

Practice Update

UPDATED: COVID-19 and Demands for Partial Refunds for Room, Board, Auxiliary Fees, and Tuition

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As higher education students and faculty adjust to the new realities of distance learning, the first lawsuit has been filed on behalf of a putative class, seeking the return of room, board, and other fees for the balance of the academic year in Arizona (*Rosenkrantz v. Arizona Bd. of Regents*, 20-cv-00613-JZB). On the other hand, throughout the country, many institutions proactively agreed to issue pro-rata refunds for fees for housing and meal plans, parking, and other services students will no longer be receiving.

With respect to tuition, the first two lawsuits were filed in federal court in South Carolina on behalf of a putative class against the two different universities. In the lawsuits and in hundreds of petitions, students have demanded a return of pro-rata tuition, claiming online schooling is not an equal substitute for classroom learning and is not what they paid for. Schools have declined to issue tuition reimbursements.

We take a look at the perspective of both sides and provide a checklist for schools in navigating these demands.

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Refunds for Room, Board, and Other Fees

- Many schools have been proactive and swiftly refunded unused portions of room, board, parking, and other fees on a pro-rata basis. This is an expensive undertaking for schools. On average, students at four-year institutions paid between \$11,500 to \$13,000 for room and board during the 2019-2020 school year.
- Some schools have refused to provide refunds, instead offering partial credit.
 - On March 27, 2020, students filed a putative class action in the United States District Court for the District of Arizona, alleging that the University of Arizona, Arizona State University and Northern Arizona University refused to refund the costs of room, board and certain fees for the unused portion of the spring 2020 semester after closing their campuses due to the COVID-19 outbreak.
 - The suit alleges that the Arizona Board of Regents offered nominal rent credits toward the next academic year. Plaintiffs seek a full refund of their room, board, and other related fees for the spring semester of 2020.
 - Plaintiffs allege claims for breach of contract, unjust enrichment, and conversion.

Refunds for Tuition

Students have demanded tuition refunds for the remainder of the academic year. Many schools have already rejected these demands. Two lawsuits have been filed on behalf of classes. Key arguments from both sides include:

Students' Perspective

- Online classes are not equivalent to classroom learning, claiming they want compensation for the lower market value of online schooling.
- Online classes are not viable for them since they returned home to different time zones throughout

the world, sometimes requiring them to take classes at 3 am.

- Virtual schooling precludes them from engaging in clinical, hands-on courses, laboratory research, and other practical learning.
- Distance learning is not what they bargained for when they enrolled.
- Tuition includes the on-campus experience, which they are no longer receiving.

Schools' Perspective

- Schools are continuing to provide students their courses through distance learning.
- The students are receiving credit for the courses they are taking online.
- Schools rely on auxiliary revenue for their operating budgets, creating deficit budgets.
- It is economically unfeasible to refund tuition, especially as schools continue to pay faculty, employees, and staff to instruct students.
- The costs associated with transitioning to and providing online courses are additional expenses, which are being absorbed by the schools.
- Schools were required to close their campuses due to government “social distancing” orders directed at slowing the spread of COVID-19.
- Schools are not contractually obligated to provide in-classroom courses, as opposed to online classes.
- Schools are fulfilling the terms of their contracts.

Checklist for Schools in Evaluating Refund Demands

- First, look to contractual language between student and institution related to:
 - Room, board, parking, and other ancillary fee agreements

- Tuition agreement
- Refund policies
- Withdrawal policies
- Examine whether the school is able to provide students what it offered in terms of:
 - Housing
 - Dining
 - Activities
 - Parking
 - Courses
 - Standard course work
 - Laboratory work
 - Practical courses requiring hands-on work
 - Accommodations for students with special needs
- Look for possible defenses or relief from contractual obligations
 - Whether and when was the school required to close by governmental order?
 - Defenses of force majeure, impossibility of performance, frustration of purpose
- Consider the effects of a refund on student loans and eligibility for public benefits
 - Tuition refund could impact students' eligibility for financial aid, Pell Grants, and public benefits because the refund could count as income for the student
- Explore whether there are viable non-refund options on a case-by-case basis
 - Feasibility of adjusting withdrawal policies
 - Possibility of providing incomplete and allowing make up of certain courses
 - Possibility of partial credit for certain hands-on courses

- Review whether there is an available source of recovery to offset losses related to providing refunds related to COVID-19 and transitioning to distance learning
 - CARES Act
 - Small Business Administration
 - Insurance coverage
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