

ADMINISTRATIVE LAW

Professor Katrina F. Kuh

Spring 2017

Tuesdays & Thursdays, 2:10am-3:30pm, Room TBD

Contact Information

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Student meetings: Students are welcome to come by my office or to e-mail me to schedule an appointment or telephone conference.

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Course Overview

This course provides an introduction to the basic principles of administrative law. Among the topics that the course will cover are the structure of federal administrative institutions; the sources of law for administrative agencies; the basic procedures for administrative rulemaking and adjudication; and judicial review of agency action. I expect students to develop an understanding of the sources of and constraints upon federal agency authority, the means by which agencies exercise authority, and the relationship of agencies with the executive, the legislature, and the courts.

Course Goals

In addition to educating students about core principles and processes of administrative law, this course seeks to aid students in developing *inter alia* the following competencies, which have been identified as Learning Outcomes for Graduating Law Students:

- understand the roles and differing characteristics of sources of law: the common law, legislation, administrative regulations, and judicial interpretation of legislation, regulations, and constitutions [3(a)];
- understand the processes through which law is made and changed and how those processes differ from one source of law to another [3(b)];
- extract rules and policy from cases, statutes, and administrative regulations and analyzing, interpreting and arguing differing interpretations of rules and statutes [5(a)];
- identify legal issues in facts and applying rules and policy to facts [5(c)]; and
- construct arguments and identify flaws in an argument [5(e)].

Materials

- The required course textbook is Mashaw, Merrill, Shane, Magill, Cuellar, and Parrillo's Administrative Law, The American Public Law System, Cases and Materials, 7th Edition (2014).

- I will also periodically distribute supplemental loose leaf materials during class and will expect students to access and use the Administrative Procedure Act. A list of useful electronic resources follows.
- Useful electronic resources:
 - **U.S. Constitution** (<http://www.law.cornell.edu/constitution>)
 - **Code of Federal Regulations [CFR]** (www.law.cornell.edu/cfr) - The CFR is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the U.S. Government.
 - **The Federal Register** (www.federalregister.gov) - The daily journal of the U.S. Government, containing most routine publications and public notices of government agencies.
 - **The Administrative Procedure Act [APA]**, 5 U.S.C. §§551 et seq. (www.law.cornell.edu/uscode/text/5/part-I/chapter-5/subchapter-II) [reprinted in the Fox textbook at pp. 407-481.] - The APA governs the way in which administrative agencies of the federal government may propose and establish regulations. The APA also sets up a process for the United States federal courts to directly review agency decisions.
 - **www.regulations.gov** - Source for information on the development of Federal regulations and other related documents issued by the U.S. government. Here you can find and comment on proposed regulations and related documents published by the U.S. Federal government.
 - **www.reginfo.gov** - Contains information on regulatory resources for federal agencies. Run by the Office of Management & Budget (OMB)'s Office of Information & Regulatory Affairs.

Class Attendance and Participation

- I will call on students during class and will consider class attendance, preparation, and participation when writing student recommendations and with regard to grading, as described below.
- If for any reason you are unprepared or otherwise do not wish to be called on, please see me at the podium before class and request a “pass” for the day. Each student may employ one pass.
- I may adjust by one-half grade (B to B+ or B+ to B, etc.) the course grade of (1) any student whose contributions to class discussion are notable and exceptional (upward adjustment) or (2) any student who is unprepared when called upon or otherwise declines to participate in class discussion (downward adjustment). In-class use of the Internet for a purpose unrelated to class discussion is prohibited and may warrant a downward adjustment.

- The American Bar Association requires that you spend at least six hours per week, on average, outside of class studying for this 3-credit course. This is in addition to the three hours a week we spend in class.
- A sign-in sheet will be available for each class. The sign-in sheet will be used to record and track attendance; falsification will be deemed a violation of the Code of Academic Conduct. Any student who misses 20% or more of scheduled classes (*e.g.*, more than 6 classes) based on the sign-in sheet records is presumptively not in good and regular attendance and may be required to withdraw from the course or receive a failing grade, upon referral to and determination by the Office of Student Affairs. *If you are unable to attend class due to illness, please send me an email, copied to my assistant, and your absence will be excused. I do not excuse absences for any reason other than student illness, although the Office of Student Affairs may do so if you are referred for excessive absences. I thus encourage you to retain documentation of any non-illness absence that you believe may ultimately be excusable (such as job interview, family emergency, or the like).*
- I maintain a course TWEN site (available through www.lawschool.westlaw.com, assistance available at west.twensupport@thomson.com or 1-800-486-4876). Please register on the TWEN site and visit the site for course information and updates.
- Please note the following schedule adjustment. Class will not be held on Thursday, March 9. The date for a make-up class will be announced early in the semester.

Examinations and Grading

- Course grades will be based upon a closed book final examination, with class participation factored in as described above.
- Grade distribution will conform to the grading curve in effect at the Hofstra Law School.

Reading Assignments (Part I)

Note: Unless otherwise indicated, all page references are to the required textbook, Mashaw.

Introduction to Administrative Law	pp. 1-34 (Mashaw), Supplement on Legislation and Legislative Process pp. 1-14 (uploaded to TWEN) (*read for first class)
Agencies and Congress	pp. 69-75, 90-101 (Mashaw), Supplement on Legislation and Legislative Process pp. 31-47 (uploaded to TWEN)
Agencies and Congress (cont.)	pp. 109-21, 154-70
Agencies and the President	pp. 203-05, 260-75, 284-96
Agencies and the President (cont.)	pp. 301-19
Agencies and the President (cont.)	pp. 319-44

Reading Assignments (Part II) Administrative Adjudication

Power to Adjudicate	pp. 375-94
Adjudicatory Due Process	pp. 394-96 (spillover paragraph only); 402-10; 419-27
On-the-Record Adjudicatory Process	pp. 501-18; 523-45
Adjudication v. Rulemaking	pp. 550-70

Reading Assignments (Part III) Rulemaking

The Power to Make Rules and Introduction to the Rulemaking Process	pp. 577-89, 594-600, 1533-48 (located in Appendix C) (emphasis on §§ 551, 553)
Substantive Review and Rulemaking Procedure	pp. 604-21
Substantive Review and	

Rulemaking Procedure (cont.)	pp. 621-43
APA § 553—Exceptions from Notice and Comment	pp. 649-76
The One-Bite Doctrine and Its Demise	<i>Perez v. Mortgage Bankers Assn.</i> , 135 S.Ct. 1199 (2015) (please read majority opinion and Justice Alito's concurring opinion), available from http://www.supremecourt.gov/opinions/14pdf/13-1041_0861.pdf Please also read the Administrator's 2010 Opinion Letter, available from 2010 WL 1822423
APA § 553—Notice and Comment	pp. 687-706
Efforts at Express Judicial Augmentation of Procedure: Hearings	pp. 712-21
Ex Parte Contacts	pp. 723-43
Rulemaking v. Adjudication	pp. 755-70

Reading Assignments (Part IV) **Scope and Availability of Review**

Scope of Review	pp. 967-982; 987-1001
Review of Interpretations of Law	pp. 1002-1007; 1010-1018 (notes 2-5); 1021-1036
Agency Interpretation of Regulations	pp. 1041-1052, Justice Scalia and Justice Thomas' dissents in <i>Perez v. Mortgage Bankers Assn.</i> , and cert. petition, <i>Gloucester County School Bd. v. G.G.</i> , available at 2016 WL 4610979
Review of Findings of Fact	pp. 1076-1100
Finality	pp. 1135-1139; 1229-1246
Ripeness	pp. 1246-1268

