v. Clear Channel Communications, Inc., 752 S.W.2d 165, 168 (Tex. App. San Antonio, 1988, no writ).

Swartley v. Hoffner, 734 A.2d 915 (Pa. Super. Ct. 1999), appeal denied, 747 A.2d 902 (Pa. 1999).

Taylor v. Albert Einstein Medical Center, 562 Pa. 176, 183-184, 754 A.2d 650, 653 (2000).

Tedeschi v. Wagner College (49 N.Y.2d 652, 427 N.Y.S.2d 760, 404 N.E.2d 1302, Ct. App. 1980).

Teeter v. Homer Military School, 81 S.E. 767 (N.C., 1914).

Tenenbaum v. Williams, 193 F.3d 581, 593 (2d Cir. 1999).

Texas State Bd. Of Educ. V. Guffy, 718 S.W.2d 48, 50 (Tex. App. – Dallas, 1986).

Thaddeux v. Blatter, 175 F.3d 378, 386-387 (6th Cir. 1999).

Than v. University of Texas Medical School at Houston, 188 F.3d 633, 137 Ed. Law Rep. 915 (Ct. of Apl., 1999).

Thompson v. City of Louisville, U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654 (1960).

Thompson v. Peterson, 546 N.W.2d 856, 861 (N.D. 1996).

Thompson, L. C., & Williams, P. G. (1995). But I changed three words! Plagiarism in the ESL classroom. *The Clearing House*, 69(1).

Tinker v. Des Moines School Dist., 393 U.S. 503, 506 (1969).

Tracy v. Central Cass. Pub. Sch. Dist. 574 N.W.2d 781 (ND 12, 1998).

Trahms v. Trustees of Columbia University, 666 N.Y.S.2d 150 (Sup. Ct. App. Div., N.Y. 1997).

Transport Co. of Texas v. Robertson Transports, 152 Tex. 551, 261 S.W.2d 549 (1953).

Unified School District No. 480 v. Epperson, 583 F.2d 1118, 1121-22 (10th Cir., 1978).

United Mine Workers of America v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966).

U. of Texas Medical School at Houston v. Than, 834 S.W.2d 425 (Ct. of Apl. Texas 1992).

U. of Texas Medical School at Houston v. Than, 874 S.W.2d 839 (Ct of Apl. Texas, Houston, 1st Division, 1994).

United States v. Scheffer, 523 U.S. 303, 309-10, 118 S.Ct. 1261, 140 L.Ed.2d 413 (1998).

United States v. Clark, 18 F.3d 1337, 1342 (6th cir. 1994).

University of Texas Medical School at Houston v. Than, 901 S.W.2d 926, 101 Ed. Law Rep. 1251, Supreme Court of Texas (1995).

United States v. Aramony, 166 F.3d 655, 661 4th Cir. (1999).

University of Houston v. Sabeti, 676 S.W.2d 685 (Ct. of Appl. Of Texas, 1984).

Vandehey, M., Diekhoff, G., & LaBeff, E. College cheating: A twenty-year follow-up and the addition of an honor code. *Journal of College Student Development*, 48(4), 468-480.

Vargo v. Hunt, 398 Pa.Super 600, 581 A.2d 625 (Sup. Ct. of Penn 1990).

Vaughn v. Regents of University of California, 504 F.Supp. at 1353.

Waliga v. Bd. Of Trustees of Kent State Univ., 22 Ohio St.3d 55, 488 M.E.2d 850, 852 (1986).

Walker v. Grand Central Sanitation, 430 Pa.Super.236, 634 A.2d 237, 240 (1993).

Walter v. Davidson, 214 Ga. 187, 104 S.E.2d 113 (1958).

Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002).

Wasson v. Trowbridge, 382 F.2d 807, 812 (2nd Cir. 1967).

Webster v. The University of Tennessee, M2007-01975-COA-R3-CV (Ct. of Apl. Of Tenn. At Nashville, 2008).

Weidemann v. State U. of New York College at Corland, 188 A.D.2d 974 (Sup. Ct. Apl. Div., N. Y. 1992).

Wessel v. Glendening, 306 F.3d 203 (4th Cir., 2002).

West Virginia Board of Education v. Barnette, 319 U.S. 624, 637 (1943).

Wheeler v. D. Miller, S. McCullough, Texas Woman's U., 168 F.3d 241 132 Ed. Law Rep. 674 (U.S. Ct. of App., Fifth Circuit, 1999).

Whitfield v. Simpson, 312 F. Supp. 889, 894 (E.D.Ill. 1970).

Williams v. Mehra, 186 F.3d 684, 689 (6th cir. 1999).

Williamson v. Bernstin, 5 Mass. L. Rptr. 94, 1996 WL1185104 (Mass.Super.) (Feb. 20, 1996).

Wilson v. Univ. of Va., 663 F.Supp. 1089, 1092 (W.D.Va. 1987).

Withrow v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, L.Ed.2d 712 (1975).

Wisch v. Sanford School, Inc., 420 F.Supp. 1310, D.Del., 1976.

Wisconsin v. Constantineau, 400 U.S. at 437, 91 S.Ct., 1971.

Wofel v. Morris, 972 F.2d 712, 179, 6th Cir, 1992.

Wolf v. Ohio State University Hospital, 170 Ohio st. 49, 53, 162 N.E.2d 475, 478, 1959.

Wulf v. City of Wichita, 883 F.2d 842, 1989.

Wright, J. C., & Kelly, R. (1974). Cheating: Student/faculty views and responsibilities. *Improving College & University Teaching*, 22, 31-34.

Yankelovich, D. (1982). Lying well is the best revenge. *Psychology Today*, August.

Youngberg v. Romeo, 457 U.S. 307, 323 (1982).

Zastrow, C. H. (1970). Cheating among college graduate students. *The Journal of Educational Research*, 64, 157-160.