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ACADEMIC DISHONESTY: REVOKING ACADEMIC CREDENTIALS

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INTRODUCTION

A credential is documentary evidence which indicates the authority of the holder.[1] An academic credential certifies that the holder has successfully completed a particular course of study.[2] Specifically, academic credentials serve as "objective indices of merit" which are utilized by the holders as "passports" into the professional work force.[3] Thus, academic credentials are precious commodities.[4]

For this reason, many students are resorting "to falsification, forgery, alteration and other fraudulent practices" to obtain academic credentials.[5] Such practices, however, compromise the

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1. BLACK'S LAW DICTIONARY 366 (6th ed. 1990). *See also* WEBSTER'S II NEW COLLEGE DICTIONARY 265 (1995) (defining "credential" as "[e]vidence attesting one's right to credit, confidence, or authority"); STAFF OF THE HOUSE OF REPRESENTATIVES SUBCOMM. ON HEALTH AND LONG-TERM CARE OF THE SELECT COMMITTEE ON AGING, 92ND CONG., REPORT ON FRAUDULENT CREDENTIALS: FEDERAL EMPLOYEES (Comm. Print 1986) [hereinafter REPORT ON FRAUDULENT CREDENTIALS] (defining credentials as "testimonials showing that a person is entitled to credit or has a right to exercise official power in terms of degrees, licensing, etc.").

2. Joan E. Van Tol, *Detecting, Deterring and Punishing the Use of Fraudulent Academic Credentials: A Play in Two Acts*, 30 SANTA CLARA L. REV. 791, 791 (1990).

3. *Id.*

4. Bernard D. Reams, Jr., *Revocation of Academic Degrees by Colleges and Universities*, 14 J.C. & U.L. 283, 283 (1987) (stating that "today, as competition for jobs and for entry into professional schools has stiffened, the college degree has become an even more precious commodity").

5. Van Tol, *supra* note 2, at 791 (stating that "it is precisely because of their inherent value that academic credentials are subject to falsification, forgery, alteration and other fraudulent use"). *See also* Reams, *supra* note 4, at 283 (stating that "many students, driven by the competitive atmosphere of the academic community, have resorted to fabrication, plagiarism, and even criminal

integrity of the academic community.[6] To combat this problem, the academic community must take it upon itself to police such activity. Courts have given great deference to the academic community's decision making policies with respect to the issuance of academic credentials.[7] The academic community must accept some self-policing responsibility since it is in the best position to ensure the validity of the credentials which it issues. Institutions should develop comprehensive internal operating policies to detect academic fraudulent activity.[8] However, the development of procedures to detect fraudulent activity is beyond the scope of this article.

This article offers a model code as a guide for academic institutions, as well as legislative bodies, to enact procedures for taking action once fraudulent activity is detected. Furthermore, this article examines the constitutional limitations on institutions, public as well as private, that take such action.

Part I offers a complete model code which provides the basis for the remainder of the article. Part II of this article discusses the purposes for such an enactment. Part III defines certain terms which should be used in a code adopted by academic institutions or legislative bodies. Part IV explains the requirement that the prohibited conduct be outlined with specificity in order to give sufficient notice to students contemplating the use of fraud to obtain academic credentials. Part V outlines the constitutional procedures that academic institutions should follow to reduce the risk of having their decisions reversed by a reviewing tribunal. Finally, Part VI offers a variety of available sanctions that an academic code should provide in order to maintain flexibility in enforcing its provisions.

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wrongdoing to obtain their degrees"). *See generally* REPORT ON FRAUDULENT CREDENTIALS, *supra* note 1 (discussing the ubiquity of fraudulent credentials).

6. Waliga v. Board of Trustees of Kent State Univ., 488 N.E.2d 850, 852 (Ohio 1986).

7. *See* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 312 (1978) (stating that courts have given academic institutions great deference in their decisions as to who may be admitted in the institution); *Waliga*, 488 N.E.2d at 852-53 (stating that courts generally do not interfere with fundamental university functions, including the granting and revoking of academic degrees); Faulkner v. University of Tenn., 627 So. 2d 362, 367 (Ala. 1992) (Houston, J., dissenting) (stating that since "educational institutions are uniquely situated to make determinations regarding academic qualifications or the lack thereof[,] [e]stablishing degree requirements and granting degrees are within the province of universities, not courts").

8. See Van Tol, *supra* note 2, at 803-16 for a comprehensive analysis of the type of procedures institutions could develop to detect fraudulant activity.

I. THE MODEL CODE

Code 100: Fraudulent Activity Within Academic Institutions

Section. Title
100/1. Purpose
100/2. Definitions
100/3. Standards of Conduct
100/4. Rules for Disciplinary Proceedings
100/5. Sanctions

100/1. Purpose
§ 1. The purposes of this Act are to:
A. preserve the integrity of legitimate academic credentials;
B. protect the academic admissions process; and
C. deter fraudulent activity.

