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COLLEGE STUDENT GRADE DISPUTES:

ADJUDICATIVE VS. MEDIATIVE MODELS OF CONFLICT RESOLUTION

Gregory C. Lisby
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INTRODUCTION

Perhaps from both the college student and professor's perspective, the most stressful, least conciliatory experience in their educational relationship is the student grade appeal. In the ideal academic world, "individual instructors assign grades to students based on their performance in specific courses."[1[1]] Grades are viewed as motivators[2[2]] and as a "general measure" of student achievement.[3[3]] However, with a dispute over a grade, the student-teacher relationship – which "is not by nature adversarial,"[4[4]] but which is "traditionally … based on respect, trust, and, at times, a blind faith"[5[5]] – is shattered, because "grades determine whether a student can stay in school and ultimately graduate; they affect his chances of furthering his education beyond the undergraduate level and eventually entering the occupational structure at a relatively high level with a good opportunity for advancement."[6[6]]

[1[1]] Serbrenia J Sims & Ronald R. Sims, *Student Assessment: A Proactive Response for the 21st Century*, in RONALD R. SIMS & SERBRENIA J SIMS (EDS.), MANAGING INSTITUTIONS OF HIGHER EDUCATION INTO THE 21ST CENTURY: ISSUES & IMPLICATIONS (1991), at 80-81.

[2[2]] JANET DONALD, IMPROVING THE ENVIRONMENT FOR LEARNING (1997), at 85. However, Donald acknowledges that grades motivate students both positively and negatively – positively, those who are "turned on" by learning and, negatively, those who are "achievement-oriented" and who are "prone to taking shortcuts to get the grade they want."

[3[3]] FREDERICK E. BALDERSTON, MANAGING TODAY'S UNIVERSITY (2d ed. 1995), at 286.

[4[4]] Board of Curators of the University of Missouri v. Horowitz, 435 US 78, 90 (1978).

[5[5]] Roger B. Ludeman, *The Formal Academic Grievance Process in Higher Education: A Survey of Current Practices*, NASPA JOURNAL, 26:3 (Spring 1989), at 235.

[6[6]] William J. Bowers & Richard G. Salem, *Disciplinary Administration – Traditional and New*, in ASA S. KNOWLES, HANDBOOK OF COLLEGE AND UNIVERSITY ADMINISTRATION: ACADEME (1970), at 7:44.

From the first discussion of the questioned grade, the student and professor step easily into predetermined, stereotypical roles as if they were actors in a play:[7][7] accuser and defendant. Or, to borrow another metaphor, no longer are they student and teacher, they "are adversaries – they are at war."[8][8] If they are not extremely careful (and, at times, despite this care), their interaction will "become a power struggle between their personal definitions of grading."[9][9] The student will ultimately feel he or she must file a formal grade appeal, if only for his or her concerns to be examined seriously.

The typical grade dispute system is generally designed by colleges and universities to be quasi-adjudicative, while at the same time supposedly "user friendly" in that its rules and procedures are easily understood. Yet it is itself confrontational. Claims and counter-claims can escalate quickly and violently, expanding far beyond the student's initial concern.[10][10] In the end, someone wins; someone else loses. Learning is not promoted. Any future relationship between the student and the professor is at best tainted and more likely impossible as a result of the defensiveness required by and inherent in the system.

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[7][7] "The filing of a grievance is like the opening of the curtain, with a drama waiting to be unfolded act by act, scene by scene. And as with any play, the grievance procedure had a unique cast of characters – challenger, defender, tribunal, witness – all with predetermined roles and expectations." Karen Robinson & Sharon Bridgewater, *Named in a Grievance: It Happened to Us*, NURSING OUTLOOK, 27:3 (March 1979), at 191.

[8][8] William C. Rando, Conflict in College Teaching: A Critical Theoretical Framework for Individual Action, Organizational Form, and Ideological Structure (1992) (unpublished Ph.D. dissertation, Northwestern University), at 100.

[9][9] *Id*. at 105.

[10][10] Other types of violence as opposed to physical violence, including especially verbal assaults, are meant here.

Consider for a moment the following interaction between a professor and a "grade grubber,"[11][11] who has received an 89, one point below an A, on an assignment – a type of student with whom all educators have had contact at one time or another:

STUDENT: I'd like to ask you about the grading of this problem.

PROFESSOR: OK. What's the problem?

STUDENT: Well, here, on this problem you took off five points.

PROFESSOR: Yes, I see that. And?

STUDENT: Well, gee, five points seems like a lot to take off when I only made this one little mistake…. I think that's unfair – five points for such a little thing. Come on!

PROFESSOR: Well, in actuality, it's not such a little thing. It is very important to understand why your reasoning is wrong, and marking it wrong seems an appropriate method to this end.

STUDENT: But five points! That's too much!

PROFESSOR: Look … the problem was worth eleven points and you made a fundamental error in solving this problem. I felt that five points was a reasonable number of points to subtract for an error like this.

STUDENT: Well, I don't agree. It's far too much. Look through the rest of my homework. You know me and my work and you know that I understand what's going on. You're not being fair.

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[11][11] An admittedly "pejorative label" which brings with it certain assumptions about the professor's initial mindset (Rando, *supra*, note 8, at 71), a "grade grubber" is a student who tries "to get better grades" than he or she deserves (*id*. at 70), who scrounges "for every last point" (*id*. at 66).

> PROFESSOR: Not being fair? Listen to what you just said! On the contrary, it would be unfair to the rest of the students in class if I gave you the five points and not them also.
>
> STUDENT: Well, then change it for everyone….
>
> PROFESSOR: Well, that defeats the whole purpose of grading doesn't it?! Look, I think that I have been fair to you and the rest of the class in grading this as I have. Of course, if you don't like it, since I am not going to change your grade, you can always [complain].[12][12]

In trying to address the student's concerns, the professor fails because she lapses into self-defeating "defensive routines."[13][13] The student, however, contributes to that failure by continuously upping "the ante, forcing [the professor] to deal with broader definitions of grading."[14][14] When the professor is unable – or unwilling – to do so, the student then complains to a higher authority, the department chair – upping the ante even further – alleging that the professor "graded me unfairly because she is a racist."[15][15]

The stage is thus set for a formal grade appeal, based on the student's expressed complaints that the grade given on that particular assignment was both arbitrary – which may commonly be defined as derived from mere opinion, without cause or basis – and/or discriminatory – which may be defined as bias or prejudice against a protected person or

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[12][12] *Id*. at 65-67. The confrontation could have ended more violently: "When a scholar at Utah State University refused to change a grade, a student screamed at her, 'Well, you goddamned bitch, I'm going to the department head, and he'll straighten you out!' … A historian at Washington State University was challenged to a fight when a student disliked the grade he'd received." Alison Schneider, *Insubordination and Intimidation Signal the End of Decorum in Many Classrooms*, THE CHRONICLE OF HIGHER EDUCATION, March 27, 1998, ¶ 3, *at* < http://chronicle.com/colloquy/98/rude/background.htm >.

