LEGAL ISSUES AND

POSTSECONDARY STUDENTS

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The UHLC/IHELG works in a series of concentric circles. At the core of the enterprise is the analytic study of postsecondary institutions—with special emphasis on the legal issues that affect colleges and universities. The next ring of the circle is made up of affiliated scholars whose research is in law and higher education as a field of study. Many scholars from all over the world have either spent time in residence, or have participated in Institute activities. Finally, many others from governmental agencies and legislative staff concerned with higher education participate in the activities of the Center. All IHELG monographs are available to a wide audience, at low cost.

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IHELG has as its purpose the stimulation of an international consciousness among higher education institutions concerning issues of higher education law and the provision of documentation and analysis relating to higher education development. The following activities form the core of the Institute’s activities:

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Introduction

Throughout the first two hundred years of American higher education, courts seldom attempted to define the status of college students or the relationship that should exist between a college and its students. Because fourteen and fifteen-year-old students were common on college campuses in colonial times, university administrators and faculty functioned out of necessity as surrogate parents.¹ Courts viewed university officials as standing "in loco parentis," allowing them to regulate the student in any manner—subject only to the standards and restraints that a parent would use in supervising the welfare of the child:

College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose.²

In the early part of the Twentieth Century, courts retained this view of college students as children, partly because many were younger than today's students and partly because the age of majority was twenty-one and also because colleges were thought to be the place for moral, as well as intellectual, development of students.³ As the average age of college students increased, some students sought to establish in court their right to be free from aspects of "in loco parentis." The courts' initial response was to perceive education as a privilege. It was assumed that students, either in public or private schools, had no legal right
35 a college-level education. For example, state supreme courts of the early 1920's, under contract law theories, found it permissible for institutions to require their students to sign broad "waiver of rights" statements similar to the one required by Syracuse University in 1924:

Attendance at the University is a privilege and not a right. In order to safeguard those ideals of scholarship and that moral atmosphere which are in the very purpose of its founding and maintenance, the University reserves the right and the student concedes to the University the right to require the withdrawal of any student at any time for any reason deemed sufficient to it, and no reason for requiring such withdrawal need be given.

For various reasons, including the lowering of the age of majority to eighteen, an increased emphasis on individual rights by the U.S. Supreme Court under Chief Justice Earl Warren, and student activism of the 1960's, many of these early assumptions about students and their rights have been successfully challenged. Although courts still defer to universities to make "academic" decisions, it is clear that the U.S. judicial system has defined students as unique individuals possessing rights and privileges at times parallel and at times divergent from those held by the general populace.

The shift from a "sellers" to a "buyers" market in higher education because of declining student enrollment has ushered in an age of consumerism in education. The momentum of the commercial consumer movement championed by Ralph Nader and others, with its emphasis on fair dealing, also has had an impact on higher education -- especially in the areas of student recruitment and giving full value for the education dollar.
activitism spread to the campus in the early 1970's as students became more vocal in asserting the rights to which they believed they were entitled in exchange for their tuition payments. Students began to sue colleges and universities under contract theories in an attempt to obtain relief from perceived inequities in the student-university relationship. As a result, courts began to reinterpret the terms of a student-college contract to put college officials and students on a more equal footing.

As a result of this evolution in student rights, university administrators are faced with more legal constraints today than ever before. Barr writes, "given the climate of the times, it appears not only prudent but necessary for [administrators] to understand the legal implications of what they do." Thus, much recent literature discusses college students and the law with the intention of guiding administrators toward a prudent course of action when dealing with students.

It is also important for university personnel to understand the courts' reasons for decisions in cases involving students and the institution. Knowledge of assumptions used by courts in defining "students" in the college environment is essential for college officials to ascertain, given a specific situation, if a court might extend students greater freedom or defer to the judgments of academicians.

This article will discuss the legal status of college students vis-a-vis the institutions they attend. The topics covered are by no means all those that may arise in higher education. They are issues, however, that are resolved
by courts based on the courts' perception of the higher education environment. There may be other issues with which higher education administrators must grapple; the issues discussed in this article are unique because their resolution depends primarily upon preconceptions, misconceptions, and insights about the college-student relationship.

Students as Contractors

Perhaps the case most central to the forging of the new "student" status was Dixon v. Alabama State Board of Education, a case involving students who were summarily dismissed from Alabama State University. Not only did this case reject the notion that education in state schools was a privilege to be dispensed at the sole discretion of the state, it also implicitly rejected the in loco parentis doctrine. The impact of Dixon and other cases dealing with due process and equal protection in public schools also influenced private institutions, as courts increasingly viewed students as contracting parties with rights arising from their contractual relationships with institutions. 11

Clear representations in the college catalog, student handbook, and other publications, and oral promises of agents of the college will often be strictly interpreted by courts as terms of the contract. 12 In interpreting terms of the contract, the court will often look at the nature of the relationship. The nature of the student-college relationship is defined by "the reasonable expectations of the parties given all the facts and
circumstances surrounding the relationship which gives rise to the mutual obligations."\textsuperscript{13} Nordin believes that courts determine the "reasonable expectations of the parties" by references to longstanding academic custom and usage," which is particularly appropriate to higher education "where the conduct of the members of the educational community is in fact governed by such long term and well established and often unwritten rules."\textsuperscript{14}

In \textit{Basch v. George Washington University},\textsuperscript{15} students brought a class action against the School of Medicine stating that the University breached its contract with medical students by increasing tuition $1,800 per year. The language of the college bulletin had estimated an increase of $200. The court, concluding that "broad language in university bulletins" did not give rise to a contractual obligation, reasoned that requiring an educational institution to operate at a financial loss would, given the finite nature of budgeting, have a direct effect on the quality of education the University could provide.\textsuperscript{16}

If contract terms are vague, ambiguous, or not stated, courts will often examine "campus common law,"\textsuperscript{17} that is, past practices of institutions of higher education. Courts often defer to the college's academic judgment in interpreting vague contract terms. For example, in \textit{Jansen v. Emory University},\textsuperscript{18} a dental student who was dismissed for academic insufficiency asserted that the dental school's bulletin, assuring dismissal only with "due process" gave him a right to a full adversary hearing prior to dismissal. Rejecting this claim, the court stated that contracts for education will "be construed in a manner which leaves the school sufficient discretion to properly exercise its educational
responsibility." Unless a college acts in an arbitrary, capricious, or unconscionable manner, courts may permit the institution to establish the meaning of the terms used in the education contract.

Courts are reluctant to apply some aspects of strict contract law to the student-university relationship. For example, the Uniform Commercial Code ("UCC"), a body of law adopted by most states to govern commercial sales transactions, is seldom employed in suits involving tuition increases and refund policies of educational institutions. Although the UCC by its terms applies only to sales of goods, some courts and commentators have argued that by analogy its standards should apply to contracts for services, including contracts to educate. Application of UCC standards to education contracts could substantially restrict schools' discretion. Courts usually apply common law contract doctrine when interpreting college contracts. This approach, which frees the courts from the restrictions of the UCC, allows the interpretation of contract-like documents in accord with the relationship usually thought to exist between university and student.