100/2. Definitions
§ 2. "Academic Credentials"
shall include a degree, certificate, diploma, award, license, grade report, transcript, resume, financial statement, admissions application or any other instrument purporting to confer any form of academic achievement.

"Knowingly"
a student knows, or acts knowingly or with knowledge of:
(a) the nature or attendant circumstances of his or her conduct, described by the code defining the offense, when he or she is consciously aware that his conduct is of such a nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.
(b) the result of his conduct, described by the code defining the offense, when he or she is consciously aware that such result is practically certain to be caused by his conduct.[9]

"Material"
means a statement, or omission thereof, of sufficient substance and importance so as to have influence of effect on a decision making process.

"Student"
shall include, but is not limited to, persons who seek admission to and persons who have been admitted to an academic institution, and persons who have graduated from

9. This definition adopts the language of 720 ILL. COMP. STAT. 5/4-5 (West 1993) which defines knowledge in a criminal context.

an academic institution.

100/3. Standards of Conduct
§ 3. A student shall not knowingly:
A. falsify, alter or forge any academic credential;
B. use, attempt to use, or assist another to use brokered, falsified, altered or forged academiccredentials; or
C. submit false information of a material nature, or misrepresent a material fact on an application for admission or any other document submitted to the institution for administrative or academic purposes.

100/4. Rules for Disciplinary Proceedings
§ 4. Upon notification that a violation has occurred, the institution shall provide the student with the following:
A. a formal written notice of the charges;
B. the opportunity to prepare a rebuttal of the charges;
C. the opportunity to retain counsel at any hearing on the charges;
D. the opportunity confront the accusers;
E. an unbiased tribunal at a hearing on the charges; and
F. an adequate record of the proceedings.

100/5.Sanctions
§ 5. Any one or more of the following sanctions may be imposed by the institution in which the violation occurred.
A. An admonition to the student that he or she has violated this Act;
B. A written reprimand for the violation and a copy of the same which shall be placed in the student's permanent academic record;
C. Termination of the student's status within the institution;
D. Revocation of any credits or degrees received by the student from the institution where the violation has occurred; and/or
E. Any other sanction that the institution deems necessary and reasonable.

II. THE PURPOSES FOR SUCH ACTION

As stated in Section 100/1 of the model code, the purposes of such an enactment are to preserve the integrity of legitimate academic credentials, to protect the academic decision making process, and to deter fraudulent activity within the academic community.

According to a congressional report released in 1986 by the Subcommittee on Health and Long-Term Care, the number of persons who have completed 4 or more years of college has tripled

since 1960.[10] However, the number of available jobs for college educated persons "has not kept in pace with" this increase.[11] It appears that this disparity will continue.[12] Thus, college graduates will continue to compete for a limited number of available jobs.[13] Furthermore, over ninety percent of employers surveyed stated that they "place either a major or moderate emphasis on academic credentials."[14] Therefore, academic credentials play a vital role in the competitive job market.[15]

The Subcommittee also discovered that there is an increase in the number of persons "turning to nontraditional methods" in obtaining degrees.[16] It is estimated that one out of every two-hundred persons in the work force have "sought, obtained and in many instances are employed on the basis of some form of fraudulent credential."[17] Also, approximately one out of every three persons has altered his or her credentials in some manner and has been hired based on the alterations.[18] It is further estimated that one out of every fifty physicians now practicing has obtained his or her license by "fraudulent or highly questionable" means.[19] Thus, consequences from the use of fraudulent credentials "range from negligible to life-threatening."[20]

A degree awarded by an academic institution certifies "to the world at large of the recipient's educational achievement and fulfillment of the institution's standards." [21] If academic institutions did not possess the power to revoke degrees, they would in essence be "making a continuing false certification to the public at large of the accomplishment of persons who in fact lack the very qualifications that are certified."[22] This would undoubtably

10. REPORT ON FRAUDULENT CREDENTIALS, *supra* note 1, at 3.
11. *Id.*
12. *Id. See generally As Employers Battle Against Bogus Diplomas*, U.S. NEWS & WORLD REPORT, Aug. 6, 1984, at 61 (citing the necessity for a master's degree or doctorate for many white collar jobs as the reason for the increase in the number of falsified degrees).
13. *As Employers Battle Against Bogus Diplomas*, *supra* note 12, at 61.
14. Van Tol, *supra* note 2, at 792.
15. REPORT ON FRAUDULENT CREDENTIALS, *supra* note 1, at 3.
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 1. *See also* William Schaffer, et al., *Falsification of Clinical Credentials by Physicians Applying for Ambulatory Staff Privileges*, NEW ENG. J. MED., Feb, 11, 1988, at 356-58 (discussing research showing that inaccurate clinical credentials were submitted more frequently than expected in applications for clinical positions. The article concluded that no clinical program could claim quality assurance if it did not take steps to ensure the authenticity of medical staff credentialing).
20. REPORT ON FRAUDULENT CREDENTIALS, *supra* note 1, at 3.
21. *Waliga*, 488 N.E.2d at 852.
22. *Id.*

"undermine public confidence in the integrity of degrees."[23] Furthermore, employers who rely on the representations certified by academic credentials are directly injured by the fraudulent conduct.[24] Therefore, there is an urgency for academic institutions and legislatures to enact proper procedures to punish the use of fraudulent credentials.

