Strategies for Negotiating Preemployment Agreements

Robert Perry, Patricia Crist

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Student preemployment agreements are an emerging form of employee-sponsored financial support for students. Forms of financial support for students include the preemployment agreement, sign-on bonus, employment bonus, scholarship, loan, stipend, and grant. Various professional, legal, and ethical issues are involved in the student–employer negotiation of the preemployment agreements. Students may consider financial support for education, type of practice setting, or location of future employment as primary benefits of preemployment agreements. Fieldwork facilities may identify therapist recruitment as the primary goal when offering a financial incentive to a student. Academic fieldwork coordinators may list preservation of the therapist–student relationship or adherence to the fieldwork agreement reached between the academic program and the fieldwork facility as a primary goal. In this article, guidelines for the practical use of preemployment agreements are outlined for use by students and professionals in academic and practice settings.

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Responses to the high costs of education, coupled with the extremely high demand for occupational therapists, have produced a financial opportunity for students and a recruitment strategy for employers that is referred to as the preemployment agreement. Employers are increasingly more willing to invest up front in future practitioners to ensure that clinical positions are filled and service provision available. Preemployment agreements have become a means for students to complete training that might have been financially impossible otherwise. Educational programs have, in many cases, become the vehicle for courting potential recruits, thus leading to the emergence of a new facet in career counseling.

Rehabilitation institutions have been willing to redirect expenses associated with recruitment into educational aid for students. One corporation pays almost half a million dollars a year to recruit occupational therapists and physical therapists. Money redirected from marketing into preemployment agreements ensures future employees while allowing students to enter the job market with lower educational loans. Recruitment of occupational therapy students used to occur during a student’s last academic year. Now, students frequently sign preemployment agreements before they even enter their professional programs.

Many occupational therapy students receive financial assistance to support their educational expenses. During the 1990 meeting of occupational therapy program directors, we did an informal survey, which indicated that an increasing number of students are signing work agreements before leaving their educational programs. Three directors indicated a 10% to 15% rate of such agreements, and only a handful of schools had policies or procedures guiding such activity. At Texas Tech Health Sciences Center, the rate of occupational therapy students signing preemployment agreements before they complete the program has increased from 4% in 1989 to 36% in 1991 (Texas Tech University, 1991). In the 1993 Education Data Survey Final Report (American Occupational Therapy Association, 1993) it was noted that in 1992 five hundred fifty-six students at 51 programs received stipends from hospitals/institutions in exchange for an employment agreement upon graduation, 85% more students than last year. Those students represented about 5% of the entire student enrollment; a percentage that has continued to grow over the past several years. (p. 9)

Although preemployment agreements are made through mutual consent of the student and the health care facility, students, clinicians, and educators are sometimes unaware of, or may even choose to ignore, the legal and ethical implications involved in signing and working under such an agreement. When a student signs an agreement with his or her fieldwork facility before participating in the fieldwork experience, the facility, the student, and the educator are placed in a precarious position due to
role confusion. For instance, the fieldwork educator becomes the employer of an employee who is also a fieldwork student.

The prevalent feeling among educators, students, and clinicians is that preemployment agreements are between the student and the employer, and are therefore not the responsibility of the university. However, the issue is not this simple. For students, their parents, employers, and educators, communication regarding these agreements is confusing due to inconsistent use of terminology for the various preemployment and financial aid resources. The student, faculty members, and employer should consider the implications, rights, and responsibilities added by these agreements during career counseling. In light of these concerns, the Administration and Management Special Interest Section (SIS) of AOTA developed a brochure for students titled Recruiters: A Student Guide (Administration and Management SIS Standing Committee, 1991). Though helpful as an introduction, the brochure does not contain sufficient information for understanding this increasingly frequent and complex relationship between students, employers, and academic administrators.

Clarification of preemployment agreements and processes influenced by these agreements is needed to enhance communication and promote appropriate use by all parties. Therefore, this article describes and defines the terminology for student preemployment agreements; identifies various professional, legal, and ethical issues involved in student–employee negotiations with case histories; and proposes guidelines for the successful negotiation of these agreements. Understanding and a working knowledge of student preemployment agreements will benefit student needs, educator roles, and institutional objectives.

