

Legal Issues and Advising

Narrative on pages 1-2 copied from the following NACADA url:
<http://www.nacada.ksu.edu/clearinghouse/advisingissues/legal.htm>

“The role of the academic advisor is at the heart of any college campus. **To be truly effective while at the same time protecting ourselves, we must be aware of the legal implications of our work and the changing environment in which we operate.** By seeking the advice of campus experts, including the counsel's office, advisors can safeguard themselves against potential errors.”

Due Process:

“One of the most basic concepts that advisors should understand is **due process rights**. Due process means in simple terms "what is fair" (Miles, 2002). Due process rights are guaranteed by the U.S. Constitution in the 5th and 14th amendments specifically. But what exactly are due process rights? Who is entitled to them? And under what circumstances are they required?

Due process is divided into two elements (Miles, 2001). The first is called **substantive due process**. Under substantive due process, all policies, procedures and rules must be fair by any independent standard. They cannot in any way be arbitrary or capricious. The second element is called procedural due process. **Procedural due process** means that the policies of an institution are carried out in an equitable manner. Policies cannot be interpreted in different ways for different students who find themselves in identical circumstances. Both elements must be present for due process to be properly provided. A student can claim a violation of their due process rights if either element is not present in an institution's policies and practices.

How do we decide when students are entitled to due process? Not all activities by a state officer necessarily require due process. Those that do are predicated in a student's interest in the outcome of a dispute. In order for a student to be entitled to due process, they must have either a property or liberty interest at stake (Miles, 2001). A **property interest** is a quantifiable benefit derived from an action. An example of a property interest might be earning a degree upon successful completion of all requirements. A student who follows and meets all requirements set out in a university's catalogue would have a property interest in the institution awarding the degree. An institution would be required to provide due process in these instances. A **liberty interest** is based on a student's ability to leave a campus freely without interference from the institution. An example of this would be actions of a university or college that make it impossible for a student to transfer to complete a degree elsewhere or perhaps find employment after leaving. Due process comes into play when the activities of an institution affect students in such a way that they fall into one of these two categories.

To provide **due process** to a student, Miles (2001) delineates **three steps** that must be followed. First, representatives of the institution must give notice of an alleged violation of policy. Secondly, the institution must offer a hearing where a student can refute any charges made. Finally, an explanation of the decision made must be given. To skip one of these steps is to abrogate a student's due process rights.

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Academic advisors should be cognizant of the ramifications of due process for our practice. In our day-to-day work, situations arise that require due process be applied. Consider decisions regarding reasonable academic progress standards as they relate to financial aid eligibility. Certainly an academic advisor involved in decisions or appeals of aid should offer due process to a student about to lose eligibility for future funding. They have a property interest in continuing to receive aid. Admission to selective professional degree programs could also require due process. These are but two potential areas in which advisors could be involved with student due process. By understanding the concept involved in due process, advisors can avoid inadvertently denying a student rights that they are guaranteed. This can help protect an advisor from becoming embroiled in difficult legal circumstances.”

The Law of Agency:

“Another important area for advisors is the law of agency. The **law of agency** essentially means that actions of an agent of a principal can bind that principal (Miles, 2001). A principal for our purposes is the educational institution. An agent of the principal can be academic advisors. At the heart of this relationship is the fact that we as advisors can bind our institutions to certain actions such as awarding of degrees on the basis of our actions. The standard that seems to emerge in recent court cases has centered on whether the agents (advisors) were acting within the scope of their professional duties (Zirkel, 2001). Did the advisor overstep the scope of his or her duties? This is how the institution can be held responsible for promises and advice made by their agents. Advisors should be aware of the implications of this for their practice. We should make a conscious effort to avoid speaking for areas outside our scopes. For example, questions about regulations governing international students or student athletes might be more appropriately handled by another campus office since students may take our vague assurance on a matter as official. The implications for the advisor are clear here: stick to what you know (Stone, 2002)! It is very easy to fall into the trap of predictions that we all know, as advisors, are dangerous.”

Negligence:

Negligence is a tort that results when one breaches a duty to another person. A tort is more or less a foreseeable personal injury. This injury can be emotional, physical or mental (Miles, 2001). For negligence to have occurred there also has to be a standard of care or foreseeability. This centers on what a reasonable person could have known or expected to happen (Miles, 2001).”

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Georgia Open Records Law [aka Sunshine Law]:

Georgia's Open Records Law provides the public with broad access to governmental records and documents. The public has a right to see, inspect and copy all "public records." "Public records" are broadly defined to include the following:

- Documents;
- Papers;
- Letters;
- Maps;
- Books;
- Tapes;
- Photographs;
- Computer-based or generated information; and
- Similar material prepared and maintained or received in the course of the operation of a public office or agency.

The Law specifically designates "computer records" as public records subject to the Law.

The Law mandates that public records be available to "any citizen of this state" and must be available to non-residents as well. It is irrelevant the purpose of a particular request .

Source: http://www.gfaf.org/resources/sunshine_laws.pdf

Send all Open Records Requests to Frances Davis

frances.davis@mga.edu