

Colleges Obligated to Give Refunds

The United States Court of Appeals for the Third Circuit recently took up the question as to whether colleges and universities must give refunds when during Covid 19 they eliminated in-person learning. The decision sparking debate on the issue was *Hickey vs. University of Pittsburgh*, 2023 U.S. App. LEXIS 20959, 2023 WL 5159578 (3rd Cir. August 11, 2023) (Krause, C.J.).

Like many colleges and universities across the country, the University of Pittsburgh and Temple University responded to the novel coronavirus pandemic by transitioning to remote learning in March 2020. Their former students—now Appellants in this consolidated class-action appeal—do not challenge the wisdom of those decisions.

The students do seek partial refunds of tuition and fees on the grounds that they received a materially different educational experience than they were promised and that they were denied access to on-campus facilities and services for which they paid specific fees. The trial courts granted the Universities' motions to dismiss for failure to state a claim.

The reasoning of the Court was based upon the fact that Pennsylvania law applies and that the Commonwealth has not jettisoned ordinary contract principles. The question was whether the Students adequately alleged that the Universities breached an implied contract to provide in-person education and services in exchange for (1) tuition, and (2) mandatory fees. Not every benefit touted by a university gives rise to a contractual commitment. The specifics of course work—like instructors, class offerings, room assignments, and degree requirements—are well within universities' discretion and may be changed consistent with their contractual obligations. Though well understood given the nature of the services universities provide, many universities even make this explicit in reservation of rights provisions. See, e.g., [Cuesnongle v. Ramos, 713 F.2d 881, 885 \(1st Cir. 1983\)](#) ("The University reserves the right to revise or change rules, charges, fees, schedules, courses, requirements for degrees and any other regulations affecting students whenever considered necessary or desirable.").

Students, of course, need to anticipate adjustments in campus life: Buildings undergo construction, programs face budget cuts, and previously "undefeated" sports teams falter. See [Gally v. Columbia Univ., 22 F. Supp. 2d 199, 206 \(S.D.N.Y. 1998\)](#) ("Not every dispute between a student and a university is amenable to a breach of contract claim[.]"). Even a university's ratings, rankings, and reputation are expected to fluctuate with normal competition in the marketplace. See [United States v. Porat, No. 22-1560, 2023 U.S. App. LEXIS 20278, 2023 WL 5009238, at *6 \(3d Cir. 2023\)](#).

Absent, for example, deceit, changes in student life would normally give rise to contractual breach. The Court was careful to point out that its holding is narrow. No facts have been induced at any trial or hearing as to the change from in-person instruction to

a different method of education. The Court, therefore, left open the door that the final result in this case might be different after a hearing or trial.

The Court of Appeals summed by finding that the Students adequately claims that they had an implied contract as to tuition in exchange for an in-person education as well as for Pitt's mandatory fees and Temple University services fee, but that the students did not have any claim as to Pitt's housing and dining fees.

The Students also adequately pleaded damages. Not only did the students fail to receive the type of education that they purportedly bargained for, which cost more and comes with different benefits than online learning including, "the opportunity for collaborative learning and in-person dialogue, feedback, and critique," for which they paid; they also allege that they did not receive specific university services while the campuses were shut down.

The Court of Appeals, who speaks for the federal courts in Pennsylvania, New Jersey, Delaware, and the United States Virgin Islands, joined the District of Columbia Circuit in holding the claims made by the students, if they are proven in court, would give rise to "cognizable damages." For the foregoing reasons, the appellate tribunal affirmed the dismissal of the Pitt Students' housing and dining fee claims, but reverse the dismissal of all other claims, and remanded for further proceedings.

The take away bullet points in this case are as follows:

- The Court of Appeals reversed the district court's tossing out a case based upon contract claim by former students that they are entitled to a refund because in-person learning was eliminated.
- Pennsylvania has not jettisoned ordinary contract principles permitting implied contracts in cases where, as here, students alleged that a university failed to perform a specific undertaking.
- Not every benefit touted by the university gives rise to a contractual commitment.
- The Third Circuit affirmed dismissal of the Pitt students' housing and dining fee claims.
- The Students have adequately alleged that services and access to campus facilities that individual fees were intended to cover were at least partially terminated so that the students may be owed a refund.
- The Students have adequately pleaded their implied contract claims as to tuition in exchange for in-person education, Pitt's mandatory fees and Temple's university services fee, but not as to Pitt's housing and dining fees.
- The Students have adequately pleaded damages.
- The Students allege they did not receive the type of education they bargained for.

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