

CASE NO.: A10-2041

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MINNESOTA COURT OF APPEALS

Linda Zinter,)
)
Plaintiff-Appellant)
)
v.)
)
University of Minnesota and)
Robert H. Bruininks)
)
Defendants-Respondents)

APPELLANT'S BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF ISSUES

1. Did the Trial Court Err in Finding No Enforceable Contract Between the Parties Precluding the University from Imposing Additional Degree Requirements on Plaintiff?

This case initially was filed in conciliation court, where Plaintiff sought a refund for two graduate school classes she was required to take above and beyond the published degree requirements, as well as for a third class. Addendum at 22. That court ruled for Defendant (Addendum at 23) and Plaintiff appealed to district court. Plaintiff then moved for leave to file a formal complaint, alleging a contract claim, a *promissory estoppel* claim, and a due process violation. Appendix at 21. The University opposed Plaintiff's motion and moved for summary judgment on the three proposed claims. Appendix at 23.

On May 26, 2010, the court dismissed the contract claim, holding that the University had not breached any agreement and that Plaintiff's claim was really one for educational malpractice. Addendum at 5-9. Judgment was entered on October 28, 2010, and Plaintiff filed a timely notice of appeal pursuant to Rule 103.03(a), R.App.Pro. Appendix at 25.

Supporting Cases:

Alsides v. Brown Institute, Ltd., 592 N.W.2d 468 (Minn. App. 1999).

Cecil v. Bellevue Hospital Medical School, 14 N.Y.S. 490 (Sup.Ct. General Term, 1st Dept, 1891).

Ross v. Creighton, 957 F.2d 410 (7th Cir. 1992).

Shuffer v. Board of Trustee of the California State University and Colleges, 136 Cal Rptr. 527 (Cal. App. 1977).

2. Did the Trial Court Err in Finding That the University Did Not Break Its Promise Not to Impose Additional Degree Requirements on Plaintiff?

The trial court also dismissed Plaintiff's *promissory estoppel* claim, ruling that the University did not break any promise it made to Plaintiff that she would not be required to take additional classes in excess of the degree requirements. Addendum at 8-9. Judgment was entered on October 28, 2010, and Plaintiff filed a timely notice of appeal pursuant to Rule 03.03(a), R.App.Pro. Appendix at 25.

Supporting Cases:

Alsides v. Brown Institute, Ltd., 592 N.W.2d 468 (Minn. App. 1999).

Cecil v. Bellevue Hospital Medical School, 14 N.Y.S. 490 (Sup.Ct. General Term, 1st Dept, 1891).

Ross v. Creighton, 957 F.2d 410 (7th Cir. 1992).

Shuffer v. Board of Trustee of the California State University and Colleges, 136 Cal Rptr. 527 (Cal. App. 1977).

3. Did the Trial Court Err in Finding That It Did Not Have the Authority to Award the Requested Relief on Plaintiff's Due Process Claims?

In its May 26, 2010 order, the trial court denied Defendant's motion for summary judgment on Plaintiff's due process claims and granted Plaintiff leave to file an amended complaint on those seeking equitable relief. Addendum at 9-12.

On June 14, 2010, Plaintiff filed an amended complaint adding as a defendant Dr. Robert Bruininks, the President of the University. Appendix at 10. The amended complaint contained one count under 42 U.S.C. § 1983 and one count under the due process clause of the Minnesota Constitution. Appendix at

15-19.

Defendants brought a motion to dismiss the due process claims. In an order dated October 26, 2010, the trial court granted the motion, ruling that it had no authority to grant the requested relief. Addendum at 16-18. Judgment was entered on October 28, 2010, and Plaintiff filed a timely notice of appeal pursuant to Rule 103.03(a), R.App.Pro. Appendix at 25.

Supporting Cases:

Anders v. Dakota Land & Development Co., 289 N.W.2d 161 (Minn. 1980).

State by Humphrey v. Alpine Air Products, 490 N.W.2d 888 (Minn.App. 1992).

Acton Constr. Co. v. State, 383 N.W.2d 416 (Minn.Ct.App. 1986) *review denied* (Minn. 1986).

University of Texas Medical School v. Than, 901 S.W.2d 926 (Tex. 1995)

STATEMENT OF THE CASE

This case was tried before District Court Judge Mary S. DuFresne in the Fourth Judicial Circuit.

