TOPICS IN THIS ISSUE

14.5: Resolving allegations of academic dishonesty: 2014 Update


"Academic suspensions or dismissals . . . require only the barest procedural protections. See Board of Curators v. Horowitz, 435 U.S. 78 (1978). In this case, plaintiff was accused of cheating, an offense which cannot neatly be characterized as either 'academic' or 'disciplinary'. The Supreme Court's reasoning in Horowitz . . . persuades me that cheating should be treated as a disciplinary matter. In declining to impose a hearing requirement on a medical school in an academic dismissal case, the Court noted that academic dismissals involve "a judgment [that] is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision . . . " In this case, the proceedings against plaintiff primarily involved resolution of factual disputes, and there was little need for subjective judgment or evaluation. Further, dismissal for cheating requires greater procedural protection than academic dismissals since the former are more stigmatizing than the latter, and may have a greater impact on a student's future."

14.6 : Academic Integrity Seminar Content Update

KEY QUOTATION: from New York Times columnist David Brooks on an ongoing (75 year) longitudinal study of human development at Harvard University called the "Grant Study":
“Perhaps we could invent something called the Grant Effect, on the improvement of mass emotional intelligence over the decades. This gradual change might be one of the greatest contributors to progress and well-being that we’ve experienced in our lifetimes.”

ENDNOTE: What can college students learn from the Grant Study?

KEY QUOTATION (from former Grant Study Director George Vaillant):

“Don't think less of yourself, but think of yourself less”

14.5: Resolving allegations of academic dishonesty: 2014 Case Study Update

Many of our readers use this case study in academic integrity hearing board/hearing officer training. Our 2014 update replaces outdated material and contains additional references and case citations. As before, we feature a broad range of problems no single hearing panel is likely to encounter. Please reassure hearing panel members that the typical allegations they resolve will be less complicated and contentious.

CASE STUDY COMMENTARY TOPICS (below):

[1] The reluctance of faculty members to report allegations of academic dishonesty
[2] Professional responsibility of faculty members to protect academic integrity (AAUP)
[3] Academic dishonesty as a disciplinary offense (basic due process is needed)
[4] Objection to "circumstantial" evidence
[5] Applying constitutional standards at private schools
[6] The Student Honor Council as "prosecutor and jury"
[7] The professor's "defamatory" and "abusive" comments
[8] International students and academic integrity standards
[9] Discrimination based on disability
[10] The lawyer's demand for pre-hearing "discovery"
[12] Absence of the professor; right of cross examination
[13] Inadequate hearing notice
[14] The hearing as a "circus"
[15] A biased hearing panel member
[16] An additional penalty for "perjury"

CASE STUDY FACTS

John and Metad were devoted friends and collaborators. Unfortunately, one of their professors at James Hunter College (a private liberal arts institution) suspected their collaboration extended to cheating during an examination.
The professor became suspicious of John and Metad's activities at the outset of the examination, when she observed them sitting next to each other, contrary to her instructions to sit "every other seat." The professor asked John to move, but noticed a few minutes later that he had not done so. It was necessary for her to reiterate her instructions, and to point out a number of vacant seats.

Later, during the first portion of the examination, John walked to the front of the room to ask the professor a question. She then observed him returning to his original seat next to Metad. Again, for a third time, she insisted that John sit in a different location.

The professor decided to compare John and Metad's examination papers after the papers were submitted for grading. She discovered that both students' answers to 50 short answer questions were identical, including four wrong answers not commonly answered wrong by the rest of the class. Also, while both John and Metad had done "A" work on the short answer questions, neither did well on the essay portion of the examination, which covered the same material. Finally, the professor noted over a dozen erasures on the short answer section of the examination, which John stated had been done toward the end of the examination period.

Before reporting the matter to college's all-student Honor Council, the professor met privately and individually with John and Metad. Both asserted they had not engaged in any form of cheating, and that the similarity of their short answer questions reflected the fact that they studied together. They also stated that their inferior performance on the essay portion of the test reflected the fact that neither had a history of doing well on essay examinations.