[13][13] *Id*. at 68.

[14][14] *Id*. at 106.

[15][15] *Id*. at 93.

class of persons because of their race, gender, religion, etc. Though academic grievance procedures vary somewhat from institution to institution, they generally include the following procedures, based on "a combination" of anecdotes, experience, and U.S. Supreme Court decisions:[16][16]

1. The student must first attempt to resolve the grading dispute with the instructor awarding the grade
2. The student notifies the appropriate department chairman or college dean of his intent to appeal a grade. The administrative official then establishes the time and place for appeal action to begin and notifies the participants
3. A departmental and/or college committee comprised of faculty and students meets as requested by the appropriate administrative official to consider the merits of the grade disputes brought before it. A record of the proceedings should be maintained and provided to the student and/or instructor upon request
4. The student and the instructor concerned should have the opportunity to present each side of the dispute with the committee asking questions as needed. The committee should have the authority to deny the appeal or change the grade accordingly
5. Decisions of a departmental committee could be appealed to a college committee in a manner described for the initial appeal process

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[16][16] Jann B. Logsdon, *et al*., *The Development of an Academic Grievance Procedure*, NURSING OUTLOOK, 27:3 (March 1979), at 189.

6. Decisions of a college committee could only be appealed to the president of the institution whose decision, based on the results of committee actions, would represent the final institutional step in the grading appeal process. The student would then be informed of the final decision[17[17]]

A formal academic grievance procedure generally serves several functions: (1) it provides the student with recourse; (2) it affords the student the right to due process under the Fourteenth Amendment – that is, fair, equal, and reasonable treatment – without affecting the institution's right to administer an organized program of instruction; (3) it protects faculty rights to freedom of instruction; (4) if the student pursues the grievance outside the institution in the civil court system, it provides data for the court to review and make a "due process ruling" without having to evaluate academic evidence; and (5) it can [reduce] potential faculty abuse of power in academic evaluation by looking at the process of instruction (were all students treated equally and fairly?) vs. the outcome of instruction (questioning faculty decisions in evaluation of specific content).[18[18]] A formal grade appeal hearing, "by its very existence, promises to be impartial."[19[19]] The outcome is thus supposed to be both fair and correct. By assuring equal participation by both sides, it is assumed a correct conclusion may be reached.

Yet how can that be? There is no agreement as to facts or motives. In fact, agreement between the student and professor is not even a purpose of a formal grade appeal; resolution is its purpose. There is no evidence, based on the interaction itself, that the

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[17[17]] Ned C. Stoll, Policy Guidelines Developed from an Analysis of Emerging Legal Challenges to the Academic Autonomy of Public Institutions of Higher Education (1980) (unpublished Ph.D. dissertation, University of Utah), at 136-137. *See also*, Wolf von Otterstedt, *Student Relations – Suggested Standards for Disciplinary Hearings*, in Knowles, *supra* note 6, at 1:13-1:14.

[18[18]] Logsdon, *et al*., *supra* note 16, at 185.

[19[19]] Patricia Miller, *Facilitating Student Grade Appeal Hearings*, NURSING OUTLOOK, 29:3 (March 1981), at 188.

perception of either party is either right or wrong. Giving both student and professor in the above example the benefit of all doubt, both have responded to the same interaction from two completely different perspectives, neither of which is entirely wrong and neither of which is entirely right. A fair solution to the problem is impossible, because the focus of the process is entirely based upon the protection of the legal rights of the parties involved. A formal grade appeal is thus not "a mechanism for problem solving,"[20][20] but a mechanism for problem resolution by others outside the student-teacher relationship, who may know nothing of the problem, the people involved, or the dynamics of the relationship.

FAILINGS OF ADJUDICATIVE SYSTEMS

Whatever the final outcome, adjudicative-type grade appeals do not and cannot promote what must (or should) be the primary interest of the two parties – reconciliation and repair of the damage caused the student-teacher relationship by their initial interaction. With their focus on legal rights using legal terms – grievant and respondent – they become

> instead … a win-lose, faculty vs. student situation. Faculty and student reputations [are] at stake.[21][21]

Both are threatened with a "loss of status in the eyes of others."[22][22] Because of this, "a previously cooperative student [may well] manifest [an unexpected] resolute persistence" and conviction.[23][23] As such, grade appeals are guaranteed to "be an anxiety-provoking

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[20][20] Logsdon, *et al*., *supra* note 16, at 186.
[21][21] *Id*. at 186-187.
[22][22] *Id*. at 187.
[23][23] Robinson & Bridgewater, *supra* note 7, at 191.

event"[24][24] – "anger and fear [being] probably the two primal emotions most often exhibited by both protagonists."[25][25]

In addition to feeling "defensive,"[26][26] the student dreads the appeals confrontation, in part, because "grades are probably the biggest source of anxiety to students,"[27][27] and, in part, because

> teachers can be overbearing. They can adopt behavior that can mortify students. They can exhibit a purported intellectual superiority, belittle students, [and] use sarcasm in a way that's hurtful.[28][28]

In addition, professors may resort to "academic games," including, rationalization, passing the buck, obfuscation, co-optation [acceptance of information with the implication that steps have already been taken to address the problem], recitation [sort of a verbal filibuster of data], displacement and projection [shifting attention away from the implications of the information to an external source]….[29][29] Because of these factors, many students "take grading quite personally."[30][30] It is thus easy to see how students may perceive the balance of power in the classroom, as well as in a grade dispute, to be weighted in favor of the professor. In an attempt to counter this perception, it is easy to understand why students feel it necessary to start "with the identification of the problem, quickly redefine[] the problem as an injustice and then expand[] the injustice" to include the claim of being denied whatever constitutional right they feel will be addressed

