FISH OR CUT BAIT:
ACADEMIC DISMISSALS AND DUE PROCESS

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INTRODUCTION

It is an unfortunate reality that students are sometimes dismissed from public universities for inadequate performance. Students may flounder when it comes to meeting academic standards in order to progress in their degree programs. When this occurs, they might be dismissed. In a January 2017 ruling,1 the Alaska Supreme Court clarified the legal standards that apply when Alaskan courts are asked whether university policies comport with due process with regard to student dismissals.

Part One of this Comment discusses due process requirements in cases involving academic dismissals. Part Two concerns the judicial treatment of academic dismissals, compared with dismissals on the basis of disciplining behavioral misconduct. Part Three summarizes applicable due process standards for academic dismissals in Alaska. Part Four provides an in-depth examination of the recently-decided case, Horner-Neufeld v. University of Alaska Fairbanks,2 which applied and further clarified the relevant standards for academic dismissals in this jurisdiction. Part Five concludes.

I. DUE PROCESS REQUIREMENTS FOR ACADEMIC DISMISSALS

It is well-settled that students have constitutionally provided protections while attending educational institutions.3 One such constitutional protection is that of due process. Students enrolled in public universities are entitled to due process protections in disciplinary proceedings.4 The Fourteenth Amendment mandates due process when citizens of a state are deprived of life, liberty, or property.5 This requirement is mirrored in Alaska’s state constitution.6

In the words of the Supreme Court, “[o]nce it is determined that due process applies, the question remains what process is due.”7 A due process

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2 Id. at 6.
5 U.S. CONST. amend. XIV, § 1.
6 See ALASKA CONST. art. 1, § 7.
analysis has two distinct components: procedural and substantive due process. Procedural due process relates to adequate notice and the “meaningful opportunity” to be heard before a neutral party. Substantive due process, by contrast, protects against egregious and arbitrary government conduct. Actionable claims related to substantive due process involve government conduct that “shocks the conscience.” Some courts have noted that substantive due process claims are “difficult to allege as the circumstance that will give rise to a claim rarely occur.”

While both procedural and substantive due process protections apply; however, “substantive due process claims are difficult to maintain.” Procedural and substantive due process receive different levels of judicial review, with the determination of the existence of substantive due process afforded greater deference. For academic dismissals, the courts defer to “the decision of school officials unless . . . plaintiffs can show . . . substantial deviation from standard procedures.” As the U.S. Supreme Court has noted,

> When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty’s professional judgment. Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

8 See Moore v. Parks, No. 96-56650, 1998 WL 123131, at *2 (9th Cir. Mar. 17, 1998) (“In addition to whatever process may be due a student upon academic dismissal, a student has a substantive due process right protecting her from an arbitrary or bad faith dismissal.”); see also Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 226–27 (1985) (noting that orderly procedures were followed and analyzing whether substantive due process rights had been violated by the student’s dismissal).


10 See Young v. City of Mount Ranier, 238 F.3d 567, 574 (4th Cir. 2001) (“Broadly speaking, the substantive due process provision of the Fourteenth Amendment protects against egregious, arbitrary governmental conduct.”).

11 Id. (quoting County of Sacramento v. Lewis, 523 U.S. 833, 846 (1998)).


13 Painter, 2017 WL 4678231, at *2; see also Young v. Cty. of Mt. Ranier, 238 F.3d 567, 574 (4th Cir. 2001).

14 See generally Mark Tushnet, Alternative Forms of Judicial Review, 101 MICH. L. REV. 2781 (2003) (examining the differences between, and features of, the various levels of judicial review).


One court has articulated the difference in levels of review between procedural and substantive due process thusly:

While missteps in the course of providing a citizen with due process can form the basis of a procedural due process claim, the fact that government officials at least tried to afford a citizen with notice and an opportunity to be heard – however allegedly bungled and prescribed that process may have been – will in most instances foreclose a substantive due process claim.17

The Supreme Court has acknowledged distinctions in the process required for disciplinary dismissals and those related to academic standing.18 Less process is due when a student is suspended or dismissed for academic reasons rather than for alleged misconduct.19 According to the Supreme Court, disciplinary dismissals resemble traditional judicial fact-finding by their very nature, whereas separating a student from a university for failure to meet academic standards “requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decisionmaking.”20 Put another way, faculty members are “in the best position to determine how to help the student to succeed and must have the discretion necessary to maintain the integrity of the curriculum and the degree” when determining whether a student should be dismissed for academic reasons.21

One example of the diminished process due in academic dismissals is that public college administrators dismissing students for inadequate academic performance do not need to hold a hearing.22 By contrast, disciplinary dismissals require oral or written notice of the allegations and an “informal give-and-take” between the student and an administrative body.23