For example, the UCC deems "substantial performance" or compliance with the terms of a contract to be adequate performance. The court rejected the use of "substantial performance" as the appropriate standard university contract actions in _Slaughter v. Brigham Young University_. In that case, a student brought an action for breach of contract arising out of his expulsion from graduate school for "academic dishonesty." The District Court had rigidly applied the UCC
contract doctrine, resulting in a damage award of $88,283. Reversing the trial court, the Tenth Circuit reasoned that the student-university relationship is "unique" and may be different at different schools. The trial court had instructed that only "substantial" compliance with the Student Code was required. The Tenth Circuit disagreed, pointing out that the student-college relationship might reasonably create an expectation of strictest honesty; by the trial court's "substantial performance" standard, "the jury was in effect instructed that a little dishonesty would not matter. This cannot be the measure and the court cannot so modify the Student Code." 24

Since an institution maintains exclusive control over the drafting of contract terms, some commentators believe that the "contract of adhesion" doctrine should be employed. 25 Courts define an adhesion contract as one dictated by a dominant party "to cover transactions with many people rather than with an individual," and one that resembles "an ultimatum rather than a mutually negotiated contract." 26 When reviewing such an agreement, courts often construe ambiguous terms of the contract against the party that wrote them, reasoning that the drafter's advantage in being able to write the agreement should have resulted in a contract that clearly expressed the drafter's position. 27

Courts rarely apply the adhesion doctrine when evaluating student-university contracts. Adhesion contracts are unlawful because the party in the superior bargaining position has taken
unfair advantage of the other. One court explained that in ordering a tuition increase, a university had not taken unfair advantage of its students; the tuition increase was viewed as "a financial necessity." 28

In a recent decision, the Eighth Circuit Court of Appeals took a major step in expanding student contract rights by applying the contract of adhesion doctrine. In Corso v. Creighton University, 29 a student charged with cheating on his first year medical finals and lying to University officials had been expelled from medical school. The student claimed that the University had breached its contract with him by not affording him a "due process" hearing. The Student Handbook provided for a hearing in all cases involving a serious penalty. In arguing that the student was properly dismissed, Creighton officials relied on other Student Handbook language delegating full authority for academic matters to the Dean. The school argued that "the court should defer to the University's interpretation of its own regulations." The court disagreed, stating that the "due process" hearing provision should control, regardless of the academic or non-academic status of the offense, "where . . . the contract is on a printed form prepared by one party, and adhered to by another who has little or no bargaining power. . . . [A]mbiguities must be construed against the drafting party." 30 The court apparently concluded that a "contract of adhesion" analysis was appropriate notwithstanding the usual principle of reliance on campus common law.

Corso, then, stands in contradistinction to earlier cases. It is too early to tell whether, in interpreting vague or
ambiguous contract terms, future courts will adopt the Eighth Circuit's application of the adhesion doctrine or will defer to the academic judgment of university officials.

Student's Rights to Due Process: Reflecting "Rudiments of Fair Play"

The Fifth Amendment of the U.S. Constitution states in part that "no person shall . . . be deprived of life, liberty, or property, without due process of law." The Fifth Amendment protects individuals from certain federal actions without due process of law. The Fourteenth Amendment applies the Fifth Amendment's due process standards to actions by the state. Public institutions of higher education are created by state constitutions or state legislatures, and so the institutions' actions are considered state actions. When the actions of officials employed by a public institution deprive a student of life, liberty, or property, some procedural due process safeguards apply regardless of the language in contract documents. Cases involving a public university, then, may involve contract issues but in addition may present Constitutional questions of due process.31

Deprivation of "life" in an academic setting is rarely at issue. For a student to be deprived of a "liberty" interest, the state's action must either substantially impair an opportunity to continue in education or impose a stigma by which the student's good name, reputation, honor, or appearance of integrity is impaired.32 Mere dismissal from a public institution is not a

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deprivation of a liberty interest, unless the school releases information that would preclude a student from attending another educational institution or impair his or her reputation in the community.

The courts have broadly defined the "property" interest of public college students. In *Dixon v. Alabama State Board of Education*, the court defined the property interests of college students:

> The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs were students in good standing. It requires no argument to demonstrate that education is vital and indeed basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens. . . . Surely no one can question the right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value.\(^3\)

In *Dixon*, several black students at Alabama State College had been expelled during a period of intense civil rights activity in Montgomery, Alabama. The students sued the state Board of Education for reinstatement, and the court faced the question of "whether the due process clause of the Fourteenth Amendment requires notice and some opportunity for hearing before students at a tax supported college are expelled for misconduct."\(^4\) The court answered in the affirmative.

It is now clear that dismissal from a public college requires a procedural due process hearing. A perplexing problem is that of determining how much procedural due process is required when a deprivation of either liberty or property occurs. In the
case of *Esteban v. Central Missouri State College*, the court concluded that the plaintiffs who were suspended for "participation in mass gatherings which might be considered as unruly or unlawful," were entitled to: 1) be given notice at least ten days prior to the date of the hearing, 2) a hearing conducted by the person with the authority to expel or suspend, 3) the right to inspect in advance any affidavits or exhibits submitted at the hearing, 4) the right to have counsel present, 5) the right to present their version as to the charges and to present their witnesses and evidence, 6) permission to hear the evidence against them, 7) the right to question witnesses against them, 8) to have each case decided solely on the evidence, and 9) to make a recording of the events at the hearing.

In *Missouri v. Horowitz*, however, the U.S. Supreme Court set a different standard for the academic dismissal of a medical student. Horowitz was placed on probation during her final year of medical school as a result of unsatisfactory clinical work. The Council of Evaluation, comprised of both faculty and students, subsequently recommended that she be dropped from school when reports by faculty and supervising physicians indicated unsatisfactory progress. Horowitz was finally dismissed, after more than four warnings by the Council and after a special review held at her request. Horowitz appealed the decision to the provost, who after review upheld the dismissal. The Court stated that an alleged failure to meet academic standards called for far less stringent procedural requirements than alleged violations of rules of conduct. It is apparent that the Court's view of the student-college relationship influenced its conclusion as to the
appropriate procedural due process requirements in an academic dismissal case. The relevant factors used in determining the due process procedures required in non-academic settings are: 1) the private interest that would be affected by the official’s action, 2) the risk of an erroneous deprivation of such interest through the procedures used, 3) and the government’s interest in the matter. 38 In Horowitz, the Court stated that in cases involving academic matters:

the severity of the deprivation is only one of several factors that must be weighed in deciding the exact due process owed. We conclude that considering all relevant factors, including the valuative nature of the inquiry and a significant and historically supported interest of the school in preserving its present framework of academic evaluations, a hearing is not required by the due process clause of the Fourteenth Amendment. 39

Thus, it is clear that after Horowitz 40 the courts will tend not to interfere in academic matters, although they can be expected freely to review university action in non-academic disciplinary matters.

