ARE PROCEDURAL AND SUBSTANTIVE STUDENT CHALLENGES TO DISCIPLINARY SANCTIONS AT PUBLIC INSTITUTIONS OF HIGHER EDUCATION JUDICIALLY MORE SUCCESSFUL THAN THOSE AT PRIVATE INSTITUTIONS?

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INTRODUCTION

When faced with sanctions, including but not limited to dismissals,[1] students at public institutions of higher education (IHEs) may obtain judicial review under Fourteenth Amendment due process and other constitutional bases,[2] whereas their counterparts at private IHEs lack this protection. Exemplifying this glaring gap for students at private IHEs, Shook characterized their counterparts as follows: "[T]he public university student enters the arena of disciplinary hearings brandishing the sharp sword of constitutional safeguards."[3]

My recent empirical analysis of the case law specific to disciplinary sanctions of students in private IHEs showed that the courts, rather than closing the door on such cases, have provided procedural and substantive review under a contract or more general theory of jurisdiction.[4]

This Article provides a similarly systematic and comprehensive analysis of the case law at public IHEs, with the primary focus being on whether their constitutional safeguards serve as the purported sharp sword. After setting forth the framework in terms of the intersecting dimensions of type of IHE (i.e., public or private) and category of conduct (i.e., academic or nonacademic), the Article follows the template of empirical analyses in

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1. The use of a broad rubric, such as "sanctions," is purposeful here in light of not only the courts' disinclination to be definitive and uniform about the level of adverse action that qualifies as a property or liberty interest under the Fourteenth Amendment but also the focus here on an encompassing scope of institutions' disciplinary, as compared with academic, actions.

2. The pertinent other constitutional avenues include the First Amendment express and Fourteenth Amendment equal protection, although Fourth Amendment search/seizure and Fifth Amendment self-incrimination protections are more separably secondary. The primary focus for the institutional comparison is due process. *See, e.g.*, Project, *An Overview: The Private University and Due Process*, 1970 DUKE L.J. 795 (1970).

3. Marc H. Shook, *The Time is Now: Arguments for the Expansion of Rights for Private University Students in Academic Disciplinary Hearings*, 24 LAW & PSYCHOL. REV. 77, 77 (2000); *see also* Wendy J. Murphy, *Using Title IX's "Prompt and Equitable" Hearing Requirements to Force Schools to Provide Fair Judicial Proceedings to Redress Sexual Assault on Campus*, 40 NEW ENG. L. REV. 1007, 1009–10 (2006) (emphasizing the difference based on the presence or absence of "state action").

4. Perry A. Zirkel, *Procedural and Substantive Student Challenges to Disciplinary Sanctions at Private—As Compared with Public—Institutions of Higher Education: A Glaring Gap?*, 83 MISS. L.J. 863 (2014). "General" represents a broad, default category that started with a New York appellate case in 1893 that applied an arbitrary and capricious standard. *Id*. at 888. The theories of fiduciary duty and private associations played a negligible role. *Id.* at 873.

terms of the method, results, and discussion.

I. FRAMEWORK

Subject to further focusing,[5] Figure 1 provides the overall contextual framework for this analysis. The first row provides the area of stereotyped and supposed stark contrast.

Figure 1. Primary Avenues for Student Challenges to Sanctions of Public and Private IHEs

	Public IHE	**Private IHE**
Federal Constitution (e.g., 14th Am. procedural and substantive due process)		
State Common Law Torts (e.g., intentional infliction of emotional distress)		
Federal or State Civil Rights Acts (e.g., Titles VI or IX)		

As alternate avenues for judicial redress, the other rows of Figure 1 shows that students at both types of IHEs generally may obtain judicial review via federal civil rights laws, such as Title VI of the Civil Rights Act[6] or Title IX of the Education Amendments,[7] and state law, including human rights statutes and common law torts. However, these avenues offer only limited protection,[8] and they are largely common to both types of institutions.[9] In light of the "state action" prerequisite,[10] the distinctive fitting av-

5. *See infra* Figure 2.

6. 42 U.S.C. § 2000d (2010) (prohibiting discrimination on the basis race, ethnicity, or national origin in institutions that receive federal financial assistance).

7. 20 U.S.C. § 1681(a) (2010) (prohibiting discrimination based on sex at institutions that receive federal financial assistance).

8. The primary reasons are that 1) the federal laws typically only apply to designated "protected" groups; 2) the corresponding state laws vary from one jurisdiction to another; and 3) the tort law, such as intentional infliction of emotional distress, do no square well with the typical facts of IHE student discipline.

9. For example, the "federal financial assistance" requisite of some federal civil rights laws, such as Section 504 of the Rehabilitation Act, does not pose a significant difference between public and private IHEs in light of the wide application in the con-

enue in public IHEs consists of constitutional claims.

A. Due Process Protections at Public IHEs

The primary basis for constitutional, procedural, and substantive protections for challenging student sanctions at public IHEs is the Fourteenth Amendment's due process clause and, for the federal military academies, its counterpart under the Fifth Amendment.[11] In two successive decisions following an initial decision in the K-12 context,[12] the Supreme Court delineated the extent of Fourteenth Amendment procedural and substantive due process in relation to academic sanctions[13] at public IHEs. However, as these two Court opinions reveal, the limitation to academic matters is not clear-cut as a matter of the rulings or the rationales.

In its 1978 decision in *Board of Curators of University of Missouri v. Horowitz*,[14] the Court held that, in terms of Fourteenth Amendment procedural due process, public IHEs need not provide a hearing for dismissal of a student based on academic, as contrasted with disciplinary, grounds. In the majority's view, "[t]his difference calls for far less stringent procedural requirements in the case of an academic dismissal."[15] Specifically in response to a public IHE's dismissal of a fourth-year medical student for clinical deficiencies, including personal hygiene, peer and patient relations, and timeliness, the Court ruled:

> Assuming [without deciding] the existence of a liberty or property interest, respondent has been awarded at least as much due process as the Fourteenth Amendment requires. The school fully informed respondent of the faculty's dissatisfaction with her clinical progress and the danger that this posed to timely graduation and continued enrollment. The ultimate decision to dismiss re-

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text of higher education. *See, e.g.*, Radcliff v. Landau, 883 F.2d 1481, 1483 (9th Cir. 1989).

10. *See, e.g.*, Ralph D. Mawdsley, Commentary, *State Action and Private Educational Institutions*, 117 EDUC. L. REP. 411 (1997).

11. For the secondary and separable constitutional alternatives, see, for example, *supra* note 2.

12. Goss v. Lopez, 419 U.S. 565 (1975) (interpreting the Fourteenth Amendment's due process clause as requiring for a disciplinary suspension from one to ten days, a minimum of oral notice, and an opportunity for the student to tell his/her side of the story).

13. Although these decisions were specifically in response to student dismissals, the Court did not determine whether this severe action constituted the requisite liberty or property interest. Thus, the broader rubric of student sanctions is useful to extend to any other adverse IHE actions that may similarly fit within these protected confines.

14. 435 U.S. 78 (1978).

15. *Id.* at 86.

spondent was careful and deliberate.[16]

In doing so, the *Horowitz* Court reflected the fuzzy boundary between academic evaluations and disciplinary determinations. For example, supporting "the significant difference between the failure of a student to meet academic standards and the violation by a student of valid rules of conduct,"[17] the Court cited its earlier decision that applied Fourteenth Amendment procedural due process to a clearly disciplinary action against a high school student.[18] Similarly, the majority found further support for its ruling in the overall nature of an educational institution,[19] thus subsuming both academic and disciplinary actions.[20] Moreover, Justice Marshall's partial dissent pointedly questioned the reliance on and workability of the distinction between "academic" and "disciplinary" matters.[21]

Although the *Horowitz* Court briefly visited Fourteenth Amendment substantive due process,[22] the subsequent decision in *Regents of University of Michigan v. Ewing*[23] crystallized its application by limiting judicial review to a narrow avenue. More specifically, in rejecting another medical student's dismissal from a public IHE,[24] the *Ewing* Court ruled that Fourteenth Amendment substantive due process only applies to a public IHE's adverse academic action if 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."[25] Although the dismissal in this case was unquestionably academic, as it was based on the student's failure of an important examination, the Court also relied in part on broader

16. *Id.* at 84–85.

17. *Id.* at 86.

18. *Id.* at 85–86 (citing Goss v. Lopez, 419 U.S. 565 (1975)).

19. *See, e.g.*, *id.* at 88 ("A school is an academic institution, not a courtroom or administrative hearing room."); *see also id.* at 91 (citing Epperson v. Arkansas, 393 U.S. 97, 104 (1968) (supporting judicial deference to public educational institutions)).

20. On the other hand, the majority used *Goss* to distinguish between the factual determinations and adversary flavor of a disciplinary determination and the more subjective and educational nature of academic evaluations. *Id.* at 89–90.

21. *Id.* at 104 n.18, 106 (Marshall, J., partially dissenting).

22. *Id.* at 91–92 ("In this regard, a number of lower courts have implied in dictum that academic dismissals from state institutions can be enjoined if 'shown to be clearly arbitrary or capricious.' Even assuming that the courts can review under such a standard an academic decision of a public educational institution, we agree with the District Court that no showing of arbitrariness or capriciousness has been made in this case." (internal citations omitted)).

23. 474 U.S. 214 (1985).

24. Again, the Court assumed that the student had a constitutionally protected interest without providing any analysis of what exactly constituted this requisite liberty or property right. *Id.* at 223.

25. *Id.* at 225.

considerations of judicial deference to legislation and to educational institutions.[26]

For disciplinary sanctions, i.e., those amounting to denials of the requisite property or liberty interest for student violations of valid rules of conduct,[27] the corresponding lower court decisions are the focus of this up-to-date empirical analysis. Early overviews showed that the Fourteenth Amendment provides more procedural protection than the academic-sanction cases,[28] although not entitling the student to the full-blown safeguards of adversarial civil proceedings, and with substantive due process playing a much more minor role based on its rather remote boundary.[29]

B. Academic v. Disciplinary Sanctions at Public and Private IHEs

The division between what one commentator translated as "cognitive" v. "non-cognitive" performance[30] pre-dates *Horowitz*.[31] Yet, despite cogent commentary in favor of a more nuanced approach,[32] the courts have con-

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26. *Id.* at 225–26.

27. *See supra* text accompanying note 17.

28. For a discussion of this contrasted category, see, for example, Thomas A. Schweitzer, *"Academic Challenge" Cases: Should Judicial Review Extend to Academic Evaluations of Students?*, 41 AM. U. L. REV. 267, 338–61 (1992).

29. *See, e.g.*, Lisa L. Swem, Note, *Due Process Rights in Student Disciplinary Matters*, 14 J.C. & U.L. 359 (1987).

30. Joseph M. Flanders, *Academic Student Dismissals at Public Institutions of Higher Education: When is Academic Deference Not an Issue?*, 34 J.C. & U.L. 21, 46 (2007). However, this re-formulation does not provide a semantic solution. *See, e.g.*, Richmond v. Fowlkes, 228 F.3d 854, 858 (8th Cir. 2000) (upholding, in light of *Horowitz* the academic characterization of dismissal of pharmacy student based on the faculty's "non-cognitive evaluation"). Further revealing the semantic difficulties in line-drawing, another commentator, who is a higher education administrator, used "non-academic," in contrast to "academic" to refer to off-campus student activities, but, again, without consistent clarity. John Friedl, *Punishing Students for Non-Academic Conduct*, 26 J.C. & U.L. 701 (2000).

31. *See* Greenhill v. Bailey, 519 F.2d 5, 8 (8th Cir. 1975) (citing Brookins v. Bonnell, 362 F. Supp. 379, 382 (E.D. Pa. 1973) ("We are well aware that there has long been a distinction between cases concerning disciplinary dismissals, on the one hand, and academic dismissals, on the other.").

32. In the leading commentary on this issue, Dutile, observed, for example, that "situations in which higher-education students face adverse institutional decisions occupy a spectrum ranging from the purely academic through the purely disciplinary." Fernand N. Dutile, *Disciplinary Versus Academic Sanctions in Higher Education: A Doomed Dichotomy*, 29 J.C. & U.L. 619, 626 (2003). He advocated a unified approach, whereby "the nature of the hearing will vary with the nature of the loss" and courts accord "appropriate deference to the expertise. . .whether academic or disciplinary. . .of college and university decisionmakers." *Id.* at 652. Among subsequent commentary following Dutile's lead, see, for example, Flanders, *supra* note 30, at 76 (advocating treating each case as "mixed" with the court parsing the facts into cognitive and non-cognitive issues).

tinued to recite the academic-nonacademic dichotomy. For example, although Sinson observed, by way of example, that "bizarre and disruptive conduct of graduate students in clinical work may be academic or nonacademic because it 'reflect[s] both on the student's academic performance and the student's deportment,'"[33] the lower courts have followed *Horowitz* consistently in treating clinical cases, including student-teaching, as academic.[34] For cheating and plagiarism, the courts have been less consistent, but these issues would appear to be on the non-academic side of the line for several interrelated reasons. First, given the *Horowitz* Court's adoption of the traditional judicial framework of a dichotomy, thus limited to only two options, cheating and plagiarism are more a matter of "misconduct" than "failure to attain a standard of excellence in studies."[35] Second, the model codes of student conduct typically include cheating and plagiarism.[36] Third, while characterizing issues such as cheating as having "mixed status,"[37] Lee concluded "the prevailing view of courts across the federal circuits is that academic misconduct (as opposed to academic failure) should be viewed as a disciplinary matter, which entitles the student to procedural due process."[38] For example, in various student-cheating cases at public IHEs, courts have rejected the academic label.[39] Fourth, subsuming plagia-

33. Scott R. Sinson, Note, *Judicial Intervention of Private University Expulsions: Traditional Remedies and a Solution Sounding in Tort*, 46 DRAKE L. REV. 195, 207 (1997) (quoting Pflepsen v. Univ. of Osteopathic Med., 519 N.W.2d 390, 391 (Iowa 1994)).

34. *See, e.g.*, Hennessey v. City of Melrose, 194 F.3d 237, 251 (1st Cir. 1999) ("The appellant's conduct at Horace Mann had academic significance because it spoke volumes about his capacity to function professionally in a public school setting."); Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46, 53 (Alaska 1999) ("While acknowledging that there is no clearly identifiable line between academic and disciplinary proceedings, we nevertheless recognize that school teachers must possess the ability to interact effectively with their students and colleagues, and, while less than tangible, such a skill may form an academic requirement necessary for satisfactory completion of a teaching program.").

35. Bd. of Curators of Univ. of Missouri v. Horowitz, 435 U.S. 78, 87 (1978) (citing Barnard v. Inhabitants of Shelburne, 102 N.E. 1095, 1097 (Mass. 1913)).

36. *See, e.g.*, Edward N. Stoner II & John Wesley Lowery, *Navigating Past the "Spirit of Insubordination": A Twenty-First Century Model Student Conduct Code With a Model Hearing Script*, 31 J.C. & U.L. 1, 27 (2004); Gary Pavela, *Limiting the "Pursuit of Perfect Justice" on Campus: A Proposed Code of Student Conduct*, 6 J.C. & U.L. 137, 142 (1980).

37. Barbara A. Lee, *Judicial Review of Student Challenges to Academic Misconduct Sanctions*, 39 J.C. & U.L. 511, 518 (2013) ("Plagiarism, cheating, and other forms of academic misconduct have a behavioral component, but determining whether academic misconduct occurred also requires professional judgment on the part of faculty or administrators—particularly in the case of plagiarism.").

38. *Id.* (citing four public IHE cases).