18 See Bd. of Curators of the Univ. of Mo. v. Horowitz, 435 U.S. 78, 90 (1978); see also Mahavongsanan v. Hall, 529 F.2d 448, 450 (5th Cir. 1976) (“There is a clear dichotomy between a student’s due process rights in disciplinary dismissals and in academic dismissals.”).
19 See Moore, 1998 WL 123131, at *1.
20 Horowitz, 435 U.S. at 90.
22 Horowitz, 435 U.S. at 90; see also Horner-Neufeld v. Univ. of Alaska Fairbanks, 389 P.3d 6, 16 (Alaska 2017), reh’g denied (Alaska 2017) (indicating that a hearing is not required to satisfy due process for academic dismissals).
23 Horowitz, 435 U.S. at 85–86. In the private college or university setting, the due process requirements for academic dismissals are even more lax and those for disciplinary dismissals may vary from public universities. See Beauchene v. Miss. Coll., 986 F. Supp. 2d 755, 767 (S.D. Miss. 2013) (“Unlike public universities where policies and procedures regarding forms of academic dishonesty must comport with due process requirements of the Fourteenth
II. DISCERNING ACADEMIC FROM DISCIPLINARY DISMISSALS

In Alaska, whether university procedures complied with due process requirements is a question of law. Alaska courts review such questions using their independent judgment, without deferring to agency expertise. The state’s courts have recognized that sometimes it is a “close call” in determining whether a dismissal is academic or disciplinary in nature. This distinction is particularly important, as procedural requirements differ regarding whether a student is dismissed for academic performance or due to behavioral conduct.

In the case of Nickerson v. University of Alaska Anchorage, a student was dismissed from a teacher certification program for his failure to respond to feedback, repeated hostile and abrasive interaction with faculty, and verbal abuse and intimidation of other professionals. The student was placed in a practicum as part of his course of study and was ultimately dismissed as his conduct “fell short of the standards for retention in the special education program.”

Before the court could answer whether Mr. Nickerson received adequate due process protections with regard to his dismissal, the court first needed to determine whether the dismissal was due to academic performance or behavioral conduct. The state university argued that it had dismissed this student for academic reasons, but the court noted that the language the university used in doing so seemed to indicate that Mr. Nickerson was dismissed for his insubordination, inability to work well with other teachers and his faculty, and general disorderly and disruptive conduct.

24 See Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46, 50 n.1 (Alaska 1999).
26 See Nickerson, 975 P.2d at 53.
28 Nickerson, 975 P.2d at 46.
29 Id. at 49.
30 Id.
31 Id. at 52.
32 Id. at 53.
The Nickerson court was presented with a “close question” without a “clearly identifiable line between academic and disciplinary proceedings.” Ultimately, the court sided with the university, recognizing “that school teachers must possess the ability to interact effectively with their students and colleagues, and, while less than tangible, such a skill may form an academic requirement necessary for satisfactory completion of a teaching program.”

Years later, the Alaska Supreme Court was again confronted with a “close call” in Richards v. University of Alaska. In Richards, a Ph.D. student in Clinical-Community Psychology alleged that she was dismissed because she was accused of plagiarizing a paper. She argued that plagiarism was categorized under the relevant university code of conduct as a disciplinary offense, and because of that, she should have been afforded due process protections relevant to disciplinary dismissals.

The court disagreed. Instead of being dismissed due to the plagiarized paper, the court found that Ms. Richards was dismissed primarily because she “was unwilling to accept constructive criticism,” “could not appropriately accept feedback,” and “was quick to doubt the judgment and experience of others.” By the time she was eventually dismissed, Ms. Richards had not been in good academic standing for two semesters, and she had not satisfactorily completed a remediation assignment related to the plagiarized paper.

Instead of categorizing the dismissal as disciplinary, the court reasoned that Ms. Richards was dismissed due to an academic impairment. As defined in the relevant university code of conduct, such impairments included “inadequate level of self-directed professional development” and “inappropriate use of and/or response to supervision or academic guidance.”

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33 Id.
34 Id.
36 Id. at 606–07.
37 Id. at 609–10.
38 Id. at 610.
39 Id.
40 Id. at 616.
41 Id.
Alaska courts have recognized that sometimes a case hinges on the academic-disciplinary dismissal distinction. If left unchecked, universities could avoid the additional protections afforded to disciplinary dismissals by simply labeling it an academic action. Accordingly, courts may look to whether the action emphasized correcting behavior through faculty suggestion or forewarning—as in correcting failing work—or punishing behavior after the fact, which would be suggestive that the dismissal was a sanction for improper conduct.

III. THE STANDARD OF REVIEW IN ALASKA

Alaska courts must be satisfied that universities, and in particular, public institutions, comport with due process when dismissing students. In its review of U.S. Supreme Court precedent, the Alaska Supreme Court noted that the Court has “never articulated the minimum process required for academic dismissals,” but indicated that procedural due process is satisfied if “(1) the school fully informs the student of its dissatisfaction with his performance and the danger that this deficiency poses to continued enrollment, and (2) the ultimate decision to dismiss is careful and deliberate.” The Supreme Court precedent has further counseled that:

Dismissal of a student for academic reasons comports with the requirements of procedural due process if the student had prior notice of faculty dissatisfaction with his or her performance and of the possibility of dismissal, and if the decision to dismiss the student was careful and deliberate.

