

**ABSTRACT**

Name of Institution : Polytechnic University of the Philippines  
Sta. Mesa, Manila

TITLE : PARAMETER OF ACADEMIC  
FREEDOM IN EXERCISING  
MANAGERIAL PREROGATIVE ON  
STUDENT ADMISSION, RETENTION  
AND DISMISSAL

AUTHOR : Mr. Ricardo Teodoro Santiago

ADVISER : Dr. Rodolfo T. De Lara

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**Overview**

Education is a demandable right but not all students seeking admission to college are accepted. This is due to the protection given by law to institutions, which are vested the academic freedom to select and reject students seeking admission, Admission, therefore is a privilege and not a right and is discretionary upon the school, which is not charged with the legal responsibility, in providing education to those who do not satisfy the requirements.

In view thereof, this study aimed to know how school administrators in tertiary education exercise their management prerogative to admit and dismiss students within the ambit of academic freedom. Specifically, this study sought answer to the following : 1)

On what grounds have the school administrators exercised their management prerogatives on the following aspects: 1.1) student admission; 1.2) retention; and 1.3) dismissal?; 2) Under what issues and grounds has the Supreme Court affirmed and/or reversed the decisions of the school administrators on the cases reviewed?, 2.1) What are similarities and differences of decisions between the School Administrators and the Supreme Court?, 2.1) How many decisions were affirmed? reversed?; 3) What are the dominant grounds for the affirmation and reversal of their decisions by the Supreme Court?; 4) What legal provisions on student admissions, retention and dismissal must the school administrators uphold for good governance?; 5) What are the dominant legal provisions that were invoked by the Supreme Court?; 6) What strategy may be used for the exercise of academic freedom within the parameter of existing jurisprudence and pertinent laws?

This study would certainly benefit the tertiary educators, administrators and students as the cases presented herein are very informative, thus, they would guide their actions on matters of admission, retention and dismissal.

The documents analyzed were copies of the Supreme Court Annotated Reports from 1959 to 2000, composed of twenty eight (28) different cases distributed as follows: 16 admission cases; 1 retention; and 11 dismissal cases of Filipino students from public and private schools; state colleges and universities.

## **METHODOLOGY AND DATA GATHERING PROCEDURE**

The study used the descriptive method of research and documentary analysis in collecting and analyzing cases of the Supreme Court. These cases were taken by the

Supreme Court Annotated Reports (SCRA); the General Reports (G.R.); CD-ROM; INTERNET and LEX LIBRIS.

The Data Collection Form by Schuler was used to classify the data into admission, retention and dismissal. Its parts include: 1) Name of Case; 2) Citation; 3) Date of Decision; 4) Plaintiff; 5) Defendant; 6) Court; 7) Opinion; 8) Author of Opinion; 9) Constitutional Law Data; 10) Statutory Law Data; 11) Prior History; 12) Facts Related to Cases; 13) Courts Reasoning; and 14) Implications for Education.

## **SUMMARY OF FINDINGS**

### **1. Grounds Invoked by School Administrators in Exercising their Management Prerogatives.**

Management prerogatives on admission were invoked by the school administrators when they decided on cases involving: a) a lay person and a woman who wanted to pursue an M.A. in Theology in a seminary for priesthood; b) students who invoked their right to free speech and peaceful assembly due to their failing grades in several subjects; c) a nursing student who was temporarily admitted subject to the submission of an Honorable Dismissal and of passing marks for the flunked subject; e) a medical student who did not successfully take the NMAT as a condition for securing certificates of eligibility for admission; d) a student alleged to have a poor academic performance due to his engagement in leading boycott of classes; f) students who have academic deficiency engaged in demonstrations to exercise their freedom of expression and assembly were joined in by faculty intervenors; g) students joined their teachers in a strike which resulted to closure of the school; h) students who blockaded and barricaded the entrances

and exits in protest of the 9% increase of tuition fee; l) a medical student who failed NMAT test three times; j) students who led and participated in protest, thereby incurred marked academic deficiency; k) imposition of 90% passing grade by the faculty of the College of Medicine as against the 70% passing grade by the Board of Regents; l) students who initiated an organization of student council; m) a student who withheld relevant information concerning his application for Socialized Tuition Fee and Assistance Program; n) a student who opposed the school plan of increasing tuition fees and other school charges but with alleged academic deficiency; o) nursing students who failed to maintain an 80% average to be eligible for re-enrollment; and p) a student who had academic deficiency but one of his subjects was reconsidered by the school and the two others were cross-enrolled and passed them.

