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DUE PROCESS IN ACADEMIC DISMISSALS
FROM POST SECONDARY SCHOOLS

In 1961, the United States Court of Appeals for the Fifth Circuit in Dixon v. Alabama State Board of Education\(^1\) held that a student dismissed from a state college for disciplinary reasons was entitled to minimal notice and hearing. This was the first time that a court had explicitly adopted the view that a disciplinary dismissal from a public post secondary school without these procedural safeguards violated property and liberty rights protected by the fourteenth amendment.\(^2\) Although in recent years the Supreme Court has extended due process protection to newly evolving property and liberty interests,\(^3\) it did not directly address disciplinary dismissals or suspensions of students from any part of the academic community until 1975 in Goss v. Lopez.\(^4\) In Goss, because a state statute specifically provided that all students in primary and secondary schools were entitled to a free education,\(^5\) the Court held that the plaintiffs, high school students, had a property interest in that education. Moreover, because of the stigma attached to a suspension or expulsion from school, and attendant potential damage to future educational and employment opportunities, a liberty interest was recognized. The Court ruled that students facing even temporary suspension from public high school were entitled to notice of the charges, an explanation of any evidence against them, and an opportunity to present evidence in their favor.\(^6\) Although Goss

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1. 294 F.2d 150 (5th Cir.), cert. denied, 368 U.S. 930 (1961).
2. U.S. CONST. amend. XIV, § 1 reads in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law . . . ."
The doctrine expressed in Dixon was repeatedly upheld by other courts of appeals in cases involving both the suspension and dismissal of high school and college students. See, e.g., Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972); Calloway v. Briggs, 443 F.2d 296 (6th Cir. 1971); Brown v. Strickler, 422 F.2d 1000 (6th Cir. 1970); Esteban v. Central Mo. State College, 415 F.2d 1077 (8th Cir. 1969).
5. This statutory guarantee of an education is not present at the post secondary level. But see note 39 infra.
6. 419 U.S. at 581. The Court stopped short of requiring the full trial-type protections of representation by counsel and confrontation and cross-examination of witnesses.
dealt with suspensions from a high school, the Court approved for the first time the Dixon doctrine that a student expelled from a tax-supported post secondary institution was entitled to due process protection.\textsuperscript{7}

Notwithstanding the expansion of students' rights in the area of disciplinary dismissals, the courts continued to maintain a laissez faire attitude toward dismissals based solely on a student's poor academic performance. In the area of academic dismissals it was believed that the evaluation of a student's work was clearly within the province of the school authorities, and judicial intervention would be appropriate only when it could be shown that the school had acted in an arbitrary or capricious manner.\textsuperscript{8} Courts refused to accept the argument that a post secondary student had an entitlement\textsuperscript{9} in his education of sufficient weight to warrant notice and hearing prior to dismissal for poor academic performance. Likewise, the courts were not convinced that the stigma attached to an academic dismissal so damaged the student's reputation or chances for future educational or employment opportunities that the procedural protections of the fourteenth amendment would be required.

Two recent cases from the Eighth and Tenth Circuit Courts of Appeals have re-examined this question. Though their conclusions are noticeably different, and demonstrate that a good deal of disagreement on this matter still exists, they reveal that the courts are expanding due process rights in this area and are examining more closely the circumstances surrounding, and ultimate results of, academic dismissals from public post secondary schools.

In Gaspar v. Bruton\textsuperscript{10} a practical nursing student, who had an adequate grade point average in her classroom work, was dismissed because she

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7. Id. at 576 n.8. The Court referred to Dixon as the "landmark" decision in the area of disciplinary dismissals. Id.
9. The concept of property entitlement has been advanced by the Court in its expansion of due process protection. See Morrissey v. Brewer, 408 U.S. 471 (1972); Fuentes v. Shevin, 407 U.S. 67 (1972); Bell v. Burson, 403 U.S. 535 (1971); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Fin. Corp., 395 U.S. 337 (1969). The Court distinguished an entitlement from a vested property right in Goldberg, noting that today's modern society has many such entitlements which do not fall within traditional common law concepts of property. 397 U.S. at 262 n.8. Such entitlements are created by "existing rules or understandings that stem from an independent source such as state law." Board of Regents v. Roth, 408 U.S. 564, 577 (1972).
10. 513 F.2d 843 (10th Cir. 1975).
Due Process in Academic Dismissals

performed poorly in the clinical aspects of her studies. The plaintiff argued that she had not received adequate procedural safeguards prior to her dismissal and was therefore deprived of protected property and liberty rights. The district court determined that there had been no violation of Gaspar's constitutional rights and that the court would not question the standards used to determine a student's academic ability. On appeal, the Tenth Circuit adhered to the established standard that, in the area of academic dismissals, the decisions of school officials would be considered conclusive unless the student could show that the officials had acted in an arbitrary or capricious manner. The court did rule, however, that, in light of Goss, the plaintiff had a vested property right in her education and was entitled to some, albeit minimal, due process protection. Nonetheless, the notice and hearing procedure that the school had given Gaspar was found to be more than adequate.

