

LAW REVIEW 15038

May 2015

(Updated March 2017: CFR Citation Corrected from title 5 to title 34)

(updated March 1, 2019)

Federal and State Laws Protect Students whose Educational Careers Are Interrupted by Military Service

By Commander Wayne L. Johnson, JAGC, USN (Ret.)

1.1.2.4--Students

The Uniformed Services Employment and Reemployment Rights Act (USERRA) accords the right to reemployment to a person who leaves a *civilian job* (federal, state, local, or private sector) for voluntary or involuntary service in the uniformed services (active duty, active duty for training, inactive duty training, funeral honors duty, etc.). USERRA does not apply to the relationship between a student and an educational institution, because the educational institution is not the student's *employer*.

In 2008 Congress enacted a law giving students USERRA-like protections when their educational programs are interrupted by voluntary or involuntary service. Congress codified that provision in title 20 of the United States Code, section 1091c (20 U.S.C. 1091c). The United States Department of Education (Education) is charged with enforcing this provision, and Education promulgated regulations which can be found in [title 34 of the Code of Federal Regulations, at section 668.18 \(34 C.F.R. 668.18\)](#).

These requirements apply to any educational institution that participates in title IV federal student financial aid programs, including Pell Grants, Stafford Loans, and the Federal Work-Study Program. The Department of Education enforces these provisions by cutting off, or threatening to cut off, an educational institution's eligibility for federal funding, including indirect funding that comes through students. Few educational institutions can operate without such federal funding, so the enforcement mechanism has real teeth.

This law applies to almost all post-secondary educational institutions, including trade schools, community colleges, public and private universities, graduate schools, law schools, etc. The law applies to anyone whose educational program is interrupted by voluntary or involuntary military service. The law applies to the following scenarios, among others:

- a. Joe Smith is a college undergraduate with no military affiliation. After he completes his freshman year, he decides to enlist in the Regular Army. When he completes his four years of active duty, he is entitled to readmission at the college, without having to go through the admissions process, and he is entitled to pick up where he left off, at the start of his sophomore year.

- b. Mary Jones is on active duty in the Air Force and is assigned to an Air Force base in Colorado. While stationed in Colorado, she enrolls in a local community college with a view toward earning an AA degree. About a month into the fall 2015 semester, the Air Force deploys her to Afghanistan for an unexpected emergency. Mary is protected from failing grades for the interrupted semester, and she is entitled to a refund for that semester. When she returns to Colorado, either still on active duty or as a veteran, she is entitled to resume her education without going through the admissions process.
- c. Bob Adams graduated from college in 2011 and was commissioned a Second Lieutenant in the Army, through the Reserve Officers Training Corps (ROTC). In anticipation that the Army would permit him to go to medical school before entering active duty, Bob applied for a prestigious medical school and was accepted. The Army changed its mind¹ and ordered Bob to active duty immediately. Although Bob has not attended medical school for even one day, he is entitled under this law to utilize his 2011 medical school admission when he leaves active duty in 2016.
- d. Deloris Davidson is a petty officer in the Coast Guard Reserve and a college undergraduate. After the Deepwater Horizon oil spill disaster, she was called to active duty to assist with the Coast Guard's investigation and remediation efforts, and she had to leave college in the middle of a semester. This law certainly protects her. The law gives her the right to a refund for the tuition of the interrupted semester, and it protects her from receiving failing grades for her courses. Upon completion of her active duty, she is entitled, as a matter of federal law, to mandatory readmission—to pick up where she left off before the semester that was interrupted.
- e. Edwin Edwards is a Lieutenant in the Navy Reserve and a law student. This law protects him if he leaves law school for *voluntary or involuntary* military service.
- f. Fred Fox is a Specialist (E-4) in the Army National Guard. In his state status, he is called to state active duty by the Governor, to participate in the clean-up operation after a tornado. This federal law does not apply to state active duty performed by National Guard members.

These provisions require an institution of higher education to readmit a service member with the same academic status as the student had when he or she last attended the institution. The regulations provide that to readmit a person with the "same academic status" means that the institution admits the student:

- To the same program to which he or she was last admitted by the institution or, if that program is no longer offered, the program that is most similar, unless the student requests or agrees to admission to a different program.
- At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status.

¹ The result would be the same if it had been Bob who changed his mind.

- With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable.
- With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had.
- If the student is readmitted to the same program, the institution must not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when the student left the institution, unless there are sufficient veterans' education benefits or other service member education benefits to pay the increased amount of those tuition and fee charges.
- If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, by assessing no more than the institutional charges that other students in the program are assessed for that academic year.

In the case of a student who is not prepared to resume the program at the point where he or she left off or will not be able to complete the program, the institution must make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost.

The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program. In addition, an institution would not be required to readmit a student if there is no reasonable way for the institution to prepare the student to resume the program or to enable the student to complete the program.

This federal law provides excellent protection for the student who is interrupting an educational program for voluntary or involuntary uniformed service. The law does not help the National Guard or Reserve member who is trying to complete this semester, despite having an obligation to perform inactive duty training or active duty training during the semester. The student will never complete the educational program if each semester is interrupted by such military training requirements. Most (or at least many) professors are willing to make accommodations for these circumstances, but no federal law requires them to do so. In these situations, the reserve components will also need to show some flexibility.

EXTRA NOTE –STATE LAWS: Always check to see if the state your college is in has any laws on this subject and any school policies that may give one more rights and options. This federal law is a floor and not a ceiling on your rights as a service member or veteran. There may be instances where active military service due to its short duration (or how mobilized for National Guard personnel) does not receive the subject Federal education protection. In those cases in particular, one should check to see what laws the state has. Some states even give the service

member the ability to sue the school for violating the state's law. Here are 20 states that have such laws or written policies: Alabama, Arkansas, Colorado, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New Jersey, New York, Pennsylvania, South Carolina, Texas, Washington, West Virginia, and Wisconsin. If your state is not listed, double check anyway as the list may not be exhaustive. See also <http://www.soc.aascu.org/dodsupport/PolicyLetters.html> for a listing of some of these states' laws and regulations.

For additional information on this subject see:

Reserve Officers Association (ROA) Law Review Number 1052, Readmission of Servicemembers to Postsecondary Institutions - Details Regarding the Department of Education (DOE) Regulations Implementing the New Law on Mandatory Readmission of Mobilized Reserve and Guard and Active Duty Students

(<https://www.roa.org/resource/resmgr/LawReviews/2010/10052-LR.pdf>)

ROA Law Review Number 13071, May 2013, New Washington Law Protects Students who Are Members of the National Guard or Reserve

(<https://www.roa.org/resource/resmgr/LawReviews/2013/13071-LR.pdf>)

The U.S. Department of Education PowerPoint presentation entitled "Readmission of Servicemembers to Post-Secondary Institutions" posted on the Catholic Univ. of America (CUA) web site.

<http://graduatestudies.cua.edu/res/docs/Dept-of-Ed-Readmission-of-Servicemembers-Brief-formatted.pdf>

The U.S. Department of Education "Frequently Asked Questions: Institutional Readmission Requirements for Servicemembers"

<http://www2.ed.gov/policy/highered/guid/readmission.html>

UPDATE March 2019

Please see Law Review 19027 (March 2019) for new information on this topic.