Clarification of Terminology

Preemployment agreements and financial aid terms, both forms of student financial support, are defined and recommended to facilitate clear, consistent communication among students, recruiters, and academic programs (see Figure 1). The first two terms in Figure 1 involve promises of employment and other financial benefits in return for support during education. The last four do not involve obligations for employment. Some agreements are combinations of the terms defined in Figure 1. For instance, a student may sign a work agreement that will be considered a loan if the student does not become an employee of the facility, or if a job is not available for the student when he or she is ready to be employed. Complex situations indicate the need for consistent use of this terminology to clarify communication and facilitate effective negotiations.

Legal and Ethical Dilemmas: Case Studies

The conditions under which the agreement is signed may either clarify or jeopardize the respective goals of the student, the clinical facility, and the educational program. The following cases demonstrate ethical and legal dilemmas that may arise during preemployment negotiations.

Case Study 1

Without the knowledge of the academic fieldwork coordinator, a senior student negotiated a work agreement with a facility where she had been prescheduled for a Level II fieldwork placement but had not yet attended. There was no specific written policy for the program to prevent this kind of arrangement and protect the educational focus of the fieldwork experience. The fieldwork educator at the facility and the student began negotiations to modify the typical fieldwork program to prepare the student for her future employment role and functions.

When the academic program became aware of the situation, the student had received a sizable starting bonus before the start of the fieldwork experience, but no employment papers had been signed. The student believed that although she had received money from the

<table>
<thead>
<tr>
<th>Preemployment Agreements</th>
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<tbody>
<tr>
<td>Work Agreement or Work Contract: A contract or agreement between the facility and the student stating that the student will be employed by the facility upon graduation in exchange for money and/or access to employee benefits prior to graduation. This money is regularly disbursed to the student during the student's educational program.</td>
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<tr>
<td>Sign-on or Employment Bonus: Money paid one time only to the student upon signing on as a future employee of the facility. Such bonuses are given to entry-level as well as experienced practitioners and usually are paid in one lump sum. Students may receive the bonus (or material goods, such as a car) during their academic program if they are hired prior to graduation.</td>
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<tr>
<td>Financial Aid</td>
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<td>Scholarship: Money paid to the student that does not require the student to serve the facility as repayment of debt.</td>
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<tr>
<td>Loan: Money lent to the student that must be repaid to the lender according to the terms of the agreement. No obligation to work for the lender is involved.</td>
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<td>Stipend: Money paid periodically to the student prior to completion of the educational program. This arrangement refers to money paid to the facility by the student only while the student is affiliated with that facility during Level I or Level II fieldwork. No obligation for work beyond fieldwork is expected.</td>
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<tr>
<td>Grant: Money paid to a student that does not require repayment or service to pay off grant-related debt.</td>
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Figure 1. Types of financial support for students.
A student was assigned to do fieldwork at a specific facility, no dilemma existed because she was not actually an employee of the facility. During routine follow-up, the clinical student supervisor related that within the first year of employment, the student took a leave of absence from her job and began to pursue other educational goals. She left employment before fulfilling her work obligation as stipulated in the work agreement and was in the process of repaying the balance of the debt. The supervisor further related that the facility was no longer interested in financially obligating itself in such a manner as a means of recruiting future therapists. Because of this student’s actions, other students who may have benefited from a work agreement and honored its intent fully will not have this opportunity.

Case Study 2

After a student was assigned to do fieldwork at a specific facility, the student accepted a sign-on bonus at the facility before beginning clinical education. The fieldwork coordinator was not consulted during the preemployment negotiations.

The fieldwork facility maintained the educational focus of the learning experience, but the student had such difficulties that at midterm the educational program was informed that the student was failing. Initial contact with the facility indicated that the student was not able to perform to the level of the employment standards desired by the facility. The academic program’s fieldwork coordinator’s involvement was geared toward ensuring that a clear differentiation was maintained between employment standards and fieldwork objectives. The facility’s fieldwork educator stated that the facility was willing to assist the student in meeting the fieldwork objectives but would not hire her upon completion because she would not exemplify the high standards upheld for staff member performance. After substantial involvement by the fieldwork coordinator working in cooperation with the fieldwork educator, the student reached entry level competency and passed the fieldwork experience.