With regard to procedural due process, Alaska courts are particularly concerned with the timing and content of notice given to students as to make such notice “meaningful.” In Nickerson, the Alaska Supreme Court found that notice must be more than perfunctory and “meaningful” notice, meaning that notice must be given “prior to the decision to dismiss that the faculty is dissatisfied with his performance and that continued deficiency will result in dismissal.” Ultimately, the record in Nickerson was unclear whether adequate notice was provided to the student that his continued unsatisfactory performance might result in his dismissal from

42 See Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46, 53 (Alaska 1999).
43 See id.
44 See id.
45 Id.; see also Bd. of Curators of the Univ. of Mo. v. Horowitz, 435 U.S. 78, 85 (1978).
46 Nickerson, 975 P.2d at 53 (citing Horowitz, 435 U.S. at 85).
47 Id. at 53.
48 Id.
the educational program.\textsuperscript{49} Accordingly, the case was remanded for further development of the record.\textsuperscript{50}

Applying the \textit{Nickerson} standard, the Alaska Supreme Court more recently found in \textit{Richards} that administrators, who had repeatedly cautioned a student that her inability to accept feedback, as well as her lack of good standing in a Ph.D. program, had provided that student with sufficient notice.\textsuperscript{51} In that case, the student, who had failed to adequately complete a remediation paper, was asked to resign from a research assistant position and received several reviews that noted she was not in good academic standing.\textsuperscript{52} Not only was the student given notice, but that notice specifically noted that the student’s failure to remedy her situation could result in eventual dismissal.\textsuperscript{53} \textit{Inter alia}, her annual reviews noted that a breach of standards of professionalism could “result in non-continuation in the Ph.D. Program,” and the relevant student handbook noted that multiple semesters without good standing “could result in dismissal from the program.”\textsuperscript{54}

In another case, the Alaska Supreme Court ruled that a social work student’s non-passing grade complied with procedural due process.\textsuperscript{55} In that unpublished case, \textit{Hermosillo v. Univ. of Alaska Anchorage}, a non-passing grade in a practicum field placement course had the effect of disqualifying the student from an educational program in social work.\textsuperscript{56} The Court found that the student knew that a failing grade in the course would bar him from the program, notably because he had unsuccessfully applied three times for the program.\textsuperscript{57} After receiving several warnings about the poor quality and untimeliness of his written reports and his failure to correct mistakes at the field placement, the student received adequate notice of the academic deficiencies behind the failing grade.\textsuperscript{58}

\textsuperscript{49} \textit{Id.} at 54.
\textsuperscript{50} See \textit{id.} at 54 (remanding the case).
\textsuperscript{51} Richards v. Univ. of Alaska, 370 P.3d 603, 615–16 (Alaska 2016).
\textsuperscript{52} \textit{Id.} at 616.
\textsuperscript{53} \textit{Id.}
\textsuperscript{54} \textit{Id.}
\textsuperscript{56} \textit{Id.} at *2.
\textsuperscript{57} \textit{Id.}
\textsuperscript{58} \textit{Id.} at *3.
Mr. Hermosillo further argued that the state university violated his due process rights by failing to readmit him after the non-passing grade.\textsuperscript{59} The court was unsympathetic to this argument, finding that the faculty had made a careful determination about excluding the student from the program—the court found that the faculty appropriately based their determination on their professional judgment about his qualifications and conduct, and met with the student to explain the reasons for the denial.\textsuperscript{60} One faculty member summarized the multiple reasons for the denial of his re-application:

The first . . . [reason] is inability to respond appropriately to feedback on assignments. Related to that is blaming others for personal poor performance, not taking personal responsibility. Chronically late work, despite repeated feedback. Requirements on assignments have not been met sufficiently. As far as application to the practicum field, the application was not updated and there are gaps in your resume. Those are the basic reasons.\textsuperscript{61}

Mr. Hermosillo also contended that the university’s decision to dismiss him from the practicum course was so arbitrary that it violated his substantive due process rights.\textsuperscript{62} In \textit{Bruner v. Peterson}, the Alaska Supreme Court noted that the review of substantive due process is highly deferential to faculty determinations in academic dismissal cases.\textsuperscript{63} In its incorporation of U.S. Supreme Court precedent, the Alaska Supreme Court has also noted that courts cannot override the substantive determination of the faculty unless it is such a substantial departure from accepted academic norms, so as to demonstrate that the responsible decision-makers “did not actually exercise professional judgment.”\textsuperscript{64}

In applying this standard to the facts of the case, the \textit{Hermosillo} court found that the faculty member gave him the non-passing grade after reviewing his performance against the course’s standards, as set forth in the syllabus and based on the students’ interaction with the faculty and students involved in the practicum placement.\textsuperscript{65} Such activity was well

\textsuperscript{59} Id. at *4.
\textsuperscript{60} Id. at *5.
\textsuperscript{61} Id. at *3.
\textsuperscript{62} Id. at *4.
\textsuperscript{63} See \textit{Bruner v. Petersen}, 944 P.2d 43, 48 (Alaska 1997) (“The faculty is in the best position to determine how to help the student to succeed and must have the discretion necessary to maintain the integrity of the curriculum and the degree.”).
\textsuperscript{64} Id. at 48 (quoting \textit{Regents of Univ. of Mich. v. Ewing}, 474 U.S. 214, 225 (1985)).
\textsuperscript{65} See \textit{Hermosillo}, 2004 WL 362384, at *4.
within academic norms, not a substantial or arbitrary deviation there- 
from.66