Courts are still wrestling with other situations on campus that deny students a "benefit" or property interest requiring due process safeguards. The U.S. Supreme Court has concluded that a suspension of ten days from a public school requires procedural due process. 41 Courts have defined student financial aid as "property" and have required procedural due process safeguards before such funds can be terminated. 42 It is unclear how future courts would view other aspects of college life. For instance, is eviction from a college dormitory a denial of a property
interest? Does removal from an athletic team or fraternal organization require due process? What constitutes a property interest for a college student and what procedural safeguards are required when that interest is denied are issues still being considered by the courts that will help to define the college-student relationship in the future.

Equal Protection and Access to Higher Education

The Equal Protection Clause of the Fourteenth Amendment requires that persons subject to a law be treated equally by those who make and administer the laws:

The Constitution does not require that things different in fact be treated in law as though they were the same. But it does require, in its concern for equality, that those who are similarly situated be similarly treated. The measure of the reasonableness of a classification is the degree of its success in treating similarly those similarly situated.43

Courts have applied the equal protection clause broadly in the area of higher education to guarantee students' rights, most commonly in the area of admission to post-secondary institutions. Although there is no absolute right to be admitted to a post-secondary school, a public institution may not exclude an entire race or class of people. University officials may, in some situations, consider an applicant's ethnic background class when making admissions decisions. The Supreme Court of Washington ruled that the University of Washington Law School could consider race when affirmatively trying to admit more minority candidates, noting that the importance of education to the practice of law creates a compelling governmental interest in considering race:
The consideration of race in the law school admission policy meets the test of necessity here because racial imbalance in the law school and in the legal profession is the evil to be corrected, and it can only be corrected by providing legal education to those minority groups which have been previously deprived.\textsuperscript{44}

When consideration of the class status of an applicant creates a quota system, the U.S. Supreme Court has found a violation of the Equal Protection Clause of the 14th amendment. In \textit{Bakke v. University of California Regents},\textsuperscript{45} the University of California at Davis Medical School set aside a number of admissions solely for minority students. The Court considered this quota system invalid, saying that if an applicant can show that a "systematic exclusion" of certain groups results from the institution's admissions policy, a "presumption of legality" of the admissions practice is overcome.\textsuperscript{46}

The courts have also taken positions in favor of equal access to public education for both men and women. In \textit{Kirstein v. Directors and Visitors of the University of Virginia},\textsuperscript{47} four female students brought suit to compel their admission to the University of Virginia. A three judge Federal District Court held that denial of admission to female plaintiffs on the basis of sex violated the equal protection clause of the fourteenth amendment, on the basis that:

the facilities at Charlottesville offer courses of instruction that are not available elsewhere. Furthermore, as we have noted, there exists at Charlottesville a prestige factor that is not available at other Virginia educational institutions. These particular individual plaintiffs are not in a position, without regard to the type of instruction sought, to go elsewhere without harm to themselves and disruption to their lives.\textsuperscript{48}
In Mississippi University of Women v. Hogan, the Supreme Court ordered that a male student be admitted to a school of nursing that had previously been open only to women. The Court reasoned that the single-sex nursing program, instead of compensating for the effects of past discrimination, actually perpetuated stereotypes about women nurses. Hogan was denied equal protection because MUW's admission policy worked to Hogan's disadvantage:

Although Hogan could have attended classes and received credit in one of Mississippi's state supported co-educational nursing programs, none of which was located in Columbus, he could attend only by driving a considerable distance from his home. Moreover, since many students enrolled in the school of nursing hold full-time jobs, Hogan's female colleagues had available an opportunity, not open to Hogan, to obtain credit for additional training.

It should be noted that not all of the Court agreed that Hogan was denied a benefit. Moreover, due to limitations placed by the Court on its holding, some single-sex schools may still be viable.

**Students and the First Amendment: Freedom of Speech, Expression, and Association**

A student's freedom of speech and other related forms of expression is guaranteed at a public university by the First and Fourteenth Amendments of the U.S. Constitution. The U.S. Supreme Court has determined that because of the special role education plays in our society, First Amendment freedoms in schools must be protected. Justice Brennan in Keyishian v. Board of Regents, stated:
the vigilant protection of constitutional freedoms is nowhere more vital than in a community of American schools. The classroom is peculiarly the 'marketplace of ideas'. The nation's future depends on leaders trained through wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues; [rather] than through any kind of authoritative selection.\[^{54}\]

In *Tinker v. Des Moines Independent Community School District*,\[^{55}\] Justice Fortas remarked, "in our system, state operated schools may not be enclaves for totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are 'persons' under the constitution."\[^{56}\]

While the special place of education makes First Amendment freedoms more "robust", certain limitations to that freedom are allowed. As described by Charles A. Wright in "The Constitution on the Campus,":

> expression is subject to reasonable and nondiscriminatory regulations of time, place, and manner; expression can be prohibited if it takes the form of action that materially and substantially interferes with the normal activities of the institution or invades the rights of others.\[^{57}\]

The burden is on the school, however, to show that in regulating expression, it in no way intended to censor its content.

The extent of student freedom of expression in public schools is nowhere more clear than in court decisions dealing with the student press. It is significant that many judges do not discuss student newspaper cases as free press issues, but rather as free speech and expression matters. A public school once it funds a college newspaper may not, except in very limited circumstances, regulate its content. A public college newspaper
has the right to exist, select its own staff, and receive funding. For example, in Schiff v. Williams, three students brought suit against the president of Florida Atlantic University alleging that he dismissed them from their positions as editors of the school newspaper in violation of their First Amendment rights. President Williams subsequently began publishing the school newspaper using administrative personnel. A published statement giving reasons for the action read in part:

the Atlantic Sun currently reflects a standard of grammar, of spelling and of language expression unacceptable in any publication, certainly unacceptable and deplorable in a publication of an upper level graduate university.

The editorial policy of the Sun has increasingly emphasized vilification and rumor mongering, instead of accurately reporting items likely to be of interest to the university community.

The court ruled that the defendant's argument failed on two grounds. First, no evidence was presented that substantiated the reference to poor technical quality,

Second, the right of free speech embodied in the publication of a college student newspaper cannot be controlled except under certain circumstances . . . . By firing the student editors in this case, the administration was exercising direct control over the student newspaper . . . . Once a university recognizes a student activity that has elements of free expression, it can act to censor that expression only if it acts consistent with First Amendment Constitutional guarantees .

The court ordered the reinstatement of the editors.

