

# LEGALLY SPEAKING

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## College, Graduate and Professional School Dismissals - A Lifetime at Stake

These days, a college education is averaging \$25,000 to \$60,000 plus per year or \$100,000 to \$240,000 to graduate per child. If your child is going to a professional school, say perhaps medical or dental school, double these numbers. Now imagine after spending that astronomical sum, investing half a million dollars or so on your child, he or she runs into a rouge administrator or instructor whose actions result in his or her arbitrary and wrongful dismissal. Now imagine that your child has permanently a black mark on their record that will prevent them from becoming a doctor or dentist or professional anywhere because no other school in this country will accept them into their programs. There is a lot at stake - a lifetime and a career at stake. These are very important interests. And they must be and can be protected.

These are the type of cases I litigate. In 2011, I represented one of these students and obtained a jury verdict of \$2.025 million against the New Jersey Dental School, then part of UMDNJ. It was and

remains the largest student verdict ever in this country. The potential economic damages in these cases is extremely large because damage to these students' careers is significant. Instead of becoming a doctor, they may be working a lab for the rest of their life. Instead of making \$200,000+ per year, they may be making \$60,000 per year. And since the damage is done at a relatively early age and will affect them for the rest of their careers, it is reasonable to argue to a jury and for a jury to award very large verdicts.

These cases are different than their close cousin employment cases because generally other employers can hire employees even after a wrongful termination. In a student case, once a student in a professional school is terminated and has a black mark on their academic transcript, schools may occasionally look at and may even (but rarely) interview the student, but the cold, harsh reality is that no other school in this country will accept these students into their programs.

There are a handful of attorneys handling these matters. Even thinner than the ranks of attorneys handling these matters is the body of law on the subject. These odds notwithstanding, I took on the matter of Vladimir v. UMDNJ several years ago because I knew in my heart that a wrong had been committed and justice needed to be served, no matter how thin the supporting law might be. My client was ranked #1 in his class in dental school, was honored by the school for his academic achievements, was intelligent beyond reproach and a star in every way. However, in a clinic in his third year, he accidentally nicked a patient during a procedure that resulted in a 10-second bleed. Somehow, a rogue instructor and administrator severely misconstrued and amplified a benign and trivial matter which ultimately resulted in his wrongful dismissal from the school.

UMDNJ is a state school. The argument that we made, and which was ultimately agreed with and rendered by the jury, was that UMDNJ took away the plaintiff's constitutionally protected right to a higher education at a public university arbitrarily and without due process. We argued successfully that there are certain bedrock principles that guide our government so that we citizens are protected and treated fairly, and that one of them is our Federal Constitution and in particular the 14<sup>th</sup> amendment which applies to state institutions like UMDNJ. These supremely important laws provide that no state shall deprive any person of his or her property without due process of law.

This means that the government can not suddenly swoop in and start taking away your stuff - your house, your car, your possessions. Due process requires this, it protects us, it protects our belongings. As a result, a dental student at a public university has a significant property interest in his or her higher education.

We successfully argued to the jury that this property interest was not just any property interest but one that is considered to be an interest of extremely great value. Of course, this makes sense. After all, a car has a certain value, a house has a certain value. But an advanced education is much more, a thing of extremely great value, certainly more than a car or a house. An education shapes us, empowers us, makes us better citizens, and makes us better people. An education is also what critically determines how much money you earn while working the rest of your life. The more education you have, the more tools you learn, the more money you can make your entire working life. A car or a house has a fixed value. But a college or dental school or medical school education is something that enhances your quality of life for you and your loved ones for the remainder of your lives. And as they say in the commercials, this right to higher education is priceless.

So not surprisingly, a graduate student is considered to have a property interest in his education that is also protected. And just like your house or your car, our constitution says that says the state can't suddenly swoop in and take away this

property arbitrarily. And the state cannot take property away from any one of us without due process. Unfortunately for my client, the state took away his property, his dental school education at UMDNJ arbitrarily and without due process. Fortunately for my client, the court and jury recognized this injustice and awarded him \$2.025 million.

No state or state institution such as UMDNJ can deprive any person of property without due process of law. These are fundamental rights provided by both the Federal and New Jersey Constitutions. Education at state institution is a property interest which is protected by the Due Process Clause. The minimum requirements for any type of disciplinary matter include an explanation of the evidence that the authorities have and an opportunity for a student to present his or her side of the story. Where an expulsion is involved, more formal procedures are required, including confronting and cross-examining witnesses, calling witnesses in defense and having legal counsel.

This all makes sense on a very basic level. The logic for this law is also good - it disserves both the interest of the student and the interest of the state if a student's punishment or expulsion is unwarranted. It does not help the state of New Jersey to be expelling very good students who do not deserve to be expelled, that is one less very qualified person to live and serve the citizens of New Jersey.

How do you quantify damages in these cases? I make this analogy. Have you ever worked all day on the computer on a project and then the computer crashes? You lose everything you worked on for the day, maybe seven hours of work. I don't know about you, but when something like that happens, I get really mad, really frustrated, really upset. I just can not believe that I worked the last seven hours and lost all my work. I have to do it all over again.

Now imagine the same thing happens, but instead of seven hours, you lose seven days of work. Can you imagine how much more upset you would be if you lost seven days of work? You would be inconsolable. You would be crazy. You would probably break something in frustration. Now imagine if you lost seven months of work. Seven months of your life's work lost. How do you think you would think about that? You would be utterly and completely devastated losing seven months of hard work.

Now try to imagine, and it's virtually impossible to imagine, because none of us have probably experienced this. But try to imagine you suddenly lost seven years of your work. Try to imagine what it might feel like to lose seven years of hard work, commitment and total dedication to one singular pursuit. Try to imagine losing seven years of your life.

Now try to imagine that those seven years of your life were lost while in your 20's - that magical time when you are full

of dreams, aspirations and a successful life to come. Try to imagine the total devastation. And compare the feelings you have losing seven hours of work and try to imagine what it might feel like to lose not seven hours but seven years of your work. How do you quantify that? How do you measure that? How do you measure the lost friendships? How do you measure the shame, the humiliation, the embarrassment? How do you measure the graduation party your parents will never be able to have? How do you measure everything that you have worked for being taken away from you, in fact your very identity being taken away? How do you start all over again?

—Charles Z. Schalk, Esq.

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