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## Morning Education: Why Universities May Face Lawsuits Related to the Coronavirus

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*With help from Nicole Gaudiano, Lauraine Genota and Michael Stratford*

*Editor's Note: Morning Education is a free version of POLITICO Pro Education's morning newsletter, which is delivered to our subscribers each morning at 6 a.m. The POLITICO Pro platform combines the news you need with tools you can use to take action on the day's biggest stories. [Act on the news with POLITICO Pro.](#)*

### Quick Fix

— James Keller, a higher education lawyer who represents colleges and universities, spoke to POLITICO about potential lawsuits college leaders may face as the coronavirus pandemic has shifted school online.

— Education Secretary Betsy DeVos announced 67 new participants for the Second Chance Pell program. Now, the program has more than doubled since its inception under the Obama administration.

— Some historically black colleges and universities will receive \$7.7 million in grants to help upkeep historic structures on their campuses.

IT'S MONDAY, APRIL 27. WELCOME TO MORNING EDUCATION. TO REOPEN OR STAY ONLINE? Ping me at [bquilantan@politico.com](mailto:bquilantan@politico.com) with your university's plans for the fall. Share event listings: [educalendar@politicopro.com](mailto:educalendar@politicopro.com). And follow us on Twitter: [@Morning\\_Edu](https://twitter.com/Morning_Edu) and [@POLITICOPro](https://twitter.com/POLITICOPro).

[Sign up for POLITICO Nightly: Coronavirus Special Edition](#), your daily update on how the illness is affecting politics, markets, public health and more.

### Driving the Day

LET'S TALK ABOUT POTENTIAL HIGHER ED LAWSUITS: Your host chatted with Keller, co-chair of Saul Ewing Arnstein & Lehr's higher education practice and K-12 schools practice, about potential lawsuits universities could face as the pandemic has upended traditional higher education. Keller has been a higher education lawyer for 16 years.

*This transcript has been edited for length and clarity.*

Q: With this shift to online learning and the coronavirus pandemic, is there an “out” for colleges when it comes to their obligations to Title IX?

A: You still need to have a prompt and equitable resolution. I don't think that institutions can push every Title IX investigation they have until next fall ... so you're going to have to do as much as you can remotely.

— Most schools have some language built into their [policies that gives them] some wiggle room to extend the deadlines. No one was thinking about coronavirus, but if one of the key witnesses is out of the country, or someone gets sick or you're on vacation, we can extend the deadlines for a reasonable period of time.

— One thing you can do is say: Consistent with our policy — hopefully you have this language — we're going to delay. We can speak to the complaining party and the responding party by phone, but some of the witnesses we need to speak with aren't available or [the investigator isn't].

Q: How does a university navigate potential ADA lawsuits?

A: On April 3, the Federal Student Aid office issued some guidelines regarding distance education in the current environment. And they said, "These exceptional circumstances may affect how education, including needed accommodations for students with disabilities is provided. Institutions should not decline to provide distance instruction at the expense of most students to address matters pertaining to accommodations for students with disabilities."

— So that's helpful, but what I would say to colleges and universities is I don't know that that itself is a legitimate defense in a lawsuit. I think you would assert the same defenses you assert in any accommodations case. What I imagine a college or university would say is there's just no way in this environment for us to accommodate every disability of every student, without causing an undue burden, or making it impossible for us to provide this learning.

— What institutions should be doing: Document all your efforts to accommodate people who are on file with your disability services office. They should document what they're trying to do to accommodate those, and if they can't, explain why they can't.

Q: Any other lawsuits we should look out for?

A: I'm not surprised by the tuition, room and board and fees lawsuits. While I believe institutions would have strong defenses to all of the claims, I can at least see a practical appeal of a room and board claim or a student fee claim.

— The tuition claims, I think those are going to be really hard to prove. I'm not sure how you're going to be able to prove your damages. How do you quantify the difference between an in-person class and online class and put a specific dollar value on that? And from a breach of contract standpoint, the basic arrangement is: I pay tuition and I satisfy my academic obligations. You give me credits. That's still going to happen.

— There is both a legal defense and a broader public policy argument, and the concern here is if these tuition claims get traction in a unique environment, I worry that it makes bad law for the future.

