

Notes

Revocation of Degree – Case Law

“Schools hold an implied power to control school records and to revoke credentials conferred upon students (e.g., degrees, credits, etc.), where such actions are in response to a former student's conduct that occurred during the student's enrollment, and as long as the school acts with good cause and after due process. A former student's withdrawal or graduation from school does not end or obviate the relationship, nor does it permanently vest a former student's status with the school. When a school confers credentials, the school places its imprimatur on a student; degrees and credits are a school's implicit endorsement of someone's academic qualifications and personal character, whether they be a current or former student.” *Doe v. Salisbury University*, 107 F. Supp. 3d 481, 492 (D. Md. 2015) (sexual misconduct case)

“See *Hand v. Matchett*, 957 F.2d 791, 794–95 (10th Cir.1992); *Crook v. Baker*, 813 F.2d 88, 92–94 (6th Cir.1987); *Waliga v. Board of Trustees of Kent State University*, 22 Ohio St.3d 55, 488 N.E.2d 850, 852–53 (1986). According to these courts, a university has the inherent power to revoke a degree if (1) there is proper cause for such action and (2) the former student is provided with notice and an opportunity to be heard that is sufficient under the Constitution. See *Crook*, 813 F.2d at 93 (quoting *Waliga*, 488 N.E.2d at 850). Furthermore, the fact that these cases all dealt with academic misconduct, as opposed to a disciplinary infraction such as the one involved in the present case, does not weaken their value as authority, for the rationale set forth in those opinions also applies to the University's ability to revoke a degree for a violation of the Honor System.” *Goodreau v. Rector and Visitors of University of Virginia*, 116 F. Supp. 2d 694, 703 (W.D. Va. 2000)

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MIT V. YOO: REVOCATION OF ACADEMIC DEGREES FOR NON- ACADEMIC REASONS

INTRODUCTION

A professor of English at an Illinois university once described an assignment he gave his incoming freshmen that involved "The Monster," an essay written by Deems Taylor.¹ In his essay "Taylor described a despicable man, someone impossible to admire, let alone to love. Only at the end of that essay did Taylor reveal the true identity of his subject: the German composer Richard Wagner."² The assignment was intended to teach the lesson that "accomplishment in the arts and in other endeavors is not always accompanied by agreeable behavior, but that accomplishment cannot be denied solely because of one's behavior."³ Freshman English majors are not the only people who might benefit from this lesson. Educators and courts should appreciate and consider the wisdom of this lesson as they face the issue of degree revocation for non-academic violations. Just as Wagner's musical compositions should not be judged according to his behavior, an otherwise-qualified university graduate's diploma should not be revoked simply because the university disapproves of the graduate's non-academic conduct.⁴

The Massachusetts Institute of Technology ("MIT") recently revoked the degree of 1998 graduate Charles Yoo for his alleged involvement in the death of Scott Krueger, a freshman fraternity pledge.⁵ Yoo was a pledge trainer in the Phi Gamma Delta fraternity at MIT at the time of the fraternity incident that caused Krueger's death. The university revoked Yoo's degree for five years on the ba-

¹ See R. Baird Shuman, Letter to the Editor, *Accomplishment and Bad Behavior*, CHRON. HIGHER EDUC., Oct. 24, 1997, at B11.

² *Id.*

³ *Id.*

⁴ See *id.* (arguing that it was a "travesty" for Johns Hopkins University to withhold a degree from a convicted murderer who had met all substantive degree requirements).

⁵ See Leo Reisberg, *M.I.T. Revokes Diploma of Graduate for Alleged Role in Drinking Death of Freshman*, CHRON. HIGHER EDUC., Aug. 13, 1999, at A4 (describing the incident and MIT's response).

sis of allegations that he had purchased the alcohol and had instructed pledges on the amount of alcohol they were expected to consume.⁶

A year after Scott Krueger's death, the Suffolk County district attorney sued the fraternity. The case was eventually dropped for lack of a defendant because the fraternity had dissolved after the incident.⁷ In addition to temporarily revoking Yoo's degree, MIT paid the Krueger family six million dollars for the college's role in the tragic incident.⁸ MIT President Charles Vest apologized to the family, stating: "[d]espite your trust in MIT, things went terribly awry, [sic] at a very personal level, I feel that we at MIT failed you and Scott. For this you have our profound apology."⁹

The decision to revoke the degree based upon Yoo's alleged misconduct has not gone unnoticed. The decision has proven controversial, both in legal and educational circles. Alan Charles Kors, a professor of history at the University of Pennsylvania, for example, has criticized MIT's action as "an arrogant abuse of power."¹⁰

In response to MIT's revocation of his degree, Yoo filed suit in Middlesex Superior Court on November 16, 1999, claiming that the university violated its own rules as well as the concept of fundamental fairness in revoking his degree.¹¹ The case is presently in the discovery stage. The lawsuit seeks reinstatement of Yoo's degree and monetary damages for the impact of the revocation on Yoo's career.¹² Yoo had planned to attend graduate school, but it will be impossible to continue his education without an undergraduate degree.¹³ Charles Yoo spent \$100,000 on the MIT degree that has been taken from him.¹⁴

⁶ See *id.* (noting that "[t]he action mark[ed] a rare, if not unprecedented, effort by a university to discipline an alumnus for a non-academic violation that took place during college").

⁷ See Kate Zernike, *M.I.T. Withdraws Diploma Over Drinking Death at Frat*, BOSTON GLOBE, July 31, 1999, at B3. The event prompted the university to make plans to build a new dormitory, and to change the current campus requirements in order to ensure that all freshmen live on campus rather than in a fraternity house. See *id.*

⁸ See Leo Reisberg, *M.I.T. Pays 6 Million to Settle Lawsuit over a Student's Death*, CHRON. HIGHER EDUC., Sept. 29, 2000, at A49. The settlement included a \$1.25 million payment to endow a scholarship in Scott Krueger's name and a \$4.75 million payment to the family. See *id.*

⁹ Editorial, *A Tragedy and an Apology*, CHI. TRIB., Sept. 21, 2000, at 30 (quoting Vest's apology).

¹⁰ Andrea Billups, *Ex-Student Sues MIT Over Revoked Diploma*, WASH. TIMES, Aug. 15, 1999, at C5 (quoting Professor Kors).

¹¹ See Ralph Ranalli, *MIT Grad Files Lawsuit over Degree Suspension*, BOSTON GLOBE, Nov. 17, 1999, at F12 (the suit claimed that Yoo was never permitted a chance to answer allegations against him during the university hearing and was given no opportunity to confront his accusers).

¹² See *id.*

¹³ See Zernike, *supra* note 7, at B3.

¹⁴ See Laurel J. Sweet, *Krueger's Frat Pledge Trainer Sues MIT to Get Degree Back*, BOSTON HERALD, Nov. 17, 1999, at 26.

Yoo's career advancement is on hold due to the university's unfair and arbitrary decision to revoke his degree. Yoo was never criminally charged or held responsible during his time at MIT, and yet the university decided, without procedural safeguards in place to protect Yoo, to revoke his degree for five years. Such a flagrant abuse of power should not be permitted.

Courts have often dealt with degree revocation for academic reasons such as plagiarism and fraud, but degree revocation for non-academic misconduct is a new issue. Part I.A examines the courts' treatment of students who have been suspended and expelled in the public and private school setting. Part I.B looks at how courts have traditionally dealt with universities' decisions to withhold academic degrees for academic reasons such as plagiarism and fraud. Part I.C critically examines the way courts have dealt with the revocation of academic degrees for academic reasons, i.e., where the plagiarism or fraud is discovered after the degree has been conferred.

Part I.D begins the look into courts' treatment of decisions to punish students for non-academic incidents. Part D looks at how courts have dealt with the suspending or expulsion of students for non-academic reasons. Part I.E examines the withholding of degrees for non-academic reasons.

Part II.A analyzes the impact of a recent case involving the revocation of a degree for non-academic reasons by the University of Virginia on the pending MIT case. Part II.B looks at the varied and numerous problems involved in permitting universities to revoke academic degrees for non-academic reasons. Part II.C suggests a model to address the problems involved in degree revocation for non-academic reasons including the adopting of strict procedures for the universities to follow, and having the courts preside over the matter. Universities should not be permitted to revoke academic degrees for non-academic reasons due to the possible abuse and unfairness to the former student. If revocation is permitted, however, then safeguards must be in place and the suggested model should be adopted.

I. THE COURTS' TREATMENT OF UNIVERSITY-STUDENT RELATIONS

A. *Institutional Suspensions and Expulsions of Students for Academic Reasons*

1. *Suspension and Expulsion in the Public School Setting*

Courts have long deferred to universities' decisions to suspend or expel students on grounds of academic misconduct,¹⁵ even though students who wish to pursue a grievance against a public university are protected by the Due Process Clause of the Fourteenth Amendment.¹⁶

In *Board of Curators of University of Missouri v. Horowitz*,¹⁷ the Supreme Court held that, in cases of an academic nature, great deference must be given to a state university's academic decisions: "Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint."¹⁸ The *Horowitz* Court concluded that a former medical student had been properly dismissed from the University of Missouri due to academic deficiencies.¹⁹ The student's claims of deprivation of liberty due to the dismissal's effect on future employment in the medical field and violation of procedural due process were held to be groundless.²⁰ The Court held that "[a]ssuming the existence of a liberty or property interest, respondent has been awarded at least as much due process as the fourteenth amendment requires."²¹ By telling the student of the problem, carefully deciding whether to dismiss her, and using inde-

¹⁵ See Thomas A. Schweitzer, "Academic Challenge" Cases: Should Judicial Review Extend to Academic Evaluations of Student?, 41 AM. U. L. REV. 267, 272-73 (1992). The deference courts show to educators stems from the common law: "It has been called an integral part of our vital tradition of academic freedom, and it has won unanimous endorsement in recent years from the United States Supreme Court." *Id.*

¹⁶ See Curtis Berger & Vivian Berger, *Academic Discipline: A Guide to Fair Process for the University Student*, 99 COLUM. L. REV. 289, 290 (1999) ("Federal courts view the student's continued enrollment as a protected property interest, immune from arbitrary state action. Resting on due process grounds, this protection has both a substantive and a procedural side. The outcome as well as the process of establishing the student's guilt must be fair . . .").

¹⁷ 435 U.S. 78 (1978). The *Horowitz* Court noted that courts traditionally have held educational institutions to less stringent procedural requirements in cases involving the failure of students to meet academic standards than in cases involving student violations of rules of conduct. See *id.* at 86-91.

¹⁸ *Id.* at 91 (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

¹⁹ See *Horowitz*, 435 U.S. at 79. The school told the student of the faculty's dissatisfaction with her progress and the possibility that she would not graduate because of it. The university even took extra steps to ensure that its decision was sound by having seven independent doctors evaluate the student. The school's actions were found sufficient to satisfy due process.

²⁰ See *id.* at 84.

²¹ *Id.* at 85.

pendent physicians to evaluate her, the university had gone above and beyond the due process requirements in an academic setting.²²

The Court further stated that a hearing is not necessary in cases involving academic dismissals,²³ in this context distinguishing academic dismissals from disciplinary dismissals.²⁴ In this context the Court quoted *Barnard v. Inhabitants of Shelburne*:

[Disciplinary cases have] no application [in academic cases] ...[m]isconduct is a very different matter from failure to attain a standard of excellence in studies. A determination as to the facts involves investigation of a quite different kind. A public hearing may be regarded as helpful to the ascertainment of misconduct and useless or harmful in finding out the truth about scholarship.²⁵

The Court noted consistent judicial rejection of the argument that students excluded on academic grounds must be granted a hearing,²⁶ and explained why courts treat academic dismissals differently than sanctions meted out for misconduct:

Such a judgment is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision. Like the decision of an individual professor as to the proper grade for a student in his course, the determination of whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making.²⁷

Decisions after *Horowitz* have followed the Supreme Court's reasoning regarding the procedural difference between academic and disciplinary violations. In 1996, for example, the Indiana Court of Appeals stated in *Reilly v. Daley*²⁸:

It is without question that a student's interest in pursuing an education is included within the Fourteenth Amendment's protections of liberty and property and that a student facing expulsion or suspension from a public educational institution is therefore entitled to the protections of due process. The

²² See *id.*

²³ See *id.* at 86.

²⁴ See *id.*

²⁵ *Id.* at 87 (quoting *Barnard v. Inhabitants of Shelburne*, 103 N.E. 1095, 1097 (Mass. 1913)).

²⁶ See *id.* at 87-88.

