

— Education Law 101



— Educational Law 101

Educational institutions face a unique combination of business and legal challenges. We counsel education clients—as well as their funders, partners, lenders, and creditors—on their diverse needs, from compliance matters, labor relations, and real estate development to financing issues and intellectual property matters.

The expansion of regulations, an increased focus on accessibility, and advances in technology have made compliance more challenging. Planning before disputes arise can ensure that responses align with an institution's mission and values.

Our clients include public, private, and charter schools; colleges and universities; and online education companies nationwide. Because our team includes attorneys across a range of practice areas, we are uniquely positioned to address the varied needs of educational institutions.

CLIENT VALUE

Ballard Spahr has developed an award-winning Client Value and Innovation program that is focused on delivering exceptional client service through the use of value-based pricing, matter management, process improvement, knowledge management, data analytics, and technology solutions that are designed to meet client needs.

TRENDING ISSUES

- Pricing Transparency
- Workforce Challenges
- Employment, Title IX, Antitrust Claims and Controversies
- DEI and Accessibility Including Affirmative Action
- Affiliations, Acquisitions and Consolidations
- Restructurings and Closures
- Union Organizing
- Data Privacy
- Student Housing
- Student Lending
- Research Parks and Innovation Districts
- Bond Finance and Disclosure
- Student and Faculty Speech
- Achieving Carbon Neutrality, Renewable Energy Initiatives and P3s

Investigations

We represent education clients in all manner of investigations. We also address the reputational risks inherent in so many of these investigations. Our services include:

- Strategic crisis management and messaging
- Enterprise risk management and corporate governance counseling
- Compliance and enforcement issues involving regulators
- Matters related to foreign students, anti-money laundering, terrorism, and sanctioned countries
- Minimizing competitive harm from false statements
- Media relations

If an allegation of sexual misconduct arises, we guide clients through the process, from claim review and investigation through advice on remedies, disciplinary measures, and due process. We also assist with campus climate checks and surveys to assess the effectiveness of the institution's efforts and adjust as needed.

Accessibility

Ballard Spahr is fully versed in laws designed to protect the rights of people with disabilities. We help education clients assess their responsibilities, design compliance programs, and defend against discrimination and other claims based on physical, mental, and digital accessibility. The team has wide-ranging experience, including with civil rights cases and balancing digital accessibility and cybersecurity concerns. This multidisciplinary perspective positions us to keep schools proactive in assessing and addressing issues under the ADA, IDEA, and other applicable laws.

Access Issues for Student Populations

We help institutions establish guidelines for providing equal access to students under Title III and Title VI, as well as for LGBTQ+ students and those who are pregnant or parenting. We advise on issues involving harassment (including cyber bullying), physical accommodations, transportation, participation in extracurricular activities, student housing, single-sex education, FERPA/privacy, and academic freedom.



Athletics

Ballard Spahr counsels clients on Name, Image and Likeness (NIL) regulations in higher education athletics. With states enacting a variety of laws related to student-athlete compensation and the recent Supreme Court ruling against the NCAA restrictions on education-related benefits for student-athletes, it's challenging for higher education institutions to navigate the legal and business dealings related to college sports.

We have a NIL Legislation Tracker that keeps our clients informed with real time updates on legislation and regulation developments.

We also advise college athletic departments on compliance with title IX in athletics. Outside of Title IX, Ballard Spahr has been nationally recognized for our handling of issues involving the evaluation of gender equity in athletics and the national governing bodies tasked with ensuring the equitable growth of sports for girls and women.

Labor and Employment

Our attorneys understand the employment issues that can arise in educational settings. We have more than 30 years of experience in faculty negotiations and often have served as chief negotiator for educational entities. We know how to forge positive relationships with organized labor while aggressively advocating the legal positions of our clients.

We have represented education clients before the National Labor Relations Board and state labor agencies,

and have successfully counseled schools during strikes and organizing activities. We help clients respond to employment-related claims, including discrimination, harassment, Family and Medical Leave Act, American Disabilities Act, wage and hour, noncompetition, confidentiality, First Amendment, and wrongful termination. We recognize the sensitivity of faculty tenure issues and design solutions that serve the best interests of the educational institution.



