



## Putative Class Action against University Based on Retention of Campus Recreation Fees Following COVID-19 Shutdown Allowed to Proceed

The COVID-19 pandemic has, unsurprisingly, given rise to litigation, including putative class actions. The case of *Chong v. Northeastern University*, currently pending in the United States District Court for the District of Massachusetts, is an example of such litigation.

In *Chong*, Plaintiffs Manny Chong, a graduate student at Northeastern University (“Northeastern”), and Thane Gallo, an undergraduate student at Northeastern, filed a putative class action alleging that Northeastern breached its contract with its students when it retained the full amount of tuition and fees it collected for the Spring 2020 semester despite transitioning to remote instruction and closing its on-campus facilities following the onset of the COVID-19 pandemic. Plaintiffs proposed separate classes consisting of students who paid Northeastern tuition and students who paid certain University fees, including a student activity fee, an undergraduate student fee, a student center fee, and a campus recreation fee. Northeastern moved to dismiss Plaintiffs’ claims.

The court allowed the motion to dismiss the claims based on payment of tuition, holding that Plaintiffs’ complaint did not plausibly establish that the governing contract included a right to in-person instruction. The court explained that the contract did not tie payment of tuition to any particular method of course instruction.

The court also rejected Plaintiffs’ claims to the extent that they were based on Northeastern’s retention of the student activity fee, student center fee, and undergraduate student fee. The court reasoned that students pay such fees “to support certain facilities during terms for which those students are enrolled in classes . . . not to gain access to any on-campus facility or resource.”

The campus recreation fee, however, stood on a different footing. The court explained that payment of the campus recreation fee gives students the option to gain admission to athletic events and to use campus athletic facilities. Plaintiffs had stated a viable claim for breach of contract based on Northeastern’s retention of this fee because plaintiffs had lost the option to utilize the University’s athletic facilities.

It will be interesting to see whether the court’s decision in *Chong* spurs similar litigation against other colleges and universities.

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