

# **DID THIS PUBLIC COMMUNITY COLLEGE NURSING PROGRAM VIOLATE SEVEN NURSING STUDENTS' RIGHTS?**

written by Nancy Brent | January 2, 2025

In my June 2024 blog [post](#), I discussed a case in which a nursing student was dismissed from a private university nursing program. The dismissal was upheld.

In the following case (*Burnett v. College of the Mainland (COM)*, 944 F. Supp. 2d 823 (S.D. Texas 2024), seven former students in the public community college's nursing program sued the college for violating their due process rights when it failed them in a class required for graduation.

## Details Leading Up to the Case

When the seven nursing students were enrolled in the nursing program, they received a student handbook. The handbook specified that a requirement that a student in the program had to pass an exit examination—the HESI NCLEX-RN readiness exam in order to be considered for graduation.

The handbook indicated that if a student did not pass the exam on the first attempt, the student could retake the examination.

While the students were in the program, the state board of nursing issued a position statement “recommending that a high stakes test not be the only criteria for graduation.”

Due to this position statement, the COM decided to make the readiness examination as part of its Advanced Medical Surgical (AMS) course and make it 40% of the student's final grade in the course.

All of the seven students took the HESI exam during their AMS course but failed the exam, not allowing them to graduate. The students:

- Asked for the opportunity to retake the exam
- Met with the director of the nursing program to retake the exam
- Voiced their concerns at a meeting of the COM's Board of Trustees to retake the exam
- Filed a formal grade appeal in order to retake the exam

None of these efforts resulted in a decision in their favor. The formal grade appeal's decision asserted that the students had been informed of the change and that COM had a “right to change nursing

program policies when necessary.”

The students were unable to graduate. They filed a civil rights lawsuit under federal law, 42 United States Code Section 1983, against COM and the director of the nursing program, alleging a violation of their constitutional rights of [substantive and procedural due process](#).

The COM filed a Motion to Dismiss the students’ lawsuit.

#### Decision of Federal Magistrate Judge

The Magistrate Judge who assisted the District Judge in this case, presented his “Memorandum and Recommendation” on COM’s Motion to Dismiss, recommending that the Court dismiss the claims against the director of the nursing program individually “in her official capacity” because it was a duplicate of the claim against COM. He also stated that the due process claims against COM and the director “in her official capacity” should stand.

COM filed its objections to the Magistrate Judge’s Memorandum and Recommendation.

The District Court Judge then rendered an opinion.

#### District Court Judge’s Ruling

In relation to the students’ *procedural due process* claim, the Judge clarified that the decision to change the exam policy by COM was an academic one, not a disciplinary one, the latter requiring a more stringent evaluation of a nursing program’s decision to change a policy that results in a student’s inability to graduate (especially in a public post-secondary education program).

Here, he continued, the students received a “full formal grade appeal” which went beyond what “courts have found sufficient to satisfy procedural due process concerns in similar circumstances” (citing prior court decisions). Since COM did not notify students of the change in policy (although this was disputed by the students), the Judge ruled that the students’ allegations were not enough to challenge a Motion to Dismiss.

Insofar as the students’ *substantive due process* claim, the Judge opined that the change in policy was not a “substantial departure from accepted norms as to demonstrate that a person or committee responsible did not actually exercise professional judgment” (citing a US Supreme Court decision on the issue of academic decision-making by education programs).

The change did not “occur in a vacuum, but came about only after a recommendation from the Texas board of nursing...”. The Judge also cited another US Supreme Court decision holding that “modifying an exam requirement after a student’s enrollment was a reasonable academic decision.”

The Judge’s decision to Dismiss the case With Prejudice (meaning it could not be filed again) was based

on no violation of the students' substantive or procedural due process rights "sufficient to withstand a motion to dismiss." No Constitutional violations were adequately pled.

### Case Guidelines for Nurse Faculty

This case was brought under Section 1983 of the Civil Rights Act of 1871. Such a case against a governmental action—such as one by this public education program—is a civil case requesting damages or equitable relief.

It is surmised that the students were seeking not only monetary damages but an injunction (a court order) prohibiting COM from not allowing them to retake the test.

This option was selected in contrast to filing the case alleging a due process violation of the 5<sup>th</sup> and 14<sup>th</sup> Amendment to the US Constitution which also protects due process violations from federal and state governments respectively.

Regardless of its basis, the case decision was based on long-standing case law by the US Supreme Court concerning *academic* decisions resulting in a student's dismissal or inability to graduate from a post-secondary education program in comparison to *disciplinary* decisions resulting in the same effect upon students.

Academic decision-making by faculty in public education institutions (and private ones as well) are generally upheld by courts unless the decision-making is without merit, unfair, or unjust. The courts consider nursing faculty (and faculty in other professions) as "experts" in evaluating academic performance.

Such deference by the courts require nursing faculty to document reasons for changes in academic requirements and support the changes with objective data.

Moreover, notice to students concerning any change must be reasonable timely, and specific. Such notice should occur in writing, in changes in the student handbook, and through other current systems (e.g., emails) that provide proof of the notice.

In this case, the students exercised several options to voice their disagreement with the decision about the change of the exam's requirement for graduation. The court saw these options, which the COM did not deter, as adequate procedures to protect the students' procedural due process rights.

As a result, the more options given a student to protest an academic change, especially as it effects graduation or dismissal from a public nursing education program, the better. A hearing, however, is not required, although it could be an option should a nursing program decide to offer it.

The student handbook was an essential issue in this case, and it is one that can be consistently raised by students when there are changes in course or graduation requirements.

Whether you teach in a public or private school of nursing, it is important to also include disclaimer language in your student handbook that reflects the right of the school and/or faculty to change requirements when it/they deem appropriate. Although the language can vary, one option is something like:

*This handbook does not create an express or implied contract, and the nursing program reserves the right to make changes in the curriculum, course content, fees and other areas at any time such changes are necessary or desirable.*

Although not a guarantee that a disclaimer would result in a judgment in favor of the academic institution and/or the nursing program, it stands as one issue the courts would consider when a student alleges a violation of his or her rights. This protection is especially helpful if a student's lawyer decides to raise a breach of a contract between the student and the nursing program.

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