²⁷ *Id.* at 90.

²⁸ 666 N.E.2d 439 (Ind. Ct. App. 1996).

due process required in a school suspension or dismissal proceeding is dependent upon whether the hearing is academic or disciplinary. In the case of academic dismissal, due process requires only the barest procedural protections.²⁹

Similarly, in *Harris v. Blake*,³⁰ the Tenth Circuit upheld a Colorado university's decision to require one of its students to withdraw due to his academic incompetence. The court discussed the difference between academic and disciplinary procedures, following *Horowitz*.³¹ Because *Harris* involved an academic violation rather than a disciplinary problem, the Tenth Circuit held that a hearing was not required to satisfy due process.³² The Tenth Circuit reasoned:

The Supreme Court has emphasized that less stringent procedural requirements attach when a school makes an academic judgment about a student than when it takes disciplinary action The Court held that the process [the student] received, notice followed by a careful and deliberate determination, satisfied the requirements of due process.³³

The Supreme Court reiterated its judicial deference to universities in 1986 in *University of Michigan v. Ewing*,³⁴ which involved a dismissal due to poor academic performance and a low score on medical board exams. As in *Horowitz*, the Court held that, even if the student had a protectable property interest in continued enrollment, the student's due process rights were not violated since the record did not indicate arbitrary action by the university.³⁵ The Court noted that courts must show deference to the educational institution in reviewing academic decisions and may only overturn a decision when "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."³⁶

²⁹ *Id.* at 444.

³⁰ 798 F.2d 419 (10th Cir. 1986).

³¹ *See id.* at 423.

³² *See id.*

³³ *Id.*

³⁴ 474 U.S. 214 (1985).

³⁵ *See id.* at 227-28 (holding that the university had adequate grounds for dismissing the student).

³⁶ *Id.* at 225 (1985).

2. Suspension and Expulsion in the Private School Setting

There is no constitutional requirement of due process in the private school setting.³⁷ Consequently, students must look elsewhere for protection against arbitrary suspensions and expulsions from private universities—namely, to the law of contracts and associations.³⁸ The contractual equivalent of due process in the private realm is an implied covenant of good faith and fair dealing.³⁹

In *Clayton v. Princeton University*,⁴⁰ the court upheld the university's decision to suspend a student from the university for cheating on a final examination, based on the student-university relationship as defined in the law of associations.⁴¹ Noting the difference between private and public institutions and the importance of the private institution's autonomy, the *Clayton* court did not require a hearing to ensure fundamental fairness in the decision to suspend or expel a student. Instead, it merely required adequate procedures "to safeguard a student from being unfairly convicted of cheating."⁴² Princeton's procedures regarding honor code violations were held to be adequate, and thus the *Clayton* court determined that the student had not been unfairly suspended.⁴³

A private university might be bound to afford students a hearing, however, if the university's student handbook provides for one. In 1984, the Eighth Circuit held, in *Corso v. Creighton University*,⁴⁴ that a student's expulsion from the university for cheating was improper because the student had not been given a right to a hearing before expulsion as provided for in the student handbook. The private university was found to have breached its contract with the student by not abiding by the handbook's terms.⁴⁵ Nevertheless, the same deference

³⁷ See Berger & Berger, *supra* note 16, at 291 ("Courts have refused to find "state action," the precondition to due process analysis, in the case of private schools, even though most receive heavy financial aid and other forms of government support.").

³⁸ See *id.*

³⁹ See *id.* ("Contract law . . . [is] the bulwark for the private school student, and there is no reason why that protection should ordinarily be less than a public school student receives under the federal Constitution. In some instances, contract law may provide even greater process.").

⁴⁰ 608 F. Supp. 413 (D.N.J. 1985).

⁴¹ See *id.* at 438 (noting that the "[l]aw of associations in New Jersey has, in general, always afforded deference to the internal decision-making process of a private organization").

⁴² *Id.* at 439.

⁴³ See *id.* (concluding that the "procedures were adequate to safeguard a student from being unduly convicted of cheating").

⁴⁴ 731 F.2d 529, 533 (1984); *cf.* *Lyon College v. Gray*, 999 S.W.2d 213 (Ark. Ct. App. 1999) (holding that, because the college had followed the procedures set out in the student handbook regarding suspension for cheating, there was no violation of procedural due process).

⁴⁵ See *Corso*, 731 F.2d at 533. The student handbook provided that in cases where a serious penalty was imposed (such as expulsion in this case) the student is entitled to a hearing before a university committee and has the right to appeal the findings made by the committee. The plaintiff was not given a hearing and therefore the court held that he was not given his rights under the contract. See *id.*

afforded public universities in due process analysis is generally given to private universities in matters of academic violations.⁴⁶ To satisfy the fundamental fairness requirement, it is only necessary that public and private universities demonstrate that the academic decisions are not arbitrary.

B. The Withholding of Academic Degrees for Academic Reasons

In cases involving student suspension and expulsion for academic reasons in a public school setting, the courts are clear that a hearing is not required to fulfill due process. The courts are also consistent in their decisions involving the withholding of degrees for academic violations in that they do not require a hearing.⁴⁷ Courts discuss the difference between academic and non-academic violations in cases regarding withholding of degrees in the same way that they discuss the topic in suspension and expulsion cases.

In *Mahavongsanan v. Hall*, a graduate student brought an action to force the University of Georgia to award her degree.⁴⁸ The appellate court reversed the lower court's decision to grant the degree by finding that, in this academic violation case, the lower court had incorrectly applied the standards used in review of disciplinary violations.⁴⁹ The appellate court noted that "the due process requirements of notice and hearing . . . have been carefully limited to disciplinary decisions."⁵⁰ The court applied the same logic used in the cases regarding suspension or expulsion. The *Mahavongsanan* court discussed the distinction between disciplinary problems and academic dismissals at length, stating: "A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals."⁵¹ The university satisfied the require-

⁴⁶ See *id.* ("[P]art of the court's reasoning was based on the deference courts should show to the expert opinion of faculty members in academic judgments.")

⁴⁷ See generally *Mahavongsanan v. Hall*, 529 F.2d 448 (5th Cir. 1976) (upholding university's decision to withhold degree after student twice failed an examination required for graduation); *Cieboter v. O'Connell*, 236 So. 2d 470 (Fla. Dist. Ct. App. 1970) (denying student's petition to force university to consider his dissertation); *Napolitano v. Princeton Univ.*, 186 N.J. Super. 548, 453 A.2d 263 (N.J. Super. Ct. 1982) (upholding university's decision to withhold student's degree for one year due to academic fraud).

⁴⁸ See *Mahavongsanan*, 529 F.2d at 448.

⁴⁹ See *id.* at 449-50 (noting that the "district court's grant of relief [was] based on a confusion of the court's power to review *disciplinary* actions by educational institutions on the one hand, and *academic* decisions on the other") (emphasis in original).

⁵⁰ *Id.* at 449.

⁵¹ *Id.* at 450.

ment that their decision be reasonable, and the court refused to grant the degree.⁵²

Similarly, the court in *Cieboter v. O'Connell*⁵³ refused to force a university to consider a dissertation where the student in question had not fulfilled the graduate school's requirements. The Florida court, like the other courts, held that the University of Florida did not have to consider the dissertation because "[t]hese are determinations which fall peculiarly within the competence of the University officials charged with the responsibility of granting doctorate degrees only to students whom they find to be fully qualified in all respects and for whose competence the University must vouch."⁵⁴ The courts agree that universities have discretion regarding academic considerations due to the universities' expertise in the area of education, and as long as the decision is not arbitrary, there is no violation of due process.

A private university's decision to withhold a degree for academic reasons is evaluated in the same manner as a private university's decision to suspend or expel a student. In *Napolitano v. Princeton University*,⁵⁵ for example, Princeton withheld a student's degree for one year because of academic fraud.⁵⁶ The *Napolitano* court held that deference should be given to the institution, recognizing "the necessity for independence of a university in dealing with the academic failures, transgressions or problems of a student."⁵⁷ The *Napolitano* court further stresses the relationship between university and student in describing the latitude given to private universities in this context:

The education process is not by nature adversary; instead it centers around a continuing relationship between faculty and students, "one in which the teacher must occupy many roles—educator, adviser, friend, and at times, parent-substitute." We decline to further enlarge the judicial presence in the academic community and thereby risk deterioration of many beneficial aspects of the faculty-student relationship.⁵⁸

⁵² *See id.* The university had given the student timely notice of the examination requirement, and also gave her time to prepare after she failed the first time. *See id.*

⁵³ 236 So. 2d 470 (Fla. Dist. Ct. App. 1970).

⁵⁴ *Id.* at 473.

⁵⁵ 453 A.2d 263 (N.J. Super. Ct. 1982).

⁵⁶ *See id.* (explaining the student's violation of plagiarism in her final paper).

⁵⁷ *Id.* at 274.

⁵⁸ *Id.* at 275 (citation omitted).

The *Napolitano* court concluded that Princeton's decision to withhold the degree was valid and reasonable and that the fact-finding procedure used to uncover the plagiarism was adequate.⁵⁹

Courts have been consistent in their reasoning in academic violation cases when a suspension or expulsion is at issue, or the withholding of a degree is involved, in both the private and public institution context. A hearing is not required in either context, as it is in a non-academic situation. Courts leave matters of academics to the institutions and do not interfere with their decisions unless the decision is arbitrary.

C. *The Revocation of Academic Degrees for Academic Reasons*

Courts apply a higher level of scrutiny in degree revocation cases, showing much less deference than in the suspension, expulsion, and even degree withholding cases. The Ohio Supreme Court's 1986 decision in *Waliga v. Kent State University*⁶⁰ is often cited on this point. The *Waliga* court permitted Kent State to revoke the degrees of two graduates, who had graduated in 1966 and 1967, respectively, after the university discovered that the students had not actually satisfied substantive degree requirements.⁶¹ The *Waliga* court held that universities have the power to revoke academic degrees "for proper cause after affording constitutionally adequate procedure."⁶² The *Waliga* court held that a hearing must be held prior to the revocation, and it must be "a fair hearing at which [the student] can present evidence and protect his interest."⁶³ The stricter procedural requirements in this context are a result of the more serious nature of degree revocation, as compared to a mere suspension or the withholding of a degree. Given the graduate's property interest in his degree, the court determined that due process requires a public university to provide a hearing at which the graduate can present his side of the story.⁶⁴

Other courts have followed *Waliga* in degree revocation cases. In *Crook v. Baker*,⁶⁵ for example, the Sixth Circuit determined that the University of Michigan had satisfied the due process requirements in revoking an academic degree from a graduate. The *Crook* court quoted at length from the *Waliga* opinion in reaching this conclusion:

Academic degrees are a certification to the world at large of the recipient's educational achievement and fulfillment of the

⁵⁹ *See id.*

⁶⁰ 488 N.E.2d 850 (Ohio 1986).

⁶¹ *See id.* at 851.

⁶² *Id.* at 853.

⁶³ *Id.* at 852.

⁶⁴ *See id.* at 853.

⁶⁵ 813 F.2d 88 (6th Cir. 1987).

institution's standards. To hold that a university may never withdraw a degree, effectively requires the university to continue making a false certification to the public at large of the accomplishment of persons who in fact lack the very qualifications that are certified. Such a holding would undermine public confidence in the integrity of degrees, call academic standards into question, and harm those who rely on the certification, which the degree represents.⁶⁶

Private universities, like public universities, must provide graduates with "procedural fairness" before revoking their degrees for academic reasons.⁶⁷ For example, Reams discusses an unreported California case in which the appellate court held that a private university student is entitled to procedural fairness in the degree revocation context because the revocation of the degree signified the removal of a significant interest. The court found that because the university informed the plaintiff of the charges against him and of the procedures to be used, the requirement of fairness had been satisfied.⁶⁸

In cases involving degree revocation for academic reasons, the only way the degree of the graduate may properly be revoked is to give the graduate a fair hearing, thereby satisfying the due process and fundamental fairness requirements. This is a more stringent requirement than is practiced in cases involving suspension and withholding of a degree.

D. Student Suspension or Expulsion of Students for Non-Academic Reasons

It is well established that for an institution to properly suspend or expel a student for non-academic reasons, it must conduct a hearing. *Horowitz* explains that disciplinary violations require fact-finding, but that academic violations require only the informed judgment of educators.⁶⁹ This rule is followed in cases discussing the suspension or expulsion of students for non-academic reasons. The rule was first set forth in *Dixon v. Alabama State Board of Education*,⁷⁰ in which the Supreme Court decided that due process required notice and some opportunity for a hearing before students could be expelled for misconduct.⁷¹

⁶⁶ *Id.* at 93 (quoting *Waliga v. Kent State Univ.*, 488 N.E. 2d 850, 852 (Ohio 1986)).

