

Legal Tips of the Week: Comply with TILA and Prepare for Coronavirus

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By Whitney Silverman and Megan Mann

As flu season continues, many schools are also concerned about the evolving coronavirus, known as 2019 Novel Coronavirus. For the latest information regarding public health and travel, schools should refer to the [Centers for Disease Control and Prevention \(CDC\)](#), [U.S. Department of State](#) and its [Overseas Security Advisory Council](#), the [World Health Organization](#), and your local health department. For further guidance on campus response, the [American College Health Association](#) offers a guide to pandemic planning and emergency response. NAIS continues to gather resources on this web [page](#).

Pay Attention to the Truth in Lending Act When Offering Tuition Payment Plans

This week's legal tip is provided by [Shipman & Goodwin LLP](#) partner [Julie C. Fay](#) and associate [Dori Pagé Antonetti](#).

The start of the new year means independent schools are already preparing for the 2020-21 academic year. As you dig out and update your enrollment contracts, pay close attention to the types of tuition payment plans your school offers. It may be surprising, but in certain circumstances, independent schools are considered creditors and must therefore comply with the federal Truth in Lending Act (TILA) and any corresponding state laws.

What is TILA?

TILA is a federal law that regulates consumer credit. Under TILA and Regulation Z (its implementing regulation), creditors must provide consumers with specific disclosures summarizing the cost of credit being extended. In the independent school context, this means that schools extending credit to parents in the form of extended tuition payments may need to comply with TILA. Compliance matters, as it will help schools steer away from potential civil or criminal penalties. It can also minimize the chance of a parent trying to avoid tuition obligations by claiming your school did not provide the required financial disclosures.

When is an independent school subject to TILA?

If your school offers payment plans that allow families to defer payment of tuition that would otherwise be due, you need to look carefully at your plans. TILA applies if:

- your school offers such payment plans regularly (more than 25 times in a calendar year);
- the credit is offered for personal, family, or household purposes;
- the amount financed falls under the exemption threshold (\$58,300 for 2020); and

- the amount due is payable by a written agreement in more than four installments *or* subject to a finance charge. In this context finance charges are defined broadly and can include administrative fees (such as the fee to enroll in the payment plan) and discounts for certain payment plans.

If TILA applies, what does it require?

If your school's payment plans are subject to TILA, enrollment should be a two-step process. First, schools must provide families with information about available payment plan options. Second, when parents or guardians select a payment plan, the school should provide a tailored TILA disclosure statement *before* parents sign the related enrollment contract. These disclosures must be clear and conspicuous, and they must be made on a separate document that the parents or guardians can print and keep.

As to substance, the disclosure statements must contain the payment schedule (which states the number of payments, amount of each payment, and due dates). In addition, the disclosure statement must identify the creditor (the school), the total amount financed (net tuition owed), and provide notification of the right and opportunity to request an itemization of the amount financed. The statement must also include information about any finance charges, the annual percentage rate, late charges, and the total of payments. In preparing these statements, schools must indicate whether there are any prepayment penalties or if a parent would be entitled to any prepayment rebate. If the school can demand early repayment, this must also be disclosed. Finally, the disclosure statement must reference the school's enrollment contract for additional information about nonpayment and default.

Is there a way to structure payment plans without triggering TILA obligations?

If you are concerned about having to meet TILA's customized disclosure requirements, there are ways for independent schools to structure payment plans without triggering TILA. First, schools can offer payment plans of four or fewer installments *and* ensure they do not use finance charges or offer discounts for any forms or schedules of payment. Proceed with caution, however, because finance charges and discounts are broadly defined. Second, because credit refers to the right to defer payment of debt, TILA does not apply if the school's payment plans allow for payment in various installments *before* the tuition amount is actually due. Therefore, independent schools could offer prepayment plans (even if they offer more than four installments) without triggering TILA obligations. For example, a school could make tuition due at the start of each semester and then structure payments to be payable before the beginning of each term.

What to do?

If a school chooses to use a payment plan that invokes TILA, it should work collaboratively with its tuition management company to ensure that the required disclosures are being made in compliance with TILA's requirements. Though TILA is not a difficult law to abide by, the logistics can be tricky, as the financial information needs to be customized for each family. Given the potential consequences for noncompliance, it is important for schools to keep TILA top of mind when structuring their enrollment process and finalizing enrollment contracts, payment plans, and any necessary disclosures.

Facing a legal issue and want to NAIS to provide some guidance? Please email legal@nais.org to suggest a topic for the Legal Tip of the Week.

Legal News Bits and Bites

IRS Issues Parking Lot Tax Refund Guidance

As previously reported, Congress [repealed](#) the parking lot tax that required nonprofits to pay taxes on the parking and transit benefits offered to their employees. The repeal is retroactive, and the U.S. Internal Revenue Service (IRS) issued guidance for obtaining a refund for any tax paid. For more information, see the [IRS website](#).

Supreme Court Hears Oral Arguments on School Choice Case

A divided U.S. Supreme Court heard oral arguments in *Espinoza v. Montana Department of Revenue*, a case that may have wide-ranging consequences for school-choice programs and religious-organization participation in public programs. For an analysis of the issues at stake and the tone of oral arguments, read this summary at [Scotusblog](#).

Changes Coming to Service and Emotional Support on Planes

The U.S. Department of Transportation (DOT) is [proposing](#) new rules regarding service and emotional support animals on planes. For additional information on this proposal, read [this](#) summary from the DOT.

Background Check Laws Evolving

It is critical to stay on top of continuously changing background check laws in your jurisdiction. As an example, Pennsylvania recently updated its background check law and now requires employees who have direct contact with children to complete their check before starting work. For further details, read [this](#) article.

For Additional Legal Education and Support

For urgent *crisis* matters, please contact NAIS Legal Counsel Megan Mann at 202-973-9716 or mann@nais.org.

For nonurgent legal education and support matters regarding immigration, tax, government relations, and proposed legislation/regulations, please book time with NAIS Staff Attorney Whitney Silverman [here](#).

For all other nonurgent legal education and support matters, you can book time directly with NAIS Legal Counsel Megan Mann [here](#).

For more resources, please visit our legal education and support [resource center](#).

Disclaimer: While NAIS attempts to provide you with up-to-date legal education and support, our publications do not constitute legal advice. Please consult your attorney for questions about

how the law may apply to your school or situation.

Read more about crisis management in this week's *Independent Ideas* blog post, [After the Storm: 7 Lessons of Managing a Crisis](#).