Mr. Hermosillo contended that it was not his performance that led to 
his non-passing grade, but that he had received the failing grade in retali- 
ation for lodging reports of sexual harassment at his practicum place- 
ment.67 Nothing in the record discussed such a report.68 Similarly lacking 
was any evidence that the faculty member was aware of such a report when 
making the grading decision.69 Appropriately, the court found that the al-
legation was insufficient to demonstrate that the grading decision departed 
from academic norms and was based on a retaliatory motive.70

IV. CLARIFYING AND APPLYING THE DUE PROCESS REQUIREMENTS

A recently-decided case, Horner-Neufeld v. University of Alaska 
Fairbanks,71 provided the Alaska Supreme Court an opportunity to further 
refine its due process jurisprudence regarding academic dismissals. In a 
January 20, 2017 decision, the state Supreme Court upheld the dismissal 
of a student based on inadequate performance in a graduate program.72

A. Factual Background

Gayle Horner-Neufeld was a student in the Ph.D. program in Marine 
Biology at the University of Alaska Fairbanks.73 Horner-Neufeld demon-
strated success in her coursework, but failed to meet the program’s re-
search standards.74 Students in the Ph.D. program were expected, inter 
alia, to find an advisor by the end of their initial year in the program, com-
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66 See id. at *4.
67 See id. at *5.
68 Id.
69 Id.
70 Id.
72 Id. at 18.
73 Id. at 9.
74 Id.
75 Id.
Notably, the student-advisor relationship “is a critical factor in the student’s success.”

Ms. Horner-Neufeld spent six years in the graduate program, departing without a degree. During her first year in 2003, Ms. Horner-Neufeld was initially assigned two advisors. She rejected advice from a faculty member to transition to a “more manageable” research project, and she turned in several incomplete thesis proposals. Thereafter, her advisors resigned from overseeing her work in July 2004.

The floundering Marine Biology graduate student went to work filing grievances against her initial advisors, alleging that they had dropped her as an advisee without notice. However, the student’s specific research focus significantly limited the number of faculty members qualified to advise her project. Several months after her initial advisors terminated the advisor-advisee relationship, Ms. Horner-Neufeld met with the Dean and Associate Dean of the school in February 2005. The Dean noted that the administration would investigate the student’s complaints, but warned that the student would “not be eligible to continue as a graduate student in [the] Marine Biology program unless [she] found a qualified advisor to supervise [her] work.” The Dean further encouraged the student to focus her efforts “on moving forward and finding an advisor so [she] may continue to working toward [her] Ph.D.” in the program.

The Dean gave the student approximately three months to find a new advisor. The school also funded a trip from Fairbanks to Juneau so that she may meet potential advisors, and the Marine Biology Ph.D. program, itself, offered faculty incentives to assist the student in meeting the

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76 Id.
77 Id.
78 Id.
79 Id.
80 Id.
81 Id.
82 Id.
83 Id.
84 Id.
85 Id.
86 Id.
deadline. These efforts had some success: the student found two advisors and received a Satisfactory overall rating in her annual review.

The next two years were rough seas for the Marine Biology graduate student. She struggled to obtain substantial grant funding, receiving a singular $500 grant in the 2005-2006 academic year, and submitting only one grant proposal the following academic year. Her advisor and other members of the faculty noted that these funding troubles could be linked to her failure to meet internal deadlines. Dismissing such concerns, Ms. Horner-Neufeld retorted that the faculty did not provide timely feedback and requested too many revisions of her thesis. She also filed several thesis drafts, none of which faculty members deemed complete.

The relationship with the second set of advisors soured. An annual report for 2005-2006 went unfilled, and Horner-Neufeld had her annual review for the 2006-2007 academic year in December 2007, approximately a year late; moreover, her annual report for that year was filed in March 2008, which was during the 2007-2008 academic year. She was given a Conditional status and was provided until March 27, 2008 to file “a detailed thesis proposal that can be used to guide and implement a research program that will lead to a successful dissertation.” While the student did submit a draft, it was found to be unsatisfactory, and her second set of advisors subsequently left their relationship with this advisee.

By the summer of 2008, Ms. Horner-Neufeld was five years into a graduate program without a suitable thesis proposal, as well as without the all-critical advisor-advisee relationship. Thereafter, she began to work with a relatively new faculty member, who agreed to pursue some research with her and discuss the potential of becoming the student’s advisor. The
record is somewhat mixed regarding whether this third faculty member was her advisor, yet several witnesses made it clear that he did not enter into an advisor-advisee relationship, while Ms. Horner-Neufeld claimed that the faculty member was indeed her advisor.98 Regardless of whether this third faculty member was the student’s advisor, the record demonstrated that she worked with this professor to develop a new thesis proposal based on his data provided to her.