⁶⁷ See Bernard Reams Jr., *Revocation of Academic Degrees by Colleges and Universities*, 14 J.C. & U.L. 283, 300 (1987).

⁶⁸ See *id.* at 301 (discussing the *Abalkhail* case).

⁶⁹ See *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 87-91 (1978).

⁷⁰ 294 F.2d 150 (5th Cir. 1961).

⁷¹ See *id.* at 158-59. The university expelled the students without ever giving a specific reason for the expulsion other than "this problem of Alabama State College" following demonstrations. *Id.* at 151-53.

In *Wright v. Texas Southern University*,⁷² the Fifth Circuit upheld a student's expulsion over his complaints that the university's action was unfounded. The *Wright* court held that a student "must be given a fair and reasonable opportunity to make his defense to the charges and to receive such a hearing as meets the requirements of justice, both to the school and himself."⁷³ The student in *Wright*, however, had been given both notice and a fair hearing during which he was given an opportunity to present a defense to the allegations,⁷⁴ and thus the due process requirement that a state university must meet to properly expel a student for non-academic reasons had been satisfied.

Other courts have suggested that additional procedures may be necessary to comply with due process. Thus, in *Gorman v. University of Rhode Island*,⁷⁵ the First Circuit held that notice and a hearing are established due process requirements, but that in certain cases additional procedures may be warranted.⁷⁶ The *Gorman* court stated that weighing and balancing competing interests unique to each individual case is necessary to determine which additional procedural requirements, if any, are necessary to guarantee fairness.⁷⁷

At minimum, then, state supported schools must provide notice of the offense and a hearing in order to satisfy the due process requirements. In the private university setting, the constitutional safeguards do not protect students from expulsion or suspension for non-academic reasons, but private universities cannot dismiss a student without reason. In *Tedeschi v. Wagner College*,⁷⁸ for example, the New York Court of Appeals held that, regardless of what theory is used to define the relationship between the university and the student, if the university has established procedural guidelines to follow in disciplining a student, it must follow these guidelines. Similarly, in *Schaer v. Brandeis University*,⁷⁹ a Massachusetts court held that pri-

⁷² 392 F.2d 728 (5th Cir. 1968).

⁷³ *Id.* at 729.

⁷⁴ *See id.* at 729-30.

⁷⁵ 837 F.2d 7 (1st Cir. 1988). The *Gorman* court noted that, while "[n]otice and opportunity to be heard have traditionally and consistently been held to be the essential requisites of procedural due process . . . [b]eyond the right to notice and hearing, the span of procedural protections required to ensure fairness becomes uncertain." *Id.* at 13-14.

⁷⁶ *See id.*

⁷⁷ *See id.* at 13 (holding that the need for procedures beyond notice and a hearing "must be determined by a careful weighting or balancing of the competing interests implicated in the particular case").

⁷⁸ 404 N.E.2d 1302 (N.Y. 1980). The *Tedeschi* court held that, because the university guidelines required a hearing, the plaintiff was entitled to a hearing before the board and the president before she could be suspended. *See id.* at 1306.

⁷⁹ 716 N.E.2d 1055 (Mass. App. Ct. 1999), *rev'd in part*, 432 Mass. 747 (Mass. 2000). Appealing to common-law principles governing private associations, the *Schaer* court held that students facing expulsion are entitled to substantial, but not rigid, adherence to the procedures memorialized in student code. *See id.* at 1061.

vate colleges must comply with the procedures they establish for themselves. Although the *Schaer* court viewed the relationship between student and university as an association rather than a contract, it reached the same conclusion as the *Tedeschi* court—namely, that a private university must adhere to its own rules to ensure fundamental fairness in decisions to suspend or expel students.

This is quite different from the academic violation cases in which courts gave the educators wide latitude. In those cases it was not until the degree was actually revoked that courts required something beyond “fundamental fairness,” namely notice and a hearing. The seriousness of revocation demanded this tactic even in the area of academic offenses. In the case of suspending or expelling a student due to conduct, the public school student is entitled to notice and a hearing; and in the private setting the university is required to follow its own rules. The courts will overturn any action by the university that is arbitrary, capricious, and not fair to the student.

E. The Withholding of Degrees for Non-Academic Reasons

Courts are more stringent in non-academic cases involving suspension and expulsion, and they are just as stringent when universities withhold degrees for non-academic violations. A hearing and notice are required. There are other considerations as well. For example, does a university have the authority to withdraw a degree from a potential graduate who has fulfilled his academic requirements but commits a disciplinary violation prior to graduation? In *People ex rel. O'Sullivan v. New York Law School*,⁸⁰ a student, after completion of final examinations but prior to graduation, acted in a manner “justifying the refusal of the faculty to recommend [the student as one to] whom a degree should be conferred.”⁸¹ The court upheld the withholding of the degree, noting that there is no substantive distinction between matriculating students and those who have completed final exams but have yet to receive a degree.⁸²

In *Johnson v. Lincoln Christian College*,⁸³ a college refused to grant a degree to a student because of rumored homosexual conduct even though he had completed all of his academic requirements. The student withdrew when the university threatened to dismiss him with the reason stamped on his transcript.⁸⁴ The Illinois appellate court held that, in contract, a college cannot “maliciously or in bad faith

⁸⁰ 22 N.Y.S. 663 (N.Y. Sup. Ct. 1893).

⁸¹ *Id.* at 665. The case does not specify the nature of the student's offense.

⁸² *See id.* at 665-66 (finding “no reason why the right to discipline is not as great between the final examination and the graduation as before”).

⁸³ 501 N.E.2d 1380 (Ill. App. Ct. 1986).

⁸⁴ *See id.* at 1382 (“Afraid that the accusation of homosexuality being imprinted on his transcript would destroy his career goal, the student withdrew from college.”).

refuse to grant a degree to a student who has fulfilled the requirements for graduation."⁸⁵

In 1997, Johns Hopkins denied a diploma to a student who pleaded guilty to the murder of a fellow student.⁸⁶ The student had fulfilled all of the academic requirements a few months before the shooting and was waiting to receive his degree in the spring at the once yearly graduation ceremony.⁸⁷ He unsuccessfully sued the university because it withheld his degree after the incident.⁸⁸ The student argued that he was no longer a student because he had completed courses at the school, and thus that he was no longer within the school's jurisdiction.⁸⁹ In *Harwood v. John Hopkins University*, the Maryland court held that the university had the power to withhold the degree because that student's violation of its code of conduct amounted to a breach of contract.⁹⁰

The *Harwood* court discussed cases involving Christian universities refusing to confer degrees when the students behaved contrary to the terms of student handbooks.⁹¹ Although the university has the power to withhold the diploma when the student does not comply with the terms of the handbook, the university has a duty to "not act maliciously or in bad faith by arbitrarily and capriciously refusing to award a degree to a student who fulfills the degree requirements."⁹² The *Harwood* court held that Johns Hopkins had not acted arbitrarily or capriciously by requiring the student in question to comply with the terms of the handbook:

⁸⁵ *Id.* at 1384 (internal quotation marks omitted).

⁸⁶ *See No Diploma for Convicted Killer*, WASH. POST, Aug. 29, 1997, at D3.

⁸⁷ *See Johns Hopkins Denies Diploma to Former Student Who Pleaded Guilty in Shooting*, CHRON. HIGHER EDUC., Sept. 12, 1997, at A12. The student was convicted of second-degree murder and weapons charges and is currently serving a thirty-five-year sentence. *See id.*

⁸⁸ *See Harwood v. Johns Hopkins Univ.*, 747 A.2d 205, 210-12 (Md. App. 2000), *appeal denied*, 759 A.2d 231 (Md. 2000).

⁸⁹ *See id.* Many courts, including the court in *People ex rel. O'Sullivan v. New York Law School*, 22 N.Y.S. 663, 665 (1893), have rejected this proposition.

⁹⁰ *See Harwood*, 747 A.2d at 211.

⁹¹ The cases discussed by the *Harwood* court included *Lexington Theological Seminary, Inc. v. Vance*, 596 S.W.2d 11, 14-15 (Ky. Ct. App. 1979) (noting that it is "ridiculous on its face" that a seminary should be forced to conform its moral approach to conflicting life style approaches and holding that a seminary "had every right . . . to exercise sound discretion in the matter of granting a degree to [a homosexual student]"); *Johnson v. Lincoln Christian College*, 501 N.E.2d 1380, 1384 (Ill. App. Ct. 1986) (implying that the discretion of religious colleges is bound only by the duty not to "act maliciously or in bad faith"); and *Carr v. St. John's Univ.*, 187 N.E.2d 18 (N.Y. 1962) (affirming a lower appellate court holding that dismissal of students for participation in civil marriage services in contravention of Catholic teaching was within the proper discretion of the university and thus beyond the scrutiny of the courts).

⁹² *Harwood*, 747 A.2d at 209 (quoting *Lincoln Christian College*, 501 N.E.2d at 1384); *see also Dinu v. President & Fellows of Harvard College*, 56 F. Supp. 2d 129, 133 (D. Mass. 1999) (finding the suspension and consequent withholding of academic degrees from two students was proper because the students were still within the jurisdiction of the school, even though they had fulfilled the academic requirements for graduation).

Dean Boswell timely notified appellant that he was suspended pending the resolution of his criminal case and adequately notified him of the provisions of the Conduct Code he was charged with violating. Appellant's murder of a fellow student and handgun violations were clear violations of the Conduct Code. Moreover, the procedures invoked by Dean Boswell were fair and comported with the requirements of the Handbook.⁹³

Although the university has the power to withhold the degree, this is not an unbridled freedom. The university still must act fairly and comply with the procedures established by the handbook.⁹⁴

From this discussion, it is apparent that courts have applied more stringent procedural standards in the case of non-academic violations. As to public institutions, a hearing and notice are required both in the suspension and expulsion cases and in cases where schools seek to withhold academic degrees, and private institutions have a duty not to act arbitrarily and capriciously. The only instance in which notice and a hearing are required following academic violations is when the institution revokes the degree after it has been conferred. It is obvious that the courts treat non-academic violations and degree revocation as the two most serious situations requiring more protections for the student.

II. ARGUMENT

A. *Goodreau v. Rector and Visitors of the University of Virginia*⁹⁵

Although the area of degree revocation for non-academic reasons is new to the courts, *Goodreau* sheds light on this topic. *Goodreau* graduated from the University of Virginia in 1990. A few months later, it was discovered that he had embezzled funds from a student organization.⁹⁶ In 1996, he asked the university to remove an "enrollment discontinued" notation on his transcript after deciding to pursue graduate business study.⁹⁷ University administrators not only denied his request but initiated degree revocation proceedings against him.⁹⁸ In *Goodreau*, the district court considered the University of Virginia's motion for summary judgment on claims asserted by *Goodreau*.⁹⁹

⁹³ *Harwood*, 747 A.2d at 214.

⁹⁴ *See id.*

⁹⁵ 116 F. Supp. 2d 694 (W.D. Va. 2000).

⁹⁶ *See id.* at 698 (student pled guilty to misdemeanor embezzlement).

⁹⁷ *See id.* at 699.

⁹⁸ *See id.* at 700.

⁹⁹ *See id.* at 697.

This case is important for analyzing the MIT situation because it suggests an approach that courts might use in cases involving non-academic degree revocations. The court refused to grant summary judgment for the university on Goodreau's breach of contract action against the university.¹⁰⁰ Similarly, the court refused to grant summary judgment for the university on his due process claims.¹⁰¹ Moreover, the court stated that, "[a]t the very least the plaintiff is entitled to notice and the opportunity to be heard."¹⁰²

The court's refusal to grant the University of Virginia summary judgment is consistent with the cases involving the suspension, withholding, and revoking of degrees for both academic and non-academic reasons discussed in this Comment. The troubling portion of *Goodreau*, however, is its discussion of the university's power to revoke a degree, where the court likened academic and non-academic cases:

[T]he fact that these cases all dealt with academic misconduct, as opposed to a disciplinary infraction such as the one involved in the present case, does not weaken their value as authority, for the rationale set forth in those opinions also applies to a University's ability to revoke a degree for a violation of the Honor System.¹⁰³

This misstates the law. Academic and non-academic cases have not been treated similarly in the case law and should not be treated similarly in the case of degree revocation. Degree revocation is the most serious action an institution can take against a former student, and it must be handled very carefully. Courts must pay close attention to the cases that have come before and retain the distinction between academic and non-academic offenses that has been established in those cases. Degree revocation for non-academic reasons should be re-evaluated in light of the inherent problems with such an action. If revocation is permitted under these circumstances, safeguards must be firmly in place to protect former students.

