

Revoking an Offer of Admission: Legal Issues and Best Practices

By: Brett A. Sokolow, JD

Occasionally, colleges have occasion to revoke the admission of an accepted student. This is easiest when it is prior to matriculation, and it is usually handled by the admissions office. Revoking an offer of admission is more complicated when such a revocation is effected after a student arrives on campus and begins taking classes.

How you define “student” in your handbook or code can have an extremely important impact on how you process the revocation. I tend to use the following statement, but many colleges use more expansive language, which serves them well: “The term ‘student’ includes all persons who have accepted admission, have enrolled at and/or are taking courses at the University, full or part-time, undergraduate, graduate or non-matriculated. David Shaw shared that Arkansas State uses a definition that is the most expansive I have seen, extending student status to six months prior to matriculation and six months post-graduation. I can see some value in extending student status six months post-graduation. My clients actually retain conduct jurisdiction for six months over student behavior that occurs prior to graduation but is not reported until after.

Retaining post-graduation jurisdiction would help you address a movie scenario I saw once, though the movie was so forgettable I cannot recall more than this scene: the Jeff Spicoli-looking character mounted the platform, accepted his diploma, marched to the podium, and gave a speech, in which he announced that he became valedictorian of his class by cheating on every one of his final exams. He then turned to the Dean with a “kiss my ass” gesture and made off with his ill-gotten spoils. Not at Arkansas State!

I’m not sure I’m comfortable with Arkansas State’s extension of the definition of student to include a six-month period prior to matriculation, but if that policy was approved by their attorneys, who am I to second-guess? I see the value in that policy but I cannot guarantee that it would pass legal muster if challenged in court. Students are entitled to notice of our rules, in the sense that they have a contractual right to know in advance what our rules are and how they work. That’s why Dean Wormer’s infamous “Double-Secret Probation” would never fly legally. There is no way to notice someone who is even vaguely contemplating applying to your college. Courts might see it as an institutional power grab that violates a basic sense of fair play. Perhaps a notice could be included with admissions materials for all who enquire (if that is not done already), but I’m not sure that coincides precisely with the six-month jurisdiction extension.

Generally, revocation of an admission is occasioned by the discovery that the student lied on his or her admissions application. Usually, they have concealed a criminal record or attendance at another institution. Where the concealment is immaterial, such as in the case of an expunged juvenile record for shoplifting, revocation is not in issue. Revocation is only in issue when the student would never have been admitted had the admissions office known of the information at the time the offer was made.

Once a student has arrived and begun classes, there are two schools of thought on best practices for addressing revocation. One approach is to process the fraud or deception on the admission application as a violation of the code of conduct, through the student conduct process. This appears to be a frequently used model for colleges to address this type of fraud. The other school of thought is to place responsibility for an admissions fraud with admissions (or the registrar or some team outside of the conduct process). There are reasons why each school of thought has merit, though I do tend to favor processing a revocation outside the student conduct process.

Most campuses that process admissions fraud as a conduct violation do not actually process it as a revocation of admission. They process it as suspension or expulsion based on violation of the code of conduct. This is inauthentic for because it involves sanctioning someone through a student conduct process, which ratifies the idea that the individual is legally a student. Additionally, this practice sanctions someone for conduct that occurred prior to the time they became a student. For most colleges, by doing so, you will be violating your own rules, or taking authority that your policies do not give you. Again, look at your definition of “student.” How can you sanction someone for a fraud that occurred prior to acceptance of admission?

There is an additional legal incongruity that must be addressed. Please understand that you are graciously extending process to any such student—they do not have a right to it. By extending the student conduct process to address this fraud, you are extending some rights of due process or fundamental fairness (public v. private). Think back to your higher ed. law classes. Remember Matthews and Goss. Recall that the Supreme Court has never formally declared that students have a liberty or property interest in an education. Lower courts have assumed a property interest, which is critically important. Without that interest, students cannot call upon the 14th Amendment to demand the rights of due process. Do you think that a student who procured his/her admission by fraud could possibly argue that they then have a property interest in that education? I’m sure there are attorneys who would have the gall to make such an argument, but as we say in Yiddish, that would take some real *chutzpah*.