In Greenhill v. Bailey, a medical student dismissed because of academic deficiencies challenged the procedure used by the state-supported University of Iowa College of Medicine to determine his fitness to practice medicine. The review procedure employed by the school permitted only a written appeal by the student after an adverse determination by the administration. Not only was Greenhill dismissed, but a form letter, which would be available to any medical school to which he might later apply, indicated that one reason for his dismissal had been "lack of intellectual ability." The form, entitled a "Change of Status Form," was sent to the Liaison Committee on Medical Education of the American Medical Colleges in Washington, D.C. The district court held that the school had absolute discretion in this area and that judicial encroachment into the academic sphere was to be avoided unless the school's bad faith or ill will could be established by the

12. 513 F.2d at 849.
13. Id. at 850. The only due process requirement mandated by the court was that the student "be made aware prior to termination of his failure or impending failure to meet [minimum academic] standards." Id. at 851.
14. Despite the due process standard established, the court closely examined the procedural safeguards that had been afforded Gaspar. She had been provided with counseling on her deficiencies, a hearing before the board of education, a hearing before the superintendent of the school at which she could confront faculty and staff and present her case, and finally, after her dismissal, a formal hearing with the opportunity to present witnesses and to confront opposing witnesses. Id. at 847. The procedures employed by the school administration were considered fair and reasonable under the circumstances. Id. at 850-51.
15. 519 F.2d 5 (8th Cir. 1975).
16. Id. at 7.
The Eighth Circuit agreed that state school officials had a wide area of judgment when evaluating the academic work of their students, but maintained that the courts could intervene when a public educational institution "acts to deprive an individual of a significant interest in either liberty or property." While academic dismissal alone was not enough to warrant due process protection, the denigration of the student's intellectual ability in conjunction with the dismissal resulted in injury to a significant liberty interest and triggered a notice and hearing requirement. The court ruled that the actions of the school officials imposed on the student "'a stigma . . . that foreclose[s] his freedom to take advantage of other [employment] opportunities.'" Recognizing the distinction between academic and disciplinary dismissals, the court nonetheless maintained that when a significant interest in liberty or property is affected by the school's actions, due process must be followed.

Admittedly these two decisions do not prescribe the same procedural safeguards for academic dismissals from post secondary schools that Goss established for disciplinary dismissals from public high schools. They do, however, represent a limited extension of due process requirements into the heretofore sacrosanct area of determination of academic deficiency in state-supported post secondary schools. This note will concern itself with this extension, how it has evolved from earlier guidelines established by the courts, and the possibility that the concepts instituted in these cases will be adopted and further expanded by other courts.

I. DUE PROCESS IN THE POST SECONDARY ACADEMIC COMMUNITY

The current increase in judicial attention to the methods used by post secondary schools in academic dismissals can best be understood by examining the concurrent histories of due process in disciplinary proceedings and academic dismissals, especially in relation to recent extensions of due process in other areas.

18. 519 F.2d at 7.
19. Id. at 8. The Court decided this case solely on the issue of the deprivation of a liberty interest. It felt that it was unnecessary to determine whether or not Greenhill had a property interest in continuing his education. Id. n.9.
20. Id., citing Board of Regents v. Roth, 408 U.S. 564, 573 (1972). The court also mentioned that the actions of the school officials might injure the student's reputation in the community. 519 F.2d at 8 n.8.
21. Id. at 7. The court held that "at the very least" the student should receive notification of any alleged deficiency in intellectual ability and a chance to personally
A. Due Process in Post Secondary School Disciplinary Matters

Prior to Dixon, two judicial theories were consistently advanced to deny any measure of procedural protection to the post secondary school student faced with official action. The first was the common law doctrine that colleges were *in loco parentis* and could control a student's actions to the same extent as parents. Under this view, a post secondary student had virtually no rights and was subject to the unquestioned authority of the school. The second theory reasoned that when a student enrolled in a college or university, he entered into a contract with the school to abide by its disciplinary rules and regulations. These regulations were framed in the broadest possible language to ensure that any deviant conduct could be handled summarily. In the federal courts these theories served to reinforce an underlying reluctance to interfere with the states' handling of what was deemed to be essentially a state function. Federal intervention was considered appropriate only when a state-supported institution discriminated against a student because of race or religion.

