
THE RIGHT OF EDUCATIONAL INSTITUTIONS TO WITHHOLD OR REVOKE ACADEMIC DEGREES

MARY ANN CONNELL*
DONNA GURLEY**

I. INTRODUCTION

One of the most important functions of an educational institution is the awarding of an academic degree.¹ 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."² Employers rely upon the holding of a degree in making employment decisions. The prestige of the institution may vicariously extend to the graduate.³ Finally, a degree may be a prerequisite for licensing in the professions.⁴ Because of the importance of a degree, educational institutions have the right and responsibility to set standards for its award.⁵ Standards may include not only the completion of course work, but also compliance with conduct standards and fulfillment of financial obligations to the

*Of Counsel, Mayo Mallette, PLLC, Oxford, Mississippi; B.A. University of Mississippi, 1959; M.A. University of Mississippi, 1971; M.L.S. University of Mississippi, 1973; J.D. University of Mississippi, 1977; LL.M. Harvard Law School, 1991. Ms. Connell is former General Counsel of the University of Mississippi and is former president of the National Association of College and University Attorneys.

**Associate General Counsel, University of Mississippi; B.A. University of Mississippi, 1982, *summa cum laude*; M.L.S. University of Mississippi, 1984; M.A.E. University of Mississippi, 1992; J.D. University of Mississippi, 2000, *summa cum laude*.

1. The 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 449, 482 (2001).

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

3. See generally 3 JAMES A. RAPP, EDUCATION LAW § 8.06[1] (2005).

4. *Id.*

5. See *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) ("[T]he 'four essential freedoms' of a university [are] 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.") (alteration in original) (quoting THE OPEN UNIVERSITIES IN SOUTH AFRICA 10–12 (Albert van de Sandt Centlivres *et al.*, eds., Johannesburg: Witwatersrand Univ. Press 1957) (the statement of a conference of senior scholars from the University of Cape Town and the University of the Witwatersrand)).

institution.⁶

Whether a student conforms to standards required for a degree is a determination to be made by the educational institution.⁷ 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, after conferring a degree, the institution discovers that the student received credit for courses he or she had not taken or engaged in some other act of academic dishonesty or non-academic misconduct? Can the institution revoke a degree already conferred? If so, 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?

This article examines whether public and private institutions of higher education 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. It also discusses the procedural safeguards required to ensure fairness in withholding or revocation procedures and analyzes the degree of deference given to educational institutions in making such decisions.

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,⁸ both public and private institutions generally have authority to withhold and revoke improperly awarded degrees.⁹ This authority exists whenever “good cause such as fraud, deceit, or error is shown.”¹⁰

6. See generally 3 RAPP, *supra* note 3, § 8.06[6][d][i].

7. See *Susan M. v. New York Law Sch.*, 556 N.E.2d 1104, 1107 (N.Y. 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 satisfies 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.

Id. at 1106-07.

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

9. See generally WILLIAM A. KAPLIN & BARBARA A. LEE, *THE LAW OF HIGHER EDUCATION* 474-77 (3d ed. 1995). Cases and authorities on this point are collected in Lori J. Henkel, Annotation, *College's Power to Revoke Degree*, 57 A.L.R. 4th 1243 (1987 & Supp. 2004).

10. *Waliga v. Bd. of Trustees of Kent State Univ.*, 488 N.E.2d 850, 852 (Ohio 1986). See also *Crook*, 813 F.2d at 93.

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.¹¹ Courts grant substantial discretion and significant deference to faculties and governing bodies of colleges and universities in evaluating students and in determining whether a student has performed all the conditions prescribed by the institution.¹² 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 one of 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 of which the college or university disapproves.¹³

Courts have upheld the right of institutions in both the public and private sectors 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* addressed the withholding of a student's degree for one year because of plagiarism.¹⁴ The court found the charge of plagiarism valid and the withholding of the degree an appropriate punishment for the act of academic dishonesty. The court interpreted Princeton'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."¹⁵ The court noted that the sanction was imposed only upon second semester seniors. This sanction 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 the last semester during the following academic year. In addition, the court acknowledged "the necessity for independence of a university in dealing with the academic failures, transgressions or problems of a student."¹⁶

Deferring to the institution's discretion in awarding or withholding an academic

11. See, e.g., *Johnson v. Lincoln Christian Coll.*, 501 N.E.2d 1380, 1384 (Ill. App. Ct. 1986); *Anthony v. Syracuse Univ.*, 224 A.D. 487, 490 (N.Y. App. Div. 1928); 14A C.J.S. *Colleges and Universities* § 41 (1991).

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

13. William H. Sullivan, *The College or University Power to Withhold Diplomas*, 15 J.C. & U.L. 335, 337 (1989) (discussing whether colleges and universities can withhold diplomas after students have met all graduation requirements); 14A C.J.S. *Colleges and Universities*, § 41 (2003). For cases in which students have sought a writ of mandamus to force an institution to confer a degree, see Lori J. Henkel, Annotation, *Student's Right to Compel School Officials to Issue Degree, Diploma, or the Like*, 11 A.L.R. 4th 1182 (1982 & Supp. 2004).

14. 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

15. *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.*

16. *Id.* at 273.

degree, the court in *Cieboter v. O'Connell* refused to force a public university to consider a dissertation where the student in question had not fulfilled the graduate school's requirements.¹⁷ 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."¹⁸

In *Mahavongsanan v. Hall*, the plaintiff had completed course work for a graduate degree at Georgia State University, but had twice failed the comprehensive examination required of all degree candidates.¹⁹ Georgia State offered the plaintiff the opportunity to take extra course work in lieu of the comprehensive examination, but the plaintiff declined and instead filed a lawsuit. The lower court enjoined Georgia State from withholding the degree.²⁰

On appeal, the Fifth Circuit noted that the case involved a purely academic decision and held that, although the court had been in the vanguard of the legal development of due process protection for students ever since *Dixon v. Alabama State Board of Education* in cases involving *misconduct*,²¹ such due process concerns are not triggered when a school applies purely *academic* standards.²²

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 scholarships. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals.²³

The Fifth Circuit found Georgia State's decision to withhold the degree to be "a reasonable academic regulation within the expertise of the university's faculty," and reversed the decision of the lower court.²⁴

17. 236 So. 2d 470 (Fla. Dist. Ct. App. 1970).

