

## Education Law Skills and Expertise

This outline has been prepared as a means of listing, by areas of law or practice, the broad range of legal services that must be provided to an educational institution. It is not a comprehensive list of all issues or regulatory matters that affect the institution.

### EMPLOYMENT

- a. Discrimination, harassment, and retaliation
  - i. Handling claims of harassment/discrimination and related retaliation based on age, disability, sexual harassment, race, religion, gender, gender identity, sexual orientation, and other protected characteristics (includes response to internal complaints, training, and administrative appeals)
  - ii. Handling matters brought before MCAD, EEOC, or other agencies
  - iii. Policies: sexual harassment/sexual misconduct, non-discrimination and harassment, ethical relationships, bullying, and codes of conduct
- b. Faculty
  - i. Appointment and tenure
  - ii. Faculty handbook revisions
  - iii. Employment contracts – presidents, heads of school, senior administrators
  - iv. Adjunct faculty
  - v. Academic freedom
  - vi. Conflicts of interest
  - vii. Investigations – discrimination, harassment, sexual harassment, retaliation, plagiarism and other misconduct and internal investigations
- c. Staff, Other
  - i. FLSA, wage and hour claims, and Massachusetts pay equity issues
  - ii. FMLA, federal and Massachusetts (Pregnant Workers Fairness Act and PFML)
  - iii. Employee handbooks and training; employee policies
  - iv. Background checks, CORI/SORI, drug testing
  - v. Employment agreements, terminations, separations, reductions in force
  - vi. Student employees, interns, and fellows
  - vii. “Independent contractor” status
- d. Affirmative Action

## Education Law Skills and Expertise

### e. ERISA, Benefit Plans

- i. Review and amend 403(b) retirement plans, guide submission of application to IRS to correct 403(b) plan operating errors; advise on issues regarding fulfilling the institution's fiduciary duties as the sponsor of the 403(b) plan
- ii. Advise on scope of benefits provided to employees
- iii. Advise on compliance issues

### LABOR

- a. Elections, union contract negotiations, collective bargaining, unfair labor practice charges, grievances, and arbitrations

### DISABILITIES / ACCESSIBILITY

#### a. Students

- i. Requests for accommodations (academic, other programs and activities, facilities) and review/revise procedures to request and approve accommodations
- ii. Draft grievance procedures in compliance with law; draft and/or review other student disability-based policies, such as for service and support animals, reduced course loads, program relocation, and medical leave
- iii. Respond to and resolve OCR investigations of complaints under Section 504 and OCR Section 504 Compliance Audits

#### b. Faculty, Staff, Visitors, Facilities

- i. ADA Title I and Title III compliance, requests for accommodations, complaints of discrimination, defense of claims of discrimination before state and federal administrative agencies and courts
- ii. Facilities compliance with local, state, federal accessibility laws, including requests for variances from the Massachusetts Architectural Access Board, analysis of compliance of existing facilities under the Uniform Federal Accessibility Standards and the ADA Design Guidelines

### NON-DISCRIMINATION AND HARASSMENT, INCLUDING SEXUAL HARASSMENT

- a. Advise on compliance with laws and regulations governing sexual misconduct proceedings, including but not limited to Title IX and MA Campus Sexual Violence Act
- b. Draft compliant policies and procedures pursuant to Title IX, MA Campus Sexual Violence Act, Clery Act, Violence Against Women Act, Title VI, Title VII, ADA/504, and other applicable law
- c. Investigate formal complaints for harassment, discrimination, and/or retaliation, including Title IX and other sexual misconduct complaints; serve as mediators for informal resolution proceedings
- d. Advise on compliance with MA Department of Higher Ed reporting requirements, including MOU requirements, survey requirements, and misconduct reports
- e. Provide trainings to staff and administrators

## Education Law Skills and Expertise

- f. Advise in/serve as panelists for student and/or employee disciplinary proceedings
- g. Advise in investigations by OCR or MA Department of Higher Ed

### ACCREDITATION

- a. Massachusetts degree-granting regulations and certificate approval processes
- b. Program integrity

### ADMISSIONS

- a. Affirmative action and diversity
- b. Scholarships
- c. Financial aid
- d. Rescission of admission
- e. Enrollment contracts

### STUDENT AFFAIRS

- a. Disciplinary matters
  - i. On and off-campus behavior that violates conduct codes, including sexual offenses, hazing, threatening behavior, alcohol, drug use, gambling, weapons on campus
  - ii. Plagiarism, academic misconduct and other claims
- b. Housing and Residence Life
  - i. Contracts, including faculty housing, occupancy, payment, termination, eviction
- c. Student Life
  - i. Student clubs and sponsored events; lotteries and raffles; liability waivers and claims; use of automobiles, buses, school facilities, assistance in licensing, contracts with performers
  - ii. Student handbooks and conduct codes
  - iii. Troubled students, including threats to self and others, and permitted institutional response
  - iv. Other student life policies: drugs and alcohol, acceptable use and social media, digital downloading, anti-bullying
  - v. Student newspapers, publications, other media (freedom of speech and responsibility of institution)

