THE APPLICATION OF THE 14TH AMENDMENT PROCEDURAL DUE PROCESS IN DISCIPLINARY CASES AT PRIVATE AND PUBLIC UNIVERSITIES

CHRISTOPHER JORDAN

I. INTRODUCTION

The Fourteenth Amendment to the United States Constitution states that no state shall “deprive any person of life, liberty and property without due process of the law.”¹ Courts throughout the United States have applied the Fourteenth Amendment’s guarantee of due process to a variety of state actions and state-supported institutions. The Supreme Court of the United States has even gone as far to apply requirements of procedural due process to public education institutions as it relates to student disciplinary adjudication.² Private universities, however, differ greatly from their public counterparts in the application of the Constitution to their operation as well as the means under state and federal laws under which these institutions exist.

Procedural due process is deeply rooted in both the Constitution and constitutional history based on rulings by the Supreme Court and other courts. In the landmark case Snyder v Massachusetts, the Supreme Court held that due process is violated if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.”³ This

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¹ U.S. Const. Amend. XIV, § 1.
³ 291 U.S. 97, 105 (1934).
includes the deprivation of life, liberty and property, among other things later ruled to be fundamental by the Supreme Court.\textsuperscript{4} In all situations where procedural due process applies, the Supreme Court has also held that the extent of due process is dependant on each individual situation: “consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action.”\textsuperscript{5}

This paper will illustrate the differences between private and public universities’ due process requirements in the context of university disciplinary cases and will explore the rationale behind these differences. Specifically it will show that because students at private institutions are not guaranteed procedural due process, students at these institutions are periodically at a disadvantage as compared to their public school-attending peers in the absence of definite university-generated due process requirements.

\textbf{II. PUBLIC UNIVERSITIES AND PROCEDURAL DUE PROCESS}

Public universities operate as an extension of state governments in much the same way as public primary and secondary schools. As many courts have upheld due process requirements for these schools, so too have courts have held that in the context of public universities, students should be afforded a least some minimal

\textsuperscript{4} US Const. amend. XIV, § 1.

form of due process rights. The Supreme Court has made at least some distinction between cases such as that where a student fails to meet prescribed academic requirements and where a student fails to follow a university code of conduct. Indeed, various courts have held that students dismissed purely for academic reasons at public institutions and not disciplinary reasons do not necessitate a hearing before the school.

The difficulty for institutions often lies in deciding what form these disciplinary proceedings need to take. Generally in due process cases, courts perform a costs versus benefits test looking at “(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through procedure used, and probably value, if any, of additional procedural safeguards; and (3) the Government’s interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.”

In the context of the University setting, such private interest may be a combination of a potential deprivation of both liberty and property—liberty being the freedom afforded to students to attend a public university as often granted under state

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7 See Board of Curators of the Univ. of Missouri v. Horowitz, 438 U.S. 78, 86 (1978) where the Court states in dicta that in the case of academic dismissal, the difference between academic cases and university code of conduct cases “calls for far less stringent procedural requirements in the case of academic [cases].”

8 See generally Mahavongsanan v. Hall, 529 F.2d 448 (5th Cir. 1976).

9 See Mathews v. Eldridge, 424 U.S. 319, 321 (1976), a case which is frequently applied to both university and non-university due process cases.
constitutions and property being such interests as academic credits or a degree as a whole. The Supreme Court has never decided, however, what exactly these procedures in disciplinary cases should be specifically those involving more severe ramifications such as expulsion or suspension.

In the case of expulsion, it appears relatively clear that students who are subject to expulsion (and perhaps other disciplinary actions) receive both notice and a chance to have their case heard before some decision-making body. As with the rest of public university procedural due process, the requirements for notice are relatively vague. The Fifth Circuit has held that the notice should contain the specific charges and “the grounds which, if proven, would justify expulsion under the regulation of the Board of Education.” Likewise, it stated that a notice that did not specify the grounds for expulsion violated a student’s right to procedural due process. Finally it also stated that a student should be furnished with a list of those witnesses against him or her along with any oral or written reports from those witnesses.

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11 See James M. Picozzi, University Disciplinary Process: What’s Fair, What’s Due, and What you Don’t Get, 96 Yale L.J. 2132, 2133 (1986-87).

12 See Gorman v. University of Rhode Island, 837 F.2d 7, 12 (1st Cir. 1988).


14 Id.

15 Id. at 159.
As previously stated, the courts do not prescribe specific hearing requirements for university disciplinary adjudication. The First Circuit Court has also added the additional requirement that the person who is about to be deprived of their property or liberty interest must be heard prior to that deprivation. The court in *Gorman* stated that, in order for a hearing to be fair, it “implies that the person adversely affected was afforded the opportunity to respond, explain and defend.” Courts have held that the nature of such hearing will likely vary depending on the specific circumstances of the actions complained of, and they have held that the hearing is to be held at “a meaningful time in a meaningful manner.” Likewise, a “full judicial dress” hearing is not required of universities.

The form of what is allowed of the accused student is also flexible under the law even if state law prescribes certain procedures. In a case before the Seventh Circuit, the Defendant alleged that the disciplinary proceedings under which she was brought did not follow the processes prescribed by Illinois state law for the infraction, which she was alleged to have committed. The panel stated that,

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17 *Id.* at 13.


21 *Pugel v. Board of Trustees of Univ. of Illinois*, 378 F.3d 659, 666 (7th Cir. 2004)
although the proceedings did not follow such procedural requirements, she had been given ample opportunity with which to “clear her name.”