18. *Id.* at 473.

19. 529 F.2d 448 (5th Cir. 1976).

20. *Id.* at 449.

21. 294 F.2d 150 (5th Cir. 1961).

22. *Mahavongsanan*, 529 F.2d at 449 (emphasis added).

23. *Id.* at 450.

24. *Id.* Interestingly, the plaintiff had argued that Georgia State's appeal was moot as the plaintiff had already received the previously withheld degree upon the order of the lower court. The Fifth Circuit disagreed, stating that the plaintiff's possession of the degree was an "ongoing stigma of erosion of their academic certification process," and that the degree would be revoked upon a finding for the university. *Id.* at 449.

In *Bilut v. Northwestern University*, 645 N.E.2d 536, 541 (Ill. App. Ct. 1994), a Ph.D. candidate brought an action for breach of contract when the university, based on her failure to successfully complete a dissertation, refused to grant her degree. The court found for Northwestern, reasoning that the plaintiff had "failed to meet her burden of proving that [the University] was arbitrary and capricious in determining that her prospectus was unacceptable or that the faculty members who reviewed her prospectus based their conclusions on anything other than academic grounds." *Id.* at 538.

B. Revoking a Degree²⁵

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*,²⁶ the plaintiff sought the restoration of his doctoral degree which Cambridge had rescinded. Although the court granted plaintiff's writ of mandamus to restore the degree because it had been taken from him without a hearing, the court clearly recognized the right of the University to "revoke a degree for 'a reasonable cause.'"²⁷

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*.²⁸ In *Waliga*, the Ohio Supreme Court addressed whether Kent State had authority to revoke a degree it determined had been improperly granted.²⁹ The court began its analysis

Another case involving a withheld degree is *North v. West Virginia Board of Regents*, 332 S.E.2d 141 (W. Va. 1985), in which a medical student was expelled for providing false information on his application for admission. He sued. The court ordered West Virginia to allow the student to continue his medical training during the pendency of his lawsuit. During that time, he completed all the requirements for an M.D. degree. Nevertheless, the court affirmed the decision of the West Virginia Board of Regents to withhold his degree. *Id.* at 143.

The court was greatly disturbed by the student's fraudulent conduct in providing false information concerning his grade point average, courses taken, degrees held, birth date, and marital status, and stated that there was no doubt but that the student was admitted into medical school because of his application, interview, and supporting documents that placed him in a more favorable light than the facts would have allowed. *Id.* at 143, 145. Observing that the student had "shown a substantial capacity for fraud and deceit by a carefully contrived plan to cheat his way into medical school," the court concluded that awarding the degree would constitute some degree of reward for fraudulent misconduct on the part of the student. *Id.* at 147. Therefore, the court concluded that "not only was the action complained of justified, it may well have been the only appropriate response available to the University." *Id.*

25. For 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).

26. *Waliga v. Bd. of Trustees of Kent State Univ.*, 488 N.E.2d 850, 852 (Ohio 1986) (citing *The King v. Univ. of Cambridge*, 8 Mod. Rep. 148 (1334)). The focus of this article is on institutions in the United States. However, degree revocation is not confined to this country. For examples of instances in which institutions abroad have dealt with revocation issues, see Lila Guterman, *German University Revokes Ph.D. of Scientist Who Falsified Data as a Bell Labs Researcher*, CHRON. HIGHER EDUC., June 16, 2004 (reporting that the University of Konstanz revoked the doctoral degree of a physicist who fabricated data as a Bell Labs researcher, even though the alleged wrongful conduct took place after he received his degree), and David Cohen, *New Zealand Institution Refuses to Revoke Degree of Student Whose Thesis Questioned the Holocaust*, CHRON. HIGHER EDUC., May 15, 2000.

27. *Waliga*, 488 N.E.2d at 852 (citing *The King v. Univ. of Cambridge*, 8 Mod. Rep. at 161-62).

28. 488 N.E. 2d 850 (Ohio 1986).

29. *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. *Id.* at 850-851. 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

by noting that Ohio statutes provided Ohio's universities with 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."³⁰

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

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.³¹

Crook v. Baker, decided in 1987 by the Sixth Circuit Court of Appeals, also treated the issue of the power to revoke a degree as a clear question of state law.³² Although the court relied heavily on *Waliga* in its analysis, the Sixth Circuit also pointed out that Michigan universities owe their status to specific provisions of the Michigan State Constitution. Because public universities in Michigan derive the authority to administer their programs from 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 Constitution in educational matters indicates that the University does have such authority.³³

Thus, the authority of an educational institution to withhold or revoke degrees for academic misconduct is well-settled so long as necessary procedural requirements are followed.³⁴

III. WITHHOLDING OR REVOKING A DEGREE FOR NON-ACADEMIC REASONS

The law and educational policy are clear that colleges and universities have 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.*

30. *Id.* at 852. Many of the public institution degree revocation decisions begin with an analysis of the power granted the institution or its governing body by the state constitution or state statutes.

31. *Id.*

32. 813 F.2d 88 (6th Cir. 1987).

33. *Id.* at 92.

34. *See infra* Section IV.

power—and perhaps a corresponding duty—to withhold a degree for fraud or academic misconduct such as plagiarism or receiving credit for courses not actually taken. Neither the law nor educational policy are as well-settled when withholding or revoking a degree for non-academic misconduct is the issue.

A. Withholding a Degree

1. Social Misconduct

In addition to possessing authority to withhold a degree for academic reasons, colleges and universities also have authority to withhold a degree for social misconduct that the institution prohibits. In *Harwood v. Johns Hopkins University*, the court dealt with an unusual and tragic circumstance.³⁵ In that case, Johns Hopkins refused to award a degree to Robert J. Harwood, Jr., despite the fact that he had completed all academic requirements necessary for graduation, because he shot and killed a fellow student, Rex Chao, on the University's campus on April 10, 1996.³⁶

Harwood enrolled at Johns Hopkins in 1992, and by the end of the fall 1995 semester he had completed all the classes required for his degree. Harwood was scheduled to receive his degree at the June 1996 commencement exercises, and 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 Johns Hopkins community, and even manned a student election table during March of 1996. He visited the campus on numerous occasions. Those visits resulted in a number of individuals filing complaints of harassment against him—including Chao and the Dean of Students—eventually erecting the requirement that he notify campus security or the Dean's Office before coming onto the campus.³⁷

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 the organization. Later that evening, while still on campus, Harwood confronted Chao, shot, and killed him. Harwood pled guilty to murder in addition to related handgun violations.³⁸

On May 15, 1996, the Dean of Students informed Harwood that his diploma would be withheld pending resolution of the criminal charges against him. Johns Hopkins 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

35. 747 A.2d 205 (Md. Ct. Spec. App. 2000).