Finally, John offered a number of reasons for his apparent determination to sit next to Metad during the examination. He asserted that the room was crowded, and vacant seats were not readily apparent. Furthermore, when he sat next to Metad a third time, he did so for "only two or three minutes" because he was "disoriented" and "not thinking or seeing clearly" due to "pressure of the examination." His numerous erasures, in his view, proved his innocence, since they demonstrated that he was uncertain about his answers, and was concentrating on his own work.

The professor told both students she was not persuaded by their responses. She also told John she was especially disappointed to hear him tell what she regarded as obviously false and contrived story about why he persisted in sitting next to Metad. She then referred the case to the Student Honor Council for a hearing, in accordance with college policies.

**PRE-HEARING OBJECTIONS**

John and Metad promptly hired a lawyer. The lawyer wrote a letter to the Vice-President for Student affairs, demanding that the case be dropped, because:

[] No one had seen John and Metad cheating; nor were any "crib sheets" found. Accordingly, the charges against them were supported only by circumstantial evidence.

[] The role of the Student Honor Council at James Hunter College was unconstitutional since the Honor Council served as both "prosecutor" and "jury."

[] The professor's comments to John about what she believed to be a contrived story were defamatory, insensitive, and abusive.

[] Even if it could be shown that John and Metad had collaborated during the examination, Metad was an international student from a culture in which such collaboration was regarded as normal and acceptable. Consequently, to pursue academic dishonesty charges against him would be fundamentally unfair, and inconsistent with the college's expressed commitment to diversity.
While asserting John's innocence, the lawyer argued that John suffered from a "personality disorder" (a mental disability covered by the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973). It was the lawyer's view that even if John were found responsible for the offense, any punishment would constitute unlawful discrimination based on disability.

Finally, John and Metad's lawyer stated that if the charges were not dropped, he required full pre-hearing "discovery" of all evidence to be considered by the hearing panel, as well as an opportunity to review all examinations submitted by other students in the course.

THE HEARING

John and Metad opted for a closed hearing. They presented their own case, with the aid of a student "advocate," since James Hunter College did not permit students accused of academic dishonesty to have active legal representation in disciplinary proceedings. John told the same story to the hearing panel that he had told the professor when she confronted him.

The course professor was on sabbatical when the hearing was held, but her written statement and other documentary evidence, including John and Metad's examinations, were submitted into evidence by the Honor Council "presenter" (a student appointed by the Honor Council to assist complainants in gathering and presenting facts against those accused of academic integrity violations). John and Metad objected to consideration of the professor's written statement, on the ground that they wished to question her about her allegations, as well as her "insensitive" attitudes toward students. Their objection was denied, on the ground that hearsay is generally admissible in college administrative hearings.

After considering the evidence, the hearing panel was uncertain whether to find John and Metad guilty, and adjourned for a week. During that time, the Chair of the panel was able to reach John and Metad's professor by telephone, in order to clarify several disputed points. The Chair subsequently shared her responses with the rest of the hearing panel, which then voted to find John and Metad "guilty." Although the hearing panel decided both students should be suspended, John received a longer suspension, since the panel believed he persisted in telling a fabricated story about his reasons for sitting next to Metad during the examination.

AN OUTRAGED LAWYER

John and Metad's lawyer said he was outraged! He raised the following issues in a letter to the college president:

- The students were entitled to active legal representation, since the Honor Counsel presenter "aggressively" pursued the case against them at the hearing.

- The professor's failure to appear at the hearing denied his clients the right to question the witnesses against them. That error was compounded by the actions of the Chair of the hearing panel, who arranged for the professor to provide testimony by telephone, without notice to his clients, or an opportunity to respond—all in violation of the James Hunter college Code of Academic Integrity, which contained the statement that accused students have "the right to ask questions of witnesses who testify in Honor Council proceedings."

- John and Metad received only three day oral notice of the Honor Council hearing, rather than the five day written notice required in the Code of Academic Integrity.

- The hearing was disorganized, confused, and resembled a "circus" rather than legal proceeding. This vindicated the lawyer's view that it was a breach of the College's responsibility to turn academic integrity enforcement over to a student honor council.
One of the hearing panel members was dating a young woman who previously had a social relationship with John. As a consequence, the hearing panel member was almost certainly biased.

John should not have been punished for "perjury" without notice of that charge, and an opportunity to defend himself at a separate hearing.