39. *See, e.g.*, Henson v. Honor Comm. of Univ. of Va., 719 F.2d 69, 74 (4th Cir.

rism and cheating under the rubric "academic wrongdoing" as compared to "academic failure," Berger and Berger pointed out that despite the ultimate frequent fusion in terms of a course grade of an "F," the "foremost difference lies in the far deeper stigma that adheres to the finding of wrongdoing."[40] Finally, as they also pointed out, "in many situations proof of academic wrongdoing will not require an instructor's singular expertise."[41]

C. The Specific Scope of the "Gap"

Providing the refined focus of this Article, Figure 2 shows the boundaries of the purported gap between public and private IHEs. More specifically, Figure 2 magnifies the focus on the gap in the first row of Figure 1 to

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1983) (concluding that cheating was disciplinary rather than "evaluating the academic fitness of a student."); Slaughter v. Brigham Young Univ., 514 F.2d 622, 624 (10th Cir. 1975) (scholarly dishonesty is "on the conduct or ethical side rather than an academic deficiency."); Jaksa v. Regents of Univ. of Mich., 597 F. Supp. 1245, 1248 n.2 (E.D. Mich. 1984) ("[C]heating, [is] an offense which cannot neatly be characterized as either 'academic' or 'disciplinary'. The Supreme Court's reasoning in *Horowitz*, however, persuades me that cheating should be treated as a disciplinary matter."), *aff'd mem.*, 787 F.2d 590 (6th Cir. 1986); Lightsey v. King, 567 F. Supp. 645, 648 (E.D.N.Y. 1983) ("[D]espite the artful semantics of the defendants, this is not an instance of discretionary grading, and the cases relating to academic standards and sanctions for academic deficiencies are not apposite. This is a disciplinary matter, rather than an academic one. . ."); Univ. of Tex. Med. Sch. v. Than, 901 S.W.2d 926, 931 (Tex. 1995) ("This argument is specious. Academic dismissals arise from a failure to attain a standard of excellence in studies whereas disciplinary dismissals arise from acts of misconduct."). *But cf.* Garshman v. Pa. State Univ., 395 F. Supp. 912, 920–21 (M.D. Pa. 1975) (ultimately analogizing cheating to professorial competence, which courts treat as an academic matter). The private IHE cases are less clear and direct in their characterization of cheating. *See, e.g.*, Valente v. Univ. of Dayton, 438 F. App'x 381, 384, 388 (6th Cir. 2011) (referring to disciplinary hearing but separately emphasizing academic standards); Clayton v. Trs. of Princeton Univ., 608 F. Supp. 413, 438 (D.N.J. 1985) (emphasizing judicial deference regardless of whether an academic matter); Corso v. Creighton Univ., 731 F.2d 529 (8th Cir. 1984); Napolitano v. Trs. of Princeton Univ., 453 A.2d 263, 273 (N.J. Super. Ct. App. Div. 1982) (deferring to private IHE's characterization of cheating as an academic matter).

40. Curtis J. Berger & Vivian Berger, *Academic Discipline: A Guide to Fair Process for the University Student*, 99 COLUM. L. REV. 289, 303 (1999); *see also* Audrey Wolfson Latourette, *Plagiarism: Legal and Ethical Implications for the University*, 37 J.C. & U.L. 1, 57 (2010) ("[D]isciplinary matters such as plagiarism or cheating, which potentially implicate serious and career-altering penalties, invite greater judicial scrutiny [than academic matters] . . . "); *cf.* Jennifer N. Buchanan & Joseph C. Beckham, *A Comprehensive Academic Honor Policy for Students: Ensuring Due Process, Promoting Academic Integrity, and Involving Faculty*, 33 J.C. & U.L. 97, 104–05 (2006) ("[A]cademic misconduct implicates the full range of due process protections available to students in public colleges and universities because the stigma associated with dishonesty and the potential loss of academic standing implicate liberty and property interests under the Fourteenth Amendment.").

41. Berger & Berger, *supra* note 40, at 303.

converge on student protections at public IHEs specific to nonacademic conduct.

Figure 2. Focusing on the Gap with Magnification

	Conduct	**Public IHE**	**Private IHE**
Procedural and Substantive Protections of Students	Nonacademic		
	Academic		

Based on the aforementioned[42] balance of authority and consistent with the prior Article, [43] cases of plagiarism and other forms of academic dishonesty were on the nonacademic side of the line, whereas case of clinical conduct were on the academic side. Moreover, in light of the findings of the previous Article, the purportedly dark segment includes the procedural and substantive protections under not only the Constitution but also, as a secondary non-distinctive strand, the contract and general theories that have emerged in the corresponding private IHE segment.

The purpose of this Article is to provide an empirical analysis[44] of the student litigation challenging sanctions for non-academic conduct at public

42. *See supra* text accompanying notes 33–41.

43. Zirkel, *supra* note 4 and accompanying text.

44. Although a broad, relatively imprecise term, "empirical" in this context refers to a systematic approach that introduces a quantitative dimension to supplement traditional qualitative legal analysis. For examples of the specific version of this approach, see Susan Bon & Perry A. Zirkel, *The Time-Out and Seclusion Continuum: A Systematic Analysis of Case Law*, 27 J. SPECIAL EDUC. LEADERSHIP 25 (2014); Youssef Chouhoud & Perry A. Zirkel, *The Goss Progeny: An Empirical Analysis*, 45 SAN DIEGO L. REV. 353 (2008); Diane M. Holben & Perry A. Zirkel, *School Bullying Litigation: An Empirical Analysis of the Case Law*, 47 AKRON L. REV. 299 (2014); Linda Mayger & Perry A. Zirkel, *Principals' Challenges to Adverse Employment Actions: A Follow-Up Empirical Analysis of the Case Law*, 308 EDUC. L. REP. 588 (2014); Mark Paige & Perry A. Zirkel, *Teacher Termination Based on Performance Evaluations: Age and Disability Discrimination?*, 300 EDUC. L. REP. 1 (2014); Perry A. Zirkel, *Public School Student Bullying and Suicidal Behaviors: A Fatal Combination?*, 42 J.L. & EDUC. 633 (2013); Perry A. Zirkel, *Case Law for Functional Behavioral Assessments and Behavior Intervention Plans: An Empirical Analysis*, 35 SEATTLE U. L. REV. 175 (2011); Perry A. Zirkel & Caitlyn A. Lyons, *Restraining the Use of Restraints for Students with Disabilities: An Empirical Analysis of the Case Law*, 10 CONN. PUB. INT. L.J. 323 (2011); Perry A. Zirkel & Cathy Skidmore, *National Trends in the Frequency and Outcomes of Hearing and Review Officer Decisions under the IDEA: An Empirical Analysis*, 29 OHIO ST. J. ON DISP. RESOL. 525 (2014).

IHEs, with the comparison to the findings for the corresponding case law at private IHEs as a background comparison. The specific questions are as follows:[45]

1. Within the specified scope, what is the total number of the court decisions?

2. In which jurisdictions have these decisions arisen?

3. How far back do these decisions date, and has their frequency changed during the intervening decades?

4. What has been the distribution of these decisions in terms of the a) student's level of education, b) type of conduct,[46] and c) level of sanction?

5. What has been the distribution of the various adjudicated claim categories, such as constitutional procedural due process and substantive due process,[47] in terms of (a) frequency, and (b) outcomes (i.e., claim category rulings)[48]?

6. What has been the overall outcomes distribution of the (a) claim category rulings and, moving to the larger unit of analysis of the decisions as a whole,[49] (b) the cases?

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45. These questions basically parallel those for the previous Article, Zirkel, *supra* note 4, at 874, except that the focus of the statistical comparison of outcomes here is between the public and the private IHEs. Conversely, this set of questions omits the statistical comparison of outcomes in terms of level of education, type of conduct, and level of sanction because 1) there is no reason to suspect significant differences in light of the findings of the previous Article (*id*. at 881–82), and 2) the public IHE cases provided less precise differentiation for each of these factors, due in part to the group nature of the conduct during the *Dixon* era.

46. As a combination of objectivity and simplicity, the references herein are to "conduct" or "alleged misconduct" rather than to the generic use of "misconduct" except where quoting a commentator or summarizing the court's characterization of what are typically allegation assumed for the sake of procedural disposition as fact.

47. "Claim category" is the designation of the tabulated rulings within each case. For the differentiation of the unit of analysis between the case and the rulings in the case, see, e.g., Chouhoud & Zirkel, *supra* note 44, at 367–68; Zirkel, *supra* note 44, at 639 (issue rulings); Holben & Zirkel, *supra* note 44, at 311; Paige & Zirkel, *supra* note 44, at 4; Zirkel & Lyons, *supra* note 44, at 335 (claim rulings); Zirkel & Skidmore, *supra* note 44, at 543–44 (issue category rulings). The reason for the "category" modifier is that the choice was to use the broad basis, such as Fourteenth Amendment due process, rather than the variations within it, such as insufficient notice or alleged hearing violations, such as lack of an impartial adjudicator or legal representation. For the specific categories in the tabulation, see *infra* note 67.

48. "Outcome" refers to whether the adjudication favored the student or the IHE according to the specific scale. *See infra* text accompanying note 69.

49. The outcome is for the final decision as a whole is based on the most student-favorable claim category ruling in the case. For example, if the student raised and the final decision adjudicated claims under more than one category of Fourteenth Amend-

7. Have these outcomes differed significantly between the public and the private IHE cases?

II. METHOD

The successive sources of the case law consisted of 1) a Boolean search of federal and state cases in Westlaw[50]; 2) a review of the higher education chapter of each YEARBOOK OF EDUCATION LAW since 1970[51]; 3) the citations in relevant law review articles[52]; and 4) the cases cited in the court decisions initially determined to fit within the scope of the study.[53] Similar to the prior Article,[54] the public IHEs, choices in relation to marginal cases resulted in more refined boundaries in terms of the various exclusions of court decisions that otherwise concerned student sanctions for nonacademic

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ment due process, with the ruling under procedural due process being conclusively in favor of the student and the one under substantive due process being in favor of the defendant IHE, the outcome entry for the case was conclusive in favor of the student. The rationale is that where the plaintiff resorted to the "spaghetti" strategy of resorting to multiple strands, or claims, the ultimate test is whether any of them "stuck." For previous examples of this conflation procedure for moving from the constituent to the case unit of analysis, see Bon & Zirkel, *supra* note 44, at 39–40; Mayger & Zirkel, *supra* note 44, at 592; Zirkel & Lyon, *supra* note 44, at 344.

50. The search terms included various combinations of "student," "state-supported," "college," "university," "disciplin!," "suspension," "expulsion," and "sanction."

51. The Education Law Association (formerly, the National Organization on Legal Problems of Education) publishes these annual compilations of court decisions. The earliest one that contained a chapter or appendix with college and university discipline cases was in 1969. Lee O. Garber & Edmund Reutter, THE YEARBOOK OF SCHOOL LAW 285 (1969). The most recent one was the 2014 edition. Joy Blanchard & Elizabeth T. Lugg, *Students in Higher Education*, *in* THE YEARBOOK OF EDUCATION LAW 207 (Charles J. Russo ed., 2014). The continuation of these sources for the period after the 2014 yearbook consisted of the higher education case blurbs in the Education Law Association's monthly SCHOOL LAW REPORTER.

52. E.g., Swem, *supra* note 29; Flanders, *supra* note 30; Paul Smith, *Due Process, Fundamental Fairness, and Judicial Deference: The Illusory Difference between State and Private Educational Institution Disciplinary Legal Requirements*, 9 N.H. L. REV. 443 (2011); Edwin N. Stoner & Corey A. Detar, *Disciplinary and Academic Decisions Pertaining to Students in Higher Education*, 26 J.C.& U.L. 273 (1999); Edwin N. Stoner II & Bradley J. Martineau, *Disciplinary and Academic Decisions Pertaining to Students in Higher Education*, 28 J.C.& U.L. 311 (2002); Edwin N. Stoner & Bradley J. Martineau, *Disciplinary and Academic Decisions Pertaining to Students in Higher Education*, 27 J.C.& U.L. 313 (2000); Edwin N. Stoner & Maraleen D. Shields, *Disciplinary and Academic Decisions Pertaining to Students in Higher Education – 2001*, 29 J.C.& U.L. 287 (2003).

53. For example, the New York court decisions, although having relatively short opinions, often contained string citations that included other relevant cases.

54. Zirkel, *supra* note 4, at 864–65. This version similarly excluded cases based on grounds that were applicable to both public and private IHEs, such as those based solely on federal or state civil rights legislation. *Id.*

conduct. First, in light of Figure 2, the scope excluded public IHE cases concerning academic sanctions.[55] Serving as the second but less robust exclusion were the relatively few cases relying solely on state laws.[56] The third exclusion consisted of cases limited to admission, readmission, or other institutional action in the absence of discipline.[57] Fourth, based on

55. *See, e.g.*, Bissessur v. Ind. Univ. Bd. of Trs., 581 F.3d 599 (7th Cir. 2009); Rogers v. Tenn. Bd. of Regents, 273 F. App'x 458 (6th Cir. 2008); Bell v. Ohio State Univ., 351 F.3d 240 (6th Cir. 2003); Richmond v. Fowlkes, 228 F.3d 854 (8th Cir. 2000); Megenity v. Stenger, 27 F.3d 1120 (6th Cir. 1994); Davis v. Mann, 882 F.2d 967 (5th Cir. 1989); Harris v. Blake, 798 F.2d 419 (10th Cir. 1986); Schuler v. Univ. of Minn., 788 F.2d 510 (8th Cir 1986); Mauriello v. Univ. of Med. & Dentistry of N.J., 781 F.2d 46 (3d Cir. 1986); Ikpeazu v. Univ. of Neb.,775 F.2d 250 (8th Cir. 1985); Hines v. Rinker, 667 F.2d 699 (8th Cir. 1981); Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975); Keefe v. Adams, 44 F. Supp. 3d 874 (D. Minn. 2014); Burnett v. Coll. of the Mainland, 994 F. Supp. 2d 823 (S.D. Tex. 2014); Stoller v. Coll. of Med., 562 F. Supp. 403 (M.D. Pa. 1983), *aff'd mem.*, 727 F.2d 1101 (3d Cir. 1984); Davis v. George Mason Univ., 395 F. Supp. 2d 331 (E.D. Va. 2005); Rossomando v. Bd. of Regents of Univ. of Neb., 2 F. Supp. 2d 1223 (D. Neb. 1998); Jenkins v. Hutton, 967 F. Supp. 277 (S.D. Ohio 1997); Carboni v. Meldrum, 949 F. Supp. 427 (W.D. Va. 1996); Lewin v. Med. Coll. of Hampton Roads, 910 F. Supp. 1161 (E.D. Va. 1996); Thomas v. Gee, 850 F. Supp. 665 (S.D. Ohio 1994); Davis v. Mann, 721 F. Supp. 796 (S.D. Miss. 1988); Green v. Lehman, 544 F. Supp. 260 (D. Md. 1982); Ross v. Penn. State Univ., 445 F. Supp. 147 (M.D. Pa. 1978); Connelly v. Univ. of Vt. & State Agric. Coll., 244 F. Supp. 156 (D. Vt. 1965); Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46 (Alaska 1999); Dillingham v. Univ. of Colo. Bd. of Regents, 790 P.2d 851 (Colo. Ct. App. 1989); Gordon v. Purdue Univ., 862 N.E.2d 1244 (Ind. Ct. App. 2007); Lusardi v. State Univ. of N.Y. at Buffalo, 726 N.Y.S.2d 202 (App. Div. 2001); Sofair v. State Univ. of N.Y. Upstate Med. Ctr. Coll. of Med., 377 N.E.2d 730 (Ct. App. N.Y. 1978); Organiscak v. Cleveland State Univ., 762 N.E.2d 1078 (Ohio Ct. Cl. 2001); Elliott v. Univ. of Cincinnati, 730 N.E.2d 996 (Ohio Ct. App. 1999); Bleicher v. Univ. of Cincinnati Coll. of Med., 604 N.E.2d 783 (Ohio Ct. App. 1992); Elland v. Wolf, 764 S.W.2d 827 (Tex. Ct. App. 1989); Univ. of Tex. Health Sci. Ctr. At Houston v. Babb, 646 S.W.2d 502 (Tex. Ct. App. 1982); Lucas v. Hahn, 648 A.2d 839 (Vt. 1994); *cf.* Wheeler v. Miller, 168 F.2d 241 (5th Cir. 1999) (close call – doctoral dismissal w. alleged but unproven connection to cheating); Harris v. Blake, 798 F.2d 419 (10th Cir. 1986) (close call – court determined); Fuller v. Schoolcraft Coll., 909 F. Supp. 2d 862 (E.D. Mich. 2012) (close call – falsified nursing application); Heenan v. Rhodes, 757 F. Supp. 2d 1229 (M.D. Ala. 2010) (close call – criticism of clinical point program); Qvyjt v. Lin, 932 F. Supp. 1100 (N.D. Ill. 1996) (close call – intertwined misconduct and admission); Neel v. Ind. Univ. Bd. of Trs., 435 N.E.2d 607 (Ind. Ct. App 1982) (close call – clinical absences); Nawaz v. State Univ. of N.Y. at Buffalo Sch. of Dental Med., 744 N.Y.S.2d 590 (App. Div. 2002) (close call – clinical directive).