36. *Id.* at 207.

37. *Id.*

38. *Id.*

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.*³⁹

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.⁴⁰

The Dean informed Harwood shortly thereafter that he was expelled from Johns Hopkins 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 and his appeal was denied. On May 1, 1998, Harwood filed a declaratory judgment action seeking the award of his diploma.⁴¹ Johns Hopkins moved for summary judgment. The court concluded that Harwood was subject to the disciplinary action of the University and that Johns Hopkins did not act arbitrarily or capriciously in denying Harwood his degree.⁴²

Harwood appealed. The Maryland Court of Special Appeals affirmed the grant of summary judgment in favor of Johns Hopkins, 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 doing so with respect to Harwood.⁴³

In another high-profile case involving a prestigious private institution, a federal district court held in *Dinu v. President and Fellows of Harvard College* 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

39. *Id.* at 207–08 (quoting *Johns Hopkins Student Handbook*) (emphasis added by the court).

40. *Id.* at 208.

41. *Id.*

42. *Id.* at 208, 213.

43. *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, at A52 (reporting that Johns Hopkins 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"). *Id.* However, not all agreed with the actions taken by Johns Hopkins. For example, a Professor Emeritus of English at the University of Illinois at Urbana-Champaign wrote in a letter to the *Chronicle of Higher Education*: "Unacceptable as Robert Harwood's shooting of a fellow student is, Harwood has met the requirements for the degree he was seeking during his years at the university. To withhold this degree from him for the reasons set forth by Johns Hopkins is a travesty." R. Baird Shuman, Letter to the Editor, CHRON. HIGHER EDUC., Oct. 24, 1997, at B11.

requirements prior to the board's disciplinary action.⁴⁴ Harvard relied on language in its *Handbook for Students*, which stated that "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."⁴⁵ 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 acts of which they were accused, and recommended to the Administrative Board that the students be required to withdraw from Harvard for one year. The Administrative Board accepted this recommendation. As a result, the students were not permitted to participate in Harvard's June 1999 commencement.⁴⁶

The students sued, asking the court to order Harvard to award them their degrees. They asserted that because they had contractually 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.⁴⁷

The court found the students' arguments "fundamental[ly] flaw[ed]" and recognized that Harvard's position was based on "logic that is unassailable."⁴⁸ The court quoted with approval the following hypothetical 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[ul]es in that instance."⁴⁹

In other cases, courts have also upheld the right of educational institutions to withhold degrees for student activity unrelated to academics but contrary to institutional policy. For example, in the often-cited case *People ex rel. O'Sullivan v. New York Law School*, the Law School withheld a student's diploma for an incident involving a protest against the choice of a graduation speaker.⁵⁰ In 1893, the Court of Appeals of New York stated that:

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 amenable 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 . . . are necessarily vested with a broad

44. 56 F. Supp. 2d 129 (D. Mass. 1999).

45. *Id.* at 130 n.3 (quoting 1998–99 HANDBOOK FOR STUDENTS at 307).

46. *Dino*, 56 F. Supp. 2d at 131.

47. *Id.* at 132.

48. *Id.* at 133.

49. *Id.* (alteration in original).

50. 22 N.Y.S. 663, 665 (N.Y. Sup. Ct. 1893).

discretion as to the persons who shall receive those honors. . . . Any other rule would be subversive of all discipline in the schools We see no reason why the right to discipline is not as great between the final examination and the graduation as before⁵¹

Courts have also granted great latitude to religious institutions where they have withheld the diplomas of students who have completed all required course work but have violated some institutional policy or rule.⁵² In *Lexington Theological Seminary v. Vance*, the Kentucky Court of Appeals ruled that the Seminary could deny a Master of Divinity Degree to a student who was an admitted homosexual.⁵³ 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."⁵⁴ 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.⁵⁵ Similarly, the court in *Carr v. St. John's University*, held that the dismissal of four students by St. John's, two of whom were married in a civil ceremony and two of whom acted as witnesses, was within the discretion of the Catholic university.⁵⁶

2. Non-payment of Fees

Courts have also upheld the right of colleges and universities to withhold degrees for nonpayment of fees.⁵⁷ For example, the court in *Martin v. Pratt Institute* upheld the right of the school to withhold a student's diploma and transcript at the time of her graduation because of her outstanding financial obligations.⁵⁸ Likewise, in *Haug v. Franklin*, the University of Texas refused to confer a student's law degree because he failed to pay a large number of campus parking tickets that he had accumulated.⁵⁹ The Texas Court of Appeals found the withholding of the degree valid because the University's traffic and parking regulations, as well as another regulation of the Board of Regents, specifically authorized such a sanction for refusal to pay traffic charges.⁶⁰

51. *Id.* at 665.

52. *See* Sullivan, *supra* note 13, at 340.

53. 596 S.W.2d 11 (Ky. Ct. App. 1979).

54. *Id.* at 13.

55. *Id.* at 12, 13. *But cf.* Johnson v. Lincoln Christian Coll., 501 N.E.2d 1380, 1382 (Ill. App. Ct. 1986) (holding that a student who met all requirements for graduation had valid cause of action for breach of contract when the college withheld his degree because there were claims that he "might be homosexual").

56. 231 N.Y.S.2d 410, 414 (N.Y. App. Div. 1962).

57. *See* 3 RAPP, *supra* note 3, § 8.06[6][d][i].

58. 717 N.Y.S.2d 356 (N.Y. App. Div. 2000).

59. 690 S.W.2d 646 (Tex. Ct. App. 1985).

60. *Id.* at 650.

