



## Colleges & Universities ADVISORY ■

**APRIL 30, 2020**

### Schools Face Class Actions as Parents and Students Sue for Refunds

by [Derin Dickerson](#), [Terance A. Gonsalves](#) and [Katie Jo Lunningham](#)

The past two months have posed unprecedented challenges for institutions of higher education as colleges and universities transitioned to online education, evacuated their campus communities, and grappled with significant disruption to institutional budgets.

But now—as many institutions finally settle into a “new normal”—another COVID-19-related challenge has emerged: class action lawsuits filed by students who were evacuated from their campus due to the COVID-19 pandemic or their parents who had already paid for spring 2020 tuition, housing, and fees. These students and parents argue that institutions should provide large refunds for spring 2020 housing, meal plans, campus activities, and in-person educational benefits that were cut short by the COVID-19 pandemic. Of course, such litigation is yet another burden for schools that have already incurred expenses that may not be reimbursable.

#### **An Overview of Claims and Classes**

The first COVID-19 refund class action was filed on March 27, 2020, in the District of Arizona. In that case, *Rosenkrantz v. Arizona Board of Regents*, the parents of two University of Arizona students seek refunds for fees and costs associated with room and board paid by students attending the University of Arizona, Arizona State University, and Northern Arizona University for the spring 2020 semester. The plaintiffs assert claims for breach of contract, unjust enrichment, and conversion.

Over the past month, similar class actions have been filed against nearly 20 public and private colleges and universities across the country, and more are undoubtedly on the way.

While most of these class actions contain claims similar to those lodged against the Arizona Board of Regents, some plaintiffs have raised unique claims or seek to represent different classes and subclasses. The following cases illustrate the various types of COVID-19-related claims that institutions might face:

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

- *Church v. Purdue University* – On April 9, 2020, a senior engineering student filed a class action against Purdue University alleging that students lost the benefits of in-person instruction, housing, meals, and student activities. The plaintiff seeks to represent four distinct classes: (1) an “on-campus housing class”; (2) a “meals class”; (3) a “fee class”; and (4) a “tuition class.” The plaintiff in this case seeks to recover a portion of tuition costs for the spring 2020 semester and is demanding “disgorgement of the difference between the value of one half a semester of online learning versus the value of one half a semester of live in-person instruction in brick and mortar classrooms.”
- *Student A v. Liberty University* – On April 13, 2020, an unnamed student filed a class action against Liberty University alleging that the university—despite publicly downplaying the pandemic and stating that the campus is “open”—has ended all on-campus activities and moved educational services entirely online. The plaintiff acknowledges that the university offered a \$1,000 housing credit, but alleges that the credit was insufficient because (1) the university did not adequately communicate with students, causing many of them to miss the deadline to apply for the credit; and (2) the amount is not the full prorated and unused portion of their housing payment.
- *Patel v. University of Vermont and State Agricultural College* – On April 21, 2020, students filed a class action against the University of Vermont alleging that students are entitled to remediation after the university refused to refund prorated portions of tuition, housing, meals, fees, and other applicable costs. Despite an explicit “emergency closing” provision in the housing and meal plan contract stating that room and meal plan fees will not be refunded if the university closes due to a pandemic, the plaintiffs argue that the university *isn’t* actually fully closed and refunds are required.
- *Hassan v. Fordham University* – On April 25, 2020, an undergraduate chemistry student filed a class action against Fordham University alleging that students lost the benefit of their education without having their tuition and fees refunded to them. Noting that “Fordham has announced on its website that it will not refund any tuition for the spring 2020 semester,” the plaintiff also criticizes Fordham’s decision to reduce some fees by 50%, arguing that students are entitled to a refund of *all* fees and not just those that Fordham chose to reduce.

## Observations

- **Which schools are targets?** At this time, there seems to be no discernable pattern. Plaintiffs have filed lawsuits against private schools, religious schools, for-profit schools, large public universities, and everything in between. In short, all institutions that shifted from in-person learning to remote learning or reduced services and offerings are at risk.
- **What are the most common legal claims?** Although each case is fact-specific, the legal claims asserted by plaintiffs remain largely the same. The class actions have alleged breach of contract and unjust enrichment claims, and almost half the cases asserted additional claims for conversion.
- **Where are the cases being filed?** Plaintiffs are not necessarily filing lawsuits in the states where their schools are located. At this time, almost half the COVID-19 refund class actions have been filed in

jurisdictions outside the locale of the institution. And while most cases are being filed in federal court, at least three cases (all against public universities in Michigan) have been filed in state court. There also does not appear to be a geographic preference for plaintiffs.

## Key Takeaways

In the midst of an already stressful time, these refund class actions pose significant financial, public relations, and legal risks to colleges and universities. Institutional leaders should seek guidance from legal counsel about how to effectively mitigate these risks and defend against COVID-19-related refund claims.

- **Know your institution's approach to refunds.** Track administrative decisions about COVID-19-related refunds or credits and make sure any decisions closely align with the provisions of the student handbook and all applicable policies. Familiarize yourself with your institution's policies and procedures addressing tuition and fee refunds and review any "emergency closure" or [force majeure](#) language, which may substantially impact your litigation matters or prevent litigation from occurring in the first place.
- **Utilize clear, empathetic communications strategies.** Institutional communications about COVID-19-related refunds or credits should be easy to understand and should clearly convey any relevant deadlines or requirements. These communications should be circulated across all campus communication channels to ensure that the information is promptly and effectively communicated to the entire campus community.
- **Don't assume that offering a refund or credit will eliminate your institution's litigation risk.** Some of the first institutions to be sued had already offered credits or refunds to students. Students nevertheless filed suit, claiming that the proffered remuneration was insufficient. Even if your institution has already offered a refund or credit, in-house counsel should continue to closely monitor the institution's legal risk.

Our [Colleges & Universities attorneys](#), well-versed in the nuances of higher education, are seasoned litigators with a proven track record of defeating class certification and winning early dismissal through dispositive motions. Alston & Bird's combination of higher education knowledge and [class action litigation](#) experience can help you protect your institution's brand and reputation while minimizing the legal risk associated with litigation.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

You can subscribe to future *Litigation* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions, or would like additional information, please contact any of the following:

## Colleges & Universities Team

Alexandra Garrison Barnett  
404.881.7190  
alex.barnett@alston.com

Mark T. Calloway  
704.444.1089  
mark.calloway@alston.com

Derin B. Dickerson  
404.881.7454  
derin.dickerson@alston.com

Jordan Webber Edwards  
404.881.4950  
jordan.edwards@alston.com

Terance A. Gonsalves  
404.881.7983  
terance.gonsalves@alston.com

Katie Jo Lunningham  
404.881.7812  
katiejo.lunningham@alston.com

Christopher C. Marquardt  
404.881.7827  
chris.marquardt@alston.com

Mike H. Shanlever  
404.881.7619  
mike.shanlever@alston.com

John I. Spangler III  
404.881.7146  
john.spangler@alston.com

# ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2020

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500  
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
LONDON: 5th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225  
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260  
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
SILICON VALLEY: 950 Page Mill Road ■ Palo Alto, California, USA 94304-1012 ■ 650.838.2000 ■ Fax: 650.838.2001  
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333