



Legal Implications of Academic Advising

Webinar Handout

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Overview

Audrey Wolfson Latourette, J.D. joins **NACADA Past President Thomas Grites** in the AdvisorConnect platform to discuss the potential legal implications of academic advising. They will review the posture of the courts with respect to intervention in both the public and private college and university context, share an analysis of a variety of legal theories employed by students to enforce statements issued by academic advisors or other representatives of the university, and share strategies to limit individuals' and institutions' potential liabilities.

References and Recommended Resources

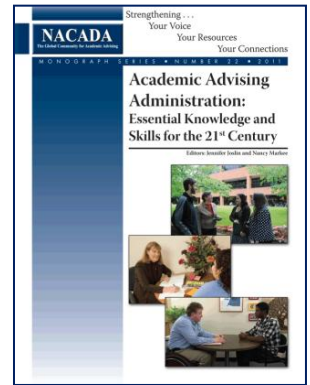
Schmidt, Peter. (2011, October 11). Federal bias inquiry assumes students, like home buyers, can be illegally steered. *The Chronicle of Higher Education*.

The following case law can be accessed on the Lexis-Nexis database:

Abrams v. Illinois College of Podiatric Medicine, 77 Ill. App. 3d 471 (1979)
Alsides v. Brown Institute, Ltd., 592 N.W.2d 468 (1999)
Blank v. Board of Higher Education of the City of New York, 51 Misc. 2d 724 (1966)
Byrd v. Lamar, 846 So.2d 334 (2002)
Healy v. Larsson, 67 Misc.2d 374 (1971)
Hendricks v. Clemson University, 353 S.C. 449 (2003)
Napolitano v. Trustees of Princeton University, 453 A.2d 279 (N.J. Super. 1982)
Sain v. Cedar Rapids Community School District, 626 N.W.2d 115 (2001)
Wilson v. Illinois Benedictine College, 112 Ill.App.3d 932 (1983)

The following is extracted from:

Wolfson Latourette, A. (2011). Legal implications of academic advising. In J.E. Joslin & N.L. Markee (Eds.), *Academic Advising Administration: Essential Knowledge and Skills for the 21st Century*. (NACADA Monograph Series, No. 22). Manhattan, KS: National Academic Advising Association.



Abstract

Academic advising has assumed an increasingly significant role in higher education in terms of retention, graduation, and transfer rates (Tricoli, 2009). Whatever method of advising is employed by the institution of higher education, the goal remains the same: to provide a structured relationship wherein students can satisfy all academic requirements, maintain the necessary cumulative average, fulfill athletic and scholarship requirements, properly prepare for graduate school mandates, and graduate in a timely fashion. Advisors and other stakeholders evince concern regarding the legal implications of erroneous academic advising given a student that hampers his or her ability to comply with foregoing objectives. The literature describes increasing student consumerism coupled with an evolving legal responsibility of advisors (Makar, 2002). Yet an examination of case law suggests that the traditional deference exhibited by courts with respect to the academic decision making of colleges and universities endures. Research indicates that despite a variety of theories upon which students sue advisors, including educational malpractice, breach of a fiduciary relationship, estoppel, and breach of contract, generally the academic advisor and her or his institution will not be deemed liable for errors in advice tendered, barring gross negligence, fraudulent conduct, or arbitrary and capricious behavior.

Chapter sections are:

- Judicial Deference to Academic Decision Making
- Student Initiated Litigation against Advisors and Institutions
 - *Educational Malpractice, Negligence, and Negligent Misrepresentation*
- Breach of a Fiduciary Relationship
- Breach of Contract
- Estoppel
- Intentional Misrepresentation
- Sovereign Immunity

Recommendations

Given the judiciary's traditional posture of minimal intervention into the student-university relationship, as premised on its deference to the university's autonomy and expertise, and the courts' rejection of the tort of educational malpractice, as applied to both failure to educate and failure to advise properly, as premised on public policy objections, generally the academic advisor will not be deemed liable for errors in advice tendered, barring gross negligence, willfulness, fraud, or misrepresentation. Case law suggests, however, that where certain and definite contractual promises are tendered to a student, or where repeated assurances by multiple authorities are offered to a student regarding course selection requirements for graduation, or where college catalogs or brochures contain contradictory information respecting such requirements, and a student complies in good faith with such advice, the institution may be bound by those assurances promised if proffered by its publications and/or its agents acting with apparent authority. In an era of increased competition among institutions of higher education for a client base, and in an era of greater expectations from a consumer oriented student population, it behooves the college or university to clearly set forth the student's ultimate responsibility in all institutional publications and have faculty advisors apprise students of same; eliminate ambiguities or inconsistencies regarding requirements in said publications; require that all waivers or alterations from course or major requirements are documented and placed within a student's file; and formally train its advising staff and faculty both in the standards for graduation, licensure, athletic eligibility, and graduate school, and in the standards for professional and objective recordkeeping of advising sessions attendant to good quality academic advising. Such measures will reflect the institution's bona fide efforts to address the best interests of its students while concomitantly serving to provide a defense to allegations of erroneous advising.

