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Legal Aspects of the Student-Institutional Relationship:

Revisiting Concerns Over Reasonable Standards in College and University Policies

by Joseph Beckham

Notoriety from litigation involving the college student's constitutional and statutory rights may have obscured awareness of some of the traditional forms of lawsuits involving the student-institutional relationship. While colleges and universities, particularly those state-supported institutions constrained by fourteenth amendment guarantees or recognized as providing "program specific" entitlements under federal statute, are often challenged on the basis of a denial of constitutional or federal statutory rights, the student-institutional relationship in higher education continues to be subtlely redefined by appellate decisions which apply to public and private sector institutions.[1]

These judicial decisions respond to student initiated suits alleging arbitrary and capricious action, breach of contract or fraudulent misrepresentation by agents or employees of higher education programs. While broadly classified as consumer protection litigation, these forms of lawsuit are as old as the common law. Their recent application in cases involving higher education reflects the intense marketplace competition among institutions and a recognition that students have economic and property interests which deserve legal protection.

Often characterized as nuisance suits these legal challenges focus attention on the discretion of faculty and administrators when a student's property interest in obtaining a degree or receiving appropriate certification is threatened. The actual dollar amount in controversy may be nominal, but the stakes for a student-plaintiff are often high, particularly when career options are foreclosed by academic policy or decision.

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Arbitrary and Capricious Action

Courts have long recognized that behaviors which are motivated by bad faith, arbitrariness or capriciousness may be actionable at law. Evidence that a student has been treated radically different from others tends to establish arbitrary and capricious action, particularly when an institutional representative fails to follow recognized institutional procedures, irregularities in the application of standards are discovered, academic decisions prejudicial to the student appear unrelated to academic performance or there is lack of uniformity in the administration of standards.

While a legal presumption exists that academic standards and their application by agents of the university are reasonably related to the institution's mission and objectives, it often becomes necessary for the college official to rebut a **prima facie** showing of arbitrary and capricious conduct by articulating the rational relationship between the policy as applied and the legitimate purposes of the institution. Typically, where a court does discover evidence of arbitrary or capricious action the court will refer the matter to the institution for a hearing in which the institution must justify its policy or practice.

Cases involving allegations of arbitrary and capricious action usually involve the institution's denial of a degree or dismissal for academic deficiencies. A law student whose cumulative grade point fell below required standards for graduation was informed by an academic standards committee that he could continue for a fourth year, but that regardless of whether he improved his overall average, he would not be given the degree. He refused to accept the conditions, but did enroll and managed to bring his cumulative average up to the requisite graduation standard in his fourth year.

While the court recognized that the law school had absolute discretion to deny the request for readmission to a fourth year, it took cognizance of the institution's previous practice of allowing other probationary students to enroll and correct deficiencies during a fourth year. In some cases, these students had met requirements and been awarded their law degree. The imposition of a condition that the student could not be granted a degree even if he satisfied degree requirements was deemed arbitrary and a manifest abuse of discretion by the court.[2]

In another case, a student successfully alleged a cause of action for arbitrary treatment when singled out from other students and compelled to meet special requirements not originally outlined in order to complete a degree.[3] Similarly, a student dropped from medical school for failing to pass a second-year final examination successfully challenged the dismissal by establishing that the examination had been incorrectly administered and other affected students had been granted the opportunity for reexaminations before any action dismissing them was attempted.[4]

Allegations of arbitrary and capricious treatment have not been sustained in cases where the institution has promulgated clear, unambiguous academic policies on minimum grade point averages and change of grade requirements. In one of these cases, the student sought to invest the minimum grade point policies with an alternative meaning which the court described as "frivolous" and inconsistent with the institution's uniform application of the policy.[5] In another, the student was unable to establish that a faculty advisor's interpretation of the procedure for awarding grade changes should prevail over the ex-

press written policy of the school. In the latter instance, the court was particularly impressed by the extent to which the institution had accorded the student procedural due process in the administrative appeal of a dismissal decision.[6]

Contract Agreement

Colleges once stood **in loco parentis** in their supervisory authority over students, but this doctrine has lost much of its vitality in recent years. As an alternative, courts have applied contract notions to the relationship between colleges and students, interpreting college bulletins, program guides and brochures as creating mutual obligations between institution and student. In some instances, oral representations by faculty advisors, deans and chairpersons have been relied upon as a basis for initiating a suit for breach of contract.