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[24][24] Logsdon, *et al*., *supra* note 16, at 188.
[25][25] Miller, *supra* note 19, at 187.
[26][26] *Id*. at 188.
[27][27] Robinson & Bridgewater, *supra* note 7, at 194.
[28][28] P.M. Forni, co-director of the Johns Hopkins University Civility Project, quoted in Schneider, *supra* note 12, ¶ 34, *at* < http://chronicle.com/colloquy/98/rude/background.htm >.
[29][29] ALEXANDER W. ASTIN, ACADEMIC GAMESMANSHIP: STUDENT ORIENTED CHANGE IN HIGHER EDUCATION (1976), at 75-85.
[30][30] Rando, *supra* note 8, at 79.

seriously by higher authorities (whether they be at the college or in the courts), such as a charge of racial discrimination.[31][31]

Whether the student wins or loses, the student will find it extremely difficult hereafter to continue or re-establish a relationship with that professor. Either the balance of power will have shifted to the student, threatening the professor's position as teacher, or the challenge to that balance will have been frustrated, leaving the student uncertain and fearful of how he or she might be treated by that professor in the future. "Psychological pain" is the natural result of this fear.[32][32]

For the professor, on the other hand, the student grade appeal is at best "an unpleasant experience"[33][33] and at worst "a grueling experience,"[34][34] depending in part on the extent of her own "authoritarianism, protectionism, [and] passive [aggressiveness]."[35][35] She perceives threats from several areas. First, her independence is threatened – "the knottiest problem" faced by any institution developing a grade appeals policy[36][36] – as final decisions regarding appropriate grades are "inherent in the exercise of professional academic freedom"[37][37] traditionally have been "the exclusive province"[38][38] of professors. Because of this, "most departments are willing to tolerate idiosyncrasies even though erratic grading can produce injustices…."[39][39] A slightly different perspective may well convince her that she cannot compromise in order to uphold "faculty rights" in

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[31][31] *Id*. at 111.
[32][32] Robinson & Bridgewater, *supra* note 7, at 194.
[33][33] Logsdon, *et al*., *supra* note 16, at 188.
[34][34] *Id*. at 189.
[35][35] Rando, *supra* note 8, at 119.
[36][36] Alfred Leja & Don Sikkink, *Developing a Grade Appeals Policy*, IMPROVING COLLEGE & UNIVERSITY TEACHING, 24:2 (Spring 1976), at 92.
[37][37] Robinson & Bridgewater, *supra* note 7, at 194.
[38][38] Ludeman, *supra* note 5, at 236.
[39][39] JOHN R. BENNETT, MANAGING THE ACADEMIC DEPARTMENT: CASES AND NOTES (1983), at 106.

general.[40][40] Second, her authority in the classroom is challenged, her professionalism questioned. She feels "wounded and under attack" that anyone would believe that her grades were not fairly assigned.[41][41] She may even "take it as a personal affront."[42][42] Her natural defensiveness makes her "less than totally objective" and likely to listen "somewhat selectively," hearing "the sensational aspects of the [grievance] and, in [her] indignation, [losing] sight of the real complaint."[43][43] If the student wins the appeal, the professor will leave the hearing "feeling intimidated."[44][44] Third, because of attempts by her colleagues to act impartially and be themselves perceived as neutral, "a climate of secrecy [is] created" and she is disheartened when she receives "so little support from other faculty members."[45][45] Finally, the professor feels "much ambivalence" – including trepidation, uncertainty, and stress – about having her teaching and grading methods evaluated at all.[46][46] If her grading standards are not upheld,

> how could [she] face [her] peers again? [Their] camaraderie would be destroyed if [she] should be judged in error. [She] would be disgraced.[47][47]

All this is exacerbated if she holds "a tenuous power position" in the department, such as that of an untenured, non-tenure track, or temporary faculty member.[48][48] It is no wonder then that she tries to win, "using whatever will work."[49][49]

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[40][40] Robinson & Bridgewater, *supra* note 7, at 191.
[41][41] *Id*.
[42][42] Rando, *supra* note 8, at 67.
[43][43] Robinson & Bridgewater, *supra* note 7, at 192.
[44][44] Rando, *supra* note 8, at 107.
[45][45] Robinson & Bridgewater, *supra* note 7, at 192.
[46][46] *Id*. at 193.
[47][47] *Id*.
[48][48] Rando, *supra* note 8, at 107.
[49][49] *Id*. at 76.

PROVIDING DUE PROCESS

The modern history of student discontent in higher education may be traced back to the post-war years following World War II and the Korean conflict when the nation's colleges and universities found themselves unprepared to handle the "great influx" of veterans and other non-traditional students – including, older students, women, and minorities – and unable to meet their needs.[50[50]] The result was that as disputes and lawsuits began to increase,[51[51]] the courts began a shift away from the old legal standard of *"in loco parentis"* as a justification for college rules and regulations and toward a greater recognition of student rights.[52[52]]

As student complaints and protests increased both in number and vigor, especially in the late 1960s, one result was a "breakdown in the rigorousness that characterized curricular developments in the humanities and a number of the social sciences…,"[53[53]] resulting in the educational problem of today known as grade inflation:

> The traditional guide in grading was the normal or Gaussian distribution that characterized the so-called bell-shaped curve. In such a distribution, grades plotted on a graph assume the shape of a bell, with the largest concentration of grades about the mid-range of C. But that distribution requires a sufficiently large sample of grades, so that the population plotted includes enough observations to embrace the full range of variation. A professor could always, and with some justification, convince himself/herself that the number of

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[50[50]] For an overview of this development, see, Kunlun Chang, *et al*., Selected Issues in Education: Curriculum, Students, and Risk Management (1992) (unpublished educational administration practicum, University of Missouri-Kansas City) (ERIC Educational Document Retrieval System #354241), at 29.
[51[51]] Stoll, *supra* note 17, at 74.
[52[52]] From the Latin, "in the place of a parent." *See*, D. Gregory & R. Ballou, *In Loco Parentis Reinventis: Is There Still a Parenting Function in Higher Education?* NASPA JOURNAL, 24:2 (Winter 1986), at 28-31.
[53[53]] ABRAHAM L. GITLOW, REFLECTIONS ON HIGHER EDUCATION (1995), at 78.

> students enrolled in a single class section was insufficient to meet the statistical test. Consequently, if one had a class with an unusual number of bright students, then a grade distribution skewed upward would be appropriate. Given a concentration of poorer students, the skew would be downward. The reality that developed, however, was that the skew was more and more upwards, so that Bs became as commonplace as Cs had previously been, As became as numerous as Bs, while Ds became rare, and Fs became an endangered species.[54[54]]

Another result was the development of "general expectation of 'total justice' – the idea that courts could compensate individuals for every misfortune, social slight, or general brush with unfairness or bad luck."[55[55]] From all historical appearances, college professors – faced with increased student willingness to challenge grades, even into the courts – collectively and "figuratively shrugged their shoulders [and] simply gave higher grades than they did before."[56[56]]

[54[54]] *Id*. at 79.
[55[55]] Jeffrey Rosen, *In Lieu of Manners*, N.Y. TIMES MAGAZINE, Feb. 4, 2001, at 49.
[56[56]] Gitlow, *supra* note 53, at 78.