B. Revoking a Degree

Maurice Goodreau sued the University of Virginia (“UVA”) in 1998 after it revoked the Bachelor of Science degree he had received in 1990.⁶¹ During the spring of 1989, his final year at UVA, Goodreau had 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 days as a student.⁶²

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.⁶³ In addition to the criminal matter, the UVA’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.⁶⁴

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.⁶⁵ Goodreau made no response. Eventually the Honor Committee informed the Registrar’s Office of its binding determination that Goodreau could not re-enroll in the University.⁶⁶

Later, when Goodreau applied for admission to UVA for a master’s 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 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.⁶⁷ Eventually the Honor Committee recommended to the General Faculty that it revoke Goodreau’s degree. University President John Casteen informed Goodreau that he could submit materials to the faculty committee for consideration. Goodreau submitted materials, but he was not invited to attend a hearing. On April 15, 1998, the General Faculty revoked Goodreau’s degree.⁶⁸

After Goodreau sued, UVA moved for summary judgment. The district court acknowledged that UVA had the implied power, with proper procedural safeguards, to revoke the degree of a student who violated its Honor System.⁶⁹ The court, however, found material questions of fact as to whether UVA had given Goodreau proper notice of the possible sanctions against him (degree revocation)

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

62. *Id.* at 698.

63. *Id.*

64. *Id.*

65. *Id.* at 698–99.

66. *Id.* at 699.

67. *Id.* at 698–99.

68. *Id.* at 700.

69. *Id.* at 703.

and had properly considered the information he submitted. It therefore denied UVA's motion for summary judgment on grounds of insufficient notice.⁷⁰

In a highly visible case, the Massachusetts Institute of Technology ("MIT") revoked the degree of Charles Yoo, a 1998 graduate, for a period of five years because of his alleged involvement in the death of Scott Krueger, a freshman fraternity pledge.⁷¹ Yoo was a pledge trainer in Phi Gamma Delta fraternity at MIT during the time of the incident that caused Krueger's death, and he allegedly purchased the alcohol involved in the incident and instructed pledges on the amount of it they were expected to drink.⁷² Yoo denied these allegations. Criminal charges were brought against the fraternity but eventually dropped after the fraternity dissolved. No charges were brought against Yoo.⁷³ MIT paid the Krueger family six million dollars for the institution's role in the tragic incident.⁷⁴

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.⁷⁵ Yoo eventually filed suit against MIT, who then moved for summary judgment. The trial court granted MIT's motion, and Yoo appealed. The Massachusetts Court of Appeals affirmed the trial court and dismissed Yoo's complaint.⁷⁶ Notably, MIT's published policy provided that it reserves the right to 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."⁷⁷

70. *Id.* at 704.

71. Leo Reisberg, *MIT Revokes Diploma of Graduate for Alleged Role in Drinking Death of Freshman*, CHRON. HIGHER EDUC., Aug. 13, 1999, at A44 (describing the incident and MIT's response).

72. *Id.*

73. Jayme L. Butcher, *MIT v. Yoo: Revocation of Academic Degrees for Non-Academic Reasons*, 51 CASE W. RES. L. REV. 749 (2001) (discussing the more stringent judicial review given instances involving expulsion, withholding, and revoking of degrees by colleges and universities for non-academic reasons).

74. Leo Reisberg, *MIT Pays 6 Million to Settle Lawsuit over a Student's Death*, CHRON. HIGHER EDUC., Sept. 29, 2000, at A49 (describing the settlement, which awarded \$1.25 million to endow a scholarship in Scott Krueger's name and \$4.75 million to the family).

75. Reisberg, *supra* note 71.

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

77. Reisberg, *supra* note 71. The decision of MIT to revoke the degree based upon Yoo's alleged misconduct has been controversial, both in legal and educational circles. *See* Butcher, *supra* note 73, at 750 (describing MIT's action as a "flagrant abuse of power" that should not be permitted); Reisberg, *supra* note 71 ("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."). Numerous individuals have written letters to the editor of the *Chronicle of Higher Education* expressing strong disagreement with MIT's handling of the matter. *See* James L. Breed, Letters to the Editor, CHRON. HIGHER EDUC., Sept. 17, 1999, at B3 ("I don't believe that educational institutions should revoke degrees for any reason other than academic fraud."). On the other hand, Gary Pavella, Director of Judicial Programs and Student Ethical Development at the University of Maryland, a nationally recognized scholar in the field of law and higher education and a frequent contributor to higher education publications, wrote a thoughtful analysis arguing that institutions should retain the right to revoke degrees for non-academic, as well as academic, misconduct. *See* Gary Pavella, *For the Same Reasons That Students Can Be Expelled, Degrees Ought to Be Revocable*, CHRON. HIGHER EDUC., Oct. 22, 1999, at B6 ("If courts and higher

Utilizing an interesting theory, the plaintiff in *Sheridan v. Trustees of Columbia University* sued Columbia for refusing to forward his transcript to graduate schools until he paid his outstanding tuition bill.⁷⁸ He argued that by not forwarding his transcript, Columbia was effectively revoking his degree.⁷⁹

The court easily disposed of the plaintiff's claim, recognizing that, while Columbia's refusal to forward his transcript to graduate schools to which he was applying might jeopardize his chances of being accepted, Columbia had not revoked its certification that the plaintiff possessed all the knowledge and skills represented by the degree.⁸⁰

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 law degree for failing to reveal material information on his application to law school and admission to the bar.⁸¹ The Georgia Professional Standards Commission notified teachers in Gwinnett County, Georgia that it intended to recall their certification as a result of finding that certain of them had obtained graduate degrees by buying them online from Internet "diploma mills."⁸²

Acknowledging that sharp differences of opinion exist regarding whether institutions should withhold or revoke degrees for non-academic reasons, many legal scholars agree that before any drastic action is taken, an affected student or degree-holder is entitled to extensive procedural safeguards.⁸³

IV. PROCEDURAL CONSIDERATIONS IN WITHHOLDING OR REVOKING DEGREES

Given the power of an institution of higher education to withhold or revoke a degree for both academic and non-academic reasons, there are necessary procedural protections the institution must grant to the affected student.⁸⁴ When the institution is public, it is subject to procedural Due Process protections under the Fourteenth Amendment, particularly if the court finds the student holds a property interest in the possession of the degree.⁸⁵ If the institution is private,

education institutions support the revocation of degrees received through fraud or error, they should also support revoking degrees for serious, proven misconduct in violation of established institutional rules." Although acknowledging that Pavella's essay was "intelligently reasoned and engagingly presented," one person writing in response strongly disagreed with Pavella, saying that this approach "raises some frightening specters." R. Baird Shuman, Letters to the Editor, *Limited Grounds for Revoking Degrees*, CHRON. HIGHER EDUC., Nov. 26, 1999, at B10 ("If someone's past conduct has not been what society expects of an educated person, the punishment should not involve the revocation of a degree, unless that degree has been obtained through deception . . .").