The Marine Biology student again attempted to swim upstream in maintaining a suitable relationship with fellow researchers and faculty members. Within a few months of beginning to work with this third faculty member, the relationship cratered to the point that she was removed from an upcoming research trip.99 In September 2008, the university provided mediation services to this third faculty member and Ms. Horner-Neufeld to attempt to salvage the relationship.100 It was unsuccessful. In November 2008, the school’s administration informed the student that she would be de-listed from the school’s graduate program in January 2009.101

The court summarized the situation of Ms. Horner-Neufeld as of January 2009, who had been enrolled for six years, writing that at that point of her de-listing: “[N]o Satisfactory report had been filed in over three years, her last report of Conditional had stood for two semesters, and she had been without an advisor or committee for nine months. She never submitted a satisfactory thesis project proposal to her advisors or took a comprehensive exam.”102

Subsequently, the student filed a formal grievance in April 2009, alleging that the university’s Office of Equal Opportunity had discriminated against her.103 Specifically, she alleged that she had suffered discrimination, retaliation, and a hostile learning environment.104 As for potential remedies, she demanded “accountability” and compensation for her time

98 See id., n.2.
99 Id.
100 Id.
101 Id. This “de-listing” was not a formal dismissal, which came later in 2013, but had the effect of removing her from the list of active graduate students in the school. See id. at 11–12.
102 Id. at 10.
103 Id. The court noted that Ms. Horner-Neufeld had filed the complaint based on the university’s “broad definition of discrimination” rather than specific bases, but when prompted she chose the bases of age and gender. She did not argue discrimination based on these bases. See id. at 12.
104 Id. at 10.
and money that she had invested in the graduate program. The university undertook an investigation, found that this Marine Biology student’s allegations sounded fishy, and concluded that there were no grounds for the grievance. After the Office of Equal Opportunity’s findings were upheld on further review at the university, the aggrieved student took her claims to state court.

B. Procedural History & Eventual Dismissal

Ms. Horner-Neufeld first challenged her treatment in the Ph.D. program on the basis of the alleged discrimination. The court noted that the student “mistakenly” pursued her claims through the equal opportunity office, rather than via the academic appeals process. Accordingly, the court remanded the case back to the university and ordered that the student utilize the proper channel to pursue her claim.

The next month, the school’s administration formally recommended her dismissal. Among the various reasons cited in the recommendation, the administration specifically noted her inability to form an advisory committee, which was due to her own poor performance, even with assistance and support from the school. The formal academic dismissal decision was sent in May 2013, and cited it two independent bases for the decision to dismiss her: “(1) Horner-Neufeld was rated Conditional in spring 2008 and thus was not in good standing and (2) Horner-Neufeld lacked a graduate committee due to her poor performance.”

At this point, Ms. Horner-Neufeld was unconvinced that the academic appeals process applied to her situation—that is, a dismissal based on the faculty’s judgment that her academic performance failed to meet requisite standards. She proceeded “under protest” and filed appeals through the university system. Upholding the dismissal, the university system noted that it lacked any evidence that she had made “research
progress,” and that it lacked any indication that “she had made” forward “progress toward completion of her comprehensive exams . . . .” Ms. Horner-Neufeld then appealed the university’s decision back to state court.

C. The Alaska Supreme Court’s Review of The Student’s Allegations

Ms. Horner-Neufeld—having spent six years in the school’s Ph.D. program without obtaining a degree—returned to court four years after being formally de-listed from the university’s graduate student ranks. The superior court disagreed with her contentions, denying them in toto, and Ms. Horner-Neufeld again appealed—this time to the state Supreme Court.

In her appeal, Ms. Horner-Neufeld lodged three primary arguments, one challenging the university’s finding that she suffered no discrimination, another alleging damages based on an implied contract theory, and a third contending that her due process had been violated with regard to her dismissal.

The Horner-Neufeld court handily disposed of Ms. Horner-Neufeld’s discrimination-based argument. In relevant part, the student asked the university—and now the court—to infer that the administration must have discriminated against her, based on the fact that she had good grades. The university’s Office of Equal Opportunity had interviewed at least six staff members and faculty, as well as reviewed both the

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115 Id.
116 Id.
117 See id. at 10–11 (“The dean . . . sent a formal notice of dismissal to Horner-Neufeld on May 20, 2013.”).
118 Id. at 11. The Alaska Supreme Court hears civil appeals directly from the Superior Court. See ALASKA R. APP. P. 202(a) (“An appeal may be taken to the supreme court from a final judgment entered by the superior court, in the circumstances specified in AS 22.05.010.”). The intermediate Court of Appeals has jurisdiction over trial court criminal decisions. See ALASKA R. APP. P. 202(b) (“An appeal may be taken to the court of appeals from a final judgment entered by the superior court or the district court, in the circumstances specified in AS 22.07.020.”).
119 See Horner-Neufeld, 389 P.3d at 12. Ms. Horner-Neufeld also demanded a trial de novo. The Supreme Court noted that such procedure was “rarely warranted,” and that the Superior Court did not abuse its discretion in denying a trial de novo, as the circumstances warranting one were not present here. See id. at 14.
120 Id. at 12.
121 Id.
122 Id.
student’s complaint and voluminous emails supplied by Ms. Horner-
Neufeld and others. In reviewing the university’s findings based on a
“substantial evidence” standard, the court found that the decision-maker
had “ample evidence” to conclude that the student’s research performance
was “poor.” Indeed, the student’s complaint lacked any evidence that
she had experienced discrimination. Instead, the record indicated that she
was dismissed for unsatisfactory research performance. The court was
clear that “[n]o matter her achievements in the classroom, Horner-Neufeld,
after six years, four advisors, and multiple drafts with feedback, had never
submitted a complete proposal for the core requirement of her Ph.D. pro-
gram—a thesis that would contribute to the body of knowledge in her
field.”