Finally, in 1971, what arguably amounts to a national age of legal majority was established when ratification of the Twenty-sixth Amendment gave the right to vote to those age eighteen or older.[57][57] Most college "students became legal adults overnight," not only eligible to vote, but also possessing other constitutional rights, such as the right of due process,[58][58] protected by the Fifth Amendment against encroachment by the federal government[59][59] and by the Fourteenth Amendment against infringement by the states.[60][60] Colleges responded by developing more and more formal academic structures and regulations to guarantee students the process they were constitutionally due, minimally copying the due process requirements followed by the courts: notice, opportunity to be heard, and the right to produce evidence on one's behalf.[61][61] By 1985, eighty-five percent of institutions of higher education reported having "a formal structure to adjudicate academic grievance cases."[62][62]

Courts have been understandably "reluctant to make judgments on academic matters,"[63][63] generally understood as "educational relationships between institutional officials and students, developed from the evaluation of student academic performances for the purpose of grading, awarding of credits and degrees, and dismissal for academic insufficiency, governed by the institutional standards for admission, continued enrollment and graduation,"[64][64] and have traditionally deferred to the decisions of the academic

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[57][57] US Const. amend. XXVI, § 1. *See also*, Stoll, *supra* note 17, at 1-2.
[58][58] Ludeman, *supra* note 5, at 235.
[59][59] "No person shall be … deprived of life, liberty, or property, without due process of law…." US Const. amend. V.
[60][60] "… nor shall any State deprive any person of life, liberty, or property without due process of law…." US Const. amend. XIV, § 1.
[61][61] *Supra* note 17.
[62][62] Ludeman, *supra* note 5, at 238.
[63][63] Logsdon, *et al*., *supra* note 16, at 184.
[64][64] Stoll, *supra* note 17, at 5. Logsdon, *et al*., defined it "to include activities or decisions directly or indirectly related to the process of instruction, research, or those affecting academic freedom" (*id*. at 185).

institution. Recognizing that student disciplinary determinations are different than academic evaluations and that "courts are particularly ill-equipped to evaluate academic performance,"[65][65] the U.S. Supreme Court stated in *Board of Curators of the University of Missouri v. Horowitz* that, like academic dismissal decisions, "the decision of an individual professor as to the proper grade for a student in his course" "requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision making."[66][66] Up until this time, however, following the Fifth Circuit's lead in *Dixon v. Alabama State Board of Education*,[67][67] most colleges and universities began recognizing students' right to continued enrollment was a legal right and requiring that they be afforded due process.[68][68] In that case, prior to dismissal for misconduct, the court ruled, the student must

> be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's

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[65][65] 435 US 78, 92 (1978). *See also*, Regents of University of Michigan v. Ewing, 474 US 214 (1985).
[66][66] *Id*. at 90.
[67][67] 294 F. 2d 150 (5th Cir. 1961), *cert. den.*, 368 US 930 (1961). *See also*, Goss v. Lopez, 419 US 565 (1975).
[68][68] Courts have generally recognized two aspects of due process – substantive due process and procedural due process. Substantive due process requires that a state must have in place appropriate rules and procedures reasonably related to a proper governmental function before a person may be deprived of life, liberty, or property. *See*, Board of Regents v. Roth, 408 US 564 (1972). In the context of higher education, this means that colleges "must establish, publish and disseminate rules, regulations and procedures that are fair, reasonable, spelled out, and consistently applied" (Stoll, *supra* note 17, at 6). Procedural due process requires that a person may not be deprived of life, liberty, or property without notice and an opportunity to oppose the government's action. In the context of higher education, this second requirement has been interpreted to be some type of hearing. *See*, Dixon, *id*. It should be noted here that due process requirements apply only to state action, i.e., the actions of public institutions of higher education.

> inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled.[69][69]

Over time, colleges and universities perceived that the more detailed their due process safeguards the less likely they would be challenged in court.[70][70] Thus began the trend "to correlate due-process rights of the college student … to a full-dress criminal proceeding,"[71][71] including in many places the right to confront his or her accusers and the right to legal counsel.[72][72] In *Horowitz*, however, the Supreme Court concluded that due process requirements were not as stringent as most colleges and universities had previously believed, that "while a state school must comply with the elementary principle of procedural fair play, it is not necessary that it adopt all the formalities of a court of law."[73][73] Courts have interpreted *Horowitz* as requiring no more than an informal faculty evaluation or meeting with the student prior to dismissal, because "academic evaluations of a student, in contrast to disciplinary determinations, bear little resemblance to the judicial and administrative fact-finding proceedings to which [the Supreme Court has] traditionally attached a full-hearing requirement."[74][74]

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[69][69] 294 F. 2d at 158-159.
[70][70] *See*, Debbie A. Levin, *Recent Cases – Board of Curators v. Horowitz*, 47 CINCINNATI L.R. 522 (1978).
[71][71] Von Otterstedt, *supra* note 17, at 1:7.
[72][72] *See*, Estaban v. Central Missouri State College, 277 F. Supp. 649 (W.D. Mo. 1967), *aff'd*, 415 F. 2d 1077 (8th Cir. 1969), *cert. den.*, 398 US 965 (1970). *See also*, Gorman v. University of Rhode Island, 837 F. 2d 7 (1st Cir. 1988).
[73][73] Von Otterstedt, *supra* note 17, at 1:11.
[74][74] 435 US at 89.

SAMPLE SYSTEMS – CURRENT PROCESSES OF THE 'TOP 5' COMMUNICATION PROGRAMS

Four of the five largest communication programs have followed the national trend and developed quasi-adjudicative systems of settling grade disputes.[75[75]] Though some are more unambiguous (and use more legal terminology) than others,[76[76]] they have certain elements in common:

1. They counsel the aggrieved student to discuss the grade with the instructor first;[77[77]]
2. Specific time limitations for filing the grievance are set, ranging from 30 calendar days to one semester after the disputed grade is assigned;[78[78]]
3. The student is given the right to submit evidence in support of his or her contentions;[79[79]]

[75[75]] In order of size, the five are: Pennsylvania State University, Middle Tennessee State University, University of Florida, Michigan State University, and Emerson College. Lee B. Becker, *et al*., *Enrollment and Degrees Awarded Continue 5-Year Growth Trend*, JOURNALISM & MASS COMMUNICATION EDUCATOR, 54:3 (Autumn 1999), at 10. Penn State uses a mediative model of grade dispute resolution which will be discussed in Section VI of this paper. A search of Emerson College's web site at < http://www.emerson.edu/ > turned up no grade appeal guidelines for use by undergraduate students; its graduate student guidelines are discussed here.