¹⁰⁰ See *id.* at 702.

¹⁰¹ See *id.* at 707.

¹⁰² *Id.* at 704 (citing *Gorman v. Univ. of R.I.*, 837 F.2d 7, 12 (1st Cir. 1988)).

¹⁰³ *Id.* at 703.

B. Problems and Issues Involved in the Revocation of Academic Degrees for Non-Academic Reasons

1. Where Will the Line be Drawn?

The main problem with allowing the revocation of an academic degree for non-academic reasons is the question of where it will end. If universities are permitted to revoke degrees years after graduation, on what grounds may they do so? One author asks, "[w]hat if 20 years from now an MIT alumnus is accused of rape by a woman who backs up her charge with DNA evidence—would the university revoke his degree?"¹⁰⁴ May a university revoke the degree of a serial killer because of the shame of having his name tied to the university? What about a politician who acts unethically in public office? Could his alma mater revoke his degree because it disagrees with his actions? This line of questioning raises the troublesome issue of how far a university may go in controlling the conduct of their students—how far may it reach?

One author has stated that MIT's actions represent a clear abuse of power.¹⁰⁵ Attorney Harvey A. Silvergate likens the specter of degree revocation to a "kind of tyranny over the graduate's life."¹⁰⁶ Once students graduate, they expect their degree credential to be permanent. While it can be said that students who achieve their degree through academic fraud do not really earn the degree, students who satisfy the academic requirements have earned their credential and will usually believe that it cannot be revoked for non-academic reasons.

2. Former Student's Property Interest in the Degree

When a student has fulfilled the academic requirements necessary to earn a degree, the student is deprived of a property interest if that degree is revoked. Degrees granted by a public university have been recognized by the courts as "a substantial property right that may only be taken away pursuant to constitutionally adequate procedures."¹⁰⁷ It has been held that when a substantial property loss is involved, the courts will require substantial procedures.¹⁰⁸

¹⁰⁴ N.D. Batra, *Can Your Alma Mater Take Away Your Degree?*, Pacific News Service, Aug. 23, 1999, available in LEXIS, Nexis Library, News File.

¹⁰⁵ See Alexis B. Offen, *Former Student Sues MIT after Diploma Suspended, Claims Broken Contract*, U. WIRE, Nov. 18, 1999, available in LEXIS, U-Wire File.

¹⁰⁶ *Id.* (quoting Boston attorney Harry A. Silvergate, who has researched discipline procedures at over 400 schools).

¹⁰⁷ Robert Gilbert Johnston & Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67, 80 (1998) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)).

¹⁰⁸ See *id.* at 82.

The private school student does not have the same due process protections as the public school student. The private university student, however, still has an important interest in the degree. Courts have required private universities to maintain and follow fair procedures in determining what action to take against a student.¹⁰⁹ Thus, although courts have not required the same procedures in cases involving private universities as they have in cases involving public universities, they have required fundamental fairness.

There is another interesting question raised by the revocation of academic degrees by universities. If the university has the power to arbitrarily revoke the degree conferred upon a qualified student, is the reverse also true? May an alumnus return his degree five, ten, or even twenty years later, if he or she is dissatisfied with the direction the university decides to head, or is dissatisfied with the result the degree has rendered in the job market? Could the student demand her money back?¹¹⁰ If the student-university relationship is a contractual one, and the university has guaranteed satisfaction as part of the terms, it seems that the student could return his degree in the same way that the university could revoke a degree for violating the student handbook twenty years before. The reason for returning the degree could be as arbitrary as those reasons universities have used to revoke degrees.

C. Model Suggested to Address Problems of Revocation of Academic Degrees for Non-Academic Reasons

1. Do Away with the Public-Private Distinction

There is a vast difference in the way courts enforce student protections between public and private universities. Public university students are given constitutional protections of due process, while private university students are given "fundamental fairness." Many have argued that the distinction between the two requirements is artificial.¹¹¹ In *Slaughter v. Brigham Young University*,¹¹² for example, the Tenth Circuit held that there was no need to draw a distinction between public and private university requirements. The court held that the proceedings followed by Brigham Young "met the requirements of the constitutional procedural due process doctrine as it presently applied to public universities," and thus the distinction between public and private was unnecessary in that case.¹¹³ Noting that the *Slaughter* opinion "may exemplify courts' recognition of an artificial

¹⁰⁹ See *id.* at 83.

¹¹⁰ See Batra, *supra* note 104.

¹¹¹ See Johnston & Oswald, *supra* note 107, at 83.

¹¹² 514 F.2d 622, 625 (10th Cir. 1975).

¹¹³ *Id.*

distinction in process due to a student between public and private institutions," Johnston and Oswald conclude that "[f]undamental fairness to a student in a private setting dictates that the student should be afforded at least the same basic protections as their peers in the public sector."¹¹⁴

Without these constitutional safeguards, students at private schools are turning to the contract theory to provide protection from arbitrary school action. The protections offered under the contract theory are in some cases even greater than those afforded by due process. The student-university relationship implies a covenant of good faith and fair dealing that the university must uphold when disciplining students.¹¹⁵ A private university may not act arbitrarily in dealing with a student. The covenant of good faith and fair dealing is equivalent to due process.¹¹⁶ A student's decision to attend a private college should not mean that the student gives up his or her right to fair disciplinary procedures. All schools, public and private, should be held to the same standards.

Nevertheless, one must acknowledge that the distinction between public and private universities goes beyond semantics. In a private university setting, a student may not bring a Fourteenth Amendment claim against the university unless the student can show that the imposition of sanctions was the result of state action (e.g. the breach of a rule mandated by the government). A finding of "state action" in private school activity that is not mandated by government is unlikely.¹¹⁷ Even the actions of private schools that receive large amounts of government aid have been held beyond the penumbra of "state action."¹¹⁸ Although the two types of universities are very different, and are treated differently in many respects, the two should not be distinguished when it comes to the revocation of academic degrees.

For years courts have "chipped away at the state action barrier."¹¹⁹ By slowly eroding the barrier, they have collapsed the distinction between public and private universities in the area of disciplinary procedures. As early as 1971, a New York superior court held that Hofstra University, a private university, had to observe constitu-

¹¹⁴ Johnston & Oswald, *supra* note 107, at 84.

¹¹⁵ *See id.* at 83-84.

¹¹⁶ *See id.*

¹¹⁷ *See* Douglas R. Richmond, *Students' Right to Counsel in University Disciplinary Proceedings*, 15 J.C. & U.L. 289, 306-08 (1989) (noting that attempts to challenge the actions of private institutions through constitutional means under various theories have had little success).

¹¹⁸ *See* Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1981) (citing other Supreme Court opinions for the proposition that private action cannot be ascribed to the state unless the state has "exercised coercive power or has provided such significant encouragement, either overt or covert, that the school must in law be deemed to be that of the State").

¹¹⁹ Richmond, *supra* note 117, at 308.

tional due process requirements in student disciplinary proceedings.¹²⁰ One commentator has observed that "[a]lthough the doctrinal bases for procedural rights may differ between public and private colleges, and most courts continue to afford public institutions greater flexibility, the law appears to be moving toward a similarity of treatment."¹²¹

Courts testing the arbitrariness of dismissals have used due process as a guideline in private university cases where "the actions or words of the university administration [create] an expectation of due process."¹²² Although due process is not in fact being applied, the arbitrary and capricious test stemming from the contractual theory creates a duty on behalf of the private university to act fairly, even if due process is not technically required. Interestingly, non-legal forces have caused further erosion in the distinction between public and private universities in that most private universities afford constitutionally adequate procedural protection, even though they are not compelled by law to do so, because of economic considerations.¹²³

The distinction between public and private universities should be collapsed in the limited area of degree revocation. Courts have been struggling with the distinction for many years as they skirt the due process and state action blockade through use of the "fundamental fairness" requirement. Universities should be put on notice that they are required to provide the same protection to students, regardless of whether they are state-supported or private, in the context of degree revocation.

¹²⁰ See *Ryan v. Hofstra Univ.*, 324 N.Y.S.2d 964, 982-84 (N.Y. 1971). However, the court predicated direct application of constitutional due process on three theories, two of which have since been rejected and another which is tenuous in application. The court made much of the fact that "Hofstra [discharged] a public function for the state, as part of a State policy of mobilizing higher education resources." *Id.* at 982. However, Professor Richmond observes that the "public function" theory has been "rejected." See Richmond, *supra* note 117, at 307. Moreover, the court implied that the fact that Hofstra was "a tax-supported" university further supported its conclusion. Such a theory was explicitly rejected in *Rendell-Baker*. Finally, the third rationale offered by the court was that the state exercised "dominance" over Hofstra by its "right and ability" to regulate dormitories. *Ryan*, 324 N.Y.S.2d at 983. Though the state did not actively regulate in this manner, the court concluded that state action was established on the basis that it could have done so. See *id.*

¹²¹ Richmond, *supra* note 117, at 309.

¹²² Carol J. Perkins, Note, *Sylvester v. Texas Southern University: An Exception to the Rule of Judicial Deference to Academic Decisions*, 25 J.C. & U.L. 399, 417-18 (1998).

¹²³ See *id.* Perkins writes:

It seems to me unthinkable that the faculty and administration of any private institution would consider recognizing fewer rights in their students than the minimum the Constitution exacts of the state universities, or that their students would long remain quiescent if a private college were to embark on such a benighted course. Thus, as a practical matter, almost every private college and university will commit itself to giving students facing dismissal at least as much notice and hearing as the Constitution compels public colleges and universities to give their students; however, this is not because of any legal compulsion but . . . because they exist in a highly competitive market for those students.

Id. at 417-18 (internal quotations and citations omitted).

2. *Degree Revocations for Non-Academic Reasons Should Require the Most Strict Procedures*

A review of the relevant case law reveals a clear pattern. The strictness of the procedures that courts require universities to observe can be placed on a sliding scale depending on the nature of the proceeding, with suspensions and expulsions for academic reasons on one end, the lenient end, and discipline for non-academic conduct on the other, more strict end. This is as it should be. Courts are loathe to intrude on the academic decisions of educators¹²⁴ and have stated repeatedly that, in cases of academic suspensions and expulsions, no hearing is required.¹²⁵ In the case of degree revocations for academic reasons, the courts require additional procedures, including a hearing, although in these cases courts still defer to educators because of their reluctance to second-guess academic decisions.¹²⁶ Judicial scrutiny of discipline based on non-academic conduct is a notch further up the strictness scale. The conduct at issue in these cases falls outside the realm of academic expertise, and courts therefore are more comfortable in closely scrutinizing these decisions in this area. Non-academic suspensions and expulsions require notice and a hearing.¹²⁷

The courts' scrutiny of degree revocations for non-academic reasons should move all the way to the strict end of the scale and require the most stringent of procedures. In these cases the university is trying, on the basis of non-academic conduct, to deprive the former student of a degree in which he or she has a property interest. The importance of the student's interest in the degree and the potential for abuse by the university in this situation make it entirely logical and appropriate that courts should treat this most severe form of discipline with the highest degree of scrutiny, and that they require the most strict procedural safeguards for the protection of former students. Yoo was stripped of his degree without a fair hearing. Moreover, the decision to revoke his degree was not made by an impartial tribunal but rather by the university administration—an interested party. Such an abuse of power can be curtailed if the courts employed a higher form of scrutiny when evaluating such cases. Such higher scrutiny is necessary to protect former students' interests and expectations.

¹²⁴ See *supra* note 15.

¹²⁵ See, e.g., *Board of Curators of Univ. of Mo. v. Horowitz*, 435 U.S. 78, 84-91 (1978) (holding that a formal hearing is not required in cases involving academic expulsion).

¹²⁶ See, e.g., *Waliga v. Kent State Univ.*, 488 N.E.2d 850, 852 (Ohio 1986) (holding that a hearing must be afforded to the student in cases involving degree revocation).

¹²⁷ See, e.g., *Horowitz*, 435 U.S. at 87-91 (1978) (explaining that disciplinary violations require fact finding).