The right of a student newspaper to continue to receive funding includes the right to a continued method of funding, according to a recent decision by the Eighth Circuit Court of Appeals. In Stanley v. Magrath, the Minnesota Daily printed a
humor issue that was described by the court as "tasteless," due in part to its use of scatological language and explicit and implicit references to sexual acts. The University Board of Regents voted to change the method of funding the paper from a non-refundable student fee to a refundable student fee. The Board rationalized that students should not be forced to fund a paper that they may find distasteful. Although the Board's action resulted in no loss funding for the paper, the court nevertheless found in favor of the plaintiffs:

The amount of money lost is beside the point. If any measurable loss has occurred, and if the motivation of those inflicting the loss is forbidden by the First Amendment, plaintiffs have a right to judicial relief.

Furthermore, apart from the economic effect of the Regents' decision, it is clear that it conveyed the impression that the Daily would be losing funds as a result of the fee change. One of the reasons that President Magrath offered to the Regents in support of the refund system was that the threat of losing financial support from the students would promote responsible journalism.62

As with other forms of expression, a school may restrain the student press if evidence of a material and substantive interference with a legitimate school activity exists, where acts create a "clear and present danger" that would bring about "substantial evils" to the institution, or where it can be shown that the students' activities would materially and substantially disrupt the work and discipline of the school.63 Mere apprehension of disruption is not sufficient to restrict individual freedoms. It is even doubtful if a state college is permitted to restrain potentially libelous expression prior to its publication for fear that administrators will also censor non-libelous expression.64
In *Widmar v. Vincent*, the U.S. Supreme Court determined that student religious activities on public campuses may be protected by the First Amendment's Free Speech Clause whenever the institution has created a public forum open to general student use. The Court concluded that the First Amendment's Freedom of Religion Establishment Clause would not be violated by an equal access policy that permitted both non-religious and religious activities in state campus facilities.

Public college students have the right to associate in a manner consistent with their First Amendment freedom of expression rights. The freedom of association, although not specifically granted in the Constitution, is guaranteed to students in state colleges through an extension of freedom of expression and assembly. Freedom of association takes on a unique character when applied to the higher education setting—the right to associate includes the right to be officially recognized as a student organization.

A leading U.S. Supreme Court case dealing with student organization recognition is *Healy v. James*. In *Healy*, a student request for the recognition of the local chapter of Students for a Democratic Society (SDS) had been approved by Central Connecticut State College's Student Affairs Committee. The college's president denied recognition, asserting that the organization's philosophy was at odds with the college's commitment to academic freedom and that the organization would be a disruptive influence on campus. The Court disagreed:
guilt by association alone, without establishing that an individual's association poses a threat feared by the government is an impermissible basis upon which to deny first amendment rights. There can be no doubt that denial of official recognition, without justification, to College organizations burdens or abridges that associational right. The primary impediment to free association flowing from nonrecognition is the denial of use of campus facilities for meetings and other appropriate purposes . . . . Moreover, the organization's ability to participate in the intellectual give and take of campus debate, and to pursue its stated purposes, is limited by denial of access to the customary media for communicating with the administration, faculty members, and other students. Such impediments cannot be viewed as insubstantial . . . 67

A college may only regulate a campus organization consistent with the limitations placed on the regulation of expression. In addition, a college administration may require a group seeking official recognition to affirm in advance its willingness to adhere to reasonable campus rules. All rules for recognition must be applied evenhandedly and may not violate Constitutional safeguards.

Students also have the freedom not to associate. That freedom, however, must be balanced against the traditional role of a university to provide an atmosphere of learning, debate, dissent and controversy. For example, many colleges and universities collect a mandatory student fee that is channelled, in some fashion, to various student organizations. Students in public colleges have argued that required membership in or payment of mandatory fees to these organizations violates the students' right of free association. While courts have agreed that membership in college organizations may not be required:
Courts have defined education in the broadest sense to require students to pay for educationally related activities, such as student organizational fees, so long as such mandatory fees, (1) do not exceed the statutory purposes for which they may be spent and (2) a campus group does not become the vehicle for the promotion of one particular viewpoint, (either) political, social, economical or religious.68

State constitutions, many patterned after language in the Bill of Rights, may extend freedoms beyond those granted by the U. S. Constitution. In State v. Schmid,69 the defendant was distributing and selling political materials on the campus of Princeton University, a private non-profit institution of higher education. He was arrested for trespassing on private property because he had not received permission from Princeton officials to distribute his materials. The defendant asserted that under the New Jersey Constitution he was given protection of his expressional rights. The New Jersey Supreme Court concluded:

... the state constitution furnishes to individuals the complementary freedoms of speech and assembly and protects the reasonable exercise of these rights. These guarantees extend directly to governmental entities as well as to persons exercising governmental powers. They are also available against reasonably restrictive or oppressive conduct on the part of private entities that have otherwise assumed a constitutional obligation not to abridge the individual exercise of such freedoms because of the public use of their property.70

Since members of the public were generally allowed on Princeton's campus, the university could not ban Schmid from its private property because he was distributing leaflets. Time, place, and manner restrictions had to be clearly drawn and administered evenhandedly.
Search and Seizure: Students and the Fourth Amendment

The Fourth Amendment protects individuals from governmental searches of their persons, houses, papers and effects without a warrant, probable cause, or consent. Evidence seized by the federal government without a warrant, probable cause, or consent is inadmissible in federal criminal proceedings under the "exclusionary rule." The "exclusionary rule" was extended to cover evidence seized illegally by state officials in *Elkins v. United States.* A number of courts have stated that searches of dormitory rooms fall within Fourth Amendment protection. Evidence seized by police in a search of a dormitory room, conducted without probable cause, would be inadmissible in criminal proceedings. Likewise, when security officers who are deputized or have arrest powers by the state search a dorm room, the search must meet Fourth Amendment standards or the evidence seized will be excluded at trial.

It is not clear that evidence will be excluded at trial if it is illegally obtained by school administrative personnel and turned over to the police. Some courts have determined that a lesser standard, "reasonable cause" rather than "probable cause," must be met by university officials in conducting legal searches of dormitory rooms. The Federal District Court in *Moore v. Troy State University,* and *Piazzola v. Watkins,* tried to explain the difference. In *Moore,* university officials and police conducted a warrantless search of Moore's dormitory room. Marijuana was discovered, and Moore was expelled. In upholding the search, the court relied upon a number of cases involving national security in which searches by a superior were held
reasonable. After weighing the need of the university to govern effectively and the students' rights to privacy, the court concluded that the university had an inherent right of reasonable inspection to preserve order and discipline on campus. Obtaining a search warrant prior to the search was not necessary.

