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Recent Cases Addressing the Educational Malpractice Doctrine: Three Key Lessons for Defending Against Student Claims

By Kimberly Bousquet, Partner, Thompson Coburn LLP

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2221 South Webster Ave, Suite A #255 • Green Bay, WI 54301 • 920-264-0199
jfaubert@careereducationreview.net • www.careereducationreview.net

Recent Cases Addressing the Educational Malpractice Doctrine: Three Key Lessons for Defending Against Student Claims

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One of the best tools for defending against student lawsuits is the educational malpractice doctrine. We offer three key lessons for effectively using the doctrine to defend against student claims.

Lesson 1: Expose educational malpractice claims masquerading as negligence, breach of contract, or other legal theories.

The educational malpractice doctrine is recognized in many states as a complete bar to claims based on quality of education services. But such claims aren't always obvious because they may not be pled under the legal theory of malpractice. Instead, they are often pled as garden variety negligence, or as breach of contract, constitutional violations, negligent hiring, negligent retention, fraud, or fraudulent concealment, among other legal theories. Courts are clear, however, that a student's claim "cannot be couched as fraud" or any other legal theory "merely to avoid the doctrine that precludes an educational-malpractice claim." *Anderson v. High-Tech Institute*, No. 11-0506-CV-W-SOW, 2014 WL 3709796, at *3 (W.D. Mo. Feb. 28, 2014) (quoting *Blake v. Career Educ. Corp.*, No. 4:08-CV-00821-ERW, 2009 WL 2567011 (E.D. Mo. Aug. 17, 2009)).

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the panic button when a new complaint alleging wide-ranging legal theories and potential punitive damages lands on your desk, look closely at the nature of the claims to see if they really are sound in malpractice and thus are barred by the widely-recognized educational malpractice doctrine.

Consider *Rockwood v. Shoen*, --- F.Supp.2d ---, 2015 WL 6774314 (S.D. Ohio Nov. 6, 2015), as an example. In that case, the federal court flatly rejected a sonography student's malpractice claim masquerading as negligence. The student claimed that the school was negligent in "failing to properly formulate" a special program for her and in "failing to communicate" her specialized program to the hospital at which she had a clinical rotation. These claims were readily rejected by the court. Ohio law, like the law of other states, does not recognize a claim for inadequate educational services "regardless of the label a plaintiff places on such a claim." The plaintiff's claim, "which targets allegedly substandard educational services" was, "in actuality an impermissible claim for educational malpractice" that the court refused to entertain. Thus, the plaintiff's claims didn't survive the pleading stage.

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In summary, even where plaintiffs don't expressly assert a malpractice claim, and instead assert breach of contract, negligence, or even possibly a constitutional claim, schools should review the underlying allegations to determine if they are really asserting a claim for inadequate educational services. If so, those claims are likely barred because, as one court put it, schools "must be allowed the flexibility to manage themselves and correct their own mistakes." *Lucero v. Curators of Univ. of Missouri,* 400 S.W.3d 1, 8 (Mo. Ct. App. 2013).

Note that, in at least one jurisdiction (New York) there is a hard and fast rule that a negligence claim cannot be maintained against schools and school officials, even if the claim does not implicate the educational malpractice doctrine. *See, e.g., Harris v. Dutchess County Bd. Of Co-Op Educ. Services*, 2015 WL 6835461 (N.Y. Sup. Ct., Nov. 4, 2015) (New York courts are "loathe to allow any claim that is based on negligent acts by school officials and educators, whether or not the allegations invoke the State's public policy by calling for evaluation of educational policy or judgment.").

Lesson 2: The educational malpractice doctrine covers a wide array of factual assertions – know what allegations to look for!

Claims for educational malpractice

KIMBERLY BOUSQUET is a partner in Thompson Coburn's higher education and business litigation practices. Kim has successfully advocated for clients in contentious, high-stakes litigation across a variety of industries. Formerly General Counsel for the Missouri State Board of Nursing, her clients include postsecondary institutions and businesses offering higher education services. Kim earned her law degree from University of Oregon School of Law, with a certificate in environmental law. She also has a B.A. in Biology and an M.S. in Environmental Studies.

