

Judge Richard G. Stearns: ELECTRONIC ORDER entered granting (38) Motion to Dismiss for Failure to State a Claim in case 1:20-cv-10827-RGS.

Plaintiffs filed this putative class action against defendant Trustees of Boston University (BU), alleging that BU breached an express or implied contract with its students (Counts I and II), unjustly enriched itself at its students' expense (Count III), and/or wrongfully converted students' property (Count IV) when it retained tuition and fees collected for the spring semester of 2020 despite ceasing in-person instruction and closing its on-campus facilities and resources in March of 2020. BU moves to dismiss all claims pursuant to Fed. R. Civ. P. 12(b)(6). For the following reasons, the court will ALLOW its motion.

The Consolidated Amended Complaint (CAC) contains numerous allegations suggestive of a reasonable expectation of in-person instruction and access to on-campus facilities and resources with respect to the putative class. It fails, however, to tie these allegations to any of the named plaintiffs, as would be required to state a claim on an individual basis. For example, although the CAC generally alleges that "students" received "syllabi and other documents that referenced class meeting schedules, locations, and physical attendance requirements" for the spring semester of 2020 and that "students" attended classes in person for the first half of the semester, see CAC paras. 153-154, it does not suggest that any of the named plaintiffs were subject to a personal attendance requirement or attended classes in person prior to March 16, 2020. Similarly, although the CAC cites to marketing materials which generally imply the existence of in-person instruction, it does not allege that any named plaintiff ever read these materials -- let alone that they relied on the materials in choosing to enroll at BU. See *Guckenberger v. Bos. Univ.*, 974 F. Supp. 106, 151 (D. Mass. 1997) ("Even assuming arguendo that statements in a university's promotional materials [about providing reasonably accommodations for students with learning disabilities] can form the basis of a binding contractual agreement with its students, the Court concludes that at best, only one of the plaintiffs (Scott Greeley) entered into such an agreement in this case because he is the only one who testified he received and relied on the brochure. None of the other plaintiffs have testified that they relied on these brochures' general representations of policy in deciding to matriculate at BU."). Finally, although the CAC alleges that BU closed certain facilities and "dramatically curtailed" resources at other facilities, see CAC paras. 85-91, it does not actually allege that the named plaintiffs were denied access on any occasion.

These are not the only deficiencies the court wishes to highlight. It also notes that the named plaintiffs only allege that they "registered for on-campus courses" in the portion of the CAC applicable to Count II. See *id.* para. 167. They do not suggest in any other portion of the CAC that they registered for in-person courses during the spring semester of 2020. And on a procedural level, the CAC does not allege that plaintiff Shakura Cox enrolled as a full-time student in any BU program during the spring semester of 2020. See *id.* paras. 23-27 (alleging that only that Dutra, Dube, N. Silulu, Bornstein, and Tran enrolled as full-time students in BU programs for the spring semester of 2020).

Because the court is not convinced that plaintiffs' claims would be without merit, if plausibly and correctly pled, it will dismiss the case without prejudice. Plaintiffs are given leave to amend their complaint to rectify the cited deficiencies. Any amended complaint is due within 14 days of this Order.

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Associated Cases: 1:20-cv-10827-RGS, 1:20-cv-10834-RGS, 1:20-cv-10914-RGS, 1:20-cv-11118-RGS, 1:20-cv-11260-RGS

(RGS, law3) (Entered: 11/04/2020)