Two years later, the same court considered the extent to which university officials could delegate their right to search to local police officers. In Piazzola, officials of a state university had reserved the right to enter dorm rooms for inspection purposes as a condition of rental. Without probable cause, consent, or warrant, the local police raided a student's dormitory room and discovered a quantity of marijuana. Even though the police had searched on the express invitation of the university authorities, the court held the search unconstitutional and barred introduction of the marijuana as evidence in criminal proceedings. Although the university may have had the right to conduct searches for college-related reasons, the court said this right did not extend to searches conducted in order to seize criminal evidence. The right to search "cannot be expanded and used for purposes other than those pertaining to the special relationship." Interpretation of these purposes is to be made in terms of the institution's need "to operate the school as an educational institution." 75

As Richard Delgado states in his article, "College Searches and Seizures: Students, Privacy, and the Fourth Amendment," 76 this distinction is a troubling one. Defining what constitutes an "institutional purpose" is difficult and subject to abuse. If the standard for obtaining evidence imposed on college officials is
lower than that imposed on police officials, then the police may simply have college officials conduct dormitory searches and turn the evidence over to them.

This double standard also bothered the court in *Smyth v. Lubbers*. The plaintiffs were students enrolled at Grand Valley State College and lived in dormitory rooms on campus. College officials searched each of the plaintiff's rooms without warrants, and discovered substances alleged to be marijuana. The evidence seized was admitted at a trial held before the All-College Judiciary. The plaintiffs were found guilty of possession of marijuana and suspended. The college's room entry procedures, in effect at the time, articulated a double standard. If college officials had reasonable cause to believe that students were continuing to violate federal, state or local laws or college regulations, rooms were subject to search by college authorities. However, student rooms could be entered and searched by county and state officials only after a search warrant had been presented stating the reason (probable cause) for the search. The court drew a distinction between the college officials' search in question and a routine inspection:

This case clearly involves a full search which focused upon the room of a specific individual who was suspected of criminal activity, and which was aimed at discovering specific evidence. The search was not "administrative" in the sense of a generalized or routine inspection for violations of housing, health or other regulatory codes.

The court further stated that students in public institutions should have the same rights as any adult citizen:
This court rejects the theory that the college officials acting pursuant to regulations may have infringed on the outer limits of an adult's constitutional rights. *Burnside* and *Moore*, upon which the college relies, were decided before *Tinker*, which rejected the proposition that students "shed their constitutional rights... at the schoolhouse gate." The Fourth Amendment is flexible enough to meet a variety of public needs, but it will not admit the slightest infringement. Public school officials are state officials and therefore must comport to the same restrictions as the local law enforcement authorities. If college officials are conducting a search to uncover evidence to later be used at trial, the probable cause standard is imposed.\(^9\)

*Smyth v. Lubbers* is not a recent case. It is difficult to determine whether other courts will follow the *Smyth* court's reasoning in future cases. The present trend by courts to give students in primary and secondary schools greater freedom under the Fourth Amendment\(^8\) should point to increased rights in higher education. Private college and university officials are still viewed by the courts as private citizens, and therefore are not subject to the Constitutional limitations that are imposed on officials of public colleges in conducting searches. If a room search complies with a clearly stated room entry policy, a "reasonable cause" standard is imposed unless the search is conducted by private school officials with the support and knowledge of the local police,\(^1\) in which case they are viewed as acting on behalf of state officials.

**The Impact of Federal Aid Regulations Upon Students and Institutions**

Courts have interpreted the Constitution to expand the rights of students at public institutions of higher education.
For the most part, since there is little state involvement ("state action") in the operation of private colleges, courts have been hesitant to grant constitutional freedoms to students enrolled in private colleges and universities. As federal aid to both public and private institutions has increased, however, federal governmental regulation has conferred constitutional-like freedoms on the student-college relationship.

Congress passed two laws that were designed specifically to regulate educational institutions that receive federal financial assistance and two laws that directly impact higher education. Title IX of the Education Amendments of 1972 states that:

No person in the United States shall on the basis of sex be excluded from participating in, being denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.82

The Family Educational Rights and Privacy Act (FERPA) of 1974 or "Buckley Amendment," gives college students the following rights:

1. Inspection and review of their own educational records,
2. An opportunity for a hearing to challenge information which is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, and
3. Subject to some exceptions, personally identifiable information in the records cannot be disclosed to third parties without the student's written consent.83

All agencies receiving federal funds through the Department of Education must comply with the restrictions of FERPA.
Two other pieces of federal legislation that have had a major impact on higher education include Title VI of the Civil Rights Act of 1964 which prohibits discrimination based upon race, color, or national origin in any "program or activity receiving federal financial assistance" and section 504 of the Rehabilitation Act of 1973 which provides:

No otherwise qualified handicapped individual in the United States . . . shall solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Violation of Title IX, Title VI, and Section 504 regulations can result in termination of "federal financial assistance" to the "program or activity" receiving the aid. The U.S. Supreme Court has determined in Grove City College v. Bell that federal financial assistance includes indirect aid, such as aid to students enrolled in the institution, but that the termination of federal funding must be limited to the "particular program or a part thereof" in which the discrimination occurs. The Secretary of Education may terminate federal funds to the entire educational institution if FERPA is violated.

Courts have dealt with the enforcement mechanisms in Title IX, Title VI and section 504 legislation in considering whether a student has a private right of action under these statutes. The U.S. Supreme Court in Cannon v. University of Chicago stated that a private right of action is implied under Title IX even though the specific enforcement mechanism described in the act is loss of federal funds to the institution. Cannon alleged that her application to the University of Chicago Medical School was denied
because she was a woman and brought suit in federal court stating that her rejection violated Title IX. The University argued that Congress had never intended a private cause of action under Title IX:

[I]t is unwise to subject admissions decisions by universities to judicial scrutiny at the behest of disappointed applicants on a case-by-case basis. . . . This kind of litigation is burdensome and inevitably will have an adverse effect upon the independence of members of the university committees.88

The Court ruled that Cannon could maintain her lawsuit despite the absence of any express authorization for it in the statute. It reasoned that "the failure of Congress to [specify a private cause of action] is not inconsistent with an intent on its part to have such a remedy available to the persons benefitted by its legislation."89

The courts have also struggled to define who is a handicapped, but "otherwise qualified individual" for the purposes of admissions and performance standards. The U.S. Supreme Court decided this issue in Southeastern Community College v. Davis90 a case that involved a student with a serious hearing disability who sought to be trained as a registered nurse. The Court ruled that an otherwise qualified handicapped individuals are those who are qualified in spite of, rather than except for, their handicap. The Court made clear that performance standards may sometimes encompass reasonable physical requirements, especially in technical disciplines. The ability to understand speech without reliance on lipreading was necessary for patient safety during the clinical phase of the nursing program and Davis could not meet that physical requirement.91
Generally, the burden is on students or applicants to prove that they are members of a class being defined by the statute, are otherwise qualified to participate, are being excluded or discriminated against solely by reason of their class, and that the program or activity receives federal financial assistance. If the student or applicant meets these four criteria, the burden then shifts to the college either to establish that the student does not meet the criteria or that there is substantial justification for discrimination.\textsuperscript{92} This substantial justification test is applied almost exclusively in 504 litigation; to meet its burden of proof, a college must establish that a handicapped individual does not possess the technical skills required to perform in a given discipline.