III. DEFINING SOME OF THE NECESSARY TERMS

A. Academic Credentials

The use of fraudulent credentials is a flourishing problem in the United States affecting all of us in some shape or form.[25] The problem is not exclusive to any single profession but is found in all occupations ranging from "architecture to zoology."[26] Furthermore, a fraudulent credential may take form in a variety of ways ranging from minor infractions to very serious behavior by a perpetrator.[27] Thus, prior to adopting a code providing for the punishment of the use of a fraudulent credential, a definition of what constitutes an "academic credential" is required.

The sample code suggests that the definition of "academic credential" should include a: degree, certificate, diploma, award, license, grade report, transcript, resume, financial statement and application.[28] Although the list appears to be quite comprehensive, such definitions should also include the language "or any 'other instrument purporting to confer any form' of academic achievement." Thus, such a definition will cover a wide range of documents found within any administrative and academic functions of academic institutions ranging from examinations to financial aid statements.

B. Material

Another threshold issue which should be examined is the level of importance that must be attached to the false information or misrepresentation before the student will be subject to the provisions of the code. For example, should institutions be able to punish students who make misrepresentations which have no bearing on any decision making process of the institution? Or, should it be required that the false or misleading information relied upon must be material to a decision making process before the institution may take action?

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23. *Id.*
24. *Id.*
25. REPORT ON FRAUDULENT CREDENTIALS, *supra* note 1, at 3.
26. *Id.*
27. *Id.*
28. *See* Van Tol, *supra* note 2, at 793-94 (stating that these items are typically considered academic credentials).

It may be argued that by omitting the requirement of a degree of materiality to the false information, students may be harshly punished for even the slightest infraction. However, in the majority of cases involving false credentials, the information was material to the institutions' decision making processes.[29] Indeed, in some form or other, any type of fraudulent activity is material even if it can be categorized as a slight infraction.

Furthermore, the sample code offers a wide range of sanctions which may be imposed upon a student who has committed a violation. Found within the list of available sanctions under Section 100/5(e) of the sample code, is the catch all phrase "any other sanction that the institution deems necessary and reasonable." This language affords institutions the opportunity to tailor the appropriate remedy to the degree of materiality and culpability of the false information and individual student.

C. *Student*

Webster's Dictionary defines "student" as "a person who is [enrolled] for study at a school, college, etc."[30] A Wisconsin Statute defines "student" as "a person who is [registered] for study in an academic institution."[31] These definitions limit the general use of the word "student" to persons who have begun a course of study. Thus, such narrow definitions of "student" may result in a challenge to an institution's authority to take action against a person for acts committed prior to admission.[32] Courts, however, have consistently recognized that academic institutions may take action where it is discovered that a student has falsified an application for admittance.[33]

In *North v. West Virginia Bd. of Regents*, the court addressed the issue of whether an institution may dismiss a person for a fraudulent act committed upon the institution prior to the admission of the individual to the institution.[34] The plaintiff in *North* falsified his application for admission to the medical school.[35] The plaintiff was then dismissed from the medical school while he was in his fourth year.[36] The plaintiff asserted that the medical school did not have the authority to dismiss him because the acts complained of

29. *Id.* at 815.

30. WEBSTER'S NEW WORLD DICTIONARY 1330 (3d Col. ed. 1988).

31. Martin v. Helstad, 578 F. Supp. 1473, 1480 (W.D. Wis. 1983) (citing WIS. STATS. § 36.05(11) (1981-82)).

32. *See generally* North v. West Va. Bd. of Regents, 332 S.E.2d 141 (W. Va. 1985) (finding plaintiff's argument that disciplinary rules did not apply to acts that took place during the application process unpersuasive).

33. *See Martin*, 578 F. Supp. 1473 (holding that academic institution acted within its rights in revoking plaintiff's admission).

34. North v. West Virginia Bd. of Regents, 233 S.E.2d 411 (W. Va. 1977).

35. *Id.* at 413.

36. *Id.*

occurred prior to his admission to the institution.[37] The court, however, rejected his claim stating that such an argument "ignores what is fundamental knowledge among all students of higher education, namely, that a person who cheats to get into school and gets caught will be expelled."[38]

As in the *North* case, it is usually after the student has begun a course of study that institutions discover the use of fraudulent conduct to gain admission. Thus, the definition of "student" should be extended to include "persons who seek admission to" an academic institution.[39] In doing so, institutions may find it easier to exercise jurisdiction over individuals who have used fraudulent means to gain admittance during the initial admissions process.[40]

IV. THE PROHIBITED CONDUCT

Not only is it important to define specific terms, but equally important is the need to clearly define the proscribed conduct in way which will give adequate notice to those contemplating the use of fraudulent credentials. The Due Process Clause requires federal and state governments to enact statutes and regulations that give private individuals reasonable notice as to what conduct is prohibited.[41] A statute or regulation violates due process if expressed "in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."[42] Even where a certain amount of conduct is clearly proscribed, courts have striken statutes and regulations that fail to establish a discernable dividing line between legal and illegal activities.[43]

There are three ways to determine whether a statute or regulation may upheld as constitutionally providing notice: first, whether the words or phrases employed have a well known technical or special meaning; second, whether the words or phrases have a well known common-law meaning; or third, whether the context or the subject matter of the statute or regulation provides meaning.[44] By providing adequate definitions of specific terms, and by carefully and clearly defining the proscribed conduct, any such code should survive a constitutional vagueness attack under the third test.

