

Stradley Ronon Stevens & Young, LLP  
2005 Market Street  
Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Washington, D.C.  
New York  
New Jersey  
Illinois  
Delaware



www.meritas.org

*Our firm is a member of Meritas.  
With 189 top-ranking law firms  
spanning 97 countries, Meritas  
delivers exceptional legal knowledge,  
personal attention and proven  
value to clients worldwide.*

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2020  
Stradley Ronon Stevens & Young, LLP  
All rights reserved.

Please click [here](#) to visit our **COVID-19 RESOURCE CENTER**

## The First COVID-19 Tuition Refund Class Actions Have Been Filed

In last month's [Education Alert](#), we discussed an emerging trend of students at higher education institutions requesting refunds for tuition and other fees as campuses closed and coursework moved online due to the COVID-19 crisis. We noted that one major area of concern for higher educational institutions was the potential that those requests would be turned into class action lawsuits.

The past month has brought about the initial wave of class action litigation, with suits filed in South Carolina, Arizona, Colorado and, most recently, New York. The cases began earlier in April when two students, one from Drexel University and the other from the University of Miami, filed putative class action lawsuits in federal court in South Carolina seeking the reimbursement of tuition, fees, and other expenses. The named plaintiffs seek to recover these damages on behalf of themselves and a putative class consisting of the entire enrolled student body at each university. Suits that have been filed since the initial two filings seek similar damages.

The complaints filed against Drexel and the University of Miami are illustrative of the legal issues universities will be forced to grapple with when faced with refund litigation. The two actions, which are nearly identical, are grounded in allegations that students paid tuition and fees for in-person instruction, access to campus facilities, student culture, and extra-curricular activities. The students claim they were deprived of these services when their schools closed their campuses because of the COVID-19 pandemic. The complaints recognize that Drexel and the University of Miami continue to provide academic instruction via distance learning. But, according to the named Plaintiffs, the value of their degrees will be diminished because their classes for this semester are being offered online and pass/fail. Plaintiffs also complain that they have been deprived of the benefits of living on campus and are no longer able to access services that are only available to students who are physically present at the school. Plaintiffs assert that they chose to enroll at their respective universities for an in-person experience, as opposed to selecting an online institution that purportedly would have had lower tuition.

Based on their allegations, plaintiffs assert claims for breach of contract and unjust enrichment. Plaintiffs seek the reimbursement of tuition, fees, and other unidentified expenses on behalf of themselves and the putative class.

As we previously discussed, the relationship between the students and their universities in the context of tuition payment is contractual in nature. The merits of the claims and defenses are therefore likely to turn on the express or implied terms of the agreement between the students the university, which may be found in any tuition or enrollment contracts or policies and procedures regarding tuition payment and refunds.

Universities faced with class action litigation may argue they have not breached any contractual terms because they continue to provide the education and credits required for students to advance to the next level of study or to graduation. The schools also are likely to highlight the speculative nature of the plaintiffs' theory of harm, which is based on the assumption that the students' degrees will be devalued because they are taking online courses on a pass/fail basis this semester. The school's defenses also may extend to student fees to the extent that those support ongoing services, such as the library, counseling, virtual fitness classes, and salaries for employees who are maintaining the campus, so the school is able to reopen safely. Additionally, defenses to performance, such as force majeure clauses and the doctrines of impossibility of performance and frustration of purpose, also may be utilized as defenses to the claims. Financial hardship to the universities resulting from COVID-19, however, does not provide a defense.

It also remains to be seen whether tuition-refund lawsuits can be litigated on a class-wide basis. For example, such claims may be undermined by the assumption that all students are similarly situated. Indeed, claims made by students whose coursework necessitates in-person activities (e.g., laboratories, clinical rotations, and the like) may raise factual issues that differ from students who are enrolled in courses that are oriented around lectures. Similarly, there also may be varying policies, procedures, and requirements that govern different schools of study within a university that could render these cases not amenable to class-wide resolution.

In response to demands or litigation seeking the reimbursement of fees and tuition, schools should account for legal issues and cultural considerations, such as the relationship between the institution and its students, the impact the response may have on future enrollment, and the potential for reputational harm. Institutions also must consider the practical implications of reimbursements, including the impact on the school's financial

ability to weather the refund and avoid bankruptcy (thus forcing students to transfer elsewhere to complete their degree). Schools receiving funds under the CARES Act Higher Education Emergency Relief Fund will have additional funds available. The recipients of such funds are required to use at least 50% of the amount received to provide emergency financial aid grants to qualifying students. While this student-earmarked funding cannot be used to reimburse schools for refunds provided to students for room, board, tuition, or fees, the school may have more latitude with the balance of the higher education funding. Additional guidance as to how recipients may use the non-student-designated funds is still expected from the Department of Education.

The class action lawsuits filed to date are, unfortunately, a likely harbinger of things to come. Because most students and their families have been financially impacted by COVID-19, they may turn to tuition refund requests and litigation as a means to offset the loss of employment or reductions in income. While the lawsuits instituted thus far have been filed against larger institutions, it is likely that similar claims will be brought against universities and colleges ranging from small private schools to large statewide university systems.

The potential exposure presented by these lawsuits underscores the importance that all higher education institutions should give to any tuition refund request based on COVID-19. Given the emerging financial challenges that face higher education institutions, creative ways to address student requests for refunds should be employed where possible to avoid potential litigation. There is a multitude of options that universities may pursue to address refund requests that will vary from institution to institution. Higher educational institutions should, therefore, respond to a request only after it has charted a well-thought-out course that accounts for the risk of potentially costly class action litigation.



**William T. Mandia**

856.321.2417

wmandia@stradley.com



**Jennifer A. Gniady**

202.419.8436

jgniady@stradley.com



**Corey S. D. Norcross**

215.564.8742

cnorcross@stradley.com

Please do not hesitate to reach out to your Stradley Ronon contact, or to any member of Stradley's Coronavirus Task Force, with any questions and concerns you may have during this period.