Education
Education

HIGHER EDUCATION LAW

For more than 50 years, attorneys on Phillips Lytle’s Education Practice Team have provided successful representation to nearly two dozen higher education and secondary education institutions. We understand the complexities of higher education law, and our team is comprised of attorneys from various practice areas, including Banking & Financial Services, Commercial Litigation, Corporate, Crisis Response & Management, Data Security & Privacy, Employee Benefits & Executive Compensation, Environment, Government Operations, Health Care Law, Intellectual Property, Labor & Employment, Not-For-Profit, Project Development, and Real Estate. This opportunity for collaboration enables our attorneys to serve client needs that are unique to the educational field yet tailored to specific needs. Whether your institution is large or small, public or private, Phillips Lytle can help.

Phillips Lytle has counseled and represented colleges, universities and secondary institutions in a variety of higher education law matters, including:

- Academic, business and student affairs
- Administrative proceedings, arbitrations and labor relations
- Board governance
- Budgets
- Business transactions
- Campus accountability and Title IX
- Charitable giving and planning
- Clery Act
- Construction, commercial real estate and zoning
- Constitutional challenges
- Contracts, affiliation agreements and collective bargaining negotiations
- Corporate restructuring/mergers and acquisitions
- Crisis response
- Cybersecurity and data privacy
- Disciplinary proceedings and terminations
- Employee benefits and health programs
- Environmental law, land use and development
- Executive compensation
- Faculty tenure
- Financing and bond issues
Government compliance, audits and investigations
HIPAA, FERPA, and similar privacy and security
Immigration
Intellectual property and technology transfer
Labor and employment
Litigation and appellate practice
Media relations and communications
Personal injury defense
Preventative policies and personnel training
Retirement plan design, operation and compliance
Risk management
Staffing issues and disputes
State and federal civil rights and anti-discrimination
Strategic planning
Student discipline
Student housing and residential life
Student loans, grants and scholarships
Tax law

Our higher education law experience by practice area:

BANKING & FINANCIAL SERVICES

Phillips Lytle has extensive experience in all types of municipal bonds, grants, private finance and loan restructuring transactions. Our team has successfully represented private colleges and universities in multimillion-dollar tax-exempt bond transactions and New York State Higher Education Capital Matching Grants. This financing can be used by our clients in the construction and equipment of student housing and other projects. Our Tax attorneys are ready to advise clients on issues associated with public offerings, real estate transactions, tax disputes, obtaining and maintaining tax-exempt status, and tax issues related to fundraising.

COMMERCIAL LITIGATION

Our goal is to avoid litigation for our clients whenever possible, however, we have the necessary experience to assist our clients when litigation is necessary. Our Commercial Litigation attorneys have experience in all types of disputes, including banking, breach of fiduciary duty, contracts, commercial, construction, insurance coverage, joint ventures, employment, fraud, housing, intellectual property, licensing, leasing, personal injury, real estate finance and development, tortious interference, trusts and estates, and unfair competition.

We regularly represent educational institutions in state court, federal court, arbitrations and administrative proceedings. We have represented educational institutions regarding faculty grievances and union contract disputes, conducted internal investigations, and defended against government investigations, including Title IX claims before the Office of Civil Rights and health care allegations before the New York State Department of Health.

CORPORATE

Phillips Lytle is regularly called on by our higher education clients to provide advice on corporate matters, faculty/staff issues, financing initiatives (including how they may impact tax-exempt status), strategic alliances, affiliation agreements, and investment and partnership opportunities with technology and start-up companies. We draft bylaws, review and revise contracts between colleges and third-party
providers (e.g., vendors and industry partners), and work with board members and management to prepare legal compliance and code of ethics programs.

We regularly participate in board meetings, counseling trustees, board members and executives on minimizing potential liability exposure (including review of insurance and preparation of indemnification agreements). Our Corporate Team has extensive experience in representing educational institutions in connection with the acquisition of other institutions and educational institution property, and has served as special counsel for governance issues in connection with institutional mergers.

**CRISIS RESPONSE & MANAGEMENT**

We understand that the higher education arena is increasingly competitive, and that the reputation of an organization is vital to its success. Phillips Lytle’s Crisis Response & Management Practice Team is available to provide advice to minimize the public effect of any crisis – from government investigations and labor strikes, to student conduct concerns, and technology and data breaches. It is critical to be prepared, which is why we have the ability to deploy experienced attorneys at a moment’s notice to implement the proper emergency response protocols.

**DATA SECURITY & PRIVACY**

Our Data Security & Privacy attorneys have real-world business experience creating and implementing data security, record retention and destruction, and storage/access policies. We have assisted educational institutions with internal investigations regarding data breaches where students’ personally identifiable information (PII) was accessible by unauthorized parties. We assist in minimizing the breach and put measures in place to prevent additional third parties from gaining access to PII.