Plaintiff Linda Zinter alleges there was an implied contract between her and the University of Minnesota, pursuant to which the University would not require her to take classes in excess of the published degree requirements. Plaintiff further alleges that the University promised not to impose additional degree requirements on Plaintiff and she relied on that promise to her detriment. Plaintiff further alleges a violation of her due process rights under the state and federal

constitutions. The Court dismissed all four claims and entered judgment in favor of Defendants.

STATEMENT OF FACTS

For purposes of this appeal, the following facts are undisputed:

In 1998 Plaintiff was admitted to the University of Minnesota's master of liberal studies ("MLS") program. Appendix at 1, ¶ 3. The program is part-time and designed for working adults. *Id.* The published degree requirements include completion of 30 credits, to be distributed among electives and required courses. Appendix at 2, ¶ 7. The student must complete a thesis or creative project ("final project") at the end of the program. *Id.*

By the end of the spring 2003 semester, Plaintiff had completed 31 credits and all of the other degree requirements with the exception of the final project seminar (LS8002). Appendix at 2, ¶ 9. Her grade point average was 3.562 on a four point scale. Appendix at 3, ¶ 9. She was in good academic standing and had never been charged with violating any University rule or policy. Appendix at 11, ¶ 5. As required, she had obtained the approval of her advisor prior to enrolling in each course she took. Appendix at 12, ¶ 13.

In September 2003 Plaintiff's advisor at that time, Professor Jack Johnson, demanded that she take two additional courses (ARTH 5108 and LS 8100) before she would be permitted to attempt to enroll in the final project seminar. Appendix

at 3, ¶ 11. Plaintiff took one of the required courses and received a grade of C+. She stopped attending the second class and received a grade of “F”. Appendix at 4, ¶ 16. As a consequence, she was not permitted to enroll in LS 8002 and was not awarded a degree. *Id.* at ¶ 17.

Plaintiff alleges the decision to require the additional coursework was based on bad faith and ill will. Appendix at 15, ¶ 29. As evidence, in the spring 2003 semester, prior to being required to take the two extra classes, Plaintiff took a course of study abroad in Florence, Italy. Appendix at 14, ¶ 26. It was her intention to take photographs to use in her final project. *Id.* However, contrary to University policy, Plaintiff was not permitted to use her camera during the study abroad field trips. *Id.* Further alleged evidence of bad faith is that Professor Johnson misrepresented the actual published degree requirements when Plaintiff sought redress within the University. Appendix at 5, ¶ 24.¹

ARGUMENT

I. Standard of Review

A motion to dismiss based on a failure to state a claim upon which relief can be granted must be denied if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief requested.

¹ Further, the University misrepresented the actual published degree requirements in conciliation court. Appendix at 15, ¶ 28.

Northern States Power Co. v. Franklin, 122 N.W.2d 26, 29 (Minn. 1963). The court must accept the facts alleged in the complaint as true and draw all reasonable inferences in favor of plaintiff. *Pullar v. Indp. Sch. Dist. No. 701*, 582 N.W.2d 273, 275-76 (Minn.Ct.App. 1998). It is immaterial whether or not the plaintiff will be able to prove the facts alleged. *Martens v. Minnesota Mining & Manufacturing*, 616 N.W.2d 732, 739-40 (Minn. 2000). “Because of the minimal formal requirements of notice pleadings and the liberal interpretation of pleadings under the rules, a motion to dismiss for [failure to state a claim upon which relief can be granted] will rarely be granted.” David F. Herr & Roger S. Haydock, *Minnesota Practice* § 12.9 (2008).

The standard of review for a motion for summary judgment is the same. Summary judgment is appropriate when there are no disputed issues of material fact and a determination of the applicable law will resolve the controversy. *Gaspord v. Washington County Planning Comm’n*, 252 N.W.2d 590, 591 (Minn. 1977). All factual disputes are to be resolved in favor of the nonmoving party. *Id.*

The appellate court reviews *de novo* a grant of a motion to dismiss or a grant of a motion for summary judgment. *Lefto v. Hoggsbreath Enters, Inc.*, 581 N.W.2d 855, 856 (Minn. 1998).

II. The Trial Court Erred in Finding No Enforceable Contract Between the Parties Precluding the University from Imposing Additional Degree Requirements on Plaintiff.