## Education Law Skills and Expertise

### OTHER REGULATORY

- a. Regulatory – educational mission and governance
  - i. FERPA, records retention
  - ii. 2008 Higher Education Opportunity Act Amendment, including program integrity, gainful employment, state authorization
  - iii. Privacy, data security, and data breach laws
  - iv. Form 990 reporting and board policies (e.g., whistleblower, records retention, conflicts of interest)
- b. Regulatory – research, conflicts of interest, animal and human subject research, institutional review board requirements, research compliance
- c. Regulatory – Title IV financial aid
- d. Summer camp regulatory requirements
- e. Regulatory – student health centers

### REAL ESTATE AND ENVIRONMENTAL

- a. Campus Development
  - i. Development agreements and ground leases for third party development on campus land
  - ii. All required permits and approvals for development and use of institutional facilities from state and local boards, agencies and authorities, including zoning and planning boards and boards of selectmen, historic commissions, state access board, MEPA review, and other
  - iii. Leases and licenses for use of campus facilities and for use by institution of off-campus property.
  - iv. Acquisitions, sales, grants of easements, and reciprocal use agreements
  - v. Public procurement for the disposition of real estate or services to or from municipalities
  - vi. Solar and net metering agreements
- b. Facilities Operations
  - i. Agreements for third-party management of facilities
  - ii. Laboratory operations, including flammable storage licenses, federal industrial alcohol, OSHA compliance, other
- c. Environmental
  - i. Coordinate with LSPs on response to releases of hazardous materials, including advice on timing and scope of reporting
  - ii. Analyze and advise on applicability of state and federal regulations affecting ongoing use and proposed development

## Education Law Skills and Expertise

### BUSINESS AND FINANCE

- a. Business and Other Institutional Program Contracts
  - i. Service agreements for dining/food services, security, parking, housekeeping
  - ii. Consulting agreements for a broad range of services, including program development
  - iii. Technology licenses, including licenses for custom software, software as a service, web hosting, technology infrastructure improvements
  - iv. Joint program development or affiliation agreements and course collaboration, delivery and hosting agreements
  - v. Bookstores and museum collections; university presses
  - vi. Real estate contracts, leases, and licenses; facilities and events licensing
  - vii. Overseas program agreements including student releases
  - viii. Contracts with artists for “public art”
  - ix. Summer conference agreements for use of campus facilities
  - x. Agreements with hotels and other venues for conferences
  - xi. Design and construction agreements
  - xii. Telecommunications and antenna licenses
  - xiii. Master contracts for distributed antenna services in campus facilities
- b. Sponsored Research and Grants and Technology Transfer
- c. Federal Contracts
- d. Programs for Below-market Rate Loans to Faculty and Staff
- e. Investments and Endowments
- f. Tax Exempt Financing, as Both Bond and Borrower Counsel
- g. Student Financial Matters, including emergency loans and truth in lending, bankruptcy, scope of institutional aid, policies on withholding transcripts, collections
- h. Taxation and Non-profit Tax Status; UBIT; Private Use, Employee Taxation Issues
- i. Affiliated Entities; Institutional Mergers/Consolidations

### ATHLETICS / NCAA

- a. Title IX
- b. Coaches: contracts, independent coach summer camps; FLSA issues
- c. NCAA compliance, including training requirements and disclosure obligations

## Education Law Skills and Expertise

### INSURANCE AND RISK MANAGEMENT

- a. International programs, study abroad issues, including student disclosures, contracts, waivers of liability, and enforcement of conduct codes while abroad
- b. Tort and other insurance claims
- c. Minors on campus
- d. Coverage analysis

### DEVELOPMENT

- a. Gift agreements
- b. Enforcement of charitable restrictions; requests for deviation or cy pres
- c. Disputes with donors
- d. Planned giving advisory
- e. Endowment issues/investment guidelines/UPMIFA

### PUBLIC SAFETY AND CAMPUS SECURITY

- a. Campus police and security guards: contracts and disputes
- b. Investigations of allegations of harassment or discrimination by police or security
- c. Clery Act: community notifications, crime statistics reporting, area of "campus," 2008 HEOA Amendment requirements, Violence Against Women Act
- d. Records requests and public records applicability
- e. Joint police force agreement
- f. Manage social media issues arising from allegations of misconduct

### INTELLECTUAL PROPERTY / TECHNOLOGY

- a. Copyright and fair use
- b. Software and technology licensing
- c. Acceptable use of internet
- d. Distance learning and state authorization
- e. Trademark

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### GOVERNANCE

- a. Advising the Board
  - i. Board policies (For Form 990 and other)
  - ii. Review and revise corporate bylaws and restated and amended articles of incorporation
  - iii. Financial exigency
  - iv. Government investigations
  - v. Liability of trustees; Massachusetts charitable immunity and fiduciary responsibility
  - vi. Internal audits and investigations
  - vii. Codes of ethics and conflict of interest
  - viii. Institutional compliance programs

### ALUMNI AFFAIRS

- a. Alumni associations, including disputes with alumni

### COMMUNITY RELATIONS AND DISPUTE RESOLUTION

- a. Negotiations and agreements with the municipality over public access and school facilities