[76[76]] Michigan State, for example, refers to its college-level hearing board as "the appropriate judiciary" with "original jurisdiction." *General Information, Integrity of Scholarship and Grades*, MICHIGAN STATE UNIVERSITY ACADEMIC PROGRAMS, 2000-2002, at 24, *at* < http://www.msu.edu/unit/ucandc/05geninf.pdf >.

[77[77]] *See*, *Grade Appeals*, MIDDLE TENNESSEE STATE UNIVERSITY HANDBOOK, *at* < http://www.mtsu.edu/~handbook/Resources/gradeapp.html >; *Grading and Grade Appeals*, UF SURVIVAL GUIDE, *at*, < http://www.jou.ufl.edu/2000ad/curric/19.htm >; *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE, *at*, < http://www.emerson.edu/anne's_test_folder/gradstudies/grieve.html >.

[78[78]] *See*, *Academic Regulations, Grades – Appeal of Course Grades*, MIDDLE TENNESSEE STATE UNIVERSITY UNDERGRADUATE CATALOG, *at* < http://www.mtsu.edu/ucat/student/acr.html >; UF SURVIVAL GUIDE (*id*.); *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE (*id*.).

[79[79]] *See*, MIDDLE TENNESSEE STATE UNIVERSITY UNDERGRADUATE CATALOG (*id*.); *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE (*id*.).

4. The student is given the right to offer and/or submit testimony on his or her behalf;[80][80]
5. The appeals panel will prepare written findings of fact;[81][81] and
6. The student has a right to appeal the panel's findings beyond the initial hearing.[82][82]

Of the programs, only the University of Florida makes it plain that a grade appeals panel cannot force its conclusions on a professor, that only professors have the power to change grades and that it may only be done voluntarily.[83][83]

THE PROBLEM RESTATED

"Demographic changes, consumerism, K-to-12 experiences" – coupled with students' overriding interest in finding a job after graduation, "the crisis of authority in this country that leaves no one above question," and grade inflation – all combine to make colleges and universities more fearful of lawsuits while they at the same time encourage legalistic thinking by creating complex legal structures whose aim it is to settle disagreements in a quasi-adjudicative manner.[84][84] The problem, then, is that students easily perceive that their grade concerns will not be taken seriously unless they themselves are prepared to "go all the way." To do this, they must treat their complaint like a legal cause of action and include as many claims and points of contention as possible in the hopes of winning

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[80][80] *See*, MIDDLE TENNESSEE STATE UNIVERSITY UNDERGRADUATE CATALOG (id.); *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE (*id*.).
[81][81] *See*, MIDDLE TENNESSEE STATE UNIVERSITY UNDERGRADUATE CATALOG (*id*.); *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE (*id*.).
[82][82] *See*, MIDDLE TENNESSEE STATE UNIVERSITY UNDERGRADUATE CATALOG (*id*.); UF SURVIVAL GUIDE, *supra*, note 77; *General Information, Integrity of Scholarship and Grades*, MICHIGAN STATE UNIVERSITY ACADEMIC PROGRAMS, 2000-2002, , supra, note 76; *Academic Grievances*, GRADUATE STUDIES, EMERSON COLLEGE (*id*.).
[83][83] UF SURVIVAL GUIDE, *supra*, note 77; *See also*, *Academic Progress Regulations, Petitions*, UNIVERSITY OF FLORIDA 2001-2002 UNDERGRADUATE CATALOG, *at* < http://www.reg.ufl.edu/01-02-catalog/academic_regulations/academic_regulations_023_.htm >.
[84][84] Schneider, *supra* note 12, ¶ 19, *at* < http://chronicle.com/colloquy/98/rude/background.htm >.

at least one – just like traditional litigation. And, as with traditional litigation, students incorporate legal claims into their grade appeals that might seem to be more appropriate for argument before a court of law than before any panel of faculty and/or students.

Students understood this as early as the turn of the last century when – in *State ex rel. Nelson v. Lincoln Medical College*[85[85]] – a student sought and received judicial relief from the courts on the grounds that his failing grades had been assigned arbitrarily and capriciously, terms with such commonly accepted legal meanings that they were not even defined in the decision.[86[86]] Yet judicial deference to academic decisions has clearly been the norm:[87[87]]

> In a controversy between a student upon the one hand and numerous instructors and officials upon the other, a resort should be to the courts only when the [student's] rights have been so clearly invaded as to leave no reasonable doubt in the judicial mind that an injustice has been done. Not infrequently that which seems to the student to be unreasonable as an exaction, and burdensome as prescribed conduct, embraces essential conformity without which the designed accomplishment could not be achieved. For these and other obvious reasons courts do not interfere with administrative management except when there has been an abuse of discretion….[88[88]]

Acknowledging that substantiated allegations of capriciousness and bad faith would be grounds for relief, if proven, a federal district court in *Connelly v. University of Vermont* concluded that "school authorities [have] absolute discretion in determining whether a

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[85[85]] 116 N.W. 294 (Neb. 1908). *See also*, Steinberg v. Chicago Medical School, 371 N.E.2d 634 (Ill. 1977); Von Seggern v. Kassmeier Implement, 240 N.W.2d 842 (Neb. 1976).
[86[86]] 116 N.W. at 297. Legally, "arbitrary" means without cause based upon the law; "capricious" means without rational basis or evidence.
[87[87]] *See*, Edwards v. Aguillard, 482 US 578 (1987).
[88[88]] Coffelt v. Nicholson, 272 S.W.2d 309, 312 (Ark. 1954). *See also*, Littsey v. Board of Governors of Wayne State University, 310 N.W.2d 399 (Mich. 1981).

student has been delinquent in his studies, and to place the burden on the student of showing that [the school's action in assigning his grade] was motivated by arbitrariness, capriciousness, or bad faith."[89][89] Similarly, acknowledging that "racial or other wrongful discrimination,"[90][90] would also be grounds for judicial interference into academic affairs under federal law,[91][91] a federal district court in *Keys v. Sawyer* ruled that, in the area of grading,

> it is difficult to imagine an area of academic life more suitable for judicial abstention. The assignment of grades to a particular examination must be left to the discretion of the instructor. He should be given the unfettered opportunity to assess a student's performance and determine if it attains a standard of scholarship required by that professor for a satisfactory grade. The federal judiciary should not adjudicate the soundness of a professor's grading system, nor make a factual determination of the fairness of the individual grades. Such an inquiry would necessarily entail the complete substitution of a court evaluation of a complainant's level of achievement in the subject under review, and the standard by which such achievement should be measured, for that of the professor.[92][92]

It would be impossible to assess the competence of any other person or judicial entity, the court concluded, to make such a determination.