56. *See, e.g.*, Hand v. Matchett, 957 F.2d 791 (10th Cir 1992); Hanger v. State Univ. of N.Y., 333 N.Y.S.2d 571 (App. Div. 1972) (authority of board of regents); Morris v. Fla. Agric. & Mech. Univ., 23 So. 3d 167 (Fla. Dist. Ct. App. 2009); Barnes v. Univ. of Okla., 891 P.2d 614 (Okla. 1995); Kusnir v. Leach, 439 A.2d 223 (Pa. Commw. Ct. 1982); Tatum v. Univ. of Tenn., No. 01A01-9707-CH-00326, 1998 WL 426862 (Tenn. Ct. App. July 29, 1998); Daley v. Univ. of Tenn. at Memphis, 880 S.W.2d 693 (Tenn. Ct. App. 1994).

57. *See, e.g.*, Saunders v. Va. Polytechnic Inst., 417 F.2d 1127 (4th Cir. 1969);

the nature of the plaintiff, the scope did not extend to cases specific to the employment role of students.[58] The final exclusions were cases limited entirely to disposition on preliminary adjudicative grounds,[59] including those specific to public IHEs and, thus, arguably closest to inclusion in the case sample: 1) traditional threshold adjudicative issues, such as the application of the statute of limitations[60]; 2) the threshold issue of "state action"[61]; 3) the due process issue of the requisite liberty or property interest[62]; and 4) the threshold institutional defense of Eleventh Amendment immunity.[63]

Some of these exclusions were close calls, reflecting the inevitably blur-

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Woody v. Burns, 188 So. 2d 56 (Fla. Dist. Ct. App. 1996); *cf.* Martin v. Helstad, 699 F.2d 387 (7th Cir. 1983) (close call – also academic v. disciplinary); Bindrim v. Univ. of Mont., 766 P.2d 861 (Mont. 1988) (failure to grant degree).

58. *See, e.g.*, Burrell v. Bd. of Trs. of Univ. of Me. Sys., 15 F. App'x 5 (1st Cir. 2001) (work study); Duke v. N. Tex. State Univ., 469 F.2d 829 (5th Cir. 1972) (teaching assistant); Ross v. Univ. of Minn., 439 N.W.2d 28 (Minn. Ct. App. 1989) (medical residency).

59. Conversely, for those cases that extended to pertinent claim rulings, the tabulation only excluded the rulings beyond the boundaries of the study. *See, e.g.*, Park v. Ind. Univ. Sch. of Dentistry, 692 F.3d 828 (7th Cir. 2012) (tabulation contract and equal protection rulings, while excluding procedural and substantive due process claims, which the court rejected on threshold grounds).

60. *See, e.g.*, Philips v. Marsh, 687 F.2d 620 (2d Cir. 1982) (mootness and availability of preliminary injunction); Brown v. Strickler, 422 F.2d 1000 (6th Cir. 1970) (jurisdiction); Hill v. Trs. of Ind. Univ., 537 F.2d 248 (7th Cir. 1976) (exhaustion and standing); Phillips v. United States, 910 F. Supp. 101 (E.D.N.Y. 1996); Martin v. Stone, 759 F. Supp. 19 (D.D.C. 1991) (exhaustion); Troy State Univ. v. Dickey, 402 F.2d 515 (5th Cir. 1968); Keeney v. Univ. of Oregon, 36 P.3d 982 (Or. Ct. App. 2001) (mootness); Siblerud v. Colo. State Bd. of Agric., 896 F. Supp. 1506 (D. Colo. 1995) (statute of limitations); Salau v. Deaton, 433 S.W.3d 449 (Mo. Ct. App. 2014) (lack of final order); Schuyler v. State Univ. of N.Y. at Albany, 297 N.Y.S.2d 368 (App. Div. 1969) (injunctive remedy); Tex. Agric. & Mech. Univ. v. Hole, 194 S.W.3d 591 (Tex. Ct. App. 2006) (ripeness).

61. *See, e.g.*, Albert v. Carovano, 851 F.2d 561 (2d Cir. 1988); Blackburn v. Fisk Univ., 443 F.2d 121 (6th Cir. 1971); Powe v. Miles, 407 F.2d 73 (2d Cir. 1968); Counts v. Voorhees Coll. 312 F. Supp. 598 (D.S.C. 1970).

62. *See, e.g.*, Charleston v. Bd. of Trs. of Univ. of Ill. at Chicago, 741 F.2d 769 (7th Cir. 2013); Williams v. Wendler, 530 F.3d 584 (7th Cir. 2008); Mercer v. Bd. of Trs. for Univ. of N. Colo., 17 F. App'x 913 (10th Cir. 2001); Lee v. Bd. of Trs. of W. Ill. Univ., 202 F.3d 274 (7th Cir. 2000); Harris v. Blake, 798 F.2d 419 (10th Cir. 1986); Krasnow v. Va. Polytechnic Inst., 551 F.2d 591 (4th Cir. 1977); Hill v. Trs. of Ind. Univ., 537 F.2d 248 (7th Cir. 1976); Mutter v. Madigan, 17 F. Supp. 3d 752 (N.D. Ill. 2014); Lee v. Univ. of Mich.-Dearborn, No. 5:06-CV-66, 2007 WL 2827828 (W.D. Mich. Sept. 27, 2007); Tobin v. Univ. of Me., 59 F. Supp. 2d 87 (D. Me. 1999); Szejner v. Univ. of Alaska, 944 P.2d 481 (Alaska 1997); Soong v. Univ. of Hawaii, 825 P.2d 1060 (Haw. 1992).

63. *See, e.g.*, Alston v. Kean Univ., 549 F. App'x 86 (3d Cir. 2013); Marino v. City Univ. of N.Y., 18 F. Supp. 3d 320 (E.D.N.Y. 2014); Robinson v. Green River Cmty. Coll., No. C10-0112-MAT, 2010 WL 3947493 (W.D. Wash. Oct. 7, 2010).

ry boundaries at the margins.[64] After determining the cases for inclusion, the first step was Shephardizing to identify the most recent relevant decision. The next step was summarizing selected information from each of these cases chronologically in a table[65] starting with the case name and the remainder of the citation and ending with clarifying comments, which included noted partial exclusions in brackets. In between, the table contains the following columns: 1) the state where the case arose; 2) a descriptor that includes the sanction level (e.g., suspension or expulsion), the student's educational level (e.g., undergraduate or medical), and the alleged misconduct (e.g., sexual harassment or exam cheating)[66]; 3) the claim basis that the court ruled on;[67] and 4) the judicial outcome of each claim basis[68] according to this four-category nominal scale[69]:

P = conclusively in favor of the plaintiff-student

( )=inconclusive, most often in favor of P (plaintiff-student) based on denial of defendant's motion for dismissal or summary judgment, but occasionally based on denial of both parties motions for summary judgment

P/D= mixed outcome, partially in favor of each side

U= conclusively in favor of the defendant university

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64. The table designates as "marginal" those close calls that, on balance, resulted in inclusion, rather than exclusion.

65. *See infra* Appendix C.

66. The specificity of these entries largely depended on the amount of detail in the court's opinion, although the descriptor was deliberately concise.

67. The categories for the claim basis, which yielded more than one entry in some cases, were as follows:

- 14th (or 5th) Amendment procedural due process (PDP) or substantive due process (SDP)
- 14th Amendment vagueness (or irrebuttable presumption) often combined with 1st Amendment overbreadth
- 14th Amendment equal protection (EP)
- 1st Amendment expression (Exp.)
- General or contract theory

In contrast, as noted in bracketed comments in the final column, the tabulation excluded incidental or peripheral claims, such as Fourth Amendment search/seizure and Fifth Amendment self-incrimination and double jeopardy, and state administrative procedures act (APA).

68. The designation of this outcome is "claim category ruling." See *supra* note 47.

69. "Nominal" in this context refers to the scale being separate categories without any ranking, or ordinality. Thus, whether an outcome of P is better or higher than an outcome of U depends on the opposing perspectives of the parties but is not answerable from an objective, or neutral, perspective. The four-category scale was a slight modification of the corresponding version in Zirkel, *supra* note 4, at 880–81.

III. RESULTS

This part reports the findings in relation to the aforementioned[70] questions. The interpretation of these findings is reserved for Part IV (Discussion). The tabulation of the cases is in Appendix B.

In response to the first two questions, the total number of cases within the specified scope of the gap is one hundred eighty-five, representing forty states, the District of Columbia, and Puerto Rico. The leading states have been New York (n=27), Texas (n=14), and Virginia (n=11).[71] In comparison, the corresponding analysis for private IHEs found ninety-five cases, representing twenty-six states and the District of Columbia, with the leading ones being New York, Massachusetts, and Pennsylvania.[72]

As for question #3, these court decisions date back to the turn of the century, with the first one in 1891, but the constitutional cases not starting until the "landmark"[73] Fifth Circuit decision in *Dixon v. Alabama State Board of Education*.[74] In this case, which is analogous *a fortiori* to the seminal, turning-point role of *Tedeschi v. Wagner College*[75] in the private IHE case law,[76] the Fifth Circuit reversed the trial court to rule that students have a right, under the Fourteenth Amendment due process clause, to notice and a hearing prior to expulsion from a public IHE.[77] Arising prior to the Supreme Court precedents in the context of public education[78] and for the most part more generally,[79] this decision, which was on a 2-to-1 vote, relied primarily on two secondary sources—an A.L.R. annotation and a law review article.[80] Moreover, having decisively ruled on this threshold issue

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70. *See supra* text accompanying notes 45–49.

71. An additional twenty-seven jurisdictions each have at least three cases: Indiana - 9; Florida and Pennsylvania - 8 each; Alabama, Illinois, and Missouri - 7 each; Georgia, Louisiana, Ohio, and Tennessee - 6 each; California, Connecticut, and Michigan - 5 each; Arkansas, South Carolina, and Wisconsin - 4 each; Kentucky and Maryland - 3 each; and Colorado, Kansas, Massachusetts, Maine, Minnesota, North Carolina, Puerto Rico, Rhode Island, and West Virginia - 2 each.

72. Zirkel, *supra* note 4, at 881.

73. *See, e.g.*, Goss v. Lopez, 419 U.S. 565, 576 n.8 (1975); *see also* Jones v. State Bd. of Educ., 279 F. Supp. 190, 197 (M.D. Tenn. 1968) ("[t]he leading case").

74. 294 F.2d 150 (5th Cir. 1961).

75. 404 N.E.2d 1302 (N.Y. 1980).

76. Zirkel, *supra* note 4, at 886.

77. *Dixon*, 294 F.2d at 151, 158–59.

78. See *supra* notes 14–26 and accompanying text. For a similarly subsequent pair of employment cases within this context, see Perry v. Sindermann, 408 U.S. 593 (1972); Bd. of Regents of State Coll. v. Roth, 408 U.S. 564 (1972).

79. *See, e.g.*, Mathews v. Eldridge, 424 U.S. 319 (1976); Withrow v. Larkin, 421 U.S. 35 (1975); Goldberg v. Kelly, 397 U.S. 254 (1970).

80. *See Dixon*, 294 F.2d at 158–59 (citing 58 A.L.R.2d 903, 909 (1958) and Warren A. Seavey, *Dismissal of Students: "Due Process"*, 70 HARV. L. REV. 1406, 1407

of the applicability of Fourteenth Amendment procedural due process, the court limited its "guidance" on the nature of the notice and the hearing to not only the disciplinary sanction of expulsion but also the particular circumstances of the case.[81] As the table in Appendix B makes clear, the prior pertinent judicial rulings were, like those in the private IHE context, limited to the non-constitutional theories, whereas the line of procedural due process and other constitutional claim rulings that more fully addressed their contours within the context of disciplinary proceedings for public IHE students proceeded directly after *Dixon*.

Figure 3 portrays the longitudinal trend, by decade, from these early cases to December 21, 2014, when the tabulation was finalized.[82] The vertical dotted line demarcates the turning-point role of *Dixon*.[83] The grey segment of the bar representing the current decade, 2011–20, is a tentative straight-line projection based on continuation of the present rate for the remaining part of the decade.

(1957)).

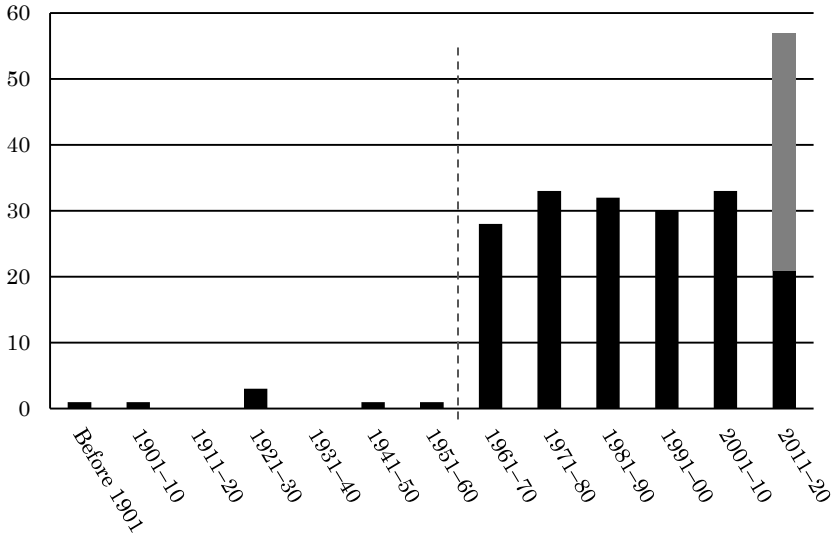
81. *Id.*

> The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. . . . In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection.

82. Due to the time lag in reporting of the decisions, some cases from the latter part of 2014 were not available as of the date of collection and tabulation.

83. As a result of *Dixon*, the starting point of each decade was one year after the corresponding starting points in the private IHE analysis. Zirkel, *supr*a note 4, at 882.

Figure 3. Frequency of Public IHE Nonacademic Sanction Cases per Decade



* Projected estimate extrapolated from 21 (no. as of 12/31/14) x 2.5 (based on 3.7 years after deduction for time lag of approx. 4 mos.) = 57. Dotted line represents *Dixon*.

