The Law of Higher Education

SIXTH EDITION
VOLUME 2

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The Law of Higher Education

Note: Since the publication of the Fifth Edition, we have added two outstanding new coauthors to our team, Neal Hutchens and Jacob Rooksby. Their bios are in the "The Authors" section below. We are greatly pleased to introduce them to you.

WK
BL

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The Law of Higher Education

A Comprehensive Guide to Legal Implications of Administrative Decision Making

Sixth Edition

Volume II

JOSSEY-BASS™
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Published by Jossey-Bass
A Wiley Brand
535 Mission Street, 14th Floor, San Francisco, CA 94105-3253—www.josseybass.com

ISBN 9781119271840 (vol. 1)
ISBN 9781119271871 (vol. 2)

Library of Congress Cataloging-in-Publication Data

Names: Kaplin, William A., author. | Lee, Barbara A., author. | Hutchins, Neal H, author. | Rooksby, Jacob H., 1982- author.
Title: The law of higher education : a comprehensive guide to legal implications of administrative decision making / William A. Kaplin, Barbara A. Lee, Neal H. Hutchens, Jacob H. Rooksby.
Description: Sixth edition. | San Francisco, CA : Jossey-Bass & Pfeiffer Imprints, [2019] | Series: The Jossey-Bass higher and adult education series | Includes bibliographical references and index.
Identifiers: LCCN 2018054935 (print) | LCCN 2018056656 (ebook) | ISBN 9781119271864 (Adobe PDF) | ISBN 9781119271857 (ePub) | ISBN 9781119271840 (vol. 1) | ISBN 9781119271871 (vol. 2)
Subjects: LCSH: Universities and colleges—Law and legislation—United States. | Education, Higher—Law and legislation—United States. | Universities and colleges—United States—Administration.
Classification: LCC KF4225 (ebook) | LCC KF4225 .K36 2019 (print) | DDC 344.73/074—dc23
LC record available at https://lccn.loc.gov/2018054935

Library of Congress Cataloging-in-Publication Data has been applied for and is on file with the Library of Congress.

Printed in the United States of America

SIXTH EDITION

HB Printing 10 9 8 7 6 5 4 3 2 1

The Jossey-Bass Higher and Adult Education Series

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9

Student Academic Issues

Section 9.1. Overview

Fewer legal restrictions pertain to an institution's application of academic standards to students than to its application of behavioral standards (see Chapter 10). Courts are more deferential to academia when evaluation of academic work is the issue, believing that such evaluation resides in the expertise of the faculty rather than the court.

This deference, however, does not discourage students from challenging decisions concerning their academic performance or issues that arise in the classroom. Section 9.2 discusses cases challenging grades and other academic judgments of students by faculty and academic administrators. Section 9.3 addresses the special legal issues that arise in online courses. The conflict over academic accommodations for students with disabilities is reviewed in Section 9.4, and the seemingly perennial problem of sexual harassment of students by faculty members is addressed in Section 9.5. The various types of challenges to academic dismissals are reviewed in Section 9.6, and degree revocation—a rare but significant decision on the part of a college or university—is discussed in Section 9.7.

Despite the fact that judicial review of academic judgments is more deferential than judicial review of discipline for student misconduct, courts do require institutions to comply with their own rules, policies, and procedures, and to examine the foundations for academic decisions to determine whether they are based on genuine academic judgments. Faculty and administrators should ensure that they adhere to these requirements, and that they fully inform students of their procedural rights for challenging academic decisions.

Section 9.2. Grading and Academic Standards

When a student alleges that a grade has been awarded improperly or that credits or a degree have been denied unfairly, the court must determine whether the defendant's action reflected the application of academic judgment or an arbitrary or unfair application of institutional policy. If the court is satisfied that the decision involved the evenhanded application of academic judgment, the court will typically defer to the institution's decision. But if the student can demonstrate arbitrary, discriminatory, or bad faith actions on the part of faculty or administrators, then the court will scrutinize the decision and may not defer to the institution's decision. Students challenging academic decisions at public institutions generally attempt to state constitutional due process claims, though they may also assert breach of contract, whereas students challenging decisions at private institutions usually allege breach of contract.

Connelly v. University of Vermont, 244 F. Supp. 156 (D. Vt. 1965), set the standard for judicial review of an academic decision. In *Connelly*, a medical student challenged his dismissal from medical school. He had failed the pediatrics-obstetrics course and was dismissed, under a College of Medicine rule, for having failed 25 percent or more of his major third-year courses. The court described its role and the institution's legal obligation in such cases as follows:

> Where a medical student has been dismissed for a failure to attain a proper standard of scholarship, two questions may be involved; the first is, was the student in fact delinquent in his studies or unfit for the practice of medicine? The second question is, were the school authorities motivated by malice or bad faith in dismissing the student, or did they act arbitrarily or capriciously? In general, the first question is not a matter for judicial review. However, a student dismissal motivated by bad faith, arbitrariness, or capriciousness may be actionable . . . .
>
> This rule has been stated in a variety of ways by a number of courts. It has been said that courts do not interfere with the management of a school's internal affairs unless "there has been a manifest abuse of discretion or where [the school officials'] action has been arbitrary or unlawful" . . . or unless the school authorities have acted "arbitrarily or capriciously" . . . or unless they have abused their discretion . . . or acted in "bad faith" [citations omitted].
>
> The effect of these decisions is to give the school authorities absolute discretion in determining whether a student has been delinquent in his studies, and to place the burden on the student of showing that his dismissal was motivated by arbitrariness, capriciousness, or bad faith. The reason for this rule is that, in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school's faculty's freedom from interference from other noneducational tribunals. It is only when the school authorities abuse this discretion that a court may interfere with their decision to dismiss a student [244 F. Supp. at 159–60].

