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STUDENTS DEMAND TUITION REIMBURSEMENT FOR COVID-19 LEARNING DISRUPTIONS

COVID-19 presents several challenges for colleges and universities. As states issued increasingly stringent stay-at-home orders, schools moved students out of dorms and canceled in-person instruction. Most schools have reimbursed housing costs, but few have reimbursed tuition. Students at Columbia University recently filed a putative class action seeking tuition reimbursement, *Bennett v. Columbia University*, 1:20-cv-03227 (S.D.N.Y.). They claim that online learning is not worth as much as the in-person experience they signed up for. With colleges already reeling from lost revenue, the outcome of that case could have important consequences for academia.

THE LAWSUIT

By now, government orders and public health concerns have forced nearly all colleges and universities to transition to remote, online classes. Columbia, situated in the heart of the country's largest hotspot, is among them. Like many other colleges and universities, Columbia announced that students would receive pro-rata housing cost refunds for the Spring 2020 semester. But, the plaintiffs in *Bennett* say the University should do more. They filed suit in federal district court alleging breach of contract and unjust enrichment and demanding tuition reimbursement.

Their suit alleges that they contracted for in-person instruction, not online courses. The students say online instruction falls short because there is no face-to-face interaction with professors, access to university benefits such as libraries, student governance, social development, hands on learning, and in-person experimentation. While online classes provide academic benefit, the students allege that "[t]he tuition and fees for in-person instruction at [Columbia] are higher than tuition fees for online institutions because such costs cover not just the academic instruction, but encompass an entirely different experience." Moreover, they allege that even though the pass-fail grading has become ubiquitous during the pandemic, it will diminish the "value of any degree issued on the basis of online or pass/fail classes...for the rest of Plaintiffs' life."

The students demand a pro-rata reimbursement of their tuition, arguing that Columbia breached its contract to provide an in-person, graded, educational experience and was unjustly enriched by retaining students' tuition and fees while providing only on-line learning.

ANALYSIS

The key to the lawsuit will be whether the students can prove that online

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courses are worth less than in-person instruction. As noted above, the students argue that online courses limit access to professors, facilities, and co-curricular and social opportunities. Columbia will likely argue that it has continued to provide students with Columbia courses and faculty, whether it is in-person or online, and that fulfills the primary purpose of the contract. Students have been able to attend classes remotely, interact with professors, and complete their courses for full credit. In some cases, remote learning might provide enhanced opportunities to learn from academics who would otherwise not be able to reach campus. Moreover, completing courses on-line will not alter students' timeline to graduate, nor will it diminish the value of Columbia degree and the attendant benefits that flow from that degree—including the prestige of being a Columbia graduate with access to its alumni network and the resulting job opportunities. Those benefits have not been diminished, especially since virtually every other educational institution was similarly forced to move to remote learning at some point during the pandemic.

To the extent Columbia had a contractual obligation to provide in-person instruction, it may argue that the doctrines of impossibility or impracticability have excused performance, or at least permitted a modified performance. After all, as the pandemic—and the government's response to it—progressed, it became unsafe and unlawful for the school to provide

in-person instruction on its campus, and it has been offering a materially similar substitute. In addition, if universities have language akin to a *force majeure* clause in their student handbooks or other contract documents, they may be able to rely on that language for relief from certain contractual obligations.

The class action lawsuit against Columbia appears to be part of a growing trend, with University of Pennsylvania, Cornell University, Pace University, Boston University, Drexel University, Long Island University and other institutions already facing similar suits. If classes are certified in these lawsuits, colleges and universities can expect to see a rash of similar tuition refund suits. Presumably, tuition reimbursement claims would be limited to the pro rata portion of the Spring 2020 semester that was conducted on-line after the institutions closed their campuses.

Should institutions operate only online in the summer or fall, students would be free to pay the tuition being charged or not attend the university. Still, the cost of tuition refunds for the Spring 2020 semester would be an enormous burden on educational institutions that are already facing significant financial constraints.

It remains to be seen whether students' class claims will gain traction with courts. In all events, colleges and universities would be wise to follow the ongoing lawsuits closely and prepare to defend against similar class claims for tuition reimbursement.