Figure 3 shows that the totals for each decade were negligible until the 1960s and that the trend has been largely steady since then except for a possible uptick in the present, largely projected decade.[84]

In response to question #4, the distribution of the 185 cases were as follows for the selected factual features:

Student's Educational Level:[85]

84. The projection is very approximate, being based on little more than a third of the decade and an unsophisticated straight-line extrapolation. The specific numbers for each time interval are as follows: 1891–1900 - 1; 1901–10 - 1; 1911–20 - 0; 1921–30 - 3; 1931–40 - 0; 1941–50 - 1; 1951–60 - 1; 1961–70 - 28; 1971–80 - 33; 1981–90 - 32; 1991–2000 - 30; 2001–10 - 33; 2011–20 - 21 as of 12/31/2014, which was the end of data-collection period. The corresponding pattern for the private IHEs was largely parallel, except that the growth onset in the 1960s and 1970s was much more gradual. *Id.* at 882 n. 82.

85. Due to the relatively large number in the final, default category, the percentages here are based on the numbers in the other, more specific categories. The corresponding percentages for the private IHE cases were: undergraduate – 66%; law 9%; medical/dental – 6%; and other graduate – 11%. Zirkel, *supra* note 4, at 882–83.

Undergraduate[86] - 100 (67%)
Law - 12 (8%)
Medical/dental[87] - 22 (15%)
Other graduate- 16 (11%)
Mixed or unspecified[88] - 35 —

Types of Conduct:[89]
Academic dishonesty[90] - 37 (20%)
Sexual harassment or assault - 15 (8%)
Other disruption[91] - 64 (35%)
Political or religious incorrectness[92]- 4 (2%)
Miscellaneous other[93] - 65 (35%)

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86. This category broadly included community colleges (n=7 cases) and military, including merchant marine, academies at the federal or state level (n=14 cases).

87. This category included veterinary medicine (n=3 cases).

88. The majority of the cases in this category were based on groups of students who participated in mass protest demonstrations, such as "sit ins," without clear differentiation or limitation as to educational level.

89. This taxonomy from the previous Article was rather ad hoc, with only academic dishonesty being well-established as a subcategory in the related law review articles (although disputed as to whether it belongs in the academic or nonacademic domain). Moreover, the recitation of the facts, including the characterization of the charges, in the court opinions ranged widely in terms of specificity and terminology, making the entries only approximate. The corresponding percentages for the private IHEs was as follows: academic dishonesty – 34%; sexual harassment or assault – 16%; other disruption – 39%; political or religious correctness – 7%. Zirkel, *supra* note 4, at 883.

90. The leading examples in the category, similar to the private IHE cases, were cheating on an examination and plagiarism.

91. Due to its imprecision and its overlap with the other subcategories, especially assault and miscellaneous, this subcategory was a very broad catchall that ranged from clearly criminal to rather minor social behavior, such as an off-campus party. The most common examples were the various cases of mass protest demonstrations that predominated in the *Dixon* and immediate post-*Dixon* decades (i.e., 1961–70 and 1971–80).

92. This odd category consisted of these early cases: North v. Bd. of Trs. of Univ. of Ill., 27 N.E. 54 (Ill. 1891) (undergraduate who refused to attend mandatory chapel); Woods v. Simpson, 126 A.2d 882, 882 (Md. 1924) (female undergraduate whose behavior was "not readily submissive to rules and regulations"); Tanton v. McKenney, 197 N.W. 510, 511 (Mich. 1924) (female undergraduate who "smoked cigarettes on the public streets . . .[,] rode around the streets . . . in an automobile seated on the lap of a young man, and was guilty of other acts of indiscretion"); State *ex rel.* Ingersoll v. Clapp, 263 P. 433 (Mont. 1928) (female undergraduate who—with her husband, another student—served alcohol at parties in their home).

93. Unlike the private IHE cases, many of the public IHE court decisions did not provide specific information about the nature of the alleged misconduct.

Level of Sanction:[94]
Expulsion/dismissal - 94 (51%)
Diploma revocation- 2 (1%)
Suspension - 80 (43%)
Other, less than suspension[95] - 6 (3%)
Unspecified - 3 (2%)

Thus, the majority of the plaintiff-students were undergraduates, and their challenges were largely to expulsions or suspension for various forms of disruptive conduct or academic dishonesty.

To respond to question #5(a), the tabulation consisted of the general and contract theories that extended from the private IHE cases and the following constitutional categories: procedural due process, substantive due process, vagueness/overbreadth, expression, and equal protection.[96] As a result of some decisions adjudicating more than one claim category, the one hundred eighty-five cases yielded two hundred forty-one pertinent rulings. The distribution of these rulings in terms of the claim categories were as follows:[97]

Procedural due process- 154 (64%)
Expression- 22 (9%)
Vagueness/overbreadth- 17 (7%)
Equal protection- 14 (6%)
Substantive due process - 13 (5%)
Contract - 12 (5%)
General - 9 (4%)

Thus, procedural due process under the Fourteenth Amendment (or, for federal military IHEs, the Fifth Amendment) accounted for almost two-thirds of the rulings, with the other claim categories accounting for less

94. This taxonomy was largely sequential in level of severity, although it is arguable whether expulsion, or dismissal, is at a higher level than diploma revocation. For cases when the student received more than one sanction, the coding entry was for the highest of these subcategories. The corresponding percentages for the private IHE cases were as follows: expulsion/dismissal - 52%; diploma denial - 9%; suspension - 33%; other, less than suspension - 6%. Zirkel, *supra* note 4, at 884.

95. These six cases consisted of failing grade (n=3), probation (n=1), scholarship revocation (n=1); and various (n=1).

96. See *supra* note 67.

97. The corresponding frequency distribution for the private IHE cases was as follows: general - 35%; contract - 63%; law of association - 1%. Zirkel, *supra* note 4, at 888–89.

than one-tenth of the rulings and with the two categories that extend to private IHEs being at the lowest positions.

For question 5(b), the outcomes distribution for each of the claim categories—as presented in more detail in Appendix A—is summarized as follows in descending order of the rate of "U's," i.e., conclusive outcomes in favor of the public IHEs:

Substantive due process - 92%
Equal protection - 92%
Contract- 92%
General - 78%
Procedural due process - 75%
Expression - 70%
Vagueness/overbreadth - 68%

Thus, to the limited extent that the percentage conclusively in favor of the defendant summarizes these results,[98] the outcome's odds appear to be worst for students for the Constitution-based claim categories of substantive due process and equal protection but generally unfavorable across all of the claim categories.

For questions 6(a) and 6(b), Table 1 shows the outcomes distribution for the claim category rulings and, after conflation via the aforementioned[99] best-for-plaintiff basis, for the cases.[100]

98. The percentage of inconclusive rulings, as shown in Appendix A and explained in the Discussion section, plays an intervening role. For example, the alternative of summarizing the distribution in ascending order of the proportion of conclusive rulings in favor of the plaintiff-student is similar but not identical due to the varying percentages in the intermediate outcome category.

99. See *supra* note 49.

100. The conflation only required special treatment in one instance, which has a ruling in state court on one claim and in federal court for two other claims. Because the parties and the challenged discipline was the same, this pair of decisions was counted as one case. Flaim v. Med. Coll. of Ohio, 418 F.3d 629, 637 (6th Cir. 2005) (procedural and substantive due process rulings); No. 04AP-1131, 2005 WL 736626, at *1 (Ohio Ct. App. Mar. 31, 2005) (contract ruling).

Table 1. Overall Outcomes Distribution for Claim Categories and Cases

Unit of Analysis[101]	**P**	**(Inc)**	**U**
Claim category rulings (n=241)	36 (15%)	20 (8%)	185 (77%)
Case decisions (n=185)	32 (17%)	18 (10%)	135 (73%)

Thus, the overall outcomes distribution of the cases was slightly less skewed toward the defendant IHEs as compared with the outcomes distribution. For example, the overall proportion of U's was 73% for the cases in comparison to 77% for the claim category rulings.

Finally, for question 7, Table 2 compares the outcomes distributions of the public IHE cases with those of the private IHE cases from the previous Article.[102] In addition to the descriptive statistics summarizing the outcomes distribution for the public and private IHEs, Table 2 provides the inferential statistic of chi-square (χ^2) to determine whether the difference is significant.[103]

Table 2. Outcomes Distribution Comparison for Public and Private IHE Cases

	P	**(Inc)**	**U**	
Public IHE Cases (n=185)	32 (17%)	18 (10%)	135 (73%)	$\chi^2 = 2.87$ ns

101. For information about these categories and subcategories, see *supra* notes 85–95 and accompanying text.

102. Zirkel, *supra* note 4, at 902–03.

103. As explained in the previous Article, Zirkel, *supra* note 4, at 891 n.138, significance in the context of inferential statistics is a determination of whether the differences are due to chance, i.e., measurement or sampling error, or are generalizable to the population for the sample. Here, the population would be all of the case law within the boundaries of the analysis, rather than the ample but incomplete sample available via Westlaw. Moreover, as explained elsewhere, chi-square is a common statistical test for determining significance for this categorical type of data, with the prevailing standards of probability (p) being .05, or more rigorously, .01. *See, e.g.*, Perry A. Zirkel, *Case Law for Functional Behavior Assessments and Behavior Intervention Plans: An Empirical Analysis*, 35 SEATTLE U.L. REV. 175, 200 n.157 (citing MEREDITH D. GALL ET AL., EDUCATIONAL RESEARCH 325–27 (2007) and LORRIE R. GAY ET AL., EDUCATIONAL RESEARCH 329 (2009)).

Private IHE Cases (n=95)	10 (11%)	11 (6%)	74 (78%)	

ns = not statistically significant

Table 2 shows that the case outcomes did not differ significantly between the public and private IHEs.

Moreover, alternative bases of comparison yield the same not statistically significant results. More specifically, because distinctive multiple claim categories are more typical of public IHE cases,[104] Appendix B1 uses this alternative unit of analysis as the basis of the comparison, yielding a statistically nonsignificant difference.[105] In the opposite direction, because the purported distinction of the public IHE cases is the availability of Constitution-based claims,[106] Appendix B2 reanalyzes the public IHE decisions to the case outcomes, based on the best-for-plaintiff conflation procedure, in comparison to the private IHE case outcomes, which were based on distinctive theories without the availability of the Constitution. Again, the result was statistical nonsignificance.[107] Thus, with the various bases of analysis, there does not appear to be a generalizable difference between the outcomes of the public IHE and private IHE case law.[108] Figure 4 depicts this culminating finding.

Figure 4. The Purported Institutional Gap: Doctrinal Distinction Without Actual Difference

	Conduct	**Public IHE**	**Private IHE**
Procedural and Substantive Protections of Students	Nonacademic		

104. See *supra* note 49. More specifically, the 185 cases yielded 241 claim category rulings, amounting to a ratio of 1.3 rulings per case. In contrast, the private IHE cases yielded one distinctive ruling per case, based typically on broad and imprecise contract or general theories.

105. See *infra* Appendix B, Outcomes Comparison 1.

106. See *supra* note 3 and accompanying text.

107. See *infra* Appendix B, Outcomes Comparison 2.

108. As an incidental postscript, the results in relation to question 3 in terms of the turning-point role of *Dixon* (see *supra* note 73–83 and accompanying text) and the clustering of the mass protest cases from *Dixon* (1961) to 1980 (see *infra* Appendix C) suggested an outcomes comparison between these two periods, here designated as the *Dixon* era and the subsequent stage. The chi-square analysis reveals a statistically significant difference with a probability exceeding .05 between these two periods, with the outcomes tending to favor the defendant institutions even more strongly during the most recent stage. *See infra* Appendix B, Outcomes Comparison 3.

IV. DISCUSSION

The overall finding in response to question 1 of 185 public IHE cases, in comparison to ninety private IHE cases,[109] appears to be largely attributable to the relative sizes in student population. More specifically, the total number of students in public IHEs has been approximately two to three times the corresponding total for students in private IHEs for many years.[110] Although the relative comparisons are only approximate,[111] any difference in litigation rate appears to be in favor of private IHEs, because the overall ratio of public/private cases is lower than the ratio of public/private enrollments. An equivalent or higher rate of these cases for private IHEs runs counter to the stereotypic "gap" in legal protection for their students.

The findings in response to question 2 of a wider jurisdictional distribution for the public IHE cases and partially different leading states[112] are likely due to the national applicability of the Fourteenth Amendment due process and the other constitutional provisions, whereas the doctrinal development at the private institutions has more gradually germinated and spread from relatively few states, including New York, Massachusetts, and Pennsylvania. New York's generally high level of litigiousness concurrently contributes to its predominant position for both the public and private IHE cases.[113]

The findings, in response to question 3, of a similar, lengthy period but an earlier and clearer turning point for the public IHE cases—*Dixon* in 1961 as compared with *Tedeschi* in 1980[114]—seem to respectively reflect the gradual development of higher education law[115] and its confluence with

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109. *See supra* text accompanying notes 71–72.

110. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS (2013) (Table 303.25), *available at* http://nces.ed.gov/programs/digest/d13/tables/dt13_303.25.asp (ratios of public v. private IHO enrollment totals ranging from 3.0 in 1970 to 2.6 in 2012).

111. Examples of inexactitude are that 1) the enrollment totals depend on the defined scope for IHEs and students; 2) the time periods are not identical in length; and 3) the identified court decisions are only the tip of the iceberg of litigation.

112. See *supra* text accompanying notes 71–72 (40 states plus two other jurisdictions for the public IHE cases compared with 26 states plus one other jurisdiction for private IHE cases, with New York the leader for both public and private IHE cases but different states in second and third positions).

113. *See, e.g.*, Perry A. Zirkel, *Trends in Impartial Hearings Under the IDEA: A Follow-Up Analysis*, 303 ED. L. REP. 1, 4 (2014) (finding New York to be the leading jurisdiction both on an overall basis and on an enrollment-adjusted basis for administrative adjudications in the context of K–12 special education).

114. See *supra* text accompanying notes 73–76.

115. *See generally* WILLIAM A. KAPLIN & BARBARA A. LEE, THE LAW OF HIGHER EDUCATION (3d ed. 2013).

the civil rights movement in the 1960s.[116] As the *Dixon* opinion revealed, the relatively nascent recognition of procedural due process as a matter of constitutional protection[117] and elementary fair play[118] played a contributing role to the upward shift. The higher and wider precedential force of *Dixon*, as compared with *Tedeschi*, and its constitutional underpinning accounted for its more precipitous effect.[119]

The results in relation to question 4 concerning the distribution of the public IHE cases in terms of students' level of education, type of conduct, and category of sanction[120] largely align with expectations[121] but also parallel those of the private IHE cases.[122] Again, for comparison purposes, the overall trend is much more one of similarity than difference.

The results for question 5(a), which concerned the frequency distribution of the claim categories, showed that procedural due process was in first-place by far, and that the contract and so-called general theories were at the opposite, bottom positions.[123] The predominance of procedural due process is attributable to the general judicial inclination toward procedural issues and the specific judicial deference to substantive expertise in the context of education, as evidenced in the *Horowitz* Court's distinction of its academic issue from the disciplinary issue in *Goss v. Lopez*.[124] Although at the obverse end in terms of frequency, the relatively few public IHE cases that relied on the general or contract theory that indistinguishably applies to private IHEs showed the same general deference to institutional authorities.[125]

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116. *See, e.g.*, Peter F. Lake, *The Rise of Duty and the Fall of* In Loco Parentis *and Other Protective Tort Doctrines in Higher Education Law*, 64 MO. L. REV. 1, 9 (1999) (concluding, under the heading of the "civil rights movement," that "[t]he 1961 decision of the Fifth Circuit in *Dixon v. Alabama* marked the beginning of the end for *in loco parentis* as an immunity insularizing the public (and later, indirectly, the private) college.").