3. *The Need for a Defined List of Reasons for Which a Degree May Be Revoked*

It has been argued that, if universities are permitted to revoke academic degrees, they should only be permitted to do so in cases of academic fraud.¹²⁸ When a student fraudulently earns a degree, the university is justified in taking the degree back because the student has not in fact earned it. However, when a university revokes a degree for reasons other than academic fraud, "the process becomes more open to corruption, manipulation, and improper influence."¹²⁹ Limiting revocation power to academic fraud limits the university's ability to subjectively revoke degrees and forces universities to police their campus and school while the student is under their jurisdiction and within their grasp to effectively punish. If the subjectivity is taken out of the revocation power, schools will not be able to arbitrarily dictate what is revocable activity and what is not. Universities would be unable to take away a degree based upon unsupported accusations as MIT has done in the Yoo case.

If universities are permitted to revoke degrees for non-academic reasons, a defined list of infractions for which degrees may be revoked should be established. The list should be established by neutral parties who can be impartial and unbiased in devising the list of conduct that merits a punishment as severe as revocation of a degree. An expert commission that understands academic institutions and that will take into account the interests of both students and universities should be formed to compile such a list. If universities are left to formulate their own such lists of conduct deserving of punishment by revocation, incidents such as the one at MIT are unavoidable.

The MIT handbook states that a degree may be revoked or suspended after graduation for acts that occurred before graduation, but were unknown to the university at that time.¹³⁰ A Boston attorney who has researched disciplinary policies at over 400 schools has stated that MIT's diploma suspension represents "an abuse of power."¹³¹ The vague language of the handbook gives the university too much freedom to take a precious asset from a former student. Without a clearly defined list of conduct that justifies the revocation of academic degrees, the power will be abused, as it was in the case of Yoo.

¹²⁸ See *Institutions Should Not Revoke Degrees for Any Reason Except Academic Fraud*, CHRON. HIGHER EDUC., Sept. 17, 1999, at B3 (compilation of letters to the editor that include those by professors outraged by MIT's revocation of Yoo's degree).

¹²⁹ *Id.*

¹³⁰ See Reisberg, *supra* note 5, at A4.

¹³¹ Offen, *supra* note 105.

4. *Establish Procedures That Must Be Followed*

In addition to limiting the revocation of degrees to a clearly defined list of non-academic infractions, universities should also be required to follow a uniform set of specific procedures in such cases. Most importantly, the decision to revoke a former student's degree should be made by a neutral tribunal—i.e., a court of competent jurisdiction—and only after a hearing in which both sides have an opportunity to be heard. Although this may appear to invade the scope of universities' autonomy, it must be recognized that the relationship between students and universities undergoes a dramatic change with the conferral of the degree. When a student graduates, he leaves his alma mater *and its jurisdiction over him* behind:

Graduation is an aoristic, punctiliar event that forever alters the student-university relationship; for the university to be able to unilaterally reinstate that relationship and compel a student to defend himself on university premises according to the university's own rules is a miscarriage of justice. Academic dishonesty is not to be condoned but revocation of an important property interest without benefit of full legal process within the legal system is likewise not to be condoned.¹³²

During their time at the university, students are subject to disciplinary hearings and the jurisdiction of the school. Once graduation takes place, however, the university and the student no longer have the same relationship, and the revocation decision must therefore be made by an independent tribunal. Many commentators agree that the courtroom, not a university proceeding, should be the forum in which the revocation is decided. For example, Mawdsley writes:

[W]here there is no student-university relationship at all (as would be the case when a student has graduated) courts should require the university to use the legal system. To treat a degree revocation as an isolated occurrence like a grade in an academic course is hopelessly myopic. . . . Considering the long-range harmful effects on the student to his or her personal and professional life, should not the university's case be subjected to more vigorous scrutiny than the informal and self-serving review by the university itself?¹³³

There is a real problem of bias when a university holds a hearing to decide whether to revoke a degree:

¹³² Ralph D. Mawdsley, *Judicial Deference: A Doctrine Misapplied to Degree Revocations*, 70 EDUC. L. REP. 1043, 1052-53 (1992).

¹³³ *Id.* at 1052.

[F]aculty members, administrators, and students may have distinct impressions of a student, especially when he or she is a member of a small community. An administrator may have had prior contact with the student in other disciplinary matters that may have not gone to the tribunal. Further, the charges may be due to maladministration by the university official. Finally, student disciplinary board members may be subjected to extreme peer pressure from other students.¹³⁴

One of the most important aspects of a trial is that the presiding judge and jury be unbiased.¹³⁵ Thus, it is important that universities be required to submit to such unbiased tribunals when something as critical as degree revocation is at issue. The requirements should be identical for all universities. Having an impartial tribunal decide the case based on a list of conduct that merits revocation reduces the subjectivity involved in the process and lessens the potential for abuse of power on the part of the university.¹³⁶

The court system is the proper place for the student to be heard and for the university to be held accountable. Too much power granted to the university can mean disaster to students everywhere. Charles Yoo's life will never be the same now that MIT suspended his degree. He is unable to attend business school, and he will forever be stigmatized as the result of a decision made without his having the ability to confront his accusers and defend himself. He has effectively been labeled a criminal, a murderer, despite the fact that he was never criminally charged. MIT is not the only university that will abuse its power and damage its former students' lives.

Courts, educators, and concerned citizens must work together to protect the interests of students. Practically speaking, the procedures outlined in this Comment would have to be imposed through legislation. But such legislation is necessary to create a cause of action to be brought before the impartial tribunal so that justice can truly be served, and the interests of former students can be protected.

CONCLUSION

Once a student graduates from a university, the relationship between the student and the university has changed forever. It is not acceptable for the university to unilaterally decide to revoke an im-

¹³⁴ Walter Saurack, Note, *Protecting the Student: A Critique of the Procedural Protection Afforded to American and English Students in University Disciplinary Hearings*, 22 J.C. & U.L. 785, 816-17 (1995) (internal citations omitted).

¹³⁵ See *id.* at 816.

¹³⁶ See *id.* ("Considering the long-range harmful effects on the student to his or her personal life, should not the university's case be subjected to more rigorous scrutiny than the informal and self-serving review by the university itself?").

portant interest that belongs to a *former* student. If universities are permitted to revoke degrees for non-academic conduct, there is a real danger that universities will abuse their power and former students everywhere will be irreparably harmed without adequate safeguards to prevent abuses. This danger exists in part because each institution decides for itself which behaviors constitute revocable conduct. Students have a property interest in their degrees. If degree revocations for non-academic reasons are to be permitted at all, there must be procedures in place to combat abuse by universities. These should include: (1) ending the procedural distinction between public and private universities in the limited area of degree revocation for non-academic reasons; (2) close judicial scrutiny of educators' decisions in this area, as well as a requirement of strict procedural safeguards; (3) creating a list of conduct that merits degree revocation; and (4) establishing specific procedures that universities must follow to properly revoke a degree, including using the legal system (an impartial tribunal) to decide if degree revocation is proper and fair to the student. The distinction between academic and non-academic proceedings must remain firmly in place regardless of the *Goodreau* court's statement.

MIT should not be permitted to revoke Yoo's degree for five minutes, five years or forever, but if it is, the suggestions above should be followed to ensure that Yoo is treated fairly and that his valuable property interest is not taken without sufficient justification. He fulfilled the requirements to graduate, and paid \$100,000 to attend, and thus he deserves no less.

JAYME L. BUTCHER[†]

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The Right of Educational Institutions to Withhold or Revoke Academic Degrees

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I. **Introduction**¹ One of the most important functions of an educational institution is the awarding of an academic degree.² An academic degree is an institution's "certification to the world at large of the recipient's educational achievement and the fulfillment of the institution's standards."³ Employers rely upon the holding of a degree in making employment decisions. The prestige of the institution may vicariously extend to the graduate.⁴

¹This outline draws heavily on a paper Donna Gurley, Associate General Counsel, University of Mississippi, and the author are preparing to submit for peer review and publication. The author wishes to express appreciation to Ms. Gurley for her contributions to this outline.

²The term "degree" is used when discussing an academic rank conferred by a college or university after examination or completion of a course of study; the term "diploma" is used when discussing a certificate awarded by a secondary educational institution. See THE NEW OXFORD AMERICAN DICTIONARY (2001) at 449 & 482.

³*Waliga v. Board of Trustees of Kent State Univ.*, 488 N.E.2d 850, 852 (Ohio 1986).

⁴See generally, 3 Rapp, EDUCATION LAW § 8.06[1].

A degree may be a prerequisite for licensing in the professions.⁵ Because of the importance of a degree, educational institutions have the right and responsibility to set standards for its award.⁶ Standards may include not only completion of course work, but compliance with conduct standards and fulfillment of financial obligations to the institution.⁷

Whether a student conforms to standards required for a degree is a determination to be made by the educational institution.⁸ What happens, however, when a student has completed all course and academic requirements but violates school policies or rules by engaging in acts of misconduct or academic dishonesty before the degree is awarded? Can the school refuse to award the degree? What if the institution discovers after conferring the degree that the student received credit for courses he or she did not take or engaged in some other act of academic dishonesty or non-academic misconduct? What can and should the institution do? What due process rights does a student at a public institution hold? What protections exist for a student at a private institution? Is there a difference in procedural requirements for withholding a degree as opposed to revoking one already granted?

⁵*Id.*

⁶*See Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (describing the “four essentials freedoms” of a university – to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”)

⁷*See generally*, Rapp, *supra* n.4 at §8.06[6][d][I].

⁸*See Susam M. v. New York Law Sch.*, 76 N.Y.2d 241, 245-46, 556 N.E.2d 1104 (1990) (“[Academic] determinations play a legitimate and important role in the academic setting since it is by determining that a student’s academic performance satisfies the standards set by the institution, and ultimately, by conferring a diploma upon a student who satisfied the institution’s course of study, that the institution, in effect, certifies to society that the student possesses the knowledge and skills required by the chosen discipline.”).

This outline examines whether public and private institutions of higher learning have the authority to withhold academic degrees already earned or to revoke academic degrees already conferred for acts of academic dishonesty or for student misconduct; discusses the procedural safeguards required to ensure fairness in the process; and analyzes the deference (or lack thereof) given to educational institutions in these matters by the courts.

II. Withholding or Revoking a Degree for Failure to Meet Academic Requirements or for Acts of Academic Dishonesty.

Although there has been relatively little judicial attention paid to the matter,⁹ both public and private institutions generally have authority to withhold and revoke improperly awarded degrees.¹⁰ This authority exists whenever “good cause such as fraud, deceit, or error is shown.”¹¹

A. Withholding a Degree

A student who enrolls in an institution of higher learning, pays all fees, completes all academic requirements in a prescribed course of study, and abides by the institution’s rules and regulations is generally entitled to a degree.¹² Courts grant substantial discretion and great deference to faculties and governing bodies of colleges and universities in evaluating students

⁹The Sixth Circuit Court of Appeals noted in *Crook v. Baker*, 813 F. 2d 88, 91 (6th Cir. 1987), the scarcity of case law on this subject, as did Ralph D. Mawdsley, *Judicial Deference: A Doctrine Misapplied to Degree Revocations*, 71 EDUC. L. REP. 1043, 1044 (1992).

¹⁰*See generally*, William A. Kaplin & Barbara A. Lee, THE LAW OF HIGHER EDUCATION (3rd ed.) at 474-77. Cases and authorities on this point are collected in Lori J. Henkel, Annot., *College’s Power to Revoke Degree*, 57 A.L.R. 4th 1243 (1987 & Supp. 2004).

¹¹*Waliga*, 488 N.E.2d at 852; *see also*, *Crook*, 813 F.2d at 93.

¹²*See, e.g.*, *Johnson v. Lincoln Christian College*, 501 N.E.2d 1380, 1384 (Ill. App. Ct. 1986); *Anthony v. Syracuse Univ.*, 224 A.D. 487 (N.Y. A.D. 1928); 14A C.J.S. *Colleges and Universities* § 41 (2003).

and in determining whether a student has performed all the conditions prescribed by the institution.¹³ There are occasions, however, when a student completes all academic requirements, but the college or university refuses to grant a degree.