Management prerogatives on retention was invoked against a case involving – a student who petitioned that his name be included in the roster of the graduating class and that two cadet officers be relieved.

Management prerogatives on dismissal was invoked on cases concerning : a) students questioning the authority of the school in conducting an administrative investigation on acts committed outside school premises; b) students who distributed leaflets to get student support to contest the 15% tuition fee increase; c) students who failed to abide by the condition set by the school regarding the use of school facilities to hold student assembly; d) students who criticized and lambasted the school administration on its decision to merge two institutes; e) a student who slapped a kitchen helper at the school cafeteria; f) students who participated in hazing activities; g) a

student who committed plagiarism in her dissertation; h) students who are campus journalists and in that capacity wrote “Ang Magasing Pampanitikan” with a cover title “Libog at Iba Pang Tula” , I) elementary pupils who refused to salute the flag as it is contrary to their religious belief as Jehovah’s witnesses (3 similar cases, 1959, 1960 and 1995).

## **2. Issues and Grounds Invoked by the Supreme Court in Affirming and Reversing the Decisions of the School Administrators.**

Decisions of the school administrators are usually affirmed by the Court under these issues and grounds: a) academic standards set by the school are followed meticulously; b) the disciplinary regulations are fair, reasonable and just/equitable; c) forfeiture of contractual right due to serious breach of discipline or failure to maintain the required academic standards; d) proper observance of the school’s right to investigate on acts committed outside the school (true test is its effect upon the morale and efficiency of the school in promoting good order, welfare and advancement of the students); f) revocation of a degree conferred due to fraud; g) dismissal due to free speech is sustained only if it involves substantial disorder or invasion of the rights of others; h) if decisions are based on school policies approved by the Department of Education.

Conversely, decisions of the school administrators are reversed by the Supreme Court under these conditions: a) violation of constitutional rights (denial of due process and equal protection clause; Bill of Rights on First Amendment); b) discretionary powers are gravely abused; c) school rules and regulations clash with any of the legal provisions; 3); d) penalty imposed is inappropriate based on the offense committed;

e) misinterpretation of the enrollment termination (admission); f) failure of the school to observe the correlative duty to exercise academic freedom responsibly; act with justice, give everyone his due, and observe honesty and good faith (Article 19, Civil Code); g) suspension or expulsion of a student on the basis of an article that she has written.

### **3. Similarities and Differences of Decisions Between the School Administrators and the Supreme Court.**

Similarities of decisions between the school administrators, and those of the Supreme Court are gleaned from these affirmed cases on admission a) assertion of academic freedom relating to what courses to take; b) determination of admission requirements and disqualifications there from (academic delinquency and violations of disciplinary regulations); c) upgrading of the quality of education through selectivity process in medical schools; d) refusal of the school to remain open until graduation of protestors; e) observance of due process on a serious breach of discipline; f) denial of admission to flunkers of National Admission Test; g) dishonesty meted by disciplinary sanction; and h) denial of promotion due to unauthorized attendance in a summer class. On retention, forfeiture of contractual right due to failure to maintain the required academic standards. On dismissal, a) upholding the right of the school to discipline students who committed acts outside the school for the protection of its morale and efficiency; b) refund of tuition fee in accordance with due process; c) disbarment due to hazing activities which initiation rites resulted to death and injury; d) plagiarism in a dissertation as a serious threat to integrity; and e) refusal to salute the flag due to religious belief (overturned in 1995).

Differences of decisions of school administrators from those of the Supreme Court are evident on these admission cases which have been reversed due to : a) improper invocation of academic freedom to discriminate students from freedom to rally; b) failure to conduct proceedings to determine the participation of students in boycott; c) refusal to hear explanation of students why they joined their teachers in a rally; d) refusal to admit protesting students due to failing grades that was a mere after thought; e) denial of admission after a semester notwithstanding that a registered student is enrolled for the entire school year (new ruling); and f) denial of enrollment to a student who wants to complete his course for the entire period (new ruling). With regard to dismissal cases, decisions of school administrators were reversed because they were found to be different from the Supreme Court's due to : a) deprivation of PMI Cadets from their constitutional right to defend themselves; b) imposition of harsh penalty on students who joined in an illegal assembly; c) suspension of students for joining a strike; d) suspension of journalist students solely on the basis of the articles they have written (except if those materials disrupt class work or involve substantial order meant to invade the rights of others).