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[89][89] 244 F. Supp. 156, 160 (D. Vt. 1965). *See also*, Gupta v. New Britain General Hospital, 687 A.2d 111 (Conn. 1996); Susan M. v. New York Law School, 556 N.E.2d 1104 (N.Y. 1990). Legally, "bad faith" means "breach of faith, willful failure to respond to plain, well-understood statutory or contractual obligations." National Labor Relations Board v. Knoxville Publishing Co., 124 F.2d 875, 883 (6th Cir. 1942).

[90][90] Keys v. Sawyer, 353 F. Supp. 936, 939 (S.D. Texas 1973). *See also*, Riley v. State , 506 N.W.2d 45 (Neb. 1993); Ochsner v. Board of Trustees of Washington Community College District No. 17, 811 P.2d 985 (Wash. 1991); Ewing v. Board of Regents, 559 F. Supp. 791 (E.D. Mich. 1983).

[91][91] 42 USC. § 1981 (2000). *See*, Brown v. Board of Education, 347 US 483 (1954).

[92][92] 353 F. Supp. at 939-940.

From the foregoing it is clear that courts are less concerned with the outcome of grade disputes and more with the processes used by colleges and universities to reach their final grade decision. What the courts generally require colleges and universities to provide complaining students is due process, and when prescribed hearing procedures are followed for grade appeals, due process has been provided.[93][93] Yet it is also clear that this hearing does not have to be one in which the requirements of procedural due process are fully met, as academic proceedings are due more judicial deference than other student disciplinary proceedings:

> The due process requirements of notice and hearing developed in the *Dixon* line of cases have been carefully limited to disciplinary decisions…. Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals.[94][94]

However, the parameters of these two types of hearings at most colleges and universities today don't vary by much. The reason could be because of the perceived difficulty of administering two different types of hearings, with different rights and rules; or because colleges and universities, if they are to make a mistake, desire to err by providing students more due process than is legally required rather than less.

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[93][93] Hill v. Trustees of Indiana University, 537 F.2d 248 (7th Cir. 1976). *See also*, Trotter v. Regents of the University, 219 F.3d 1179 (10th Cir. 2000); Rubin v. Ikenberry, 933 F. Supp. 1425 (C.D. Ill. 1996).
[94][94] Mahavongsanan v. Hall & Georgia State University, 529 F.2d 448, 449-450 (5th Cir. 1976). *See also*, Keles v. Yale University, 889 F. Supp. 729 (S.D. N.Y. 1995).

Despite this judicial deference, "the often painful teaching-learning process"[95[95]] continues to generate increased numbers of lawsuits, as more and "more students are demanding more accountability in everyday academic life,"[96[96]] "while faculty members feel equally strongly about their right to grade in the manner they think most appropriate."[97[97]] But grade inflation[98[98]] – coupled with "the frequent inclusion in grades of class attendance and participation and other variables that are not learning outcomes, and markedly different standards that may be used within single classes and from class to class, all of which are usually unknown to the users of grades"[99[99]] – makes this a particularly difficult position to defend. Thus, in "a nation of separate, resentful, legalized selves," it should not be surprising that "our interactions are increasingly conducted in the shadow of legalese,"[100[100]] because

> the vocabulary of law and legalism is the only shared language we have left for regulating behavior in an era in which there is no longer a social consensus about how men and women, and even boys and girls, should behave. But rather than leading to more understanding and empathy, the legalization of our personal and professional

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[95[95]] Logsdon, *et al*., *supra* note 16, at 184.
[96[96]] Ludeman, *supra* note 5, at 239. *See also*, Charles M. Renneisen, Report on Follow-up Survey of American Civil Liberties Union Research on Academic Freedom (August 1976) (unpublished report) (ERIC Document Retrieval System #153578).
[97[97]] Miller, *supra* note 19, at 186.
[98[98]] *See*, Ben Gose, *Efforts To Curb Grade Inflation Get an F from Many Critics*, THE CHRONICLE OF HIGHER EDUCATION, July 25, 1997, at A41-A42. *See also*, Lee C. Mitchell, *Inflation Isn't the Only Thing Wrong with Grading*, THE CHRONICLE OF HIGHER EDUCATION, May 8, 1998, at A72; Noel Perrin, *How Students at Dartmouth Came To Deserve Better Grades*, THE CHRONICLE OF HIGHER EDUCATION, Oct. 9, 1998, at A68.
[99[99]] Lion F. Gardiner, *Monitoring and Improving Educational Quality in the Academic Department*, in ANN F. LUCAS, LEADING ACADEMIC CHANGE (2000), at 179.
[100[100]] Rosen, *supra* note 55, at 46.

> lives is leading to more social polarization and more mistrust of authority in all its forms.[101[101]]

As a result, colleges and universities become increasingly difficult to govern, misunderstandings abound – such as the rumor that "if your roommate kills himself, you automatically get straight A's for the semester"[102[102]] – and more and more people sue.[103[103]] The situation has reached the point where the problem has become the topic of cynical humor:

> Don't fail to be guided by two cardinal rules: (1) Never forget that all student work is, by definition, above average. (2) Never forget that a B+ is a below-average grade…. While we strongly counsel against giving honest grades, we also warn against grading too high too soon. Instead, we recommend that a professor grade low – but not so low as to invite violence – at the beginning of the term and gradually increase to A's as the semester progresses, regardless of any objective improvement.[104[104]]

Determining the exact process due has not been facilitated by the courts either. In *Mathews v. Eldridge*,[105[105]] the Supreme Court identified three factors to be considered and balanced: the private interest being affected by the official action, the risk of erroneously depriving someone of this interest weighed against the value of additional