In Doe v. New York University,\textsuperscript{93} a student was denied admission because of an extensive history of mental impairments that limited her ability to handle stressful situations such as medical school. The court sided with New York University, stating:

\textit{[C]onsiderable judicial deference must be paid to the evaluation made by the institution itself, absent proof that its standards and its application of them serve no purpose other than to deny an education to handicapped persons.}\textsuperscript{94}

Congress' intention in drafting anti-discrimination legislation was to increase the rights of qualified students to receive a complete education, both in public and private institutions. Unfortunately, the Supreme Court's decision in Grove City College v. Bell may severely limit the effect of Congress' legislation.\textsuperscript{95}
The U.S. Supreme Court has also held that the United States government can deny tax-exempt status to institutions that participate in discriminatory practices. Bob Jones University had written policies permitting officials to expel any students who participated in interracial dating or marriage. The Court in Bob Jones University v. United States upheld an IRS ruling denying Bob Jones University tax-exempt status, stating:

[b]ased on the "national policy to discourage racial discrimination in education a private school not having a racially nondiscriminatory policy as to students is not "charitable" within the common law concepts reflected by section 170 and 501(c)(3) of the Code.\textsuperscript{96}

Not only has the influx of federal money given the federal government more control over institutions of higher education, it has also placed greater restrictions on college students. Under current law, students are required, as a condition of the receipt of federal financial aid, to meet the registration requirements under Section 1113 of the Department of Defense Authorization Act of 1983.\textsuperscript{97} Linking receipt of federal financial aid to draft registration has turned college administrators into enforcement agents of draft registration—a role that makes many of them uncomfortable.\textsuperscript{98}

At least one district court has questioned the law's Constitutionality. In Doe v. Selective Service System,\textsuperscript{99} a preliminary injunction was issued against enforcement of Section 1113 because it violated Fifth Amendment rights against self-incrimination. The court reasoned that the statute penalized those who asserted the Fifth Amendment by denying them
access to Title IV funds, impermissibly burdening the exercise of that privilege. In addition, the statute's scheme of operation served to incriminate those who asserted their Fifth Amendment privilege because the very act of applying for financial aid could lead directly or indirectly to incriminating evidence. The court also found that section 1113 was a "bill of attainder" in violation of U.S. Constitution Article I, § 9, clause 3. A bill of attainder is a law that legislatively determines guilt and inflicts punishment upon an identifiable individual or group without the protection of a judicial trial. The court stated:

Section 1113 bears no relationship to bona fide qualifications for educational funding but instead appears to be intended to reach the past act of nonregistration. To say that plaintiffs can escape the section's prohibitions by simply registering is to say that an allegedly unconstitutional law becomes valid by its mere enforcement; it ignores the fact that males born after January 1, 1963 must register within 30 days of their 18th birthday or be subjected to the prosecution for late registration. Section 1113 clearly singles out an ascertainable group based on past conduct.

The U.S. Supreme Court subsequently stayed the injunction, subject to its own ruling, which should be issued later in 1984.

Student Disenfranchisement: The College Vote and Residency Requirements for Voting

The right of students to vote as residents of their college communities varies from state to state. Many students wish to vote in these jurisdictions because of the complicated absentee ballot system and their interest in political involvement. The compelling state interest articulated in restricting student
voting takes three forms. Strict voter residency requirements facilitate voter identification to prevent fraud, promotes a more informed electorate, and ensures voter membership and interest in the community. 102 Most courts have found that these justifications are insufficient to support a presumption against student residency. In Jolicoeur v. Mihaly, 103 the court held that a statute which created an almost conclusive presumption that an unmarried minor's voting residence was his or her parents' home violated the 14th Amendment Equal Protection Clause and the 26th Amendment. In United States v. State of Texas, 104 the federal court enjoined the voting registrar from applying a burdensome presumption of nonresidency to unmarried dormitory students. The U.S. Supreme Court has determined that a voting residency period of more than 30 days violates the 14th Amendment. 105 Consequently, an unduly long voter residency requirement designed by states to eliminate student voting would most likely be struck down as unconstitutional.

Statutory provisions discounting attendance at a local college or university as a factor in determining a student's residence have been upheld. 106 Nevertheless, most courts consider the college dormitory as a student's place of residence and encourage student participation in the voting process.
The Right to Educate: The Doctrine of Academic Abstention

As previously stated, courts have historically deferred to college officials regarding academic decisions so long as these decisions are consistent with the college's own stated rules, academic common law, constitutional provisions, and are made without malice:

The maintenance of discipline, the upkeep of the necessary tone and standards of behavior in a body of students in a college is, of course, a task committed to its faculty and officers; not to the courts. It is a task which demands special experience, and is often one of much delicacy . . . and the officers must, of necessity, be left untrammeled in handling the problems which arise as their judgment and discretion may dictate, looking to the ends to be accomplished. Only in extraordinary situations can a court of law ever be called upon to step in between students and the officers in charge of them.107

Portions of this doctrine have been undercut; for example, it is clear that courts will provide a remedy for violations of student rights when university officials make decisions that are arbitrary, capricious or in bad faith. Yet, courts are still reluctant, for the most part, to substitute judicial decisions for academic judgment. Courts defer to the "particular knowledge, experience, and expertise of academicians."108 Even under a contract analysis, the contract to educate will be "construed in a manner which leaves the school sufficient discretion to properly exercise its educational responsibility."109

Courts are often faced with balancing student expectations under the contract with the institution's right to set educational curriculum, including the right to eliminate academic programs.
If elimination of an educational program is due to financial problems, enrolled students have standing to question whether the financial crisis is bona fide. If the court is satisfied that a valid financial emergency exists, it usually will not substitute its judgment for that of the university:

where there is a showing that the administrative body, in exercising its judgment, acts from honest convictions, based upon the facts which it believes in the best interest of the school, and there is no showing that the act is arbitrary or generated by ill will, fraud, collusion, or other such motives, it is not the province of the court to interfere and substitute its judgment for that of the administrative body.

Similarly, governing boards have the power to impose mandatory fees as deemed necessary, notwithstanding that some students may object to the manner in which the fees are used. "The effect of accommodating every student's viewpoint on all regents' decisions would be to destroy the regents' discretionary power specifically granted to them by the state constitution." In addition, students may be compelled to follow reasonable campus regulations if the regulations are based on the educational benefit to the student and not solely on the need to generate revenue. For example, the courts have upheld a university policy requiring students to live in on-campus housing provided the policy is premised upon academic criteria.

