



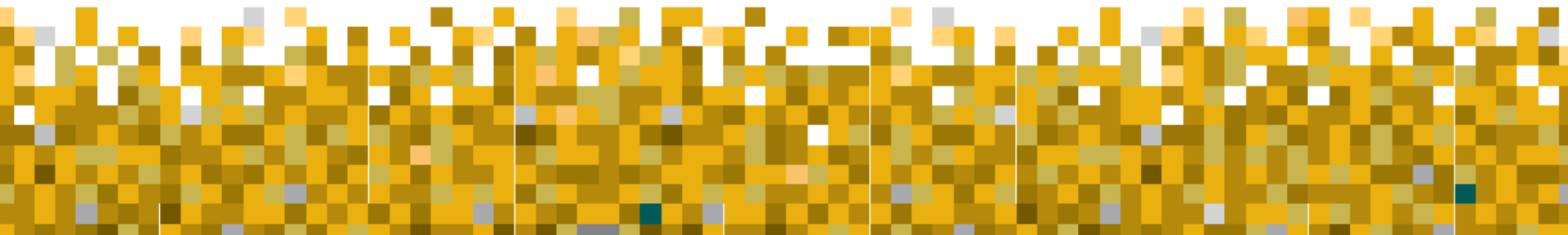
Collections Best Practices

Compliance + Performance

Brian Hill

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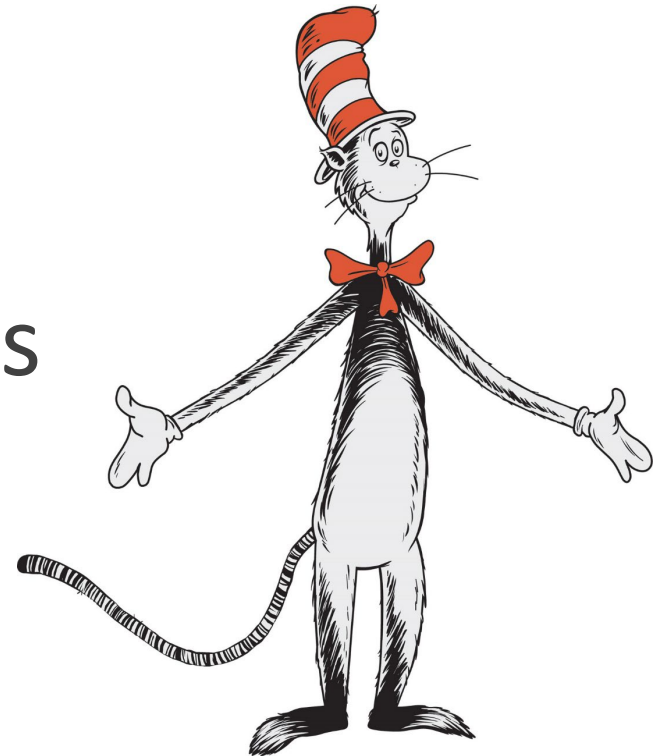