Despite overwhelming evidence of her inadequate performance in
the research component of the graduate program, Ms. Horner-Neufeld at-
tacked the thoroughness of the university’s investigation. Specifically,
she decried the fact that she was never formally interviewed during the
university’s investigation, and she argued that the university failed to give
her notice of her performance falling below academic standards. But
the court then reminded the student that there was no requirement of such
an interview. Moreover, the court cast the department’s behavior not as
retaliation, but as support. This Marine Biology student seemed to be a
fish out of water, and the department took steps to help her succeed.
Instead of dismissing her in retaliation for her February 2005 complaints
against her initial advisors, the faculty provided funding and incentives for
potential advisors, arranged the trip to Juneau, provided additional re-
search funding in 2007, and actively addressed potential issues and worked
to mitigate concerns while they monitored the student’s situation. Ultimate-
lly, the court found that the Office of Equal Opportunity’s investiga-
tion was thorough and legitimate.

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123 Id.
124 Id. at 13.
125 Id.
126 See id. at 14.
127 Id.; cf. WHITNEY HOUSTON, HOW WILL I KNOW (Arista 1985) (detailing one woman’s
experience that without notice it was difficult to have actual knowledge, hence the titular ques-
tion, “How will I know?”). It is clear from the record that faculty members were knowledgeable
about these things, including the requisite standards for graduate students to make forward pro-
gress in the program.
129 Id.
130 Id.
The student was similarly unsuccessful on her implied contract contention. Ms. Horner-Neufeld argued that the university failed to comply with its own procedures, and thereby it had violated an implied covenant of good faith and fair dealing. As it had done before, the Alaska Supreme Court sidestepped the question as to whether the student had a contract with the university, noting that even if such a contract existed, the university had satisfied its obligations. In this case, the university had “surely satisfied” what it was required to do as it had helped the student find and maintain an advisor, attempted mediation with the third potential advisor, and monitored relationships between the student and the faculty.

D. Applying the State’s Due Process Requirements for Academic Dismissals

Ms. Horner-Neufeld challenged her academic dismissal on both procedural and substantive due process grounds. The record indicated that this was not a disciplinary dismissal, so the standards applicable to academic dismissal were used in this case. Indeed, Ms. Horner-Neufeld relied upon policies regarding academic performance in her arguments. Applying Nickerson, the court examined whether the university substantially complied with its own procedures and policies and whether the application of these policies in the current case was arbitrary, unreasonable, or an abuse of discretion. In reviewing the university’s relevant published documents, the court found that the university had abided by its policies. Specifically, the academic catalog noted that Ms. Horner-Neufeld could be “disqualified from graduate study” if her academic performance was deemed unsatisfactory, and that an advisor and was required in order for her to obtain a “Satisfactory” committee report and remain in good standing. Further, the court noted that the dean’s statement in

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131 Id. at 18.
132 See Bruner v. Petersen, 944 P.2d 43, 48 (Alaska 1997) (“While we have not previously decided whether the catalog or the handbook of a state university constitutes a contract between the student and the university, we need not reach that issue in this case.”).
133 Horner-Neufeld, 389 P.3d at 18.
134 Id.
135 Id. at 11.
136 Id. at 15.
137 See id., n.20 (citing Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46, 50 n.1 (Alaska 1999)).
138 Horner-Neufeld, 389 P.3d at 16.
February 2005 indicated that the student would be dismissed if she failed to find an advisor, and that the student had received written notice of her Conditional status twice, and still failed to rectify the situation.\textsuperscript{139}

The court then turned to the due process analysis under the federal and state constitutions. Beginning with procedural due process, the court noted that a formal hearing was not required for academic dismissals.\textsuperscript{140} What was required under the \textit{Nickerson} standard was that the school fully informed the student of the academic deficiency and its potential consequences for her continued enrollment, as well as an ultimate decision regarding dismissal that was both “careful and deliberate.”\textsuperscript{141} As noted above, Alaska courts strongly consider the notice given to students in academic dismissals, and the court in \textit{Horner-Neufeld} specifically discussed that notice “must precede dismissal ‘by a reasonable time so that a student has a reasonable opportunity to cure his or her deficient performance.’”\textsuperscript{142}

