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Abstract: Health occupations (HO) teachers increasingly are required to defend their decisions in court to fail students or dismiss students from programs. Legal precedents have established several steps that HO teachers must take to protect students' rights to both procedural and substantive due process. To justify their decisions to fail or dismiss a student, HO teachers need to take specific steps as they develop course objectives and evaluate the performance of unsatisfactory students. HO teachers often experience emotional discord when they fail or dismiss students. However, the HO teacher is bound by professional ethics to ensure that patients receive adequate care. To protect themselves and their institutions from the possibility of legal challenges, HO teachers should provide clear, unambiguous explanations of all policies, criteria, and time frames to which students are subject.

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Over the past 25 years, health occupations (HO) teachers have encountered increasing legal challenges from students who are dismissed from their programs. Because these *dismissals threaten* not only students' personal career *goals* but their future employability, students are more likely to seek court action for resolution. Moreover, teachers face a dual dilemma. If they fail a student or place them on probationary status; they could be involved in litigation. On the other hand, if academic dismissal is not instituted, patient safety could be jeopardized.

Due Process and its Application to Health Occupations Students

When students pursue legal action, they usually base their claims on violation of the Fourteenth Amendment's due process and equal protection clause. Dismissal cases involve either procedural or substantive due process rights. Procedural rights consist of the steps used to protect and guarantee the rights of citizens (Spink, 1983). These rights can be violated, for example, when an institution fails to provide a hearing prior to dismissal for disciplinary reasons. The landmark decision in Dixon v. Alabama State Board of Education (1961) afforded procedural due process in disciplinary cases for post-secondary students. In contrast, substantive due process focuses on academic deficiency in which the student fails to attain the required level of competency. To claim substantive due process, the intent of the law requires proving unfairness and unreasonableness in a teacher's or institution's decision regarding the dismissal. This article will present a review of several relevant substantive due process cases and a discussion of their implications for HO teachers. As stated earlier, in cases of academic dismissal, the student fails to attain a specific level of competence. Limandri (1981)

believes Connelly v. The University of Vermont and State Agricultural College established the basis for courts avoiding judicial interference in the educational process unless the decision ". . . was motivated by arbitrariness, capriciousness, or bad faith." In Greenhill v. Bailey (1975), Bailey both failed to hold a hearing and in a memo stated that Greenhill "lacked intellectual ability." While the court would not interfere in judging the student's academic performance, it did chastise Bailey for not providing notice of the charges. In addition, the court stated that an opportunity must exist for the student to clear his/her name and to refute the allegations of academic deficiency before the academic body which is responsible for the dismissal (Niedringhaus & O'Driscoll, 1983).

The landmark case of the Board of Curators of the University of Missouri v. Horowitz (1978) addressed Horowitz's claim that she was deprived of her liberty and procedural due process rights. Horowitz, a medical student, argued that she had not been permitted to review her clinical evaluations and had not been notified of a dismissal hearing. The Board of Curators provided evidence that Horowitz had been given a warning about her performance, placed on probation, and then warned that she might be dismissed. Even though the school had provided her with additional clinical time, she still failed her final examinations. Subsequently, she was asked to leave school. The Supreme Court left the evaluation of her academic abilities up to her professors and stated that she had been given more due process than was required.

Nursing students' dismissal for clinical incompetence was challenged in Gaspar v. Bruton (197S), Lyons v. Salve Regina College (1975), and Hubbard v. John Tyler

Community College (1978). While each case involved unique circumstances, only Lyons won her case because the College breached the language in the student manual. The court determined that to avoid breaching students' due process rights, students must be informed orally or in writing of their performance inadequacies and the subsequent effect on their academic standing. Moreover; ". . . the school's decision-making process must be careful and deliberate" (Niedringhaus & O'Driscoll, 1983, p. 158).

The courts have established that teachers are uniquely qualified to evaluate a student's performances in the classroom and clinical settings, and governing boards of schools also have delegated thii authority to teachers. Therefore, HO teachers must develop course requirements and expectations for personal and professional behaviors before student performance can be deemed insufficient and warranting dismissal. More specifically, classroom teachers should

L Develop student behavioral objectives and publish them in the course syllabus. If the course is taught by a team, objectives must be developed jointly.