78. 745 N.Y.S.2d 18 (N.Y. App. Div. 2002).

79. *Id.* at 318.

80. *Id.* at 317.

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

82. Jaime Sarrío, *Teachers buy degrees, hike pay*, GWINNETT DAILY POST, March 14, 2004.

83. See, e.g., KAPLIN & LEE, *supra* note 9, at 495; Butcher, *supra* note 73, at 769.

84. See Gilbert and Oswald, *supra* note 25 (discussing procedural issues involved in revoking academic credentials).

85. Amelunxen v. Univ. of Puerto Rico, 637 F. Supp. 426, 430 (D.P.R. 1986)

principles of fundamental fairness in decision-making and adherence to contract terms will come into play.⁸⁶

A. Public Institutions

Although courts give deference to the academic decisions of institutions and will rarely try a student's claims *de novo*, they will review the procedural safeguards that were afforded a plaintiff whose degree has been withheld or revoked. In *Crook v. Baker*, the Sixth Circuit discussed at length the sufficiency of due process rights afforded the plaintiff, providing a road map for other institutions seeking to revoke or withhold a degree.⁸⁷ Crook received a master's degree from the University of Michigan in geology and mineralogy, claiming to have discovered a new, naturally occurring mineral as part of his research for his master's thesis.⁸⁸ After Crook received his degree, several faculty members became concerned that Crook might have fabricated most of his test data, and that the "naturally" occurring mineral was most likely a synthetic compound created in a different lab at the University of Michigan and taken by Crook for his thesis.⁸⁹ Prior to taking any other action, the University invited Crook to return to campus for more tests on the mineral.⁹⁰ Crook returned. The faculty monitored his research and discovered that, instead of running tests, Crook simply fed his final data into a computer and asked it to regurgitate the data for him.⁹¹ Shortly thereafter, Michigan informed Crook in writing of the claims against him, the facts supporting those claims, and the procedures to be used in a hearing on the matter.⁹² The letter also warned him that, if the charges against him were proven, Michigan might revoke his master's degree.⁹³

Following a hearing, an *ad hoc* committee found that Crook had indeed fabricated research data while writing his thesis, and the Executive Board of the Graduate School recommended the revocation of Crook's degree. The Board of Regents followed the Executive Board's recommendation and voted to rescind.⁹⁴ Crook filed suit in response, and a federal district court found in his favor.

("[Defendants] may assume, as the Supreme Court has done, and we will do, that a student has either a property or liberty interest in continuing education."). *See also* *Merrow v. Goldberg*, 672 F. Supp. 766, 771 (D. Vt. 1987) ("Since degrees are awarded as the result of accumulated credits, the parties agree that credits should be entitled to protection similar to that afforded degrees.").

86. *See, e.g.*, *Palmer Coll. of Chiropractic v. Iowa Dist. Ct. for Scott County*, 412 N.W.2d 617 (Iowa 1987) (involving successful breach of contract claim against private school that had failed to award degree to student who had been expelled shortly before graduation); *Southern Methodist Univ. v. Evans*, 115 S.W.2d 622 (Tex. Comm'n App. 1938) (finding that private institution had entered into a contract to offer plaintiff instruction in subjects necessary to obtain degree—but not a contract to confer a degree).

87. 813 F.2d 88 (6th Cir. 1987).

88. *Id.* at 95.

89. *Id.*

90. *Id.*

91. *Id.* at 95–96.

92. *Id.* at 96.

93. *Id.*

94. *Id.* at 97.

However, the Sixth Circuit reversed, including the district court's finding that Crook had been denied due process.⁹⁵

The Sixth Circuit found that Crook had been given written notice of the charges against him and the basis of those charges.⁹⁶ Crook had also been afforded an opportunity to be heard in that he had responded to the charges in writing prior to the hearing, and he had appeared at the hearing and spoke on his own behalf and was allowed to question other witnesses.⁹⁷ His attorney had even argued his case before the Michigan Board of Regents, although this was apparently not part of the written process originally proposed.⁹⁸ Finding that Crook had been awarded sufficient notice and an opportunity to be heard, the court held that the requirements of the Due Process Clause of the Fourteenth Amendment had been satisfied.⁹⁹

It is helpful to contrast the procedural safeguards that were followed in *Crook* to those observed in *Driscoll v. Stucker*.¹⁰⁰ In the latter case, Dr. Driscoll successfully completed a six-year accredited residency in otolaryngology at Louisiana State University's Health Science Center ("LSUHSC").¹⁰¹ Residents who successfully completed the program were given a letter of recommendation from LSUHSC allowing them to sit for the examination for board certification.¹⁰² Driscoll received such a letter and, with plans to take the examination, applied for and received temporary staff privileges at a hospital while he considered an offer for a contract position there.¹⁰³ Two months later, Driscoll was informed by the American Board of Otolaryngology—not by LSUHSC—that he would not be permitted to take the examination because his letter of recommendation had been withdrawn.¹⁰⁴ Driscoll filed suit against LSUHSC and against Dr. Stucker individually.¹⁰⁵ The court determined that Driscoll had a property and liberty interest in receiving a recommendation that would allow him to sit for the board certification examination, thus entitling him to notice and an opportunity to be

95. *Id.* at 99–100.

96. *Id.* at 97.

97. *Id.* at 97–98.

98. *Id.* at 98.

99. *Id.* at 99–100. *See also* *Easley v. Univ. of Michigan Bd. of Regents*, 627 F. Supp. 580 (E.D. Mich. 1986) (holding that law student who enrolled in five-hour civil procedure course had no substantive due process right to six credit hours, even though he had taken the same exam as students the following year who received six credit hours).

100. 893 So. 2d 32 (La. 2005).

101. *Id.* at 37.

102. *Id.* at 38.