Academic institutions generally withhold a degree for three reasons: First, for academic problems, such as failing grades or academic dishonesty; second, for non-academic problems, such as failure to pay tuition or fees; and, third, for social misconduct that the college or university disapproves.¹⁴

Courts have upheld the right of universities in both the public and private sector to withhold academic degrees because students failed to meet academic requirements or engaged in acts of academic dishonesty. For example, the Superior Court of New Jersey in *Napolitano v. Trustees of Princeton University*¹⁵ addressed the withholding of a student's degree for one year because of plagiarism. The court found the charge of plagiarism valid and the withholding of the degree a viable punishment for the act of academic dishonesty. The court interpreted the University's regulation allowing suspension of a student under these circumstances to include the power to withhold degrees and held that "a withheld degree . . . is a less severe variation of suspension."¹⁶ The court noted that withholding the degree is imposed only upon second semester seniors. It permits the student to finish his or her academic requirements and wait the prescribed period to receive the degree, rather than requiring the student to lose tuition and repeat

¹³See *Bruner v. Petersen*, 944 P.2d 43, 48 (Alaska 1997) ("In matters of academic merit, curriculum, and advancement, the courts afford university faculty and administrators substantial discretion."); see generally, 15A AM. JUR.2D *Colleges and Universities* § 29 (2003).

¹⁴William H. Sullivan, *The College or University Power to Withhold Diplomas*, 15 J.C.&U.L. 335, 337 (1989); 14A C.J.S. *Colleges and Universities*, § 41 (2003).

¹⁵453 A.2d 263 (N.J. 1982).

¹⁶*Id.* at 265. The court noted that excluding plaintiff's case, Princeton had withheld 20 degrees for disciplinary reasons since the 1972-73 academic year. *Id.*

the last semester during the following academic year. In addition, the court found there exists “the necessity for independence of a university in dealing with the academic failures, transgressions or problems of a student.”¹⁷

Deferring to the university’s discretion in awarding or withholding an academic degree, the court in *Cieboter v. O’Connell*¹⁸ refused to force a university to consider a dissertation where the student in question had not fulfilled the graduate school’s requirements. The Florida court, like many other courts, held that the University of Florida did not have to consider the dissertation because “[t]hese are determinations which fall peculiarly within the competence of the University officials charged with the responsibility of granting doctorate degrees only to students whom they find to be fully qualified in all respects and for whose competence the University must vouch.”¹⁹

B. Revoking a Degree²⁰

The issue of whether an academic institution has the authority to revoke a former student’s degree was addressed as early as 1334. In *The King v. University of Cambridge*,²¹ the plaintiff sought the restoration of his doctoral degree which the University had rescinded. Although the court granted plaintiff’s writ of mandamus to restore the degree because it had been

¹⁷*Id.* at 273.

¹⁸236 So. 2d 470 (Fla. Dist. Ct. App. 1970).

¹⁹*Id.* at 473.

²⁰For an excellent discussion of the subject, see Robert Gilbert Johnston and Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67 (1998).

²¹8 Mod. Rep. 148 (1334).

taken from him without a hearing, the court clearly recognized the right of the University to “revoke a degree for a reasonable cause.”²²

One of the earliest cases in the United States discussing the revocation of a degree is *Waliga v. Board of Trustees of Kent State University*.²³ In *Waliga*, the Ohio Supreme Court addressed a single issue: whether the university had authority to revoke a degree it determined had been improperly granted.²⁴ The court began its analysis by noting that Ohio statutes provided that Ohio’s universities had the power to “confer such . . . academic degrees as are customarily conferred by colleges and universities in the United States” and to “do all things necessary for the proper maintenance and successful and continuous operation of such universities.”²⁵

²²*Id.* at 164. For cases in which students have sought a writ of mandamus to force an institution to confer a degree, see Annotation, *Students Right to Compel School Officials to Issue Degree, Diploma, or the Like*, 11 A.L.R.4th 1182 (1982 & 2004).

²³488 N.E. 2d 850 (Ohio 1986).

²⁴*Id.* at 851-52. In its “Syllabus by the Court,” the court noted that the two former Kent State students had “discrepancies” in their official academic records. After an investigation, the university determined that the academic records were incorrect and that the students had not met the necessary requirements to graduate. No mention was made as to whether the students had played a role in falsifying their records. Furthermore, although the syllabus discussed the procedural due process provided to the students by the university, the court noted that it was not asked to decide whether the level of due process provided was sufficient, but only whether the university could revoke a degree previously granted. *Id.*

²⁵*Id.* at 852. Many of the public university degree revocation decisions begin with an analysis of the power granted the university or its governing body by the state constitution or state statutes. See, e.g., *Crook*, 813 F.2d at 92 (“Indeed, the administrative independence granted

The court went on to note that, unless a university has the power to revoke or rescind a previously granted degree, the university is placed in the untenable position of continuing to certify to the public that the former student did, indeed, meet all of the university's degree requirements. The court's reasoning is summarized in one of the most frequently cited paragraphs in degree revocation cases:

Academic degrees are a university's certification to the world at large of the recipient's educational achievement and fulfillment of the institution's standards. To hold that a university may never withdraw a degree, effectively requires the university to continue making a false certification to the public at large of the accomplishment of persons who in fact lack the very qualifications that are certified. Such a holding would undermine public confidence in the integrity of degrees, call academic standards into question, and harm those who rely on the certification which the degree represents.²⁶

In *Crook v. Baker*,²⁷ decided one year later in 1987, the Sixth Circuit Court of Appeals also treated the question of the power to revoke a degree as a clear question of state law. Although the court relied heavily on *Waliga* in analyzing this issue, the Sixth Circuit also pointed out that Michigan universities gain their status under the Michigan state constitution. Because the public universities of Michigan have the authority to administer their programs under the state constitution, such authority implies the right to revoke a degree previously granted:

We conclude that there is nothing in Michigan constitutional, statutory or case law that indicates that the Regents do not have the power to rescind the grant of a degree. Indeed, the administrative independence granted to the University by the Michigan

to the University by the Michigan Constitution in educational matters indicates that the University does have such authority.”).

²⁶*Waliga*, 488 N.E.2d at 852.

²⁷813 F.2d 88 (6th Cir. 1987).

Constitution in educational matters indicates that the University does have such authority.²⁸

To summarize, the authority of an educational institution to withhold or revoke degrees is supported by a logical extension of its conferral power, by contract law, and by the precedential authority of *Napolitano*, *Waliga*, and *Crook*. The procedures that must be followed to afford constitutional or contractual protections to affected students or former students raise a number of different issues that will be discussed in Section IV below.

III. Withholding or Revoking a Degree for Non-academic Reasons.

A. Withholding a Degree

1. Social Misconduct

In addition to holding authority to withhold a degree for academic reasons, colleges and universities also have authority to withhold a degree for social misconduct the institution prohibits. In *Harwood v. Johns Hopkins University*,²⁹ the court dealt with an unusual and tragic circumstance. The University refused to award a degree to Robert J. Harwood, Jr., even though he had completed successfully all academic requirements for graduation, because he shot and killed a fellow student, Rex Chao, on the Hopkins campus on April 10, 1996.

Harwood enrolled at Hopkins in 1992. By the end of the Fall 1995 semester, he had completed all required classes. Harwood was scheduled to receive his degree at the June 1996 commencement exercises. Harwood did not register for classes or pay tuition for the Spring 1996 semester. He lived with his grandmother in Rhode Island during that time but continued to maintain consistent contact with the Hopkins community and even manned a student election table during March of 1996. He visited the campus on numerous occasions, which resulted in a number of complaints of harassment being filed against him by Chao.

Harwood attended a meeting of a student political organization on April 10, 1996. While there, he distributed flyers and spoke out in opposition to the candidacy of Chao for president of

²⁸*Id.* at 92.

²⁹747 A.2d 205 (Md. Ct. Spec. App. 2000).

the organization. Later that evening, while still on campus, Harwood confronted Chao and shot and killed him. Harwood pled guilty to murder in addition to related handgun violations.

On May 15, 1996, the dean of students informed Harwood that his diploma would be withheld pending resolution of his criminal charges. The University based its decision to withhold Harwood's degree on provisions of the Student Handbook, which provided, in pertinent part:

*The university does not guarantee the award of a degree or a certificate of satisfactory completion of any course of study or training program to students enrolled in any instructional or training program. The award of degrees and certificates of satisfactory completion is conditioned upon satisfaction of all current degree and instructional requirements at the time of such award, compliance with the university and divisional regulations, as well as performance meeting bona fide expectations of the faculty.*³⁰ (emphasis added by the court).

After the dean learned of Harwood's guilty plea, she notified him that she was initiating disciplinary proceedings against him, that he could submit any materials he wished her to consider, and that he or his parents could speak with her by telephone. Harwood responded that he was not subject to the jurisdiction of the dean's office because he was no longer a student, that his actions were not punishable under the Undergraduate Student Conduct Code, and that the dean continued to violate the Conduct Code by denying him a hearing.

The dean informed Harwood shortly thereafter that he was expelled from the University and would not be awarded his degree, reiterating that he remained subject to the Conduct Code until the award of his diploma. Harwood appealed the dean's decision within the University; his appeal was denied. On May 1, 1998, Harwood filed a declaratory judgment action seeking the award of his diploma. The University moved for summary judgment. The court concluded that Harwood was subject to the disciplinary action of the University and that the University did not act arbitrarily or capriciously in denying Harwood his degree.

³⁰*Id.* at 207-08.

Harwood appealed. The Maryland Court of Special Appeals affirmed the grant of summary judgment to the University, holding that it had the right to withhold a diploma from a student who has completed all required course work and that it did not act arbitrarily and capriciously in refusing to award Harwood his degree.³¹

In another high profile case involving a prestigious private university, the district court held in *Dinu v. President and Fellows of Harvard College*³² that two Harvard students, suspended by the school's disciplinary board after having been found guilty of stealing money from Harvard Student Agencies, were not entitled to the award of their degrees, even though they had completed all degree requirements prior to the board's disciplinary action. The College relied on language in the HANDBOOK FOR STUDENTS, which stated: "Instances of theft, misappropriation, or unauthorized use of or damage to property or materials not one's own will ordinarily result in disciplinary action, including requirement to withdraw from the College."³³ A disciplinary committee investigated allegations that the students had accepted money for work they had not performed, determined that the students had indeed committed the wrongful act, and recommended to the Administrative Board that the students be required to withdraw from the College for one year. The Board accepted this recommendation. As a result, the students were not permitted to participate in Harvard's June 1999 commencement.

³¹*Id.*; see also, Ben Gose, *Court Upholds Right of a University to Deny Degree to Student Who Killed Another*, CHRON. HIGHER EDUC., March 17, 2000. ("A spokesperson for Hopkins said the University was pleased with the ruling. 'It certainly accomplishes what we were seeking, which was to be able to uphold the principle that a degree from Johns Hopkins says more than just that you completed your courses. It says something about your behavior as a citizen of the university during the time you were here.'")

³²56 F. Supp.2d 129 (D. Mass. 1999).

³³*Id.* at 130 (quoting HANDBOOK FOR STUDENTS at 307).

The students sued, seeking to have the College forced to award them their degrees. They asserted contractually that because they had satisfied the formal requirements for a degree prior to the Board's action, their right to a degree had vested, and the Board was powerless to punish their misconduct by withholding their diplomas. They further argued that since the misconduct in question occurred after they had fulfilled all academic requirements, they had ceased being students and were no longer subject to Harvard's disciplinary jurisdiction.

The court found the students' arguments "fundamentally flawed" and the position of Harvard to be based on "logic that is unassailable."³⁴ The court quoted with approval the following syllogism from Harvard's memorandum in support of its summary judgment motion: "Assume, for example, that a senior completes his course work, learns that he will not graduate with honors, and, in a rage, attacks the chair of his department. Plaintiffs cannot seriously suggest that Harvard would be powerless to enforce its disciplinary r[u]les in that instance."³⁵

In other cases, courts have also upheld the right of educational institutions to withhold a degree for student activity unrelated to academics but contrary to university policy. For example, in *People ex rel. O'Sullivan v. New York Law School*,³⁶ the Law School withheld a student's diploma for an incident involving a protest against the choice of a graduation speaker. The New York Supreme Court stated:

It cannot be that a student having passed all examinations necessary for a degree can, before his graduation, excite disturbance and threaten injury to the school or college without being amendable to some punishment. No course would seem open except to forthwith expel him or refuse his degree. . . . The faculties of educational institutions having power to confer degrees

³⁴*Id.* at 133.

³⁵*Id.*

³⁶22 N.Y.S. 663, 665 (N.Y. Sup. Ct. 1893).

