

## A New Epidemic: Class Actions Against Colleges and Universities by Students Demanding Refunds

As a result of the COVID-19 crisis, many universities and colleges across the country suspended in-person classes and required students to vacate school housing. Students have since filed a wave of federal class action lawsuits against these institutions claiming breach of contract and unjust enrichment for alleged failure to refund the students for tuition, housing and various activities fees. We provide a quick update and overview below.

After the COVID-19 crisis arose, many colleges closed their classrooms but continued to provide online instruction. These new putative federal class actions claim that on-line instruction is inferior and will result in a less prestigious degree. Essentially, the students assert in their complaints that online instruction is “not what they signed on for” and, accordingly, they are entitled to a refund. They also seek refunds for various other fees that the students may have paid up front such as room and board and activity fees that often pay for health services, student centers, student events and concerts, campus buses, parking and athletics.

Several of these federal class actions have already been filed in the past 10 days, and more are likely. Considering their emergent nature, no court has yet to rule on whether these COVID-19 refund class actions meet the stringent standards sufficient to obtain class certification or whether, if at all, these lawsuits can succeed on the merits.

There are potential defenses to class certification that may be appropriate and successful depending upon the institution and its educational programs. For example, some areas of study may be more amenable to online learning, which could offer a defense that the lack of commonality among students defeats class certification. Likewise, class certification also could be denied where the putative classes in these lawsuits are not necessarily monolithic respecting participation in extracurricular activities, residency on/off campus, financial aid contributions, etc.

Beyond attacking class certification, before the COVID-19 crisis arose, similar refund claims have been dismissed on their legal merits through a variety of defenses. For example, in some states, such as New York, there is jurisprudence predating COVID-19 that grants educational institutions broad discretion on how to educate students and limits the circumstances when students may successfully obtain a refund. As a general matter, the courts are hesitant to second guess educational institutions in how they teach their students. Where in person classroom instruction was not feasible, the courts may grant an educational institution substantial deference in deciding to provide on-line instruction as a substitute. Moreover, since the underlying claims are based on contract or quasi-contract theories of liability, an underlying contract, such as an enrollment agreement between the student and the educational institution, may provide defenses. Some contracts may have specific provisions that limit the circumstances when refunds are available and/or their amount. Depending on the contract, there also may be provisions affecting the students' ability to seek or obtain redress such as mandatory arbitration provisions, class action waivers and/or force majeure clauses.

In short, colleges and universities may have several possible defenses to class certification and/or the merits of these refund class actions depending upon the circumstances.

Bond has experienced attorneys dedicated to assisting higher education clients with class action defenses. If you have any questions about this subject or you think we can be of assistance, please contact [Monica Barrett](#), [Gregory Reilly](#) or the attorney in the firm with whom you are regularly in contact.



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