

Overview

The Steptoe & Johnson Higher Education Team has established itself as trusted counsel to institutions of higher education (IHEs) across the United States as they navigate a swiftly changing educational landscape. We provide practical solutions tailored to meet the evolving needs of IHEs by designing policies and processes that serve to expand opportunities and minimize risk. Our diverse team leverages extensive experience to enhance the strategic position of our higher education clients, offering proactive, long-range guidance in a variety of areas of campus life. While we always aim to avoid the courthouse when possible, we are prepared to vigorously litigate on behalf of our clients when circumstances compel us to do so.

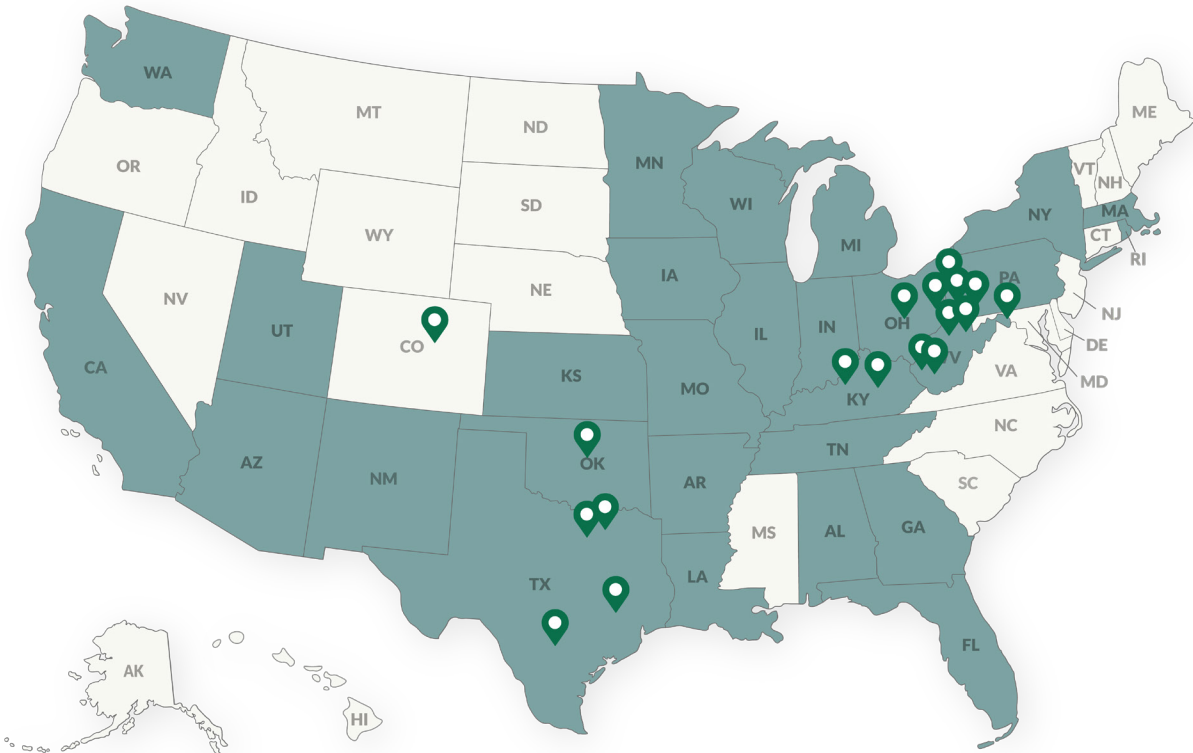
Trust lies at the core of our approach. Institutions can rely on our deep understanding of the unique needs and regulatory frameworks that shape the business of operating an IHE. Many of our attorneys have had firsthand experience as academic administrators and faculty members, providing them with invaluable insights into the complexities of campus culture. We collaborate closely with executive leaders and boards, guiding them through intricate issues from business operations to Title IX and from data security to partnerships and mergers. By fostering a relationship built on trust, we empower institutions to make informed decisions and strengthen their overall operations.

To best serve our clients, we have built a team that draws from a diverse array of perspectives and experiences. In addition to serving as academic administrators and faculty, many members of the Steptoe & Johnson Higher Education Team have worked at all levels of government, including national, state, and local; led public policy initiatives; and served as board members of educational institutions and nonprofit organizations. Additionally, our attorneys are frequently featured at national conferences, offering guidance on issues affecting educational institutions, and have authored some of the most widely recognized titles on higher education law.