A. There Is an Enforceable Contract Between the Parties

In an action against an educational institution, a student may allege breach of contract if the institution fails to perform specific promises made to the student. *Alsides v. Brown Institute, Ltd.*, 592 N.W.2d 468 (Minn.App. 1999), 473-74. “The catalogs, bulletins, circulars, and institutional regulations form part of the contract.” *Id.* at 473 (quoting *CenCor, Inc. v. Tolman*, 868 P.2d 396, 398 (Colo. 1994)). “A contract between a school and its students confers duties upon both parties which cannot be arbitrarily disregarded and may be judicially enforced.” *DeMarco v. University of Health Sciences*, 352 N.E.2d. 356 (Ill. App. Ct. 1976). *Anthony v. Syracuse University*, 231 N.Y.S. 435 (1928) (general rule is that a university student who complies with all reasonable regulations and pays tuition creates a contractual relationship with the university and is entitled to complete the selected courses and receive a degree); *People ex rel. Cecil v. Bellevue Hosp. Medical College*, 14 N.Y.S. 490, 490 (1891) (university cannot take money from a student and allow him to remain at school, only to arbitrarily refuse to confer a degree on him). There are numerous decisions in accord.² Indeed, the Seventh

² See *Zunbrun v. University of Southern California*, 101 Cal. Rptr. 499, 504 (Ct. App. 1972) (collecting cases from numerous states); *Wickstrom v. North Idaho College*, 725 P.2d 155 (Idaho 1986); *Taylor v. Wake Forest Univ.*, 191 S.E.2d. 379 (N.C. Ct. App. 1972); *Ward v. Washington State Univ.*, 695 P.2d 133 (Wash.Ct.App. 1985); *Steinberg v. Chicago Medical School*, 371 N.E.2d. 634 (Ill. 1977).

Circuit has said that there “seems to be ‘no dissent’ ” from the proposition that the student-school relationship is essentially contractual in nature. *Ross v. Creighton*, 957 F.2d 410, 416 (7th Cir. 1992) (quoting *Peretti v. Montana*, 464 F. Supp. 784, 786 (D. Mont. 1979)).

The decision in *Cecil v. Bellevue Hospital Medical School*, 14 N.Y.S. 490 (Sup.Ct. General Term, 1st Dept, 1891) is squarely on point. Cecil was attending medical school and had finished his course of study except for a final examination. When he presented himself to take the exam “he was informed by the secretary of the faculty that he would not be allowed to present himself for final examination, nor would [the school] grant him a degree of doctor of medicine.” *Id.* at 490. The school argued that it had the right, for any reason, to refuse the student his examination and degree. The court flatly rejected that argument:

The circulars of the respondent indicate the terms upon which students will be received, and the rights which they were to acquire by reason of their compliance with the rules and regulations of the college in respect to qualifications, conduct, etc. When a student matriculates under such circumstances, it is a contract between the college and himself that, if he complies with the terms therein prescribed, he shall have the degree, which is the end to be obtained.

See also Academic Challenge Cases: Should Judicial Review Extend to Academic Evaluations of Students? 41 American U. Law Review 267, 277 (1992) (there has long been a “general consensus that an implied contract is created by the institution’s acceptance of the student and the student’s commitment of the tuition, money, time, and effort required to complete the course work for the diploma); M. Zolandz, *Storming the Ivory Tower: Renewing the Breach of Contract Claim by Students Against Universities*, 69 Geo. Wash. L. Rev. 91, 107 (2000) (“a wealth of commentary, as well as a considerable amount of treatment by the courts, has established the principle that a university’s relationship with its students can best be assessed contractually.”)

This corporation cannot take the money of a student, allow him to remain and waste his time (because it would be a waste of time if he cannot get a degree), and then arbitrarily refuse, when he has completed his term of study, to confer upon him that which they have promised, namely, the degree of doctor of medicine, which authorizes him to practice that so-called science.

Id. The court concluded that the school's position "cannot for a moment be entertained" and "could never receive the sanction of a court in which even the semblance of justice was attempted to be administered." *Id.* The situation here is no different. Cecil was blocked from taking the final exam. Ms. Zinter was blocked from taking the final project seminar. In both instances the student had no way of knowing when or whether they would be allowed to finish their program and obtain a degree.

