Avoiding Legal Issues in Professional and Technical Programs

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Professional and Technical Programs

- Characteristics
  - Curriculum may include professional practice, norms, standards, and ethics.
  - Experiential Learning – Clinicals, internships, etc.
  - Individual programs handbooks, rules.
  - Demanding.
  - Prospect of employment.

Outline of Today's Webinar

- Due Process
- Educational Malpractice and Avoiding Contract Claims
- Avoiding Discrimination Claims
- Social Media and the First Amendment

Due Process

- "No State shall deprive any person of life, liberty, or property without due process of law." U.S. Constitution, Amend. 14
- *Goss v. Lopez*, 95 S.Ct. 729 (1975) (once student is admitted, student has a protected liberty or property interest in continuing in attendance at a public college/university).

Basic Due Process

- Government may not deprive a person of life, liberty, or property without due process of law.
  - Notice
  - Opportunity to be heard
  - Flexible concept – balance seriousness of the deprivation with the cost/benefit of particular processes

Due Process: Balancing Interests

- College's Interests
  - Maintain order and a safe learning environment
  - Uphold high academic standards
- Student's Interests
  - Be excluded only when truly deserved
  - Avoiding unfairness and mistakes

Due Process

- Substantive
  - Standards that are not arbitrary or capricious
- Procedural
  - Adequate notice of charge or standard
  - Opportunity to be heard

Due Process

- Behavioral – Student Code of Conduct
  - More formal.
- Academic – Grade Appeal Policy, Academic Integrity Course and Program Rules (Progression Committee).
  - Less formal – deference to academic decisions.

Behavioral

- Conduct Code
  - Violent or threatening behavior
  - Failure to cooperate with school officials
  - Drug, alcohol, weapons violations
  - Disorderly/disruptive conduct

Academic

- Your paper is poor quality; it gets an “F”.
- You did not turn in your paper; the loss of points means you fail the class.
- You exceed the maximum number of excused absences for the clinical; you must retake the class.
- You recklessly endangered a clinical patient; you fail the class and you may not continue in the program.

Academic Decisions: Due Process

- Students: Right to be free from arbitrary and capricious academic determinations.
- Is decision reasonable?
  - How does consequence relate to curriculum?
  - As a practical matter, are similar standards in place in other programs, at other schools?
- Courts do not want to get involved in matters of professional judgment.

Academic Decisions: Procedural Due Process

- Notice of Standard
- Hearing is not Required Prior to Sanction
- Departmental Appeal (Readmission or Progression Committee, etc.) and/or Grade Appeal
  - Reasonable? Arbitrary? Capricious? Illegal?
- Formal Hearing Elements not Required (No J-Board)

Professional and Technical Programs

- Academic or Behavioral?
  - Characteristics
    - Curriculum includes professional norms, standards, ethics
    - Clinicals, Internships
- Courts generally treat the practical aspects of professional and technical education as academic.

Professional and Technical Programs

- LESSON – Distinguish between academic failure and behavioral misconduct
- LESSON – Reasonable academic sanction resulting from reasonable academic decision

Educational Malpractice

- Legal challenge to general quality of an education.
- Not generally recognized. *Alsides v. Brown Institute*, 592 N.W.2d 468 (Minn. Ct. App. 1999) (rejecting claims that involve an inquiry into the "nuances of educational processes and theories").
- Judicial deference given to academic decisions.
- But: Courts have found colleges and university materials to contain promises to students or to constitute part of a contract with students.

Where Promises and/or Contracts May Be Found

- Student Handbooks
- Catalogs
- Web Pages
- Bulletins
- Admission Materials
- Syllabi
- Promotional Materials

Avoiding Litigation

- Follow your handbook.
  - Know what is in your printed material and follow it.
- Listen to student complaints and solve problems as they arise.
- Publish disclaimer (“These materials are subject to change at any time”).
- Place particular focus on the start-up of new programs.

Avoiding Discrimination Claims

- Direct Evidence
- Circumstantial Evidence
  - Protected class
  - Adverse action
  - Causal connection between protected class and adverse action
  - If all three of the above, then institution must provide a reasonable non-discriminatory reason for the action
  - Then student may try to prove the reason was a pretext (not the real reason)

Avoiding Discrimination Claims

- Pretext
  - Typically, the student tries to show they were **treated differently than similarly situated students**
- Lesson
  - Try to be **consistent**

Social Media and the First Amendment

- Interaction between the free speech rights of students and the reasonable program rules of the institution
- Scope/jurisdiction of the rules
- Lesson – focus on the substance of the behavior rather than its format

Social Media and the First Amendment

- *Tatro v. University of Minnesota*, 816 N.W.2d 509 (Minn. 2012)
- *Yoder v. University of Louisville*, 2012 U.S. Dist. Lexis 45264 (U.S. District Ct., W.D. Ky., March 30, 2012).

Tatro, Holding

» "[W]e hold that a university does not violate the free speech rights of a student enrolled in a professional program when the university imposes sanctions for Facebook posts that violate academic program rules that are narrowly tailored and directly related to established professional conduct standards."

United States Supreme Court

Students for Fair Admissions v. Harvard College.
Students for Fair Admissions v. University of North Carolina.

- Opinions issued on June 29, 2023 (holding that the Harvard and UNC admissions programs that considered race as a "plus" factor in a holistic process violated the Equal Protection Clause (UNC) and Title VI (Harvard)).
- Department of Education issued a FAQ document on August 14, 2023. SFFA Resource FAQ_ DOJ Seal ED Seal.
- Would also apply to programs with individual admission processes.

Accommodations (Disability, Pregnant and Parenting, Religious)

- Work with appropriate campus office (Office for Students with Disabilities, Student Affairs, etc.)
- Emphasize individualized assessment and engaging in an interactive process.
- Pregnant and parenting is almost always in relation to how you treat other students who need medical absence or leave.

Contact Information

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Thank you.

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