Employee Benefits

We are at the forefront of advising college and university investment committees of their ERISA fiduciary duties in selecting and monitoring 403(b) plan investments and keeping in-house counsel abreast of case law developments in light of the recent storm of litigation against colleges and universities. We also counsel in-house human

resources and legal personnel on benefit plans (including 403(b)), taxation, vendor contracts, and regulatory compliance. Our attorneys stay up-to-date on regulatory and legislative developments and keep clients well-informed so they can plan and respond effectively.

Intellectual Property and Technology Licensing

Ballard Spahr's Intellectual Property Department helps some of the world's best-known medical centers, research institutions, and universities develop, commercialize, enforce, and defend their intellectual property assets.

We have a deep bench of more than 50 intellectual property attorneys and professionals, including more than 20 registered patent practitioners, who can provide a full range of intellectual property services, including trademarks, trade secrets, copyrights, patent prosecution; procurement and licensing; analyzing, de-risking, and commercializing technologies as well as assist our clients with making sound business decisions on a day-to-day basis.

When necessary, we can bring protective actions for our clients' property in the United States and throughout the world. Our intellectual property practice is ranked by *Chambers USA* as one of the leading in the nation.

In addition to our IP attorneys' national recognition in *Chambers*, *IAM Patent 1000*, and *Managing Intellectual Property*, LMG Life Sciences, a leading guide to law firms and attorneys in the life sciences industry, named Ballard Spahr as a 2020 "Firm to Watch" for intellectual property, and in 2021 nominated one of our partners in New York as a finalist for Patent Strategy Lawyer of the Year for the life sciences. We have significant experience working with clients in key industries, including the life sciences, software, medical/medical device, and chemical industries.





Free Speech/Media

Ballard Spahr has one of the nation's foremost Media and Entertainment Law practices. Our first Amendment attorneys help education clients defend against defamation claims and other speech-related lawsuits arising out of internal investigations, #MeToo claims, and student or staff statements on social media. We advise on the potential liability of all forms of speech—including by students and employees—and help to strike a balance between the free-speech rights of guest speakers and the need to maintain a safe and respectful environment for all members of a campus community. Our First Amendment attorneys conduct prepublication review and counseling related to sensitive manuscripts or draft articles to help reduce our education clients' exposure before litigation is even contemplated.

Privacy and Data Security

We help educational clients navigate the many laws, regulations, and industry practices designed to safeguard student and employee records, as well as financial, health, and other confidential information. We help our clients develop effective policies and execute plans that support digital privacy and safety on campus. We advise on all aspects of information risk management programs, vendor assessment and management, information security disclosures,

cyber-incident response planning, employee training and community awareness, privacy laws and practices, and the management of marketing preferences. We serve as both investigators and advocates with deep experience in cyber-related internal and governmental investigations, regulatory compliance and enforcement matters, cyber-related crisis management, and civil and criminal litigation.

Student Lending

Our nationally recognized student lending attorneys represent clients in higher education and the student loan industry, including private schools, colleges, universities, sponsors, lenders, servicers, guaranty agencies, and collection agencies. We also have assisted secondary market participants and other entities involved in federal and state guaranteed student loan programs, income share agreements, private and supplemental student loan programs, and related tuition payment plans and school debit card plans. We have represented lenders and servicers of all sizes in

connection with examinations, investigations, and enforcement actions brought by federal and state regulatory agencies operating in this space, including the CFPB, the Department of Education, prudential banking regulators, and attorneys general and banking departments in California, Iowa, Massachusetts, Minnesota, New York, and Wisconsin. We have persuaded regulatory agencies to drop claims, convinced them to adopt more favorable terms in consent orders, and successfully negotiated significant dollar reductions in settlement demands.

Tax and Institutional Advancement

We represent education institutions in a wide range of tax and governance issues, including institutional management, legal compliance, donor programs, investment management, and operating structures. The tax attorneys on our team have significant experience with governance structures and the related documents, policies, and procedures that support the most efficient operation of educational organizations. Our experience includes formation documents, management documents and policies, compensation policies and procedures, document retention policies, conflict of interest policies, whistleblower policies, codes of conduct, public disclosure rules, and employee benefits policies, including pension plans.