Also instructive is *Shuffer v. Board of Trustees of the California State University and Colleges*, 136 Cal Rptr. 527 (Cal. App. 1977). A graduate student with a straight "A" average had two remaining required courses, numbered EDP 557 and EDP 559B. The student was then told that he must take EDP 559A instead of EDP 559B, and further told that "if in the judgment of his fellow practicum members and [the instructor of EDP 559A] he successfully completes this experience he will be given credit for 559B." *Id.* at 530. The student alleged that he alone was directed to take 559A and he alone was subject to evaluation and grading by his peers. *Id.* Contrary to the directive, he attended 559B. The instructor prevented him from doing the work and he received an incomplete in the course and was not awarded a degree. On appeal the court reversed a ruling

for the university and remanded for a hearing to determine whether the student had been treated in an arbitrary and capricious manner. *Id.* at 533.

B. The University Breached Its Contract with Plaintiff.

As the trial court stated, to establish a breach of contract “the plaintiff must prove three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” Addendum at 5 (quoting *Olson & Associates, P.A. v. Leffer, et al.*, 756 N.W.2d 907, 918 (Minn. Ct. App. 2008) *review denied* (Minn. 2009)).

In this case the critical documents forming the contract are the written graduation requirements, which are outlined in Plaintiff’s proposed complaint and first amended complaint. Appendix at 2, ¶ 7, Appendix at 12, ¶ 11. These requirements apply with equal force to the student and the school. The student must successfully complete those requirements in order to graduate. And the school cannot add to those requirements for a particular student in good academic standing.³ This is perhaps the most fundamental part of the agreement between students and schools. If the implied agreement does not contain such a provision the student is at the complete mercy of the school and has no idea when or if he will be allowed to graduate.

³ This case does not present the situation where a school decides to change the published degree requirements for everyone. Obviously the school needs some discretion in that regard. *See Jallali v. Nova Southeastern University, Inc.*, 992 So. 2d 338 (Fla. App. 2008) (university has the right to change published degree requirements if not arbitrary or capricious and adequate notice is provided).

The trial court held the Plaintiff did not complete the necessary conditions precedent because she never took the final project seminar. “Assuming that Plaintiff never sought to enroll in the final project seminar, she did not complete the conditions precedent required by the parties’ contract.” Addendum at 6-7.

It is true that the Plaintiff never sought to enroll in the final project seminar and thus did not complete all the published degree requirements. But she was prevented from doing so as a direct result of Defendant’s material breach. She was close to the goal line and then the University moved the goal line back twenty yards (and left open the possibility of moving it again). The actionable agreement is that the University will not add degree requirements in excess of the published degree requirements. (Such an agreement is implicit in the agreement to award a degree once the published requirements have been met.) Described as such, Ms. Zinter had completed all conditions precedent at the time she was ordered to take the additional classes.

C. This Case Does Not Allege Educational Malpractice

The trial court also ruled the case presented an educational malpractice claim not enforceable under the *Alsides* decision. “Determination of whether Defendant wrongfully required Plaintiff to take two additional courses would require the court to engage in a comprehensive review of a myriad of educational and pedagogical factors as well as administrative policies.” Addendum at 7. “The factfinder would need to determine whether in fact Plaintiff had presented a clear

idea of her final project and that she met pedagogical goals of the University, whatever those goals may be.” Addendum at 8.

The *Alsides* court held that educational malpractice claims attacking the general quality of the education provided to students are typically rejected because of: (1) the lack of a satisfactory standard for evaluating an educator; (2) the inherent uncertainties about causation and damages in light of intervening factors such as a student’s attitude, motivation, temperament, past experience, and home environment; (3) the potential for a flood of litigation against schools; and (4) the possibility that such claims will embroil the courts into overseeing the day-to-day operations of schools. *Id.* at 473. By contrast, a contract claim is not one for educational malpractice where there is no need to inquire into “the nuances of educational processes and theories.” *Id.*

None of the concerns expressed in *Alsides* apply in this case. Plaintiff’s contention is that Defendant had no discretion to require the additional classes, whether two or twenty. Such action is arbitrary and capricious on its face. The standard is clear – did the University impose added classes on Plaintiff above and beyond the published degree requirements (regardless of motivation)? The undisputed answer is yes.

The Plaintiff’s attitude and motivation and home environment are also not relevant. She was in good standing and followed all University rules and regulations. Her state of mind is irrelevant to whether or not the University could require her to take classes in excess of the published degree requirements.

As for a flood of litigation, that will be true only if many other students are treated as poorly as Ms. Zinter. If that is the case, then a flood of litigation is appropriate.⁴

Concerning the final factor, Plaintiff's claim does not put the court in the role of overseeing the day-to-day operations of schools. The case presents a pure question of law that can be decided without any inquiry at all into educational and pedagogical factors. Can a school impose degree requirements on a student in good standing in excess of the published degree requirements, or is such action necessarily arbitrary and capricious?