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37. *North*, 332 S.E.2d at 144.
38. *Id.* at 144-45.
39. Van Tol, *supra* note 2, at 811.
40. *Id.*
41. Connally v. General Const. Co., 269 U.S. 385, 391-93 (1926).
42. *Id.* at 391.
43. *See generally* Kenneth E. Johnson, *The Constitutionality of Drug Paraphernalia Laws*, 81 COLUM. L. REV. 581, 588-89 (1981) (examining the division between legal and illegal conduct in the context of drug paraphernalia).
44. *Connally*, 269 U.S. at 391-92.

V. CONSTITUTIONAL LIMITATIONS ON INSTITUTIONAL PROCEDURES

Historically, courts have given great deference to academic institutions in their fundamental academic functions.[45] Such academic functions include, but are not limited to, deciding whether or not to grant admission to an applicant[46] granting academic degrees.[47] However, a recent trend of cases indicates that individuals are successfully turning to the judicial system in challenging the authority of academic institutions that exercise the power to withdraw academic credentials.[48]

At this point, it is necessary to distinguish two forms of action institutions may take which affect a person's interests in academic credentials—academic and disciplinary action.[49] Disciplinary actions involve allegations of wrongful conduct.[50] In contrast, purely academic actions are based solely on the students' academic performance.[51] Which form of action the institution takes may determine the level of scrutiny a reviewing tribunal will give to the procedures afforded the student. If the institution has taken action based solely on academic performance, then the courts should not intervene except in cases where the institution has acted in bad faith, arbitrarily, or irrationally.[52]

In *Board of Curators of the Univ. of Missouri v. Horowitz*, the plaintiff was dismissed from the University of Missouri because the institution determined that the plaintiff did not possess the necessary skills to adequately perform as a doctor.[53] The plaintiff was dismissed without a hearing and subsequently claimed that he

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45. *North*, 233 S.E.2d at 417-18 (citing Greenhill v. Bailey, 519 F.2d 5 (8th Cir. 1975)). *See also* Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 312 (1978) (stating that courts have given academic institutions great deference in their decisions on who may be admitted in the institution); Faulkner v. University of Tenn., 627 So. 2d 362, 367 (Ala. 1992) (Houston, J., dissenting) (stating that "educational institutions are uniquely situated to make determinations regarding academic qualifications or the lack thereof. Establishing degree requirements and granting degrees are within the province of universities, not courts");.Waliga v. Board of Trustees of Kent State Univ., 488 N.E.2d 850, 852-853 (Ohio 1986) (stating that courts generally do not interfere with fundamental university functions, including the granting and revoking of academic degrees).

46. Martin v. Helstad, 578 F. Supp. 1473, 1482 (W.D. Wis. 1983).

47. *Waliga*, 488 N.E.2d at 852-53 (citing Goss v. Lopez, 419 U.S. 565 (1975).

48. It was not until 1975, in *Goss v. Lopez*, that the Supreme Court required that students must be afforded due process when faced with dismissal as a disciplinary action. 419 U.S. 565 (1975). *See also North*, 233 S.E.2d at 414 (stating that "[t]he development of the law regarding student's rights to a due process hearing when expelled from school has been of rather recent origin").

49. *See* Board of Curators of the Univ. of Missouri v. Horowitz, 435 U.S. 78, 87-88 (1978) (identifying differences between disciplinary and academic dismissals).

50. *Id.*

51. *Id.*

52. Susan M. v. New York Law Sch., 556 N.E.2d 1104, 1106 (N.Y. 1990).

53. 435 U.S. at 89-90.

was not afforded sufficient due process.[54] The Supreme Court indicated that where a decision is based soley on an evaluation of the student's academic performance, the constitution does not require a hearing prior to dismissal.[55]

However, academic institutions should not rely on the *Horowitz* decision when adopting their policies for dismissing students based on poor academic performance. At least one district court has held that a student who was dismissed for poor academic performance was afforded adequate due process where the student had the opportunity to respond to the charges in writing and to talk with the institution's committee members.[56] This case suggests that courts may require some form of due process, even if minimal.

However, the *Horowitz* decision may provide an avenue for greater deference from the courts for institutions that are confronted with a suit challenging the institution's academic decisions. The level of scrutiny a court may give the procedures afforded by the institution may depend on how the institution responds to the constitutional challenge.