Upon completion of the fieldwork, the clinical director at the facility stated that she had reconsidered her previous decision and offered to rehire the student. Citing pride and dignity as reasons, the student chose not to accept the position reoffered by the facility, successfully secured employment elsewhere, and repaid the sign-on bonus.

These two case situations indicate the role ambiguity and conflict of interests created among students, the fieldwork facility, and the academic program. In working through these situations, roles of the different entities involved, priorities regarding each of the parties, and academic versus employment conflicts had to be clarified. Important questions suggested by these cases are as follows:

1. Do the student and the facility have an ethical or legal obligation to disclose to the academic program that two potentially conflicting agreements have been reached with the facility?
2. How is the focus on education ensured during fieldwork? What happens when facility standards and fieldwork requirements conflict?
3. Is the facility’s fieldwork educator able to maintain objectivity regarding fieldwork programming and student evaluation when the student has a prior agreement with the administration of the facility?
4. Do preemployment agreements place the student at an advantage or disadvantage over other fieldwork students? What are the professional risks for a student accepting an agreement before or during fieldwork?
5. Does the academic program have the right to include the existence of these agreements in their decisions regarding fieldwork placement?

These questions are central to maintaining and protecting the integrity of the educational experience, the professional development of the student, and the relationship between academic and fieldwork education programs.

These two cases illustrate some of the problems associated with accepting competing roles. Depending on how the agreement was written, the student may simultaneously be a student and an employee. As a student, a person accepts the rights and responsibilities stipulated in the fieldwork agreement reached between the university and the clinical facility. As an employee or potential employee, the student may have taken on an additional role with expectations different from those for fieldwork, such as carrying a particular patient load in preparation for employment, covering for absent therapists, or maintaining responsibility for a given program. Also, the educational purpose of the fieldwork experience may be altered. For example, the student may be allowed to visit only facilities where similar occupational therapy services are provided, because the visit facilitates the student’s future role as an employee.

The clinical fieldwork supervisor has the primary responsibility of guiding the clinical education of the student. However, as both fieldwork educator and employer, the clinician may have taken on two differing and possibly conflicting roles. The fieldwork educator may be working under the constraints of both the fieldwork agreement and the employment agreement. Likewise, the student, who is probably less able to negotiate differing simultaneous professional roles, is vulnerable to multiple, potentially conflicting role expectations that may be beyond typical fieldwork expectations.

With the presence of multiple, competing roles between students and clinicians, academic fieldwork coordinators’ roles are also transformed. The academic fieldwork coordinator is working under the provisions of a
fieldwork agreement and must ensure that this agreement, along with the stated educational objectives, act as primary to the relationship between the student, the facility, and the academic program. The responsibility of the academic fieldwork coordinator is to provide the best possible arrangement in which the student can learn and meet stated fieldwork objectives. The academic fieldwork coordinator must maintain the authority to affect the daily routine of the student on fieldwork, should that become necessary. This responsibility is assigned and monitored through processes required by educational programs to maintain accreditation (AOTA, 1991). Additional ethical dilemmas between students and academic faculty members regarding preemployment agreements and sign-on bonuses can occur as illustrated in the following cases.

**Case Study 3**

A student signed a preemployment agreement with a facility to ease his current financial burden. The contracting facility financed the student’s educational expenses for more than a year, expecting to have a position filled on a predetermined date. When another facility offered the student a contract buy-out, the first facility was in jeopardy of losing the new therapist to a competing institution. The student came to the faculty members for advice regarding the implications of such actions. The student was made aware that a facility manager not only makes budgetary and programming decisions, but also plans with the expectation that certain positions will be filled according to the provisions of a contract.

**Case Study 4**

A student pursued a facility to buy out his contract because he did not want to work in the facility that had provided the preemployment agreement. The second facility was unaware of the student’s previous commitment and offered a sign-on bonus. The student requested a reference for the new facility from faculty members and reported that the sign-on bonus was going to be used to pay off the previous work agreement debt.

In Case 3, the facility offering the contract buy-out is acting unethically and requesting the student to act likewise. The aggressive marketing and recruiting of therapists has stimulated competition to the degree that unethical behavior is challenged. In Case 4, the student was acting unethically to ensure his own self-interests. Although most clinical facilities prohibit the recruitment of students or therapists with existing contractual obligations, some do not. Regardless, all parties are bound to ethical standards and actions such as honoring commitments and fulfilling legal obligations.