COMMENTARY

[1] This case may provide insight into the reluctance of faculty members to report allegations of academic dishonesty.

Although the first obligation of the campus administration is to insure that the accused students are treated fairly, it will also be important to create a climate in which faculty members believe their efforts are valued. Faculty members should not expect to "win" every case; nor should they take an adverse finding as a personal affront. However, faculty members reasonably expect that diligent efforts to protect academic integrity will be properly recognized as a component of their "service" obligation to the institution.

[2] Programming and orientation for faculty members should reiterate the professional ethical responsibility to promote academic integrity.

The AAUP "Statement on Professional Ethics" states in this regard that:

As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom (emphasis supplied).

[3] Whichever administrative unit has oversight of the academic integrity process, it should be understood that academic dishonesty is likely to be viewed by most courts as a disciplinary offense requiring basic due process, not a matter of subjective academic judgment.

Courts and commentators sometimes disagree on this issue, but we think the best explanation for treating academic dishonesty as a disciplinary offense (with a higher level of due process) was stated in Jaksa v. Regents of Univ. of Mich., 597 F.Supp. 1245 (E.D.Mich. 1984), aff'd, 787 F.2d 590 (6th Cir. 1986). Chief Judge John Feikens wrote:

Academic suspensions or dismissals . . . require only the barest procedural protections. See Board of Curators v. Horowitz, 435 U.S. 78, In this case, plaintiff was accused of cheating, an offense which cannot neatly be characterized as either 'academic' or 'disciplinary'. The Supreme Court's reasoning in Horowitz, however, persuades me that cheating should be treated as a disciplinary matter. In declining to impose a hearing requirement on a medical school in an academic dismissal case, the Court noted that academic dismissals involve "a judgment [that] is by its nature more subjective and evaluative than the typical factual questions presented in the average disciplinary decision." Horowitz, 435 U.S. at 90. In this case, the proceedings against plaintiff primarily involved resolution of factual disputes, and there was little need for subjective judgment or evaluation. Further, dismissal for cheating requires greater procedural protection than academic dismissals since the former are more stigmatizing than the latter, and may have a greater impact on a student's future. But see Corso v. Creighton University, 731 F.2d 529, 532
(8th Cir.1984) (cheating on an exam is "clearly an academic matter"). Accordingly, I hold that plaintiff is entitled to the higher level of procedural protection guaranteed in school disciplinary proceedings.

[4] Objection to "circumstantial" evidence

Objections to the use of "circumstantial evidence" in this case are misplaced. Circumstantial evidence may be relied upon, even in criminal proceedings. For example, a hearing panel may properly draw inferences from the totality of evidence in order to conclude that chance alone would not be a reasonable explanation for suspicious patterns of answers on an examination. See *McDonald v Board of Trustees of the University of Illinois*, 375 F. Supp. 95, 1975, aff'd 503 F. 2d 105, 1974 and *Matter of Katz v. Board of Regents of the State of New York*, N.Y. Appellate Division, Third Department, 2011. (In the context of "compelling circumstantial evidence" of plagiarism a student be punished even if the teacher can't find the original source).

Care should be taken in relying exclusively upon statistical evidence. (See, e.g., Buss, W. and Novak, M., "The detection of cheating on standardized tests" *Journal of Law and Education*, V9, January 1980, p.14: "(a)ny limitations in the probative force of a statistical analysis to detect cheating are likely to be exacerbated if the statistical analysis provides the only evidence considered"). See also *Matter of Basile v. Albany College of Pharmacy of Union University* 279 A.D. 2d 770 (2001) (college's findings were "arbitrary or capricious" and "lacked a rational basis").

In the present instance, however, there are many other forms of evidence as well:

[a] nearly identical multiple choice answers, resulting in superior scores;

[b] contrasted with inferior responses to essays covering the same academic material;

[c] consistent and eventually successful efforts to sit in adjoining seats;

[d] such efforts being specifically prohibited by the professor, requiring her repeated personal intervention;

[e] over a dozen answer sheets erasures by John, which he admits were accomplished sometime after he sat next to Metad during the examination.

Taken separately, each of these factors might be insufficient proof of academic dishonesty. In the aggregate, however, they would be more than adequate to support a finding that John and Metad had cheated on the examination in question.