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[101[101]] *Id*. at 48.
[102[102]] Leo Reisberg, *Hollywood Discovers an Apocryphal Legend: 2 Films Focus on 'Suicide Rules,'* THE CHRONICLE OF HIGHER EDUCATION, Sept. 11, 1998, at A41.
[103[103]] *See*, e.g., *British Student Urge Race-Blind Exams*, THE CHRONICLE OF HIGHER EDUCATION, March 19, 1999, at A51; *Former Duquesne Student Sues Over Grade Curve*, THE CHRONICLE OF HIGHER EDUCATION, Sept. 12, 1997, at A13; *Professor Sues College for Changing Student's Grade*, THE CHRONICLE OF HIGHER EDUCATION, Jan. 29, 1992, at A19; *Student Sues Alma Mater for Changing Grade Policy*, THE CHRONICLE OF HIGHER EDUCATION, Jan. 16, 1998, at A8; *Two-Year College Sued Over an Athlete's Grades*, THE CHRONICLE OF HIGHER EDUCATION, May 2, 1997, at A46.
[104[104]] Lawrence Douglas & Alexander George, *Point of View: If It Pleases the Class*…, THE CHRONICLE OF HIGHER EDUCATION, June 4, 1999, at A60.
[105[105]] 424 US 319 (1976).

procedures, and the government's interest in administrative and fiscal efficiency. Yet this balancing encourages *ad hoc* determinations and makes it unlikely any college or university will be able to know with certainty that the process it establishes – short of a full evidentiary hearing – will be adequate if challenged in court. For example, in *Ross v. Pennsylvania State University*,[106[106]] a federal district court determined that an academic termination decision based upon a student's poor grades, but also upon an evaluation of the student's attitude and motivation, required more "process" than the university had used. A hearing, the court ruled – though not required if the termination had been based solely and without exception upon the student's grades – "would allow [him] to explain any reason for his poor scholarship and would permit the university officials better to determine whether [he] had the potential to achieve the intellectual level required…."[107[107]]

DEVELOPING A HEALTHY GRADE DISPUTE SYSTEM

The quasi-adjudicative grade dispute systems now used by almost every college and university focus on right and (though they do not necessarily or openly acknowledge this) power. As such they are inherently confrontational, unfair, and not conciliatory. A good system, according to Allan Ashworth and Roger Harvey, should "ensure that grievances are solved as quickly and fairly as possible."[108[108]] No quasi-adjudicative system can promise either. Beyond that, they do not promote learning or student-faculty relationships. Good educational practices, according to Arthur Chickering and Zelda Gamson, include seven principles:

[106[106]] 445 F. Supp. 147 (M.D. Penn. 1978).
[107[107]] *Id*. at 153.
[108[108]] ASSESSING QUALITY IN FURTHER AND HIGHER EDUCATION (1994), at 88.

1. They encourage student contact with faculty;
2. They encourage cooperation among students;
3. They encourage active learning;
4. They give prompt feedback;
5. They emphasize time on task;
6. They communicate high expectations; and
7. They respect diverse talents and ways of learning.[109][109]

Not one of these is promoted by quasi-adjudicative grade dispute systems. They do not encourage student-faculty interactions; to the contrary, they make such interactions more difficult. They encourage student cooperation only to the extent that another student may be able to help with anecdotal or other evidence to be used in the grade appeal. They do not encourage active learning of the course material; in fact, they encourage a learning that is focused on use of rules and evidence to support one's contentions. Neither do they emphasize prompt feedback; quasi-adjudicative grade dispute systems take time to reach a resolution. They cannot emphasize time on task to learn course material, as quasi-adjudicative grade dispute systems require substantial time to prepare for the appeal. They do not emphasize high expectations; they only emphasize minimal effort to get the grade desired. Finally, they force all students into the same process to have their concerns heard and do not recognize alternative methods. William Ury, Jeanne Brett, and Stephen Goldberg contend that interest-based dispute resolution is better, because

> reconciling interests is less costly than determining who is right, which in turn is less costly than determining who is more powerful…. [F]ocusing on interests … tends to

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[109][109] *Seven Principles for Good Practice in Undergraduate Education*, THE WINGSPAN JOURNAL (1987), at 1-4.

result in lower transaction costs, greater satisfaction with outcomes, less strain on the relationship, and less recurrence of disputes.[110[110]]

It seems clear that these results are not the outcomes of student grade disputes under a quasi-adjudicative system and also that the relationship between the student and the professor might be better if they were.

To this end, Ury, *et al*., propose a mediative model of grade dispute resolution based upon six principles:[111[111]]

1. Put the focus on reconciling interests through procedures that bring about contact as early as possible and that strengthen the motivation of the two parties to mediate their dispute by making it easy to address a dispute and by protecting the parties against retaliation;
2. Build "loop-backs" into the system which will encourage negotiation and an interest-based approach to dispute resolution;
3. Provide low-cost rights and power back-up procedures in the event the two parties are unable to mediate their dispute;
4. Build in consultation before the system is implemented and feedback afterwards;
5. Arrange procedures in a low-to-high-cost sequence; and
6. Provide the necessary skills, resources, and motivation.

A search of the Internet through Bill Warters' Campus Mediation Resources web site at Wayne State University[112[112]] and professional contacts revealed two universities which apply mediative models of dispute resolution to student grade appeals: Pennsylvania

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[110[110]] GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT (1988), at 15.
[111[111]] *Id*. at 42.
[112[112]] *At* < http://www.mtds.wayne.edu/campus.htm >.

State University and Georgia Southwestern State University.

The Penn State system was set up shortly after the *Ross* decision and requires mediation as a prerequisite to any subsequent grade appeal.[113[113]] Its primary advantage, according to Robert Richards, associate dean for undergraduate education in the College of Communications, is that students "feel they have an opportunity to be heard and can vent; they can come to see the other side of the coin."[114[114]] An unusual aspect of the Penn State system is that the mediator – or "neutral" – is a group, known as the Good Offices Committee, and composed of faculty members elected from the college's departments and an equal number of students appointed by the associate dean, though any faculty member from the department in which the student is challenging his or her grade will not participate in the mediation. "People from the disciplines are familiar with the course in question," Richards said. "An outside person would have no idea what goes on in this class. By having students present on the Good Offices Committee, the complainant feels more comfortable that there's a larger body to deliberate and make recommendations."[115[115]]

After failing to resolve a dispute over a final grade with a professor, a student may petition his or her college's Good Offices Committee for grade mediation. The committee then meets with both student and professor together, listens to both sides, attempts to clarify the issues, and brainstorm possible solutions acceptable to both. Though the committee does not have the power to change the student's grade, it does try "to resolve

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[113[113]] The policy was implemented in 1983. G-10: *Grade Mediation and Adjudication*, ACADEMIC ADMINISTRATIVE POLICIES & PROCEDURES MANUAL, *at* < http://www.psu.edu/dept/oue/aappm/G-10.html >. *See also*, THE UNIVERSITY FACULTY SENATE POLICIES FOR STUDENTS (Aug. 4, 1998), *at* < http://www.psu.edu/ufs/policies/b-resol.html >.