Today’s students are paying higher prices for their education as well as higher costs of living. Often, due to rigorous curricula and fieldwork requirements, little time is left for part-time employment. Escalating costs for occupational therapy education constitute a considerable investment by the student. Work contracts and sign-on bonuses are methods used to defray these expenses and ward-off long term debt for education frequently referred to as mortgaged futures. Long-term debt may influence employment decisions for years. For instance, a student who signed a preemployment agreement with a person who owns a nursing home in the community. The facility is planning to pay her $3,000 per semester in exchange for 1 year of employment. At graduation, she will have been given $21,000, for which she will need to commit to 7 years of employment with the nursing home.

As older students return to school in larger numbers, they bring with them family and financial obligations that may prevent completion of the curriculum unless they can make financial arrangements with employing facilities (Perry, 1992). Family responsibilities and educational expenses such as relocation costs, especially during fieldwork, prompt students to sign contracts for financial support.

Arranging in advance to cover fieldwork-related expenses provides these students with a certain degree of psychological comfort. These students may have achieved a certain degree of psychological safety in knowing that there is a job waiting for them upon graduation and knowing where they will be after fieldwork is completed. This security allows the student to plan for the long term rather than worrying about future employment. Other students who have signed preemployment agreements or accepted sign-on bonuses before employment have done so for other reasons, such as to secure employment in a preferred city or facility. In the next case, the student was aware of her needs and career desires before graduation and took action to meet these needs.

**Case Study 5**

A student signed a work agreement with a prestigious facility where employment was desirable because of the learning opportunities available during development as an entry-level practitioner. She sought this agreement to ensure her future as well as to limit educational expense liabilities. She did not talk to any other recruiters or seek any other options after signing an agreement. Upon completion of fieldwork, the student was notified that there was not an available opportunity at the facility and that the work contract would be converted to a loan with interest payments.

In this situation, because the facility did not honor its agreement, the student was penalized, because unequal and even unfair rights and responsibilities were stipulated between the facility and the student. Students can also be mesmerized by the strategies used by some recruiters,
as exemplified in the following case.

Case Study 6
A student's primary goals were to specialize in pediatrics and to work closely with an experienced therapist in beginning his career. A recruiter working for a large company specializing in contract therapy services convinced the student to sign on because the company would be able to help the student achieve this goal. The student did not research the company before signing a 2-year work agreement stipulating that upon graduation he would work anywhere in the United States for this corporation. Upon graduation, only solo therapist positions in nursing homes in rural areas were available and offered to this student. Though the student was able to benefit from the financial support during education, he thought that his desired professional development and self-esteem were hampered because he was assigned to work in a clinical situation that did not afford his desired career goals in pediatrics or provide support from experienced therapists.

Students may use financial arrangements to reinforce their own beliefs about their relative worth. Numerous contacts at career fairs and with recruiters have made students aware that their career choices will make them marketable commodities. Work agreements enhance the professional self-esteem of students.

The negative side of preemployment agreements has been reported by fieldwork educators. Some students with work agreements display decreased motivation to demonstrate more than minimal competence during fieldwork because their future employment is secure. Now, some facilities and corporations offering these agreements refuse to hire students who do not demonstrate good work attitudes or entry-level competence during all fieldwork, because the corporations do not want to have the quality of their occupational therapy services hindered.

Some facilities that have signed these agreements are informing academic programs that they will provide fieldwork only for students under contract with them. By shifting financial resources to assist students through preemployment agreements, staff member continuity can be maintained without discontinuing services, as exemplified in the following case.

Case Study 7
During a fieldwork experience, a student signed a work agreement with the facility. During her last month at this site, all the occupational therapy staff members were fired. Reasons given by administration were "conflicts in mission and changes in future hospital goals." The discharged occupational therapy staff members disagreed and believed that the primary reasons were cost savings in salaries and the knowledge that new staff members were readily available for employment at lower salaries.

Resolution of the problem was difficult due to the multiple obligations and responsibilities among the student, academic program, and fieldwork site. The student was bound by the preemployment agreement to work for the facility, but the fieldwork experience was jeopardized due to the loss of adequate clinical supervision. The work agreement had provided an employment opportunity for the student, but also created problems. Given the diversity of student backgrounds, their needs and motivations, and the needs and restrictions of employing facilities, preemployment agreements are likely to continue.