In deciding to pursue such cases, one might rely upon the aphorism, "when offered a number of different theories, start with the simplest." The facts outlined above are most simply and logically explained by a theory that would encompass a finding of academic fraud. By contrast, John and Metad offer a baroque defense, based upon coincidence, improbable differences in performance on the same examination, and John's stress-induced visual impairment (which did not affect his performance on the multiple choice portion of the examination).

Essentially, it is reasonable to conclude that both students, having reportedly studied together beforehand, also found it necessary to collaborate during the examination. John was almost certainly determined to sit near Metad in order to give or receive unauthorized assistance. Such assistance may have been prepared in advance, reduced to writing, designed to be shared, and initially held by Metad. This suggestion must remain a hypothesis, however, since the precise nature of the collaboration probably cannot be established with certainty. It is simply not possible to know the "intentions and thoughts" of individuals in these situations, "but such unattainable evidence is not required" *Nash v.*


[5] Applying constitutional standards at private schools

James Hunter College is a private institution, so it isn't bound by the constitutional due process requirements applicable to federal and state agencies. Still, since the relationship between students and a private institution is contractual, an implied term of "fair dealing" may be imposed by the courts. See, e.g., Carr v. St. John's University 231 N.Y.S. 2nd 410, 413 aff'd 12 N.Y.2nd 802 (1962):

[T]here is an implied contract between the student and the university that, if he complies with the terms prescribed by the university, he will obtain the degree which he sought. The university cannot take the student's money...and then arbitrarily expel him or arbitrarily refuse, when he has completed the required courses, to confer on him that which it promised, namely, the degree."

In defining what might be "arbitrary" action at a private college, courts may define basic due process standards that won't be radically different from those applied at public institutions. See, generally, Ahlum v. The Administrators of the Tulane Educational Fund, 617 So. 2d 96 (La. App. 4 Cir., 1993) ("due process safeguards in private schools cannot be cavalierly ignored or disregarded"). At a minimum, private schools can be challenged for "bad faith" or "ill will" (usually in the context of claims of unlawful discrimination). See Chandamuri v. Georgetown University 274 F. Supp. 2d 71 (D.C. 2003):

The D.C. Court of Appeals has previously noted that it will not second-guess an educational institution's application of its own academic standards and procedures unless the plaintiff "can provide some evidence from which a fact finder could conclude that there was no rational basis for the decision or that it was motivated by bad faith or ill will unrelated to academic performance."

[6] The Student Honor Council as "prosecutor and jury"

The Code of Academic Integrity at James Hunter College states that members of the Student Honor Council, chosen at random, will "present" cases against accused students at Honor Council hearings. "Presenters" are not part of the hearing panel, and have no vote. Other members of the Honor Council sit on the hearing panel, may ask questions of those who participate in the hearing, and have a vote.

Most lawyers don't like proceedings that are "investigatory" in nature (i.e. members of a committee or agency gather evidence, ask questions, and ascertain facts), but the courts have specifically upheld such proceedings in the context of college and university discipline. For example, in Clayton v. Trustees of Princeton University 608 F. Supp. 413, 425, D.C. N. J., 1985 it was held that Princeton University's honor code offered accused students "a fair and impartial fact-finding process," even though Honor Committee members combined "prosecutorial and judicial functions" by investigating and hearing contested cases.

Likewise, in Gorman v. University of Rhode Island 837 F.2d 7, 15, 1st Cir., 1988, the Court observed that "[i]n fostering and insuring the requirements of due process ...the courts have not and should not require that a fair hearing is one that necessarily must follow the traditional common law adversary method." Specifically, the court held that the role of an Acting Dean of Student life as an advisor to a disciplinary hearing panel did not deny an accused student a fair hearing, even though the Acting Dean ruled on procedural issues prior to the hearing:

Nor do the various roles of [the Acting Dean], while inappropriate in a judicial setting, necessarily violate the requirements of fairness. As Justice Blackmun noted in Richardson v. Perales, 402 U.S. 889 (1971) "the advocate-judge-multiple hat suggestion...assumes too much and would bring down too many procedures designed, and working well..." The University procedures are
designed to give students an opportunity to respond and defend against the charges made, and there is no evidence to show that Gorman was denied a fair hearing because of [the Acting Dean's] multiple roles (p. 15).