Courts do not appear to apply these contract standards rigorously, choosing to resolve many ambiguities in favor of the institution and often abstaining from resolving substantive matters of academic policy. Nevertheless, fundamental fairness to the parties involved in a lawsuit requires that the court consider the extent to which a contractual relationship did exist between parties and the potential harm when one party has breached a duty under terms of the contract.

Two contractual situations have been recognized by courts as representative of a student-institutional relationship. Where college brochures or bulletins constitute a contractual inducement to enroll and students can be said to have reasonably relied upon contractual terms in undertaking a field of study, students may sue to force specific compliance with the proposed program or seek an award of monetary damages for their reliance on the contractual obligation. In a second situation, oral and written representations related to degree and program requirements, often the result of inaccurate or improper advisement, have been the bases for suits in which students seek award of the degree or program modifications consistent with the alleged contractual obligation.

An illustration of the first instance involved students enrolled in the school of architecture of Ohio University. The school had lost accreditation, but its faculty and college administrators repeatedly assured students they would obtain an accredited degree. Provisional two-year accreditation was secured when these same institutional representatives gave assurances to accrediting officials that the institution would work toward meeting all requirements for accreditation. Subsequently, this provisional accreditation was withdrawn when the university elected to phase out the architecture program in response to financial problems. The students enrolled in the architecture program sued, alleging that an implied contract based on the oral representations of university faculty and administrators was breached when the university failed to maintain accredited status.

The court recognized a contractual obligation because the faculty and staff of the school continually conveyed the promise that the institution would work toward full accreditation. Since students acted upon this promise and continued to enroll, pay fees and tuition and attend classes, the court concluded that the students had acted reasonably in reliance upon these promises and that the institution breached the implied contract when it withdrew funding and support for the program. In recognizing that college governing boards have the authority to discontinue programs, the court qualified this power by emphasizing that contractual commitments which are undertaken must be honored or damages for breach of contract awarded unless the institution can show financially exigent conditions so overwhelming as to permit a defense of impossibility of performance.[7]

A student's reliance on the oral representations of faculty advisors or written academic policies have often been the basis for contract suits. In one representative case, the student sought the award of the master's degree when he relied upon a faculty member's erroneous advice relative to the scoring of a final comprehensive examination. When the college applied a higher standard than the professor had indicated, the student was denied the degree and sued to force the institution to make the award of the master's.

Although the student asserted that he would have passed the examination using the criteria articulated by the professor, the court found this a highly speculative contention. Showing a characteristic judicial reluctance to intervene in academic policy and noting that the institution had offered the student a reexamination without prejudice, the court refused to require the award of the degree.[8]

Any contract between a student and the institution implicitly requires the student to demonstrate academic competence and the institution to act fairly and in good faith. While courts are extremely reluctant to compel the award of a degree, it is important for the institution to meet its obligations to the student and avoid irreparable injury. Statements which guarantee special services such as remedial or tutorial programs for the disadvantaged or which specify academic procedures which the student must follow are frequently recognized as actionable contract claims by courts.[9] While the judicial branch is reluctant to interfere by requiring award of an academic degree, the courts will not defer to the professional educator when it comes to the contractual obligation to provide student services express or implied by the institution.

Fraudulent Misrepresentation

While a student's reliance on statements made by university administrators may be a basis for a contractual obligation, there are few cases in which the agent's representations have been construed as attempts to fraudulently induce the individual to pay fees or perform services. Cases of fraudulent misrepresentation are rare, confined primarily to proprietary institutions in which the inducements were considered gross and the defrauded person was unable or unlikely to be sufficiently informed to know better.