22. Blackstone set out this theory as follows:

A parent may also delegate part of his parental authority during his life, to a tutor or schoolmaster of his child; who is then *in loco parentis*, and has such a portion of the child committed to his charge, viz. that of restraint and correction as may be necessary to answer for the purpose for which he is employed.

1 BLACKSTONE, COMMENTARIES 453 (4th ed. 1771). The extreme extent to which the courts felt this control could go is well illustrated by the following passage from *Gott v. Berea College*:

[T]he school, its officials and students, are a legal entity, as much so as any family, and, like a father may direct his children, those in charge of boarding schools are well within their rights and powers when they direct their students what to eat and where they may get it, where they may go, and what forms of amusement are forbidden.


24. One example is an old Syracuse University regulation which all students were required to sign:

Attendance at the University is a privilege and not a right. In order to safeguard [its] scholarship and [its] moral atmosphere, the University reserves the right to request the withdrawal of any student whose presence is deemed detrimental. Specific charges may or may not accompany a request for withdrawal.


The growing discontent with the judicial policy of nonintervention was expressed well by the late Harvard Professor Warren A. Seavey, who was appalled that educational institutions whose very existence depended on the preservation of basic freedoms would dismiss a student for disciplinary reasons without any procedural safeguards. He characterized the courts' response as "denying to a student the protection given to a pickpocket," and argued that the professor-student relationship demanded that all facts pertinent to a disciplinary dismissal be made known to the student.

Dixon v. Alabama State Board of Education was the first significant departure from the practice of judicial nonintervention in disciplinary dismissals from post secondary schools. In Dixon, students were dismissed from a state-supported college as a result of involvement in a civil rights demonstration. They were neither told of the grounds for their dismissal, nor were they given a chance to speak on their own behalf. The court of appeals ruled that because dismissal from college would deny the student possible future educational and employment opportunities, he was entitled to due process protection before expulsion. To determine what procedural protections were required, the court balanced the right of the student to continue his education against the importance of the specific state power that had been exercised.

27. Professor Seavey suggested that this relationship was a fiduciary relationship wherein the function of the professor was "to act for the benefit of [the student] as to matters relevant to the relation between them." Id. at 1407 n.3, citing RESTATAEMT OF AGENCY § 390 (1933), RESTAEMT OF TRUSTS § 170 (1935). Presumably this duty of the professor to act in the student's best interests and keep the student informed of all relevant facts in transactions between them could be recognized in academic as well as disciplinary dismissals.
29. The usual school practice allowed for a hearing before a disciplinary expulsion and a conference with faculty members before dismissal for academic deficiency. The school authorities argued that since the students had been dismissed for violating state law, as opposed to university regulations, normal procedure was not applicable. 294 F.2d at 154-55.
30. Id. at 157. This line of reasoning reflects the commonly held view that a college education is no longer a luxury but a necessity. See Wright, The Constitution on the Campus, 22 VAND. L. REV. 1027, 1032 (1969). Professor Wright indicated that because the value of a post secondary education has increased so much in recent years, a student should not be summarily dismissed for disciplinary reasons. However, Wright did not feel that due process protection is applicable in the area of academic dismissals, because school authorities are the experts in deciding the value of a student's academic work. See id. at 1032, 1070.
31. 294 F.2d at 156. This balancing concept has been used by the Supreme Court to extend the degree of due process required in several noneducation cases. See cases cited note 3 supra. Professor Wright also stressed the importance of this test and main-
Dixon established minimum procedures required in disciplinary dismissals from state post secondary schools: the student should be given the names of the witnesses against him and the facts to which those witnesses testified; he should have an opportunity to present his own defense, including presentation of witnesses; and the findings of any hearing should be made available to him in writing. The Dixon standards were substantially adhered to by other circuits in subsequent cases. Despite the widespread acceptance of the right to due process in disciplinary dismissals from state schools, the courts consistently refused to apply procedural safeguards when the student facing disciplinary action was from a private school.

The first express recognition by the Supreme Court that students at any stage of their public education were entitled to due process protection in a disciplinary dismissal came in Goss v. Lopez. Although Goss dealt with the suspension of a public high school student, it was the first case in which the Court sanctioned the Dixon doctrine, and it was relied upon by the courts of appeals in Gaspar and Greenhill. Under the Goss rationale and facts, a public school student has both a property and liberty interest in public education, and these interests are sufficient to warrant notice and a hearing before even temporary suspensions. The Court reasoned that since all

