

Insights

New Threat on the Horizon for Schools, Colleges, and Universities: Class Action Lawsuits for Return of Tuition

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By: Deborah J. Daniels, Robert A. Greising, and Judy L. Woods

COVID-19 has caused tremendous disruption and expense for colleges and universities, and other tuition-based education institutions, leading to concerns not only about when students may safely return to campus but even as to the future viability of some institutions. In the past few weeks, a new threat has emerged: class action lawsuits seeking the return of fees and tuition for students. The lawsuits are being filed against public and private institutions of varying size, including one filed in Indiana against Purdue University.

Only a few of these lawsuits have been filed to date, but more are sure to follow. Some cases are being filed in jurisdictions hundreds of miles from the campus, based on the residence of the named plaintiff. Local attorneys from smaller communities are assisted by law firms from New York and Chicago. The typical lawsuit makes claims of breach of contract and unjust enrichment, on the basis that the institution has allegedly breached its agreement with students to provide an on-campus experience and should reimburse a significant amount of tuition and fees to the students. Other theories of recovery have been included as well, but they focus on the failure of the institution to provide what the student thought he or she was entitled to receive.

The theme underlying the demands for tuition reimbursement assumes that in resorting to online or remote alternatives to traditional classes, the educational institutions are diminishing the student experience and the value of the students' education. In two nearly identical complaints (filed by the same South Carolina attorney against separate schools in Florida and Pennsylvania), the named plaintiffs make the conclusory and unsupported assertion that "[t]he value of any degree issued on the basis of online or pass-fail classes will be diminished for the rest of Plaintiff's life." The complaint in the Purdue case references a Brookings Institute study criticizing the effectiveness of online courses and suggests that the school should reimburse fully half of the tuition and fees for all similarly situated students for the semester, assigning no value to the online instruction.

To guard against such lawsuits, we recommend that schools be as transparent as possible, without causing confusion, in developing plans for partial reimbursement or credits based on objective and defensible calculations and communicating clearly with students and their parents about these decisions and the basis on which they

were made. Offering refunds or credits on items that are directly tied to specific services for which the students may no longer be receiving a benefit, such as certain activity fees, parking or transportation, may be readily identifiable and reimbursable. Other fees are not as easily linked to specific services and may pay for continued maintenance, debt service and other sunk costs.

In their communications, schools should acknowledge that they understand the difficulties that students are experiencing, and provide information about other assistance they will be making available to qualifying students, e.g., through the CARES Act.

Schools should provide their professors, teaching assistants, and other faculty with resources and guidance on best practices for remote instruction, as well as the necessary tools and technology to connect with students in a remote environment. For example, lectures presented in a video format and increased telephone or videoconference office hours may help to maximize the remote learning experience. Online offerings should involve, to the extent possible, the opportunity for videoconference interaction with students whose on-campus experience permitted one-on-one or small group discussions. Many schools are providing virtual clinical experience, and the Indiana Department of Education is awarding licensure credit without requiring in-person student teaching, based on remote learning or a certification from the educational institution. Online tutoring, mentoring, academic counseling, and career counseling may also be provided.

Schools should review their policies, as well as their formal contracts with students/families, for language relating to the impact of unforeseen circumstances on the delivery of services. Several typical policies, such as those governing refunds, and enrollment contract provisions, may provide relief for the institution. Other defenses of a general nature are also likely to be available as institutions react to the unprecedented impact of COVID-19 and the ensuing governmental orders and guidance to "stay at home" and to "shelter in place."

Institutions should review their insurance policies as well, checking for business interruption insurance coverage and even general liability coverages. It will be essential to make claims promptly and within policy deadlines to avoid putting coverage at risk. Institutions should be prepared for initial rejections of coverage, but not be dissuaded from pushing for coverage.

If you have questions, comments or concerns, please feel free to contact **Deborah J. Daniels, Robert A. Greising** or **Judy L. Woods** of our **Higher Education service group**.