

Our Education Practice

The intersection of education and the law is remarkably complex and full of traps for the unwary. These days, a single transaction, claim, lawsuit or even tweet can undermine the mission and affect the reputation of a college, university or school district for years to come. We help our educational clients avoid and resolve employment disputes, Title IX violations, and operational and governance problems that can cause long-lasting harm to instruction, recruitment, enrollment, fundraising and the bottom line.

We have built a strong practice in higher education and school law by focusing on representing colleges, universities, and school districts in labor, employment and benefits matters; student affairs, student conduct, sexual misconduct and Title IX; business transactions and risk management; governance; and matters involving privacy, student records, and open meetings.

We offer practical and creative solutions for our educational clients focused on achieving goals and objectives in light of the regulatory and public environments in which they operate. Not only do we represent colleges, universities and school districts in matters that frequently arise, we are also available to provide full-service representation in crisis conditions, such as outside investigations and misconduct of the most serious kind.

Our representation and counsel includes the following areas:

- **Civil Rights**, including First Amendment freedom of speech, press, and religion and alleged violations of federal and state civil rights laws
- **Litigation and Dispute Resolution**, including the defense of civil rights, breach of contract and negligence claims, and employment litigation
- **Privacy**, including the Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), and public records laws
- **Ethics**, including conflicts of interest and compliance with federal and state ethics laws and guidelines
- **Governance**, including:
 - Board and committee structure, bylaws and charters
 - Employment agreements for presidents and superintendents
 - Management of major crises with legal implications
 - Relationships with affiliated foundations
 - Town-gown relationships
 - Policy and procedure development and implementation
 - Public meetings
 - Intercollegiate and interscholastic athletics

- **Labor & Employment**, including:
 - Hiring, termination, collective bargaining, wage and hour, and compliance with state and federal employment laws
 - Tenure, promotion, academic freedom, and other faculty employment issues
 - Grievances, arbitration and litigation
 - Defense of complaints to the EEOC, OFCCP and BOLI
 - Employment contracts for highly compensated employees, including presidents, superintendents, coaches, and athletic directors
- **Outside General Counsel**, including all facets of college, university and school district operations
- **Procurement, Contracting and Business Transactions**, including:
 - Contracts for performing artists and speakers,
 - Academic affiliation and internship agreements, and
 - Faculty and student exchange agreements
 - Facility use agreements, leases, and easements
 - Software licenses and data privacy agreements
 - Sponsored research, cooperative, and grant agreements
- **Public Meetings and Public Records**, including advice, compliance, defense of petitions to district attorneys, and defense of complaints to the Oregon Government Ethics Commission
- **Public Retirement Systems**, including eligibility, FTE determinations, contribution rates, employer appeals, and post-retirement return-to-work restrictions
- **Student Affairs**, including:
 - Student conduct policies and procedures
 - Title IX and sexual assault
 - Regulation of student organizations
 - Student health services and student health insurance
 - Study abroad programs and incidents
- **Title IX and Federal and State Law Compliance**, including:
 - Requirements for investigations of sexual assaults and discrimination
 - Claims of unequal participatory opportunities, facilities or funding
 - The establishment of written policies to comply with Title IX and VAWA
 - Representation of institutions in Title IX lawsuits and investigations, including those brought by the U.S. Department of Education Office for Civil Rights (OCR)
 - Compliance with federal and state financial aid programs
 - Degree authorization and program approval
 - Clery Act policies, campus crime reporting and annual campus security and fire safety reports

Representative Matters

Student Affairs – We have represented educational clients in the following:

- A Title IX investigation involving multiple incidents, complainants and respondents
- Complaints to the Office for Civil Rights alleging deficient Title IX policies, procedures and investigations
- The review and revision of Title IX policies and student conduct provisions required by OCR
- The evaluation of Title IX, Violence Against Women Act and Clery Act policies and procedures in response to incidents of sexual misconduct by student-athletes
- A Title IX complaint brought by a student alleging sexual harassment by a senior administrator
- The application of FERPA in an investigation of complaints made by former students alleging sexual misconduct by an employee
- The application of FERPA in a public records petition brought by a major news outlet
- Negotiations with a student health insurance carrier and the restructuring of student health center operations
- Litigation challenging the decision to expel a graduate student for possessing a deadly weapon on campus
- Review and drafting of campus speaker agreements, clinical practicum agreements, and educational testing agreements

Labor, Employment and Employee Benefits – We have represented educational clients in the following:

- Complaints alleging discrimination and wrongful termination against tenured faculty and other employees
- The recognition of a wall-to-wall faculty bargaining unit
- The negotiation of a first-ever collective bargaining agreement with a faculty union, a first-ever collective bargaining agreement with sworn police officers, and collective bargaining with a graduate teaching and research fellows' union
- Presidential employment agreements and the negotiated departure of presidents
- Terminating the employment of a department chair for misuse of funds and establishing a degree program without authority
- Participation in a comprehensive employee benefits program
- A tort claim notice filed by a senior administrator alleging breach of contract, whistleblower retaliation, wrongful discharge and race discrimination
- The dismissal of a unionized employee for sexually harassing another unionized employee
- A complaint alleging misuse of federal and state grant funds by senior employees
- Assessment and reformation of dysfunctional academic departments

Construction, Business and Risk Management – We have represented educational clients in the following:

- Tax credit financing of a capital construction program
- Multi-million dollar insurance coverage denials
- Two major lawsuits affecting the structure of the institution and its affiliated hospital and clinics, as well as its self-insurance and risk management protocols
- The operation of an insurance trust
- A fee dispute with an architect on a construction project
- A lawsuit brought by a subcontractor related to payment and performance bonds on a construction project
- Prevailing wage compliance and disputes
- The obligation to defend and indemnify senior administrators
- Insurance coverage for professionals, including defense before professional licensing boards
- Consulting contracts for the evaluation of academic programs and survey research
- Data breaches

Accreditation and Reorganization – We have represented educational institutions in the following matters:

- Reorganization of programs and departments and reassignment of personnel
- Complaints to an accrediting agency alleging that various actions by the institution should cause its accreditation to be revoked
- Program discontinuation
- Retrenchment and financial exigency

Public Records and Open Meetings– We have represented educational institutions in the following matters:

- A challenge to the confidentiality of institutional and faculty research records
- Petitions appealing the denial of public records requests
- The intersection of FERPA and public records statutes
- Exemptions to public records disclosure requirements
- The confidentiality of faculty records and teacher personnel files
- The permissibility of executive sessions
- Electronic communications among governing board members
- Constitution of a quorum and parliamentary procedure
- Proper notice of special meetings, work sessions and executive sessions

+ ATTORNEYS



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