

Higher Education

Miller Canfield's higher education team follows an interdisciplinary approach to help our clients fulfill their mission while minimizing litigation risk and remaining compliant with the multitude of regulations that affect institutions of higher education.

We represent public and private not-for-profit institutions, for-profit education providers, education and athletic associations, and educational foundations on a wide range of matters. Our work includes project-oriented work such as financing of major improvements, counseling in connection with U.S. Department of Education/Office for Civil Rights audits, and defending significant, high-profile litigation, as well as providing day-to-day general counsel services.

We have assisted institutions of higher education with respect to:

TITLE IX COMPLIANCE, INVESTIGATIONS, AND LITIGATION

- Defending litigation involving Title IX athletics disputes
- Counseling on Title IX athletics compliance matters
- Defending litigation involving Title IX sexual misconduct and due process disputes
- Counseling on Title IX discrimination and harassment compliance matters
- Counseling for U.S. DOE/OCR audits and investigations under Title IX and Cleary Act
- Investigating sexual misconduct and discrimination claims by students, staff, and faculty
- Serving as neutral hearing officers during sexual misconduct and discrimination investigation proceedings

CORPORATE AND FINANCE

- Formation and accreditation of new institutions and affiliates
- Governance matters, including drafting and interpretation of Board and Faculty By-Laws and Handbooks
- Structuring tax-exempt and tax-advantaged financing programs
- Tax audits and advice
- Real estate transactions
- Contract negotiation and review
- International law compliance impacted by remote courses

LABOR AND EMPLOYMENT

- Counseling and litigation to resolve faculty, student, and staff claims under Title VII, Title VI, ADA, ADEA, FMLA, and state law
- Tenure termination proceedings, both internal and external litigation
- Response to faculty and staff union organizing

Continued

- Negotiation of collective bargaining agreements with faculty and staff
- Negotiation of senior administrator employment, compensation and severance agreements
- International law compliance impacted by remote work
- Policy development and training regarding all of the above

DISPUTE RESOLUTION AND LITIGATION

- Investigation and resolution of whistleblower/qui tam claims
- Class action defense including claims by students/alumni and employees
- Open Meetings Act and Freedom of Information Act litigation defense

TECHNOLOGY AND PRIVACY

- Policy and procedure development to clarify ownership of intellectual property rights
- COVID-19 policies and procedures
- Review of sponsored research agreements
- FERPA/HIPAA/FOIA compliance as applied to electronic records and email

REGULATORY AND COMPLIANCE

- Investigation and resolution of alleged sports governing agencies by-law infractions
- Open Meetings Act/FOIA counseling

EXPORT CONTROLS AND SANCTIONS

- Identification and Classification of University Export-Controlled Items
- Conduct Export Controls and Sanctions Clearances on Proposed Research Projects
- Develop New, and Audit Existing, Export Control and Sanctions Compliance Programs
- Conduct Export Controls and Sanctions Compliance Training

Representative Matters

Title IX Litigation

Defended large Michigan public university in historic multi-plaintiff, multi-jurisdictional lawsuit alleging widespread sexual abuse

Continued

Defended large Michigan public universities in Title IX collective action lawsuits challenging decision to eliminate athletic teams

Defended large California public university in Title IX collective action lawsuit challenging decision to eliminate athletic teams

Defended large Michigan public university in Title IX sexual misconduct case involving due process rights of accused perpetrators of sexual misconduct

Defended large Michigan public university in Title IX sexual misconduct case filed by expelled student

Tuition Litigation

Represented numerous institutions of higher education sued in breach of contract class action litigation as a result of offering only remote/online learning during the COVID-19 pandemic

Immigration

Miller Canfield has represented several public universities in immigration matters involving PERM Special Handling labor certification, H-1B CAP exemptions, I-140 immigrant petitions, and adjustments of status matters.

Collective Bargaining

Assisted a public university with their faculty contract negotiations, ultimately reaching a five-year collective bargaining agreement

Negotiated an initial and successor collective bargaining agreements between a community college and its faculty and teaching assistants

Represented community college at fact-finding hearing before Michigan Employment Relations Commission

Negotiated successor collective bargaining agreements between a community college and its full-time faculty

Negotiated initial and successor collective bargaining agreements between several universities and their AFSCME (dining, custodial, grounds, maintenance, etc.) employees

Corporate Matters

Our attorneys assist higher education clients with all types of contract drafting and review, and other corporate matters, including:

- Contract drafting review including museum collection, collaboration/affiliation agreements, vendor agreements and campus policies for public community college
- Drafting and negotiating the development agreement and the long-term ground lease that will enable the plans for the building and expansion of a research center to move forward. The team also negotiated an occupancy lease for a major tenant of the center. Other elements of the project included environmental considerations, bond and other financing arrangements (including block chain), bankruptcy, real estate development, state and local tax, gifting and university law, and the relationship between public institutions and private entities.

