

Georgia Student Handbook Is a Contract Between University and Students

An interesting case from the Eleventh Circuit Court of Appeals highlights the rights of students, the pitfalls of overreaction by administrators, and the importance of the precise wording of rules, regulations, and academic policies. The Eleventh Circuit is the appellate court that decides appeals from federal district courts in Alabama, so its decisions are noteworthy as judicial precedent. This case involved a controversy between Thomas Barnes, a student at Valdosta State University (VSU), and its president, Ronald Zaccari. VSU is a public university governed by the Board of Regents of the University System of Georgia.

Zaccari planned to build a parking deck on the VSU campus, a project that Barnes opposed on environmental grounds. Barnes campaigned against it by posting flyers around campus, writing a letter to the student newspaper, in which he attacked the proposed parking deck as a waste of money and a misuse of campus real estate; and placing negative comments on his Facebook page (where he called the parking deck the “Zaccari Memorial Parking Garage”).

After learning that Barnes had also contacted some members of the Board of Regents, Zaccari summoned Barnes to a meeting in his office on April 16, 2007. This was the same day that over 30 people were murdered on the Virginia Tech campus. Zaccari had also become concerned about the fact that someone had made prank calls to his house, had tripped the alarm system at his house, and had inappropriately entered his office. He believed these actions could be attributed to Barnes, though Barnes denied it and there was no actual proof of his involvement.

Zaccari concluded that Barnes was a threat and should be removed from campus. He explored the option of removing Barnes for academic reasons, but Barnes was making satisfactory academic progress. He considered using a mental health withdrawal procedure and had Barnes examined by campus mental health professionals. They did not, however, provide support for the conclusion that Barnes was a danger to himself or to others. Finally, Zaccari considered a disciplinary expulsion of Barnes. When he learned that the mental health withdrawal procedure and the student disciplinary process required giving the student notice and a hearing prior to any adverse action, Zaccari rejected these options as being “too cumbersome.”

Zaccari then decided that he could “administratively withdraw” Barnes based upon Board of Regents Policy 902, which allowed disciplinary charges to be brought against someone who “clearly obstructs or disrupts” legitimate university activities. He was advised by campus legal counsel that invoking Policy 902 without first giving Barnes a hearing would violate Barnes’ due process rights. This advice was rejected, however, and Zaccari gave Barnes a letter administratively withdrawing him on May 7, 2007. Zaccari’s letter said that Barnes could be readmitted by submitting two letters from mental health professionals and agreeing to receive therapy. Barnes submitted the two letters the next day, but they were deemed inadequate.

Barnes appealed to the Board of Regents, which referred the matter to an administrative law judge. By December of 2007, Barnes had still not been given a hearing, and the present lawsuit was filed. In January of 2008, the Board of Regents reinstated Barnes without a hearing.

Zaccari announced his plans to retire at the end of June 2008 for reasons unrelated to the Barnes case

Barnes sued Zaccari individually under 42 U.S.C. § 1983, claiming that Zaccari had violated his due process rights under the Fourteenth Amendment by failing to give him notice of the charges against him and a hearing. Barnes also sued the Board of Regents on the theory that the Board had breached a contract with him articulated in the provisions of the Student Handbook and the student housing contract. Zaccari moved for summary judgment based upon qualified immunity, and the Board of Regents moved for summary judgment based upon its Eleventh Amendment sovereign immunity. The trial court denied both motions, and an appeal was then taken to the Eleventh Circuit. *Barnes v. Zaccari*, No. 10-14622 (11th Cir. Feb. 7, 2012)

The Eleventh Circuit began with the plain language of the Fourteenth Amendment due process clause: “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law.” It then applied standard “due process” analysis, the first issue being whether the Board of Regents was the “State.” All parties agreed that, as an arm of the State of Georgia, it was. The court’s next inquiry focused on whether Barnes had been deprived of “property” by the actions of Zaccari and the Board of Regents. The court observed that the “hallmark of property is an individual entitlement grounded in state law, which cannot be removed except ‘for cause.’” *Barnes*, at 15 (quoting from an earlier case). On this point, Zaccari and the Board of Regents contended that Barnes had no entitlement to continued enrollment in VSU. The Eleventh Circuit disagreed, however, based on a careful review of the Board’s rules. The Constitution of the State of Georgia vested control of the university system in the Board of Regents, and Board Policy 401.01 gave specific authorization to campuses to “punish, suspend, exclude or expel” those students who are “violating rules and regulations of the institution.” By implication, the Court reasoned, Policy 401.1 withholds authority to discipline students who follow the rules and regulations.

Since, under the Court’s reasoning, Barnes possessed a property interest in continued enrollment under the rules of the Board of Regents, “due process” protection applied. The university thus could not infringe that property interest by terminating Barnes’ enrollment without first giving him notice of the charges against him and an opportunity to present his side of the story: “Due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct.” *Barnes*, at 19 (quoting an earlier decision). Unfortunately for the defendants, notice and a hearing were not provided.

Notwithstanding that fact, the defendants claimed Barnes’ suit must fail because they were “immune” to suit. Zaccari argued that he was entitled to qualified immunity, which provides complete protection for government officials sued, under 42 U.S.C. § 1983, in their individual capacities as long as their conduct violates no clearly established statutory or constitutional rights of which a reasonable person would have known. The Eleventh Circuit focused on whether Barnes’ rights were “clearly established” and whether Zaccari, as a “reasonable college President” should have known of Barnes’ rights. The Court concluded that Barnes’ rights were well established and that Zaccari should reasonably have been aware of

them. The Court, therefore, affirmed the lower court's judgment overruling Zaccari's motion for summary judgment based upon qualified immunity.

With regard to the Barnes' breach of contract claim against the Board of Regents, the Eleventh Circuit held that claim was barred by the doctrine of sovereign immunity contained in the Eleventh Amendment to the United States Constitution. While the State of Georgia had waived its sovereign immunity to breach of contract claims brought in the *state courts* of Georgia, this statutory waiver of sovereign immunity specifically preserved Georgia's sovereign immunity to claims brought in *federal court*. Therefore, the appellate court overruled the lower court's denial of the Board of Regents' motion for summary judgment on the breach of contract claim and directed that this claim be dismissed.

Due to important wording differences in board rules, the legal rationale of *Barnes v. Zaccari* may not be directly applicable to UAHuntsville. However, the law is clear that UAHuntsville, as a state university and a division of the University of Alabama System, is the State of Alabama for the purpose of a due process analysis. And the *Barnes* decision emphasizes the fact that courts will generally view a student's current enrollment as a constitutionally protected property right that can be interrupted only by means of procedures incorporating the basic due process elements of "notice and hearing." The fact that such procedures may, at times, appear "cumbersome" will not excuse taking shortcuts. It is true that emergencies do sometimes occur and that state officials are empowered to act with dispatch in legitimate emergency situations. However, as the court stated in *Barnes v. Zaccari*, officials cannot "magically declare" an emergency exists and then ignore well-established constitutional principles.