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Timothy G. Anagnost

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CASES NOTED

DISCIPLINARY EXPULSION FROM A UNIVERSITY— RIGHT TO NOTICE AND HEARING

Plaintiff, a student at a state university, was placed on disciplinary probation by a faculty discipline committee. During the proceeding plaintiff was not allowed to register. After the decision of the committee he petitioned for late registration. This petition was denied by a faculty committee of his college without affording him a hearing. Plaintiff again petitioned at the commencement of the next trimester, but this petition was summarily denied by university officials without notice or hearing. Plaintiff brought an alternative writ of mandamus to require the university to admit him to its college of architecture and fine arts. The circuit court quashed the alternative writ of mandamus and plaintiff appealed. The First District Court of Appeal, *held*, reversed with directions: Where refusal of late registration to a student by a faculty committee of a college at a tax supported state university amounted to expulsion of the student and was made solely on the ground he had been charged with misconduct, the committee's action was invalid since student was not afforded due process. The university must first give notice of the charges against the student and grant him a fair hearing before he may be expelled. *Woody v. Burns*, 188 So.2d 56 (Fla. 1st Dist. 1966).

The interest of institutions of higher learning in maintaining student discipline and in retaining a discretionary right to dismiss, as opposed to a student's individual interest in remaining in school, has created various theories concerning the power which may be vested in an institution to effectuate its policies. Among the theories most frequently used by the courts are the *in loco parentis* doctrine,¹ which considers the university and the student in a familial manner; the contract theory,² which views the relationships on a business basis; and more recently, the constitutional interpretation,³ which weighs the interests of the opposing parties to

1. This doctrine gives universities the power to act as a parent and to establish rules with the discretion of a parent disciplining his children. *Stetson Univ. v. Hunt*, 88 Fla. 510, 102 So. 637 (1924); *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

2. The university and student enter into either an expressed contract, as evidenced by the university catalog, or an implied contract, which acknowledges the university's authority to discipline. *Dehaan v. Brandeis Univ.*, 150 F. Supp. 626 (D. Mass. 1957); *Stetson Univ. v. Hunt*, 88 Fla. 510, 102 So. 637 (1924); *Anthony v. Syracuse Univ.*, 224 App. Div. 487, 231 N.Y.S. 435 (1928); *Barker v. Trustees of Bryn Mawr College*, 278 Pa. 121, 122 A. 220 (1923).

3. The due process clause places some limits on the absolute authority of universities to expel students from public schools. *Dixon v. Alabama State Bd. of Educ.*, 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 267 U.S. 930 (1961); *Due v. Florida A.&M.*, 233 F. Supp. 396 (N.D. Fla. 1963); *Knight v. State Bd. of Educ.*, 200 F. Supp. 174 (M.D. Tenn. 1961). *Contra*, *Steier v. New York State Educ. Comm'r*, 271 F.2d 13 (2d Cir. 1959), *cert. denied*, 361 U.S. 966 (1960).

determine if there has been any deprivation of due process involved in the university's execution of its right to take disciplinary action.

The law is well established in the area of academic dismissals.⁴ However, the same cannot be said of disciplinary dismissals without notice or hearing. Most cases in this area have dealt with the adequacy of the hearing rather than whether a hearing and notice are in fact required.⁵ As far back as 1723 courts recognized the right to be heard before a university could take steps to dismiss a master,⁶ however they have been reluctant to interfere with the discretion of university officials in disciplining students. The courts have held that unless it can be shown that a dismissal was arbitrary and capricious, the court will not review the exercise of the university's honest discretion.⁷

Under the contract theory the proposition has been set forth that an educational institution must have the right to establish rules and regulations, and the courts should not intervene unless these rules are found to be unreasonable.⁸ A student is said to accept these rules upon applying for admission on the basis of an expressed⁹ or implied¹⁰ contract. It has been argued in rebuttal that even if the courts do apply the contractual theory, the unequal bargaining positions of the two parties might enable the courts to decide in favor of the student.¹¹

Under the parental theory courts have ruled in favor of the university by expounding upon the concept that university authorities take the place of one's parents and are allowed wide discretion in maintaining discipline.¹² This theory could also be interpreted in favor of the student by reasoning that an expulsion would involve a severance of the parental relationship which would normally be undesirable save in extreme situations.¹³

4. No hearing is required when a student is expelled for academic reasons. *Barnard v. Inhabitants of Shelburne*, 216 Mass. 19, 102 N.E. 1095 (1913).

5. Annot., 58 A.L.R.2d 903 (1958).

6. *King v. Chancellor of the Univ. of Cambridge*, 2 Raym. Ld. 1334, 92 Eng. Rep. 370 (K.B. 1723).

7. *Robinson v. University of Miami*, 100 So.2d 442 (Fla. 3d Dist. 1958); *Newman v. Graham*, 82 Idaho 90, 349 P.2d 716 (1960); *Tanton v. McKenney*, 226 Mich. 245, 197 N.W. 510 (1924); *Carr v. St. John's Univ.*, 17 App. Div. 2d 632, 231 N.Y.S.2d 410 (1962); *Foley v. Benedict*, 122 Tex. 193, 55 S.W.2d 805 (1932); *Frank v. Marquette Univ.*, 209 Wis. 372, 245 N.W. 125 (1932).

8. *Lesser v. Board of Educ.*, 18 App. Div. 2d 388, 239 N.Y.S.2d 776 (1963); *McGinnis v. Walker*, 40 N.E.2d 488 (Ohio Ct. App. 1941) (dicta).

9. *Anthony v. Syracuse Univ.*, 224 App. Div. 487, 231 N.Y.S. 435 (1928) (student deemed to have entered contract with private university, which through statements in catalog expressly gave the university the power to expel without notice or reason).

