

Advisory

UPDATE (2): Monitoring Class Claims Filed Against Colleges And Universities For COVID-19-Related Interruptions

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As of April 20, 2020 (the date of our last Advisory), students and parents had filed putative class action lawsuits, seeking a mix of tuition and fee refunds, against at least seven colleges and universities across the country. Advisories regarding these early suits can be found [here](#) and [here](#).

Since that time, plaintiffs have filed at least nineteen new putative class actions against universities and colleges seeking refunds related to COVID-19. The defendants in this latest wave of suits include University of Miami (the second lawsuit filed against the university), Fordham University, New York University, Pace University, Manhattan College, Columbia University (two lawsuits), Cornell University (two lawsuits), Long Island University, the University of Vermont, Penn State University, East Carolina University, the University of North Carolina Wilmington, Adelphia University, Vanderbilt University, the Regents of the University of California System (two lawsuits), and Boston University. (Lawsuits were also filed against Colorado State University, the University of Michigan, Michigan State University, and Wayne State University, but those complaints were unavailable as of the publication of this Advisory.)

As in the past, these suits assert claims for breach of contract, unjust enrichment, and, in some cases, conversion for the non-reimbursement of student fees. There are, however, at least three developing trends that warrant monitoring.

First, in their quest for tuition refunds, plaintiffs' counsel appear to be more frequently and purposely selecting class representatives with majors that are arguably particularly disrupted by the absence of on-campus learning. For example, the named plaintiffs in some of these new suits include students in programs like architecture, musical theater, and chemistry. The complaints allege that these particular areas of study cannot be replicated online because they require in-person model making, recitals, or on-campus laboratory work. By choosing these specially-situated students as named plaintiffs, it may be that plaintiffs' counsel gain the advantage of telling an arguably more compelling story in their initial complaints. But, this choice also undermines their credibility in seeking class treatment for these refund claims. For example, on the face of these complaints, one has to question whether these uniquely impacted students can fairly and adequately represent the entire undergraduate student body in seeking tuition refunds. Indeed, the unique way in which a music major might be impacted as compared to a history major highlights the fact that (i) the disruption to every student's educational experience in the current circumstances is different and (ii) class-defeating individualized inquiries will be necessary to determine how and to what extent each student has been impacted (if at all) and damaged by the move to online learning.

Second, a few of the plaintiffs have supported their claims with allegations about changes the universities have made to their in-person and online learning programs going forward. For example, in the suit against Manhattan College, the complaint alleges that Manhattan has moved all summer classes online and has reduced tuition by 30%. The complaint uses this change as a way to supposedly place a monetary value on the difference between what the students allegedly bargained for (*i.e.* the on-campus experience) and what they received (online learning). These allegations illustrate that a university's defense of these class actions and its decisions regarding how to address the pandemic in future academic terms are potentially interrelated and need to be evaluated in tandem.

Third, continuing a trend that emerged in the earlier suits, some of the new complaints allege that the defendant university is expected to receive relief funds under the CARES Act. Plaintiffs have not clearly articulated exactly how the anticipated disbursement of these funds may bolster their claims. Presumably, these allegations are germane (if at all) to the unjust enrichment claims. The implication seems to be that if a university is allowed to retain *both* relief funds that are intended to compensate students (and eventually universities) for unexpected COVID-19 costs *and also* the tuition and student fees associated with the interrupted spring, the university will receive an inequitable windfall. It is not clear, however, that CARES Act allegations will ever play a central role in these refund suits. Some eligible institutions are declining to accept the funds. And, the first wave of relief payments cannot be retained by the universities but, instead, must be distributed to students. Thus, it is difficult to see how this relief unjustly enriches the universities. Universities may, nevertheless, have an interest in monitoring whether and how these CARES Act allegations evolve as universities accept relief payments that they can deploy to defray their own pandemic-related cost increases.

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