32. 294 F.2d at 158-59. The Dixon court did not feel that a full trial-type hearing was necessary or appropriate. Id. at 159.
33. See note 2 supra.
34. In attempts to gain due process protection for private school students, two arguments have been raised unsuccessfully. Some litigants have claimed unsuccessfully that even private school dismissals involve state action since the state requires that certain subjects be taught and gives indirect assistance to private schools. See Bright v. Isenbarger, 314 F. Supp. 1382 (N.D. Ind. 1970). See also Grossner v. Trustees of Columbia Univ., 287 F. Supp. 535 (S.D.N.Y. 1968); Greene v. Howard Univ., 271 F. Supp. 609 (D.D.C. 1967). Secondly, it has been suggested that when a student is admitted to a university, he enters into a contract with the school to obey the school's regulations. If the student breaks those rules, he has rescinded his contract; but because the burden of proving rescission is on the university, some form of hearing would be required. See Comment, Developments in the Law—Academic Freedom, 81 Harv. L. Rev. 1045, 1145-47 (1968).
35. 419 U.S. 565 (1975). In the academic realm, the Court previously had addressed the due process rights of teachers who had been dismissed. See, e.g., Board of Regents v. Roth, 408 U.S. 564 (1972); Slochower v. Board of Educ., 350 U.S. 551 (1956); Wieman v. Updegraff, 344 U.S. 183 (1952). The Court had dealt with the dismissal or suspension of students only in the context of first amendment violations. See, e.g., Tinker v. Des Moines School Dist., 393 U.S. 503 (1969).
36. The two-step analysis used by the Court asked first whether a sufficient interest existed to warrant fourteenth amendment protection, and second, how much procedural protection was required. 419 U.S. at 576-77.
students in Ohio were extended the statutory right to an education, they had a "legitimate claim of entitlement" to an education and could demand procedural protection of that property interest. In post secondary schools, however, this statutorily created entitlement is generally not present. Although the *Gaspar* court believed that post secondary students had a property interest, the *Greenhill* court noted the difference in the entitlement claim between post secondary students and those at the elementary and high school level.

In addition to acknowledging a student's property interest, the Court in *Goss* held that sustained and recorded charges of misconduct could have an adverse effect on the student's future educational and employment opportunities. Contrasting the suspension or expulsion of a student with the decision not to rehire a university teacher after the expiration of a one-year contract, the Court considered the injury in the latter case to be speculative and insubstantial whereas harm to the expelled or suspended student was adjudged to be virtually inevitable. Since the student's "good name, reputation, honor, or integrity" were at stake, the Court ruled that due process was required to protect him against a deprivation of liberty. This aspect of the

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37. *Ohio Rev. Code Ann.* § 3313.64 (1972) established that all children between the ages of 6 and 21 were entitled to free primary and secondary education.

38. 419 U.S. at 573-74.

39. See 513 F.2d at 850; 519 F.2d at 8 n.9. There is one instance where it conceivably could be argued that there is a statutory right to post secondary education. The California legislature has mandated that "all qualified California youth be insured the opportunity to pursue higher learning." *Cal. Educ. Code* § 22520 (West 1975). However, once enrolled he should have the opportunity to continue as long and as far as his capacity and motivation, as indicated by his academic performance and commitment to educational advancement, will lead him to meet academic standards and institution requirements.

40. 419 U.S. at 575.

41. See Board of Regents v. Roth, 408 U.S. 564 (1972).

42. 419 U.S. at 575-76. *Roth* did establish that if a person's future employability were affected by state action there was a cognizable liberty interest; but the Court held that the mere fact that refusal to hire would make the teacher less attractive to other potential employers was not sufficient reason to recognize a liberty right. *See* 408 U.S. at 574 n.13. In *Goss*, the appellees contended that colleges and employers frequently were interested in whether an applicant had been dismissed or suspended from school. The Court noted, therefore, that future educational and employment opportunities would certainly be limited. 419 U.S. at 575 n.7.

43. 419 U.S. at 574, *citing* Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971). In *Constantineau*, the plaintiff was held to be entitled to due process protection before
Court's decision, however, must be read in light of recent case law holding that an interest in "reputation" alone is not sufficient to warrant due process protection, but rather there must be a deprivation of a previously recognized right.

B. Due Process In Post Secondary Academic Dismissals

Despite the extension of due process into the area of disciplinary dismissals, the courts continued to maintain that determination of academic ability is a matter in which only the schools possess the required expertise. As long as the school authorities used good faith and were not arbitrary in formulating and applying academic standards, the courts refused to grant students any procedural protection. This had been particularly true in post secondary
schools where freedom from outside interference in the operation of the school was considered essential if the school were to operate effectively as a "marketplace of ideas." 47 Two questions were traditionally asked by the courts in determining whether judicial intervention was warranted: had the student met the school's minimum academic requirements, and were school authorities motivated by ill will or bad faith in dismissing him? The first question was always within the school's discretion, and only if that discretion was found to have been abused would the courts intervene. 48 Case law established that for a student to have any redress in the courts, he must show that the actions of the school were "arbitrary or capricious." 49 When the school's determination amounted to an honest evaluation of a post secondary student's academic work, and his dismissal was the result of this determination, the student was held not to have a property or liberty interest that warranted due process protection. 50

the student still was afforded the opportunity to attend another school. Id. at 22, 102 N.E. at 1097.