The plaintiff alleged that his instructor had decided before completion of the course to fail the plaintiff regardless of the quality of his work. The court held that these allegations met its requirements for judicial review. The allegations

therefore stated a cause of action, which if proven at trial would justify the entry of judgment against the college.

A decade later, a federal appeals court issued an important reaffirmation of the principles underlying the *Connelly* case. *Gaspar v. Bruton*, 513 F.2d 843 (10th Cir. 1975), concerned a nursing student who had been dismissed for deficient performance in clinical training. In rejecting the student's suit against the school, the court held:

> The courts are not equipped to review academic records based upon academic standards within the particular knowledge, experience, and expertise of academicians. Thus, when presented with a challenge that the school authorities suspended or dismissed a student for failure re: academic standards, the court may grant relief, as a practical matter, only in those cases where the student presents positive evidence of ill will or bad motive [513 F.2d at 850–51].

The U.S. Supreme Court has twice addressed the subject of the standard of review of academic judgments at public institutions. In the first case, *Board of Curators of the University of Missouri v. Horowitz*, 435 U.S. 78 (1978) (discussed in Section 9.6.5), a dismissed medical student claimed that the school applied stricter standards to her because of her sex, religion, and physical appearance. Referring particularly to *Gaspar v. Bruton*, the Court rejected the claim in language inhospitable to substantive judicial review of academic decisions:

> A number of lower courts have implied in dictum that academic dismissals from state institutions can be enjoined if "shown to be clearly arbitrary or capricious." . . . Courts are particularly ill equipped to evaluate academic performance. The factors discussed . . . with respect to procedural due process [see Section 9.6.3] speak a fortiori here and warn against any such judicial intrusion into academic decision making [435 U.S. at 91–92].

In the second case, in which the Court relied heavily on *Horowitz*, a student filed a substantive due process challenge to his academic dismissal from medical school. The student, whose entire record of academic performance in medical school was mediocre, asserted that the school's refusal to allow him to retake the National Board of Medical Examiners examination violated his constitutional rights because other students had been allowed to retake the exam. In *Regents of the University of Michigan v. Ewing*, 474 U.S. 214 (1985) (discussed in Section 9.6.3), the Court assumed without deciding the issue that Ewing had a property interest in continued enrollment in medical school. The Court noted that it was not the school's procedures that were under review—the question was "whether the record compels the conclusion that the University acted arbitrarily in dropping Ewing from the Inteflex program without permitting a reexamination" (474 U.S. at 225). The court then stated:

> Ewing's claim, therefore, must be that the University misjudged his fitness to remain a student in the Inteflex program. The record unmistakably demonstrates, however, that the faculty's decision was made conscientiously and with careful deliberation, based on an evaluation of the entirety of Ewing's academic career [474 U.S. at 225].

Citing *Horowitz*, the Court emphasized:

> When judges are asked to review the substance of a genuinely academic decision, such as this one, they should show great respect for the faculty's professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment [474 U.S. at 225].

Citing *Keyishian* (discussed in Section 7.1.1), the Court reminded the parties that concerns about institutional academic freedom also limited the nature of judicial review of substantive academic judgments.

In addition to constitutional claims of lack of procedural or substantive due process, such as the claims in *Horowitz* and *Ewing*, courts may resolve legal questions concerning the award of grades, credits, or degrees by applying not only standards of arbitrariness or bad faith but also the terms of the student-institution contract (see Section 8.1.3 of this book). A 1979 Kentucky case, *Lexington Theological Seminary v. Vance*, 596 S.W.2d 11 (Ky. Ct. App. 1979), illustrates the deference that may be accorded postsecondary institutions—especially church-related institutions—in identifying and construing the contract between the institution and a student. The case also illustrates the problems that may arise when institutions attempt to withhold academic recognition from students because of their sexual orientation.

The Lexington Theological Seminary, a seminary training ministers for the Disciples of Christ and other denominations, denied Vance, a student who had successfully completed all his academic requirements, a master of divinity degree because of his admitted homosexuality. Three years after he first enrolled, he advised the dean of the school and the president of the seminary of his homosexuality. In January 1976, the student was informed that his degree candidacy would be deferred until he completed one additional course. In May 1976, after he had successfully completed the course, the faculty voted to grant the master of divinity degree. The seminary's executive committee, however, voted not to approve the faculty recommendation, and the board of trustees subsequently ratified the committee's decision. The student brought suit, seeking conferral of the degree.[1]

The trial court dealt with the suit as a contract case and held that the seminary had breached its contract with the plaintiff student. The Kentucky Court of Appeals, although it overruled the trial court, also agreed to apply contract principles to the case: "The terms and conditions for graduation from a private college or university are those offered by the publications of the college at the time of enrollment and, as such, have some of the characteristics of a contract."

The appellate court relied on various phrases from the seminary's catalog—such as "Christian ministry," "gospel transmitted through the Bible,"

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[1] See generally Annotation, "Student's Right to Compel School Officials to Issue Degree, Diploma, or the Like," 11 A.L.R.4th 1182.