



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### No Breach Of Contract Against University For Changing Grading Scale During Student's Enrollment

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In *McMahon v. Salmond*, No. 13-4550 (3d. Cir., Aug. 4, 2014) the United States Court of Appeals for the Third Circuit affirmed that the State University of New Jersey Rutgers ("Rutgers") did not breach a contract with a student enrolled in the nursing school when it made grading standards more rigorous during the student's enrollment. The plaintiff had been a student at the former University of Medicine and Dentistry of New Jersey ("UMDNJ") prior to its merger with Rutgers. After the merger, the grading standard for the nursing program changed, and grades the student had earned that would have been passing under UMDNJ's standards were now considered failing under Rutgers' standards. Ultimately, the student failed out of the program. The student argued that Rutgers breached a contract with him by changing the grading scale and that the standards that were in place when he matriculated should control. However, the Court held that, under New Jersey law, courts have a narrow role in resolving academic conflicts between students and universities, and the scope of review is limited to a determination of whether the procedures followed were in accordance with the institution's rules and regulations. The Court found that Rutgers followed its rules and regulations in grading the student and ultimately dismissing him from the program.

**Client Tip:** *An institution should consult with its legal counsel if a dispute of this nature arises to ensure that it follows the proper protocols. Though it appears from the McMahon decision that a university may not be held liable for breach of contract if it changes its grading standards, administrators should still be careful if and when grading changes occur. In McMahon, the Court's reasoning was based in part on the fact that the student had been given the opportunity to retake courses he failed when the UMDNJ standards were still in place and he had signed a document acknowledging that any further failing grades would permit his immediate dismissal. Had those factors not occurred, it is unclear whether the courts would have ruled the same.*