

## HIGHER EDUCATION TEAM

### OVERVIEW

BCLP offers a fully-integrated global team possessing valuable higher education experience. We understand that now, more than ever, universities and colleges find themselves under strenuous attack in the courts and from regulatory agencies across the broad spectrum of legal domains in which they operate.

The multiple missions served – providing education, advancing knowledge through cutting-edge research, and providing the most advanced patient care available – contribute to the sometimes-staggering legal complexity confronting higher education institutions.

Our higher education attorneys fully appreciate how the diverse and sometimes competing constituencies within institutions of higher education occasionally complicate management's efforts to develop and execute legal strategies. We are skilled at assisting those efforts without making the complex dynamics of university governance and management even more challenging. We've "been there," and we understand the unique discomfort that can attend higher education's engagement with legal issues and processes, particularly in the internal investigations/compliance, technology transfer, and collegiate sports arenas.

### EXTENSIVE HIGHER EDUCATION EXPERIENCE

- [Conducting internal investigations and compliance audits](#), whether overseen by management or by Boards of Trustees
- [Protecting and enhancing technology development](#), intellectual property and commercialization
- Providing [higher education data privacy/security regulation and data breach management](#)
- [Advising on critical governance, tax, endowment management](#) (e.g., UPMIFA, tax-compliant joint ventures) and other business affairs of universities and colleges
- Structuring, negotiating, and assisting in the [governance of strategic contractual arrangements](#), including replacing underperforming online program management (OPM) arrangements, and/or negotiating new ones to support online degree programs

- Assisting campus expansion and renewal finance and development, including representing higher educational institutions on their often unique environmental exposures and claims
- Designing and advising on issues arising under compensation and employment benefits specific to exempt organizations
- Collegiate Sports Practice, from defending sports-related litigation to naming rights deals
- Handling high-profile first amendment and second-amendment constitutional compliance in the distinctive setting of higher education

## MEET THE TEAM



### **James D. Lawrence**

Partner, Kansas City

[jim.lawrence@bcplaw.com](mailto:jim.lawrence@bcplaw.com)

[+1 816 374 3378](tel:+18163743378)



### **Sarah Hartley**

Partner, Washington / Boulder

[sarah.hartley@bcplaw.com](mailto:sarah.hartley@bcplaw.com)

[+1 303 866 0363](tel:+13038660363)

## AREAS OF FOCUS

- Campus Compensation & Employee Benefits
- Campus Expansion & Renewal Finance
- Student Affairs and Employment Matters from Title IX to the 2nd Amendment
- Higher Education Governance, Tax & Endowment Management
- Higher Education Technology Development & Commercialization
- Higher Education Internal Investigations & Compliance
- Collegiate Sports Practice
- Campus Free Expression

## EXPERIENCE

We understand how universities, colleges and academic medical centers operate in a highly-regulated, extraordinarily litigious environment, which makes them among the most legally complex and challenged institutions in the world.

We regularly represent colleges and universities in a full spectrum of areas that reflect the diversity of our clients and their legal needs, including athletics, construction, employment relations, estates and trusts, finance and commercial transactions, general business and operational matters, information technology, intellectual property, labor and labor relations, real property, tax, and utilities and energy advice, to name a few. Some of our experience includes:

- Represented New York University in obtaining land use approvals for (and successfully defending litigation challenging) the NYU Core project, which includes the construction of new university buildings comprising approximately 2 million square feet of classroom, dormitory, faculty housing and other space on its Washington Square Campus in Manhattan.
- Conducted internal investigations for a number of universities, including one major sports powerhouse, concerning athletic and sports medicine department compliance with regulations and best practices on sports-related concussion policies, educational programs, clinical management and return to play/learn decision-making and documentation.
- Conducted a year-long independent investigation for the Board of Trustees of one of the nation's largest state universities concerning the university's improper use of restricted state funds for capital infrastructure projects. The investigation involved more than 50 witness interviews and the review of thousands of documents to uncover that institution had misused nearly \$100 million in state funds on over a dozen capital projects at the university over a ten-

year period. The BCLP team issued a written report containing its factual findings and recommendations, which the Board of Trustees made public.

- A cross-practice team from BCLP advised the University of Cambridge on its 150 hectare mixed-use scheme at the North West Cambridge Development, a project part of an estimated billion dollar investment into the city. The completed development, potentially a 15-year project, will include 3,000 new homes, 2,000 student residences, a hotel, senior living facilities, supermarket and supporting retail and community facilities. We advised the University from the very inception of the development on all legal aspects including planning, procurement, construction (non-contentious and contentious), energy, real estate disputes and charities law.
- Represented a major national research university in a year-long, distance learning project structuring, reworking and replacing online program management (OPM) vendor arrangements to negotiate reasonable revenue shares, appropriate exit mechanisms, fair allocations of compliance obligations and risk management responsibilities.
- On behalf of a public university, negotiated over \$5 billion of private fund investments, including terms of subscription agreements and side letter agreements, with sponsors of private equity, private real estate and venture capital funds; negotiated Investment Management Agreements with separate account managers and Wall Street firms, including Goldman Sachs and J.P. Morgan, for direct investments including stocks, bonds, options, futures and private equity opportunities, and negotiated legal agreements related to investments in state-specific tax credits.
- Serve as outside general counsel to a 15,000-student university with multiple international locations, providing counsel and litigation services on a wide range of governance, business, employment and cross-border matters.
- Assisted dozens of colleges and universities with all aspects of employee benefits, including the design, structure and documentation of 403(b) plans, 457 plans, tuition remission programs, health plans and other welfare benefit arrangements.
- Represented a number of universities with respect to data incident response, data security and privacy matters. This work often includes identifying the diverse laws that impact institutions and help rank which raise the most risk and concern based upon an institution's particular functions and footprint.
- Assisted colleges and universities navigate through uncertainty about their obligations with respect to firearms on campus. BCLP has represented a flagship state university in extensive litigation over the last four years relating to the University's prohibition of firearms on campus. The University prevailed at the trial court level and the case is now on appeal.

