

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ASHA SMITH, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

UNIVERSITY OF)
PENNSYLVANIA,)

Defendant.)

CASE No. 2:20-cv-2086

COMPLAINT – CLASS ACTION

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Plaintiff Asha Smith (“Plaintiff”) by and through undersigned counsel, brings this action against University of Pennsylvania (“Defendant” or the “University”) on behalf of herself and all others similarly situated, and makes the following allegations based upon information, attorney investigation and belief, and upon Plaintiff’s own knowledge:

PRELIMINARY STATEMENT

1. Plaintiff brings this case as a result of Defendant's decision to close campus, constructively evict students, and transition all classes to an online/remote format as a result of the Novel Coronavirus Disease (“COVID-19”).
2. While closing campus and transitioning to online classes was the right thing for Defendant to do, this decision deprived Plaintiff and the other members of the Classes from recognizing the benefits of in-person instruction, access to campus facilities, student activities, and other benefits and services in exchange for which they had already paid fees and tuition.

3. Defendant has either refused to provide reimbursement for the tuition, fees, and other costs that Defendant is no longer providing, or has provided inadequate and/or arbitrary reimbursement that does not fully compensate Plaintiff and members of the Class for their loss.
4. This action seeks refunds of the amount Plaintiff and other members of the Class are owed on a pro-rata basis, together with other damages as pled herein.

PARTIES

5. Defendant University of Pennsylvania is an institution of higher learning located in Philadelphia, Pennsylvania.
6. Upon information and belief, Defendant has an estimated endowment of approximately \$14.7 Billion.¹
7. Moreover, upon information and belief, Defendant is eligible to receive federal stimulus under the CARES Act. The Act directs that approximately 14 billion dollars be distributed to colleges and universities based upon enrollment and requires that institutions must use at least half of the funds they receive to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to COVID-19.
8. However, Defendant has refused to apply for CARES Act assistance, announcing that it is financially capable of meeting student needs without such funding:²

¹ <http://www.investments.upenn.edu/about-us>

² <https://penntoday.upenn.edu/announcements/penn-will-not-apply-cares-act-funding>

The CARES Act, which was recently passed by Congress, allows universities to apply for emergency relief funds to offset the impacts of the COVID-19 pandemic. Despite the serious financial impact to Penn as a result of the pandemic, after analyzing the full scope of the regulations involved, Penn has determined that it will not apply for nor accept the funds that would be available through the CARES Act.

Although Penn is declining to apply for these particular federal funds, our commitment to providing financial aid and support to students in need is unwavering, and we will continue to do all that we can to ensure the educational success of all Penn students.

9. Plaintiff is an individual and a resident and citizen of the state of Pennsylvania.
10. Plaintiff is currently enrolled as a full time student at the University for its Spring Semester.
11. Plaintiff has paid substantial tuition for the Spring 2020 semester either out of pocket or by utilizing student loan financing, or otherwise.
12. There are hundreds, if not thousands, of institutions of higher learning in this country.
13. Some institutions of higher learning provide curriculum and instruction that is offered on a remote basis through online programming which do not provide for physical attendance by the students.
14. Defendant's institution offers in person, hands on curriculum.
15. Plaintiff and members of the Proposed Tuition Class did not choose to attend another institution of higher learning, or to seek an online degree, but instead chose to attend Defendant's institution and enroll on an in-person basis.
16. Common sense would dictate that the level and quality of instruction an educator can provide through an online format is lower than the level and quality of instruction that can be provided in person.

17. Moreover, the true college experience encompasses much more than just the credit hours and degrees. The college experience consists of:

- i. Face to face interaction with professors, mentors, and peers;
- ii. Access to facilities such as computer labs, study rooms, laboratories, libraries, etc;
- iii. Student governance and student unions;
- iv. Extra-curricular activities, groups, intramurals, etc;
- v. Student art, cultures, and other activities;
- vi. Social development and independence;
- vii. Hands on learning and experimentation; and
- viii. Networking and mentorship opportunities.

18. Plaintiff's education has changed from in-person hands on learning to online instruction.

19. Plaintiff's online instruction is not commensurate with the same classes being taught in person.

20. For example, upon information and belief, not all of the University's classes are being taught in a live setting via online streaming. Rather, some professors are uploading pre-recorded lectures where students have no opportunity for interaction; and still other professors are simply uploading reading and other assignments with no video lectures at all.

21. In addition to tuition, Plaintiff was required to pay certain mandatory fees, including but not limited to a substantial "general fee" and a clinical fee.

22. As a result of most on-campus operations being reduced or eliminated, Plaintiff no longer has the benefit of the services for which these fees have been paid.

23. For example, Defendant describes the general fee as supporting "a variety of student

related activities, services, and spaces.”³

24. However, a majority of these activities and services have been cancelled, and most on-campus spaces have been closed.

25. By way of example, while not an exhaustive list, the following campus services have been closed: Hospitality Services; Morris Arboretum; Off-Campus Services; Penn Bookstore; Penn Children’s Center; University Ice Rink; all on campus libraries; all student activities; student centers, and generally all other activities, services, and spaces not considered “life sustaining” to the University.⁴

26. As a result of students being encouraged to return home and avoid campus, Student Health Services has reported fewer than five in-person visits per day.⁵

JURISDICTION AND VENUE

27. This Court has jurisdiction over this action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one Defendant, there are more than 100 Class members, and the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs.

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29. This Court has personal jurisdiction over Defendant because Defendant is domiciled in

³ <https://srfs.upenn.edu/costs-budgeting/undergraduate-tuition-and-fees>

⁴ See, e.g., <https://coronavirus.upenn.edu/students-families/student-faq> ; <https://coronavirus.upenn.edu/faculty-staff/march15-message-from-libraries> ; <https://coronavirus.upenn.edu/content/march-20-2020-message-penn-faculty-and-staff-regarding-university-operations>.

⁵ <https://www.thedp.com/article/2020/04/coronavirus-campus-health-counseling-psychological-caps-services>

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