Gifts and Endowments

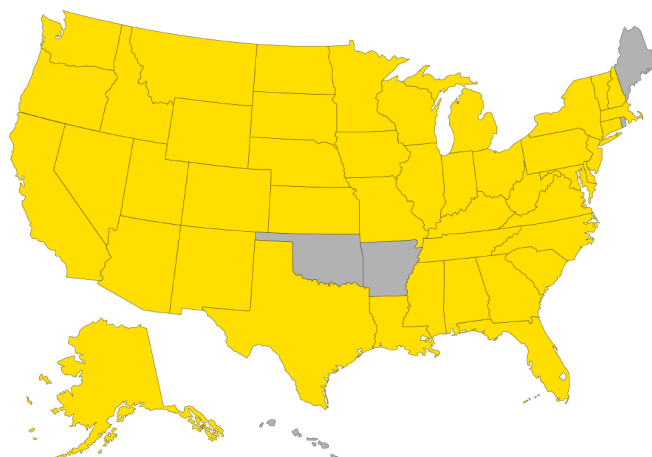
We regularly counsel education clients on policies and procedures related to scholarships, gifts, and endowments. We assist with the development and monitoring of policies for gift acceptance, including the creation and management of scholarship programs, donor advised fund programs, and policies for endowment management and distribution. We provide guidance on planned and structured giving to take advantage of tax laws and enhance gifts to educational institutions. We also advise clients on gift intentions and parameters for redirecting gifts, and assist in the pursuit of significant pledges that are not fulfilled by donors.

Private Equity Investments

With many universities investing more in securities not available in public markets, we offer a valuable perspective on private equity investments to augment guidance from the school's internal investment offices and business personnel. We analyze the legal issues and risks of potential investment in private equity funds and alternative investment vehicles. We advise investment committees on how to set up and define the committee's scope of responsibility and provide counsel on fiduciary issues. Our attorneys review offering memoranda and fund organizational documents, subscription agreements, and related documentation. We also draft and negotiate side-letter agreements and identify deviations from market practices.



STATES WE'VE DONE WORK IN



Education Finance

A significant segment of our nationally recognized Public Finance Group is focused on tax-exempt and taxable bond financings, bank lending, and derivative transactions for educational organizations. We have served as bond counsel, underwriter's counsel, borrower's counsel, or credit enhancer counsel on billions of dollars in educational bond issues. These financings have supported the development of campus facilities, research buildings, student housing (both university- and privately owned), auxiliary facilities, athletic facilities, and stadiums throughout the country. We participate in financings for higher-educational institutions, vocational/technical schools, school districts, charter schools, and other private and parochial schools, as well as student loan issuers.

Health Care

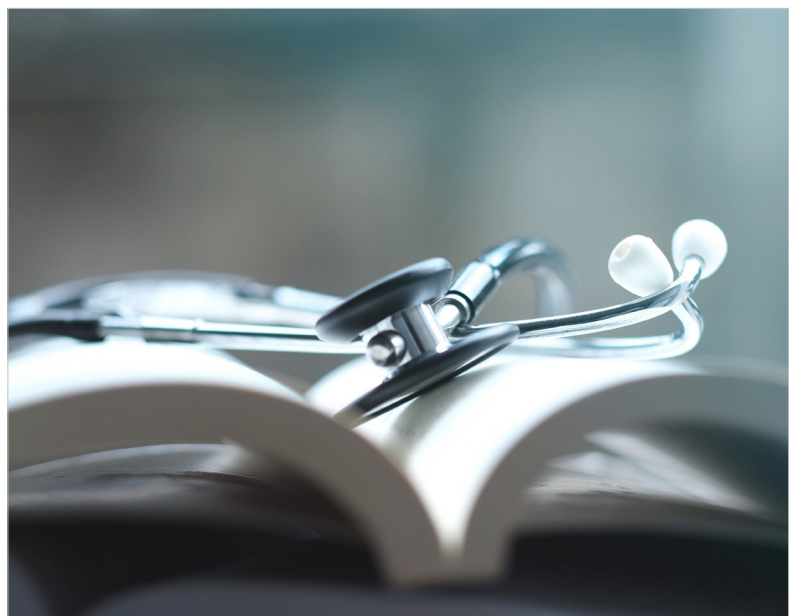
Our health care attorneys serve as general and special counsel to academic medical centers, physician practices, insurance companies, and other health care organizations. We assist educational institutions in forming affiliations, joint ventures, and reorganizations, and advise them on mergers and acquisitions of hospitals, health care systems, and physician practices. Our team advises on corporate relationships with health care providers and research organizations. We also provide guidance on regulatory compliance with HIPAA, Medicare, Medicaid, and data security requirements.