Under the Goss doctrine, when an education is statutorily guaranteed it is arguable that a public high school student could not be academically dismissed without notice and hearing since the result would be the foreclosure of that guaranteed education.


48. See, e.g., Connelly v. University of Vt. & State Agricultural College, 244 F. Supp. 156 (D. Vt. 1965), in which the district court held that, because a teacher had told a student that he would not pass regardless of the quality of his work, the student's dismissal was not based on the quality of his work. The court did not hold that the student should have received a passing grade in the course, but, because of the alleged bad faith on the part of the professor, the student had a cause of action. Id. at 161.

49. See, e.g., Brookins v. Bonnell, 362 F. Supp. 379 (E.D. Pa. 1973), discussed at p. 121 infra; Keys v. Sawyer, 353 F. Supp. 936 (S.D. Tex. 1973) (assignment of grades to a law student held to be a matter of the professor's discretion and only when the professor's actions were arbitrary or capricious would the federal courts intervene); Foley v. Benedict, 122 Tex. 193, 55 S.W.2d 805 (1932) (medical student who failed three major subjects and was automatically dismissed was held not to be entitled to any due process protection unless he could show arbitrary action on the school's part).

50. It would appear that a student is not entitled to procedural safeguards if failing grades are erroneously calculated by an incompetent professor. Assignment of grades is left strictly to the professor and unless the student can show arbitrariness, as was the case in Connelly v. University of Vt. & State Agricultural College, 244 F. Supp. 156 (D. Vt. 1965), he will not be entitled to any procedural safeguards. The courts have consistently declined to determine when a student's work is substandard. While courts obviously cannot determine the value of academic work, it has been suggested that when a student claims that a careless professor did not properly assess his performance, the court might require that the failing student's work be reevaluated by another faculty member. See Comment, Developments in the Law—Academic Freedom, 81 Harv. L. Rev. 1045, 1139 (1968). A recent Supreme Court case, however, implied that the Court would not be especially receptive to this suggestion. In Bishop v. Wood, 96 S. Ct. 2074 (1976), a case involving the dismissal of a police officer for allegedly false reasons, the court stated:
Due Process in Academic Dismissals

While the arbitrary and capricious standard has been retained, recent decisions have looked more closely at the circumstances surrounding academic dismissals. Courts have continued to refuse to evaluate a student’s work, but in some cases they have been more reluctant to accept automatically a school’s contention that a dismissal was in fact an academic dismissal. In Brookins v. Bonnell, for example, a nursing student, allegedly dismissed for academic failure, claimed that he had been arbitrarily dismissed for actions that were unrelated to his academic performance. The court agreed that the dismissal was in fact for disciplinary rather than academic reasons and held that due process protection similar to that set out in Dixon was required.

Thus, until recently, the courts have only been willing to examine academic dismissals from public post secondary schools to determine if they were arbitrary or capricious, or if they were for disciplinary rather than academic reasons. Where the dismissal was based strictly on academic performance, the courts have not been willing to recognize a property or liberty interest held by the student sufficient in and of itself to invoke due process.

II. EXPANSION OF DUE PROCESS IN POST SECONDARY SCHOOL ACADEMIC DISMISSALS

Both Gaspar v. Bruton and Greenhill v. Bailey reaffirmed the doctrine that courts will not examine the evaluation of academic performance in state-supported post secondary schools unless the schools' actions are arbitrary or capricious. These two cases, however, have expanded the role of due process in academic dismissals in two significant ways. Gaspar recognized that a student who pays an enrollment fee is vested with a property right protected by due process. Greenhill held that once school authorities go beyond a mere evaluation of a student's academic performance, to a characterization

The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs.