Nevertheless, as recruiting practices and marketing strategies signalling increased competition for students and faculty proliferate, it is advisable to exercise caution in representing the program of an institution. Courts seem particularly protective of students who have been induced to enroll in programs which promise placement assistance bordering on a guarantee of employment or mislead students into believing they have special aptitude through the use of inappropriate testing and bogus courses.[11]

A public community college lost a jury verdict to a student who complained that he was induced to enroll in a one-year welding technology program through representations of faculty and administrators. These representations induced him to believe certain classes would be available and program completion would prepare the student for

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employment in the trade. The representations were false in that several courses were not offered, machines and materials were not available at the college and the year-long course of study was not sufficient to adequately prepare him for employment as a welder. A jury verdict was returned which awarded $125,000 to the student, but was overturned by the trial judge on the ground that Oregon statute law implies governmental immunity for state college officials in the exercise of their role as counselors. In reinstating the jury award to the student the Oregon Supreme Court concluded that the college's representatives acted recklessly in assuring the student that material and equipment would be available.[12]

Conclusion

Two legal concepts of particular relevance to the educator can be extrapolated from the litigation described in this article. One of these concepts applies the standard of reasonable prudence to the acts of higher education officials and asks what a reasonably prudent person might have done in circumstances similar to those which gave rise to the litigation. Such a test of liability would require that the university employee act in good faith without malice or intent to injure. Further, the standard would require the institution to justify the reasonableness of its policy, often demonstrating that the policy as applied bears a rational relationship to a valid institutional purpose.

A second concept, that of reasonable reliance, is often emphasized by courts because reliance is both a measure of damages and evidence of a contractual obligation. If a student relies on inaccurate, false or misleading information, the injury suffered may create liability for the institution. By invoking the concept, courts ask whether, given all the facts surrounding a particular circumstance, it was reasonable for the student to rely on the express or implied policies announced by the institution's representatives.

Taken together, both legal concepts suggest a number of maxims already familiar to the professional educator. Reasonably prudent conduct would almost certainly compel an institution to provide accurate information to students, maintain adequate records, insure confidentiality, arrange for valid evaluation of academic performance and uniformly apply academic standards. The doctrine of reasonable reliance would mandate publication of clear and specific policies, periodic notice of standards, maintenance of adequate facilities and services to support student participation in programs and adequate opportunity to complete a program before its discontinuance.

Beyond the application of professional best practice standards consistent with the rule of law, there is a vital role played by administrators, counselors and faculty in mitigating institutional liability. The educator is both an institutional representative and an advocate for the student. In that facilitative role, it is possible to resolve some disputes through a process of mediation or accommodation. Where valued academic standards permit no flexibility, early and periodic notice of those standards can head off student complaints. Alternately, a system of internal appeal and administrative review of decisions which have injurious consequences for the student are advisable. Under all circumstances, current case law underscores the application of fundamental fairness and reasonableness in conflicts between student and higher education institution.

Notes

1. See, for example, Virginia Davis Nordin, "The Contract to Educate: Toward a More Workable Theory of the Student-University Relationship," **Journal of College and University Law,** Vol. 8, No. 2 (1982).

2. Paulsen v. Golden Gate University, 93 Cal. App. 3d 825, 156 Cal. Rptr. 190, **rev'd,** 25 Cal. 3d 803, 159 Cal. Rptr. 858, 602 P.2d 778 (1979).

3. Valvo v. University of Southern California, 136 Cal. Rptr. 865 (Cal. App. 1977).

4. Maitland v. Wayne State University Medical School, 257 N.W.2d 195 (Mich. App. 1977).

5. Watson v. University of South Alabama College of Medicine, 463 F. Supp. 720 (S.D. Ala. 1979).

6. Hines v. Rinker, 667 F.2d 699 (8th Cir. 1981).

7. Behrend v. State, 55 Ohio App. 2d 135, 379 N.E.2d 617 (Ohio App. 1977). See also Eden v. Board of Trustees of State University of New York, 49 App. Div. 2d 277, 374 N.Y.S.2d 686 (App. Div. 1975).

8. Olsson v. Board of Higher Educ., 426 N.Y.S. 2d 248, 402 N.E.2d 1150 (App. Div. 1980).

9. See Yakin v. University of Illinois, 508 F. Supp. 848 (E.D. Ill. 1981).

10. Delta School of Business v. Shropshire, 399 So. 2d 1212 (La. App. 1981).

11. Joyner v. Albert Merrill School, 411 N.Y.S.2d 988 (Civ. Ct. 1978).

12. Dizick v. Umpqua Community College, 577 P.2d 534 (Or. 1979).