

## “A Matter of Degree . . .”

Recently, several universities have been confronted with difficult issues relating to the impact of a student’s conduct on a degree that has been earned or, in some cases, already awarded. Late last year, the governing board of the University of Mississippi voted to revoke degrees awarded to three students because of evidence of misconduct. In 1999, after irregularities in some student records were discovered, an investigation was conducted and university officials learned that an employee had given the students academic credit for work they did not do in an on-line distance learning course. Two of the students were enrolled in a graduate program at the Oxford campus, and the independent study course was taken in their last semester before the degrees were awarded.

Five other students were implicated in what was apparently a scheme to pay the employee for the false credits. Hearings were offered to all eight students. Only one student opted to participate, and she was exonerated. Of the remaining seven, three students were expelled and one student lost the credit but was allowed to retain the degree, presumably because she earned sufficient other credits to satisfy degree requirements. A notation was, however, placed on her permanent transcript. For the remaining three students, the misconduct resulted in loss of their degrees under the decision of the Board of Trustees of the State Institutions of Higher Learning, the governing body for the University of Mississippi.

Degree revocation is an extreme measure rarely seen in higher education. Despite that fact, the courts have addressed the issue and have provided guidance to an institution faced with a situation in which revocation may be an appropriate action. It is well established that a university has the inherent authority to revoke a degree upon good cause, such as for fraud, academic misconduct, etc. *Crook v. Baker*, 813 F.2d 88 (6th Cir. 1987); *Waliga v. Board of Trustees*, 488 N.E.2d 850 (1986); *Abalkhail v. Claremont University Center*, 2d Civ. No. B014012 (Cal. Ct. App. 1986). The power to revoke resides in the entity that has the power to award the degree. *See Hand v. Matchell*, 957 F.2d 791 (10th Cir. 1992). For most institutions, this is the governing board. The institution may act to revoke a degree using its own internal procedures, as opposed to having to go to court to obtain a judgment or order divesting the degree recipient of the degree. *Crook v. Baker*, 813 F.2d at 84-85, 86-87; *Waliga v. Board of Trustees*, 488 N.E.2d at 850-52. This rule has been criticized by one commentator. Mawdsley, Ralph D. "Judicial Deference: A Doctrine Misapplied to Degree Revocations." 70 Ed. Law Rep. 1043 (Jan. 16, 1992).

It is also clear from the decisions that a graduate has a property interest in the possession of an awarded degree from a public institution. He/she is therefore entitled to the protection of Fourteenth Amendment due process procedures when the institution decides to take action that may lead to the revocation or rescission of the degree. *Crook v. Baker*, 813 F.2d 88. The *Baker* case, which involved a proceeding that led to the revocation of a master of science degree by the University of Michigan, provides a helpful summary of the type of due process rights that should be incorporated into institutional procedures. The University of Michigan procedures, which were apparently developed for the specific case at hand, included standard hearing elements. The degree recipient received and responded to a statement of charges. An *ad hoc* disciplinary

committee consisting of several faculty members was appointed to hear the charges. At the hearing, the degree recipient was assisted by an attorney who was, however, not allowed to examine witnesses. The university attorney, apparently representing the university department that was presenting the charges, was also present and was subject to the same limitation. Opening statements were made. The hearing was somewhat informal, with relaxed "rules of evidence." The department bore the burden of establishing the charges by "clear and convincing evidence." Written submissions were made by both the department and the degree recipient. The committee produced a written report finding the degree recipient had, as charged, fabricated research data. The report was accepted by several intermediate authorities, who forwarded a recommendation of degree revocation to the university Regents. The Regents decided to rescind the degree.

Decisions by other institutions to revoke or rescind a degree have become newsworthy. In 1990, the University of Tennessee decided to revoke a doctor of philosophy degree awarded to a Redstone Arsenal employee who had completed a program conducted in Huntsville by the University of Tennessee Space Institute. The degree was revoked based on the University's finding that the dissertation was a duplication of material in reports co-authored by the employee's faculty advisor. The case ended up in court when the degree recipient sued the University in Tennessee, seeking damages and injunctive relief. See *Faulkner v. The University of Tennessee*, 627 So.2d 362 (Ala. 1992)(Alabama had sufficient contacts with the University of Tennessee to exercise jurisdiction over it and that Alabama courts need not recognize the immunity to suit accorded the University in Tennessee). Several years later, the Massachusetts Institute of Technology, in an unusual case, revoked the diploma of a graduate for pre-graduation misconduct. This action was perhaps unprecedented, however, because the offending behavior did not involve academic misconduct but, instead, a violation of MIT's student disciplinary code (The graduate was charged with serving alcohol to freshman pledge who died as a result of over-intoxication.). Also, the revocation was placed in effect for a period of five years, making it more akin to a suspension.

