

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DIGITAL MEDIA SOLUTIONS, LLC)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	
)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC,)	
<i>et al.</i>)	
)	
Defendants.)	

**PENDING STUDENT INTERVENORS’ EMERGENCY MOTION FOR STATUS
CONFERENCE & PRODUCTION OF RECORDS TO ADDRESS LOSS OF STUDENTS’
FUNDS**

Proposed student intervenors Emmanuel Dunagan, Jessica Muscari, Robert J. Infusino and Stephanie Porreca (“Dunagan Plaintiffs”)¹ move the Court to schedule an emergency status conference to address the apparent loss of over \$9 million in Title IV Federal Student Aid funds that belongs to students.

1. Students at schools subject to the Receivership are reporting that the student loan stipends they rely on to pay living expenses, *which belong to the students not their schools*, have not been distributed. In numerous inquiries to undersigned counsel and in statements to multiple

¹ Dunagan Plaintiffs are named representatives in a proposed class action against the Illinois Institute of Art LLC, the Illinois Institute of Art-Schaumburg, LLC, and Dream Center Education Holdings LLC, three of the entities in Receivership. On February 6, 2019, they filed an unopposed motion to intervene in this matter, which remains pending. (Dkt. 35).

news outlets, students across the country are seeking immediate assistance because they are missing rent and mortgage payments and are unable to afford food, gas, daycare, or books.²

2. According to an article in the Arizona Republic, the receiver, Mr. Dottore, stated on Friday that he does not know where the student money is, but suspects it could have been used prior to his appointment on other school expenses like payroll. *See* Rachel Leingang, “Argosy University Withholding Financial Aid. Students Can’t Pay Their Bills.” *Arizona Republic* (Feb. 8, 2019), *available at*:

<https://www.usatoday.com/story/news/education/2019/02/08/argosy-university-financial-aid-closing-receivership-accreditation/2817950002/>.

3. According to the same Arizona Republic article, on February 6, 2019 Principal Deputy Undersecretary of the United States Department of Education, Diane Auer Jones, sent an email to the Minnesota Office of Higher Education stating: “I have had daily calls with the receiver, but as of last night he hadn’t released the stipends. We have emphasized to him that this must be done, but we are also consulting with our legal team to figure out what next steps we can take legally if it doesn’t happen.” *Id.*

4. These missing student funds should be readily identifiable in the schools’ books and records. Department of Education regulations require schools to “maintain title IV, HEA

² As but one example, *see* Staci Zaretsky, “Law Students Unable to Pay Rent Without Student Loans After School Goes Into Receivership,” *Above the Law* (Feb. 8, 2019) (“[S]tudent leaders at [Western State College of Law] are now expressing their concerns about an unfair lack of transparency from the administration, as their classmates have been seen crying in the hallways. Here’s what one student told us: ‘We’ve been told since January 19 that the school is working to get our financial aid and still nothing. Students are contemplating dropping out, dropping to part time, whether to buy food or pay rent or buy books. The school requested that students ‘petition’ for \$50-\$100 Visa gift cards to help with expenses and we still haven’t even received that.’”), *available at*: <https://abovethelaw.com/2019/02/law-school-student-loans-delay-receivership/?rf=1>.

program funds in a depository account . . . insured by the FDIC or NCUA.” 34 CFR § 668.163.

For each depository account, the schools “must clearly identify that title IV, HEA program funds are maintained in that account” by either: (i) including the phrase “Federal Funds” on each account or (ii) by notifying the depository institution that the depository account “contains title IV, HEA program funds that are held in trust and retaining a record of that notice” as well as by filing a UCC-1 statement with the appropriate state or municipal government entity “disclosing that the depository account contains Federal funds and maintaining a copy of that statement.” 34 CFR § 668.163(2). Accordingly, with proper information from the Receiver, the Court should be able to identify the accounts established by the schools to receive funds from the Department of Education, confirm that the accounts were funded by the Department, and determine when and to whom the funds in such accounts were distributed.

5. On February 12, 2019, undersigned counsel contacted Special Counsel for the Receiver to discuss the Receiver’s position on this motion. In response, Special Counsel provided undersigned counsel with a February 7, 2019 letter from the Receiver to the Department of Education, which is attached hereto as Exhibit A. The February 7 letter does not explain what happened to the missing student funds and raises numerous additional questions regarding the whereabouts of Receivership assets.

6. This situation needs to be addressed promptly. While the Dunagan Plaintiffs are hopeful that there is a harmless explanation and a simple solution, the reporting cited above has heightened their concern that student interests are, or have been, overlooked to address other obligations.

Accordingly, the Dunagan Plaintiffs respectfully move for the Court to schedule an emergency status conference at which the Receiver can report and the Court and others may inquire on the Receiver's efforts to ascertain the whereabouts of the missing student funds.

/s/ Richard S. Gurbst

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Emergency Motion For A Status Conference was served upon all parties of record by the Court's electronic filing system this 12th day of February 2019.

/s/ Richard S. Gurbst _____
Richard S. Gurbst
One of the Attorneys for Pending Intervenors