

STUDENTS— EDUCATIONAL RELATIONSHIP

9



9.1 OVERVIEW

The provost wants to know whether some scheduled classes may be dropped because of low enrollment even though this action will delay graduation for some students. The admissions officer wants to know whether a student can be denied admission for suspected criminal conduct and how and where to verify this information. The newspaper reports that several students participated in demonstrations that led to a riot in the community, and the student-affairs officer wants to know if anything can or should be done. The dean of health sciences wants to know whether a student in the nursing program can be dismissed for academic deficiencies based upon her erratic behavior in a required clinical program even though the student has achieved an “A” average in her courses.



These difficult questions illustrate the challenges in the educational relationship between students and their schools and colleges. Today’s campus is a highly charged environment

with rising fears about drugs, crime, gangs, sexually transmitted diseases, and suicides. “Zero tolerance,” and other coercive disciplinary techniques often applied without discretion or common sense, may be more successful in generating student distrust than curbing violence. Sharing the prevalent societal attitude that every perceived slight is grounds to sue, students now file lawsuits about the functional aspects of an education—what we call the *educational relationship*—including denial of admission, grade disputes, student discipline, challenges to curriculum content (most often based on religious content), failure to deliver educational services, and changes in course and program requirements.

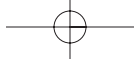
Other causes of the dramatic rise in student claims are open to dispute. One certain cause is the expanded scope of both procedural and substantive rights afforded to students by the collective work of legislators, courts, and administrative agencies. Equally important is disciplinary action, imposed for misconduct that occurred in the expanding range of activities available to students. Another factor may be the unrelenting pressure to excel coupled with the easy availability of term papers for sale on the Internet, tempting even more students to resort to plagiarism and other academic misconduct.

The challenge for every school and college is to preserve the educational environment while preventing student claims or resolving them in a fair manner. The ultimate goal is to position the school or college to minimize its financial exposure. The preventive law program will help to minimize other harder-to-measure costs as well, including the costs to productivity and morale as teachers and administrators devote time participating in institutional judicial affairs and the judicial system.



Whether the provost may cancel the classes with low enrollment is an issue of contract that cannot be resolved without reviewing the catalog and other materials relied upon by the student, but any potential liability could have been avoided by specifying in the enrollment contract the institution's right to make such changes.¹ In most states, the admissions officer of a private institution can deny admission to a student with a criminal conviction, but denial for “suspected” criminal conduct could lead to a claim if the conduct was not properly investigated according to published procedures.² Whether the student-affairs officer should take action against the students requires investigation to determine whether their conduct was misconduct or was instead protected as a constitutional right.³ The dean of health sciences can academically dismiss the student if the institution follows basic procedures.⁴

- 1 Section 9.3 discusses program changes.
- 2 Section 9.3 addresses criminal convictions.
- 3 Section 9.6 discusses off-campus conduct.
- 4 Section 9.4 discusses clinical programs.



The answer to each question presents risks, but also opportunities to prevent claims through educating, drafting clear policies and procedures, reviewing contracts, scrutinizing catalogs and brochures, and implementing other preventive measures.

Section 9.2 of this chapter analyzes five factors that influence courts in ruling on these types of student claims. With these overarching principles in mind, the remaining sections address various aspects of the educational relationship: admissions (Section 9.3), grades and degrees (Section 9.4), religion (Section 9.5), and student discipline (Section 9.6). Each section describes the law and emphasizes preventing, or at a minimum, successfully managing student claims. Chapter 10 will discuss student rights, including freedom from discrimination and invasion of privacy. Chapter 11 will discuss extracurricular activities and student claims arising from criminal activity and dangerous conditions.
