

Legal Obligations of Proprietary Institutions of Higher Education to Reserve and National Guard Students Enrolled

By Second Lieutenant Lauren Walker²

1.1.2.4—Students

1.8—Relationship between USERRA and Other Laws/Policies

Q: I am the General Counsel of a proprietary institution of higher education with campuses in California, Florida, and New York. We have several Reserve and National Guard students enrolled in our degree programs who must attend their annual two-week training during the semester. What legal obligations does the proprietary institution of higher education owe to these students?

A: Two federal laws that are pertinent, but neither apply to the situation at hand. The first federal law is the Uniformed Services Employment and Reemployment Rights Act (USERRA). But USERRA does not afford rights to postsecondary students whose educational programs are interrupted by voluntary or involuntary military training or duty or service because you, the higher educational institution, are not an employer of the students.

The second pertinent law is 20 U.S.C. § 1091c. This law was enacted in 2008 and accords some students who attend a higher educational institution with USERRA-like protections. The statute states that a student who is absent from an institution of higher education because of service in the uniformed services shall be entitled to readmission to the institution if he or she meets three conditions.³

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2300 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²In February 2022, Lauren graduated cum laude from Baylor Law School and took the Texas bar exam. She is a Second Lieutenant in the Marine Corps not presently on active duty. In June, she will enter active duty in the Marine Corps. She wrote and submitted this article before she entered active duty.

*Military title used for identification only. The views expressed in this article are the views of the author, and not necessarily the views of the Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. Government.

³See 20 U.S.C. § 1091c(c)(1).

However, section 1091c does not apply to your situation because the statute defines “service in the uniformed services” as “service (whether voluntary or involuntary) on active duty in the Armed Forces, including such service by a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.”⁴ Since the students’ annual training is only two weeks long, your institution has no legal obligation to the Reserve and National Guard students who must attend annual two-week training during the semester.

It should be noted that the proprietary institution does have legal obligations under 20 U.S.C. § 1091c to students who are on active duty in the Armed Forces for more than 30 days under a call or order to active duty for more than 30 days. For instance, if the Army calls one of your Reserve students to active duty to deploy to Iraq for six months, your proprietary institution of higher education has a legal obligation to protect the student from failing grades for the interrupted semester and to refund the student for that semester. Additionally, when the student returns home, the proprietary institution of higher education must allow the student to resume his or her education without requiring the student to go through the admission process.

In sum, your proprietary institution of higher education has no legal obligations under federal law to the Reserve or National Guard students who attend annual training for two weeks during the semester.

Q: What about state laws? Does California, Florida, or New York impose legal obligations on the proprietary institution of higher education?

More than half the states have enacted state laws protecting students whose higher education careers are interrupted by voluntary or involuntary military training or service.⁵ Section 1091c is a ceiling, but merely a floor. States may, and many do, provide greater or additional benefits over and above section 1091c.

California

California is one of the states that enacted additional legislation to protect students who are members of the Reserve or National Guard.⁶ Under the California statute, an institution of higher education shall grant an academic leave of absence for military service to any student who is a member of the active militia or a reserve component of the Armed Forces of the

⁴*Id.* § 1091c(a).

⁵See Wayne L. Johnson, *Where to Find Federal and State Laws Online that Protect Students whose Educational Careers are Interrupted by Military Service*, Law Review 21038 (July 2021) (provides a list of some of the State laws in this area).

⁶Cal. Mil. & Vet. Code § 824.

United States who is called or ordered to active duty.⁷ Under the California statute, active duty does not include annual training.⁸ Therefore, your proprietary institution of higher education does not have legal obligations to Reserve or National Guard students enrolled at your California campus.

Keep in mind, that the proprietary institution of higher education will have legal obligations to students who are covered under the California statute. One such obligation includes allowing the student to make an election to either have the institution make arrangements to reasonably accommodate and assist him or her to meet all coursework requirements or for a refund of tuition and fees he or she paid for the academic year missed due to military service.⁹ Additionally, the institution is obligated to restore the student to the educational status he or she attained before being called or ordered to such duty without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid before the commencement of his or her active duty.¹⁰

Florida

Florida is another state that passed legislation to protect students who are members of the Reserve and National Guard. Under the Florida statute, each Florida College System institution board of trustees, and state university board of trustees must establish policies regarding currently enrolled students who are called to, or enlist in, active-duty military service.¹¹ These policies must ensure that the students do not incur academic or financial penalties by performing military service.¹² Additionally, the students must be able to elect to complete the course work at a later date or withdraw from the course with a full refund.¹³

Since your educational institution is proprietary, not state-supported, it appears that the Florida statute does not apply.

New York

New York also enacted additional legislation to protect students who are members of the Reserve and National Guard.¹⁴ Under the New York statutes, if a member of the National Guard or Reserve is called or ordered to active duty, the institution of higher education must grant the

⁷*Id.* § 824(a).

⁸*See* Cal. Mil. & Vet. Code § 143; 146; 32 CFR § 553.1(2).

⁹Cal. Mil. & Vet. Code § 824(b).

¹⁰*Id.* § 824(c).

¹¹Fla. Stat. § 1004.07(1).

¹²*Id.* § 1004.07(2).

¹³*Id.*

¹⁴N.Y. Educ. Law § 6350-6354.

student a military leave of absence from the institution while the student is on active duty, and for one year after the conclusion of such services.¹⁵ The term active duty is defined in 10 U.S.C. § 101(d)(1), or (b). Based on the definition, the proprietary institution of higher education does not have legal obligations to Reserve and National Guard students enrolled at your New York campus.

But, if one of the students at your institution meets the definition of “active duty” then your institution will have legal obligations to the student. For instance, if a Reserve student is called to active duty for 30 days (or even less) for a national emergency then your proprietary institution of higher education has a legal obligation to protect the student from failing grades for the interrupted semester and to refund the student for that semester. Once the student returns from serving on active duty, the student is entitled to be restored to the educational status he or she attained before being called or ordered to such duty without loss of academic credits earned, scholarships or grants awarded, or tuition and other fees paid prior to the commencement of his or her active duty.¹⁶ Additionally, the student has the option of a refund of tuition or fees paid or credit the tuition and fees to the next period of enrollment.¹⁷

This article was written in May of 2022.

Please join or support ROA

This article is one of 2,000-plus “Law Review” articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in October 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military

¹⁵*Id.* § 6350.

¹⁶*Id.* § 6351.

¹⁷*Id.* § 6352.

spouses, attorneys, judges, employers, ESGR volunteers, DOL investigators, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002¹⁸

¹⁸ You can also contribute on-line on the ROA website, www.roa.org.