We provide advice in these situations about required notifications to the affected parties as well as to the appropriate government agencies. We have also analyzed wireless, internet access and social media policies with a focus on limiting liability that could be imputed to colleges, universities or secondary educational institutions.

**EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION**

In today’s competitive market, colleges and universities need to review and update their benefits and compensation structure to best fit the direction of their institution. Our attorneys represent educational institutions in updating tax-deferred annuity/403(b) plans, advise on compliance with Internal Revenue Service and ERISA regulations and requirements, and provide advice about employee health and welfare benefit plan design changes and operational compliance issues. Our Employee Benefits & Executive Compensation attorneys work with our Corporate, Securities, Tax, and Labor & Employment attorneys to design executive compensation plans that incentivize maximum impact and assist in reporting these arrangements for corporate governance and securities law purposes.

**ENVIRONMENT**

For projects requiring environmental review, Phillips Lytle has experience representing educational institutions regarding due diligence associated with real property acquisition, compliance audits and environmental compliance programs. Our environmental attorneys work with many education clients on campus improvement and/or expansion projects involving zoning and land use permitting, historical consultation with New York’s State Historic Preservation Office (SHPO), environmental permitting and environmental impact reviews pursuant to New York State Environmental Quality Review Act (SEQRA), and challenges to zoning issues in Article 78 proceedings. We also represent schools in licensing issues with energy and power authorities.
GOVERNMENT OPERATIONS

Phillips Lytle has experience in prosecuting disciplinary hearings against public employees and challenging the constitutionality of state statutes and municipal ordinances. Our attorneys regularly advise clients regarding compliance with state and federal laws, especially as it relates to educational institutions.

HEALTH CARE LAW

Our Health Care Law attorneys represent virtually every segment of today’s health care marketplace. With that knowledge and experience, we assist educational institutions with medical and health-related affiliation agreements, HIPAA compliant policies and procedures, hospital and medical center student internships, medical staffing or licensing issues, and other New York State privacy laws and regulations.

INTELLECTUAL PROPERTY

Phillips Lytle offers a full range of services to secure, defend and enforce the intellectual property rights of our education clients, whether it’s patents, trade secrets, service marks or copyrights. To that end, we have represented research universities and institutions with respect to a broad range of intellectual property issues, including preparing, filing and prosecuting domestic and foreign patent applications in multiple technical disciplines.

We have experience negotiating and drafting a wide range of licensing and technology transfer agreements for our education clients, including research agreements, option agreements, license agreements, confidentiality agreements and material transfer agreements. Moreover, we regularly counsel clients with respect to patent scope and associated design issues, as well as render non-infringement opinions and conduct freedom-to-operate studies.

LABOR & EMPLOYMENT

Our Labor & Employment attorneys provide daily advice to institution presidents, administrators and general counsel with respect to faculty and student issues ranging from faculty tenure disputes to student disciplinary concerns.

We represent education clients in labor arbitrations, collective bargaining negotiations, contract administration, faculty/student association matters, NLRB proceedings, and LMRA litigation. We have extensive experience in defending colleges, universities and secondary education institutions against government investigations and private charges of state and federal discrimination, wage and hour, safety and constitutional violations, and wrongful discharge involving, but not limited to, Title VII, Title IX, ADA, Section 504, ADEA, FMLA, FLSA and OHSA compliance.

We regularly draft and provide advice on faculty, staff and student handbooks, and assist our education clients in imposing and defending terminations and disciplinary decisions. We have provided advice and represented clients before the New York State Department of Education, United States Department of Education, and educational accrediting associations.

NOT-FOR-PROFIT

The members of Phillips Lytle’s Not-For-Profit Practice Team are devoted to assisting our education clients with all aspects of legal, corporate and tax regulatory compliance. College and university trustees and officers require an understanding of their duties and specific requirements under the New York Education Law and the New York Not-For-Profit Corporation Law to ensure that their organizations carry out their educational purposes; appropriately utilize gifts, grants, endowments or other restricted funds; and discharge their duties in good faith while acting in the best interests of the institution. Our
attorneys regularly counsel clients about their obligations and corporate housekeeping, provide advice about proposed courses of action, and assist in developing and implementing conflict of interest policies and codes of conduct or ethics.

**PROJECT DEVELOPMENT AND REAL ESTATE**

Our Project Development and Real Estate attorneys are regularly involved in college and university construction, development and expansion projects. Whether it’s assisting with property acquisition, preparing forms and leases, or zoning/land use permitting, our attorneys have experience in all phases of development.

We have assisted colleges and universities in community outreach to address concerns about proposed expansion projects, and our attorneys regularly work with local developers who build-to-suit for college campuses or who have obtained construction projects through the public bidding process. We also have extensive experience in the collaboration of colleges and universities with start-up companies under START-UP NY, including the negotiation and creation of lease documents for multimillion-dollar high-tech facilities.