117. Dixon v. Alabama, 294 F.2d 150, 156 (citing, e.g., Slochower v. Bd. of Educ., 350 U.S. 551 (1956)).

118. *Id.* at 158 (citing Warren A. Seavey, *Dismissal of Students: "Due Process"*, 70 HARV. L. REV. 1406, 1407 (1957)).

119. See *supra* notes 82–84 and accompanying text.

120. See *supra* notes 85–95 and accompanying text.

121. As observed in the earlier Article, the slight skew towards graduate student cases, such as law and medicine, fits with the higher stakes in terms of past investment and future income; the prevalence of issues of student safety, including mass disruption and sexual harassment, and academic integrity align with modern societal concerns; and the predominance of expulsion cases correlates with the high-stakes interest of the plaintiff-student. Zirkel, *supra* note 4, at 897–98.

122. See *supra* notes 85, 89, and 94.

123. See *supra* text accompanying note 97.

124. Bd. of Curators of Univ. of Mo. v. Horowitz, 435 U.S. 78, 89–90 (1978).

125. *See, e.g.*, Cornette v. Aldridge, 408 S.W.2d 935, 942 (Tex. Ct. App. 1966) ("It

The results for question 5(b) revealed an encompassing outcomes skew strongly in favor of the public IHEs and, within it, the expected and interrelated judicial disinclination in applying substantive, as compared with procedural, due process.[126] The corresponding due process distinction within the academic analog is between the procedural focus of *Horowitz* and the substantive focus of *Ewing*.[127] The claim category outcomes also show that the indistinctly applicable (i.e., extending across private and public IHEs) contract and general theories fit within the range set by procedural and substantive due process; yet, the two bases most remote from the conduct-discipline issue—expression[128] and vagueness/overbreadth[129]—were the least favorable to the defendant IHEs.[130]

Upon examination overall for both units of analysis, per question 6, the skew in favor of public IHEs was slightly less pronounced upon conflation from claim category rulings to case decisions.[131] As Table 1 revealed, the aforementioned[132] spaghetti strategy was relatively limited in its extent[133] and effect.[134]

Closer examination of the conflated outcomes suggests successively corrective conclusions. First, in the plaintiff's direction, the overall proportion

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is difficult to imagine a period in the life of our nation when the courts need to give greater support to public school authorities concerning their discretion in dealing with students than now, so long as such discretion is not exercised in an unreasonable, arbitrary and capricious manner.").

126. See *supra* text accompanying note 98.

127. See *supra* notes 14–26 and accompanying text.

128. Although the dividing line is not clear-cut and the analysis is nuanced at the overlap, general expression is subject to First Amendment protection, and conduct is not. *See, e.g.*, Wisconsin v. Mitchell, 508 U.S. 476, 487 (1993).

129. To the partial extent that the basis of vagueness/overbreadth is First Amendment expression, the same distinction applies. Moreover, in some of these cases, the challenge was to a state law rather than the IHE's own rules or charges. *See, e.g.*, Undergraduate Student Ass'n v. Peltason, 367 F. Supp. 1055 (N.D. Ill. 1973); Reliford v. Univ. of Akron, 610 N.E.2d 521(Ohio Ct. App. 1991).

130. Nevertheless, more than two thirds of the claim rulings for each of these two categories were conclusively in favor of the public IHEs. Moreover, as Appendix A shows, their relative rankings on the obverse side, which is the proportion of rulings, for each of these two categories, is reversed due to the relatively high proportion of inconclusive rulings for expression (14%).

131. See *supra* text accompanying note 99.

132. See *supra* note 49.

133. The ratio of claim category rulings to cases was 1.3, which was relatively limited compared, for instance, to the 7.5 ratio in Lyons & Zirkel, *supra* note 44, at 340, and the 4.5 ratio in Bon & Zirkel, *supra* note 44, at 40.

134. Due in part to its limited extent and in part due to the overriding trend in favor of the defendant institutions, the proportion conclusively in favor of students and the proportion of inconclusive outcomes each increased only two percentage points. *See supra* Table 1.

of inconclusive case outcomes (10%)[135] may well have had a leveraging effect for the students in terms of potential settlement.[136] Even if all of these cases were to settle in favor of the plaintiffs to the level of relief they would have obtained via a conclusive win in court, the odds in favor of the defendant public IHEs would still be 3:1. Second, given the unlikelihood of this full settlement assumption and the similarly potential converse counting of excluded cases[137] and rulings,[138] the overall 4:1 ratio in the private IHE sector[139] is a more objectively reasonable figure.[140] Third, as the Comments column of Appendix C reveals, the victory for the limited proportion of cases where the court ruled conclusively in favor of the plaintiff-student was often far less than full.[141] More specifically, the remedy of compensatory damages was the partial exception[142] rather than the rule.[143]

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135. Here, as the Outcome column of Appendix C shows, a higher proportion of the inconclusive rulings were in favor of the student than in the private IHE cases. Zirkel, *supra* note 4, at 890–91.

136. For a comparable limited ratio and increased settlement effect, see Paige & Zirkel, *supra* note 44, at 7 n. 45 (citing empirical support in Kathryn Moss et al., *Prevalence and Outcomes of ADA Employment Discrimination Claims in the Federal Courts*, 29 MENTAL & PHYSICAL DISABILITY L. REP. 303, 306 (2005); Laura Beth Nielsen et al., *Individual Justice or Collective Legal Mobilization?: Employment Discrimination Litigation in the Post–Civil Rights United States*, 7 J. EMPIRICAL LEGAL STUD. 175, 184–87 (2010)).

137. The arguably includable cases, which the tabulation excluded, were those that the court decided on threshold grounds in favor of the defendant public IHEs, such as lack of the requisite liberty or property interest or solely based on the Eleventh Amendment defense. *See supra* notes 60–63 and accompanying text.

138. As the Comments column in Appendix C shows, the analysis excluded various peripheral claim rulings, which were almost universally unsuccessful for the plaintiff-students.

139. Zirkel, *supra* note 4, at 890.

140. The exclusion of the state APA cases (*supra* note 56) served only as a limited offset, because—again, as the Comments column in Appendix C noted—several of the Florida cases were included even though they were marginal to the extent that their brief opinions did not sufficiently clarify whether the procedural due process rulings were based on the Constitution or the state APA. *See, e.g.*, Heiken v. Univ. of Cent. Fla., 995 So. 2d 1145 (Fla. Dist. Ct. App. 2008); Abramson v. Fla. Int'l Univ., 704 So. 2d 720 (Fla. Dist. Ct. App. 1998).

141. Partially offsetting this conclusion, the availability of attorneys' fees for prevailing plaintiffs in the Constitution-based cases provides an advantage in comparison to the private IHE cases, thus potentially contributing to the plaintiffs' leverage for settlements, the frequency of their cases, and their fiscal costs/benefits.

142. Alcorn v. Vaksman, 877 S.W.2d 390 (Tex. Ct. App. 1994) (awarding substantially reduced damages); *cf.* Castle v. Marquardt, 632 F. Supp. 2d 1317, 1341 (N.D. Ga. 2009) (preserved claim for further proceedings including, if verdict for plaintiff-student, possibility of actual or nominal damages).

143. For an explicit denial, see Smith v. Denton, 895 S.W.2d 550 (Ark. 1995). In most of the other cases, the absence of any such award in the court opinions that were conclusively in favor of the plaintiff-student seemed to suggest that the remedy was

The lack of such compensatory relief was likely largely attributable to the predominance of procedural due process among the cases conclusively in favor of the plaintiff-student.[144] In these cases, with very limited exceptions,[145] the typical relief was merely a remand for a re-hearing with constitutionally proper related procedures, which obviously could result in an outcome adverse to the plaintiff-student.[146] As the appellate court in one of these cases observed upon modifying the injunctive relief that the trial court had ordered, "[i]n general . . . the remedy for a denial of due process is due process."[147] Moreover as the same court also illustrated, the enduring doctrine of deference to educational authorities, also contributed to the reduced relief.[148]

The answer to the final question is probably the most significant finding of this follow-up analysis—namely, the outcomes distribution of the public IHE cases is, as a generalizable matter, not different from the outcomes distribution of the private IHE cases whether the comparison is on an overall

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limited to declaratory or injunctive relief.

144. As a result of the combination of their first-place frequency (*supra* text accompanying note 97) and their approximately second-place success rate (*infra* Appendix A), procedural due process accounted for more than two thirds of the cases decided conclusively in favor of the plaintiff-students. Additionally, the trend of conditioning reinstatement on a new hearing was not limited to procedural due process cases. *See, e.g.*, Hammond v. S.C. State Coll., 272 F. Supp. 947 (D.S.C. 1967) (clarifying in First Amendment expression case that nullification of the suspensions was subject to possible new disciplinary proceedings); *cf.* Papish v. Bd. of Curators of Univ. of Mo., 410 U.S. 667, 671 (1973) (ordering, in another First Amendment expression case, restoration of credits and reinstatement "unless [this plaintiff graduate student] is barred from reinstatement for valid academic reasons").

145. *See, e.g.*, Machosky v. State Univ. of N.Y. at Oswego, 546 N.Y.S.2d 513 (Sup. Ct. 1989) (ordering reinstatement without contingency of new hearing due to extremely long delay); Marin v. Univ. of Puerto Rico, 377 F. Supp. 613 (D.P.R. 1974) (ordering reinstatement and expungement without explicit or implicit contingency but based on various unconstitutional violations on the face of the voided IHE policies rather than procedural due process along).

146. As the Comments column in Appendix C also reveals, the relief of reinstatement not only was uncommon but also often contingent upon the outcome of the rehearing.

147. Univ. of Tex. Med. Sch. at Houston v. Than, 901 S.W.2d 926, 933 (Tex. 1995).

148. *Id.* More specifically, in this case, the court reduced the trial court's injunctive relief and made it contingent upon the outcome of the new hearing, reasoning that the trial court's order represented "unwarranted judicial interference with the educational process." *Id.* at 934. Although this case concerned academic dishonesty, thus arguably overlapping with academic issues, the public IHE case law more generally reflected the same tradition of deference to educational authorities that was evident in not only *Horowitz-Ewing* (supra note 19 and text accompanying note 26), but also the private sector IHE case law (Zirkel, *supra* note 4, at 900).

basis[149] or—arguably the most appropriate basis[150]—when limited to the respectively distinctive theories.[151] For both sectors, the outcomes odds favor the defendant institutions at an approximate 4:1 ratio.[152] Thus, as Smith had concluded based on a much more limited and non-empirical basis, the difference between these institutions is "illusory," being not practically—as well as statistically—significant.[153] Instead, as Figure 4 symbolizes, rather than the gap-like black-and-white distinction between public and private IHEs, the level of protection for students in non-academic sanction cases tends to be the same light gray.[154]

Also, similar to the private sector analysis,[155] the likely explanations for the pro-defendant outcomes trend in the public IHE cases is a complementary combination of the persistent deference doctrine for courts vis-à-vis academia and the likely[156] improved policies and procedures in higher education for student disciplinary cases. Additionally and unlike the private IHE analysis, the individual and institutional defendants' respective defenses of qualified immunity[157] and Eleventh Amendment immunity,[158] which apply to constitutional claims, played a limited contributing role.[159]

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149. *See supra* Table 2 (cases) and *infra* Appendix B, Comparison 1 (rulings).

150. Just as both the private and public IHE analyses excluded claims equally applicable to both types of institutions, such as those premised on federal or state anti-discrimination laws, it may be argued that the contract and "general" theories that were characteristic of the private IHEs cases should not be included in this follow-up analysis.

151. *See infra* Appendix B, Comparison 2.

152. *See supra* notes 138–41 and accompanying text.

153. Smith, *supra* note 52, at 451–52.

154. This follow-up analysis serves to confirm the hypothesis in the earlier Article. See *supr*a Zirkel, note 4, at 893–94 ("it may be that the coloration of the corresponding public IHE side is a rather weak and indistinguishable shade of gray rather than a potent black protection for the plaintiff students."); *see also id*. at 901 ("It may be that students' litigative cudgels [at public IHEs] are similarly soft. . .").

155. *Id.* at 896.

156. Given the relatively clearly settled precedents in the post-*Dixon* era, there is solid reason to expect institutional improvement. The ethical mission of IHEs adds to the compliance incentive for such improvement. *See, e.g.*, Gary Pavela & Gregory Pavela, *The Ethical and Educational Imperative of Due Process*, 38 J.C. & U.L. 567, 569 (2012). However, as the previous Article pointed out, the empirical evidence is insufficient to determine the extent of this improvement. Zirkel, *supra* note 4, at 896 n.163.

157. *See, e.g.*, Clarke v. Univ. of N. Texas, 993 F.2d 1544, 1544 n.2 (5th Cir. 1993); Hall v. Med. Coll. of Ohio at Toledo, 742 F.2d 299, 307–10 (6th Cir. 1984).

158. *See, e.g.*, Flaim v. Med. Coll. of Ohio, 418 F.3d 629, 637 (6th Cir. 2005).

159. Inspection of Appendix C reveals that these defenses were infrequent, partially attributable to the exclusion of cases based solely on the Eleventh Amendment. See *supra* note 63 and accompanying text.

Finally, the incidental finding,[160] which the original seven questions did not directly address, was that the outcomes after *Dixon* were significantly different between the immediately subsequent two decades and—marked only approximately by the ten-year units and the clustering of mass demonstrations[161]—the more recent period extending from 1981 to the present.[162] This increased judicial skew toward the defendant educational institutions reflects the broader return of the proverbial pendulum after the activist era of the 1960s and 1970s.[163]

In conclusion, the results of this empirical study, in tandem with those of the earlier corresponding analysis, provide a firmer foundation and direction for scholars as well as practitioners and policymakers. The overall message is to avoid seductive stereotypes, such as the image of students at public IHEs being equipped, unlike their counterparts at private IHEs, a "sharp sword of constitutional safeguards" for judicial challenges to institutional sanctions.[164]

For scholars, these findings suggest the need for wider and deeper research with both the traditional legal approach and the complementary empirical models[165] focusing on the case law concerning student sanctions at private and public IHEs.[166] For example, what have been the frequency and outcomes trends for the corresponding case law concerning academic sanctions, and do these trends differ between the public and private IHEs and from the non-academic foci of this pair of analyses?

For practitioners and policymakers, these findings underscore the need to formulate and implement procedures and standards that fairly balance individual and collective interests. The rather basic procedural and substantive requirements that emerge from case law for both public IHEs under the Constitution,[167] and the private IHEs under other theories of funda-

160. See *supra* note 108.

161. This rough factual dividing line is derived from the Sanctions column in Appendix C.

162. See *infra* Appendix B, Comparison 3.

163. *See, e.g.*, Perry A. Zirkel, *National Trends in Education Litigation: Supreme Court Decisions Concerning Students*, 27 J.L. & EDUC. 235, 242 (1998) (finding in the 1980s, with the exception of the religion cases, "the pendulum-shift in the Supreme Court's decisions concerning k-12 students under the flexible provisions of the Constitution, seemingly overriding the specific factual variations of each such case.").

164. See *supra* note 3 and accompanying text.

165. Beyond the broad empirical categories of quantitative and qualitative methods, the emergence of "a more complex, multi-factored picture" will require, as the earlier Article recommended, "a sophisticated multi-method approach." Zirkel, *supra* note 4, at 897 and 897 n.165.

166. See *supra* Figures 1 and 2.

167. Although not the purpose of this analysis, the cases in Appendix C may serve as the basis for a comprehensive and current distillation of the specific safeguards that

mental fairness, provide ample latitude for providing students with a darker shade of safeguarding gray, as an ethical and educational matter.

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the courts have required, thus updating the 1987 contribution of Swem, *supra* note 29.

