Higher Education

Barclay Damon's multidisciplinary Higher Education Team serves the full range of legal needs of public and private colleges, universities, and their related entities. Our lawyers currently represent colleges and universities across the Mid-Atlantic and Northeast, including day-to-day counsel to one of New York State's largest private universities.

The firm's higher education services include advising on day-to-day academic, business, and corporate matters; labor and employment; student discipline and related affairs; NCAA compliance; tax matters, including tax-exempt issues; real estate, financing, and construction; employee benefits; litigation; higher education regulatory issues; intellectual property, and health care.

We are members of the National Association of College and University Attorneys (NACUA) and the Eastern Association of College and University Business Officials (EACUBO). Our regular work for colleges and universities includes:

Higher Ed Regulatory and Student Affairs

- Utilize extensive knowledge of Title IX, Section 504, the Americans With Disabilities Act (ADA), and the Family Educational Rights and Privacy Act (FERPA).
- Represent clients in NCAA compliance matters, including routine compliance advice, self-reporting of violations, and major infractions cases.
- Assist clients with higher education regulatory issues and investigations, including student, faculty, and staff misconduct and Title IX matters.
- Represent clients in student discipline and academic integrity matters, including providing advice during investigations and possible violations of student codes of conduct, assistance in charging decisions, and guidance during the administrative hearing and appeal process.
- Assist with issues involving international programs and virtual learning.

Investigations

- Conduct investigations under Title IX and with respect to student, faculty, and staff misconduct.
- Our higher education investigations team includes:
    - Dan French, Higher Education Practice Area co-chair, White Collar & Government Investigations Practice Area co-chair, former general counsel for Syracuse University, and former US attorney for the Northern District of New York.
    - Rick Hartunian, White Collar & Government Investigations Practice Area member and former US attorney for the Northern District of New York.
    - Lizz Acee, Higher Education Practice Area member.
    - Buster Melvin, Higher Education Practice Area co-chair.
    - David Burch, Higher Education Practice Area member and White Collar & Government Investigations Practice Area co-chair.
    - Pei Pei Cheng de Castro, Higher Education and White Collar & Government Investigations Practice Areas member, former deputy general counsel to the governor of New York State, former executive deputy inspector general legal at the Metropolitan Transportation Authority, and former deputy general counsel and director of investigations at the New York State Joint Commission on Public Ethics.
    - Kyra Ganswith, Higher Education Practice Area member.

Labor and Employment

- Advise clients on day-to-day labor and employment matters, including policies and procedures, employee and labor relations, arbitrations, tenure, terminations, separation agreements, employment agreements and appointments, wage and hour matters, employee benefits, immigration, OSHA, and workers' compensation.
- Represent clients in discrimination matters brought by staff, faculty, and students in state and federal courts and before the Equal Employment Opportunity Commission, the New York State Division of Human Rights, the US Department of Labor, and the US Department of Education's Office for Civil Rights.

Public Finance

- Represent clients in connection with tax-exempt and taxable obligations used to finance academic buildings, athletic facilities, dormitories, and additional facilities.
- Serve as bond and underwriter's counsel in connection with the issuance of tax-exempt and taxable obligations by the Dormitory Authority of the State of New York and various local agencies and authorities.
- Provide advice to clients on private use qualified management contracts issues and prepare and assist in the implementation of post-issuance compliance procedures to ensure compliance with the Internal Revenue Code.
- Provide advice to clients on disclosure issues to ensure compliance with securities laws and prepare and assist in the implementation of post-issuance compliance procedures to ensure compliance with continuing disclosure undertakings.

Tax

- Assist clients in tax matters relating to scholarships, fellowships, fringe benefits, unrelated business taxable income issues, for-profit subsidiaries, and issues concerning the private use of university buildings, including any effects on tax-exempt financing.

Construction and Real Estate

- Represent clients in matters involving construction projects, including project financing, preparation, and negotiation of construction contracts, bid disputes, mechanics' lien proceedings, bond claims, contract disputes, mediations and arbitrations, judicial proceedings and actions, payment and performance of bond claims against sureties, defense of sureties in response to bond claims, and suits by sureties against indemnitors.

Litigation

- Represent clients in all areas of litigation, including commercial, contract, construction, business, labor and employment, and personal injury matters in state and federal courts and in mediation and arbitration proceedings.

Intellectual Property

- Represent large academic research institutions on a variety of technologies, including Columbia University, Rensselaer Polytechnic Institute, University of Utah, Yale University, Syracuse University, and University of Bridgeport.
- Provide services that include:
    - Patent application drafting, preparation, and filing worldwide
    - Patent prosecution worldwide
    - Patentability searches and opinions
    - Patent filing and prosecution strategies advice
    - Inventorship determinations
    - Claim interpretations

- Validity analyses
- Infringement analyses
- Freedom to-operate analyses
- Patent licensing consultation
- Patent maintenance and docket management
- Patent portfolio monetization analyses and assessments

Health Care

- Counsel on licensing, contracting, and regulatory compliance for medical and mental health centers located on college campuses.