In addition to such professional experiences, our attorneys are experienced in advising in a number of important areas:

- Business Operations & Strategic Advancement
- Board Governance
- Title IX & Other Anti-discrimination Claims
- Student Affairs
- Labor & Employment
- Intellectual Property
- Cybersecurity & Data Security
- Regulatory Compliance
- Athletics
- Institutional Partnerships & Mergers

Steptoe & Johnson recognizes that higher education plays a vital role in shaping the future, and we are committed to supporting the success of IHEs. Our experience and our comprehensive suite of value-driven services provide the necessary guidance, pragmatism, and resources to help colleges and universities overcome challenges and thrive in today's dynamic landscape. Our trusted advice and counsel enable our higher education clients to focus on the core mission of providing transformative education while mitigating risks and fostering the optimal academic environment for students, faculty, and staff.



Steptoe & Johnson Offices



Steptoe & Johnson Higher Education Experience

- Alabama
- Arkansas
- California
- Florida
- Georgia
- Illinois
- Indiana
- Kansas
- Kentucky
- Louisiana
- Massachusetts
- Michigan
- Minnesota
- Missouri
- New Mexico
- New York
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- Tennessee
- Texas
- Washington
- West Virginia
- Wisconsin

Business Operations & Strategic Advancement

Our attorneys work with institutional leaders and trustees to help them navigate and address a variety of complex issues, including evaluating insurance coverage and crafting partnership agreements and advising on issues related to distance learning, governance, or institutional finances. In addition, we're often called upon to assist with strategic planning and financial sustainability. We help identify growth opportunities and provide recommendations to enhance our clients' opportunities to achieve long-term success. Our attorneys have:

- Participated with college leadership in the development of a five-year strategy to disassociate an institution from denominational affiliation
- Advised a higher education client in connection with a financial exigency declaration and with the elimination of academic programs
- Negotiated and drafted the closing legal opinion needed for a university to secure funding for constructing a multimillion-dollar health and wellness complex
- Reviewed, revised, and negotiated lease contracts between private higher education institutions and tenants
- Developed governing documents for a higher education institution to operate an off-campus pharmacy
- Established a separate real estate foundation to protect the endowed assets of another foundation affiliated with a public university
- Routinely assisted presidents, chief academic officers, and chief financial officers in revising and implementing policies and procedures to promote more effective and sustainable academic and business operations
- Assisted a private higher education institution with purchasing the assets of another private institution and addressed related accreditation issues and student financial aid compliance concerns
- Advised a university on compliance with American Association of University Professors (AAUP) guidance and the university's employee handbook with respect to tenure decisions and faculty dismissals during financial exigency
- Reviewed and revised institution policies, including faculty and student handbooks, for universities across the United States
- Advised higher education clients regarding closure considerations



Board Governance

Whether a college or university is public or private, governing boards have a fiduciary responsibility to ensure that they are managing an institution responsibly and in compliance with the law. Our attorneys have experience advising boards on the legal matters that are unique to IHEs including board and committee structure, procedure and policy, regulatory and compliance issues, risk management, fiduciary responsibility, presidential contracts, faculty and student concerns, reputational management, litigation, and related issues. Our attorneys have advised university and college boards and their leaders on operational best practices, accreditation standards, bylaws, board member orientation, board assessment and conflicts of interest policies. In addition, our team includes a former board professional/liaison and corporate secretary for two IHEs, as well as several attorneys who have served on IHE boards and as general counsels to IHEs, bringing a unique perspective to our work for clients.

- Advised a college and university that are closely-related on the formation and refinement of a unique corporate governance model which included a single president for both institutions, but two separate boards of trustees; oversaw all board governance; established the boards' committee structures, charters and policies; prepared, revised and maintained all corporate documents, and devised the board member onboarding, evaluation and engagement programs
- Addressed multiple governance issues for boards at IHEs, including disassociation of college board from denominational supervision
- Advised IHEs and their boards on institutional mergers and acquisitions
- Conducted a comprehensive review of governance practices, resulting in implementation of new and revised governance policies and practices

Title IX & Other Anti-discrimination Claims

In recent years, campuses across the country have witnessed a dramatic rise in claims of discrimination and harassment by students and employees. We partner with institutions to craft policies, offer trainings, and create safeguards aimed at the prevention of such incidents. When claims of sexual misconduct and/



or gender discrimination arise, our attorneys offer a sensitivity to the nature of such matters and experience in helping institutions navigate all phases of the investigation and resolution. Our attorneys understand the investment that each academic institution makes in its students and workforce, and we collaborate with the institution to proactively protect the health and safety of campus communities. Our attorneys have:

- Represented IHEs in all types of discrimination claims in front of the U.S. Department of Education's Office for Civil Rights, the Equal Employment Opportunity Commission (EEOC), and state civil rights commissions and before various courts
- Drafted sexual misconduct policies to comply with Title IX guidelines and provided training to Title IX coordinators, investigative teams, and hearing panels at universities across the United States
- Conducted compliance assessments with Title IX and state law requirements
- Counseled higher education institutions related to a variety of employment discrimination issues, including the Americans with Disabilities Act (ADA), Title IV, and the human/civil rights acts of various states

Student Affairs

Central to the higher education experience is the cultivation of a robust campus life, including clubs, fraternal associations, student governance, athletics, service-learning opportunities, and travel study programs. The community created on a college campus not only offers a unique and valuable learning environment but also presents many legal challenges. We work with institutions to ensure that the campus environment is intentionally structured to advance the interests of students and their safety.



Our attorneys develop effective and practical student handbooks and conduct codes and design effective disciplinary processes. We also work with administrators, staff, and faculty to provide guidance and training so they can function as effective student advocates. Our attorneys have:

- Defended a higher education institution against claims by a former student relating to disciplinary action
- Advised a faith-based higher education institution on the newly enacted portion of the Pennsylvania criminal code dealing with hazing on campus
- Helped institutions navigate difficult student misconduct issues
- Counseled institutions on the intersection of policy requirements and anti-discrimination issues
- Advised multiple IHEs regarding the release of information and compliance with the Family Educational Rights and Privacy Act (FERPA)
- Assisted institutions with navigating student disability and accommodation issues

Labor & Employment



While innovative and dynamic, college campuses are among the most complex employment venues, with a variety of categories of employment, including faculty, staff, adjunct, and student worker roles. The Steptoe & Johnson Higher Education Team has been recognized regionally and nationally for its employment counsel. We assist with all aspects of employment relationships, such as drafting and negotiating presidential contracts, preparing faculty and staff employment guides and

contracts, investigating and resolving workplace disputes, addressing disability accommodation issues, and handling discipline and discipline matters. We also work with clients on issues related to unions, ranging from elections and collective bargaining to representation before arbitration panels and the National Labor Relations Board (NLRB).

UNIONIZATION

Possible unionization on campuses creates additional complexities for IHEs. The Steptoe & Johnson Higher Education team has a record of exceeding expectations across the spectrum of labor issues, from organizing campaigns to decertification and everything in between. Labor activities such as picketing and petitions for recognition can happen at any time and are often planned to occur at the most inconvenient times. Responsiveness in times of crisis is vitally important. Steptoe & Johnson has the depth to ensure that experienced lawyers are always ready to go, anytime or anywhere necessary. In addition, we work proactively with clients by training managers and supervisors to minimize the chance of facing a union campaign.

TENURE

When issues develop surrounding tenure and promotion decisions, the Steptoe & Johnson team works with campus leadership to develop a strategy to address such issues. We counsel IHEs on their tenure procedures and processes and provide representation in tenure-related litigation.

EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION

Steptoe & Johnson's employee benefits team designs creative and pragmatic solutions to align with each institution's legal and operational needs in all facets of employee benefits and compensation law. We have extensive experience helping IHEs achieve their goals through the design, implementation, and administration of tax-qualified retirement plans, health plans, and nonqualified deferred compensation plans. We also advise institutions on officer and executive employment agreements, including executive compensation programs.

OUR ATTORNEYS HAVE:

- Defended colleges and universities, as well as affiliated organizations, in grievances, faculty tenure matters, and employee contract matters
- Defended an IHE against allegations of age discrimination and Family and Medical Leave Act (FMLA) retaliation
- Defended a university through trial in a negligence case in which a former employee was accused of taking photographs of students without their knowledge
- Arbitrated on behalf of and advised multiple IHEs regarding union issues
- Advised higher education clients on reductions in force, including voluntary and involuntary severance arrangements

Intellectual Property

Steptoe & Johnson attorneys have extensive experience in issues related to all forms of intellectual property rights, including trademark, copyright, and patent prosecution and protection. As intellectual centers, IHEs need to take the steps necessary to protect the original work of their faculty and intellectual collaborators. As colleges and universities increase the use of online course delivery modalities, they must have robust policies in place that guide employees, faculty, and students on the appropriate use of intellectual property and copyrighted materials. In addition, as IHEs market themselves and their programs, they often utilize logos and other forms of trade dress that have been the subject of considerable investments of time and money.