For example, where a law school dismisses a student who has falsified a credential for admission and the institution discovers the falsification after the student has been admitted, the action taken by the school may be phrased in two ways. First, the institution may assert that the student was dismissed because of the student's dishonesty. Second, the institution may claim that the student was dismissed because the institution determined that he or she did not possess the necessary academic requirements. Under the former claim, the institution will be held to a higher level of scrutiny in determining whether it has afforded the student with the proper procedures for taking disciplinary action. Under the latter, however, the court may determine that the institution is exercising a function which is academic in nature and thus, give greater deference to the institution's procedures.

A. Authority

Courts have consistently upheld the authority of academic institutions to withdraw academic credentials as a disciplinary measure.The direct issue of whether academic institutions have the authority to revoke degrees was addressed as early as 1334.[57] In *The King v. University of Cambridge*, the court stated:

> This is a case of great consequence, both as to the property, the honour, and the learning, of this university, and concerns every

54. *Id.* at 78.
55. *Id.* at 84-91.
56. Miller v. Hamline Univ. Sch. of Law, 601 F.2d 970 (8th Cir. 1979).
57. *Waliga*, 488 N.E.2d at 852 (citing The King v. University of Cambridge, 8 Modern Rep. 148 (1334)).

> graduate there, though at present it is the case only of one learned man, and the head of a college. The question is, whether the University can suspend and degrade, and by what rules they may proceed. . .[58]

In answering this issue, the court held that the institution "could revoke a degree for a reasonable cause."[59]

More recently, modern courts have also addressed the issue of whether academic institutions have the authority to revoke degrees. Two prevailing views have emerged supporting this authority. First, an institution's authority to revoke a credential should be implied from its power to issue the credential. Second, a student obtains an academic credential or admission to the institution pursuant to a contract between the student and the issuing institution. Thus, where fraudulent means are used, the institution should have the right to rescind the contract and revoke the conferred credential or admission to the institution.

Courts have held that since academic institutions have statutory authority to confer degrees, then it is implied that such institutions have the authority to revoke degrees. In *Waliga v. Board of Trustees of Kent State Univ.*, the Supreme Court of Ohio addressed the issue of whether a public institution had the implied authority to revoke a degree that was already conferred.[60] In *Waliga*, both plaintiffs, George H. Waliga and Kent L. Taylor, were awarded degrees from the board of Trustees of Kent State University.[61] Subsequently, it was discovered by university officials that the two plaintiffs received their degrees based on falsified grades and credit for courses that were never attended.[62] Upon further investigation, university officials determined that the degrees were erroneously issued and notified the plaintiffs that action would be taken to revoke them.[63]

Before the degrees were revoked, however, the plaintiffs filed suit challenging the authority of the university to revoke their degrees.[64] The trial court found that the University possesses only the authority conferred upon it by the legislature.[65] Since the applicable statute was silent on the matter, the court then held that the University did not have the authority to revoke the degrees.[66]

On appeal, however, the Ohio Supreme Court held that the

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58. *Waliga*, 488 N.E.2d at 852.
59. *Id.* (internal citation ommitted).
60. *Id.*
61. *Id.*
62. Waliga v. Board of Trustees of Kent State Univ., 1984 WL 6436, *1 (Ohio App. 1984).
63. *Id.* at *1-*2.
64. *Id.* at *1.
65. *Id.* at *3.
66. *Id.* at *1.

University had the power to revoke the degrees.[67] In interpreting the statute, the court found that the University had the powers to do "all things necessary for the proper maintenance and successful and continuous operation" of the university.[68] The court then held that the implied power to revoke degrees can be derived from the university's express powers because a reasonable relationship exists between these duties.[69] The court went on to hold that the plaintiff's degrees may be revoked if there is just cause, i.e. deceit, fraud or error, and if the plaintiff is afforded due process.[70]

The *Waliga* opinion is limited because it involves a public institution created by a state statute. Contract law, however, applies to private institutions as well as public. Thus, private and public institutions faced with a challenge on their authority to revoke a credential may assert a contractual basis for taking action.

As every first year law student quickly discovers, basic contract law requires an offer and acceptance for a valid contract. These elements are present in the implied contract that results from a student's attendance at a college.[71] However, where a party's assent to the contract "is induced by . . . fraudulent . . . misrepresentation by the other party upon which the recipient is justified in relying, the contract is voidable by the recipient."[72]

In *Martin v. Helstad*, the court held that a University was warranted in negating a contract with a student who had falsified his admissions application.[73] The plaintiff, Henry Martin, applied to the University of Wisconsin Law School while he was incarcerated in the Federal Correctional Institution at Milan, Michigan.[74] The application specifically asked for the place of residence of the

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67. *Waliga*, 488 N.E.2d at 850.

68. *Id.* at 852.

69. *Id.*

70. *Id.* at 853.

