



# Higher Education Law

## Overview and Hot Topics

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## Overview

- Higher education law attorneys are involved with virtually every part of the institution since legal matters can affect each and every function of the college or university.
- To some extent, we function as “generalists,” handling matters in multiple areas of law. While some of us are “specialists” and primarily focus on specific areas of law, and work primarily with one or two departments on campus.

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## Issues

As in-house counsel, we are involved with issues such as

- Governance
- Employment and human resources
- Student affairs
- Campus security
- Athletics
- Financial and business affairs
- Risk management
- Government and community relations
- Procurement and contracts
- Intellectual property
- Various forms of dispute resolution

## Areas of Law

- Business, Finance, and Contracts
- First Amendment
- Second Amendment
- Privacy Law
- Constitutional Law
- Development and Fundraising
- Employment and Labor Relations
- Environmental Law
- Governance – SBOE, internal policy development
- Intellectual Property (creation/licensing; use of others')
- Research & Technology Transfer
- Lobbying and Legislative Affairs (advisory)
- Litigation
- Real Property Acquisition, Development & Zoning
- Statutory & Regulatory Compliance
- Taxation

## Who

We work with a variety of constituencies outside and at the institution – both governmental and non-governmental

## Who (outside)

- The SBOE
- Other state agencies (e.g. State Risk)
- The United States Department of Education
- Other federal agencies (e.g. U.S. attorney – ADA)
- The City of Boise
- ACHD
- Boise State University Foundation
- Boise State Alumni Association
- Bronco Athletic Association
- ACLU, developers, artists, associations, etc.

## Who (inside)

- Our Administration
  - The President, the Provosts, Administrative Vice Presidents (VP Student Affairs, etc.), senior administrators, deans, department heads
- Academic Departments
  - Staff and faculty
- Non-Academic Departments (e.g., Athletics, Security, Boise Public Radio, Health Center)
- Our Event Venues (Student Union, ExtraMile Arena, Morrison Center)

## What We Do

- Contracts
  - Volume-wise – mostly contracts
  - Drafting, reviewing, negotiating
  - Variety of contract types
- Public Records Request
  - Also volume-wise
  - Athletics
  - Newsworthy events
- Counsel
  - Primarily, we counsel our University clients – research, interpret, and advise on the law.
- Also
  - We do some litigation, some immigration, and IP management

## Federal Laws

- Unique to Education
  - Title IX
  - Clery Act
  - FERPA
- Other federal laws
  - Title VI
  - Title VII
  - ADA
  - ADEA

## Recent Issues in Idaho/at Boise State

- Legislation related to CRT
- COVID protocols
  - Remote learning
  - Mask mandates
  - Testing requirements
- Black Lives Matter
  - Big City Coffee
  - Contract with BPD
- Team Chaplain



## Recent Issues in Idaho/at Boise State

- Funding legislation
- Transgender student athletes
- Faculty speech
- UF 200
- Mountain West Championship
  - Court storming



## Update – First Amendment

- *Houston Community College System v. Wilson*
- *Shertleff v. Boston*
- *Kennedy v. Bremerton School District*
  
- *Mahanoy Area School Dist. v. B.L*

## Update – Title IX

- NPRM – June
  - 700 pages
  - Expands coverage to behavior that occurs in education programs off campus, including out of country. (The Trump administration required discrimination to be shown on campus.)
  - Expands mandatory reporting requirements to all employees at colleges that operate an educational program who have knowledge of an instance of sex discrimination.
  - Created new eligibility for retroactive complaints after a student leaves an educational program due to an instance of discrimination.
  - Requires “prompt time frames” for investigating cases of discrimination.
  - Elimination of cross-examination and live hearing requirement from the rules for campus hearings.
  - Requires colleges to allow students who participate in a live hearing to do so remotely if they choose.
  - Allows informal resolution of an incident without the submission of a formal complaint. (The Trump administration required a formal complaint.)
  - Requires protections for pregnant students and employees.
  
- Separate NPRM for student athletes forthcoming

## Update – Discrimination

- *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College and Students for Fair Admissions v. University of North Carolina, et al.*
- *Cummings v. Premier Rehab Keller P.L.L.C*
- *Bostock v. Clayton County*

## Update – Athletics

- *National Collegiate Athletic Association v. Alston* (2021)
  - NIL (Name, Image, and Likeness)
  
- Conference Realignment

## Additional notes

- Outside counsel
  - Specialty areas, for example
    - Immigration
    - Environmental Law
  - Unplanned resource allocations, like litigation
  - Required to use outside counsel
    - e.g., for torts because of our participation in State Risk
- Other JDs on campus
  - Institutional Compliance
  - Research Compliance
  - Technology Licensing
  - NCAA Compliance
  - And of course, many as faculty





- Any questions?



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**THANK YOU**



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