[7] The Professor's "defamatory" and "abusive" comments

The argument the Professor "defamed" John and was "offensive" and "abusive" to him in their private conversation does not appear to be accurate, or relevant to the decision to hold an academic dishonesty hearing.

First, since John and the professor were speaking privately, the teacher's verbal expression of concern about John's "false and contrived story" cannot be defamatory, since it was not directed to or overheard by a third party.

Also, it was appropriate for the professor to send a written report the underlying facts of the case to campus officials responsible for academic integrity and student conduct, as provided by the institutional regulations. Even if it were subsequently determined that some or all of the facts in the professor's report were inaccurate, it is unlikely the professor could be found liable for defamation, unless the report were reckless, or motivated by malice (see "The Law and Academic Integrity" in Kibler et. al., Academic Integrity and Student Development, pgs. 52-54, 1988; the law accords a qualified or absolute "privilege" when referring allegations of wrongdoing to those responsible for taking appropriate action).

Legal issues aside, John's suggestion that the professor's comments were "offensive" and "abusive" reflects unjustified sensitivity. Complaints of this nature must not be allowed to inhibit staff members from speaking candidly with students. If the professor believed John was lying to her, it was reasonable to raise the issue with him, and to explain why such behavior is ultimately self-defeating.

Engaging students in dialogue and discussion about ethical issues can generate complaints that faculty and staff members are "judgmental" and "insensitive." What is truly insensitive, however, is the aura of the benign, undifferentiated benevolence which too many educators use in their relations with students. The latter practice has become a sophisticated art of survival which often enables college and university officials to avoid confrontations and quarrels. Unfortunately, it also fails to help students define the boundaries by which they may shape their character. (See also Bok, S., Lying, 1978, p.257: "many" individuals "who might be able to change the patterns of duplicity in their own lives lack any awareness of the presence of a moral problem in the first place, and thus feel no need to examine their behavior...").

[8] International students and academic integrity standards

Declining to hold international students accountable for clearly stated campus policies would undermine the concept of diversity. Learning to live together in a diverse world requires an effort to understand and follow the rules of a host society. Most of us would consider it presumptuous, for example, if Americans visiting other countries asserted they were free to ignore laws or regulations that seemed to differ from those in the United States.

Syracuse University offers the following guidance to international students:

There are multiple settings worldwide where consistent standards apply to people from different cultures. National teams competing in the Olympics, for example, must follow the same rules of competition. Likewise, students from the United States and other countries are expected to adhere to established academic and conduct policies at Syracuse University . . .
Learning styles differ and cultural traditions vary, but all societies honor the work and contributions of others. At Syracuse University, collaboration on assignments is often encouraged, but the collaboration must be authorized and acknowledged. Likewise, using words or ideas from others may be welcome (for example, a useful quotation from a book or website), but the usage must credit the source. If in doubt, please ask your instructors for guidance; they will appreciate your willingness to understand and follow University academic integrity policies.

See our related article "Academic integrity and cultural diversity."

Ethical dialogue is one way of discovering common ethical ground. Basically, Metad should be asked if he would be willing have his behavior (collaborating on an examination designed to test individual competency) become normative within his own society. For example, would he gladly fly on an airplane if he learned the pilot passed his written flight tests only because a friend gave him the answers?

[9] Discrimination based on disability

The fact that John may have a "personality disorder" would not excuse him from the obligation to adhere to reasonable college rules important to the institution's academic mission. Section 504 of the Rehabilitation Action of 1973, and the Americans with Disabilities Act, prohibit discrimination on the basis of disability. It's not considered discrimination on the basis of disability to hold individuals responsible for unlawful or prohibited behavior, even if the behavior is "caused" or influenced by a mental disorder. See, generally, TPR 07.18 "Focus on the Conduct."

[10] The lawyer's demand for pre-hearing "discovery"

It's usually good policy to share with accused students the names of potential witnesses and copies of documents to be introduced into evidence. Accused students will probably have access to that information anyway, since it's normally kept in files under their names, and will be considered "education records," as defined by the Family Educational Rights and Privacy Act (FERPA).