Legal Implications of Academic Advising



Today's Topics

- Judicial Deference to Academic Decision Making
- Student Initiated Litigation Against Advisors and Institutions:
 - Educational Malpractice, Negligence and Negligent Misrepresentation
 - Breach of a Fiduciary Relationship
 - Breach of Contract
 - Estoppel
 - Intentional Misrepresentation
- Sovereign Immunity

Educational Malpractice

The tort of educational malpractice represents a negligence claim wherein the plaintiffs allege the advisor had a duty toward the student, and in breaching that duty by proffering incorrect advice, was the proximate cause of foreseeable damages sustained by the student.

Educational Malpractice

It is a claim which is enamored of by the commentators, but not by the courts, which express reluctance in determining that, in fact, an advisor has a duty as a matter of law to give accurate academic advice to students.

Breach of a Fiduciary Relationship

A fiduciary is an individual such as a trustee with regard to a beneficiary, or a lawyer with regard to a client, who possesses an expertise upon which the other party relies, and who engages in that conduct that most benefits a client, and there exists a “reposing of faith, confidence and trust, and the placing of reliance by one upon the judgment and advice of the other.”

Breach of a Fiduciary Relationship

Courts historically apply the concept to legal or business settings, in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and generally decline to recognize the relationship between an advisor and a student as a fiduciary one.

Breach of Contract

Courts traditionally indicate that the contractual relationship between the student and the university is evidenced in the institution's written documents, including catalogs, bulletins, and brochures, and faculty/student handbooks. Courts will not recognize a breach of contract on the part of the institution unless the student can demonstrate breach of a specific duty or promise set forth in the contract.

Breach of Contract

Courts may consider oral modifications to a student-university contract, but will not enforce such statements unless the terms are sufficiently definite and certain, and the individual proffering the statements has actual or apparent authority to do so.

Estoppel

- Estoppel refers to the reasonable reliance by one party on the word, acts, or deed of another so that the first party changes his position and suffers injury as a consequence.
- Before oral statements issued by advisors will be deemed binding, the students must demonstrate justifiable reliance on the statements, and the representative issuing the statement must actually or reasonably appear to have authority.

Intentional Misrepresentation

Refers to the statements proffered by public or private institutions, upon which students rely, which specifically promise an educational service, such as courses or curriculum, and which are premised on fraud or misrepresentation.

Sovereign Immunity

The Eleventh Amendment of the U.S. Constitution affords a governmental immunity to states, state agents and state instrumentalities with regard to lawsuits brought in federal courts by citizens; state constitutions similarly offer immunity to a state institution. Such immunity is an essential part of the U.S. federalism scheme wherein states retain the sovereignty they enjoyed prior to the ratification of the U.S. Constitution.

Sovereign Immunity

The Fourteenth Amendment of the Constitution permits Congress to abrogate sovereign immunity to enforce guarantees of due process and equal protection set forth in the Constitution. The rationale for providing sovereign or government immunity is that this doctrine endeavors to provide protection for public resources that might be at risk in litigation, and to protect state officers and employees from being intimidated in the performance of their tasks by litigation threats.

Unlawful Steering to or from a Particular Course

The Education Department's Office of Civil Rights may be establishing new precedent by potentially determining that illegal steering occurs when an advisor allegedly discriminates against a student by "steering" a student toward or away from a course, premised on discrimination grounded in race, gender, religion and the like.

Unlawful Steering to or from a Particular Course

- The term is commonly employed in housing discrimination situations wherein a realtor will steer a minority individual away from a white neighborhood and vice versa.
- In the context of academic advising, for example, steering may potentially occur when an advisor steers a female student away from an engineering course, premised on illegal gender stereotyping.

Recommendations

- Clearly set forth the student's ultimate responsibility in all institutional publications and have faculty apprise students of same
- Eliminate ambiguities or inconsistencies regarding requirements in such publications

Recommendations

- Require that all waivers or alterations from course or major requirements are documented and placed within a student's file
- Formally train, on an annual basis, one's advising staff and faculty both in the standards for graduation, licensure, athletic eligibility and graduate school, and in the standards for professional and objective record keeping of advising sessions

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Academic Advising**



The logo for NACADA ADVISOR CONNECT features a small icon of a person at a computer on the left, followed by the text 'ADVISOR' in red and 'CONNECT' in blue. To the right of the text is a graphic of four stylized human figures in orange, green, red, and blue, with a blue arrow pointing from the text towards them.