Id. at 2080.
52. Id. at 383. The court expanded the meaning of a disciplinary dismissal by ruling that the student's actions were not misconduct that would subject him to disciplinary proceedings but rather were misconduct in the sense that he had failed to do something required of all students. Id.
53. Id.
54. 513 F.2d 843 (10th Cir. 1975).
55. 519 F.2d 5 (8th Cir. 1975).
56. 513 F.2d at 850.
of his personal traits, and make that characterization public, the student is deprived of a significant liberty interest if he is not accorded some notice and hearing.\textsuperscript{57}

\textbf{A. Property Interest in Academic Dismissals}

In reaching its decision in \textit{Gaspar}, the court of appeals emphasized that the controversy did not involve a disciplinary matter, but was rather a question of Gaspar's total academic performance. Notwithstanding the fact that the dismissal was an academic one, the court reasoned that if, under \textit{Goss}, a public high school student had a property right in his education, then Gaspar, who had paid an enrollment fee to attend school, had a vested property right a fortiori.\textsuperscript{58} From the language of the court's opinion, it is unclear whether the student acquired her property interest merely by enrolling in the state-supported school or by paying her enrollment fee and thereby creating a contract between herself and the school.\textsuperscript{59} If the Tenth Circuit has ruled that the student had a property interest merely because she enrolled in a state school, the opinion does not stand on solid ground. As the Eighth Circuit noted in \textit{Greenhill},\textsuperscript{60} the high school student in \textit{Goss}, who was guaranteed an education by statutory provision, had a significantly different claim of entitlement to his education than that of the post secondary student who is admitted to college or graduate school on a competitive basis. While the entitlement in \textit{Goss} arose from existing rules or understandings, without the

\textsuperscript{57} 519 F.2d at 8.

\textsuperscript{58} 513 F.2d at 850. The court of appeals spoke of a "vested property right" rather than of a property "interest" or "legitimate claim of entitlement." The Supreme Court has eradicated the use of the old right-privilege distinction to determine if due process protections apply. \textit{See} Board of Regents v. Roth, 408 U.S. 564, 571-72 (1972). An entitlement, as used by the Court, is something less than a constitutional right, yet still warrants procedural safeguards. \textit{See} note 9 \textit{supra}. In \textit{Goss}, the Court spoke of just such a protected interest "not created by the Constitution." Rather, they are created, and their dimensions are defined, "by an independent source such as state statutes or rules entitling the citizen to certain benefits." 419 U.S. at 572-73, \textit{citing} Board of Regents v. Roth, \textit{supra}, at 577. Clearly Gaspar's property interest would constitute such an entitlement; however, the Tenth Circuit either blurred this distinction or felt that it was not worth making because entitlements are now granted due process protection once reserved only for rights.

\textsuperscript{59} \textit{See} 513 F.2d at 850. The court asserted:

We have no difficulty in concluding that in light of \textit{Goss} . . . where the Supreme Court recognized a \textit{property right} in public school students that certainly such a right must be recognized to have vested with Gaspar, and the more prominently so in that she paid a specific, separate fee for enrollment and attendance at Gordon School.

\textit{Id}.

\textsuperscript{60} 519 F.2d at 8 n.9. Although the court did not decide the issue of whether a property interest existed, it seemed inclined to conclude that one did not. \textit{Id}.
existence of a contract, there is no such rule or understanding that the public post secondary school student is entitled to complete his education.

It can be argued, however, that a graduate student has a greater property interest in his education than a public school student. Theoretically, the more advanced a student is in his studies, the more he can justifiably rely on completing his work and attaining a degree. This expectation of graduating could be considered a property interest, particularly in an era when a post secondary degree is a prerequisite for many occupations. The major flaw with this argument, however, is that although a student may have a much greater personal interest in obtaining a post secondary degree, it is merely a unilateral expectation. The Supreme Court, in other contexts, has held that a unilateral expectancy, no matter how great, is not protected by procedural due process. It is difficult, if not impossible, to reconcile a recognition of a property interest based on enrollment in a state post secondary school with those cases.

The only acceptable interpretation of Gaspar then is that the court looked to the contract between the student and the school as creating a property interest. This would be the first time that a court used a contract theory to find that a student at a state-supported post secondary school had a property interest in his education, although the Supreme Court has ruled that a property interest in public employment can be created by contract. Using the contract analogy, when the student accepts the school’s offer of admission he

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61. Cf. Comment, Developments in the Law—Academic Freedom, 81 HARV. L. REV. 1045, 1152-53 (1968). This article contends that the expectation of graduating from a post secondary school has tended to receive more protection than the expectation of graduating from other schools. While this article pertains to procedural due process rights in disciplinary dismissals, dismissal from post secondary schools for academic reasons results in the same significant foreclosure of future educational and employment opportunities.

The amount of potential loss to a student dismissed from a post secondary school for academic failure was recognized in Connelly v. University of Vt. & State Agricultural College, 244 F. Supp. 156, 159 (D. Vt. 1965), in which the district court held that “[t]he value of the right of a third year medical student to complete his fourth year and attain a degree which entitles him to practice the profession of medicine is worth . . . in excess of $10,000.”