APPENDIX A: OUTCOMES DISTRIBUTION OF CLAIM CATEGORIES

Category[168]	**Sub-total**	**P**	**(Inc)**	**U**
General	n=9	11%	11%	78%
Contract	n=12	0%	8%	92%
Procedural due process	n=15	17%	8%	75%
Substantive due process	n=13	0%	8%	92%
Vagueness/overbreadth+[169]	n=17	26%	6%	68%
Expression	n=22	16%	14%	70%
Equal protection	n=14	8%	0%	92%
TOTAL	241	15%	8%	77%

APPENDIX B: SELECTED OTHER STATISTICAL COMPARISONS

1. Outcomes Comparison Between Public IHE Claim Category Rulings and Private IHE Cases

	P	**Inc**	**U**	
Public IHEs (n=241 rulings)	36 (15%)	20 (8%)	185 (77%)	$\chi^2 = 1.77$ ns
Private IHEs (n=95 cases)	10 (11%)	11 (6%)	74 (78%)	

ns = not statistically significant

2. Outcomes Comparison Between Constitutional Cases (Public IHE) and Non-Constitutional (Private IHE) Cases

168. For information about these categories and subcategories, see *supra* notes 85–95 and accompanying text.

169. This category also included two cases that contained adjudicated claims of irrebuttable presumption.

	P	Inc	U	
Public IHEs (n=171 cases)	31 (18%)	16 (9%)	124 (73%)	$\chi^2 = 2.51$ ns
Private IHEs (n=95 cases)	10 (11%)	11 (6%)	74 (78%)	

ns = not statistically significant

3. Outcomes Comparison Between *Dixon* Era and Subsequent Stage's Public IHE Cases

	P	Inc	U	
Dixon (1961) thru 1980 (n=63 cases)	15 (24%)	11 (17%)	37 (59%)	$\chi^2 = 7.77$*
1981 thru 2014 (n=115 cases)	12 (10%)	12 (10%)	91 (79%)	

* statistically significant at the .05 level[170]

APPENDIX C: TABULATION OF COURT DECISIONS WITHIN SPECIFIED SCOPE

Case Name	Citation	State	Sanction	Theory	Out-come	Comments

170. *See* supra note 103.

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
North v. Bd. of Trs. of Univ. of Ill.	27 N.E. 54 (Ill. 1891)	Ill.	expulsion of under-grad for refusing to attend mandatory chapel	general?	U	marginal case – un-clear pro-tection for student
Gleason v. Univ. of Mi-ami	116 N.W. 650 (Minn. 1908)	Minn.	dismissal of law stu-dent for deficiency and insub-ordination	general	(P)	complete deference (as corp.) but subject to manda-mus – re-manded here for show cause
Woods v. Simp-son	126 A. 882 (Md. 1924)	Md.	dismissal of female undergrad for being "not readi-ly submis-sive"	general?	U	marginal case – non-interference unless ex-traordinary circum-stance. - cit-ing *Sullivan*
Tanton v. McKen ney	197 N.W. 510 (Mich. 1924)	Mich.	expulsion of under-grad for indiscrete female be-havior	general	U	not arb. & cap. - defer-ence
State *ex rel.* Inger-soll v. Clapp	263 P. 433 (Mont. 1928)	Mont.	expulsion of married undergrad for serving alcohol in her home	contract	U	not arb. & cap. – rely-ing on *Woods* inter alia – re-jecting *Gleason*, *Hill,* and *Anthony*
State *ex rel.* Sher-man v. Hyman	171 S.W.2d 822 (Tenn. 1942)	Tenn.	dismissal of medical students for cheat-ing (selling exams)	contract	U	fair hearing in IHE con-text. – deference - citing *Clapp* and private IHE deci-sion

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
People *ex rel.* Bluett v. Bd. of Trs. of Univ. of Ill.	134 N.E.2d 635 (Ill. Ct. App. 1956)	Ind.	expulsion of medical student for cheating	general	U	rejecting *Hill* and *Anthony* – no rt. to formal hearing
Dixon v. Alabama State Bd. of Educ.	**294 F.2d 150 (5th Cir. 1961)**	Ala.	expulsion of black students for off-campus demon-stration	14th Am. PDP	(P)	specifica-tion of no-tice and requisite hearing (distin-guishing private IHE cases) – **landmark decision**
Knight v. State Bd. of Educ.	200 F. Supp. 174 (M.D. Tenn. 1961)	Tenn.	suspension of black students for campus demon-stration	14th Am. PDP	P	reinstate-ment sub-ject to no-tice and hearing - *Dixon*
Due v. Fla. A&M Univ.	233 F. Supp. 396 (N.D. Fla. 1963)	Fla.	suspension of 2 under-grads for contempt conviction	14th Am. PDP	U	met *Dixon* touchstone of fairness
Cor-nette v. Al-dridge	408 S.W.2d 935 (Tex. Ct. App. 1966)	Tex.	indefinite suspension of under-grad for repeated reckless driving	general	U	not arb. & cap. - defer-ence (citing *Sherman*)
Wasson v. Trow-Trow-bridge	382 F.2d 807 (2d Cir. 1967)	N.Y.	expulsion of under-grad US-MMA ca-det for leading protest	5th Am. PDP	(P)	incomplete as well as inconclusive victory

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Ham-mond v. S.C. State Coll.	272 F. Supp. 947 (D.S.C. 1967)	S.C.	suspension of 3 under-grads for campus protest	1st Am. Exp.	P	nullification but subject to possible new disci-plinary pro-ceedings
Gold-berg v. Regents of Univ. of Cal.	57 Cal. Rptr. 463 (Ct. App. 1967)	Cal.	expulsion of students for campus demon-stration	14th Am. PDP	U	met *Dixon* standards
				1st Am. Exp.	U	
Buttney v. Smi-ley	281 F. Supp. 280 (D. Colo. 1968)	Colo.	suspension of less than 1 sem. of students for campus demon-strations	14th Am. PDP	U	
				1st Am. Exp.	U	
				14th Am. EP	U	not racial discrimina-tion
Zanders v. La. St. Bd. of Educ.	281 F. Supp. 747 (W.D. La. 1968)	La.	expulsion of black students for campus demon-stration	14th Am. PDP	U	
				1st Am. Exp.	P/U	reinstate-ment of 8 of 26
Barker v. Hard-way	283 F. Supp. 228 (S.D. W.Va.), *aff'd mem*., 399 F.2d 638 (4th Cir. 1968)	W.Va.	suspension of students for campus demon-strations	14th Am. PDP	U	
Moore v. Stu-dent Affairs Comm. of Troy State Univ.	284 F. Supp. 725 (M.D. Ala. 1968)	Ala.	indefinite suspension of under-grad for drug pos-session in dorm	14th Am. PDP	U	met *Dixon* [excluded 4th Am. claim re search of dorm room – U]

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Scoggin v. Lincoln Univ.	291 F. Supp. 161 (W.D. Mo. 1968)	Mo.	1-yr. suspension of students for campus demonstration	14th Am. PDP	P	nullification but subject to possible new disciplinary proceeding (w. proper PDP)
				1st Am. Exp.	U	
Marzette v. McPhee	294 F. Supp. 562 (W.D. Wis. 1968)	Wis.	suspension of black students for campus demonstration	14th Am. PDP	P	reinstatement contingent upon hearing
Stricklin v. Regents of Univ. of Wis.	297 F. Supp. 416 (W.D. Wis. 1969)	Wis.	suspension of 3 students for campus disorder	14th Am. PDP	P	subject to interim suspension with preliminary notice and subsequent more formal proceedings
Furutani v. Ewigleben	297 F. Supp. 1163 (N.D. Cal. 1969)	Cal.	expulsion of undergrad for campus demonstration	14th Am. PDP	U	
Wright v. Tex. S. Univ.	392 F.2d 728 (5th Cir. 1968)	Tex.	expulsion of students for campus disruptions	14th Am. PDP	U	adequate notice and hearing (subsuming arb. & cap. std.)
French v. Bashful	303 F. Supp. 1333 (E.D. La. 1969)	La.	suspensi-si-on/expulsion of 10 students for campus disturbance	14th Am. PDP	(P)	new hearing w. rt. to counsel
				14th Am. vagueness	U	
Jones v. State Bd. of Educ.	407 F.2d 834 (6th Cir. 1969)	Tenn.	indefinite suspension of students for campus	14th Am. PDP	U	
				14th Am. EP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
			unrest	1st Am. Exp.	U	
Scott v. Ala. State Bd. of Educ.	300 F. Supp. 164 (S.D. Ala. 1969)	Ala.	expulsion and indefinite suspension of black students for campus demonstration	14th Am. PDP	U	except 3 of 6 reinstated subject to proper proceedings
				1st Am. Exp.	U	
Esteban v. Cent. Mo. State Univ.	415 F.2d 1077 (8th Cir. 1969)	Mo.	suspension of 2 undergrads for campus demonstration	14th Am. PDP	P	relief of new hearing
Soglin v. Kauffman	418 F.2d 163 (7th Cir. 1969)	Wis.	expulsion of students for campus protest (SDS)	14th Am. vagueness/1st Am. overbreadth	P	"misconduct"
Buck v. Carter	308 F. Supp. 1246 (W.D. Wis. 1970)	Wis.	interim suspension of undergrads for raiding another fraternity	14th Am. PDP	U	
Norton v. Discipline Comm.	419 F.2d 195 (6th Cir. 1969)	Tenn.	suspension of undergrads for inflammatory dissemination	14th Am. PDP	U	
				1st Am. Exp.	U	
Keane v. Rodgers	316 F. Supp. 217 (D. Me. 1970)	Me.	expulsion of undergrad (cadet) for alcohol/ drugs in his car	14th Am. PDP	U	[excluded unsuccessful 4th Am. claim for searching his car]
Jones v. Snead	431 F.2d 1115 (8th Cir. 1970)	Mo.	suspension of students demonstration	14th Am. PDP	U	affirmed denial of preliminary injunction – short opinion

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Perl-man v. Shasta Joint Jr. Coll. Dist. Bd. of Trs.	88 Cal. Rptr. 563 (Ct. App. 1970)	Cal.	suspension and expul-sion of undergrad for insub-ordination	14th Am. PDP	P/U	upheld sus-pension but, due to bias, not expul-sion - relief was ex-pungement
Speake v. Gran-Gran-tham	317 F. Supp. 1253 (S.D. Miss. 1970), *aff'd mem.*, 440 F. 2d 1351 (5th Cir. 1971)	Miss.	suspension of 4 stu-dents for disruptive leafleting	14th Am. vague-ness/1st Am. over-breadth	U	after suc-cessful TRO [excluded 8th Am. C&U claim]
				14th Am. EP	U	
				1st Am. Exp.	U	
Stewart v. Reng	321 F. Supp. 618 (E.D. Ark. 1970)	Ark.	suspension of under-grad for alleged drug use	14th Am. PDP	P	temporary injunction subject to new hear-ing
Sword v. Fox	446 F.2d 1091 (4th Cir. 1971)	Va.	suspension of students for sit in	14th Am. vague-ness/1st Am. over-breadth	U	
Bistrick v. Univ. of S.C.	324 F. Supp. 942 (D.S.C.19 71)	S.C.	expulsion of under-grad for participa-tion in campus demon-stration	14th Am. PDP	U	
				1st Am. Exp.	U	
Consejo Gen. de Estu-diantes v. Univ. of P.R.	325 F. Supp. 453 (D.P.R. 1971)	P.R.	interim suspension of students for campus demon-stration	14th Am. PDP	U	marginal case – in-substantial constitu-tional claim

Case Name	Citation	State	Sanction	Theory	Outcome	Comments
Gardendenshire v. Chalmers	326 F. Supp. 1200 (D. Kan. 1971)	Kan.	suspension of undergrad for carrying a firearm	14th Am. PDP	P	reinstatement contingent upon hearing
Andersen v. Regents of Univ. of Cal.	99 Cal. Rptr. 531 (Ct. App. 1972)	Cal.	expulsion of undergrad for academic dishonesty	14th Am. PDP	U	
Ctr. for Participant Educ. v. Marshall	337 F. Supp. 126 (N.D. Fla. 1972)	Fla.	suspension of student for insubordination in wake of protest	14th Am. vagueness/1st Am. overbreadth	U	[excluded unsuccessful 5th Am. double jeopardy claim]
				1st Am. Exp.	U	
				14th Am. EP	U	
Herman v. Univ. of S.C.	457 F.2d 902 (4th Cir. 1972)	S.C.	suspension of student for sit in	14th Am. PDP	U	
Lowery v. Adams	344 F. Supp. 446 (W.D. Ky. 1972)	Ky.	suspensision/expulsion of black undergrads for disruptive demonstration	14th Am. PDP	U	
				14th Am. vagueness/1st Am. overbreadth	U	
Winnick v. Manning	460 F.2d 545 (2d Cir. 1972)	Conn.	2-sem. suspension of student for campus protest	14th Am. PDP	U	
Paine v. Bd. of Regents of Univ. of Tex. Sys.	355 F. Supp. 199 (W.D. Tex. 1972),	Tex.	automatic 2-yr. suspension of student for drug conviction	14th Am. DP irrebuttable presumption	P	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
	aff'd mem., 474 F.2d 1397 (5th Cir. 1973)			14th Am. EP	P	
Sill v. Penn. State Univ.	462 F.2d 463 (3d Cir. 1972)	Pa.	suspension of 36 undergrads and 3 grads for campus protest	14th Am. PDP	U	[also sufficient evidence]
				14th Am. vagueness	U	
Hagopian v. Knowlton	470 F.2d 201 (2d Cir. 1972)	N.Y.	expulsion of West Point cadet for accumulated demerits	5th Am. PDP	(P)	limited success in terms of required hearing (and subsequently overruled re prelim. injunctive relief)[171]
Brookins v. Bonnell	362 F. Supp. 379 (E.D. Pa. 1973)	Pa.	expulsion of nursing student for purported academic issues	14th Am. PDP	P	conditional upon due process hearing – disciplinary > academic
Papish v. Bd. of Curators of Univ. of Mo.	410 U.S. 667 (1973)	Mo.	expulsion of grad student for distributing underground newspaper w. indecent cartoons	1st Am. Exp.	P	restoration of credits and reinstatement unless valid academic reason
Blanton v. State Univ. of N.Y.	489 F.2d 377 (2d Cir. 1973)	N.Y.	suspension of 5 students for sleep in	14th Am. PDP	U	
				1st Am. Exp.	U	

171. Philips v. Marsh, 687 F.2d 620, 624 (2d Cir. 1982).

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Kister v. Ohio Bd. of Regents	365 F. Supp. 27 (S.D. Ohio 1973)	Ohio	suspensi-si-on/expulsion of 9 students for criminal conviction in campus protest	14th Am. PDP	U	[excluded various other claims that appeared to be entirely peripheral]
Undergraduate Student Ass'n v. Peltason	367 F. Supp. 1055 (N.D. Ill. 1973)	Ill.	revocation of scholarships of students for demonstration	14th Am. vagueness/1st Am. overbreadth	P	
Brown v. Knowlton	370 F. Supp. 1119 (S.D.N.Y. 1974)	N.Y.	dismissal of West Point cadet for excess demerits	5th Am. PDP	U	citing *Hagopian*
McDonald v. Bd. of Trs. of Univ. of Ill.	375 F. Supp. 95 (N.D. Ill.), *aff'd mem.*, 503 F.2d 105 (7th Cir. 1974)	Ill.	dismissal of 3 medical students for cheating	14th Am. PDP	U	
Marin v. Univ. of Puerto Rico	377 F. Supp. 613 (D.P.R. 1974)	P.R.	summary suspension > 1 yr. of students for campus demonstration	14th Am. PDP	P	relief of reinstatement and expungement based on various violations not limited to PDP
				14th Am. vagueness/1st Am. overbreadth	P/D	mixed results among the challenged rules