71. Johnson v. Lincoln Christian College, 501 N.E.2d 1380, 1384 (Ill. App. 1986).

> The student's tender of an application constitutes and offer to apply to the college. By 'accepting' an applicant to be a student at the college, the college accepts the applicant's offer. Thereafter, the student pays tuition (which obviously constitutes sufficient consideration), attends classes, completes course work, and takes tests. The school provides the student with facilities and instruction, and upon satisfactory completion of the school's academic requirements (which constitutes performance), the school becomes obligated to issue the student a diploma.

Id. See also William H. Sullivan, *The College or University Power to Withhold Diplomas*, 15 J.C. & U.L. 335 (discussing the contractual relationship between students and universities and the implications of an institution withholding a degree from a student who has completed degree requirements).

72. RESTATEMENT (SECOND) OF CONTRACTS § 164 (1981).

73. Martin v. Helstad, 578 F. Supp. 1473 (W.D. Wis. 1983); *see also* Martin v. Helstad, 699 F.2d 387 (7th Cir. 1983) (holding on appeal that the University properly dismissed the plaintiff).

74. *Martin*, 578 F. Supp. at 1475.

applicant.[75] Martin, however, omitted the fact that he was in prison at the time he submitted his application.[76] Instead, he listed an address in Milwaukee, Wisconsin as his present address.[77] Martin also stated on the application that he was employed at Pap's Family Restaurant.[78] Martin received notice that he had been admitted to the law school.[79]

Subsequently, the dean of the school discovered that Martin was convicted and incarcerated for seven counts of aiding and abetting in interstate transportation of forged securities.[80] Shortly after, Martin was notified that his admission had been rescinded.[81] Martin then filed suit against the school.[82]

The issue before the court was whether "a successful applicant has a property interest in an accepted offer of admission to an academic program" before the applicant begins classes.[83] The court found that an applicant has a "slight property interest" in admission prior to matriculation.[84] Thus, the court recognized the existence of a contract between Martin and the law school.[85] The court implied that Martin's misrepresentations on the application were a breach of his obligations which warranted the negation of the contract between him and the school.[86] Therefore, the court found that the law school could rescind the offer of admission.[87]

The above cases indicate that courts are generally willing to recognize that academic institutions possess the authority to withdraw a credential or admission once it has been conferred. As we have seen, this authority extends to both public and private institutions, although on differing grounds. Plaintiff's, however, are successfully challenging the procedures that academic institutions utilize when such action is taken. In the analysis that follows, the distinction between a public and private institution will play a greater role in determining exactly what procedures are required before an institution may take action affecting an individual's interests in an academic credential.

B. Disciplinary Actions and Due Process

The Supreme Court held that "[b]ecause disciplinary actions

75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.* at 1476.
80. *Martin*, 578 F. Supp. at 1478.
81. *Id.*
82. *Id.* at 1475.
83. *Id.* at 1480.
84. *Id.* at 1481-82.
85. *Id.* at 1481.
86. *Martin*, 578 F. Supp. at 1481-85.
87. *Id.* at 1485.

resemble traditional judicial and administrative factfinding, a student facing dismissal from a public institution is entitled to" certain constitutional protections.[88] Furthermore, due process requires state governments to enact statutes and regulations that provide standards for their enforcement.[89] Such standards should be reasonably clear guidelines for enforcement of the statutory scheme.[90]

Whether the institution is public or private, courts have imposed certain procedural requirements on disciplinary actions that would affect a person's interest in an academic credential. Indeed, it is this area that plaintiffs find much success in challenging actions taken by academic institutions.[91] Degrees have consistently been recognized by the courts as substantial property rights which may only be taken away "pursuant to constitutionally adequate procedures."[92]

The success of a plaintiff will depend upon whether or not the institution follows adequate procedural requirements prior to taking action which may affect an individual's interest in the credential. Case law indicates that courts will closely scrutinize the procedures utilized by public institutions. On the otherhand, private institutions are afforded greater leeway in the disciplinary procedures they utilize.

C. Public Institutions

Public institutions are held to the strictures of the Constitution. The Fourteenth Amendment, in part, provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[93] The judicially created concept of "state action" ensures that when a state agency takes action, it does so in accordance with due process.[94] Public academic institutions fall within the reach of the state action concept.[95] Thus, they must observe the demands of the Due Process Clause.

In *North v. West Virginia Bd. of Regents*, the court addressed the issue of whether a student who was expelled and had all of his

88. *Id.* at 1482-83 (citing Goss v. Lopez, 419 U.S. 565, 580, 583-84 (1975).

89. Coates v. City of Cincinnati, 402 U.S. 611, 614 (1971).

90. *Id.*

91. *See* University of Texas Medical Sch. v. Than, 901 S.W.2d 926 (1995) (holding that the institution violated the due process rights of a student accused of cheating on an examination because, even though he was given oral and written notice of charges against him and a hearing, he was excluded from a portion of the evidentiary proceedings surrounding his dismissal).

92. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985).