To sum up, the affirmed cases are 9 on admission, 1 on retention, and 6 on dismissal, having a total of 16, On one hand, the reversed cases are 7 on admission and 5 on dismissal, with a total of 12, thus, 28 cases in all.

#### **4. Dominant Grounds for the Affirmation and the Reversal of the Decisions**

The dominant grounds for the affirmation of the decisions of the school administrators by the Supreme Court are: a) academic freedom to impose the schools' admission requirements; b) setting the academic standards of the school as a means of

upgrading the quality of education it provides, and c) imposition of disciplinary regulations. These common grounds are true to admission and retention only. On dismissal, the dominant grounds favored by the Supreme Court are: a) disciplinary sanction (hazing, plagiarism, unauthorized cross enrollment); b) defiance of Department Order No.8- saluting the flag, singing of the national anthem, and reciting the patriotic pledge.

For the reversal of decisions, the dominant grounds on admission and dismissal are: a) curtailment of the student rights to rally/boycott/strike; b) deprivation of due process-right to be heard; c) conflicting interpretation on the contractual enrollment right; and d) writing articles believed to be contrary to morals.

#### **5. Legal Provisions on Student Admissions, Retention and Dismissal that School Administrators must Uphold for Good Governance.**

For good governance, the legal provisions upheld by school administrators are those found in their student handbook, University Code; the Constitution of the Philippines (1935, 1973, 1987), Education Act of 1982, Manual of Regulations for Private Schools; the Civil Code of the Philippines; Department Orders, and decided cases of the Supreme Court of the Philippines (*stare decisis*).

#### **6. Dominant Legal Provisions Invoked by the Supreme Court in Affirming and Reversing the Decision of School Administrators**

The dominant legal provisions invoked by the Supreme Court in affirming and reversing the decisions of school administrators are: a) Article IV, Sec. 5, Par. 2 – 1987 Constitution (academic freedom shall be enjoyed in all institutions of higher learning;



b) R.A. 2382 Sec. 5 (a and f) as amended, and MECS Order No. 52, s. 1985 (promotion of quality education by requiring students to pass admission test or securing certificates of eligibility for admission); c) Sec. 4, Par. 137, Manual of Regulations for Private School (registration in a school means enrollment for the entire semester) – overturned SC decision, new ruling.. enrollment for the entire period up to graduation; d) DECS Order No. 12, s. 1972 (disqualification from taking the test again after three failure; e) Par. 145 of the Manual of Regulation for Private Schools (penalty shall not be imposed upon any students, except for cause); f) Sec. 9, Par. 2, Education Act of 1982 B.P. Blg. 232; Art XIV Sec 5(3), 1987 Const.; (right of students to freely choose their field of study and to continue their course up to graduation); g) Art. 19 of the Civil Code (every person must in the exercise of his right and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith); h) Dept. Order No. 8 of MECS (discredits unauthorized summer classes); i) Art. 26 of the Universal Declaration of Human Rights (everyone has the right to education); j) Dept. No.8, s. 1955, DECS; R.A. No. 1265, (an act making flag ceremony compulsory in all educational institutions); k) Art. III, Sec. 4, Bill of Rights, 1987 Constitution (no law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances); and l) University Code/Rules and Regulations/Student Handbook (fixing admission requirements; disciplinary grounds and academic delinquency).

**7. Strategy that may be used for the Exercise of Academic Freedom within the Parameter of Existing Jurisprudence and Pertinent Laws**

In the exercise of academic freedom, the school administrators must strategize the same within the parameter set by existing jurisprudence and pertinent laws. Academic freedom is granted to institutions of higher learning to determine who to teach, what to teach, and how to teach it; what aims and objectives to formulate, and how to attain them; but the Supreme Court has cautioned that it should not be construed in a niggardly manner or in a grudging fashion, otherwise, that would frustrate the purpose of academic freedom and nullify its intent. Enjoyment of academic freedom includes the exercise of management prerogatives to allow a free hand on matters concerning admission, retention and dismissal. Administrative decisions should be in keeping with the observance of due process, both procedural and substantive in nature with an end of new of good student governance.

