

CLIENT ALERT

Give Us A Break: Students Filing Tuition Refund Class Actions Against Universities Over COVID-19 Disruptions

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Many colleges and universities have transitioned to on-line courses and have asked students to vacate campus housing, in response to the COVID-19 pandemic. Now, some of those students have filed putative class actions against both public and private universities – demanding a break on tuition and mandatory and other fees. We anticipate similar class action complaints being filed around the country against other universities.

Our higher education and class action team has analyzed the complaints, which to date have been filed in federal court, asserting breach of contract and unjust enrichment claims on behalf of nationwide classes consisting of all students enrolled for the spring semester of 2020 and who have paid tuition and fees for services which the university has failed to provide and have not received a refund of their pro rata tuition and fees. Some of the complaints rely upon representations made on the universities' websites, which tout the benefits of living on-campus, in-person interactions with faculty and students, or "experiential learning," to allege that the students have been deprived of the benefits of on-campus learning and that the value of any degree issued on the basis of on-line classes will be diminished. At least one complaint cites a study purporting to find that students learn less, receive poorer grades, and are more likely to drop out of school, when provided on-line courses rather than in-person courses. *See, e.g., Zachary Church v. Purdue University and the Board of Trustees of Purdue University*, No. 4:20-cv-00025 (N.D. Ind.), Verified Class Action Complaint filed Apr. 9, 2020, ¶¶ 34-36. The putative class action complaints typically allege that there are more than 100 putative student-class members and that more than \$5 million is at stake.

State law typically will govern such breach of contract and equitable claims. Further, the specific contractual terms of any matriculation or governing agreements between the students and the university will also impact any legal analysis. Despite such variations, however, there are some consistent key issues which we have identified which may impact how such student-plaintiffs might fare in their lawsuits, such as the stated purpose of fees sought to be refunded and the extent to which the university has been frustrated in fulfilling that purpose.

A university may have certain common law defenses to argue that it did not breach any contract. Universities may also have available authority in some jurisdictions, which accord universities some "leeway in modifying their programs from time to time to exercise their educational responsibility properly." *Kashmiri v. Regents of Univ. of California*, 156 Cal. App. 4th 809, 824 (2007), *as modified* (Nov. 15, 2007), *as modified* (Nov. 28, 2007).

Crowell & Moring attorneys are seeing higher educational institutions respond to student demands for refund of tuition and fees in various ways, in order to avert costly lawsuits like the ones described above. We have a team of higher education/class action attorneys who have been advising university clients to help them brainstorm their options as they deal with these legal issues and to assess and mitigate their risks, in the event that they receive complaints of the type described above.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Laurel Pyke Malson

Partner – Washington, D.C.
Phone: +1 202.624.2576
Email: lmalson@crowell.com

A. Marisa Chun

Partner – San Francisco
Phone: +1 415.365.7408
Email: mchun@crowell.com

J. Daniel Sharp

Partner – San Francisco
Phone: +1 415.365.7372
Email: dsharp@crowell.com