Continued

- Represented an American university in matters involving its branch location in Qatar's Education City, which is part of the Qatar Foundation. Our attorneys acted as outside general counsel to the university and advised on compliance with Qatar law. Advice covered issues including labor law, civil code, Qatar penal code, privacy and security matters, and freedom of speech. Our attorneys also provided advice on Qatari customs and practices.
- Joint venture between a regional hospital and a provider of medical school educational services
- Negotiation of cell phone tower lease agreements
- Act as outside General Counsel for a Michigan community college and provide advice and counsel on all legal matters.

Export Controls and Sanctions

- Identified applicable export controls under International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) and economic sanctions programs enforced by Office of Foreign Assets Controls (OFAC) to university research projects conducted with government agencies, laboratories, and private companies, including those funded by research grants; develop corresponding compliance measures for research projects.
- Advised and assisted university on nuclear research projects that are subject to regulatory controls administered by the Nuclear Regulatory Commission (NRC), including Part 810 of the regulations controlling the transfer of nuclear technology and assistance administered by the National Nuclear Security Administration (NNSA), and Part 100 of the regulations controlling the export and import of nuclear equipment administered by the NRC.
- Assisted university with screening foreign universities and other international research and collaboration parties under EAR entity/person controls and OFAC sanctions.
- Assisted university with determination use and scope of ITAR exclusion: information in public domain and EAR exclusions: published information and software, fundamental research, and educational information.
- Conducted comprehensive audit of university export controls and sanctions compliance programs and preparation of audit gap analysis report documenting audit findings.
- Counseled and advised university on construing and complying with Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) applicable to government-funded research projects.

Finance

Represented a Michigan liberal arts college in connection with a bond financing through the Michigan Finance Authority and various taxable loans through various banks.

Represented a Southwest Michigan college in connection with a bond financing through the Michigan Finance Authority and various taxable loans through various banks.

Represented the Michigan Finance Authority in connection with a financing for a private university.

Free Speech

Continued

Represented Northern Michigan University in this First Amendment student press case. The plaintiff, a former journalistic advisor, was terminated by the paper's board of directors. She claimed she was fired in retaliation for her encouragement of the student editors to investigate and publish unfavorable stories about the school administration, and sought an injunction prohibiting her termination. *Reed v. Neiheisel*, 2015 WL 42493130 (W.D. Mich. 2015).

Intellectual Property

Miller Canfield has represented colleges and universities in matters involving trademark applications and renewals

Investigations

Miller Canfield has conducted an extensive investigation following a public allegation that a softball coach for a major university had intentionally thrown at a play during practice in retaliation for the player's complaints about the team.

Represented a public university regarding alleged misconduct by a coach with a minor during a European tour.

Litigation Procedure

In *Hyde v. University of Michigan Board of Regents*, 226 Mich App 511 (1998), the Michigan Court of Appeals agreed that an employee who refused to produce his medical records, asserting the physician-patient privilege, could not then seek to recover emotional distress damages.

Labor and Employment

Miller Canfield has handled employment and labor and employment matters public and private universities and colleges, including:

- S. Department of Education
- Clery Act audits
- Civil litigation
- General labor and employment advice and compliance
- Labor negotiations, including fact-finding hearings
- Freedom of Information Act
- Open Meetings Act
- Employment contracts
- Employee benefits
- Retaliation and discrimination litigation
- Sexual misconduct investigations
- Class action suits

Continued

Private University Tenure

In *Branham v. Thomas M. Cooley Law School*, 689 F.3d 558 (6th Cir. 2012), obtained a successful result in first private university tenure case, establishing that tenure does not grant any right to continued employment or a removal procedure beyond that provided by contract.

Public-Private Partnerships

- Represented public universities in public-private partnerships to build student housing
- Represented a public university in the expansion of the Grand Rapids Research Center on the Grand Rapids, Michigan, Medical Mile