The final component required in order to conform to procedural due process is the requirement of an impartial judge, panel or decision-maker. The view of “impartiality” however, is quite flexible, however. In the Second Circuit case *Winnick v. Manning*, the court held that a dean of student who had previously been involved in the case and had witnessed the actions of the student constituted sufficient impartiality such that he could serve on a disciplinary panel.

### III. PRIVATE UNIVERSITIES AND PROCEDURAL DUE PROCESS

Private Universities differ greatly from their public counterparts in form, function, funding, and fundamental due process rights for students. Courts throughout the United States have agreed that the relationship between private universities and their students differ greatly between public and private universities. Whereas, it is well settled that public universities are accountable to the state and therefore must apply the Fourteenth Amendment, it is also settled that the relationship between a private university and its students is generally a matter of contract law. Private institutions such at universities are not subject to

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22 *See Pugel v. Board of Trustees of Univ. of Illinois*, 378 F.3d at 662.

23 *See Wasson v. Trowbridge* 382 F.2d 807, 813 (2nd Cir. 1967).

24 *See Winnick v. Manning*, 460 F.2d 545, 548 (2nd Cir 1972).

state action, even if a large portion of their operating budget comes from state
governments.\textsuperscript{26} Even schools chartered by the United States Congress, which are
funded by the federal government, are still not considered to be “state schools”, and
therefore students do not receive the same due process protections from the
fourteenth amendment.\textsuperscript{27} “A showing of general governmental involvement in a
private educational institution is not enough to convert essentially private activity
into governmental activity for purposes of a due process claim.”\textsuperscript{28}

The contractual relationship between a private university and its students
has been said to begin at the moment a student matriculates to that university.\textsuperscript{29}
Countless United States district court cases have held that students at private
universities are subject to these contracts. For example, the United States District
Court for the Northern District of Georgia ruled on a case involving a student who
was suspended from the university and claimed that she did not receive proper due
process.\textsuperscript{30} The court held that she was not entitled to the same due process of tax-
supported university and was only entitled to the due process outlined in the
university’s code of student conduct.\textsuperscript{31} Such constitutional safeguards do not exist


\textsuperscript{28} Id.


\textsuperscript{30} See Jansen v. Emory University, 440 F. Supp. 1060, 1061 (N.D.G.A. 1977)

\textsuperscript{31} Id.
at private institutions. Such examples include a private institution’s permitted use of a waiver of notice and waiver of hearing.

Private organizations and institutions are permitted to see seek a waiver of notice and a waiver of hearing from individuals involved in such an organization. Courts, however, have stated that such waivers must be explicit and clear and that the concept of notice and hearing is “so fundamental to our society.” As such, only by seeking specific agreements from students can a private university expel, suspend, or discipline a student without some form of notice and hearing.

IV. ANALYSIS

The Columbia Law Review published a survey in 1999 regarding due process in public and private university settings. The survey found overall that most universities go above and beyond those requirements prescribed under the law and that private universities provide some form of due process on par with the number of public universities that do to the same. Over 90 percent of surveyed school had prescribed procedures for adjudicating conduct violations, which included notice of

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34 Id.

hearing and charges.\textsuperscript{36} The survey found primary differences between public and private universities lie in the difference between presumption of innocence and introduction of defense evidence which public schools overwhelmingly beat private schools.\textsuperscript{37}

Public universities differ greatly from state to state and school to school in terms of their size, scope and student makeup. As previously stated, public universities are obligated under the both their state constitution and the United States constitution to provide procedural due process to its students. The courts however, offer flexibility to public universities with regard to the means by which the conduct their disciplinary adjudication. Often times the courts defer to the schools’ judgments. From school to school, this means that these processes are not consistent even within a given state. Moreover, hearing requirements can even differ from case to case depending on what sort of infraction is alleged by the university. Although public schools a required to provide procedural due process, this sort of flexibility can be seen as disadvantageous to students.

The difference between public and private school due process requirements under the constitution are very striking. It seems, however, that despite these requirements, the flexibility afforded public schools as compared to the near universal implementation of some form of due process across private schools\textsuperscript{38}

\textsuperscript{36} \textit{Id.}

\textsuperscript{37} \textit{Id.}

means that there is little difference a majority of public and private schools. The difference arises at those private universities that do not provide due process any either any violation of student conduct codes or specific violations.

Students at institutions that do not offer due process to their students are at an obvious disadvantage, as there may be little to no recourse for those students should they be suspended or expelled. One comfort, however, lies in the court’s statement in *Dixon*, which states that even private institutions should offer some form of due process. In the wake of this statement, courts are obviously going to defer to university codes at private university to set forth the university’s requirements regardless of how arbitrary they might be, whereas a court may determine a certain policy at a public institution is not in accordance with the constitution. It is at these institutions that do not offer processes where courts may at some point interfere

V. CONCLUSION

Although public universities are required to offer some form of procedural due process to their students while private universities are not, students are private universities seem to have very few distinct disadvantages with regard to due process. The biggest disadvantage lies with those students who attend universities without definite due process requirements and those universities that may allow for waivers of notice and hearing from their students. At private universities that do

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in fact have such codes, the primary disadvantage among these students is that courts will defer to any such hearing requirements their codes set forth, as these requirements do not have to be in accordance with the Constitution. Public university students, however, despite having due process guaranteed to them may still be impacted by weak or ineffective due process procedures implemented by their university, as the courts often defer to the university’s judgment as it relates to the procedure for these adjudications.