[114[114]] Telephone interview with Robert Richards, associate dean for undergraduate education, College of Communications, Pennsylvania State University, April 24, 2001.

[115[115]] *Id.*

the disagreement … to help one side see where the other side is going."[116[116]] And, in Richards' thirteen years of experience, "mediation process has worked in all … cases; I've never had a case go on beyond that."[117[117]]

A more traditional system has been in place since 1998 at Georgia Southwestern State University, one which uses a single "neutral" to mediate student grade disputes.[118[118]] Under the Georgia Southwestern system, a student who chooses mediation first chooses a mediator from a list in the human resources office. If he or she does not know how to choose a mediator, Diane Kirkwood, the director of human resources there who also serves as the university's alternative dispute resolution liaison, recommends a "mediator from the other side of campus" to assure neutrality.[119[119]] The process is much the same as that at Penn State, except that professors are

> allowed to say whether they volunteer to go through mediation. Unless faculty are open to hearing issues, it won't go anywhere. Faculty at times are reluctant to say no to mediation, because [of the fear that] it says to the student that faculty are not open to hearing issues.[120[120]]

The meeting is sometimes scary for students, Kirkwood said, "because they have to communicate; but it teaches them an important skill because it teaches them to speak up for and represent themselves."[121[121]] The biggest advantage of grade mediation, Kirkwood believes, is that "you're giving people a chance to get together and talk at the

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[116[116]] *Id.*
[117[117]] *Id.*
[118[118]] *See*, *Appendix G: Procedures for Appeals of Grades & Other Academic Concerns*, GSWEATHERVANE, STUDENT HANDBOOK AND ACTIVITIES CALENDAR, 2000-2001, GEORGIA SOUTHWESTERN STATE UNIVERSITY, at 73-75.
[119[119]] Telephone interview with Diane Kirkwood, director of human resources, Georgia Southwestern State University, April 17, 2001.
[120[120]] *Id.*
[121[121]] *Id.*

lowest level."[122][122] Her biggest concern is that "we're giving students a false sense of hope, thinking that mediation will give them a better grade."[123][123]

CONCLUSIONS

Though the mediative model of grade dispute resolution may not be the perfect solution to the many problems inherent in a confrontation between a student and a professor, it would appear to be a better option to the resolution of grade disputes. It is generally faster. It promotes understanding, compromise, and reconciliation. It is less cumbersome and less formal. It is more flexible and more aptly suited to resolving narrower points of disagreement over grades based on the mutual interests of the two parties than a quasi-adjudicative grade appeals system.

The most important element of the mediative model clearly is the neutral mediator. On the one hand, it would seem that familiarity with the discipline and the course, the student and the professor, might be helpful in developing alternatives for settling the dispute. On the other hand, that same familiarity could be perceived by some as compromising the mediator's neutrality. One the one hand, this could be managed through the use of a Good Offices Committee as mediator – composed of an equal number of both faculty and students familiar with both the discipline and requirements of the course. On the other hand, a committee – as an official entity of a college or university – risks having its loyalty questioned. Matt Jackson, assistant professor of communication and a former member of the Penn State Good Offices Committee, said of his service that his

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[122][122] *Id.*
[123][123] *Id.*

> sense was that both the student and the professor misunderstood the role of the committee, because the student probably felt the committee was a little biased toward the professor. My sense was that we tended to side with the professor initially. My guess would be that [others'] perception [was] that [the committee's] inclination initially [was] to side with the professor.[124[124]]

Such a committee also risks having its role misunderstood. Jackson remembers one mediation in which he participated in which "both professor and student … assumed it was more like a trial; after each side presented, each tried to rebut the other and debate as if [they] were in court."[125[125]] That could potentially be intimidating to both the student and the professor, who may feel like they are being called upon to explain themselves. Jackson also said that, "depending upon its membership, the committee could have allowed itself to lapse into the role of judge," which could have "put pressure on the professor and the student to accept the [committee's] compromise," whether or not they agreed with it.[126[126]] On the other hand, a committee could be useful in developing a greater number of options for resolving the grade dispute.

Yet, to a greater or lesser degree, these are all risks a single mediator faces as well, from being perceived as truly neutral, to acting as a mediator not as an adjudicator, to helping the two parties develop enough options to generate one acceptable to both sides. Training and mediation experience would seem to be the key, though training of a

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[124[124]] Telephone interview with Matt Jackson, assistant professor of communications, College of Communications, Pennsylvania State University, April 23, 2001.
[125[125]] *Id.*
[126[126]] *Id.*

group to act as a complementary whole would obviously be more time-consuming and difficult than the training of an individual "neutral."

Both the Penn State and the Georgia Southwestern State grade dispute systems provide adjudicative back-up procedures, arranged in a low-to-high-cost sequence, in the event mediation does not succeed – the third and fifth principles of Ury, *et al*.[127[127]] – and both systems appear to provide mediators with the necessary skills and resources and participants with the necessary motivation to mediate – Ury's sixth principle. (It could be, however, that Penn State's mandatory mediation should be viewed as something other than providing "motivation" to mediate.) Though it is unclear whether either system has "loop-backs" – Ury's second principle – built into the process to encourage continuing negotiation, both systems provide for the mediation option only after the student's receipt of a final grade in the course, not for grades on specific assignments within the course (which could actually be the basis for the final grade appeal). Perhaps allowing for grade mediation even before a final grade is assigned would promote Ury's first principle – that of bringing about contact between the two parties as early as possible, assuming it is not administratively unworkable. It is also unclear whether either system provides opportunities – either formal or informal – for feedback or response from the participants to see how they feel about the outcome. Kirkwood said this was an area she felt her school could improve upon, which would help bring "a sense of closure"[128[128]] to the process.

Yet whatever their shortcomings, it is this writer's opinion and conclusion that either the Penn State or the Georgia Southwestern State option is still better than the quasi-

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[127[127]] *Supra* note 111.
[128[128]] *Supra* note 119.

adjudicative grade appeal systems currently in place in most all American colleges and universities. The learning relationship between student and professor is ideally like that of Plato and Socrates. It is thus well worth the effort.

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