However, unless a college adopts contrary rules as a matter of policy, there's no due process requirement for pre-trial (or pre-hearing) "discovery," even in a criminal case (see Weatherford v. Bursey 429 U.S. 545, 559, 1977: "There is no general constitutional right to discovery in a criminal case..."). Furthermore, the voluntary release of at least some of the information the lawyer is requesting from James Hunter College (i.e. other students' examinations) would violate student privacy rights, as protected by FERPA. To obtain the examinations, the lawyer will have to demonstrate why they are relevant to the charges against his clients, and obtain a subpoena. If a subpoena is obtained, the College is obligated under FERPA to notify the students involved.


The courts are close to unanimous in holding there is no legal right to the full and active participation of an attorney in student disciplinary cases (Nash, supra). See, e.g., Hart v. Ferris State University 557 F. Supp. 1379 (W.D.Mich., 1983):

If plaintiff's counsel were permitted to cross-examine witnesses, the College might well find it desirable to have counsel ready to represent its own interests in insuring that its witnesses not be harassed and that plaintiff's witnesses be subjected to equally searching cross-examination. The entire character of the hearing could be escalated into a fully adversary proceeding."

However, if accused students are not allowed active representation by counsel, colleges (including private colleges) should not use attorneys as "prosecutors." See Ahlum, supra:
Clearly, Tulane's system is designed to be non-adversarial and to allow the accused student the opportunity to present his side... If the University allows an attorney to present its case and engage in extensive or harsh cross-examination, fairness would dictate that the accused be allowed to have an attorney present to represent his interests.

It's possible that a right to active legal representation for students could be triggered by "harsh cross-examination" conducted by a lay administrative officer (e.g., a dean experienced in campus administrative proceedings). Care should be taken that facts are presented and questions asked in an atmosphere of civility, with the objective of discovering the truth rather than obtaining a "conviction."

[12] Absence of the professor; right of cross examination

John and Metad raise an important due process argument when they assert that they were unable to question the referring faculty member at the hearing.

It is true that a series of cases has held that there is no constitutional right to cross-examination in college or university disciplinary proceedings. See Dixon v. Alabama, 294 F. 2d 150, 159 (5th Cir., 1961): "This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required."); Jaska v. Regents of the University of Michigan, 597 F.Supp. 1245 (E.D. Mich., 1984): "The Constitution does not confer on plaintiff the right to cross-examine his accuser in a school disciplinary hearing."); Nash, supra, p. 955: "Neither the Fifth Circuit...nor the Supreme Court has expanded the rule in Nixon to require cross-examination and confrontation of witnesses in the context of school disciplinary hearings..."

Nonetheless, in other contexts, judges recognize the value of cross-examination as an "essential and fundamental requirement for [a] fair trial" Pointer v. Texas, 380 U.S. 400, 405, (1965), and may require it if a college disciplinary case "resolved itself into a problem of credibility;" Winnick v. Manning, 460 F.2d 545, 550 (2nd Cir., 1972). See related cases and commentary in TPR 11.27 Cross examination in sexual misconduct cases.

Application of the "Golden Rule" would be a useful guide in this context. If a faculty member or administrator would wish to cross-examine a person who had made a serious accusation against them, it would seem prudent and reasonable to accord a similar right to students.

The absence of an opportunity to cross-examine witnesses, of course, does not necessarily mean that the findings should be reversed, or a new hearing conducted. An assessment of the potential value of cross-examination needs to be made before making a final decision. For example, if John and Metad do not deny the basic facts set forth in an affidavit by the professor, cross-examination about unrelated issues (e.g., "insensitivity" to students) would have "no bearing on the outcome of the hearing" and it would serve "no useful purpose" (Winnick, supra, p. 549).

The absence of cross-examination in this case, however, almost certainly would have served a useful purpose and was not harmless error. This is highlighted by the fact that "private" testimony from the professor was considered by the hearing panel, and appeared to be important. Considering such testimony without notice to John and Metad was a gross procedural error that violated the spirit if not the letter of the College's Code of Academic Integrity. James Hunter College, even as a private institution, is vulnerable on this issue, since both private and public institutions are obligated to follow their own regulations. See e.g., Weidemann v. State University of New York at Cortland, 592 N.Y.S. 2d 99 (A.D. 3 Dept., 1992), and citations therein pertaining to both public and private institutions of higher education.