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Haynes v. Dallas Cnty. Jr. Coll. Dist.	386 F. Supp. 208 (N.D. Tex. 1974)	Tex.	suspensi-si-on/expulsion of undergrad for off-campus drug use	14th Am. DP irrebuttable presumpsumption	U	distinguished *Paine* (automatic)
Garshman v. Penn. State Univ.	395 F. Supp. 912 (M.D. Pa. 1975)	Pa.	dismissal of medical student for academic dishonesty	14th Am. PDP	U	
Edwards v. Bd. of Regents of Nw. Mo. State Univ.	397 F. Supp.822 (W.D. Mo. 1975)	Mo.	suspension of undergrad for repeated disruptive conduct	14th Am. PDP	U	marginal case - not reaching constitutional proportions
Smyth v. Lubbers	398 F. Supp. 777 (W.D. Mich. 1975)	Mich.	possible suspensi-si-on/expulsion of 2 undergrads for drug possession	14th Am. PDP	P	narrowly limited substantial evidence standard [also borderline case because potential and largely 4th Am.]
Birdwell v. Schlesinger	403 F. Supp. 710 (D. Colo. 1975)	Colo.	disenrollment of USAFA cadet for having a car and apartment and lying about them	5th Am. PDP	U	[excluded unsuccessful self-incrimination claim]
				5th Am. SDP	U	
Nzuve v. Castleton State Coll.	335 A.2d 321 (Vt. 1975)	Vt.	expulsion of undergrad for criminal charges	14th Am. PDP	U	[excluded unsuccessful self-incrimination claim]

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Jenkins v. La. State Bd. of Educ.	506 F.2d 992 (5th Cir. 1975)	La.	suspension of 6 under-grads for boycott	14th Am. vague-ness/1st Am. over-breadth	U	
An-drews v. Knowl-ton	509 F.2d 898 (2d Cir. 1975)	N.Y.	dismissal of 2 West Point ca-dets for alcohol and cheat-ing respec-tively	5th Am. PDP	U	citing *Was-son* and *Hagopian*
Morale v. Gri-gel	422 F. Supp. 988 (D.N.H. 1976)	N.H.	suspension of under-grad for drugs	14th Am. PDP	U	[excluded unsuccess-ful 4th Am. claim]
De Prima v. Co-lumbia-Greene Cmty. Coll.	392 N.Y.S.2d 348 (Sup. Ct. Albany Cnty. 1977)	N.Y.	suspension of under-grad for disorderly conduct	14th Am. PDP	P	relief of new hearing
Escobar v. State Univ. of N.Y. at Old West-bury	427 F. Supp. 850 (E.D.N.Y. 1977)	N.Y.	suspension of under-grad for disruptive drunken-ness	14th Am. PDP	P	possible hearing on subsequent conduct
Adibi-Sadeh v. Bee Cnty. Coll.	454 F. Supp. 552 (S.D. Tex. 1978)	Tex.	expulsion of most of the Irani-an stu-dents who participat-ed in unru-ly demon-stration	14th Am. PDP	U	
				1st Am. Exp.	U	
Gabril-owitz v. New-man	582 F.2d 100 (1st Cir. 1978)	R.I.	potential expulsion of under-grad for rape	14th Am. PDP	P	proceed with hear-ing but with right to counsel - special circ.

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Marshall v. Maguire	424 N.Y.S.2d 89 (Sup. Ct. Nassau Cnty. 1980)	N.Y.	expulsion of undergrad for ?? {unspecified]	14th Am. PDP	P	relief of new hearing
Shamloo v. Miss. State Bd. of Trs. of Insts. of Higher Learning	620 F.2d 516 (5th Cir. 1980)	Ala.	suspension of Iranian students for campus demonstration	14th Am. vagueness/1st Am. overbreadth	(P)	prelim. injunction against IHE regs.
Bleicker v. Bd. of Trs. of Ohio State Univ. Coll. of Veterinary Med.	485 F. Supp. 1381 (S.D. Ohio 1981)	Ohio	2-quarter suspension of vet. med. student for academic dishonesty	14th Am. PDP	U	[separate from unsuccessful academic dismissal]
Turof v. Kibbee	527 F. Supp. 880 (E.D.N.Y. 1981)	N.Y.	suspension of undergrad for ??	14th Am. PDP	U	
Kolesa v. Lehman	534 F. Supp. 590 (N.D.N.Y. 1982)	N.Y.	disenrollment of undergrad in NROTC for drug usage	5th Am. PDP	U	marginal case
Sohmer v. Kinnard	535 F. Supp. 50 (D. Md. 1982)	Md.	expulsion of pharmacy student for drug abuse	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Light-sey v. King	567 F. Supp. 645 (E.D. N.Y. 1983)	N.Y.	zero grade of cadet undergrad for exam cheating	5th Am. PDP	P	marginal case remedy of restored grade
Hart v. Ferris State Coll.	557 F. Supp. 1379 (S.D. Mich. 1983)	Mich.	potential expulsion for sale of drugs	14th Am. PDP	U	
				14th Am. SDP	U	
				14th Am. EP	U	
McLaug hlin v. Mass. Mar. Acad.	564 F. Supp. 809 (D. Mass. 1983)	Mass.	expulsion of under-grad cadet for drugs and false-hoods	14th Am. PDP	P	rt. to coun-sel per *Ga-brilowitz* relief pre-sumably new hear-ing
Cody v. Scott	565 F. Supp.103 1 (S.D.N.Y. 1983)	N.Y.	dismissal of West Point ca-det for drug pos-session	14th Am. PDP	U	no rt. to counsel – *Wimmer* [excluded other as-sorted claims]
Jones v. Bd. of Gover-nors of Univ. of N.C.	704 F.2d 713 (4th Cir. 1983)	N.C.	1-semester suspension of nursing undergrad for exam cheating	14th Am. PDP	(P)	
Wallace v. Fla. A&M Univ.	433 So. 2d 600 (Fla. Dist. Ct. App. 1983)	Fla.	expulsion of under-grad for possession of drugs	14th Am. PDP	U	marginal case – inci-dental [excluded state law ruling]
Hart-man v. Bd. of Trs. of Univ. of Ala.	436 So. 2d 837 (Ala. Ct. App. 1983)	Ala.	suspension of under-grad for threat	14th Am. PDP	U	marginal case – inci-dental issue

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Wim-mer v. Leh-man	705 F.2d 1402 (4th Cir. 1983)	Md.	dismissal of Naval Academy cadet for drug pos-session	5th Am. PDP	U	
Henson v. Hon-or Comm. of Univ. of Va.	719 F.2d 69 (4th Cir. 1983)	Va.	expulsion of law stu-dent for academic dishonesty	14th Am. PDP	U	
Mary M. v. Clark	473 N.Y.S.2d 843 (App. Div. 1984)	N.Y.	suspension of under-grad for cheating	14th Am. PDP	U	[excluded APA claim]
Hall v. Med. Coll. of Ohio	742 F.2d 299 (6th Cir. 1984)	Ohio	dismissal of medical student for academic dishonesty	14th Am. PDP	U	qualified immunity
Jaksa v. Bd. of Regents of Univ. of Mich.	597 F. Supp. 1245 (E.D. Mich. 1984), *aff'd mem.*, 787 F.2d 590 (6th Cir. 1986)	Mich.	1-sem. suspension of under-grad for exam cheating	14th Am. PDP	U	
Univ. of Hou-ston v. Sabeti	676 S.W.2d 685 (Tex. App. Ct. 1984)	Tex.	expulsion of student for exam cheating	14th Am. PDP	U	
North v. W. Va. Bd. of Re-gents	332 S.E.2d 141 (W. Va. 1985)	W.Va.	expulsion of medical student for false info on applica-tion	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Tully v. Orr	608 F. Supp. 1222 (W.D.N.Y. 1985)	N.Y.	suspension of USAFA cadet for plagiarism and other miscon-duct	14th Am. PDP	U	denied pre-liminary injunction (also SDP?)
Fain v. Brook-lyn Coll.	493 N.Y.S.2d 13 (App. Div. 1985)	N.Y.	dismissal of under-grads for theft	14th Am. PDP	U	[excluded successful claim based on insuffi-cient evi-dence]
Nash v. Auburn Univ.	812 F.2d 655 (11th Cir. 1987)	Ala.	suspension of 2 vet. medicine students for aca-demic dis-honesty	14th Am. PDP	U	detailed analysis and broad contextual reliance
				14th Am. SDP	U	
Crook v. Baker	813 F.2d 88 (6th Cir. 1987)	Mich.	rescission of M.S. for plagiarism in thesis	14th Am. PDP	U	
				14th Am. SDP	U	
Barlet-ta v. State	533 S.E.2d 1037 (La. Ct. App. 1988)	La.	expulsion of dental student for unauthor-ized prac-tice	14th Am. PDP	U	
Rosen-feld v. Ketter	820 F.2d 38 (2d Cir. 1987)	N.Y.	suspension of law stu-dent for disorderly protest	14th Am. PDP	U	
				1st Am. Exp.	U	
Gorman v. Univ. of R.I.	837 F.2d 7 (1st Cir. 1988)	R.I.	one-year suspension of under-grad for sexual harass-ment and	14th Am. PDP	U	extensive analysis
Tellefse n v. Univ. of N.C. at Greens boro	877 F.2d 60 (4th Cir. 1989)	N.C.	suspension of under-grad for ??	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
James v. Wall	783 S.W.2d 615 (Tex. Ct. App. 1989)	Tex.	failing grade of medical students for exam cheating	14th Am. PDP	(P)	marginal case – temporary injunction on various grounds
Machovsky v. State Univ. of N.Y. at Oswego	546 N.Y.S.2d 513 (Sup. Ct. Oswego Cnty. 1989)	N.Y.	suspension of undergrad for harassment	14th Am. PDP	P	reinstatement due to delay
Bauer v. State Univ. of N.Y. at Albany	552 N.Y.S.2d 983 (App. Div. 1990)	N.Y.	suspension of undergrad for exam cheating	14th Am. PDP	U	marginal case – short opinion and alternative rationale
Kalinsky v. State Univ. of N.Y. at Binghamton	557 N.Y.S.2d 577 (App. Div. 1990)	N.Y.	suspension of undergrad for plagiarism	14th Am. PDP	P	remand for new hearing[172]
Shuman v. Univ. of Minn. Law Sch.	451 N.W.2d 71 (Minn. Ct. App. 1990)	Minn.	1-yr. suspension of 2 law students for cheating	14th Am. PDP	U	
				contract	U	
Los v. Wardell	771 F. Supp. 266 (C.D. Ill. 1991)	Ill.	expulsion of law student for violence	14th Am. PDP	U	
Reliford v. Univ. of Akron	610 N.E.2d 521 (Ohio Ct. App. 1991)	Ohio	expulsion of undergrad for burglary conviction	14th Am. vagueness/1st Am. overbreadth	U	

172. The litigation continued after a new hearing, which found the student guilty, and the student was ultimately unsuccessful due to an untimely appeal. Kalinsky v. State Univ. of N.Y. at Binghamton, 624 N.Y.S.2d 679 (App. Div. 1995).

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Weide-mann v. State Univ. of N.Y. at Cortlan d	592 N.Y.S.2d 99 (App. Div. 1992)	N.Y.	dismissal of grad for exam cheating	14th Am. PDP	P	relief of new hearing
Armest o v. Weidne r	615 So. 2d 707 (Fla. Dist. Ct. App. 1992)	Fla.	suspension of law stu-dent for exam cheating	14th Am. PDP?	U	marginal case – in-tertwining APA with constitu-tional PDP plus suffi-cient evi-dence
Clarke v. Univ. of N. Tex.	993 F.2d 1544 (5th Cir. 1993)	Tex.	expulsion of grad student for sexual as-saults	14th Am. PDP	U	qualified immunity
Hen-derson State Univ. v. Spadoni	848 S.W.2d 951 (Ark. Ct. App. 1993)	Ark.	suspension of under-grad for assault	14th Am. PDP	U	
Osteen v. Hen-ley	13 F.3d 221 (7th Cir. 1993)	Ill.	expulsion of under-grad for assault	14th Am. PDP	U	
Abrams v. Mary Wash-ington Coll.	1994 WL 1031166 (Va. Cir. Ct. Apr. 27, 1994)	Va.	suspension of under-grad for sexual as-sault	14th Am. PDP	U	marginal case [excluded various oth-er claims]
Alcorn v. Vaks-Vaks-man	877 S.W.2d 390 (Tex. Ct. App. 1994)	Tex.	dismissal of doctoral student for purported academic reasons	14th Am. PDP	P	reinstate-ment and substantial-ly reduced damages ($10k) disciplinary > academic
				1st Am. Exp.	P	
Knapp v. Jun-	879 S.W.2d	Mo.	suspension of under-	14th Am. PDP	U	[excluded APA claim]

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
ior Coll. Dist. of St. Louis Cnty.	588 (Mo. Ct. App. 1994)		grad for campus disruption	1st Am. Exp.	(P)	
Herbert v. Reinstein	1994 WL 587095 (E.D. Pa. Oct. 21, 1994), *rev'd on other grounds*, 70 F.3d 1255 (3d Cir. 1995)	Pa.	suspension of law student for violence	14th Am. PDP	U	
Smith v. Denton	895 S.W.2d 550 (Ark. 1995)	Ark.	suspension of student for firearm	14th Am. PDP	P	denied damages
Gruen v. Chase	626 N.Y.S.2d 261 (App. Div. 1995)	N.Y.	expulsion of undergrads for ?? [unspecified]	14th Am. PDP	U	short opinion
				general	P	relief of new hearing – IHE failed to follow its own policies (*Tedeschi*)
Univ. of Tex. Med. Sch. at Houston v. Than	901 S.W.2d 926 (Tex. Ct. App. 1995)	Tex.	dismissal of medical student for academic dishonesty	14th Am. PDP	P	(marginal case because basis was state constitutional PDP) reduced relief to new hearing
Reilly v. Daly	666 N.E.2d 439 (Ind. Ct. App. 1996)	Ind.	dismissal of medical student for academic dishonesty	14th Am. PDP	U	[also substantial evidence]
				14th Am. EP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Haley v. Va. Com-monwealth Univ.	948 F. Supp. 573 (E.D. Va. 1996)	Va.	2-yr. sus-pension of grad stu-dent for sexual harass-ment	14th Am. PDP	U	[excluded Title IX claim]
Carboni v. Mel-drum	949 F. Supp. 427 (W.D. Va. 1996)	Va.	dismissal of veteri-nary medi-cine stu-dent for exam cheating	14th Am. PDP	U	[excluded unsuccess-ful 4th Am. claim]
Roach v. Univ. of Utah	968 F. Supp. 1446 (D. Utah 1997)	Utah	dismissal from 2 grad pro-grams for 1) unpro-fessional conduct, and 2) mis-leading info	14th Am. PDP	U/P	upheld first dismissal but ruled for student on second dismissal – and denied qualified immunity
				14th Am. SDP	U/(P)	not for first, but unde-veloped rec-ord for sec-ond
				contract	(U)/(P)	undevel-oped record
Donohu e v. Baker	976 F. Supp. 136 (N.D.N.Y . 1997)	N.Y.	expulsion of under-grad for rape	14th Am. PDP	(P)	1 of several claims (cross ex-am) [excluded state APA claim]
Crowley v. U.S. Merch. Marine Acad.	985 F. Supp. 292 (E.D.N.Y . 1997)	N.Y.	proposed expulsion of under-grad cadet for sexual miscon-duct	5th Am. PDP	P	continued the hearing with rt. to lawyer-advisor
Jackson v. Ind. Univ. of Penn.	695 A.2d 980 (Pa. Commw. Ct. 1997)	Pa.	suspension of under-grad for assault	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Abram-son v. Fla. Int'l Univ.	704 So. 2d 720 (Fla. Dist. Ct. App. 1998)	Fla.	unspeci-fied disci-pline for disruptive conduct and false infor-mation	14th Am. PDP?	U	marginal case - short opinion that may be APA>14th Am.
Gagne v. Trs. of Ind. Univ.	692 N.E.2d 489 (Ind. Ct. App. 1998)	Ind.	expulsion of law stu-dent for lying on his appli-cation	14th Am. PDP	U	reliance on K-12 case law
				contract	U	
Salehpo ur v. Univ. of Tenn. at Mem-phis	159 F.3d 199 (6th Cir. 1998)	Tenn.	dismissal of dental student for insubordi-nation	14th Am. PDP	U	
				1st Am. Exp.	U	
Woodis v. Westar k Cmty. Coll.	160 F.3d 435 (8th Cir. 1998)	Ark.	expulsion of nursing undergrad for drug conviction	14th Am. PDP	U	
				14th Am. vague-ness	U	
Foo v. Trs. of Ind. Univ.	88 F. Supp. 2d 937 (S.D. Ind. 1999)	Ind.	expulsion of under-grad for alcohol vio-lation	14th Am. PDP	U	
				14th Am. SDP	U	
Cobb v. Rector & Visi-tors of Univ. of Va.	84 F. Supp. 2d 740 (E.D. Va.), *aff'd mem.*, 229 F.3d 1142 (4th Cir. 2000)	Va.	expulsion of black undergrad for exam cheating	14th Am. PDP	U	[excluded unsuccess-ful 14th Am. SDP and state tort/ contract claims from 1999 deci-sion]
				14th Am. EP	U	
Good-reau v. Rector & Visi-tors of Univ. of Va.	116 F. Supp. 2d 694 (W.D. Va. 2000)	Va.	revocation of under-grad de-gree for theft of club funds	contract	(P)	factual is-sue whether IHE had proper pro-cedures for degree rev-ocation