The potential benefits for students and future employees outweigh the potential problems if all parties share common objectives and ethically honor clearly stated expectations. The ability to convert extensive dollars for competitive recruitment into direct financial support for a student who eventually will become a productive employee is acceptable and valuable for all parties, for education, and for practice. Therefore, guidelines pertaining to the execution of agreements are necessary to help educators, employers, and students promote beneficial relationships and avoid legal or ethical problem situations.

Preemployment Guidelines and Contracts
The legal responsibilities between parties agreeing to preemployment agreements or sign-on bonuses should be specified in a written contract. A contract is a promise or a set of promises to which the law attaches legal obligations. The law has defined a contract as a deliberate engagement between competent parties to do or abstain from some act for sufficient consideration. The contract should benefit all parties and the obligations should be clearly delineated. Each party signing the contract is responsible for understanding the content and, by signing, agrees to the stated promises and conditions. Legal advice should be sought to protect the interests of each party when negotiating and writing contractual arrangements.

A contract to provide any financial support for the student's education should include language regarding the following issues:

1. expected length of employment
2. choice in selecting employment setting including assistance with relocation expenses
3. provision of supervision and other professional growth opportunities
4. determination of the rate for wage and benefits at the time of employment
5. terms for repayment if the student or facility does not willfully honor the contract
6. distribution of funds including amount and timelines
7. interactions among student, fieldwork site, preemployment facility, and academic program including simultaneous roles and fieldwork processes.

Beyond the actual contract, students, academic programs, and facilities are encouraged to use the terms defined in this article to enhance communication and to take active steps to act responsibly and ethically regarding preemployment agreements.

Guidelines for Agreements and Sign-on Bonuses

Students

Students should consider the following points and actions when negotiating a work agreement or other financial exchange for work:

1. Take the time to carefully review personal and professional reasons before signing an agreement. Understand how this agreement will affect other financial aid or obligations (including tax liabilities).
2. Check state licensure laws and reimbursement regulations to make sure that the agreement does not require the student to perform duties beyond his or her level of certification.
3. Underline any part of the contract that the student does not understand, and seek explanation from the facility and a lawyer for those items.
4. Contracts, at least in theory, are negotiable before signing. The student should cross out the parts she or he does not like, and write in terms, especially oral agreements, that the contract may not include.
5. Make sure all changes to the contract appear on all copies of the final agreement that will bear the student’s signature. The student should retain a copy of the final agreement.
6. Understand that a breach of contract may occur if the student does not live up to his or her responsibilities as stipulated in the contract. Failure to perform may be a breach of contract.

In a case where the student has not performed satisfactorily on a fieldwork experience, accepts a buy-out, or acts to terminate a contract, the potential employer may then require repayment, penalties, and even damages. Likewise, facilities that do not live up to their stated agreements may also be in breach of the agreement, and legal remedies may be sought by the student.

7. Consult with a faculty member and an attorney. Faculty members cannot act as intermediaries during negotiations, but can share past experiences and can cite cautions as well as desirable outcomes. Lawyers can protect the student’s legal interests and rights.

8. If accepting employment with the student’s fieldwork facility, the student should be proactive and negotiate primary and secondary roles with the academic fieldwork coordinator and potential clinical supervisor for whom the student will work. It is important to discuss how role and performance conflicts between fieldwork and employment will be handled before the situation arises.

9. Gather as much information as possible regarding the future employer. At minimum, talk to current employees, especially those who have signed these agreements, and request time observing occupational therapists in these sites. Avoid jobs where experienced occupational therapy supervision is not provided.

10. Remember that the purpose of fieldwork is to practice occupational therapy under supervision, not to entice fieldwork facilities to offer a preemployment agreement.

11. Act ethically, responsibly, and professionally regarding these decisions.

12. Seek restitution for breach of contract.

Academic Programs

With academic programs being inundated with recruitment requests from employers, two important activities are also increasing: (a) the opportunity to encourage recruiters to offer preemployment agreements to assist students with education costs and (b) efficient networking methods to promote effective recruiter–student interaction.