63. See Perry v. Sinderman, 408 U.S. 593 (1972), in which the existing policies and practices of the institution were held to have created an implied contract between a teacher and a state school system. Perry involved the dismissal of a nontenured college teacher who had been employed by the Texas State College system for 10 years. There was no formal tenure system, but because of the guidelines used by the school system, the Court recognized an entitlement that required notice and hearing before dismissal.

This doctrine was recently reaffirmed in Bishop v. Wood, 96 S. Ct. 2074 (1976). The Court, relying on Perry and existing state law, held that “an enforceable expectation
enters into a contract with the school. Whether that contract is created merely by the student enrolling or by his paying an enrollment fee, it entitles the student to receive his education. It is unclear whether the student is then entitled to complete his education or whether his continued enrollment is conditioned on satisfactory academic performance. In either case some due process protection is required to determine if the student has failed to meet the established standards.

B. Liberty Interest in Academic Dismissals

In determining that the medical student in Greenhill had a legitimate liberty claim, the Eighth Circuit relied heavily on the standards established by the Supreme Court in Board of Regents v. Roth and Wisconsin v. Constantineau. In Greenhill, both parties agreed that because of information contained in the “Change of Status Form” and its availability to all medical schools, it would be virtually impossible for the student to be readmitted to another medical school. Because the university, in dismissing Greenhill,
criticized not only his academic performance, but also his "intellectual ability," the resulting stigma significantly reduced his opportunities for future employment.\textsuperscript{69} The thrust of the court's decision was that the school did more than just evaluate academic performance. In "denigrating" the student's intellect, it overstepped the bounds of an academic evaluation and, as a result, due process protection became necessary.\textsuperscript{70} In all likelihood, if the school authorities had not communicated this evaluation of the student's intellectual ability outside the school, or if the "Change of Status Form" reflected only that Greenhill had not met required academic standards, the court would not have ruled that due process was required.\textsuperscript{71}

While Greenhill may appear similar to cases in which the courts have intervened in post secondary academic dismissals because the school's actions were arbitrary or capricious, or because what had been termed an academic dismissal was actually a disciplinary procedure, there are two significant differences. In Greenhill, the record clearly indicated that the plaintiff was a poor student;\textsuperscript{72} and there was no evidence that the school's decision to dismiss him could be considered arbitrary or capricious. Secondly, the court emphasized that the dismissal was in no sense a disciplinary one, and that its holding involved a recognition of the role of due process in explicitly nondisciplinary areas.\textsuperscript{73} In effect, the court held that while public post secondary school authorities can dismiss a student for poor academic performance, they may not do more than evaluate classroom work, nor may they publicly "denigrate" a student's personal traits without according him due process protection.\textsuperscript{74}

\textsuperscript{69} Id. at 8.
\textsuperscript{70} Id. See also Wellner v. Minnesota State Junior College Bd., 487 F.2d 153 (8th Cir. 1973), in which a nontenured faculty member claimed that he had not been reappointed because of his racist statements. Following Roth, the court of appeals held that while the reappointment refusal alone did not result in deprivation of a liberty interest, when coupled with the placement of the racist statements in the teacher's permanent file, it did constitute a deprivation severe enough to warrant notice and hearing.
\textsuperscript{71} See 519 F.2d at 8.
\textsuperscript{72} See id. at 6-7.
\textsuperscript{73} Id. at 8-9. The court did not characterize its decision as an extension of due process, but rather observed that "the particular circumstances [met] the criteria articulated by the Supreme Court in Board of Regents v. Roth . . . and Perry v. Sinderman . . . ." Id. For discussions of these cases, see notes 42 and 63 supra.
\textsuperscript{74} Since the Eighth Circuit's decision in Greenhill, the Supreme Court, in Paul v. Davis, 424 U.S. 693 (1976), greatly restricted the application of procedural safeguards to liberty interests. See note 45 supra. Although under the Davis rationale, damage to reputation alone will not warrant due process protection, Greenhill probably stands unaffected. The Eighth Circuit's primary emphasis in Greenhill was on the foreclosure of future educational and employment opportunities, rather than on harm to the student's reputation. 519 F.2d at 8.

\textsuperscript{74} The emphasis of the court on the public disclosure of the denigration of the
Having recognized a liberty interest, the court of appeals in *Greenhill* then defined the procedural safeguards necessary to protect that interest. In setting out these requirements, the court was influenced by the fact that school officials were acting in their roles as educators, not as fact-finders as they would be in a disciplinary matter. Therefore, the safeguards required were not as extensive as the court had mandated in *Dixon*. All that was necessary in *Greenhill* was first, that the student be given notice of any reasons for the dismissal which went beyond academic performance, if such information would be available to other schools and would stigmatize his future as a student; second, that the student be allowed the opportunity to contest the truth of such information. The required hearing could be an “informal give-and-take” session rather than a trial-type proceeding. This would provide the student a chance to clear his name, but still maintain the flexible environment, unencumbered by rigid judicial procedure, that is essential to the proper functioning of a post secondary institution.