The doctrine of academic abstention also allows an academic institution to control its own academic quality. It is the institution that ultimately decides what its educational goals and processes will be. "Quality of education" suits and academic grade appeals have little chance for success in today's courts.
It is not entirely clear when a court will decide to pierce the veil of academic abstention in order to remedy a student complaint. However, one commentator theorizes the following rationale:

Except in program termination cases, the courts' refusal to overturn university decisions on academic issues is most clear. It is partly a reflection of the courts' heavily result-oriented approach to all student challenges to university academic decisions. Where the dispute involves money owed, the courts may feel somewhat more comfortable with, and be somewhat quicker to recognize, abuse and unfairness. But the closer the dispute intrudes on strictly academic relationships, the more reluctant the courts are to overturn a decision made by educators.\textsuperscript{114}

Summary and Conclusions

Prior to the 1960's, courts were rarely involved in disputes between the college and the student. It was clear that the courts' view of the college/student relationship placed the college in new-complete control over dispensing rights and privileges to its students. With the advent of student activism and expanded consumer rights, courts have redefined the status of college students. The courts' view of college students has been drawn from the desire to treat students as adult citizens while still allowing the academic institution its right to educate.

A student who contracts with a college for an education can generally rely on explicit terms of the college's published materials; its bulletins, handbooks, and agreements. Vague or silent terms will most likely be left to the college to interpret, although the Corso v. Creighton University\textsuperscript{115} decision may lead to stricter interpretation of student contract rights by future courts.
When a court feels that it reasonably possesses the expertise to determine whether a student has received due process, it will not hesitate to require procedural safeguards before a student is expelled or suspended from a public university. When balancing the college's right to educate against a student's right to due process in academic matters, courts will usually defer to the procedures internal to the academic institution. Through the Equal Protection Clause of the Fourteenth Amendment, it is clear that courts wish to open the doors of public universities and colleges to all qualified persons regardless of sex, race, or class. Where the Constitution does not reach private institutions, Congress has involved courts through Title IV, Title IX, and § 504 legislation.

Today's students have gained most in the area of First Amendment freedoms. While the courts balance student rights against the college's right to educate, an important aspect of the courts' consideration is the definition of education. By defining the classroom as "the marketplace of ideas," the courts have taken a dim view of any censorship by public university officials. Except for clear time, place, and manner restrictions defined specifically for an academic setting, courts have allowed students at public colleges to express themselves and associate with few limits. When expression takes the form of a student publication, that publication may exist, select its own staff, and be generally guaranteed continued university funding. Freedom of association carries with it the right to organize and to be recognized as an official student group. Colleges have the right to educate, thus
colleges have the right to extract tuition and fees even from students who may not support specific education programs. Courts have generally given wide latitude to a college's definition of what comprises its educational enterprise.

While private students may not enjoy First Amendment freedoms in their relations with college authorities, a recent state court decision applying state constitutional guarantees to private entities may soon extend to some private students the rights and privileges that exist on the public campus. In these cases, the private school may argue its own first amendment protections (free exercise of religion, for example) to restrict the encursion of the state into its internal affairs.

The college's "right to educate" has influenced the courts in decisions dealing with Fourth Amendment rights. Some courts have determined that school officials need only reasonable cause to search a student's dormitory room and seize evidence. While Smyth v. Lubbers\textsuperscript{116} treats college officials at public schools as state officials and not as private citizens, and imposes probable cause standard or room searches, it is too early to tell whether the probable cause standard will be consistently imposed by future court decisions.

Finally, a student's status has created interesting problems with local communities and federal governmental programs. Student voting rights have been greatly expanded by the courts. The federal government, on the other hand, has to date, successfully put restrictions upon students in exchange for financial aid. The
constitutionality of § 1113 of the Defense Authorization Act is still questionable and the Bankruptcy Reform Act of 1978 places strict requirements on repayment of student loans.\textsuperscript{117}

Courts have taken a active role in defining the rights and privileges of today's college students. The courts are still trying to understand precisely where the student fits as an enrolled member of an academic community and as a citizen with Constitutional freedoms. Scholars of higher education law are often troubled by apparent inconsistencies in court decisions. Although it is difficult to predict how a given court will decide a specific case, an understanding of the trends in judicial thinking will lead to a clearer understanding of the parameters within which that decision will be made.
The author gratefully acknowledges the work of his research assistant, Barbara A. Becker.


2. *Gott v. Berea College*, 161 S.W. 204, 206 (1913) (Courts will not interfere with the authority of a college to make rules governing student behavior unless the rules are unlawful or against public policy).

3. *John B. Stetson University v. Hunt*, 102 So. 637 (1924) (College may make regulations relating to mental training and moral and physical discipline).

4. *Board of Trustees of University of Mississippi v. Waugh*, 62 So. 827 (1913) (stating "that the right to attend a state educational institution is not a right, but a gift and students must submit to conditions lawfully imposed as a condition to this gift"), aff'd 237 U.S. 589 (1915).

5. *Anthony v. Syracuse University*, 244 App. Div. 487, 231 N.Y.S. 435, 438 (1928) (dismissal of student based on rumors and allegations that she was "not a typical Syracuse girl" upheld).


10. 294 F.2d 150 (5th Cir. 1961).


12. See Steinberg v. Chicago Medical School, 354 N.W.2d 586 (1976) (private medical school bound under contract to fulfill its promises as stated in college bulletin upon acceptance of applicant's admissions fee); Lowenthal v. Vanderbilt University, No. A-8525 slip opinion (Chancery Ct. Tenn. 1977) (school liable in damages to students for tuition paid due to "substantial disintegration of academic
program"), and Healy v. Larsson, 323 N.Y.S.2d 625 (1971) (public college bound under implied contract to confer a degree upon a student who satisfactorily completed a course of study authorized by representatives of the college).


16. Id. at 1268.


19. Id. at 1062.
20. Eisele v. Ayers, 381 N.E.2d 21 (App. Ct. 1978) (U.C.C. is inapplicable to college setting because it is limited to sale of goods. Reliance on doctrine of part performance is misplaced when dealing with tuition increases).


22. See White and Summer, Uniform Commerical Code 835(1972); commentators also urge that the "doctrine of unconscionability" (contrary to public policy) be employed when dealing with student-university contracts see, e.g. "Rights and Remedies of Students," supra at 481.

23. 514 F.2d 622 (10th Cir. 1975).

24. 514 F.2d 622, 626-27.

25. "Rights and Remedies of Students" supra at 481-83.


30. Id. at 7.

31. See, e.g., Ross v. Penn State University, 445 F.Supp. 147 (M.D. Pa. 1978) (failure to afford student a hearing at which he could explain any mitigating circumstances for his poor academic scholarship before termination as a graduate student violated his right of due process despite the fact that his termination did not violate his contract with the University).


33. 294 F.2d 150, 157.

34. Id. at 151.

35. 415 F.2d 1077 (8th Cir. 1969).
36. Id. at 1089-90.


38. See Matthews v. Eldridge, 424 U.S. 319 (1976) (an evidentiary hearing is not required prior to the termination of social security disability payments and the administrative procedures prescribed by the Act fully complies with due process).

39. 435 U.S. 78, 86 n.3.

40. The Court held that both the procedural and substantive due process accorded to Horowitz met Constitutional standards, emphasizing that she was "fully informed of faculty dissatisfaction with her clinical progress and that there was no showing of arbitrariness or capriciousness by the school. 98 S.Ct. 948, 952 (1978).