In this case, the court found that Ms. Horner-Neufeld had received ample notice of the need for an advisor, her deficiency in securing one, and ample opportunity to correct the issue.\textsuperscript{143} The dean had clearly informed her in February 2005 that she would be ineligible to continue as a graduate student unless she found an advisor.\textsuperscript{144} Ms. Horner-Neufeld was aware that she was required to obtain Satisfactory annual reports, and that Conditional status reports could culminate in her dismissal from the program. She further failed to comply with the faculty’s requirement that she submit an adequate thesis proposal by March 2008.\textsuperscript{145}

Ms. Horner-Neufeld had run out of time in the program, and she was ultimately de-listed as a graduate student in 2009.\textsuperscript{146} Instead of offering an apology for her academic deficiencies and questionable behavior, the graduate student filed suit, claiming that the faculty had not only failed to

\begin{itemize}
  \item \textsuperscript{139} Id.
  \item \textsuperscript{140} Id.
  \item \textsuperscript{141} Id. at 16–17 (citing \textit{Nickerson}, 975 P.2d at 53 (requiring that the school fully informs the student of her academic deficiency)).
  \item \textsuperscript{142} Id. at 16–17 (citation omitted).
  \item \textsuperscript{143} Id. at 17.
  \item \textsuperscript{144} Id. at 9 (“[Y]ou will not be eligible to continue as a graduate student in our Marine Biology program unless you find a qualified advisor to supervise your work . . . .”) (alteration in original).
  \item But see \textsc{Justin Bieber, What Do You Mean?} (Def Jam 2015) (identifying areas of ambiguity, such as when his purported partner “[s]aid we’re running out of time,” to which one may be tempted to ask “What do you mean?”).
  \item \textsuperscript{145} \textit{Horner-Neufeld}, 389 P.3d at 10.
  \item \textsuperscript{146} Id.
\end{itemize}
warn her about a possible dismissal, but that she was also not informed that her research performance failed to meet academic standards.\textsuperscript{147} The court found that the decision to de-list the student was both careful and deliberate.\textsuperscript{148} The court acknowledged that research was critical to the student’s success in the graduate program, but she had trouble securing—or even submitting—grant proposals.\textsuperscript{149} Given how closely the faculty had monitored and assisted the student over six years, it was difficult for the court to characterize the school’s decision to de-list the student “as anything other than careful and deliberate.”\textsuperscript{150} In six years, Ms. Horner-Neufeld had “never produced a satisfactory thesis proposal despite requests, with deadlines, from her advisors, and despite the Graduate Student Manual’s guidance that a proposal be developed within 18 months.”\textsuperscript{151} Finding that the school had satisfied both prongs of the Nickerson test, the court found that the faculty had afforded Ms. Horner-Neufeld procedural due process.\textsuperscript{152} 

With regard to substantive due process, Ms. Horner-Neufeld argued that the university violated her rights when it dismissed her from the graduate program.\textsuperscript{153} In applying precedent from both the U.S. and Alaska Supreme Court,\textsuperscript{154} the Horner-Neufeld court reviewed the facts giving great deference to the faculty’s professional judgment, and asked whether the school’s decision was a substantial departure from accepted academic norms. In one sentence, the court’s reasoning was clear:

Given that after six of the maximum ten years to complete a Ph.D., Horner-Neufeld had exhausted relationships with four co-advisors and a potential fifth advisor, had never submitted a complete thesis proposal, had struggled to win grants, and had not yet taken her comprehensive exam, her dismissal was not a substantial departure from accepted academic norms.\textsuperscript{155}

\textsuperscript{147} Id. at 9–10; see JUSTIN BIEBER, SORRY (Def Jam 2015) (“I hope I don’t run out of time . . . Cause I just need one more shot at forgiveness.”).
\textsuperscript{148} Horner-Neufeld, 389 P.3d at 17.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{153} Id.
\textsuperscript{155} Id. at 18.
The student’s naked allegation was further laid bare, as the court found that she had offered no evidence to suggest a departure from such norms.\textsuperscript{156}

\section*{E. Lessons for Jurists and Future Advocates}

In reaching its decision, the \textit{Horner-Neufeld} court offered several lessons for advocates and jurists. Specifically, the opinion suggests a preferred order of operations for such arguments, noting that procedural claims resulting from an academic dismissal are first examined in terms of the school’s compliance with their own policies, and then on constitutional grounds of due process.\textsuperscript{157} Formulating the analysis as such has its advantages. Specifically, structuring and evaluating arguments regarding the university’s own procedures facilitated the court’s review of the student’s due process protections. For example, if a public university did not comply with its own procedures, such failure could cut against the carefulness of its ultimate decision under the second \textit{Nickerson} prong.\textsuperscript{158} Further, a university policy contained in a handbook or catalog could inform the court’s decision—and future advocates’ arguments—about whether dismissed students were afforded adequate notice under \textit{Nickerson}’s first prong.

The \textit{Horner-Neufeld} court also formally adopted the substantive due process requirements that the Alaska Supreme Court articulated in \textit{Hermosillo}, as reviewed above.\textsuperscript{159} As an unpublished opinion, \textit{Hermosillo} was entered pursuant to Alaska Rule of Appellate Procedure 214, which limited its precedential value.\textsuperscript{160} By incorporating the case here, the court formally adopted that case’s reasoning in a published opinion, thereby giving it greater weight in future cases.