The absence of cross-examination of a referring faculty member, whose relevant "private" testimony is subsequently considered by the hearing panel, is a sufficiently serious error to justify a new hearing.
See, generally, *University of Texas Medical School at Houston v. Allan Than*, 901 S.W.2d 926 (Tex. 1995) (considering evidence without notice to one of the parties is a likely due process violation).

A rehearing might be held by the original hearing panel (see *NLRB v. Donnelly Garment Company*, 330 U.S. 219, 1947, cited in Kenneth Culp Davis, *Administrative Law Text*, 1972, p. 248: a judge is not "disqualified from sitting in a retrial because he was reversed on earlier rulings." pp.236-237), but it would avoid unnecessary controversy to use a new panel, if possible.

**[13] Inadequate hearing notice**

It would be a serious procedural error to conduct a hearing if an accused student did not receive proper notice, as defined in campus policies. See *Weidemann*, supra. A new hearing may be required in John and Metad's case, if their attorney has stated the facts correctly.

The hearing record in John and Metad's case should be reviewed before a final decision is made on the issue of notice. The hearing officer might have discovered that notice was deficient, and asked the students if they were willing to proceed nonetheless. An accused party may, of course, knowingly and freely waive procedural requirements (*Yench v. Stockmar*, 483 F. 2d 820, 10th Cir., 1973), including a notice requirement.

**[14] The hearing as a "circus"**

The simple fact that there is free-wheeling discussion during a campus hearing, or witnesses speak out of order, is not a due process violation. Indeed, such informality might be appropriate, in order to put the participants at ease, and to engender the candid exchange of views and information.

This was the view of the United States Court of Appeals for the Sixth Circuit, in reversing a lower court decision in *Crook v. Baker* 813 F. 2d 88 (6th Cir., 1987). The lower court had overturned a University of Michigan determination to revoke the graduate degree of a student accused of fabricating data in his master's thesis. In an acerbic opinion, the lower court judge used the word "circus" to describe the University's informal hearing process. A unanimous appellate court disagreed:

> Though the district court in its opinion described the hearing presided over by Professor Rosberg as a 'circus-like free-for-all,' the full transcript that is in the record makes clear that it simply was an informal rather than a trial-type hearing (p. 90).

On the issue of whether students could be entrusted with primary responsibility for resolving contested academic integrity cases, three judges on a panel of the United States Court of Appeals for the Fourth Circuit observed they "might" disagree with the wisdom of such a practice, but could find no constitutional defect in it. See *Henson v. Honor Committee of the University of Virginia*, 719 F.2d 69, 73 (4th Cir., 1983).

**[15] A biased hearing panel member**

John and Metad are entitled to an unbiased hearing panel. However the simple fact that one of the panel members was dating someone who previously had a social relationship with John does not constitute sufficient proof of bias. It will be necessary to offer specific evidence that the panel member was motivated by some sort of animosity toward either John or Metad (Davis, supra, p. 249). See also *Gorman*, supra, p. 15. The Court in that case observed that "in the intimate setting of a college or university, prior contact between the participants is likely, and does not per se indicate bias or partiality."

Even a panelist with a superficial knowledge of the background of the case need not be disqualified, provided that he or she can "judge the case fairly and solely on the evidence presented." *Keene v. Rodgers*, 316 F. Supp. 217, 222 (D. Me., 1970). However, hearing panel members who know an
accused student, or who may be familiar with the facts of the case, should reveal such knowledge at the outset of a hearing, rather than at the end. Generally, if the accused student objects to the panelist's participation, it would be prudent to find a replacement.

[16] An additional penalty for "perjury"

It would be lawful even in a criminal case to increase a penalty if the decisionmaker determined that the person found guilty of the pending charge gave false testimony (after making an oath or affirmation to tell the truth) "on a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." United States v. Dunnigan, 507 U.S. 87 (1993). This result has special applicability in the college and university context, where part of the educational objective of a campus disciplinary hearing is to teach students they have a responsibility to tell the truth.

* The facts, characters, and names in this case study are all fictional

14.6: Academic Integrity Seminar Content Update

Academic Integrity Seminar (AIS) content is made available to TPR subscribers (or ASCA members) without charge or obligation. Only attribution is requested.