Insurance Coverage and Regulation

- Assist in reducing financial exposure before and after losses occur by managing claims involving insurance, maximizing coverage, and reducing the risk of unacceptable losses through drafting contracts on coverage and indemnification and identifying risks in premises and operations.
- Recover insurance proceeds from property and other covered losses, including periods of interrupted business, and recover payments made for uninsured liabilities and payments under self-insured and deductible clauses.
- Provide insurance auditing services to determine the adequacy of insurance programs, risk management measures, and whether exposure is covered by insurance through identifying potential risks and losses, reviewing and explaining existing coverage, evaluating potential risks in the client's operations, and determining coverage gaps.

Representative Experience

- Obtained dismissal on summary judgment of professional malpractice and intentional-tort claims against a university client related to student health services.
- Obtained dismissal on summary judgment of professional malpractice and intentional-tort claims against a university client related to student mental health services.
- Obtained dismissal on summary judgment of negligence and employer liability claims against a university client related to a sports club injury.
- Obtained a no probable cause determination for a public university in an alleged race and national origin discrimination case before the NYS Division of Human Rights.
- Obtained a dismissal of a lawsuit by a student alleging 17 causes of medical malpractice and intentional torts against a private university and its health care center.
- Represented a large private university in Upstate New York on its rights to insurance coverage with regard to multiple sexual harassment claims.
- Obtained dismissal on a summary judgment of a Title IX complaint filed in federal court by a former student.
- Represented a large private university in connection with age discrimination and related state-law claims brought by a former professor. The district court dismissed the claims, the First Circuit affirmed, and the First Circuit denied the plaintiff's petition for rehearing and petition for en banc review. In its affirmance, the First Circuit agreed that the plaintiff's wrongful termination claims were time-barred, also finding that the plaintiff failed to demonstrate error regarding the district court's conclusion that any failure-to-hire claim had not been properly exhausted and failed to state a plausible claim of retaliation.

- Served as an investigator for several private secondary boarding schools in connection with allegations of sexual misconduct between former faculty and students.
- Investigated claims of sex discrimination by a faculty member against her university department.
- Served as a Title IX appeal officer for a private university.
- Served as an independent fact finder for the University-Wide Committee on Sexual Misconduct (UWC) for a large private university.
- Assisted in the preparation of COVID-19 protocols for use by member institutions of a higher education consortium.
- Represented an administration member of a public university with respect to a governmental investigation related to compliance matters.
- Represented several private universities in New York State in connection with compliance requirements for various governmental incentive programs.
- Represented a private university in New York State in connection with an NCAA investigation.
- Represented a private university in New York State in connection with criminal investigations involving accusations against staff members.
- Represents universities and individuals in connection with National Collegiate Athletic Association (NCAA) compliance matters.
- Obtained a no probable cause determination from the NYS Division of Human Rights for a complaint filed by an applicant with a prior criminal conviction who applied for over 100 positions with the university.
- Obtained withdrawal of complaint filed with the NYS Division of Human Rights by a former employee of a private university alleging discrimination on the basis of his disability and associational disability discrimination. Successfully obtained the withdrawal with no concessions made by the university.
- Obtained a no probable cause determination from the NYS Division of Human Rights in an alleged disability discrimination and failure to accommodate complaint filed by a student who engaged in academic misconduct while taking an exam.
- Obtained a no probable cause determination for a private university in an alleged disability discrimination, failure to accommodate, and retaliation complaint filed by a former employee with the NYS Division of Human Rights.
- Successfully negotiated a resolution on behalf of a private university of federal claims involving allegations of gender discrimination and erroneous outcome violations under Title IX as well as state law contract, constitutional, and tort claims.
- Obtained arbitration award in favor of a large, private Massachusetts university denying a former professor's grievance concerning notice of nonrenewal.
- Obtained federal court dismissal (and affirming decision of First Circuit) of age discrimination and related claims brought by a former professor against a large, private Massachusetts university.
- Represented a private university in connection with age discrimination and related state law claims brought by a former professor. The district court dismissed the claims, and the First Circuit affirmed. In its summary affirmance, the First Circuit agreed that the plaintiff's wrongful termination claims were time barred. The First Circuit also found that the plaintiff failed to demonstrate error as to the district court's conclusion that any failure-to-hire claim had not been properly exhausted and failed to state a plausible claim of retaliation. The court further affirmed dismissal of the state law claims on the grounds that they should not be discretionarily entertained and for the appellant's failure to establish the requisite amount in controversy.