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Smith v. Rector & Visitors of Univ. of Va.	115 F. Supp. 2d 680 (W.D. Va. 2000)	Va.	suspension of under-grad for assault conviction	14th Am. PDP	(P)	factual issue re notice and deviation from assurances [excluded conspiracy and failure to supervise claims]
Pappachristou v. Univ. of Tenn.	29 S.W.3d 487 (Tenn. Ct. App. 2000)	Tenn.	indefinite suspension of law student for exam cheating	general	U	not arb. & cap.
Delgado v. Garland	2001 WL 1842458 (S.D. Ohio April 5, 2001)	Ohio	suspension of under-grad for sexual harassment	14th Am. PDP	U	
Morfit v. Univ. of S. Fla.	794 So. So. 2d 655 (Fla. Dist. Ct. App. 2001)	Fla.	suspension of grad student for misconduct	14th Am. PDP?	P	relief of new hearing [marginal case - intertwined state APA]
Watson v. Beckel	242 F.3d 1237 (10th Cir. 2001)	N.M.	expulsion of under-grad cadet for sexual assault	14th Am. PDP	U	
				14th Am. EP	U	
Hill v. Mich. State Univ.	182 F. Supp. 2d 621 (W.D. Mich. 2001)	Mich.	suspension of under-grad for riot	14th Am. PDP	U	
				14th Am. SDP	U	
Fedorov v. Bd. of Regents of Univ. of Ga.	194 F. Supp. 2d 1378 (S.D. Ga. 2002)	Ga.	dismissal of dental student for drug abuse	14th Am. PDP	U	[excluded §504/ADA claims]
Brown v. W.	204 F. Supp. 2d	Conn.	expulsion of under-	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Conn. State Univ.	355 (D. Conn. 2002)		grad for ac. dishonesty	1st Am. Exp.	(P)	
Tigrett v. Rector & Visitors of Univ. of Va.	290 F.3d 620 (4th Cir. 2002)	Va.	1-semester suspension of under-grads for assault	14th Am. PDP	U	related to but separate from *Smith v. Rector & Visitors of Univ. of Va.*
Anderson v. Sw. Tex. State Univ.	73 S.W. 775 (5th Cir. 2003)	Tex.	2-semester suspension of student for zero-tolerance drug policy	14th Am. EP	U	failed to preserve unsuccessful 14th Am. PDP claim on appeal
Viriyapanthu v. Regents of Univ. of Cal.	2003 WL 22120968 (Cal. Ct. App. Sept. 15, 2003)	Cal.	1-semester suspension of law student for plagiarism	14th Am. EP	U	ducked whether disciplinary or academic – same result
Pugel v. Bd. of Trs. of Univ. of Ill.	378 F.2d 659 (7th Cir. 2004)	Ill.	dismissal of grad student for fraudulent academic conduct	14th Am. PDP	U	
				1st Am. Exp.	U	
Gomes v. Univ. of Me. Sys.	365 F. Supp. 2d 6 (D. Me. 2005)	Me.	1-yr. suspension for under-grads for sexual assault	14th Am. PDP	U	[excluded state law claims, including IIED]
Cady v. S. Suburban Coll.	152 F. App'x 531 (7th Cir. 2005)	Ill.	expulsion of under-grad for disorderly conduct in class	14th Am. PDP	U	
Butler v. Rector & Bd. of	121 F. App'x 515 (4th Cir.	Va.	expulsion of M.Ed. Counseling student	14th Am. PDP	U	
				14th Am. SDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Visitors of Coll. of William & Mary	2005)		for inappropriate conduct	contract	U	
Flaim v. Med. Coll. of Ohio	2005 WL 736626 (Ohio Ct. App. Mar. 31, 2005)	Ohio	dismissal of medical student for drug conviction	contract	U	ducked academic-disciplinary distinction, concluding same outcome w/o deference
	418 F.3d 629 (6th Cir. 2005)			14th Am. PDP	U	illustrates 11th Am. effect, leaving only individual Ds
				14th Am. SDP	U	same
Matar v. Fla. Int'l Univ.	944 So. 2d 1153 (Fla. Dist. Ct. App. 2006)	Fla.	expulsion of grad student for plagiarism	14th Am. PDP?	U	marginal case – indirectly or implicitly 14th Am.
Danso v. Univ. of Conn.	919 A.2d 1100 (Conn. Super. Ct. 2007)	Conn.	suspension of undergrad for stalking	14th Am. PDP	U	
Burch v. Moulton	980 So. 2d 392 (Ala. 2007)	Ala.	dismissal of medical student for drug possession	14th Am. PDP	U	
				general	U	not arb., cap., or in bad faith
Rubino v. Saddlemire	2007 WL 685183 (D. Conn. Mar. 1, 2007)	Conn.	2-yr. suspension of undergrad for disorderly conduct	14th Am. PDP	(P/U)	denied both sides' motions for summary judgment
				14th Am. SDP	(P/U)	same

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Heiken v. Univ. of Cent. Fla.	995 So. 2d 1145 (Fla. Dist. Ct. App. 2008)	Fla.	unspecified discipline of undergrad for ??	14th Am. PDP?	U	marginal case - short opinion that may be APA>14th Am.
Di Lella v. Univ. of D.C. David A. Clark Sch. of Law	570 F. Supp. 2d 1 (D.D.C. 2008)	D.C.	one-year suspension of law student for exam cheating	14th Am. PDP	U	[excluded §504/ADA claims and those barred by statute of limitations]
				1st Am. Exp.	U	
				contract (assuming)	U	
Holmes v. Poskanzer	342 F. App'x 651 (2d Cir. 2009)	N.Y.	unspecified discipline of 2 undergrads for confrontation w. adm'r	14th Am. PDP	U	short opinion not specifying discipline
				1st Am. Exp.	U	
Castel v. Marquardt	632 F. Supp. 2d 1317 (N.D. Ga.. 2009)	Ga.	suspension of nursing student for disruptive behavior	14th Am. PDP	(P)	preserved for trial and, if successful and if proven, possible damages (not from individual Ds)
				14th Am. SDP	U	
Sarver v. Jackson	344 F. App'x 526 (11th Cir. 2009)	Ga.	suspension of undergrad for ??	14th Am. PDP	U	
O'Neal v. Alamo	2010 WL 376602 (W.D.	Tex.	expulsion of undergrad for	14th Am. PDP	U	[excluded state tort law claims]

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Cmty. Coll. Dist.	Tex. Jan. 27, 2010)		terroristic threats	1st Am. Exp.	U	
Phat Van Le v. Univ. of Med. & Den-tistry of N.J.	379 F. App'x 171 (3d Cir. 2010)	N.J.	dismissal of dental student for exam cheating	14th Am. PDP	U	
Mawle v. Tex. A&M Univ. Kings-ville	2010 WL 1782214 (S.D. Tex. Apr. 30, 2010)	Tex.	expulsion of grad student for sexual harass-ment and plagiarism	14th Am. PDP	U	
				14th Am. SDP	U	
				1st Am. Exp.	U	
Smith v. Va. Mil. Inst.	2010 WL 2132240 (W.D. Va. May 27, 2010)	Va.	expulsion of under-grad for plagiarism	14th Am. PDP	U	
Furey v. Tem-ple Univ.	730 F. Supp. 2d 380 (E.D. Pa. 2010)	Pa.	expulsion of under-grad for altercation	14th Am. PDP	(P)	issues of material fact for some PDP claims
				14th Am. EP	U	
Lucey v. Bd. of Regents of Nev. Sys. of Higher Educ.	380 F. App'x 608 (9th Cir. 2010)	Nev.	various sanctions less than suspension of under-grad for dorm inci-dents	14th Am. PDP	U	
				contract (assum-ing)	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Esfeller v. O'Keefe	391 F. App'x 337 (5th Cir. 2010)	La.	1-year probation + anger mgmt. program of undergrad for Internet harassment	14th Am. PDP	U	
				14th Am. vagueness/1st Am. overbreadth	U	
Korte v. Curators of Univ. of Mo.	316 S.W.3d 481 (Mo. Ct. App. 2010)	Mo.	dismissal of medical student for theft	14th Am. PDP	U	
Willis v. Tex. Tech Univ. Health Sci. Ctr.	394 F. App'x 86 (5th Cir. 2010)	Tex.	expulsion of student for handgun threat	14th Am. PDP	U	indistinct from *Esfeller*
Coates v. Natale	409 F. App'x 238 (11th Cir. 2010)	Ga.	expulsion of undergrad for insubordinate in-class conduct	14th Am. EP	U	marginal case – threshold? [+ excluded PDP and SDP claims – denied on threshold grounds]
				contract	U	
Katz v. Bd. of Regents	924 N.Y.S.2d 210 (App. Div. 2011)	N.Y.	failing grade for undergrad for plagiarism	general	U	not arb. & cap. (relying on private IHE cases)
Yoder v. Univ. of Louisville	417 F. App'x 529 (6th Cir. 2011)	Ky.	dismissal of nursing undergrad for MySpace account of class	contract	U	
Carter v. Citadel Bd. of Visitors	835 F. Supp. 2d 100 (D.S.C. 2011)	S.C.	1-yr. suspension of undergrad for drug use	14th Am. PDP	U	

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Idahosa v. Farm-ingdale State Coll.	948 N.Y.S.2d 104 (App. Div. 2012)	N.Y.	dismissal of nursing undergrad for plagia-rism	general	U	not shock-ingly dis-proportion-ate sanction
Wells v. Colum-bus Tech. Coll.	2012 WL 1300276 (M.D. Ga. Apr. 16, 2012)	Ga.	suspension of under-grad for disruptive classroom conduct	14th Am. PDP	U	
				14th Am. SDP	U	
Barnes v. Zac-cari	669 F.3d 1295 (5th Cir. 2012)	Ga.	expulsion of under-grad for threaten-ing staff (Facebook)	14th Am. PDP	(P)	
Park v. Ind. Univ. Sch. of Dentis-try	692 F.3d 828 (7th Cir. 2012)	Ind.	dismissal of dental student for hybrid dis-ciplinary and aca-demic rea-sons[173]	14th Am. EP	U	[excluded PDP and SDP claims – disposed of on threshold grounds]
				contract	U	deference (citing aca-demic cas-es)
Caiola v. Sad-dlemire	2013 WL 1310002 (D. Conn. Mar. 27, 2013)	Conn.	expulsion of student for sexual assault	14th Am. PDP	U	
				14th Am. SDP	U	
Hunger v. Univ. of Ha-waii	927 F. Supp.2d 1007 (D. Haw. 2013)	Haw.	1-yr. sus-pension of grad stu-dent for terroristic threats	14th Am. PDP	(P)	probable violation but denied preliminary injunction

173. "[H]er 'admitted inability to prioritize and accomplish competing tasks' and her 'noncompliance [with] professional responsibilities' [including breach of confiden-tiality]." *Park*, 692 F.2d at 830.

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Buechler v. Wenatchee Valley Coll.	298 P.2d 110 (Wash. Ct. App. 2013)	Wash.	dismissal of nursing undergrad for distributing drugs	14th Am. PDP	U	
Medlock v. Trs. of Ind. Univ.	2013 WL 1309760 (S.D. Ind. Mar. 28, 2013)	Ind.	suspension of undergrad for drug possession	14th Am. PDP	U	[excluded unsuccessful 4th Am. claim]
Amaya v. Brater	981 N.E.2d 1235 (Ind. Ct. App. 2013)	Ind.	dismissal of medical student for academic dishonesty	contract	U	
Judeh v. La. State Univ. Sys.	2013 WL 5589160 (E.D. La. Oct. 10, 2013	La.	expulsion of grad student for harassment	14th Am. PDP	U	
Boyd v. State Univ. of N.Y. at Cortland	973 N.Y.S.2d 413 (App. Div. 2013)	N.Y.	suspension of undergrad for sexual harassment	14th Am. PDP	P	relief of continued hearing (detailed factual findings and opportunity for rebuttal)
Osei v. Temple Univ.	518 F. App'x 86 (3d Cir. 2013)	Pa.	suspension of undergrad for threatening faculty	14th Am. PDP	U	
Chang v. Purdue Univ.	985 N.E.2d 35 (Ind. Ct. App. 2013)	Ind.	dismissal of nursing undergrad for unprofessional conduct (e.g., angry behavior)	14th Am. PDP	U	marginal case due to clinical context for part of the conduct
				contract	U	deference - not arb., cap., or in bad faith

Case Name	Citation	State	Sanction	Theory	Out-come	Comments
Zimmer-man v. Bd. of Trs. of Ball State Univ.	940 F. Supp. 875 (N.D. Ind. 2013)	Ind.	suspension of 2 under-grads for off-campus Facebook pranks/har assment	14th Am. PDP	U	
				14th Am. SDP	U	
				1st Am. Exp.	U	qualified immunity
Yoder v. Univ. of Louis-ville	526 F. App'x 537 (6th Cir. 2013)	Ky.	dismissal of nursing student for inappro-priate blog post	14th Am. PDP	U	qualified immunity
				14th Am. vague-ness/1st Am. over-breadth	U	
				1st Am. Exp.	U	qualified immunity
Brew-baker v. State Bd. of Regents	843 N.W.2d 466 (Iowa Ct. App. 2014)	Iowa	suspension of grad student for sexual harass-ment	1st Am. Exp.	U	plaintiff failed to preserve PDP and EP claims [excluded double jeopardy and various state law claims]
Gati v. Univ. of Pitts-burgh	91 A.3d 723 (Pa. Su-per. Ct. 2014)	Pa.	dismissal of dental student for unprofes-sional con-duct, incl. forgery	14th Am. PDP	U	marginal case be-cause mixed academic-disciplinary and similar-ly unre-solved pub-lic-private IHE issue
Brown v. Univ. of Kan-sas	16 F. Supp. 3d 1275 (D. Kan. 2014)	Kan.	dismissal of law stu-dent for false ap-plication info	14th Am. PDP	U	[excluded unsuccess-ful state tort law claims]