Please see the AIS website here. Click this link to view the AIS 2014 report.

Two excerpts from the report follow:

[1] AIS content update (challenging the view that "playing dirty is necessary")

About one-third of the students referred to AIS see their future careers in business or the professions as an unrelenting "dog-eat-dog" struggle for supremacy. One student currently studying for a medical career wrote:

"Today's world is full of people who will do whatever it takes to get ahead. The world would be a much more peaceful place if people followed the rules and didn't push others out of the way to be on top. The world would also not be as advanced if people didn't do whatever it took to get the job done. Technology wouldn't be as advanced, America may not have been its own country if the founders hadn't done what was necessary. It is sad, to say, but sometimes playing dirty is necessary."

We previously explored this topic with you and shared our newsletter article: Confronting "Adolescent Social Darwinism" in the Academic Integrity Seminar. Most of you know one of our primary aims is to challenge the perspective that "playing dirty is necessary."

Relevant AIS content/resources include:
Academic dishonesty: Social Implications + The Economic Importance of Trust

Social Trust and Social Media + The Role of Trust in Daily Life: A thought Experiment

World Bank on Business Ethics and Profitability ("Reputational Risk")

Thinking "Long Term" in Building a Business (values of small business owners)


[2] Harvard "Grant Study" update. Many students assigned to AIS expect simple exercises in values clarification or plagiarism prevention (they've encountered both before). These are worthy topics and we include them. Nonetheless, our primary objective is to help students understand why academic integrity is important. We do so in two ways: [1] emphasising the importance of trust in personal, social, and economic relationships and [2] expanding the definition of "integrity" to encompass a life of integrity (note that Erik Erikson's final stage of human development is defined as finding "integrity.")

Much of the information we share with students about human development is grounded on research from the Greater Good Science Center at the University of California at Berkeley and an ongoing (75 year) longitudinal study of human development at Harvard University called the "Grant Study".

The latest Grant study data was summarized in Dr. George Vaillant's 2013 book Triumphs of Experience: The Men of the Grant Study. Vaillant concluded that:

Maturation . . . implies a growing capacity to tolerate difference and a growing sense of responsibility for others; it is the evolution of teenage self-centeredness into the [unselfish] empathy of a grandparent.

We're intrigued by Vaillant's reference to "empathy of a grandparent," since substantial numbers of AIS students praise grandparents in their gratitude statements. AIS tutors are thus encouraged to make the following observation in many of their responses:

AIS tutor comment:

"X [student name omitted], you wrote in your gratitude statement:

'From my grandmother, I learned people should have the ability to forgive others because love is a much stronger power than hate.'
Let me suggest, as you look back in admiration at your grandmother, you're defining values most likely to enrich your own life in the future.

This approach has power because it reflects key values the student has self-identified.

You can see Grant Study overviews and updates in this Harvard Magazine article (2001) and the Huffington Post (2013).

In his 2012 article "The Heart Grows Stronger," New York Times columnist David Brooks reviewed the Grant Study and wrote:

Perhaps we could invent something called the Grant Effect, on the improvement of mass emotional intelligence over the decades. This gradual change might be one of the greatest contributors to progress and well-being that we’ve experienced in our lifetimes.

ENDNOTE: What can college students learn from the Grant Study?

What follows is a concluding comment frequently shared with students completing the Academic Integrity Seminar:

AIS tutor concluding comment:

"People often create brief legacy statements for inscription on gravestones or elsewhere after they die. I doubt you’ve seen many like this:

John will be long remembered and admired for making tons of money, eating well, and driving a Porsche."

Sounds weird, doesn't it?

Here's the main point of our seminar: Human beings are social animals (check out these eyes). Our greatest satisfaction comes from the responsibilities we meet; the communities we build; the trust we share; and the social bonds we create.

Harvard University researchers have been conducting an ongoing (75 year) longitudinal study of human development called the "Grant Study." You can see a Grant Study overview in this Harvard Magazine article. The study director summarized decades of research when he wrote that people who reported the greatest sense of fulfillment in life "did not think less of themselves, but thought of themselves less."

That summary statement of the Grant Study research bears repeating:
Don't think less of yourself, but think of yourself less.