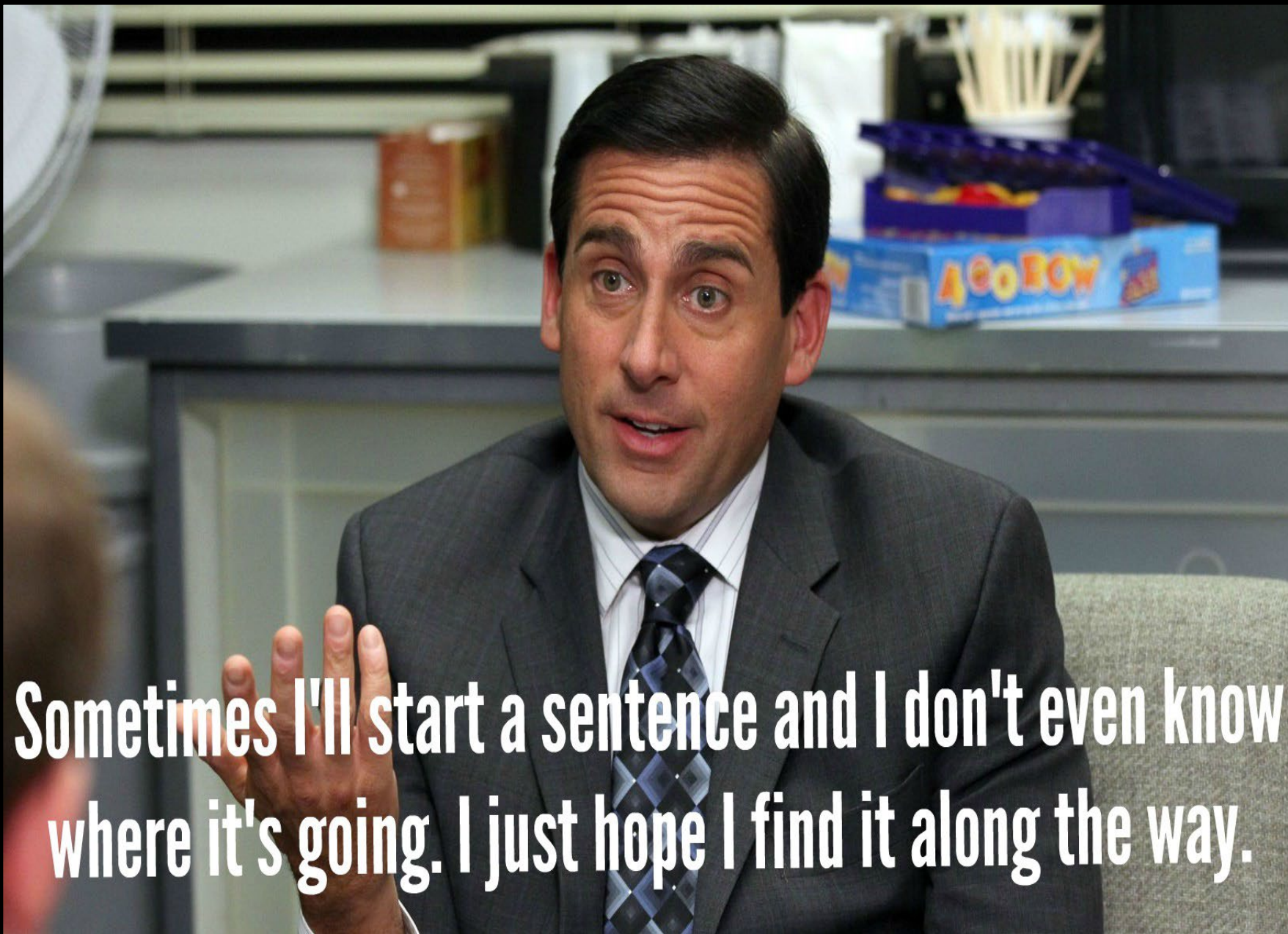
Agenda

Part I-Collection costs on non-federal
debt types

Part II-UDAAP

Part III-Improving Recoveries





Sometimes I'll start a sentence and I don't even know where it's going. I just hope I find it along the way.

This presentation **does not** constitute legal advice. Prior to any legal or compliance changes within your organization, please consult your legal counsel.

Finally, although we believe the information in this presentation is accurate as of this date, the statutes, regulatory guidance and case law in this area is ever changing.

Please continue to monitor for changes.









Part I: Non Federal Master Promissory Notes for AR



Dr. Seuss says:

Think  left and think right 
and think low  and think high 
oh, the things you can think
up if only you try!

The Government's Response - CFPB

- Created by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 in response to the recession of 2008.
- Formally began operations in 2011.
- Works with other regulators, including State Attorney Generals and financial regulators, targeting UDAAP and other violations.
- Has announced that it will focus on, among other topics, student lending and debt collection.
- All creditors and debt collectors should also be conscious of litigation risk associated with asset recovery.



Types of Debt

Perkins Loans:

- Federal Loan Program
- Regulated by federal regulations and guidelines
- Master Promissory Note

Types of Debt Subject to State Collection Cost Restrictions:

- Any type of Accounts Receivable debt, including;
 - Tuition loan extended directly to student
 - Any extension of credit directly to student
 - Student Receivables such as Library Fines, Parking and Cafeteria fees, etc.
 - DOES NOT include federally guaranteed student loans, which are regulated by other federal guidelines ([34 CFR 682.410](#))



Need for Written Agreement-FDCPA

FDCPA - it is a violation to collect any amount that is not “expressly authorized by the agreement creating the debt or permitted by law.”



Collection Costs Case Law

1. *Kojetin v. C U Recovery, Inc.*, 212 F.3d 1318 (8th Cir. 2000), collection costs must be specifically laid out in the agreement between the creditor and debtor; must be related to actual costs of collection.
2. *Seeger v. AFNI, Inc.*, 548 F.3d 1107, 1113 (7th Cir. 2008), percentage-based collection fee permissible under FDCPA if collection costs allowable under state law and contract that creates debt also includes language authorizing the fee.
3. *Bradley v. Franklin Collection Service, Inc.*, 739 F.3d 606 (11th Cir. 2014). Court holds that written agreement must specify exact percentage of collection costs.