2. Develop grading criteria for written work and print the criteria in the course syllabus. Be sure to include the penalty for students who submit late written work.

3. Determine a process for handling failing papers, e.g., using a second grader or redoing the paper to achieve mastery of the underlying concepts.

Teachers might consider duplicating the failing paper and placing it in the student's fiie until he/she passes or fails the course. Having examples of prior unsatisfactory work may provide the foundation for winning a grievance and allows the next teacher to thoroughly evaluate the student. If more than one person grades a

written work, all graders should agree upon the evaluation criteria and implement them consistently. Students compare the evaluative comments on their papers. When grading inconsistency becomes apparent, grievances are likely to follow.

In the clinical setting, evaluation criteria for such cognitive, affective, and psychomotor behaviors as fundamental knowledge, interpersonal relations, technical skills, integrity, and professionalism must be developed. Besides determining broad clinical requirements, teachers must carefully identify the criteria for satisfactory course completion as well as the consequences for unsatisfactory performance. As with the theoretical portion of the course, clinical objectives and criteria must be printed in the syllabus and student handbook. Additionally, the teacher must decide the sources for evaluation input, for example, direct observations> informal feedback from health care staff, and clinical preceptors. After the criteria are set, the teacher determines the frequency for conducting formal evaluation conferences. Remember, the law requires that students be apprised periodically of their performance.

Further general due process guidelines include the following points:

L Distribute a copy of the student handbook to each student at the beginning of the school year. Provide a signature page which each student must sign and turn in that states he/she has read the handbook.

2. Review all course documents with the students on entry into the program and each subsequent school term as appropriate.

3. Once a term has begun, do not alter course objectives or requirements.

4. Outline the steps in the student grievance process, publish them in the student handbook, and review them with the students at the beginning of each school term.

With legal precedence being set by such landmark cases as Horowitz and Connelly, institutions must continue to deal fairly with students and accept internal accountability for their decisions and decision-making processes. Once evaluation criteria are identified, written, published, and reviewed with the faculty and students, no one should be misled as to the program's requirements for satisfactory performance.

Failing an Unsatisfactory Student

Teachers are hesitant to recommend remedial work or to fail the student who is performing below minimum standards in the clinical component of a course. Reluctance arises in a teacher because clinical evaluations are subjective, often based on limited observations, and fear exists in being accused of having personality conflicts with the student. Hesitancy is compounded further when clinical objectives are broadly stated in the syllabus, leaving room for open interpretation.

Failing students who are performing poorly is mentally and physically draining to the teacher. The teacher must spend extra time planning clinical experiences and closely supervising these students during the clinical experience. Supplemental conferences must be held with each student explaining his/her deficiencies. Even more time is spent in the ritual of psyching oneself for these confrontations (Symanski, 1991). Another burden is added for the teacher when competent students are left to fend for themselves while concentrating on the poorer student. Resentment builds against a student who in all likelihood will not graduate!

Blaming oneself for the student's inadequacies or one's heavy workload will not help the student. Be careful of becoming immersed in a doom-and-gloom attitude over failing a student. Yes, students can face financial and personal hardship because they must wait a year before returning to the health occupations program. However, keep asking: Is this student safe in the health care setting? Does allowing him/her to continue for financial reasons justify the 'burden placed not only on the next instructor who will be the clinical supervisor, but also the ethics of permitting an incompetent student to work with patients? Always remember that one's sixth sense or intuition about student performance is usually correct.

Another common problem is finding other HO teachers who have never failed a student. They become hostile and angry when learning about a student failure by making such remarks as "You are just too critical," or "That student did wonderful in *my* rotation!" Rather than arguing the decision with them, seek advice and guidance from an administrative director. He/she should be knowledgeable and supportive about the decision as long as adequate documentation exists and the student's due process rights are preserved. During the process of banding an unsatisfactory student, is not the time to engage in philosophical battles over beliefs in. failing student (Symanski, 1991).

