

## Due Process Required for Academic Dismissal

Students dismissed from public institutions of higher education occasionally challenge the dismissal in court. One potential basis for a challenge is a claim that the institution violated the student's right to "due process" under the Fourteenth Amendment of the U.S. Constitution. Recently, a student dismissed from the Southern Illinois University (SIU) School of Dental Medicine for academic reasons raised that very claim. The student, Hlavacek, failed a required course his first semester (Fall 2005) and was placed on academic probation for the Spring 2006 semester. In the Fall of 2006, Hlavacek restarted his course of study after he failed the same course for a second time while on probation.

Hlavacek then failed yet another required course, though he subsequently passed it after taking a "remediation examination." In the Fall 2007 semester, Hlavacek failed three more courses. He was allowed to re-take the examination in one of the classes but failed it again. This led to SIU placing Hlavacek on academic probation once again. In the middle of the Spring 2008 semester, SIU informed Hlavacek by letter that he was being dismissed from the university for unsatisfactory academic performance. Accompanied by a faculty representative, Hlavacek challenged his dismissal at a hearing on March 5, 2008. By letter dated March 12, 2008, SIU informed Hlavacek that the hearing panel had affirmed his dismissal.

Hlavacek next appeared before an appeals committee, which affirmed his academic dismissal. He also pursued other avenues of relief, including filing a grievance with SIU's Office of Institutional Compliance and seeking review of the decision to dismiss him through the Provost, the Chancellor, the Board of Trustees, and, finally, the President. Each appeal or petition was denied. In February 2010, Hlavacek filed a complaint in federal District Court alleging violations of his First Amendment rights, his rights under the Equal Protection Clause, and his right to due process. The district court dismissed all of these claims. Hlavacek subsequently appealed solely on the issue of denial of due process.

The Court of Appeals first noted that Hlavacek would have to show that SIU deprived him of a cognizable property interest and that it failed to give him whatever process was due for that particular deprivation. The Court assumed, without deciding, that Hlavacek had a protectable interest in continuing his graduate education. That narrowed the case to an evaluation of the process that SIU provided in connection with its decision to dismiss him from the dental program. In making that evaluation, the Court noted that the law distinguishes between academic dismissals and disciplinary dismissals from an academic institution. Dismissals for poor academic performance "require no hearing at all." It is sufficient that the student was informed of the nature of the faculty's dissatisfaction and the ultimate decision to dismiss was "careful and deliberate." A different standard, the Court noted, would be difficult to imagine: how could federal judges second-guess the judgment of the faculty on the matter of the academic performance of a student. The Court finally affirmed Hlavacek's dismissal after pointing out that the action had been reviewed and upheld by several appeals committees and university administrators, evidencing a "careful and deliberate" process. The Court declined in such circumstances to disturb the professional judgment of the SIU faculty on academic matters.

*Hlavacek v. Boyle*, No. 11-1100, (7th Cir. Dec. 6, 2011).

This is yet another case demonstrating that the courts will not substitute their judgement for that of the faculty in academic matters, so long as the decisions of the faculty are reached in a careful and deliberate fashion.