Elements of a Written Agreement

To recover the maximum allowable collection costs in states that permit such costs, you should include the following in your written agreement;

- The terms of the loan or the extension of credit.
- The repayment terms.
- The conditions of default.
- The CONSEQUENCES of default laid out in VERY SPECIFIC detail. Written agreement must specify whether collection costs will be added if the student defaults and at what percentage.
- If there are internal collection fees, you should disclose them separately because some states, like KS, regulate those fees separately.
- Late fees or other fees attached to default, or additional legal fees if you choose to enforce the written agreement in court.
- Written agreement may be electronic, but to validate the debt the signature should be printable.



Financial Responsibility Agreement

From NACUBO Advisory Report 2015-1:

- A financial responsibility agreement provides relevant information about official institutional policies to students and contractually binds them to those policies. It is intended to potentially protect student debts from bankruptcy discharge and set parameters for internal and external collection efforts
- Members are encouraged to consider requiring students to sign an agreement prior to registering for classes and periodically thereafter. The institution will need to determine how often students are asked to reaffirm the financial responsibility agreement, taking into account state law, characteristics of the student population, and coordination with other processes. Current practices vary widely by institution.
- No matter how an institution handles this issue, **the legal goal remains: a clear contract that binds the student to the most current policies of the institution and covers all of the amounts that become due and owing during a student's tenure with the institution.**



Best Practices for Financial Responsibility Agreements

Collin College, Plano, TX

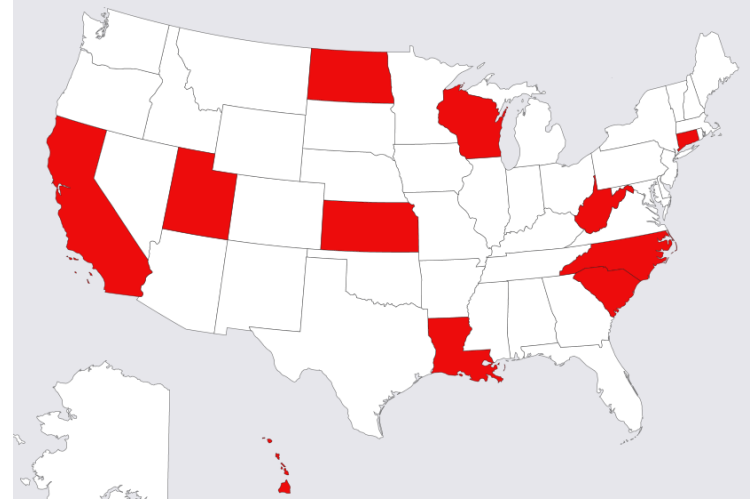
“I understand a delinquent account may be placed with an outside collection agency and/or reported to the national credit bureaus. I understand I will be responsible for all late payment fees, percentage based collection fees (up to 33.33% of the original principal balance), attorney fees, interest and any other costs and charges necessary for the collection of any amount not paid when due and/or any balance resulting from an adjustment to financial aid awards and/or amounts not covered under a third party funding agreement made on my behalf between Collin and another entity.”

Collection costs should be included in the promissory note as seen above in the example from Collin College.



Collection costs

- California
- Connecticut *
- Guam
- Hawaii
- Kansas *
- Louisiana
- North Carolina
- North Dakota
- South Carolina
- Puerto Rico
- Utah
- West Virginia
- Wisconsin



These States either Prohibit or Restrict the amount of Collection Fees to be collected, even with a signed Student Financial Agreement. Many State Laws Prohibit or Restrict certain collection activities such as billing, dunning, the size font, what disclosures have to be printed on the back of letters, etc.



State Collection Cost Laws*

*more restrictive than just requiring a written agreement, and/or imposing a limit

State	Collection Cost Status	Notes
California	<ul style="list-style-type: none">• Prohibited	Cal. Civ. Code § 1788.14(b)
Connecticut	<ul style="list-style-type: none">• If debtor is liable, not more than 15% of the amount collected	Conn. Gen. Stat. Ann. § 36a-805(a)(13)
Guam	<ul style="list-style-type: none">• Prohibited	14 G.C.A. § 3204 (page 7)
Hawaii	<ul style="list-style-type: none">• Prohibited, except for debts to the University of Hawaii	Page 10 of http://cca.hawaii.gov/pvl/files/2013/08/hrs_pvl_443b.pdf
Kansas	<ul style="list-style-type: none">• May not exceed 15%	Kan. Stat. Ann. 16a-2-507
Louisiana	<ul style="list-style-type: none">• Prohibited – however, attorney’s fees are permitted	La. Rev. Stat. Ann. § 9:3534(B)
North Carolina	<ul style="list-style-type: none">• Prohibited	N.C. Gen. Stat. § 58-70-115(2)