- Represented the Dormitory Authority of the State of New York in litigation challenging its compliance with the State Environmental Quality Review Act in connection with the condemnation of property for the expansion of John Jay College of Criminal Justice.
- Advised a number of universities on UPMIFA implications of making “internal loans” of endowed funds to cover operating budget deficits.
- Advised a non-profit extension services organization in support of education outreach for a nationwide, non-credit educational network in the review of subrecipient agreements with a public U.S. research university.
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## **REPRESENTATIVE CLIENTS**

We are proud to represent the full diversity of institutions of higher education, from world-renown research powerhouses to small liberal arts colleges, both non-denominational and religiously-affiliated. Some of our clients include:

- Arizona State University
- ASU Foundation
- Atla Colleges, Inc.
- Azusa Pacific University
- Case Western Reserve University
- Claremont University Consortium
- Columbia University
- Emory University
- Florida State University
- Graduate School of the Stowers Institute of Medical Research
- Greenville College
- Howard University

- Indiana State
- Jewish Theological Seminary
- Judson College
- Kansas City University
- Kansas University of Medicine and Biosciences
- KU Innovation and Collaboration-University of Kansas
- McKendree University
- Mercer College
- Moody Bible Institute
- Mount Sinai Hospital Medical Center
- Mountain West Athletic Conference
- National Collegiate Hockey Conference
- National Lewis University
- NCAA
- New York University
- Northeastern Illinois University
- Northwestern Memorial Hospital
- Oxford University
- Park University
- Pennsylvania Higher Education Assistance Agency (aka American Education Services)
- Pennsylvania State University
- Ranken Technical College
- Rocky Mountain Athletic Conference
- Southern Intercollegiate Athletic Conference

- Southeast Missouri State University
- St. Louis University
- Stanford University
- The City University of New York
- Touro College
- UCLA Investment Company
- University College of London
- University of Cambridge
- University of Colorado
- University of Colorado Foundation
- University of Denver
- University of Missouri
- University of South Florida
- University of Tennessee
- Washington University in St. Louis
- Webster University
- Westmont College
- Wheaton College
- Yale University

## **RELATED INSIGHTS**

Insights  
Feb 07, 2024

## **NLRB Regional Director determines Dartmouth basketball players are employees**

Insights

Jun 30, 2023

### **Affirmative Action: Effects of the Ruling and Actions to Take Now**

Insights

Apr 11, 2023

### **Department of Education's New Proposed Rule for Transgender Participation in Athletics**

The participation of transgender athletes in youth, interscholastic, and elite sport has long been a highly charged political issue domestically and internationally, with a vast range of different approaches to regulating participation. Last week's combination of Supreme Court orders, state legislation, and a proposed rulemaking from the Department of Education's Office of Civil Rights ("OCR") confirm that this must remain a focal point for educational institutions intending to continue offering athletics participation opportunities.

Insights

Jun 27, 2022

### **Proposed Changes to Title IX Unveiled on its 50th Anniversary**

Insights

Jul 22, 2021

### **What Do You Need To Know About The Latest Title IX Guidance?**

Department of Education Q&A Provides Insights Into Enforcement Priorities On July 20, 2021, the Biden Administration announced new guidance for the implementation of the 2020 Title IX regulations on sexual harassment, giving institutions of higher education (and K-12 institutions) much-awaited insight into how the Biden Department of Education will enforce the Trump era regulations adopted last year while the administration undertakes its comprehensive review of the Trump era regulations.

Insights

Jun 24, 2021

### **BCLP Lawyers Author Analysis for 'Law360' on Antitrust Guidance for Higher Ed IP Collaboratives**

Insights

Jun 24, 2021

### **Supreme Court Issues Decision in Closely Watched Student Social Media Case**

On June 23, 2021, the Supreme Court issued its decision in the closely-watched case of Mahanoy Area School District v. B.L. The decision, which upheld the Third Circuit's ruling for a high school cheerleader suspended from her cheerleading squad for a profanity-filled social media post, tackles the thorny question of whether, and under what circumstances, public schools may punish students for their off-campus social media use, and conversely, the circumstances under which such speech is protected by the First Amendment.

Events

Jun 07, 2021

### **Hartley Presents CLE Program on the Regulation of Transgender Athletes**

BCLP Partner Sarah Hartley will present a virtual CLE program "Recent Developments In The Regulation of Transgender Athletes In Sports" on June 7 for the Colorado Bar Association's Sports & Entertainment Section.



## **Antitrust Guidance by the Justice Department for Higher Education Institutions non-Standard Essential Patents Pool Reveals A Path Toward Licensing and Innovation**

The increasing intersection of antitrust and intellectual property laws has led to a number of complex legal issues for which clients often seek guidance from the Antitrust Division of the Department of Justice (“DOJ”). Earlier this year, a collaboration of fifteen private and public universities sought specific guidance from the DOJ with regard to a non-Standard Essential Patents (“SEPs”) patent pool. In its response, the DOJ found that the design, contractual structure, and antitrust safeguards employed in the collaboration minimized legal risk while promoting procompetitive licensing, increased output, and innovation. Higher education clients with robust physical sciences and engineering programs may find this guidance helpful when exploring their own non-SEP patent pool collaboration opportunities.