103. *Id.*

104. *Id.* at 39. Dr. Stucker, the director of the program at LSUHSC, had written the Board informing them that he was withdrawing Driscoll's letter of recommendation. *Id.* at 38–39. Dr. Stucker had learned from a third party that Driscoll had performed a minor surgical procedure one weekend in a closed clinic. *Id.* It is unclear whether performing such a procedure violated any LSUHSC rule or policy as the case mentions that other doctors and residents engaged in the practice from time to time. *Id.* at 40–41.

105. *Id.* at 40.

heard—both of which had been denied him.¹⁰⁶ Finding in Driscoll's favor, the court affirmed an award of lost wages, although amended slightly, and general damages.¹⁰⁷

Comparing the facts in *Crook* with *Driscoll*, Crook received written notice of the charges against him and was given ample opportunity to respond to those accusations in writing and at a hearing.¹⁰⁸ However, in *Driscoll*, the program director withdrew the letter of recommendation (thus denying Driscoll the opportunity to sit for his board examinations) with no notice to Driscoll, leaving him to discover his penalty from a third party, the American Board of Otolaryngology.¹⁰⁹ Furthermore, Driscoll was adjudged to be in violation of an unwritten regulation on the basis of hearsay evidence, and was given no opportunity to confront his accusers, examine the evidence, or present his side of the story.¹¹⁰

B. Private Institutions

When private institutions seek to revoke a degree, constitutional requirements usually do not apply.¹¹¹ However, those institutions, like their public counterparts, must provide students and graduates with "procedural fairness" when they attempt to withhold or revoke degrees.¹¹² In *Abalkhail v. Claremont University Center*, for example, a private institution awarded a Ph.D. to a student whose dissertation later was challenged as having been partially plagiarized.¹¹³ In response to the challenge, Claremont appointed a committee to investigate and determine whether

106. *Id.* at 43–44.

107. *Id.* at 53–54. Another case involving a university's failure to give adequate due process is *Univ. of Texas Med. Sch. at Houston v. Than*, 874 S.W.2d 839 (Tex. App. 1994). The Medical School accused Than of cheating on an exam by copying from another student and withheld his degree. Than sued. The court found that Texas had not afforded Than sufficient due process because (1) Than was informed of the charges against him too late to be able to locate witnesses, (2) Than was not provided with a copy of the evidence to be used against him, (3) Than was excluded from part of the hearing in which the hearing officer went to the testing room to see and observe the testing conditions (this took place well after the test had been completed), and (4) the hearing officer placed the burden of proof on Than. *Id.* at 845–52. The appellate court affirmed the trial court's injunction ordering Texas to issue Than his diploma, noting that, because of errors made by the University, it was impossible at that point to cure the procedural deficiencies that had infected the case. *Id.* at 854.

108. *Crook v. Baker*, 813 F.2d 88, 97–99 (6th Cir. 1987).

109. *Driscoll*, 893 So. 2d at 39.

110. *Id.* at 43–51.

111. *See, e.g., Imperiale v. Hahnemann Univ.*, 966 F.2d 125 (3d Cir. 1992) (finding no state action involved in revocation of plaintiff's medical degree by private university medical school).

112. *Butcher*, *supra* note 73, at 759.

113. 2d Civ. No. B014012 (Cal. Ct. App. 1986), *cert. denied*, 479 U.S. 853 (1986). The authors have been unable to locate the trial court decision in this matter but have chosen to discuss this case anyway because of its importance to private institutions addressing possible degree withholding or revocation. The authors have relied extensively on the work of Bernard D. Reams and have cited to his excellent article on degree revocation in discussing the *Abalkhail* case. *See* Bernard D. Reams, Jr., *Revocation of Academic Degrees by Colleges and Universities*, 14 J.C. & U.L. 283, 299–301 (1987). *See also* KAPLIN & LEE, *supra* note 9, at 476–77.

plagiarism had occurred and whether degree revocation was warranted.¹¹⁴

After receiving the committee's report concluding that academic dishonesty may have occurred, the dean of the graduate school gave Abalkhail notice of a formal hearing to be held and of the procedures that would be used.¹¹⁵ At the hearing, Abalkhail was given a copy of the complaint instigating the proceedings and 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.¹¹⁶

The investigative committee met with Abalkhail on a second occasion, apprised him of additional evidence in the matter, and allowed him to give an explanation.¹¹⁷ Two times after that, a committee member wrote Abalkhail to inform him of the evidence against him and invite him to respond.¹¹⁸ The committee then concluded that Abalkhail had plagiarized substantial portions of his thesis and recommended that his degree be revoked. Claremont 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.¹¹⁹

The California Court of Appeals reviewed Claremont's due process procedures extensively and upheld the University's action. The court noted that an educational institution's decisions are subject to limited judicial review because educators are uniquely qualified to evaluate student performance.¹²⁰ That being the case, the court said it would set aside an institution's decisions only if an abuse of institutional discretion had occurred.¹²¹

The court found no such abuse of discretion in *Abalkhail*. According to the court, while Mr. Abalkhail was entitled to procedural fairness because revocation of a degree constitutes deprivation of a significant interest, he was entitled only to the "minimum requisites of procedural fairness."¹²² The court also declared that Abalkhail received adequate notice of the charges against him, of the possible consequences, and of the process to be used. These procedures afforded him fair notice, a fair opportunity to present his position, and a fair hearing.¹²³

In summary, although private institutions are not required to afford the complete package of constitutional due process that public institutions must provide, courts expect them to afford students or degree-holders minimal procedural protection to ensure at least fundamental fairness in decisions to withhold or revoke academic degrees.¹²⁴ At least one court has suggested that

114. Reams, *supra* note 113, at 299.

115. *Id.* at 299–300.

116. *Id.* at 300.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 301.

124. *Id.* at 297. Although some courts have applied the rules of contracts or the rules of

procedural protections for students at private institutions should parallel the protections available to their peers at public institutions. In *Slaughter v. Brigham Young University*, BYU dismissed a student for using, without permission, a professor's name as coauthor of an article the student submitted for publication.¹²⁵ The student sued and won at the trial level.¹²⁶ On appeal, the Tenth Circuit used constitutional due process as its guide in determining the adequacy of BYU's procedural protections. It concluded that the BYU procedures met the requirements of due process as applied to public colleges and universities, and commented that there was no need to "draw any distinction, if there be any, between the requirements . . . for private and public institutions."¹²⁷ Although this case dealt with the expulsion of a student rather than a situation in which a degree was withheld or revoked, it demonstrates the point that if due process is satisfied under constitutional standards, then the procedures in question are automatically sufficient with respect to the lower standard for private institutions as well.