POLITICO Pro is here to help you navigate these unprecedented times. Check out our new [Covid-19 Coverage Roundup](#), which provides a daily summary of top Covid-19 news coverage from across all 16 federal policy verticals as well as premium content, such as DataPoint graphics. Please sign up at our [settings page](#) to receive this unique roundup sent directly to your inbox every weekday afternoon.

SCOTUS WATCH: We're looking out for a Supreme Court ruling on Deferred Action for Childhood Arrivals, an Obama-era program that provides work permits and deportation protections for nearly 700,000 undocumented people who were illegally brought to the United States as children.

— The high court will release orders from its Friday conference at 9:30 a.m., and there's a possibility of opinions at 10 a.m. The ruling on DACA is expected by June.

[White House](#)

FIRST LADY SENDS GIFTS TO HOSPITALS: First lady Melania Trump is sending care packages to hospitals in 10 states for medical staff and children who are patients, [the Associated Press reported](#).

— The gifts included blankets, caps, tote bags, pencils, backpacks, stickers, Dr. Seuss books and games, according to the White House. They had her “Be Best” initiative logo on them.

— Hospitals receiving these gifts are in some states with high numbers of coronavirus cases. Packages were shipped late last week to New York, Massachusetts, Pennsylvania, Louisiana, Florida, Ohio, Tennessee, Texas, Delaware, Nevada and D.C.

### Education Department

DEVOS EXPANDS SECOND CHANCE PELL PILOT: DeVos on Friday announced 67 more colleges that will participate in an experimental program that allows incarcerated students to receive Pell Grants to pay for their education.

— About 130 schools in 42 states and D.C. are now participating in the program. This expansion more than doubles the number of colleges permitted to enroll incarcerated students using federal financial aid aimed at low-income students. [Read the full list of schools](#).

— The program was started in 2015 by the Obama administration and [has since been championed by DeVos](#).

— “By expanding this experiment, we are providing a meaningful opportunity for more students to set themselves up for future success in the workforce,” DeVos said in a statement. “The stories I’ve heard from students and institutions engaged in the experiment are very encouraging, and we look forward to seeing how this expansion will help even more students achieve a better future.” [Read more from Michael Stratford](#).

### K-12

MASSACHUSETTS OK'd FOR NEW ACHIEVEMENT ASSESSMENTS: DeVos approved Massachusetts on Friday to participate in the Innovative Assessment Demonstration Authority, part of the Every Student Succeeds Act, according to the Education Department. The state is the first to be approved for the 2020-21 school year.

— The pilot program is designed to encourage local involvement in developing the next generation of assessments for student achievement. DeVos, in a statement, said the program allows states to “rethink assessing student achievement in ways that are more relevant to what they are learning.”

— The goal of Massachusetts’ new science assessment is to build a new form of assessment for grades five and eight that incorporates technology-enhanced performance tasks that are more engaging for students.

— Since 2018, Georgia, North Carolina, Louisiana and New Hampshire have been granted IADA flexibility. [Read more from Nicole Gaudiano](#).

### Higher Education

NATIONAL PARK SERVICE AWARDS \$7.7M TO HBCUs: The National Park Service announced \$7.7 million in grants to HBCUs for the preservation of historic structures on their campuses. [Read the full list of this year's grantees](#).

— Grants were awarded to 18 projects in 12 states. Some include: the restoration of Samuel T. Graves Hall at Morehouse College, the preservation of the University Memorial Chapel at Morgan State University and the preservation of Andrew Carnegie Library at Livingstone College.

— “These grants help us to honor the legacy of HBCUs in serving our nation’s higher education needs,” said National Park Service Deputy Director David Vela. [More from Lauraine Genota.](#)

### Syllabus

— Is the Pell Grant reserve fund in trouble? [NASFAA](#)

— Could coronavirus antibody tests really help colleges reopen in the fall? [The Chronicle of Higher Education](#)

— Can colleges survive coronavirus? 'The math is not pretty': [NPR](#)

— How to ask a college for more financial aid: [The New York Times](#)

— Why Congress should give an additional \$1.5 billion to historically black colleges and universities: [Forbes](#)