### **Conclusion**

On the basis of the findings, the researcher was led to formulate these conclusions:

1. Management prerogatives on admission and retention is invoked by school administrators depending on the academic qualifications of students for enrollment and his ability to cope with the academic standards set by the school.. On dismissal, the decision is focused on violations of disciplinary obligations. If management prerogatives are exercised judiciously by school administrators, the Supreme Court does not pass a review unto their decisions except if there is arbitrariness, collusions and fraud thereof.
2. In a wholistic view, the Supreme Court affirms school decisions if the academic freedom granted to institutions of higher learning is exercised within the ambit of fair play. Conversely, decisions are reversed if the students are denied of due process, if the

penalty imposed is inappropriate to the act committed and if the legal provisions afforded for the protection of both the school and the students are misconstrued.

In affirming and reversing decisions of the school administrators, the verdict pronounced by the trial and the appellate courts sometimes differ from those of the Supreme Court because the circumstances surrounding every case are unique and distinct from each other. Given this premise, errors on the part of the school cannot be avoided but can be remedied. In a number of occasions, though, the decisions of the school administrators show similarities to those of the Supreme Court on matters relating to the schools academic freedom on imposition of admission requirements, academic standards and disciplinary measures. Remarkable difference in decisions, however, are on matters concerning the misuse of academic freedom to prevent students from their freedom of expression and to deprive them of due process.

3. The Supreme Court accords the institutions autonomy and full respect in the exercise of academic freedom.

4. Good student governance is achievable when the school promulgates rules and regulations and implements the same in accordance with the tenets of the Constitution and other special laws meant to protect the rights of all parties concerned. The legal provisions on admission, retention and dismissal are within the discretionary powers of school officials who are vested academic freedom, a privilege, hence, not absolute in character that can be used capriciously.

5. The academic freedom granted by the Constitution to school administrators need be exercised harmoniously with the other provisions of law.

6. The parameter of academic freedom is set within the ambit of jurisprudence and pertinent laws. Observance of due process is both procedural and substantive, and evidence must be present and duly considered to support the decision. Penalty imposed should be reasonable and applicable to all students guilty of the same offense.

### **Recommendations**

Guided by the conclusions of this study, the researcher offers the following recommendations:

1. To school administrators, exercise academic freedom fairly, reasonably and equitably. In administrative proceedings, exercise due process but refrain from rigorous requirements of procedural due process and cross-examination. Take note that opportunity to see the written statement or order used as basis of an order is not a denial of due process. Furthermore, familiarize yourselves with jurisprudence and other pertinent laws concerning admission and dismissal to lessen if not totally eradicate the reversal of decisions. Read and update on decisions of the Supreme Court especially the “stare decisis.”

Provide the legal support in times of controversy to expedite the discharge of cases judiciously.

2. To the students, invoke your constitutional rights to strike a happy balance with the academic freedom of schools. If decisions are found arbitrary, elevate your case to the Commission on Higher Education, Regional Trial Court, Court of Appeals and finally to the Supreme Court to serve the ends of justice. Remember, though, that exercise of free

speech does not tantamount to dismissal but may be a subject of disciplinary measures if handled irresponsibly.

3. To parents, invoke the right of your child to choose any field of study he wants to pursue, and his right to enroll for the entire period up to graduation, except for academic delinquency and violations of disciplinary rules.

4. To school authorities, especially the President, Registrar and Deans of Student Affairs, Discipline Coordinators, etc., review your school policies and implement them in keeping with the recent rulings of the Supreme Court to avoid strain relationship and litigation. It is also imperative to follow due process of law on cases of protest, general assembly, barricade, organization of student council and the like.

5. To the Commission on Higher Education, review the curriculum of the Legal Aspect of Education in the masteral/doctoral level to afford Graduate Students the opportunity to understand the implementation of the provisions of Education Act of 1982 and the Manual of Regulations for Private School and not to be confined only within the letters of the law.

6. To the legislators, pass laws which extend the coverage and application of due process and equal protection clause to keep pace with the present cultural values of the youth (such as respect for gay rights, protection to pregnant students to name a few. Such openness and reasonableness will pave the way to fair and just school rules and regulations.

7. To future researchers and law enthusiasts, use this research as guide or basis for legal discussions and school disputes. Also, use this study as a stepping stone to unveil

other decisions of the lower court not covered by this present study, thus, protection of student rights can be better assured.

For future studies, it is recommended that a comprehensive research be conducted to show how decisions of school administrators differ from those of the lower courts to see where disparity takes place. Hence, the school and the students cause of action may be safeguarded, not to mention its contribution to judicious student governance that will pave its way to amicable settlement of cases.

