

Alert

New York Private Schools May Have to Show Damages to Collect Full Tuition in Breach of Tuition Contract Case

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Private school enrollment contracts frequently obligate families to pay full tuition for the school year even if a student does not ultimately attend the school. In *Gunderson v. Park West Montessori Inc.*, No. 602195/08 (N.Y. Sup. Aug. 24, 2009), a case pending in the New York State Supreme Court, a couple signed a standard contract on Dec. 20, 2007, obligating them to pay full tuition to a Montessori pre-school for the 2008-09 school year. The parents opted for a payment plan providing for quarterly payments on the first day of May, August and November 2008, and February 2009. After paying the first installment of \$4,700, but before the school year even began, the family decided to move out of the state. On April 10, 2008, five months prior to the start of the school year, the parents informed the school that their child would not be attending their institution for the 2008-09 school year, prompting the school, in accordance with the terms of its contract with the family, to demand the remaining tuition payments. The parents then commenced a lawsuit seeking to enjoin the school from securing a judgment against them for the full tuition and for a return of the \$4,700 already paid. The school counterclaimed for the full balance owed under the agreement.

As part of this ongoing litigation, New York Supreme Court Justice Walter Tolub denied the school's motion for summary judgment, and granted the parents' motion to compel discovery, finding that even though the parents had signed a contract obligating them to pay the full tuition, the school could only enforce the contract to the extent that it was damaged by the lost tuition. Noting the school's claim that it had "made commitments and incurred financial obligations based upon the number of children enrolled," Justice Tolub concluded that discovery was needed to determine the school's actual losses, which, he said, could range from nothing to the full amount of the tuition.

The decision states that an "anticipatory" or "liquidated" damages clause, in order to withstand scrutiny, must be "reasonable and proportionate to the probable loss." Thus, the ruling suggests that, to enforce a tuition contract providing that parents pay full tuition when a student either never attends school, or withdraws mid-year, a private school may be required to prove it incurred damages.

This case is still being litigated; we will update you as the case progresses and ultimately when a decision is rendered by the court.

If you have any questions about this alert, or would like any further information about education law, please contact:

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