

# Did the nursing faculty at this private university unfairly dismiss the student from the program?

written by Nancy Brent | June 5, 2024

## **Avoiding Liability Bulletin - June 2024**

Faculty in school of nursing education programs are required to adhere to their adopted policies and procedures governing a student's progression through the educational program.

This adherence is particularly important in private colleges and universities where the governing policies and procedures can be used by students to allege that the nursing program [breached its contractual obligations](#) to the student.

In the following case (*Urso v. Bradley University*, 4th District Illinois Appellate Court, 2023), a student filed a lawsuit alleging a breach of contract when she was dismissed from a private university's nursing program after receiving a failing grade in one of her clinical courses.

### Circumstances Leading Up to the Case

The student received a grade of "D" in one nursing course covering adult health. She repeated the course and received a grade of "C". She was then able to enroll in a clinical practicum for adult health and was assigned to a preceptor staff nurse and two patients.

When the student was going to her primary patient's room, the preceptor exited and told her she just took the patient's vital signs. The student did not repeat taking the vital signs but gave her secondary patient's medications.

About a half hour later, the student recorded vital signs of the primary patient taken by and recorded by the preceptor. The preceptor discovered this and immediately told the student's clinical instructor.

The instructor asked the student if this was what occurred, and the student said she did not take the patient's vital signs but recorded those taken by the preceptor earlier.

The clinical instructor's anecdotal notes for the student reflected that she explained to the student that the patient could have been in severe hypertension at the time she did not take the vital signs and that her documentation did not accurately reflect the patient's true status at the time.

The clinical faculty member consulted with the course coordinator, and it was decided that the student's

falsification of the medical record indicated unsafe practice. Since such conduct did not meet the clinical course requirements, the student received an “unsatisfactory” grade—a failure of the course (despite the fact that the patient was not harmed by her failure to take vitals).

After a meeting with the associate chairperson of the department of nursing and the clinical instructor, the student was informed that because this was the second failure of required nursing courses, she was dismissed from the nursing program. The student refused to sign the evaluation and the outcome of the meeting.

Following established policies and procedures within the department of nursing and the university, including the informal grievance procedure, it was decided that the failing grade was consistent with the policy governing grading in the student handbook.

Additionally, since this was the student’s second failing grade in a required course, consistent with the nursing student handbook, she was not permitted to continue in the nursing program.

The student initiated a formal grievance process as provided in the university handbook and asked for a “due process” hearing. The hearing resulted in upholding the failing grade in her clinical course. Despite the student’s position that she did not “intend” to deceive, defraud, or harm anyone, her conduct violated the ethical standards “becoming of a nurse.”

The student was dismissed from the nursing program.

#### Student Files a Lawsuit

The student alleged in her lawsuit that the university breached its contract with her because it failed to follow the policies and procedures outlined in its student handbook(s) and “failed to perform its contractual duties in good faith in discharging her from the nursing program.”

Both the student and the university filed [Motions for Summary Judgment](#). After a hearing on the Motions, the court granted the university’s Motion and denied the student’s Motion.

The student appealed the court’s decision

#### Appellate Court Decision

The student alleged that the Motion for Summary Judgment for the university was in error because the university’s decision to remove her from the nursing program was not consistent with its nursing program handbook and the decision was arbitrary, capricious, and in bad faith.

The appellate court upheld the trial court’s decision.

In so doing, it opined that although a contractual relationship may be established through a school’s

written documents, including a student handbook, the relationship cannot be “strictly categorized or characterized in purely contractual terms.”

The court further explained that because courts are reluctant to overturn academic decisions in private universities, a breach of a contractual relationship in that setting must be based on a decision that is arbitrary, capricious, or in bad faith.

In this case, the court continued, the university followed its policies and procedures concerning a dismissal from the program, granted “due process” to the student, and the decision was not made “ by animus”.

In fact, the court stated, the student took full advantage of the university’s grievance procedure to challenge the dismissal. Additionally, previous decisions to dismiss students from its program occurred when students falsified documents during the nursing education program.

### Key Take Aways from This Case

This case decision underscores the long-standing principle that academic decisions by faculty in post-secondary educational programs are considered “expert” decisions.

Courts are reluctant to challenge those expert decisions unless there is unmistakable evidence that adopted policies and procedures were not followed, that the decision was not well reasoned, or in the case of public post-secondary educational programs, violated a constitutionally protected right.

Keep in mind that a nursing program in a private college or university is not governed by state or federal constitutional protections, such as due process or equal protection. Rather, fairness, equality, and the fair application of adopted policies and procedures, are the touchstones for private post-secondary institutions.

As a faculty member, then, there are additional factors you need to keep in mind as you evaluate a student’s progression or dismissal from your nursing education program. Those factors include:

- Clinical (and classroom) objectives must be in writing, clearly stated, and communicated to students by way of course and clinical syllabi
- Apply adopted policies and procedures of the nursing education program fairly and consistently
- Utilize well-developed clinical and academic evaluation forms
- Keep accurate, up-to-date, concurrent, and complete anecdotal notes on student issues that arise in the clinical or classroom setting
- Never discuss a student’s progress in the program “on the fly”. Meet with the student privately and inform him or her of the identified problem(s)
- Timely and consistently inform students about their adherence to required course and clinical objectives

- Use adopted forms for student notices governing grading, discipline, or other situations applicable to a student's status in your nursing program
- Always make reasoned judgments about student performance, both academically and clinically
- Be available to students and clinical preceptors in clinical practicums
- When evaluating safe and competent nursing practice by a student in the clinical setting, injury to a patient is not required in that assessment

*This information is for educational purposes only and is not to be taken as specific legal or other advice by the reader. Nor does it create an attorney-client relationship. If legal or other advice is needed, the reader is encouraged to seek such information from a nurse attorney, attorney or other professional.*