

HIGHER EDUCATION LAW

INFORMATION MEMO

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Important New York First Department Decision in *Tapinekis v. Pace University*: Time to Review Your Tuition and Fee Refund Disclaimers?

Pandemic-related litigation against colleges and universities regarding refunds of tuition and fees is still playing out in the courts. The outcome of these lawsuits, in which students demand tuition and fee refunds because of COVID-19-era campus shutdowns, have differed, depending on the specific language in the institution's policy. Institutions that included clear *force majeure* language in their institutional policies have been more successful in court than those whose policies, recruitment materials and informational websites stressed the virtues of the institution's on-campus experience — both educational and social — without emphasizing *force majeure* disclaimers.

An important decision by New York's Supreme Court Appellate Division, First Department, issued on May 19, 2026, provides helpful guidance to New York colleges and universities on the topic of how to discuss tuition and fee refunds in *force majeure* circumstances in institutional materials, including websites, course catalogs and brochures. The case, *Tapinekis v. Pace University*, 2026 N.Y. App. Div. LEXIS 3302 (May 19, 2026), contained claims and facts very similar to those addressed in two earlier cases decided by the U.S. Court of Appeals for the Second Circuit, *Goldberg v. Pace University*, 88 F.3d 204 (2d Cir. 2023) and *Tapinekis v. Pace Univ.*, 2024 U.S. App. LEXIS 12969 (2d Cir. May 30, 2024). Therefore, institutions in other states within the Second Circuit, specifically Connecticut and Vermont, will also find the *Tapinekis* ruling relevant.

In *Tapinekis*, a student claimed that the University's Emergency Closings provision in the University's academic catalog could not serve as a *force majeure* clause, and thus the student was due refunds when the University closed in the spring of 2020 under the New York governor's order. In the earlier 2023 *Goldberg* case, the Second Circuit reviewed the identical language in the University's Emergency Closings policy, which stated:

Occasionally, the University is confronted by the need to close because of inclement weather or other reasons beyond the University's control Although classes are planned to commence and conclude on the dates indicated in the academic calendar, unforeseen circumstances may necessitate adjustment to class schedules and extension of time for completion of class assignments. Examples of such circumstances may include faculty illness, malfunction of University equipment (including computers), unavailability of particular University facilities occasioned by damage to the premises, repairs or other causes and school closings because of inclement weather. The University shall not be responsible for the refund of any tuition or fees in the event of any such occurrence.

Mr. Goldberg sued the University, claiming breach of contract, unjust enrichment and additional claims under New York law, demanding a refund of his tuition, fees, and additional damages. The trial court rejected his claims that the Pace Emergency Closings provision should have specifically included the word "pandemic" in its list of potential issues over which it had no control, holding that the disclaimer language was both sufficiently broad and specific to include a scenario such as the COVID-19 pandemic.

The following year, when reviewing the dismissal of Ms. Tapinekis' claim for a tuition refund, the Second Circuit likewise found that the Emergency Closing provision barred her breach of contract claim.

In the *Tapinekis* state court case, which focused on the plaintiff's claim for refunds of certain student fees, the University argued in its motion for summary judgment that the Emergency Closing provision barred Ms. Tapinekis' claims for breach of contract and unjust enrichment because it acted as a *force majeure* clause that allocated the risk of events beyond the University's control. In opposition, Ms. Tapinekis argued that the provision did not bar her claims because it did not include the term *force majeure* or identify a "pandemic" as a reason for its refusal to refund tuition or fees, and thus should not apply to her claims. The state trial and appellate courts rejected that assertion, stating "The 'Emergency Closings' provision allocated the risk of loss to students in the event of unforeseen, emergency circumstances outside of defendant's control, including the pandemic," and thus was enforceable against the plaintiff.

Even with this favorable ruling in *Tapinekis* and multiple courts' rejection of the claim that the words "*force majeure*" must be included in similar policies in order to be enforceable against demands for tuition and fee refunds, a prudent approach in reviewing tuition and fee refund policies may be to include those specific words — if for no other reason than to prevent claims that the policy is ineffective because "pandemic" and "force majeure" have not been incorporated. Institutional review of disclaimers should also ensure that language is otherwise sufficiently specific enough to overcome claims of overbreadth, such as has been found by the Second Circuit in [other litigation](#) against universities stemming from the pandemic.

If you have any questions related to defense of these actions, or need advice in the development of appropriate disclaimer/*force majeure* language for institutional publications, contact [Suzanne Messer](#) or any of the attorneys in Bond's [higher education practice](#).