C. Entity Making Final Revocation Decision

While an institution that grants a degree may later, after providing appropriate process, revoke that degree, courts require that an appropriate officer or body effectuate the revocation. In *Hand v. Matchett*, a doctoral student's Ph.D. was revoked after evidence indicated that the student had plagiarized his dissertation.¹²⁸ Prior to the litigation, the Board of Regents at New Mexico State University 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.

In *Hand*, the student challenged the basic right of the University to revoke his degree, as well as the process by which the degree had been revoked. The federal district court granted summary judgment in favor of Hand, reasoning that the University's procedures for revoking a degree violated New Mexico law.¹²⁹ The Tenth Circuit agreed, also reaching its decision on a single issue of state law—

private associations to the relationship between a student and a private college or university, courts are increasingly viewing this as a unique relationship. *See, e.g.,* *Napolitano v. Trustees of Princeton Univ.*, 453 A.2d 263, 272–73 (N.J. Super. Ct. App. Div. 1982) ("The student-university relationship is unique, and it should not be and cannot be stuffed into one doctrinal category."); *Bilut v. Northwestern Univ.*, 645 N.E.2d 536, 541 (Ill. App. Ct. 1994) ("It is the opinion of this court that the relationship between a student and a private college or university is unique and cannot be strictly categorized or characterized in purely contractual terms.").

125. 514 F.2d 622 (10th Cir. 1975).

126. *Id.* at 624.

127. *Id.* at 625.

128. 957 F.2d 791 (10th Cir. 1992).

129. *Id.* at 794.

whether the entity revoking the degree was the proper body to do so.¹³⁰ Determining that New Mexico state statutes granted the Board of Regents alone the power to confer (and, therefore, to revoke) degrees, the court reasoned that the Board could not delegate that authority to a lower body such as the committee or the University president.¹³¹ Thus, the court held the degree revocation to be void.¹³²

Another case illustrating the connection between legislative authorization of a governing body to make degree decisions and the importance of recognizing that authority is *Mendez v. Reynolds*.¹³³ The Board of Trustees for the City University of New York (“CUNY”) community colleges was statutorily authorized to impose graduation requirements. One requirement imposed by the Board provided that all candidates for graduation must pass a particular writing assessment (the CWAT).¹³⁴ Hostos Community College, one of six CUNY community colleges, substituted its own writing assessment.¹³⁵ Five days before graduation, the President of Hostos informed students that they must pass the CWAT in order to graduate, regardless of whether they had passed the Hostos writing assessment.¹³⁶ The students filed suit, claiming that CUNY should be bound by the acts of Hostos’ administrators—its apparent agents—or that CUNY should be equitably estopped from withholding their degrees. The court held for CUNY:

[I]t would contravene public policy to force an institution of higher learning to award degrees where the students had not demonstrated the requisite degree of academic achievement. “Requiring the college to award [the student] a diploma on equitable estoppel grounds would be a disservice to society, since the credential would not represent the college’s considered judgment that [the student] possessed the requisite qualifications.”¹³⁷

D. Degrees of Due Process

Courts delineate a dichotomy between a student’s due process rights in

130. *Id.* at 795.

131. *Id.* at 795–96.

132. *Id.* at 796.

133. 681 N.Y.S.2d 494 (N.Y. App. Div. 1998).

134. *Id.* at 495–96.

135. *Id.* at 495.

136. *Id.* at 496.

137. *Id.* at 497 (quoting *Matter of Olsson v. Bd. of Higher Educ. of the City of New York*, 402 N.E.2d 1150). “In order for society to be able to have complete confidence in the credentials dispensed by academic institutions, however, it is essential that the decisions surrounding the issuance of these credentials be left to the sound judgment of the professional educators who monitor the progress of their students on a regular basis.” *Olsson*, 402 N.E.2d at 1153. *See also* *Faulkner v. Univ. of Tenn.*, No. 01-A-01-9405-CH00237, 1994 WL 642765 (Tenn. Ct. App. 1994) (holding that Tennessee was not estopped from revoking Ph.D. degree based on discovery that student had plagiarized professor’s work in writing thesis, even though professor had instructed student to plagiarize the work).

disciplinary dismissals and in academic dismissals.¹³⁸ “The higher of the two standards, which requires 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.”¹³⁹

V. JUDICIAL DEFERENCE TO ACADEMIC DECISIONS OF UNIVERSITIES

The academic decisions of colleges and universities are generally awarded great deference by the courts.¹⁴⁰ Absent arbitrary or capricious actions, courts prefer not

138. See, e.g., *Wright v. Texas Southern Univ.*, 392 F.2d 728, 729 (5th Cir. 1968). Although the dichotomy is clear between academic and disciplinary dismissals, once the right to due process is triggered, courts use a “sliding scale” to determine the adequacy of the due process offered. *University of Texas Med. Sch. v. Than*, 874 S.W.2d 839, 847 n.4 (Tex. Ct. App. 1994). “The harsher the punishment, the more process the student is due.” *Id.* (citing *Goss v. Lopez*, 419 U.S. 565, 584 (1975) (“Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more harsh than having a degree withheld or revoked. See also *Morrow v. Goldberg*, 672 F. Supp. 766, 772 (D. Vt. 1987) (“Within the broad category of decision making affecting interests of individual students, the Court has distinguished between disciplinary decisions and academic decisions in evaluating the process provided in particular cases.”)).

Although the courts have in theory embraced two mutually exclusive subclasses of revocation decisions—one based on academic considerations and the other on misconduct—in actuality, the line is often blurred. As Fernand N. Dutile has pointed out, “In reality, situations in which higher-education students face adverse institutional decisions occupy a spectrum ranging from the purely academic through the purely disciplinary.” Dutile, *Disciplinary Versus Academic Sanctions in Higher Education: A Doomed Dichotomy?*, 29 J.C. & U.L. 619, 626 (2003). Rather than being alarmed at the difficulty encountered in differentiating between academic and misconduct cases, Dutile points out that in academic cases, the student receives an ample opportunity to be heard through his academic work. For example, a student who takes a three hour exam or writes a ten-page paper receives a “hearing” that would satisfy almost any procedural protection required in a misconduct case. *Id.* at 650.