. . . are necessarily vested with a broad discretion as to the persons who shall receive those honors. . . . Any other rule would be subversive of all discipline in the school. . . . We see no reason why the right to discipline is not as great between the final examination and the graduation as before. . . .³⁷

Courts have granted great latitude to religious institutions in withholding diplomas of students who have completed all required course work but have violated some institutional policy or rule.³⁸ In *Lexington Theological Seminary v. Vance*,³⁹ the Kentucky Court of Appeals ruled that the Seminary could deny a Master of Divinity Degree to a student who was an admitted homosexual. The court's decision rested on its finding of a contract between the student and the Seminary arising from the words used in the school catalogue, such as "Christian ministry," "gospel transmitted through the Bible," and "fundamental character." It held that these words constituted contract terms that created "reasonably clear standards" upholding the exclusion of homosexuals based on the institution's Christian ministry.⁴⁰

Similarly, the court in *Carr v. St. John's University*,⁴¹ held that the dismissal of four students, two of whom were married in a civil ceremony and two of whom acted as witnesses, was within the discretion of the University.

³⁷*Id.* at 665.

³⁸*See* Sullivan, *supra* n.14 at 340.

³⁹596 S.W.2d 11 (Ky. Ct. App. 1979).

⁴⁰*Id.* at 13; *but cf.*, *Johnson v. Lincoln Christian College*, 501 N.E.2d 1380 (Ill. Ct. App. 1986) (holding that student who met all requirements for graduation had valid cause of action for breach of contract when College withheld his degree because there were "claims" that he "might be homosexual.")

⁴¹231 N.Y.S.2d 410 (N.Y. A.D. 1962).

2. Non-payment of Fees

Courts have also upheld the right of colleges and universities to withhold degrees for nonpayment of fees. In *Haug v. Franklin*,⁴² the University of Texas refused to confer a student's law degree on him because he failed to pay a large number of campus parking tickets he had accumulated. The Texas Court of Appeals found the withholding of the degree valid because the University's traffic and parking regulations authorized such an action.

B. Revoking a Degree

Maurice Goodreau sued the University of Virginia in 1998 after it revoked the Bachelor of Science degree he had received in 1990.⁴³ During the Spring of his final year at the University, Goodreau used his position as president and treasurer of a student club to steal more than \$1500 in University funds by submitting forged or false reimbursement vouchers. Goodreau's actions remained undetected during the remainder of his student days.

At the beginning of the following academic year, the incoming president of Goodreau's former club noticed discrepancies in the organization's records and referred the matter to University police. Goodreau eventually admitted taking the funds for personal use and pled guilty to misdemeanor embezzlement. In addition to the criminal matter, the University's Honor Committee initiated an honor case against Goodreau. He did not cooperate with the investigation because he thought there should not be a hearing since he was no longer a student.

A member of the Honor Committee testified that he both wrote and called Goodreau to inform him of his right to a hearing and that there was a possibility that his degree could be revoked. Goodreau made no response. Eventually the Honor Committee informed the Registrar's Office that Goodreau could not reenroll in the University.

Later on when Goodreau applied for admission to the University to pursue a masters degree in business administration, he was informed that there was a notation on his transcript that his enrollment was "discontinued." Goodreau filed a grievance to have the "enrollment

⁴²690 S.W.2d 646 (Tex. Ct. App. 1985).

⁴³*Goodreau v. Rector and Visitors of Univ. of Va.*, 116 F.Supp.2d 694 (W.D. Va. 2000).

discontinued” notation on his transcript removed. In his grievance letter, Goodreau once again admitted misappropriating the funds. Considerable dispute existed as to whether Goodreau was informed that a possible result of the grievance would be the revocation of his degree. Eventually the Honor Committee recommended to the General Faculty that it revoke Goodreau’s degree. President Casteen informed Goodreau that he could submit materials to the faculty committee for consideration. He did, but he was not invited to attend a hearing. On April 15, 1998, the General Faculty revoked Goodreau’s degree.

Goodreau sued, and the University moved for summary judgment. The district court acknowledged that the University had the implied power, with proper procedural safeguards, to revoke the degree of a student who violated the Honor System. However, the court found material questions of fact as to whether the University gave Goodreau proper notice of the possible sanctions against him [degree revocation] and properly considered the information he submitted. It, therefore, denied the University’s motion for summary judgment on Goodreau’s due process claim of insufficient notice.⁴⁴

In a highly visible case, M.I.T. revoked the degree of Charles Yoo, a 1998 graduate, for a period of five years for his alleged involvement in the death of Scott Krueger, a freshman fraternity pledge.⁴⁵ Yoo was a pledge trainer in Phi Gamma Delta fraternity at M.I.T. at the time of the fraternity incident that caused Krueger’s death and allegedly purchased the alcohol and instructed pledges on the amount of alcohol they were expected to drink.⁴⁶ Yoo denied these allegations. Criminal charges were brought against the fraternity (and eventually dropped after

⁴⁴*Id.*

⁴⁵James L. Butcher, *MIT v. Yoo: Revocation of Academic Degrees for Non-Academic Reasons*, 51 CWRLR 749 (2001).

⁴⁶ *Id.* at 750.

the fraternity dissolved), but not against Yoo. M.I.T. paid the Krueger family six million dollars for the institution's role in the tragic incident.⁴⁷

The decision to revoke the degree based upon Yoo's alleged misconduct has been controversial, both in legal and educational circles.⁴⁸ Yoo's attorney complained that the punishment was too harsh and that the disciplinary hearing had been unfair since Yoo was not given an opportunity to confront his accusers.⁴⁹ Yoo eventually filed suit against the University. The trial court granted summary judgment to M.I.T., and Yoo appealed. The Massachusetts Court of Appeals affirmed and dismissed Yoo's complaint.⁵⁰ One of the important points to note in this case is that M.I.T.'s published policy provided that the University may withdraw academic degrees "in the event that a case is brought after graduation, for actions that occurred before graduation but were unknown at the time."⁵¹

Utilizing an interesting theory in degree revocation cases, the plaintiff in *Sheridan v. Trustees of Columbia University*⁵² sued the University for refusing to forward his transcript to graduate schools until he paid his outstanding tuition bill. He argued that, as a degree holder, he was in a fundamentally different position from plaintiffs in cases in which the courts had held

⁴⁷Leo Reisberg, *MIT Revokes Diploma of Graduate for Alleged Role in Drinking Death of Freshman*, CHRON. HIGHER EDUC., Aug. 13, 1999, at A-4.

⁴⁸Butcher, *supra* n.45 at 750; Reisberg, *supra* n.47 ("The action marks a rare, if not unprecedented, effort by a university to discipline an alumnus for a non-academic violation that took place during college.")

⁴⁹Reisberg, *supra* n.47.

⁵⁰*Yoo v. Massachusetts Institute of Technology*, 801 N.E.2d 324 (Mass. Ct. App. 2004).

⁵¹Reisberg, *supra* n.47.

⁵²296 A.D.2d 314 (N.Y. App. Div. 2002).

that a university has no legal obligation to provide a diploma or transcript to a graduating student with outstanding financial obligations to the institution. He claimed that by not forwarding his transcript, Columbia was effectively revoking his degree.

The court made short order of plaintiff's claim. It acknowledged that while the University's refusal to forward his transcript to graduate schools to which he was applying might jeopardize his being accepted, the University did not revoke its certification that plaintiff possessed all the knowledge and skills represented by the degree.

Degree revocation has serious implications outside the loss of the degree. For example, the Supreme Court of New Jersey revoked the license of John Benstock to practice law in the State of New Jersey after New York Law School revoked his Juris Doctor degree for failing to reveal material information on his application to law school and admission to the bar.⁵³

IV. Procedural Considerations in Withholding or Revoking Degrees

Given a higher education institution's power to withhold or revoke a degree, what procedural protections must the institution give the student? If the institution is public, the Due Process Clause of the Fourteenth requires certain procedural protections, particularly if the court finds the student holds a property interest in the possession of the degree. If the institution is private, principles of fundamental fairness in decision-making and adherence to contract terms will be called into play.⁵⁴

A. Public Institutions

In *Crook v. Baker*,⁵⁵ the Sixth Circuit discussed the procedural protection required to meet constitutional due process when a public institution revokes an already awarded degree.

⁵³*In the Matter of John E. Benstock*, 701 A.2d 129 (N.J. 1997).

⁵⁴For a good discussion of procedural issues involved in revoking academic credentials, see Robert Gilbert and Jane D. Oswald, *Academic Dishonesty: Revoking Academic Credentials*, 32 J. MARSHALL L. REV. 67 (1998).

⁵⁵813 F.2d 88 (6th Cir. 1987).

The plaintiff, Crook, received a Master's Degree of Science in geology and mineralogy in 1977 from the University of Michigan. As a part of his master's thesis, Crook claimed to have discovered a new, naturally occurring mineral, which he named "texasite." The following year, faculty at the University discovered that a sample of a synthetic mineral created at the University, and having the same chemical composition as texasite, had disappeared from campus. Upon closer inspection, faculty also became aware that Crook had not logged enough lab time on the electronic microscope to have generated the data that he included in his thesis.

Suspecting that Crook had fabricated his data based on the chemical properties of the synthetic substance taken from the University, the University invited Crook back to re-conduct his experiments in 1979. Crook was then informed that an Ad Hoc Disciplinary Committee had been formed to review his case and, depending on the outcome of the investigation, his degree might be revoked by the University. Crook and the Committee exchanged extensive statements prior to the hearing, which lasted eight hours. Crook was allowed to have his attorney present, although the attorney was not allowed to examine or cross-examine witnesses.

Following the hearing, the Committee issued a finding that the data in the thesis had been fabricated, but made no recommendation as to whether Crook's degree should be revoked. The findings of the Committee were forwarded to a higher level body, the Executive Board of the Graduate School, which recommended that the University rescind Crook's degree. This recommendation was, in turn, reviewed by a vice-president who had no previous dealings with Crook's case. The Board of Regents of the University then reviewed the findings of the Committee, the recommendations of the Executive Board, and the recommendation of the vice-president. Crook's attorney was allowed to speak on Crook's behalf before the Board of Regents, which subsequently voted to rescind Crook's degree.

Crook challenged the revocation, claiming that he had not been afforded adequate due process. The court discussed the requirements of due process, dividing its discussion into procedural and substantive issues. First, the court noted that procedural due process was adequate in that Crook had been allowed to file a response, present witnesses, have counsel advise him, make statements on his own behalf, cross-examine witnesses, file exceptions to the Committee's report, and have his attorney speak on his behalf before the Board of Regents

before the final decision. As to substantive due process, the court asked whether the decision of the Board of Regents was arbitrary and capricious or supported by adequate evidence. The court remarked that the Board had clearly exercised professional judgment in making its decision, and found that there was *clear and convincing evidence* Crook had fabricated the data for his thesis.

B. Private Institutions

When private institutions seek to revoke a degree, constitutional requirements usually do not apply.⁵⁶ For example, in a suit filed against Claremont University Center by a student whose doctoral degree was revoked on a determination that his dissertation was plagiarized, a California appellate court analyzed this private University's action using a deferential standard of review, asking whether the University abused its discretion. In *Abalkhail v. Claremont University Center*,⁵⁷ the University granted Abalkhail a Ph.D. degree in 1979. The following year the University received a communication that Abalkhail's dissertation contained material copied from another author's paper. The University appointed a committee to investigate and determine whether plagiarism had occurred and whether degree revocation was warranted.

After receiving the report of the investigative committee concluding that academic dishonesty may have occurred, the dean of the graduate school gave Abalkhail notice of a formal hearing and of the procedures that would be used. At the hearing, Abalkhail received a copy of the complaint instigating the proceedings and was given an opportunity to present his views in the matter. Abalkhail was permitted to question a witness and to suggest any additional procedures he deemed necessary to ensure him a fair hearing.

The investigative committee met with Abalkhail on a second occasion, apprized him of additional evidence in the matter, and asked him for an explanation. Two times after that, a committee member wrote Abalkhail to inform him of the evidence against him and invite him to

⁵⁶See, e.g., *Imperiale v. Hahnemann Univ.*, 966 F.2d 125 (3rd Cir. 1992).

⁵⁷2d Civ. No. B014012 (Cal. Ct. App. 1986). For a good analysis of this case, see Bernard D. Reams, *Revocation of Academic Degrees by Colleges and Universities*, 14 J.C.&U.L. 283 (1987); Kaplin & Lee, *supra* n.10 at 476-77.

respond. The committee then concluded that Abalkhail had plagiarized substantial portions of his thesis and recommended revocation of his degree. The University accepted the committee's recommendation, revoked the degree, and notified Abalkhail of its action. Abalkhail then sued, alleging deprivation of due process and lack of a fair hearing.