Real Estate

Our nationally recognized Real Estate Department has represented education clients on a wide range of development matters, including site acquisition, land use, zoning, planning, development, construction, financing, leasing, and tax exemption. Several Ballard Spahr attorneys are LEED Accredited Professionals as documented by the U.S. Green Building Council. As such, we are well-positioned to help develop and implement programs to promote sustainability, green building, and cost-effective projects to reduce greenhouse gas emissions. We

We provide guidance on tax issues related to tax-exempt financing, including private business use issues, and we assist our clients with post-issuance tax compliance and in tax audit matters. We also assist in the foundation and interpretation of procedures for post-issuance continuing disclosure compliance and, when necessary, in the remediation of post-issuance tax and disclosure issues.

We regularly advise clients on issues related to municipal securities regulation, compliance, and enforcement, including primary offerings, secondary market disclosure filings, disclosure training for officers and staff, and avoidance of selective disclosure to individual market participants.



have successfully represented academic institutions in construction-related mediation, arbitration, and litigation proceedings. Our attorneys have worked with major universities, special innovation districts, and private developers to design, develop, and operate innovation incubators and technology centers across the country. We have negotiated, closed, and helped implement many complex agreements to marshal the resources to develop innovation centers from concept to completion.

Environmental

Ballard Spahr's environmental lawyers maintain continuous working relationships with school and university counsel and facilities personnel, providing responsive and imaginative support in this complex regulatory area. Our services have involved the acquisition and development of environmentally impaired properties, compliance counseling and enforcement, and regulatory litigation, including:

- Design and implementation of environmental compliance audits
- Representation of universities in air, wastewater, storm water, hazardous waste, and storage tank regulatory matters
- Advice, including litigation, on the acquisition and development of contaminated real property and riparian rights
- Advice on Superfund litigation concerning the disposal of hazardous substances
- Representation in EPA, state, and local environmental enforcement actions, including issues related to waste disposal
- Representation of research universities and health care units in U.S. Drug Enforcement Administration and U.S. Department of Transportation investigations

Litigation

We assist schools, colleges, and universities in the spectrum of disputes and litigation matters, including health care and environmental cases. We counsel in matters of premises liability, fraternities and sororities, and labor and employment. We also have represented clients in criminal and civil enforcement proceedings, including defending against False Claims Act cases alleging research misconduct. We conduct internal investigations, including into allegations of faculty violations of conflict-of-interest policies. Our white collar litigators are accomplished, seasoned professionals with significant experience in high-stakes matters.



Climate Change and Alternative Energy

We assist educational institutions in a wide range of activities that allow them to take advantage of new opportunities and minimize risks involving climate change and clean-energy issues. Our attorneys have worked on a broad range of renewable-energy projects involving solar, hydroelectric, wind, landfill gas, agricultural biomass, coal or wood waste, and geothermal electric generation, as well as ethanol and biodiesel facilities. In the litigation area, we have

been involved in national climate change cases. We advise on the development of climate policies for universities and other educational institutions. With our real estate practice, we help developers, purchasers, and tenants with green design, building development, and occupancy matters. Our finance lawyers advise education clients and other market participants on effective climate change disclosure in public debt offerings.