139. Stephen B. Thomas and Deborah L. Barber, *The Right to Rescind a Degree*, 33 EDUC. L. REP. 1, 2–3 (1986) (commenting that most courts will defer to the judgment of the college or university in revoking a degree if adequate due process is provided). See also *Amelunxen v. Univ. of Puerto Rico*, 637 F. Supp. 426, 431 (D.P.R. 1986) (“Since the procedural requirements in the case of an academic dismissal are so minimal, in only extremely rare situations would an educational institution’s actions be found to violate the Fourteenth Amendment procedural due process right. If a school’s decision is to be reversed, it must be done on the basis of substantive due process; that the decision was based on unconstitutional criteria or was ‘arbitrary and capricious.’”).

140. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (“Our holding today [in the University of Michigan Law School affirmative action case] is in keeping with our tradition of giving a degree of deference to a university’s academic decisions, within constitutionally prescribed limits.”); *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); *Kashani v. Purdue Univ.*, 763 F. Supp. 995, 997 (N.D. Ind. 1991) (“It is not for this court to rewrite the criteria for a doctorate in electrical engineering at Purdue University, and it is not for this court to superimpose its most limited and irrelevant scholastic and educational judgments upon those of the educational officials at Purdue University.”); *North v. West Virginia Bd. of Regents*, 332 S.E.2d 141, 146 (W. Va. 1985) (reasoning that deference should be given to school officials as they “are in the best position to understand and appreciate the implications of various [academic] disciplinary decisions”); *Waliga v. Bd. of Trustees of Kent State Univ.*, 488

to alter decisions regarding admissions, grading, degree requirements, and other purely academic matters.¹⁴¹ The Supreme Court reiterated its judicial deference to institutions of higher education in *Regents of the University of Michigan v. Ewing*:

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.¹⁴²

In *Board of Curators of the University of Missouri v. Horowitz*, 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 set by the University.¹⁴³ The Supreme Court determined that the student had been fully informed by the faculty that her progress was 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.”¹⁴⁴

Similar deference has been extended to decisions that withhold or revoke degrees for academic reasons. In *Napolitano v. Trustees of Princeton University*, the Princeton disciplinary committee determined that a graduating senior had plagiarized a term paper and withheld her degree for one year.¹⁴⁵ At trial, rather than conduct a full-fledged hearing, the judge reviewed the sufficiency of the evidence against the student and found it adequate to sustain Princeton's decision to withhold.¹⁴⁶ On appeal, the student challenged the deference that the trial court had given Princeton's determination. The appellate court found that a claim of plagiarism was one of academic fraud, not general misconduct.¹⁴⁷ Relying on

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).

141. See KAPLIN & LEE, *supra* note 9, at 465–500 (3d ed.) and KAPLIN & LEE, *supra* note 9, at 291–96 (Supp. 2000) (discussing comprehensively the level of judicial deference given to decisions made by both public and private institutions of higher education).

142. 474 U.S. 214, 225 (1985).

143. 435 U.S. 78 (1978).

144. *Id.* at 86.

145. 453 A.2d 263 (N.J. Super. Ct. App. Div. 1982).

146. *Id.* at 270. While the trial judge emphasized his personal disagreement with the harshness of the decision, he held that he could not find “that Princeton could not in good faith have assessed the penalties it did against plaintiff.” *Id.*

147. *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.”). See also *Mahavongsanan v. Hall*, 529 F.2d 448, 450 (5th Cir. 1976)

Horowitz, the court came to the conclusion that the trial judge “should not have become a super-trier under due process considerations.”¹⁴⁸

Although courts defer to the academic decisions of colleges and universities, such deference has its limits. 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*, a graduate student had completed both a dissertation and comprehensive examinations when he was informed that both accomplishments were unacceptable because his thesis committee had never been formally recognized by the University.¹⁴⁹ The student sought a writ of mandamus ordering Illinois to issue his degree. Although his claims were dismissed by the lower court, the appellate court found that Tanner had presented sufficient evidence of arbitrary and capricious conduct on the part of the University to proceed on his mandamus theory.¹⁵⁰

VI. SUMMATION

Courts have recognized the right of colleges and universities to withhold and revoke degrees for both academic and non-academic violations. Courts show considerable deference to decisions of academic institutions when degrees are withheld or revoked for purely academic reasons. Greater procedural safeguards are required when withholdings or revocations are enforced against students for non-academic reasons, granting to students in those situations the full range of procedural protections.

Commentators have raised concerns over withholding and revoking degrees for non-academic reasons, asking precisely where the line will 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?”¹⁵¹ Should an institution set forth a list of misconduct that merits degree revocation or withholding in advance? Should there be a distinction between procedural protections afforded students in private and public institutions? These questions are legitimate and deserve thoughtful contemplation by those in academic policy-making positions.

After extensive research and personal experience in this area, the authors have

(“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).

148. *Napolitano*, 453 A.2d at 275. *But cf.* Ralph 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).

149. 363 N.E.2d 208, 209 (Ill. Ct. App. 1977).

150. *Id.* at 209–10.

151. *Butcher*, *supra* note 73, at 765.

reached several conclusions. (1) Colleges and universities clearly have legal authority and educational responsibility to withhold or revoke a degree obtained through error or academic fraud. Prior to graduation, an institution may also withhold a degree if a student is guilty of serious non-academic misconduct. (2) The particular entity, i.e., the governing board, that conferred a degree is the proper entity for conducting degree revocation proceedings—not the courts. (3) Once a student graduates, a college or university should not attempt to revoke a degree already conferred for any reason other than error or academic fraud. (4) The highest level of procedural process should be granted to a student, whether at a public or private institution, when the institution seeks to revoke a degree already conferred, including a hearing, advanced notice of the charges, the name of the person(s) making the charges, the names of witnesses who will testify, the substance of their testimony, the right to have a legal adviser, and the right to present witnesses and evidence on his or her behalf. (5) The institution should place a statement in the student handbook setting forth the college or university's authority to withhold or revoke a degree received through error or academic fraud and describing the process that will be used should such a circumstance arise in the future.¹⁵²

152. See generally Butcher, *supra* note 73, at 766–73 (laying out an excellent model for revocation of academic degrees); Pavella, *supra* note 77 (describing another good model for revocation processes).