The California Court of Appeals reviewed extensively the University's due process procedures and upheld the University's action. The court first noted that an educational institution's decisions are subject to limited judicial review because educators are uniquely qualified to evaluate student performance. That being the case, the court would set aside a university's decisions only if there were found to be an abuse of university discretion.

The court found no such abuse of discretion in *Abalkhail*. Although stating that the plaintiff was entitled to procedural fairness since revocation of a degree constitutes deprivation of a significant interest, he was entitled only to minimal due process – the “minimum requisites of procedural fairness.”⁵⁸ The court found that Abalkhail received adequate notice of the charges against him, of the possible consequences, and of the process to be used. These procedures, the court found, afforded Abalkhail fair notice, a fair opportunity to present his position, and a fair hearing.⁵⁹

In summary, although private universities are not required to afford the complete package of constitutional due process public institutions must provide, courts expect private universities to provide minimal procedural protection to ensure at least fundamental fairness in decisions to withhold or revoke academic degrees.⁶⁰ At least one court has suggested that procedural protections for private university students should parallel the protections available to public university students. In *Slaughter v. Brigham Young University*,⁶¹ the University dismissed a

⁵⁸*Id.* at 15.

⁵⁹*Id.* at 21.

⁶⁰Reams, *supra* n.57 at 297.

⁶¹514 F.2d 622 (10th Cir. 1975).

student for using without permission a professor's name as coauthor of an article the student submitted for publication. The court used constitutional due process as its guide in determining the adequacy of the private university's procedural protections. It concluded that the procedures followed by Brigham Young met the requirements of constitutional due process as applied to public universities and commented that there was no need to "draw any distinction, if there be any, between the requirements . . . for private and public institutions."⁶²

C. Entity Making Final Revocation Decision

While a university that grants a degree may later, after providing due process, revoke that degree, it would be a mistake to believe that a degree may be revoked by *any* body within the university. In *Hand v. Matchett*,⁶³ a doctoral student's Ph.D. was revoked after evidence indicated the student had plagiarized his dissertation. The New Mexico State University Board of Regents had approved a lengthy process for determining whether a degree should be revoked. Upon allegations of academic misconduct, the graduate dean would do a preliminary investigation. If the investigation indicated that the misconduct had actually occurred, then an *ad hoc* committee would be formed to hear the evidence. The decision of the committee could be appealed to the executive vice president of the university and the president. Along the way, the student, or former student, would be invited to respond to the charge and present his evidence.

The former student challenged the basic right of the university to revoke his degree, as well as the process by which the degree was revoked. The Tenth Circuit, deciding in favor of the student, reached its decision on a purely state law issue: Whether the entity revoking the degree was the proper body to do so? Determining that New Mexico state statutes granted the Board of Regents alone the power to confer (and, therefore, revoke) degrees, the Board could not delegate

⁶²*Id.* at 625.

⁶³957 F.2d 791 (10th Cir. 1992).

that authority to a lower body as had been done here. Thus, the court held the degree revocation to be void.⁶⁴

D. Degrees of Due Process

There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals.⁶⁵ The higher of the two standards, the one requiring due process for disciplinary matters, typically is used when a degree is to be revoked, given that the cause for revocation generally alleges misconduct, fraud, cheating, misrepresentations, or the like.⁶⁶

V. **Judicial Deference to Academic Decisions of Universities**

The academic decisions of colleges and universities are generally awarded great deference by the courts.⁶⁷ Absent arbitrary or capricious actions, courts prefer not to alter decisions regarding admissions, grading, degree requirements, and other purely academic

⁶⁴*Id.* at 796.

⁶⁵*Wright v. Texas Southern Univ.*, 392 F.2d 728, 729 (5th Cir. 1968).

⁶⁶Stephen B. Thomas and Deborah L. Barber, *The Right to Rescind a Degree*, 33 EDUC. L. REP. 1 (1986).

⁶⁷*See, e.g., Regents of Univ. of Calif. v. Bakke*, 438 U.S. 265, 312 (1978) (stating that courts have given academic institutions great deference in their decisions on who may be admitted); *Faulkner v. Univ. of Tenn.*, 627 So. 2d 362, 367 (Ala. 1992) (stating that "educational institutions are uniquely situated to make determinations regarding academic qualifications or the lack thereof. Establishing degree requirements and granting degrees are within the province of universities, not courts."); *Waliga*, 488 N.E.2d at 852-53 (stating that courts generally do not interfere with fundamental university functions, including the granting and revoking of academic degrees).

matters.⁶⁸ The Supreme Court reiterated its judicial deference to universities in *University of Michigan v. Ewing*,⁶⁹ saying:

When judges are asked to review the substance of a genuinely academic decision . . . 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.⁷⁰

In *Board of Curators of the University of Missouri v. Horowitz*,⁷¹ the United States Supreme Court upheld the dismissal without a formal hearing of a fourth year medical student for failure to meet the academic standards of the university. The Court found that the student had been fully informed by the faculty that her progress had been inadequate and that she was in danger of dismissal. Showing great respect for the judgment of the faculty in academic matters, the Court declared that due process requirements must be adapted to a particular situation and that a certain set of procedures cannot be applied in every situation: "The need for flexibility is well illustrated by the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct. This difference calls for far less stringent procedural requirements in the case of an academic dismissal."⁷²

⁶⁸For a thorough, comprehensive, and excellent discussion of judicial deference to decisions of higher education institutions in both the public and private sector, see Kaplin & Lee (3rd ed.) at 465-500 and (Supp. 2000) at 291-96.

⁶⁹474 U.S. 214 (1985).

⁷⁰*Id.* at 225.

⁷¹478 U.S. 78 (1978).

⁷²*Id.* at 86.

This same deference has been extended to decisions to withhold or revoke degrees for academic reasons. In *Napolitano v. Trustees of Princeton University*,⁷³ the university disciplinary committee determined that a graduating senior had plagiarized a term paper and withheld her degree for one year. At trial, rather than conduct a full-fledged hearing, the judge reviewed the sufficiency of the evidence against the student. On appeal, the student challenged the deference that the trial court had given the university's decision. The appellate court found that a claim of plagiarism was a claim of academic fraud, not one of general misconduct,⁷⁴ and relying on *Horowitz*, came to the conclusion that the trial judge "should not have become a super-trier under due process considerations."⁷⁵

⁷³453 A.2d 263 (N.J. Super. Ct. App. Div. 1982)

⁷⁴*Id.* at 271. "It is clear that plaintiff was charged with plagiarism – in other words, that plaintiff attempted to pass off as her own work, the work of another. That act, if proven, constituted academic fraud. We do not view this case as involving an appeal from a finding of general misconduct; instead, we are concerned with the application of academic standards by the authorities at Princeton." *Id.*; *see also, e.g., Mahavongsanan v. Hall*, 529 F.2d 448, 450 (5th Cir. 1976) ("Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship."). *But, cf. Crook v. Baker*, 813 F.2d 88 (6th Cir. 1987) (pointing out that university regents' process for determining whether to rescind a degree based on academic fraud involved elements of both academic and disciplinary decisions and student was, therefore, accorded notice that was usually given in disciplinary matters).

⁷⁵*Napolitano*, 453 A.2d at 275. *But, cf., Mawdsley, Judicial Deference: A Doctrine Misapplied to Degree Revocations*, 70 EDUC. L. REP. 1043 (1992) (arguing that judicial deference should not be applied once student has graduated and no longer has on-going relationship with college or university).

Although courts give deference to the academic decisions of universities and colleges, that deference is limited, and an institution may not act arbitrarily or with malice in withholding or revoking a degree. In *Tanner v. Board of Trustees of the University of Illinois*,⁷⁶ a graduate student had completed both a dissertation and comprehensive examinations when he was informed by the University that both were unacceptable because his thesis committee had never been formally recognized by the University.⁷⁷ The student sought a writ of mandamus ordering the university to issue his degree. Although his claims were dismissed by the lower court, the appellate court found that the student had presented sufficient evidence of arbitrary and capricious conduct on the part of the university to proceed on his mandamus theory.

VI. Summation

Courts have recognized the right of colleges and universities to withhold and revoke degrees for both academic and non-academic violations. They require greater due process when such adverse actions are taken against students for non-academic reasons, granting to students in those situations a full panoply of procedural protections. Courts give great deference to decisions of academic institutions when degrees are withheld or revoked for purely academic reasons. Determining whether certain wrongful acts should be classified as academic or non-academic opens up a gray area ripe for further debate and discussion (plagiarism, for example).

Commentators have raised concerns over withholding and revoking degrees for non-academic reasons, asking just where will the line be drawn. “The main problem with allowing the revocation of an academic degree for non-academic reasons is the question of where it will end. If universities are permitted to revoke degrees years after graduation, on what grounds may they do so?”⁷⁸ Should the university set forth in advance a list of misconduct that merits degree revocation or withholding? Should there remain a distinction between procedural protections

⁷⁶363 N.E.2d 208 (Ill. App. Ct. 1977).

⁷⁷*Id.* at 209.

⁷⁸Butcher, *supra* n. 45 at 765.

afforded students in private as opposed to public institutions? These questions are legitimate and deserve thoughtful contemplation by those in academic policy-making positions.

Closely akin to this topic is that of falsified academic credentials and what disciplinary actions colleges and universities should have in place to deal with situations in which faculty, staff, or students obtain employment or admission based on untruthful representations on their curriculum vitae or applications. While many of the philosophical and procedural issues are the same as with degree withholding or revocation, that discussion is beyond the scope of this outline.⁷⁹

⁷⁹For general information on the subject of falsified academic credentials, see *UCLA Soccer Coach Concedes that Degree Came from Diploma Mill*, CHRON. HIGHER EDUC., Feb. 8, 2002; Welch Suggs, *Lessons Unlearned: Colleges and athletics officials cope with falsehoods on resumes and in biographies*, CHRON. HIGHER EDUC., July 5, 2002; Katherine S. Mangan, *The Fine Art of Fighting Fakery*, CHRON. HIGHER EDUC., Nov. 1, 2002; Andrea L. Foster, *On the Web, It's Easy to Earn Straight A's*, CHRON. HIGHER EDUC., Feb. 7, 2003; Lawrence Biemiller & Welch Suggs, *Basketball Scandals Mar March Madness*, CHRON. HIGHER EDUC., Mar. 21, 2003; Robin Wilson, *Fall From Grace: One lie, retold over 26 years, undoes a professor's teaching career*, CHRON. HIGHER EDUC., April 4, 2003; Scott Smallwood, *The Price of Murder: A triple homicide haunts a professor who thought he'd already paid for his crime*, CHRON. HIGHER EDUC., Sept. 12, 2003; Scott Smallwood, *Should Colleges Check Up on Professors?* CHRON. HIGHER EDUC., Sept. 12, 2003; Julianne Basinger, *4 Years after a Scandal, a President Steps Down*, Mar. 5, 2004; Thomas Bartlett, *Move to Fire 2 Professors Roils Campus in Mississippi*, CHRON. HIGHER EDUC., Mar. 19, 2004; Welch Suggs, *Athletics Director Caught in 2002 Resume Scandal Gets a Second Chance*, CHRON. HIGHER EDUC., May 7, 2004.

**HYPOTHETICAL FOR DISCUSSION IN CONJUNCTION
WITH PRESENTATION ON DEGREE WITHHOLDING AND REVOCATION**

Rose Rambler completed all academic requirements for her Ph.D. degree in Psychology at Beacon Hill University at the end of the Fall 2003 semester. Since Beacon Hill did not have a mid-year commencement exercise, Rose was scheduled to receive her degree at the June exercises. Not having a job and not really being too interested in going to work and losing the check from home, Rose simply hung around the campus during the Spring 2004 semester.

Not having enough to do, Rose began to frequent the bars and before long was drinking excessively with anyone she could find. On March 15, 2003, Rose invited a group of 9th and 10th grade students to join her for drinks. She bought the drinks and created games in which the students won money she provided for every drink they consumed within one minute. Before long, Shy Sylvia, who had never had a drink before, passed out. Rose put Sylvia in her car and started to take her to the hospital. However, Rose was so intoxicated that she attempted to enter the Interstate on the exit ramp and ran head-on into another vehicle, killing not only Shy Sylvia but also all the occupants of the other car.

Rose was charged with vehicular manslaughter, among other things. Provost Sam Shocked was so offended by Rose's outrageous conduct that he announced without a hearing of any kind that Rose would not receive her degree in June. Rose sued. What are the issues? Would your assessment of this situation be different if Provost Shocked had given Rose a hearing before making the final decision to withhold her degree?