**III. CONCLUSION**

The *Greenhill* and *Gaspar* decisions will probably not significantly alter academic dismissal proceedings as they currently exist in state-supported post secondary schools. *Gaspar* did hold that students in public post secondary schools have a property right in their education; nonetheless, when a school evaluates only the student’s total academic performance and its decision re-

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75. 519 F.2d at 9 n.11.
76. Id. at 9.
77. Id. This informal setting would be conducive to the free flow of information between students and faculty, a goal implicit in the professor-student fiduciary relationship theory advanced by Professor Seavey. *See note 27 supra.*
Due Process in Academic Dismissals

reflects only upon that performance, nothing more than the minimal standards of notice mandated by *Gaspar* will be required. When the dismissal reflects adversely upon more than a student's academic work, the resulting loss of liberty may, under *Greenhill*, require the protection of notice and hearing. While it could be argued that an academic dismissal from some post secondary schools, particularly law and medical schools, automatically imposes such a severe stigma on a student that future employment opportunities are foreclosed, no court has yet accepted this argument. It would appear that the argument would fail to establish a property interest because there is no legitimate claim of entitlement, but rather a mere unilateral expectation on the part of the student. However, because academic dismissal from a professional school may completely foreclose any chance for employment in that profession, it is conceivable that the existence of a liberty interest could be established in that instance.

Although the immediate practical effect of these two cases is uncertain, they represent an expansion of due process rights into the realm of academic dismissals. Professor Wright has maintained that the changes in due process in our colleges and universities have been effected largely because of the increased importance of post secondary education in today's society. While the post secondary academic community and the teacher-student relationship function optimally when free from outside interference, the courts should ensure that there are adequate procedural safeguards to protect the important interests of post secondary school students, particularly when school authorities venture beyond the narrow evaluation of academic performance.

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78. While no court has held that a hearing is required prior to an academic dismissal, 10 U.S.C. § 6963 (1970) provides midshipmen at the United States Naval Academy with an opportunity to present their cases in a rather unique procedure. The statute requires that a midshipman who fails any examination will be discharged, unless an Academic Board recommends otherwise. This Academic Board, in effect, acts on behalf of the midshipman in a relationship similar to that proposed by Professor Seavey. See note 27 supra. After a hearing before this Board, where full consideration is given not only to the midshipman's academic work, but also to personal characteristics, the Board can recommend that the midshipman be retained. The concept of providing a hearing that looks at more than just academic performance is compatible with the English law expressed in *R. v. Senate of the Univ. of Aston*, [1969] 2 All E.R. 964.

79. See *Wright*, supra note 30, at 1032.
ADDENDUM

Subsequent to its decision in Greenhill, the Eighth Circuit Court of Appeals has ruled in Horowitz v. Board of Curators\(^8\) that because academic dismissal from a state medical school effectively foreclosed the student's chances for employment in the field of medicine, a student has a liberty interest in completing her education that warrants due process protection.\(^8\) This decision has been appealed to the Supreme Court.\(^8\) Unlike Greenhill, where information denigrating the student's intellectual ability had been disseminated, Horowitz involves a purely academic dismissal and the reasons for the dismissal were not made public.

This aspect of the opinion is a dramatic expansion of Greenhill, and in light of the Supreme Court's recent decision in Bishop v. Wood,\(^8\) it is questionable that the decision will be affirmed if heard by the Court. Indeed, the general interpretation of Greenhill has been that absent public disclosure of the reasons for dismissal, the student is not stigmatized "in a constitutional sense."\(^8\)

While the effect of Greenhill on academic dismissals has been characterized in this article as relatively insignificant, it is clear that Horowitz, if affirmed by the Court, will have a potentially significant impact on "every graduate and professional school in the nation."\(^8\)

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81. 538 F.2d at 1321.
83. 96 S. Ct. 2074 (1976). *See* notes 45 & 74 *supra*.
84. Horowitz v. Board of Curators, 542 F.2d 1335 (8th Cir.), *denying rehearing of 538 F.2d 1317* (8th Cir. 1976). This factual distinction between Greenhill and Horowitz was noted by three judges who felt that the school's petition for rehearing should have been granted. *See also* Cato v. Collins, 539 F.2d 656, 660 (8th Cir. 1976); Navato v. Sletten, 415 F. Supp. 312, 317-18 (E.D. Mo. 1976).