Energy and Project Finance

Our attorneys provide innovative, cost-effective results to clients, making us a powerful ally in the development, acquisition, and financing of energy assets and in the achievement of regulatory, policy, and legislative goals. We work with education-related entities on performance-driven energy solutions and the underlying financial and infrastructure

development options available to those institutions. We also help clients navigate and manage the process while exploring alternative financing solutions addressing the deferred maintenance crisis, the value of supply and demand-side energy options, and the challenges of a budget neutral approach to achieve campus sustainability goals.

Contacts



VALARIE J. ALLEN

Public Finance Group

Co-Leader

215.864.8565

allenv@ballardspahr.com

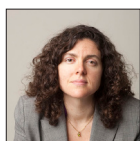


SETH D. BERLIN

Media & First Amendment

202.508.1122

berlins@ballardspahr.com



SHANNON D. FARMER

Labor & Employment

215.864.8221

farmers@ballardspahr.com



ELIOT I. GRIFFIN

Litigation

215.864.8258

griffinei@ballardspahr.com



TERI M. GUARNACCIA

Public Finance Group Co-Leader;

Student Housing

410.528.5526

guarnacciat@ballardspahr.com



KAITLIN M. GURNEY

Media & First Amendment

215.864.8585

gurneyk@ballardspahr.com



STEPHEN J. KASTENBERG

Antitrust

215.864.8122

kastenberg@ballardspahr.com



SCOTT D. MARTY, PH.D.

Intellectual Property

678.420.9408

martys@ballardspahr.com



STEVE T. PARK

P3/Infrastructure Group Co-Leader

215.864.8533

parks@ballardspahr.com



SARA A. McCORMICK

Real Estate

215.864.8734

mccormicks@ballardspahr.com



KENDIS KEY MUSCHEID

Tax & Exempt Organizations

602.798.5410

muscheidk@ballardspahr.com



EMILIE R. NINAN

Finance Department Co-Chair

302.252.4426

ninane@ballardspahr.com



HESTER H. PARROT

Charter Schools

303.299.7376

parroth@ballardspahr.com



WILLIAM C. RHODES

Education Industry Group Leader;

Finance

215.864.8534

rhodes@ballardspahr.com



DEE SPAGNUOLO

Compliance & Investigations

215.864.8312

spagnuolod@ballardspahr.com



MAGGIE M. TATTON

Private Equity Group Co-Leader;

Mergers & Acquisitions

612.371.2465

tattonm@ballardspahr.com



ELIZABETH WINGFIELD

Litigation & Compliance

215.864.8128

wingfielde@ballardspahr.com

Our Locations

ATLANTA

999 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309-4421
678.420.9300

BALTIMORE

111 South Calvert Street
27th Floor
Baltimore, MD 21202-6174
410.528.5600

BOULDER

1801 13th Street
Suite 308
Boulder, CO 80302-5391
303.379.2275

DELAWARE

919 North Market Street
11th Floor
Wilmington, DE 19801-3034
302.252.4465

DENVER

1225 17th Street
Suite 2300
Denver, CO 80202-5596
303.292.2400

LAS VEGAS

One Summerlin
1980 Festival Plaza Drive
Suite 900
Las Vegas, NV 89135-2658
702.471.7000

LOS ANGELES

2029 Century Park East
Suite 1400
Los Angeles, CA 90067-2915
424.204.4400

MINNEAPOLIS

2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2119
612.371.3211

NEW JERSEY

700 East Gate Drive
Suite 330
Mount Laurel, NJ 08054-0015
856.761.3400

NEW YORK

1675 Broadway
19th Floor
New York, NY 10019-5820
212.223.0200

PHILADELPHIA

1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
215.665.8500

PHOENIX

1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555
602.798.5400

SALT LAKE CITY

201 South Main Street
Suite 800
Salt Lake City, UT 84111-2221
801.531.3000

SIOUX FALLS

101 South Reid Street
Suite 302
Sioux Falls, SD 57103-7030
605.978.5200

WASHINGTON, DC

1909 K Street, NW
12th Floor
Washington, DC 20006-1157
202.661.2200