Mechanically, when you process fraud as a student conduct matter, you have to iron out procedural questions, such as who has standing to serve as complainant? Who is the victim? Does an admissions officer make the complaint? These are not insurmountable obstacles, but procedural details that do need to be addressed. There are some reasons why processing fraud as a student conduct complaint is the path of least resistance, and therefore practical. If an admissions committee declares an admission to be void, it is void *ab initio*, from the beginning. Some courts would therefore require a refund of tuition monies paid by the “student” under the unjust enrichment theory of contract law. Of course, there is a counter-argument to be made by colleges, that they did confer the value of an education, if not the actual credits to accompany it, and that monies are not refundable when the pecuniary enrichment of the college is a result of the fraudulent actions of the student. Daren Bakst of CLHE pointed out, and rightfully so, that the issue may not be that simple when the student has borrowed money for tuition (and likely done so fraudulently). Declaring an admission void for fraud might bring the college bursar

into legal conflict with various lending authorities seeking return of student loans. It might be easier to just suspend or expel.

But, just because something is easier doesn't always make it better. In fact, the path of least resistance is usually the less principled path. It is here. By taking a contract approach, and declaring an admission to be void, colleges can prevent students from retaining credits or degrees acquired through fraud. We have an interest in making sure that representations to the world that students make of the education they have received at our institutions is earned and merited. Allowing a student to keep ill-gotten credits is unethical. Allowing the student to publicize and make use of our credits involves the college as a third-party to the student's fraud.

Procedurally, a contractual approach to admissions fraud is less onerous than student conduct procedures. Legally, if you obtained clear evidence of a criminal record by a student who certified that he did not have one, you could declare the admissions decision void through your proper campus mechanism and simply inform the student to leave. In most jurisdictions, there is no necessity of notice or a hearing (this may be different for graduate students). Understanding how the fraud leads to a revocation requires contractual analysis. A contract is formed when a minimum of two parties have contractual intent, form a meeting of minds to the terms of the contract, and exchange valuable consideration. If your college offers admission, and a student accepts it, the basis of that contract is formed by the terms of the admission materials. If the student lies on the admission materials, the necessary meeting of the minds is not present, and there is technically no agreement formed.

Best Practices

Because information is imperfect, I suggest that any process designed to address admissions revocation provide some level of notice and a "show cause" opportunity. With this type of mechanism, the student would be given information that a possible admissions fraud has been detected, and an admissions (or other) committee will be making a decision on whether the admission was invalid. The student can then be offered a written or oral opportunity to show cause why the admission was valid, and why they did not lie on their application. Should this committee reach a reasonable conclusion based upon substantial evidence that the admission was valid, the matter will be put to bed. But, if the reasonable conclusion is fraud, the committee would then revoke the admission and inform the student. No appeal necessary. Should any other institution or employer inquire as to the status of the student, there are no FERPA protections of these records, because the student is not and was never validly a student. It would be accurate to state "John Smith has never been a student here" or "John Smith enrolled pursuant to a fraudulent record, which when discovered, resulting in our revocation of our admission of John Smith as a student."

RISK MANAGEMENT TIP OF THE WEEK

Do your admissions applications ask about prior criminal convictions and/or conduct records at other colleges? If you don't ask, it is not a fraudulent omission if the student fails to disclose to you. Call a meeting with your admissions department, and draft some language to add to your next round of admissions materials.

All information offered in this publication is the opinion of the author, and is not given as legal advice. Reliance on this information is at the sole risk of the reader.

Brett A. Sokolow, JD, is President of the National Center for Higher Education Risk Management (NCHERM) in Malvern, Pennsylvania. Mr. Sokolow serves ten colleges as outside counsel, and has served as a consultant to over 650 colleges and universities. Mr. Sokolow holds memberships to the National Association of Student Personnel Administrators (NASPA), the Association for Student Judicial Affairs (ASJA), the American College Personnel Association (ACPA), where he is Vice President for Education of the Commission for Student Conduct and Legal Issues. He is a member of the Council on Law in Higher Education (CLHE), where he also serves as a member of the Board of Trustees. He is Editor Emeritus of the Report on Campus Safety and Student Development. Mr. Sokolow has authored ten books and dozens of articles on campus security, Clery Act compliance, student conduct, risk management, problem drinking, and sexual misconduct. www.ncherm.org