The trial court focused much attention on the final project seminar and whether in fact Plaintiff had developed a sufficiently clear idea of her topic, which is a necessary prerequisite to enrolling in the final project seminar. Addendum at 6. But, as the trial court acknowledged, Plaintiff never even attempted to enroll in that class. Addendum at 6. And, even if she had, it is Plaintiff's position that the University would still not have the authority to impose on her additional degree requirements. The University could continue to reject her from the seminar or refuse to give her a passing grade if she failed to successfully complete the final project. Thus, the University could always ensure that Ms. Zinter did not walk away with a degree she did not deserve.

⁴ The University argued below that not only did Professor Johnson act in accordance with University policy, but that the policy imposed on him a "duty" to do what he did. Addendum at 20. So this may be a regular occurrence.

III. The Trial Court Erred in Finding That the University Did Not Break Its Promise Not to Impose Additional Degree Requirements on Plaintiff.

There are three elements to a *promissory estoppel* claim. Plaintiff must prove (1) a clear and definite promise, (2) the promise might reasonably induce the promisee's action or inaction and the promisee relies on the promise to her detriment, and (3) the promise must be enforced to prevent injustice. *Deli v. Univ. of Minn.*, 578 N.W.2d 779, 781 (Minn.Ct.App. 1998), *review denied* (1998).

The trial court acknowledged for purposes of Defendant's motion that the University promised Plaintiff that it would award her an MLS degree if she successfully completed all the degree requirements, that the University intended that Plaintiff rely on the promise so that Plaintiff would pay tuition to participate in the program, and that Plaintiff relied on the promise when she enrolled in the MLS program and began paying tuition. Addendum at 8-9.

However, the court found that the University did not break its promise to Plaintiff. "Plaintiff did not complete the requirements of the MLS program. The requirements clearly include completion of the final project, which Plaintiff cannot dispute that she left incomplete." Addendum at 9. This is the same flawed analysis the court used in finding that Plaintiff did not meet the conditions precedent on the contract claim. She could not complete the final required course unless and until she completed the two extra courses.

IV. The Trial Court Erred in Finding That It Did Not Have the Authority to Award the Requested Relief on Plaintiff's Due Process Claims.

The due process clause protects a student's interest in attending a public university. *Abbario v. Hamline Univ. School of Law*, 258 N.W.2d 108, 112 (Minn. 1977). "If a student's expulsion results from the arbitrary, capricious, or bad-faith actions of university officials, the judiciary will intervene and direct the university to treat the student fairly." *Id.*

However, as the trial court noted, the 11th Amendment of the United States Constitution precludes an award of money damages under 45 U.S.C. § 1983.

Addendum at 12. Similarly, money damages are not available for a violation of the due process clause of the Minnesota Constitution. See Addendum at 11-12.

Plaintiff's amended complaint, however, seeks only equitable relief. Specifically, Plaintiff seeks: (1) the disgorgement of the tuition that Plaintiff paid to the University over the course of her enrollment in the MLS program, (2) the disgorgement of other costs and fees Plaintiff had paid to the University, and (3) the expungement from her record of the class in which she received an "F" grade. Appendix at 20.

The trial court ruled that Plaintiff's request for a refund of tuition and costs was in fact a claim for money damages and hence not proper. The trial court further ruled that it did not have the authority to expunge a class from Plaintiff's transcript.

A. Plaintiff's Claim for a Refund of Tuition and Costs Meets All the Elements of Unjust Enrichment.

The mere fact that the relief Plaintiff seeks involves a transfer of money does not make it “money damages.” Damages seek to measure what a plaintiff has lost as a result of the alleged violation. In sharp contrast, the goal of restitution is to prevent the defendant from being unjustly enriched by making him give up what he wrongfully obtained. *See Dobbs, Handbook on the Law of Remedies* 224 (1973) (“The damages recovery is to compensate the plaintiff, and it pays him, theoretically, for his losses. The restitution claim, on the other hand, is not aimed at compensating the plaintiff, but at forcing the defendant to disgorge benefits that it would be unjust for him to keep.”)

