# Dicent v. Kaplan University: Third Circuit Forces Dissatisfied Student to Arbitrate Her Claims Against a For-Profit College

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*A dissatisfied former student sued Kaplan University in federal court, accusing the for-profit university of making false claims and disseminating false advertisements. A federal court dismissed her claims, ruling that she had agreed to arbitrate her dispute with Kaplan rather than sue. On appeal, the Third Circuit Court of Appeals affirmed the trial court's dismissal.*

Maria Dicent enrolled in an online legal studies program at Kaplan University in 2014. She did not have a good experience. In 2017, she sued Kaplan in a federal court, accusing the for-profit university of making false claims and disseminating false advertisements (*Dicent v. Kaplan University*, 2018).

According to Ms. Dicent, Kaplan lured her into enrolling in Kaplan’s online program by using deceptive tactics. She said she had not been informed that she would need 180 hours to graduate, far more hours than a typical four-year degree program requires, and that she had not been able to keep her e-books, which she apparently paid to use. She also said Kaplan’s financial aid office retaliated against her because she refused to allow her photo to be used to promote Kaplan (p.1).

Unfortunately for Ms. Dicent, she signed an arbitration agreement when she enrolled at Kaplan back in 2014. In that agreement, Dicent promised not to sue Kaplan and to arbitrate any claims she might have against the for-profit. She also agreed to waive her right to a jury trial.

Based on the arbitration agreement, a federal trial court threw out Dicent’s suit and ordered her to arbitrate her claims. Dicent, who pursued her case without a lawyer, then appealed to the Third Circuit Court of Appeals (*Dicent v. Kaplan University*, 2019).

Dicent contended on appeal that she was not aware of the arbitration agreement, but the Third Circuit did not buy her argument. A clearly labeled Arbitration Agreement was included in Dicent’s enrollment packet, the court noted, and Dicent admitted having signed the packet with an e-signature (p. 313). “The most reasonable inference we can draw from the evidence presented is that Dicent simply did not read or review the Enrollment Packet PDF closely before she e-signed it, which will not save her from her obligation to arbitrate,” the Third Circuit concluded. “In the absence of fraud,” the court ruled, failure to read a contract “is an unavailing excuse or defense and cannot justify an avoidance, modification, or nullification of the contract or any provision thereof” (p. 314).

*Dicent v. Kaplan University* is an unfortunate decision. The Obama administration recognized that for-profit colleges were using arbitration agreements to prevent students from suing them for fraud or other misconduct. “Forced arbitration provisions used by many schools in their enrollment agreements—often buried in the fine print—effectively prevent students from seeking redress for harm caused by their school and hide wrongdoing from the Department and the public,” the Department of Education stated in a 2016 press release (U.S. Department of Education, 2016). Obama’s Department of Education adopted regulations forbidding the for-profits from forcing their students to sign arbitration agreements (Cao & Mishory, 2018).

Betsy DeVos, President Trump’s Secretary of Education, scuttled the Obama rule shortly after taking office, but a [federal court ordered her](https://www.insidehighered.com/news/2018/10/17/more-year-later-obama-student-loan-rule-takes-effect) to implement it (Kreighbaum, 2018). In light of that ruling, [Secretary DeVos released new guidance](https://www.insidehighered.com/quicktakes/2019/03/18/devos-tells-colleges-drop-arbitration-agreements) to the for-profit colleges in March 2019, [instructing them](https://ifap.ed.gov/eannouncements/030719GuidConcernProv2016BorrowerDefensetoRypmtRegs.html) to drop enforcement of mandatory arbitration agreements (Kreighbaum, 2019).

However, a few months ago, DeVos’s Department of Education rolled out new regulations for resolving “borrower defense” claims, a process by which students may obtain a student loan discharge if they are able to show they were defrauded by the institution they attended. The new regulations allow for-profit colleges to put mandatory predispute arbitration agreements in their student-enrollment documents. As a Century Foundation report noted, the Department’s new rule “directly contradicts the Trump’s Department of Health and Human Services on a similar issue, which acknowledges the harm that such mandatory arbitration provisions can have for consumers” (Walsh, Cao, & Mishory, 2019).

In recent years, a few courts have invalidated arbitration agreements on various grounds. Some courts have labeled them *adhesion contracts*—agreements that a stronger party forces a weaker party to sign on unfavorable terms. Other courts have looked at the inherent unfairness in some of these agreements. For example, a California court ruled that an arbitration agreement was “substantively unconscionable” because it “required young college-aged students to travel from San Diego, California to Marion County, Indiana to arbitrate their claims against a company that solicited their business in California” (*Magno v. College Network, Inc.*, 2016, p. 838).

Acting without an attorney, Ms. Dicent was probably unaware of the legal arguments that can be made against arbitration agreements that for-profit colleges require students to sign as a condition of enrollment. She may not have known that the Obama administration recognized these agreements for what they are—an unfair tactic to protect for-profit colleges from being sued for fraud.

We feel quite certain that Ms. Dicent was telling the truth when she said she did not know about the mandatory arbitration agreement until Kaplan submitted it in district court. Almost all students sign long, turgid documents as a condition of enrollment, and most of them sign without reading. What would be the point? When students enroll at a for-profit college, they are enrolling on the college’s terms, and they realize they have no power to negotiate.

What is so bad about arbitration agreements? First of all, the complaining party is usually required to pay half the arbitrator’s fees, so arbitration may be more expensive for the student than a lawsuit (*Gabriel v. Island Pacific Academy, Inc*., 2017). Second, arbitration agreements often bar students from banding together to file class action suits, which is virtually the only way students can obtain justice against the well-funded for-profits, with their battalions of lawyers (Kreighbaum, 2017).

Finally, it is well known that arbitration generally favors the corporate party. That is why banks, financial services institutions, and for-profit colleges force their customers to sign arbitration agreements (Borak & Barrett, 2017). The arbitrators know they will see a defrauded student only once, but they will likely see the corporate party again and again. If they get a reputation for siding with the underdog, the corporations will not choose them to arbitrate their disputes.

The for-profits know they will repeatedly be accused of defrauding their students. The best way to deal with this constant threat is to get the students to promise not to sue *before allowing them to enroll*. Then, when students get defrauded—as many of them will—there will be little they can do about it.

Unfortunately, for-profit colleges are still permitted to force their students to sign arbitration agreements as a condition of enrollment. Unlike the Obama administration, Betsy DeVos’s Department of Education refuses to recognize the inherent unfairness of mandatory arbitration agreements in for-profit colleges’ enrollment documents.

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