State Collection Cost Laws*

*more restrictive than just requiring a written agreement, and/or imposing a fee limit of 11.3%

State	Collection Cost Status	Notes
North Dakota	<ul style="list-style-type: none">Prohibited	N.D. Admin. Code § 13-04-02-09(3) & (4) (page 6)
Puerto Rico	<ul style="list-style-type: none">Prohibited	10 P.R. Laws Ann. § 981p(10)
South Carolina	<ul style="list-style-type: none">Prohibited	S.C. Code Ann. § 37-2-414
Utah	<ul style="list-style-type: none">Cannot be more than 40% of principal	Utah Code Ann. § 12-1-11
West Virginia	Prohibited, except for schools located in WV:	W. Va. Code Anno. § 46A-2-128(c), (d)
Wisconsin	<ul style="list-style-type: none">Prohibited, except that Wisconsin state universities may assess collection costs	Wis. Admin. Code § DFI-Bkg 74.11(1)-(2)(a)



Which state law applies?



- Although the contract originates in a state that differs from consumer's state of residency, **the applicable law is the law of the state of residence of the debtor**
- Courts are more likely to apply their own consumer protection **statutes to protect their citizens.**
- Choice of law provisions unlikely to be enforced when there are restrictive consumer protection statutes at issue.



Fees are a concern for creditors and collectors alike

Both the University/School and the Debt Collector can be liable in a lawsuit if the debt collector refuses to abide by applicable state laws on collection costs and fees.

Patzka v. Viterbo Coll., 917 F. Supp. 654 (W.D. Wis. 1996) – both the school and the debt collector were found liable for violations of the FDCPA and the Wisconsin Consumer Act (“WCA”). Court states that even if fees were not prohibited by the WCA, there was no written agreement disclosing collection fees and attorneys fees.



Fees are a concern for creditors and collectors alike

- State laws directed at the Creditor: **“An extender of credit may not contract with a consumer for the reimbursement of fees paid to a collection agency employed to collect the consumer's indebtedness”** La. Rev. Stat. Ann. § 9:3534B.
- UDAAP, and other state consumer protection statutes, may implicate creditors who do not comply with various state requirements for the addition of fees.
- All collection contracts require the debt collector to abide by federal, state and local law, which is what we are always striving for.



Fees are a concern for creditors and collectors alike

- “Ohio law doesn’t allow private creditors to make debtors pay collection costs, Torguson said. But in these cases, where the plaintiff is the state of Ohio, collection costs of up to and above 70 percent are added to the amount claimed due, he said. This is an unreasonable burden to place on former students struggling to get on with their lives.”

DeWine spokesman Dan Tierney said the office allows collection fees so that taxpayers don’t have to cover the cost. “We try to make (collecting debts) as cost-neutral as possible to the state agencies that are owed money, he said.

- <http://www.dispatch.com/content/stories/local/2016/08/16/ohio-sued-over-student-loan-collection-fees.html>



California law

California civil code 1788-14

- (b) Collecting or attempting to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law;
- See more at: <http://codes.findlaw.com/ca/civil-code/civ-sect-1788-14.html#sthash.oyNvZyrQ.8qRYYvv9.dpuf>



Legal precedence

Freeman vs GRC

- In 2012, the plaintiff alleged that GRC violated the FDCPA by attempting to collect collection costs that were not expressly authorized by the agreement creating the debt, or permitted by law.
- Client had placed delinquent account with GRC. Plaintiff asked for copy of her signed agreement when she was a student.
- GRC requested validation of debt document from the client
- Client was unable to produce the document
- Lawsuit became certified as a class action lawsuit
- As settlement negotiations began, client located the requested document





Part II: UDAAP



What is UDAAP?

Unfair: Does the act or practice hinder a borrower's decision making?

Deceptive: Is the statement prominent enough for the consumer to notice? Is the information in a easy to read format? Is the placement of the information in a location where the borrower can be expected to look? Is the information in close proximity to the claim it qualifies?

Abusive Acts or Practices: Is the borrower able to make an educated decision based on the disclosures provided to him or her? Does the borrower understand the risks, costs & conditions? Does the borrower appear confused? Does the borrower keep asking the same questions?



