

Universities Sued for Closing Campuses Amidst COVID-19 Crisis

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Students at the country's colleges and universities are challenging their institutions' responses to the COVID-19 crisis in putative class-action lawsuits seeking reimbursement for tuition, room and board, and more following campus closures due to COVID-19.

The students argue they are entitled to refunds because the institution failed to provide them with all of the benefits of an on-campus education for which they paid. The lawsuits typically allege some combination of the following: (i) the students paid for amenities such as room and board, dining plans, and access to facilities, which they cannot receive because they are not on campus; (ii) the quality of their education has been lessened by the forced, online curricula because studies show that students learn better in classrooms than online and because they are unable to gain the benefit of personal connections with faculty and classmates; (iii) their degree will be less valuable to them in the marketplace because a degree from an online program is not as valuable as a degree from an in-person program.

Colleges and universities have several potential defenses to these suits. With respect to breach of contract claims, student policies may not be considered a contract at all, depending on applicable law in the relevant jurisdiction. Where there is a contract, actual or implied, the provisions of the policies or agreements may not guarantee the mode of instruction, the provision of access to facilities, and so on.

Depending on the government action in their state, institutions also may be able to assert the impossibility or impracticality of meeting the alleged obligations. The accreditation requirements, and recent modifications to those requirements in response to the pandemic, may provide an additional defense.

Some schools have refunded some or all of the fees charged for room, board, and amenities, thus mitigating, if not eliminating, any possible damages.

Further, any alleged damages with respect to the quality of education or the future value of a degree will be extremely difficult to prove (if not, entirely speculative).

Other possible avenues for defeating class certification exist under Federal Rules of Civil Procedure Rule 23. Showing typicality and common injury (two of the seven requirements for a prima facie case) will be difficult no matter how the cause of action is plead: different students pay different types and amounts of costs and fees, some may be on scholarship, or have different living arrangements entitling them access to different amenities. These differences support defenses arguing the damages are too individualized to make class certification appropriate.

When they return to live, in-person learning, schools may face lawsuits not because they closed, but because they reopened. One school is being sued on this theory. A

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putative class action was filed against Liberty University in the Western District of Virginia alleging the University unreasonably placed students in harm's way for *not* closing campus because of COVID-19. The lawsuit alleges that, in addition to putting students at risk, the University only "opened" to avoid having to pay refunds for fees, room, board, activities, and so on. Consequently, the suit alleges, the school is only nominally open, even though all content had shifted to online, to prevent students from seeking the very refunds that are sought in other class-action lawsuits against institutions.

Following the 2008 financial crisis, students filed lawsuits against various universities alleging, among other things, that their university was responsible for their inability to find a job or, at least, misrepresented the value of a degree from the school in the job marketplace. These suits were largely unsuccessful, as courts generally refused to impute liability for the global financial collapse on colleges and universities. Courts may take a similar viewpoint with the students' COVID-19 suits.

Jackson Lewis' team dedicated to defending these claims for higher education clients nationwide consists of members from the Class Action and Complex Litigation and Higher Education Groups. Our team includes seasoned class action litigators, as well as higher education attorneys with decades of experience defending claims brought by students against colleges and universities. If you have any questions, please reach out for more information.