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## **Saiber Attorneys Sean Kelly, Rina Grassotti and Gregory Tabakman Win Summary Judgment in Federal Court for Public University**

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Saiber attorneys Sean Kelly, Rina Grassotti and Greg Tabakman won summary judgment for a large public university, dismissing claims by a graduate nursing student who was expelled because of inadequate academic performance. The former student raised claims based on breach of contract, arguing that the grade standards that should be applied to him were those that had been in effect when he first matriculated, and that the university was barred from making those grade standards more rigorous while the student was in the program. The student also asserted that the university violated his state and federal constitutional due process rights, and discriminated against him on the basis of his military status.

Regarding the student's contract claims, the Court held that in the absence of evidence that the university "deviated in some significant way from its published rules and regulations, [the student's] mishmash of contract-based claims cannot survive summary judgment." The Court also held that the more lenient and outdated grading policies did not apply.

The Court similarly rejected the student's claims of violations of his procedural and substantive due process rights, holding that by allowing an informal process of administrative appeal of the student's grades, the university extended to him more than the required level of due process.

Finally, the Court found no evidence that the university's treatment and dismissal of the student was the product of discrimination or retaliation against him on the basis of his military status, or for any reason other than his poor grades.

For over 30 years, **Sean Kelly** has focused his practice on counseling and defending clients in matters involving employment, higher education and school law. He is a member of the National Association of College and University Attorneys and the Higher Education Committee of the NJ State Bar Association. Mr. Kelly is certified by the

Supreme Court of New Jersey as a Civil Trial Attorney, has been repeatedly included in New Jersey Monthly Magazine's list of New Jersey "Super Lawyers," holds the highest rating awarded by the Martindale-Hubbell Lawyers Directory, has been named a Master of two separate American Inns of Court, and is included on the New Jersey Superior Court roster of court-approved mediators.

**Rina Grassotti** specializes in higher education and school law, employment and labor law, business litigation, insurance coverage litigation, and reinsurance litigation. Ms. Grassotti has been named to the list of New Jersey Super Lawyers - Rising Stars 2011-2013 and she is the co-chair of the Higher Education Committee of the NJ State Bar Association. In that capacity she organized last year's conference, "Lessons Learned From Penn State: A Comprehensive Review of University Practices and Responsibilities in the Aftermath of the Sandusky Sex Abuse Scandal." Ms. Grassotti is a member of the National Association of College and University Attorneys.

**Gregory S. Tabakman** concentrates his practice on employment and labor law and business litigation. He is a member of the New Jersey State Bar Association, the Association of the Bar of the City of New York and the Essex County Bar Association. Before entering private practice Mr. Tabakman clerked for the Honorable Justice Virginia A. Long of the New Jersey Supreme Court.

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