The University of Alabama in Huntsville has now joined the list of institutions having to address, on a post-graduation basis, the issue of pre-graduation student misconduct. Within several months after a Ph.D. degree was awarded to an engineering student, his faculty advisor discovered that the student had used in his dissertation substantial portions of a dissertation by a student at another institution. The matter was reported by the advisor to the graduate dean, who, after an investigation that included communication with the student, found that there was a reasonable basis for concluding plagiarism had occurred. The case then moved to a more formal stage, using procedures designed to allow the University to make a final determination while insuring that the rights of the degree recipient were protected. Formal charges were prepared and provided to the degree recipient, and a hearing was held before a five-member panel of tenured faculty. The degree recipient was represented by a senior University administrator. The hearing panel unanimously found "clear and compelling evidence of plagiarism on several levels" and further that the dissertation "failed to meet degree requirements in regard to research contributions, originality, and verifiability."

The Provost concurred with these findings and recommended to the President that the

degree be revoked. President Frank Franz accepted the report and revoked the degree. The Board of Trustees of The University of Alabama subsequently approved the President's decision, rendering it final. Notification was provided to the former student, a notation was placed on his transcript indicating that the degree was revoked, and his thesis was removed from the Library. This represents, apparently, the first instance of an awarded degree being revoked by any of the University of Alabama institutions.

Another recent case presents an interesting variation on this "revocation" theme. Brown, a masters degree student at the University of California at Santa Barbara, received an initial approval of his thesis from his three-member thesis committee. He then added an "acknowledgments" section, which he entitled "Disacknowledgments" and in which he used profane language to lambast certain university administrators and staff, as well as the California Governor and the Board of Regents. When he attempted to file his thesis in the university library, the section was discovered and the thesis was referred back to the committee. It then determined that the section, even after some modification, did not meet the professional standards required for scholarly publication. His degree was initially withheld until he removed the offending section, although the university finally awarded the degree the next year despite the student's failure to respond as requested.

Brown sued the members of the thesis committee, the graduate dean, the library director, and the chancellor, claiming that they violated his constitutional rights by withholding his degree. The case was appealed by Brown to the Ninth Circuit Court of Appeals after the trial court granted the defendants' motion for summary judgment. The appellate court regarded a 1988 Supreme Court case, *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, as instructive. In *Hazelwood*, the U.S. Supreme Court held that school officials do not transgress First Amendment rights when they exercise some control over student expressive activities (in this case, a high school newspaper) as long as that control is related to "legitimate pedagogical concerns." Acknowledging the difference in the constitutional status of "curricular" and "noncurricular" student speech, the Ninth Circuit recognized that a public educational institution has an inherent right to regulate student speech that falls in the former category. In fact, such right stems from the basic notion of academic freedom itself, that is, the right of an institution to establish and apply academic standards to curricular assignments.

In this case, Brown was given an academic assignment (the completion of a thesis) and was provided with reasonable standards applicable to that assignment. In rejecting the "Disacknowledgment" section of the thesis, the thesis committee was acting pursuant to a proper pedagogical purpose - teaching Brown what are professional norms for the format of a scholarly paper. *Brown v. Li*, 308 F.3d 939 (9th Cir. 2002).

The plaintiff had also charged university officials with violating his procedural due process rights under the Fourteenth Amendment when they withheld his degree without first providing him a hearing. The Ninth Circuit, however, stated that the officials' action was properly characterized as "academic" in nature, as opposed to disciplinary, and that, as long as the decision to defer awarding the degree was "careful and deliberate," no hearing was required. The lower court's dismissal of these federal constitutional claims was, therefore, affirmed.

In extending the *Hazelwood* principles to higher education, the Ninth Circuit Court's ruling in *Brown* provides welcome precedent protecting the academic decisions of university faculty against student "free speech" claims. In a larger sense, the foregoing cases and actions demonstrate the authority an academic institution may exercise over its degrees, even to the extent of withdrawing a degree already awarded, where serious pre-award academic or nonacademic misconduct has occurred and where certain basic procedural student rights are observed.