

Anticipated Covid-19 Litigation Against Universities Has Arrived

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Litigation that higher education predicted weeks ago would proliferate has now started to be filed -- in the form of class action lawsuits by students (or parents or payers) seeking refunds for tuition and fees. Before the new year, university counsel were working overtime on academic admissions scandals, Title IX harassment issues and sexual assault matters, and freedom of expression cases, to name some of the bigger topics. As the spring term progressed, schools were looking forward to spring break and March Madness, but quickly began to confront the ongoing pandemic -- in-person classes suspended into April and then extended to the end of the school year and beyond; faculty and staff working remotely; campuses closed down; staff now being furloughed; study abroad cancelled and students extracted from around the world; vendor contracts being modified. While faculty were working with IT personnel to transform their classes from in-person to fully online at a breakneck speed, counsel were also working with administrators to prepare for the onslaught of litigation involving the myriad changing contracts and relationships.

This month, the lawsuits started. Penn State, Arizona State, and Long Island University have all been sued. Earlier in April, Drexel University and the University of Miami were similarly sued. The University of Colorado at Boulder and Columbia University now have also been sued. Earlier suits were filed against Liberty University and the Arizona Board of Regents, covering each of the University of Arizona, Arizona State University and Northern Arizona University.

The complaint against Penn State has been filed in federal court, the Southern District of New York. The named plaintiff is the parent of a Nittany Lion who pays her daughter's tuition and is upset that her child is allegedly not getting the same level of education she received on campus and in-person. The complaint raises three counts -- breach of contract, unjust enrichment and conversion -- and seeks compensatory and punitive damages, among other forms of relief, effectively demanding that all tuition and fees be pro-rated to the point in time when in-person classes ended. While there is a recognition that Penn State already offered on-line classes at defined tuition rates, the allegations appear to suggest that the current educational services are not even on par with Penn State's pre-existing on-line programs, such that the current educational services are of no value at all. The lawsuits against Drexel and Miami were both filed in federal court in South Carolina by enrolled students who live in South Carolina. Each of those lawsuits similarly assert claims for breach of contract and unjust enrichment.

These suits are akin to the lawsuits filed in the wake of the 2008 Financial Crisis in which law students and other graduates complained about the quality of their education as they tried to enter the workforce during a severe recession. We expect these lawsuits to continue being filed across the country, and we anticipate that this type of litigation will twist and morph to include all levels of educational institutions, and that still other classes of plaintiffs will continue to emerge.

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