The difference between the remedies of restitution and damages has long been recognized by Minnesota courts. *See e.g., Anders v. Dakota Land & Development Co.*, 289 N.W.2d 161, 163 (Minn. 1980) (damages and restitution are different remedies). *State by Humphrey v. Alpine Air Products*, 490 N.W.2d 888, 895 (Minn.App. 1992) (restitution is a traditional equitable remedy). Other courts have reached the same conclusion. *See, e.g., Gilpin v. AFSCME*, 875 F.2d 1310, 1314 (7th Cir. 1989) (typically restitution is a substitute for rather than a form of damages); *Charter Communications v. Burdulis*, 460 F.3d 168, 182 (1st Cir. 2006) (same); *Rogers v. Loether*, 467 F.2d 1110, 1121 (7th Cir. 1972) (restitution is “clearly” an equitable remedy); *SEC v. Commonwealth Chem. Secs., Inc.*, 574 F.2d 90, 102 (2d Cir. 1978) (unlike damages which focuses on the

plaintiff, restitution focuses on the defendant by preventing unjust enrichment and disgorging wrongfully held gains).

As the trial court correctly stated, the elements of a claim for restitution or unjust enrichment are: (1) a benefit conferred by the plaintiff on the defendant, (2) the defendant's acceptance of the benefit, (3) the defendant's retention of the benefit where it would be inequitable to retain it without paying for it. Addendum at 17. *See Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn.Ct.App. 1986) *review denied* (Minn. 1986). The trial court ruled that the first two elements of the offense were met, but not the third:

Plaintiff conferred a benefit on the University (tuition money), the University accepted the benefit, but the University has not wrongly retained the benefit. Plaintiff paid to enroll in courses and the University enrolled her in those courses. Even assuming that Defendants' decision to require Plaintiff to take two additional courses was arbitrary and motivated by bad faith, Plaintiff paid tuition to take the courses ((and all courses prior to the alleged due process violations) and the University enrolled her in those courses. There is nothing wrongful about the University's retention of tuition money in this case.

Addendum at 17. This analysis might be correct if Plaintiff took classes at the University simply for the sake of learning. But she enrolled in the MLS program to obtain a degree that, presumably, would translate into an increased earning potential. She was wrongly denied the degree and hence never received the benefit of the bargain. Her years in the MLS program were largely "a waste of time"⁵ since she was effectively prevented from graduating. Given these

⁵ *See Cecil, supra.*, at 490.

circumstances it would be unjust to allow the University to retain Plaintiff's tuition payments and other costs and fees.

B. The Court Does Have Authority to Expunge a Class Record from Plaintiff's Transcript.

Plaintiff stopped attending one of the classes that she was required to take in excess of the published degree requirements and received an "F" in the class. Appendix at 4. She seeks the removal of any record of that class from her transcript. The trial court, however, concluded that such relief was unavailable because the University's decision to award the grade of "F" to plaintiff was one of academic discretion that cannot be reviewed under the standard of *Alsides, supra*. Addendum at 19.

Plaintiff, however, is not asking the court to interfere in legitimate academic decisions and change the failing grade to a higher grade. Instead, Plaintiff asks that the court completely expunge from her transcript all records of the class. Such relief is appropriate because the class and failing grade were the direct and proximate result of defendants' improper actions. Whether or not the "F" grade was "deserved" based on the quality or quantity of Plaintiff's coursework is simply irrelevant.⁶ Removal of the class and grade from Plaintiff's transcript is certainly within the court's broad equitable powers. *See, e.g., University of Texas Medical School v. Than*, 901 S.W.2d 926, 934 (Tex. 1995)

⁶ Under Defendants' theory even if Plaintiff was forced to take classes for which she clearly was not prepared and consequently failed, Plaintiff would be barred from seeking the removal of the grade.

(court removed an "F" grade from student transcript where student's due process rights were violated).

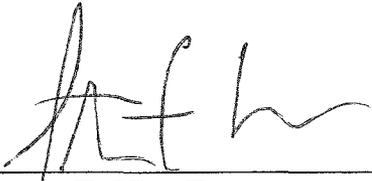
CONCLUSION

Plaintiff requests that the Court reinstate her claims for breach of contract and *promissory estoppel*. Plaintiff further requests that the Court find as a matter of law that the University did breach its agreement with Plaintiff.

Plaintiff also requests that the Court rule that Plaintiff can maintain a due process claim seeking disgorgement of the tuition and other monies Plaintiff provided to the University, and that the trial court does have the equitable authority and discretion to remove a class record from Plaintiff's transcript where the class was a direct and proximate result of Defendants' violation of law.

Dated: December 18, 2010

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