93. U.S. CONST. amend. XIV, cl. 1.

94. Reams, *supra* note 4, at 292.

95. *Id. See also* Smith v. Denton, 895 S.W.2d 550, 554 (Ark. 1995) (requiring due process safeguards for state university's suspension procedures).

earned credit canceled was afforded due process.[96] Charles North, a fourth year medical student, was accused of falsifying his application for admission to the school.[97] The school discovered the falsifications and verbally notified North that a hearing would be held to determine what action the institution would take.[98] The school, however, provided no formal notice of the charges.[99] Furthermore, North was not allowed to be present at the hearing when the adverse evidence was presented to the committee.[100] He was, however, admitted to the hearing when the committee cross-examined him on the charges.[101] After the hearing, the committee recommended to the school president that North be expelled and all of his credits cancelled.[102]

Before the president acted upon the committee's recommendation, North hired an attorney.[103] The attorney notified the school that he felt North's due process rights had been violated.[104] The school conducted a second hearing and sent North a formal notice of the charges against him.[105] North's attorney, however, was not allowed to attend the hearing.[106] No record was made reflecting what transpired at the hearing.[107] Pursuant to the second committee's recommendation, the president again notified North that he was expelled from the medical school and that all of his earned grades would be cancelled.[108]

North appealed his case to the Board of Regents who found that due process had not been afforded and remanded the case for a third hearing.[109] Again, North's attorney was not allowed to attend the hearing.[110] At the third hearing, North was asked to plead "guilty or not guilty" to the charges.[111] For the third time, the committee recommended expulsion and the president affirmed.[112] The Board of Regents upheld the expulsion.[113] Subsequently, North filed suit in the Circuit Court of Kanawha County.[114] The court upheld the

96. North v. West Virginia Bd. of Regents, 233 S.E.2d 411 (W. Va. 1977).
97. *Id.* at 413.
98. *Id.*
99. *Id.*
100. *Id.* at 413-14.
101. *Id.* at 414.
102. *North*, 233 S.E.2d at 414.
103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.*
108. *North*, 233 S.E.2d at 414.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *North*, 233 S.E.2d at 413.

expulsion.[115]

On appeal, the Supreme Court of Appeals of West Virginia addressed the issue of whether North was afforded due process.[116] The court stated that "[t]he traditional view was that a student attending college did so as a matter of privilege and therefore had no right to complain if he were summarily expelled or suspended."[117] However, in 1975, the United States Supreme Court held that a high school was required to afford due process standards to students who were suspended for ten days.[118] The *North* court applied this ruling to the case at hand and determined that due process equally applies to state-supported universities.[119] Thus, the court focused on the extent of due process procedures that need to be afforded students faced with dismissal.[120]

In determining the exact procedures due process requires in such circumstances, the court first noted that "standards for procedural due process, once we leave the criminal area, may depend upon the particular circumstances of a given case."[121] The court held that under the circumstances in *North* a "student is entitled to substantial due process protection."[122] The court found that due process requires "a formal written notice of charges; sufficient opportunity to prepare to rebut the charges; opportunity to have retained counsel at any hearings on the charges; to confront his accuser, and to present evidence on his own behalf; an unbiased hearing tribunal; and an adequate record of the proceedings."[123] The case was remanded to the lower court for a determination of whether North was afforded due process according to the standards enumerated by this court.[124]

As the *North* case indicates, courts will require public institutions to provide substantial due process procedures prior to taking action if the action will result in a property loss. It appears, however, that courts will require less where the institution takes action which does not result in a substantial property loss. This is discussed in further detail below. In addition, case law also indicates that courts do not require the same standards for private institutions.

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115. *Id.*
116. *Id.* at 415.
117. *Id.* at 414 (citing Steier v. New York State Educ. Comm'r, 271 F.2d 13 (2d Cir. 1959)).
118. *Id.* at 415 (citing Goss v. Lopez, 419 U.S. 565 (1975)).
119. *North*, 233 S.E.2d at 415.
120. *Id.*
121. *Id.*
122. *Id.* at 417.
123. *Id.*
124. *Id.* at 419.

D. Private Institutions

The activities of private academic institutions are not a public function even if its income is primarily derived from public grants.[125] Thus, private institutions are not held to the strict due process requirements of their counterparts.[126] However, even where a private institution takes action, courts have required some form of due process even if minimal. Generally, courts require private universities to "maintain[ ] and follow[ ] fair procedures in determining what action to take against a student."[127]

However, the United States Court of Appeals for the Tenth Circuit, in *Slaughter v. Brigham Young Univ.*, implied that a private academic institution should be subject to the same due process requirements as its public counterparts.[128] In *Slaughter*, a graduate student submitted two articles for publication using the name of a professor as a co-author.[129] The articles were published without the knowledge of the professor.[130] The student used the professor's name to improve his chances of publication since previous attempts at publication under his name alone had been unsuccessful.[131]

The University's student conduct code provided that students should observe "high principles of honor, integrity and morality."[132] The code also provided that students should "be honest in all behavior. This includes not cheating, plagiarizing, or knowingly giving false information."[133] The school discovered that the articles were published with the professor's name and held a hearing to determined whether the student had violated the above provisions of the student code.[134] The Dean notified the student of the charges and that a hearing would be held to determine what course of action would be taken by the school.[135] At the hearing, the student was found in violation of the school code.[136] Subsequently, the student was expelled from the school.[137]