Unfair

To be considered unfair the act or practice must contain at least one of these elements:

- It causes or is likely to cause substantial injury, usually monetary to consumers
- It cannot be reasonably avoided by consumers
- The resulting injury is not outweighed by benefits to consumers

September 28, 2016

CFPB Fines TMX Finance LLC \$9 Million for Unfair and Abusive Practices

American Express to Pay \$75.7 Million for Unfair Marketing

Jesse Hamilton and Zeke Faux
December 24, 2013 1:55 PM

CFPB Orders National City Bank to Pay \$35 Million for Unfair Mortgage Lending

December 23rd, 2013 | by Jason Oliva | [CFPB](#), [News](#), [Reverse Mortgage](#)



Deceptive

To be considered “deceptive” the act or practice must contain at least one of these elements:

- ☒ The representation, omission or practice misleads or is likely to mislead the consumer
- ☒ The consumers interpretation of the representation, omission or practice is reasonable under the circumstances
- ☒ The misleading representation, omission or practice is material

CFPB Fines Chase \$309 Million-Plus for Deceptive Credit Monitoring Practices

September 20, 2013 [NationalMortgag...](#)

CFPB Fines Experian \$3 Million for Deceiving Consumers in Marketing Credit Scores

Credit Reporting Company Misstated How Credit Scores It Sold Were Used

MAR 23, 2017



Abusive

To be considered “abusive” the act or practice must contain at least one of these elements:

- ☒ Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service

Takes unreasonable advantage of:

- ☒ a consumer’s lack of understanding of the material risks, costs, or conditions of the product or service;
- ☒ a consumer’s inability to protect his or her interests in selecting or using a consumer financial product or service
- ☒ a consumer’s reasonable reliance on a covered person to act in his or her interests

CFPB Fines Titlemax Parent Company \$9 Million for Luring Consumers Into More Costly Loans

Lender Also Illegally Exposed Borrowers’ Debt Information to Employers, Friends, and Family

SEP 26, 2016

It is important to note that, although abusive acts or practices may also be unfair or deceptive, each of these prohibitions are separate and distinct, and are governed by separate legal standards.



Part III: Maximizing Recoveries



Solving the skip tracing puzzle

Social Media Usage → Search Facebook/LinkedIn to find possible POE, phone #, family contacts etc.

Search for fishing or hunting licenses → Do a reverse search of the address associated with the license.

Search for professional licenses → Search for the type of employer e.g if the consumer has an RN license- search for nursing homes and or hospitals in the area the consumer lives. Call the possible POE's (if you cant find a # to a POE, call the county clerk)

Check Voter Registration → Do a reverse search of the address on the registration card

Search consumer last name in the area he/she resides → If you can't find anyone, search the oldest area the consumer lived in (e.g. where they grew up) you may find a parent or grandparent who still lives in that area

**If the consumer is self-employed, call the chamber of commerce or the clerk who handles business licenses.*

**Manta.com is a great website for searching POE's, results include the names of subsidiaries and affiliates.*



Properly Overcoming Objections

"It seems like"

"I understand"

"It appears"

Acknowledge the Objection



Ask the next logical question based on the *conversation*.

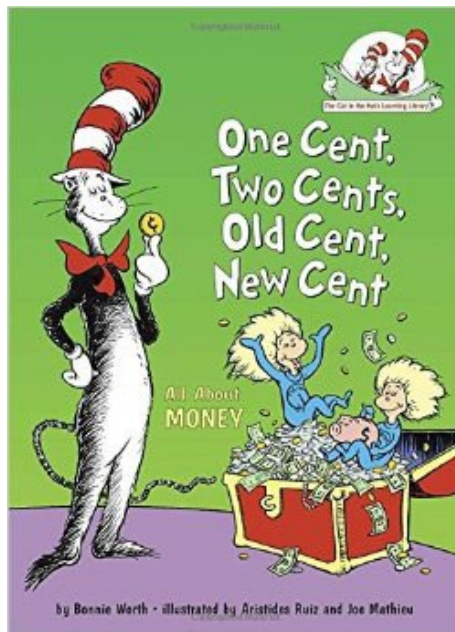
Example: The student states *"I never attended classes"*

Ask: Did you sign up for classes?

Did you properly withdraw?

Did you get it in writing?

Do you have a copy of the withdrawal slip?



Encourage creative thinking-never stop
innovating!





You're off to great places!

Today is your day!

Your mountain is waiting,

So get on your way!

- Dr. Seuss -