41. Goss v. Lopez, 419 U.S. 565 (1975) (a 10-day suspension from school is not de minimus and must be imposed in accordance with due process standards, usually including notice and a hearing).


44. DeFunis v. Odegaard, 507 P. 2d 1169 (Wash. 1973) consideration of race in admissions not a per se violation of the 14th Amendment; (law school admission policy that allowed for preferential treatment of minority groups upheld), vacated as moot, 416 U.S. 312 (1974).

45. 438 U.S. 265, 98 S.Ct. 2733 (1978) (medical school admission policy that instituted quotas for minority applicants violated 14th Amendment, state constitution and Title IX of the Civil Rights Act of 1964, although race could be a proper factor to consider in admission).

46. 98 S.Ct. 2733, 2763 n. 53.


48. Id. at 187.

49. 102 S.Ct. 3331 (1982).

50. Id. at 3336, n. 8.
51. Justice Powell in his dissenting opinion remained unconvinced that Hogan was truly denied a benefit, describing his situation as an "inconvenience." Id. at 3345.

52. The U.S. Supreme Court majority limited its decision to MUW's School of Nursing, declining to review the policy as to other MUW schools—despite the fact that the Fifth Circuit Court of Appeals addressed the single-sex status of the entire school. However, the burden on a public single-sex school to demonstrate an important state interests substantially related to gender specific admissions criteria will be difficult to bear. Steigelfest, "The End of an Era for Single-Sex Schools? Mississippi University for Women v. Hogan", 15 Conn. L. Rev. 353 (1983).

53. 385 U.S. 589 (1967) (dismissal of teachers for failure to sign a loyalty oath "chills" expression and is unconstitutional).


55. 393 U.S. 503 (1969) (suspension of students for wearing black armbands, without a showing that such conduct interfered with school discipline or the rights of others, prohibits expression and is not permissible under 1st and 14th Amendments).
56. Id. at 511.


58. 519 F.2d 257 (5th Cir. 1975).

59. Id. at 259.

60. 519 F.2d 257, 260, quoting Bazaar v. Fortune 476 F.2d 570, 574 rehearing en banc 489 F.2d 225 (5th Cir. 1973).

61. 719 F.2d 279 (8th Cir. 1983).

62. Id. at 282-83.

63. Schiff v. Williams, 519 F.2d 263 (5th Cir. 1975).


65. 102 S.Ct. 269 (1982) (a college may not deny a recognized student organization the right to hold worship services in college facilities that are made generally available to the public).
66. 408 U.S. 169 (1972) (a college may not restrict speech by denying recognition to a group whose views it finds abhorrent).

67. Id. at 181, See also Gay Lib. v. University of Missouri, 558 F.2d 848 (8th Cir. 1977).

68. See Good v. Associated Students of the University of Washington, 542 P.2d 762 (1975) (authority of university to impose mandatory student services fee upheld).


70. Id. at 628. But see Washington v. Chrisman, 102 S.Ct. 812 (1982) where the plain view exception to the Fourth amendment was applied, despite heightened state constitution protections, to a search incident to the arrest of a student who lived in a college dormitory.

71. 364 U.S. 206 (1960) (evidence illegally seized by state officials is inadmissible in a federal criminal trial, even when there is no participation by federal officers in the search and seizure).
72. A police officer is permitted to seize evidence that is in "plain view" without a warrant. The "plain view" exception to the Fourth Amendment warrant requirement was applied to the college dormitory setting in Washington v. Chrisman, 102 S.Ct. 812 (1982). In this case, a Washington State University police officer followed a student (whom he had placed under arrest) to the student's dormitory room to retrieve the student's identification. While standing in the entrance to the room, the officer noticed contraband and seized it. The defendants then gave the officer written consent to search the room and he discovered more contraband. The Court ruled that since the officer had placed the defendant under arrest, he had the right to remain "literally at [his] elbow at all times" and evidence seized was admissible. Id. at 816.

73. 284 F. Supp. 725 (M.D. Ala. 1968) (warrantless search by university officials and police based on reasonable cause upheld).


75. Id. at 628.

76. 26 Hastings L. J. 57 (1974).

78. Id. at 786.

79. Id. at 789. (cit. omitted).

80. See 34, Baylor L. R. 209 (Spring, 1982).

81. See e.g. Brown v. Mitchell, 409 F.2d 593 (10th Cir., 1969) (suspension of students by private college that does not receive state funds but does receive a tax exemption did not constitute "state action").


88. Id. at 709.


91. Id. at 407.


93. 666 F.2d 761 (2d Cir. 1981).

94. Id. at 776.


100. Id. at 943.


105. See Dunn v. Blumstein, 405 U.S. 330 (1972) (durational residency requirement of one year in the state and three months in the county as a prerequisite to vote violates the 14th Amendment) and Marston v. Lewis 410 U.S. 679 (1973) (50-day residency requirement unconstitutional as to presidential elections but permissible as to elections involving state and local officials).
106. See Wittingham v. Board of Elections, 320 F. Supp. 889 (N.D.N.Y. 1970) (statute that made presence on a state as a student neither a positive nor negative factor in determining residency for voting upheld) and Gorenberg v. Onondaga County Board of Elections, 328 N.Y.S. 2d 198 (1972) (statute requiring students to file an affidavit as evidence of residence does not violate due process or equal protection standards).

107. Woods v. Simpson, 146 Md. 547 at 551 126 A 882 (1924) (refusal of university to enroll student for another term, because of friction with authorities not an abuse of discretion.

108. Gaspar v. Bruton, 513 F. 2d 843, 851 (10th Cir. 1975) (the court will defer to the particular knowledge, experience and expertise of academicians). Also Connelly v. University of Vermont and State Agricultural College, 244 F.Supp. 156 (D.Vt. 1965) (courts do not interfere with the management of a school's internal affairs unless "there has been a manifest abuse of discretion or where action has been arbitrary or unlawful").

109. See Jansen v. Emory University, 4409 F. Supp. 1060 (N.D. Ga. 1977) (dental student dismissed for academic insufficiency entitled to due process as defined in education contract and not full adversary due process), aff'd. 579 F. 2d 45 (5th Cir. 1978).
110. See Galton v. College of Pharmaceutical Sciences, Columbia University, 70 Misc. 2d 12, 332 N.Y.S. 2d 909 (Sup. Ct. 1972) (college has obligation to allow current students to continue their studies until graduation, absent circumstances beyond the control of the college).

111. Levitt v. Board of Trustees, 376 F. Supp. 945, 950 (D Neb. 1974) (discharge of college faculty, based on lack of funds and absent showing of fraud or ill will, upheld).

112. Erzinger v. Regents of the University of California, 87 Cal. Rptr. 164 (1982) (university has authority to impose mandatory student fees to provide student health services; use of such fees to provide abortion services did not violate free exercise of religion).


115. See supra note 29.


117. See supra note 101.