The student filed suit claiming that he had been wrongfully dismissed.[138] The trial court held, as a matter of law, that the

125. Rendell-Baker v. Kohn, 457 U.S. 830, 840 (1981).
126. Reams, *supra* note 4, at 292.
127. *Id.* at 298. See *id.* at 298-301 for an overview of the relevant case law on the adequacy of procedural requirements.
128. *Slaughter v. Brigham Young Univ.*, 514 F.2d 622 (10th Cir. 1975).
129. *Id.* at 624.
130. *Id.*
131. *Id.*
132. *Id.* at 624 (internal citation ommitted).
133. *Id.* (internal citation ommitted).
134. *Slaughter*, 514 F.2d at 624-25.
135. *Id.*
136. *Id.* at 625.
137. *Id.*
138. *Id.* at 623.

proceedings afforded the student were "deficient or inadequate."[139] On appeal, the court found that the hearing was adequate and that the student had a meaningful opportunity to participate, present his position, and hear witnesses.[140] Based on these facts, the court held that the proceedings "met the requirements of the constitutional procedural due process doctrine as it presently applied to public universities."[141] The court went on to state that "it is not necessary under these circumstances to draw any distinction, if there be any, between the requirements in this regard for private and for public institutions."[142] Accordingly, the court set aside the lower courts ruling and entered a judgement in favor of the University.[143]

As the cases indicate, generally, courts do not hold private and public institutions to the same standards. However, the *Slaughter* case may exemplify a court's recognition of an artificial distinction in process due to a student between private and public institutions. Fundamental fairness to a student in a private setting dictates that the student should be afforded at least the same basic protections as their peers in the public sector.

VI. CHOOSING THE APPROPRIATE REMEDY

The sample code provides a wide range of available sanctions that an academic institution may impose upon a student who has violated its provisions. The sanctions range from a simple admonition to the most severe form of punishment an academic institution may impose[144]—dismissal from the institution and revocation of any grade or degree conferred upon the student. The various degrees of punishment are to provide flexibility for the institution.

There are many forms of fraudulent conduct individuals use in the academic setting to obtain admission, credit, grades or degrees. Furthermore, some forms of fraudulent conduct do not result in any benefit to the perpetrator. However, any form of fraudulent activity is detrimental to the integrity of the academic community. Thus, whether or not a benefit results, the wrongful conduct should not be ignored and the perpetrator should be punished to deter future reoccurrences.

As the above analysis indicates, courts recognize the authority of academic institutions to dismiss a student and revoke a credential after issuance as disciplinary measures. The extent of the procedures that should be afforded under due process, "may depend

139. *Id.* at 625.
140. *Slaughter*, 514 F.2d at 625.
141. *Id.*
142. *Id.*
143. *Id.* at 627.
144. *North*, 233 S.E.2d at 417.

upon the particular circumstances of a given case."[145] Generally, where a student is disciplined for wrongful conduct and the action taken by the institution does not result in a deprivation of a property interest, or even if the deprivation is de minimis, it appears that due process will not be implicated.[146] In otherwords, "the more valuable the right sought to be deprived, the more safeguards will be interposed".[147] Thus, depending on what action the institution takes, there may not be a deprivation of any property interests. Therefore, the institution may not be required to afford the student with the complete due process procedures discussed above.

Finally, it should be noted that courts have recognized situations in which due process need not be given prior to taking action.[148] An example of such a situation is where a student presents a "continuing danger to persons or property or an ongoing threat of disrupting the academic process."[149] In such situations, students may be promptly expelled.[150] However, students are still entitled to a prompt due process hearing afterwards.[151]

CONCLUSION

Academic credentials have been and will continue to be a vital part in the decision making process of employers in hiring and promoting their employees. In most cases, academic credentials are the principal indicators of prospective employees' capabilities and accomplishments. Thus, when individuals fraudulently obtain and use academic credentials, not only are employers harmed but the integrity of the academic community is also compromised. The academic community must take it upon itself to ensure the trustworthiness of the credentials in which it issues. In doing so, however, academic institutions should be fully informed of the potential challenges they will face.

As we have seen, academic institutions are afforded great deference in their decision making processes. The problems that arise, however, are in the procedures institutions follow when taking disciplinary actions. Because public institutions are subject to the strictures of the Constitution under the concept of "state action", they are held to a higher standard than private institutions. To provide for fundamental fairness and to avoid the expense of costly litigation, however, private institutions should adopt the procedures generally applicable to their public counterparts.

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145. *Id.* at 415.
146. *Id.* at 416.
147. *Id.* at 417.
148. *Id.* (citing Gross v. Lopez, 419 U.S. 565 (1975)).
149. *North*, 233 S.E.2d at 417 (quoting Gross v. Lopez, 419 U.S. 565 (1975) (internal citation omitted)).
150. *Id.*
151. *Id.*