Often health care professionals, who see themselves as caring and nurturing persons, experience inner conflict over their decision. It is not an uncommon feeling. While guiding the student through remediation and possible failure, the teacher's approach always remain humane. However, caring and nurturing must be taken into

account for the patients, too. It is neither humane nor ethical to allow an incompetent student to practice on patients.

Having addressed the emotional issues surrounding student dismissal, let's turn to the actual evaluation process. The following guidelines are suggested:

1. Develop a concise evaluation instrument with criteria denoting satisfactory performance.

2. Develop an anecdotal notetaking process, being careful to note both positive and negative clinical behaviors. When only negative behaviors are documented, one can be accused of having a personality conflict or of being unfair.

3. Transfer the anecdotal notes to the formal evaluation instrument either daily or weekly to avoid omitting key observations.

4. Keep a record of each student's clinical assignment and other learning activities.

5. When deficiencies are noted, communicate the concerns with the student either informally in the clinical setting or formally with a written evaluation and conference. To verify whether the student understands the concerns, have him/her reflect on the conversation overnight and meet again with the teacher the following day to discuss any misunderstandings.

6. Develop a plan for improvement with specific timelines and consequences. Do not forget to document referrals to such institutional resources as tutoring or counseling centers. All parties involved should sign and date the written document.

7. Once the plan for improvement is listed, follow it to the letter.

Table 1 is an example of a student progression plan that can be used to define a student's deficiencies and the subsequent plan of action.

By including instructor actions, it illustrates that the plan is a collaborative effort. Administrators and school boards prefer that a conscious effort is made to help the student improve. By noting the time frames and consequences, the student is given a definite period of time in which remediation must occur and the outcome when improvement does not occur. Although this does not stop a student from filing a grievance, it does show that one did not act in bad faith or in a capricious or arbitrary manner.

Always be prepared for a student grievance. Grant (1989) recommends the following steps before a grievance is failed

1. Review your grading criteria for clarity to a lay audience.
2. Use standard forms and language across all clinical courses.
3. Review your institutional policies on the grievance procedure for ambiguity.
4. Ensure that the dismissal criteria are clearly stated.
5. Seek support of the dismissal process from the school's administrators.
6. Assist the school's administrators to understand how HO studenta differ from. those in non-vocational programs.

Although failing an unsatisfactory students is difficult, one does not fail students, they fail themselves! When student evaluations are based on sound professional standards and judgment and are conducted without malice, the courts uphold teachers' decisions. The key intervention strategies are to establish concise course requirements,

Table 1

Example of Problem-Solving Record

Problem	Plan of Action
Violation of Chemical Safety	
1. 4/10/92, 8:00 a.m.. John entered H.R.'s room to administer an IM medication. He failed to check the patient's armband or double check the medication record before giving the med. I reminded him to follow the "5 Rights of Administering Medications."	**1. John will administer all medications following the "5 Rights of Administering Medications. "**
2. 4/10/92, 1030 a.m. John was giving his 10 a.m. medications when he discovered that he had omitted H.R.'s 9:00 a.m. Digoxin. MD was notified. Digoxin was given at 1045 a.m. and an incident report was fried.	**2. John will develop and implement a plan to avoid omitting medications in the future.**
3. 4/17192. John was unable to state the side effects and rationale for his patient receiving Procardia, Apresoline, and Aldomet. He stated he did not have time to research his medications even though he received his assignment on 4116192.	**3. At the beginning of each clinical shift, John must be prepared to state the drug's actions and side effects as well as correlate all medications and IV solutions to the patient's diagnosis.**
	4. The instructor will observe John administer medications to all of his patients for one week (4/24 & 4/25/92).
	5. If no further violations of chemical safety occur by the end of the quarter (6/7/92), this plan will be discontinued.
	6. If further violations of chemical safety occur, John's progression in the second-year will be reviewed by the second-year team and the Director of Nursing.

use complete documentation and communication techniques, and provide feedback as well as the opportunity to correct the deficiency in a timely manner. Adhering to legal precedence may seem overwhelming at first, but, once familiar with it, teachers should feel more comfortable with their teaching career.

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