10. *Stetson Univ. v. Hunt*, 88 Fla. 510, 102 So. 637 (1924).

11. See generally Comment, *Private Government on the Campus—Judicial Review of University Expulsions*, 72 YALE L.J. 1362 (1963).

12. *Gott v. Berea College*, 156 Ky. 376, 161 S.W. 204 (1913).

13. Comment, *supra* note 11.

Before 1958, however, only one case¹⁴ had considered the theory of procedural due process in relation to student dismissals without notice or hearing. Prior decisions indicated that formal notice and a hearing are not required.¹⁵ Recent decisions have indicated that procedural due process will be considered, and notice and hearing required in public institutions of higher learning.¹⁶ Some states have not been confronted with the problem since they have statutes which require hearing and notice in a public university before dismissal.¹⁷

The instant case follows the recent trend toward the application of due process requirements.¹⁸ An earlier federal decision in Florida,¹⁹ although ruling that plaintiffs had failed to make a case, endorsed certain criteria to insure procedural due process²⁰ and set "fairness" as the standard to follow in determining whether plaintiff's right to due process had been preserved. Therefore, it seems the law in Florida today calls for both notice and hearing before a public university may dismiss a student for misconduct.

A dichotomy must be drawn at this point between public and private universities. Although early decisions had held that notice and hearing were required of a private university,²¹ later cases indicated that courts would be more reluctant to interfere with university authorities at private institutions.²² In a recent decision, *University of Miami v. Militana*,²³ a Florida court refused to recognize a medical student's plea of deprivation of due process in being dismissed from a private university without a hearing. The court held that students enter into a contractual relationship with a private university in which university authorities have a wide discretion in deciding matters of dismissal.²⁴

14. *State ex rel. Sherman v. Hyman*, 180 Tenn. 99, 171 S.W.2d 822 (1942), *cert. denied*, 319 U.S. 748 (1943) (court held that due process was not applicable where there was a rightful exercise of a university's inherent authority to discipline students).

15. *Dehaan v. Brandeis Univ.*, 150 F. Supp. 626 (D. Mass. 1957); *People ex rel. Bluett v. Board of Trustees*, 10 Ill. App. 2d 207, 134 N.E.2d 635 (1956); *State ex rel. Ingersoll v. Clapp*, 81 Mont. 200, 263 Pac. 433 (1928), *cert. denied*, 277 U.S. 591 (1928); *Vermillion v. State ex rel. Englehardt*, 78 Neb. 107, 110 N.W. 736 (1907).

16. Cases cited note 3 *supra*.

17. *E.g.*, MASS. GEN. ANN. LAWS ch. 76, § 17 (1958); PA. STAT. ANN., tit. 24, § 13-1318 (1962).

18. *Woody v. Burns*, 188 So.2d 56 (Fla. 1st Dist. 1966).

19. *Due v. Florida A&M.*, 233 F. Supp. 396 (N.D. Fla. 1963).

20. *Due* endorsed the criteria set forth in *Dixon*, namely, giving notice to students, naming the witnesses (including a written or oral report as to the testimony of each witness) and allowing an opportunity to present a defense with the introduction of the student's witnesses.

21. *Baltimore Univ. v. Colton*, 98 Md. 623, 57 A. 14 (1904); *Commonwealth ex rel. Hill v. McCauley*, 3 Pa. County Ct. 77 (1887).

22. See cases cited note 2 *supra*.

23. 184 So.2d 701 (Fla. 3d Dist. 1966).

24. The student in this case plans to file a new suit in the federal court in an attempt to halt federal grants to the university's medical school. *Miami Herald*, Oct. 24, 1966, § B at 1, col. 1 (city ed.).

The principle of protection by procedural due process is more easily recognized at public universities because they are similar to state agencies and as such must follow constitutional rules of procedural due process.²⁵

The area of higher education is of such vital public concern that its deprivation by any authority should be predicated upon conformity to constitutional guarantees of procedural due process. In recognition of the seriousness of expulsions for misconduct a tentative statement of policy has been forwarded by the American Association of University Professors which calls for both notice and hearing without mention of different standards for private as opposed to public schools.²⁶ Although strict procedural requirements are not necessary, the lack of notice and hearing, as in the instant case, are ample grounds for relief for a violation of due process and should be considered as such both at public and private universities.

TIMOTHY G. ANAGNOST

THE CORPORATION AND THE PRACTICE OF LAW

The Plaintiff, a corporation, filed a complaint signed by the plaintiff's president above the name of the corporation.¹ Defendants moved to dismiss for failure to state a cause of action and to strike the complaint upon the ground that it had not been signed by a licensed attorney.² The plaintiff then moved to amend the complaint by striking the name of the corporation and the signature of its president and inserting the signature of counsel. The trial court granted the defendants' motion to strike the complaint and denied the plaintiff's motion to amend on the ground that a corporation cannot appear or sign a pleading in proper person and that a complaint which was signed by the president of a corporation who was not an attorney³ was a nullity and therefore not amendable. On appeal, *held*, affirmed: a complaint filed by a plaintiff corporation through its president, which does not bear the signature of an attorney, is a nullity and may not be amended after the expiration of the statutory time for foreclosing a

25. "[N]or shall any State deprive any person of life, liberty, or property without due process of law . . ." U.S. CONST. amend. XIV, § 1.

26. *Statement on the Academic Freedom of Students*, 51 A.A.U.P. 447, 449 (1965).

1. The record indicates that the complaint was actually prepared by a licensed attorney who would not sign it. No reason was given for his refusal to sign.

2. Rule 1.5 of the Fla. Rules of Civil Procedure, in effect at the time of the filing of this case, provides in part:

(a) Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name

3. The fact that the corporation's president was not an attorney was not discussed in the appellate court's opinion. The question does not appear to have been considered.