Contact Information:
Kimberly Bousquet
Partner
Thompson Coburn LLP
Phone: 314-552-6099
Email: kbousquet@thompsoncoburn.com
Twitter: @KimBousquetEsq

often get overlooked for a second reason – they don't, on their face, always clearly implicate the provision of educational services. Regardless, courts often find that claims are barred because the doctrine is broadly defined. As one court recently noted, the doctrine covers any claim that "requires the fact finder to enter the classroom and determine whether or not the judgments and conduct of professional educators were deficient." *Harris v. Dutchess Cty. Bd. of Co-op. Educ. Servs.*, 50 Misc. 3d 750, 25 N.Y.S.3d 527 (N.Y. Sup. Ct. 2015). This is because courts will generally eschew claims that require them to "make judgments as to the viability of broad educational policies" or "to sit in review of the day-to-day implementation of these policies." *Id.*

Thus, the educational malpractice doctrine may apply even when the claims are not directly tied to allegations of poor education, but nonetheless implicate school policies or judgment calls. For example, in *Cheslowitz v. The Bd. of Trustees of the Knox School*, 2015 WL 1912296 (N.Y.Sup. April 14, 2015), the plaintiff claimed that the school failed to properly hire, supervise and retain teachers, administrators, deans, and headmasters. The Court dismissed these claims based on the educational malpractice doctrine even though they related solely to the school's hiring practices and not necessarily to educational services.

In *Anderson v. High-Tech Institute,* 2014 WL 3709796, at *4 (W.D. Mo. Feb. 28, 2014), a federal district court in Missouri defined the wide girth of Missouri's educational malpractice doctrine, holding that the following factual alleged misrepresentations were barred by the doctrine:

- "Students would receive education sufficient to qualify for employment in their field of study."
- "Students would be provided adequate modern framing aids and equipment upon which to learn."
- "The instructors were experienced, well-qualified experts and top-trained professionals in their field of instruction."
- "Classes would be restricted to a small size adequate for personalized instruction."

The court also found that factual assertions concerning how the program operated were barred, even if those facts could be easily proven. This included allegations that "[s]ome classes would commence without an instructor" and "[c]lass instructors could, and would, change repeatedly during the semester." *Id.*

The goal of any motion to dismiss should be to clearly articulate the essence of the claims to expose them as requiring a review of educational policies, programs, principles, theories, or the implementation thereof.

Lesson 3: Achieve early dismissal by articulating the claim's essence.

Now that you know how to expose educational malpractice claims, what do you do about it? ***The first, and simplest, option is to move to dismiss the offending claims.*** Because claims involving educational malpractice can often be determined from the face of the complaint, courts will find that they are barred as a matter of law. *See, e.g., Anderson,* 2014 WL 3709796, at *4 ("The Court concludes, as a matter of law, that these allegations invoke the educational malpractice doctrine."). Thus, when the allegations invoke educational policies, principles, practices, theories, or implementation thereof, it may be wise to move to dismiss the relevant claims at the pleading stage.

The goal of any motion to dismiss should be to clearly articulate the essence of the claims to expose them as requiring a review of educational policies, programs, principles, theories, or the implementation thereof. The motion will often need to re-frame the issues and facts with the goal of informing the court of the interplay between the allegations and the educational policies implicated. For example, a student may contend that he or she was defrauded when a school added a required course to its curriculum. Before considering the merits of the claim (there may be many good contractual defenses), you should first consider a strategy for articulating this claim as invoking an educational policy, program, principle, theory or implementation thereof. In this example, the claim clearly invokes the school's policies surrounding academic and programmatic standards, student progression, and graduation requirements. This claim, when viewed in light of these policies, goes to the heart of what a school does and would require the court to step into the shoes of the school administrators and substitute its judgment for the school's. To help facilitate this process, you may want to pull out your school's policy handbook and thumb through it with the claim in mind. You will likely find countless school policies, procedures, and principles that relate to the claim at hand.

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This type of strategy paid off in *Gillis v. Principia Corp.*, 111 F. Supp. 3d 978, 985 (E.D. Mo. 2015). There, the plaintiff sued Principia College for breach of contract (among other theories) for the school's alleged failure to live up to the principles it espoused in its written policies. The defense argued that the claim was "merely a thinly veiled claim for educational malpractice." The federal court agreed, and dismissed the claim because it went "toward the alleged poor quality of her educational experience in terms of [the school's] alleged failure to conform to its expressed Christian Science foundation." *Id.* at 985. Thus, it may often be necessary for the defense to expose the true nature of the student's claim to show the judge that it's nothing more than a new version of a defunct cause of action.

If, however, the basis for a motion to dismiss is not clear from the face of the pleadings, you may want to save your ammunition for a strong motion for summary judgment following the plaintiff's deposition. This avoids making bad law for your case and the sector and allows the legal team an opportunity to develop a solid factual record supporting dismissal.

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Career Education Review
2221 South Webster Avenue, Suite A #255
Green Bay, WI 54301
Phone: 920-264-0199 | Fax: 920-659-7797
Email: jfaubert@careereducationreview.net | Website: www.careereducationreview.net

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