Legal concerns of the academic program include proper supervision of the fieldwork student and negotiation of mutually beneficial fieldwork training agreements. Fieldwork is applied education through supervised clinical practice and is not intended to be on-the-job training. When both a training and preemployment agreement occur simultaneously, the cooperation with the academic program may be superseded by employment issues, thus clouding effective evaluation and supervision of the student. The school may be sent inappropriate, inaccurate, or incomplete information regarding student deficiencies and thus render the school unable to provide accurate counseling for the student or, more importantly, unable to legally defend students’ rights or fairly terminate unqualified students. Avoiding the placement of a student in a fieldwork facility where he or she has a preemployment agreement will eliminate some of these concerns. This approach may be the fairest to the student, the academic program, and fieldwork facility. Employing facilities will benefit from this decision because students will bring varied experience to diversify current services.

Academic programs can do the following regarding...
preemployment agreements:

1. Uniformly deal with recruiters and direct their calls to an appropriate resource such as a career center or other approved avenues to contact students. At one school, the Student Occupational Therapy Association now acts as an effective intermediary between recruiters and individual students because no career placement service exists. As a fundraiser, the association sells a booklet of resumes for a specified fee.

2. Develop guidelines or policies regarding fieldwork placement decisions and preemployment agreements. Inform students and fieldwork educators of these policies.

3. Educate clinical fieldwork supervisors, students, and recruiters regarding potential problems and benefits of employment agreements.

4. Develop procedures regarding dissemination and protection of student names and information regarding preemployment agreements with reference to the Buckley Amendment to the Family Educational Privacy Act of 1978 (Public Law 90-247).

5. Educate students regarding these preemployment agreements. Discuss ethical responsibilities, legal rights, and liability exposures. Provide support and counsel on an individual basis regarding potential implications for professional development. Encourage students to seek legal advice regarding the contract.

6. Encourage fieldwork facilities to notify the academic program when a future or current fieldwork student has a preemployment agreement at that facility. Require that they recognize that the primary agreement between the academic program and the fieldwork facility is to provide fieldwork training to the student, and that preemployment is a secondary goal.

7. Use the negotiation and acceptance of these contracts as methods to teach ethics and professional judgment.

 practice settings

Whether or not a facility has a fieldwork program, if work agreements are used as part of an overall hiring strategy to attract students, the following guidelines are suggested:

1. Educate human resource personnel and other recruitment staff members regarding the purpose, value, and responsibilities regarding these preemployment agreements. Encourage use of appropriate terms in all materials and ethical behavior regarding contacts with potential preemployment agreement students.

2. Encourage the redirection of some recruitment funds from advertising to preemployment agreements.

3. Review administrative policies regarding all preemployment agreements. Refuse to be involved in buying out contracts of students or therapists who have not fulfilled their contractual obligations.

4. Develop methods to increase student loyalty to the facility. Expect ethical behavior and ongoing involvement, reporting, or interviews with the potential employee. Implement penalties in the event of contract breach.

5. Encourage contracts that successfully match a student's career goals with the facility's mission. Develop contracts that are mutually beneficial for the facility and the student.

6. Notify the academic program when a preemployment contract is signed with a pending or current fieldwork student.

7. Develop review processes to ensure that the student has worked to acquire maximal benefit from academic and fieldwork experiences.

8. Offer work agreements because the benefits can outweigh the limitations for all parties.

Summary

Though the long-term effects of preemployment agreements on career development are unknown, these guidelines are suggestions to ensure responsible interactions among facilities, occupational therapy students, and academic settings. Preemployment agreements meet personal, educational, professional, financial, and institutional goals. Long-term implications warrant additional study.

Preemployment agreements are increasing because they mutually benefit occupational therapy students and employers. As illustrated by the case studies in this article, this emerging process is creating new ethical and legal dilemmas for academic programs as well as for the other parties involved. The intent of this article was to identify potential issues and dilemmas involved in student-employee negotiations and preemployment agreements. The issues and proposed guidelines may not be germane to all situations. Although this article has discussed only problem cases, many successful relationships, primarily those that include the guidelines discussed here, have been completed. Terminology for preemployment agreements is different from terminology for financial aid. Consistent use of terminology, and knowledge regarding these agreement processes including guidelines for their appropriate use, is necessary to avoid ethical and legal problems. Exploration of the impact of preemployment agreements on future career decisions and professional development is needed.
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Compiled by Shirley Wells, MPH, OTR and AOTA Public Relations Department

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