Additionally, the court’s thorough analysis of the facts in this case suggests that the inquiry as to whether dismissed students have been afforded due process is, at once, both deferential and fact-intensive. Courts defer to the professional judgment of the faculty in academic dismissals related to the ultimate decision to dismiss students for academic reasons,

\begin{itemize}
\item \textsuperscript{156} \textit{Id.}
\item \textsuperscript{157} \textit{Id.} at 15–18.
\item \textsuperscript{158} See \textit{Nickerson} v. Univ. of Alaska Anchorage, 975 P.2d 46, 51–52 (Alaska 1999).
\item \textsuperscript{159} See \textit{id.} at 52–53.
\item \textsuperscript{160} See \textit{ALASKA R. APP. P. 214(d)(1)} (“Citation of unpublished decisions in briefs and oral arguments is freely permitted for purposes of establishing res judicata, estoppel, or the law of the case. Citation of unpublished decisions for other purposes is not encouraged.”).
\end{itemize}
but in evaluating that judgment, jurists must have clarity as to whether students were afforded procedural due process in terms of rights of notice and a careful decision.\textsuperscript{161} Moreover, the Horner-Neufeld court reviewed the factual record and dutifully applied the law thereto.\textsuperscript{162} A fleshed-out discussion of the underlying facts facilitated the court’s ability to discern whether the student was afforded adequate notice, as well as whether the faculty’s dismissal determination was both careful and deliberate.

The recently-decided opinion further indicates the importance that Alaskan courts place on the timing and content of notice given to students so as to make such notice “meaningful.”\textsuperscript{163} As articulated in Nickerson, and now in Horner-Neufeld, students must be given notice, time, and reasonable opportunity to “cure their academic deficiency.”\textsuperscript{164} Future advocates may argue that the time provided between the notice and the dismissal did or did not provide such a reasonable opportunity to cure. Advocates may also debate whether the content of the notice was sufficient. A failing law student, for example, may have a singular opportunity to receive graded feedback in a semester, following the dreaded final exam, and receive grades therefore into the following semester.

Finally, Horner-Neufeld is especially informative with regard to the distinction between disciplinary and academic dismissals. In the instant case, the student argued that her notice was either lacking or inadequate because she had good grades, and therefore must have experienced discrimination or retaliation.\textsuperscript{165} Ms. Horner-Neufeld had focused on her classroom activity. Graduate study, at the Ph.D. level, involves both research and classroom experiences.\textsuperscript{166} To demonstrate mastery, Ph.D. students are expected to contribute to the field via a thesis or dissertation.\textsuperscript{167} That said, a narrow interpretation of “academic” in “academic dismissals” would focus exclusively upon classroom performance. The court here discussed the student’s research progress and grant proposal writing within the context of her eventual “academic” dismissal.

\textsuperscript{161} See Horner-Neufeld, 389 P.3d at 16–18.
\textsuperscript{162} See id. at 12–18 (applying the relevant law).
\textsuperscript{163} See Nickerson, 975 P.2d at 53.
\textsuperscript{164} Horner-Neufeld, 389 P.3d at 16.
\textsuperscript{165} See id. at 12.
\textsuperscript{166} See generally Kirsi Phyalto et al., Challenges of Becoming a Scholar: A Study of Doctoral Students’ Problems and Well-Being, INT’L SCHOLARLY RES. NETWORK EDUC. (Apr. 29, 2012), https://www.hindawi.com/journals/ism/2012/934941/ (examining the requirements of doctoral studying and successful study practices at the doctoral level).
\textsuperscript{167} See Horner-Neufeld, 389 P.3d at 9.
While participation in research may seem to some graduate students as a job rather than academic coursework, *Horner-Neufeld* indicates that research participation and progress should be evaluated under academic considerations, rather than under that of behavior. For example, a situation might be before the court in the future in which faculty members are hesitant to work with or advise a Ph.D. student because she was a poor teammate, had a terrible attitude, or performed shoddy work. *Horner-Neufeld* suggests that if these research troubles culminated in an ultimate dismissal, the dismissal would be analyzed under the more deferential academic dismissal standard, rather than one looking to punish misconduct. Edge cases could include students dismissed for the intentional sabotage of research data, substantial violations of research protocols, or cases in which the faculty allegedly collude not to advise a particular student. If these or similar situations were to be heard in Alaska, *Horner-Neufeld* is highly likely to be cited throughout the briefs and resulting opinion.

**CONCLUSION**

Students dismissed from public colleges and universities have constitutional protections, including the right to be afforded due process. Due process protections differ among public and private institutions, and between academic dismissals and those related to behavioral misconduct. Alaskan courts have wrestled with the proper due process protections for students dismissed for academic reasons, and they have had to ferret out distinctions in their reasoning with regard to why some cases, which appear to be disciplinary dismissals, should be examined under the more deferential standard governing academic dismissals.

The due process protections provided to students dismissed from public university settings include both procedural and substantive due process rights. The recently-decided *Horner-Neufeld* case provides lessons to future judges and advocates regarding the applicable standards related to such rights.