Cybersecurity & Data Security

IHEs hold large quantities of sensitive data regarding students, employees, and others associated with the institution. At the same time, the use and preservation of such sensitive data are strictly regulated to protect individual privacy. Because of its value, the data held by colleges and universities is increasingly becoming a prime target for hackers.



Recognizing the importance of emerging issues associated with information security and data protection, Steptoe & Johnson has cultivated a strong and experienced cybersecurity and data privacy group. We can help colleges and universities improve their data security policies and processes and vigorously defend institutions if a data security incident or breach occurs. Our attorneys have:

- Thoroughly investigated data security incidents for clients, including coordination with insurers, retention of experts, interaction with governmental and regulatory authorities, preparation of post-incident reports, and advising clients regarding post-incident remediation
- Quickly responded to higher education clients' data breaches and potential security incidents involving hacking, ransomware, and phishing and whaling attacks, providing breach notification assistance and advice on cybersecurity information sharing
- Provided California Consumer Privacy Act (CCPA) and General Data Protection Regulation (GDPR) advice and compliance assistance to multiple higher education clients
- Successfully served as breach counsel for higher education clients
- Reviewed cyber insurance policies and provided coverage advice
- Advised clients regarding how to plan for and respond to any breach and reevaluate existing cybersecurity plans following a breach
- Planned and developed compliant organization-wide data security programs

Regulatory Compliance

For IHEs, the cost and complexity of meeting an array of regulatory demands are growing ever more daunting. The Steptoe & Johnson Higher Education Team partners with institutions to craft policies and processes that ease regulatory burdens. We have assisted multiple IHEs in the creation of campuswide compliance and ethics policies to help prevent compliance issues. In addition, our attorneys work with institutions to conduct audits of compliance processes, and we defend institutions in the event of an investigation. We work with institutions on matters related to student financial aid, international student immigration issues, FERPA, Clery Act, and many other areas. Our goal is to help institutions identify and implement the best and most efficient practices associated with regulatory compliance. Our attorneys have:



- Advised multiple IHEs on FERPA and ADA compliance with respect to COVID-19 contact tracing and testing records for students and employees
- Assisted a large institution in a comprehensive review of its financial aid operations to ensure its compliance with federal student aid regulations
- Helped multiple institutions address compliance with Clery Act reporting requirements
- Provided support and counsel to institutions on issues related to the administration and management of restricted and endowed assets and the application of safeguards contained in the Uniform Prudent

Management of Institutional Funds Act (UPMIFA)

- Assisted multiple institutions in addressing immigration issues arising under the Student and Exchange Visitor Program
- Assisted multiple institutions in addressing emotional support animal requirements imposed by the Fair Housing Act

Athletics



We have broad experience working with both institutions and athletic conferences on issues ranging from program compliance to athlete safety and health. Our attorneys have partnered with National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), and National Christian College Athletic Association (NCCAA) schools to help them ensure their athletic programs are governed by effective and accountable policies and processes. In the event of an investigation, we support institutions through the review and remediation process. Our attorneys have:

- Represented a university charged with multiple NCAA violations necessitating termination of the athletic director's long-term employment agreement
- Advised IHEs and an individual conference on compliance with NCAA guidance regarding returning to play during the COVID-19 pandemic
- Advised institutions on appropriate handling of NCAA violations
- Negotiated employment contracts with athletic directors
- Helped institutions deal with issues surrounding the welfare of student-athletes

Institutional Partnerships & Mergers

Strains upon higher education institutions have made the business of managing a college or university increasingly challenging over the past decade. In the face of such mounting challenges, many IHEs may consider forms of integration or deep collaboration in order to attain efficiencies of scale or to assist with financial challenges. The Steptoe & Johnson Higher Education Team works with institutions to explore potential pathways and to navigate regulatory, licensing, and accreditation requirements that may influence key operational decisions. We bring an experienced perspective to any consideration of such potential institutional recalibrations. Our attorneys have:

- Negotiated merger and asset purchase agreements between IHEs

- Negotiated and drafted an international nursing program agreement with a foreign university on behalf of a U.S. college
- Assisted a private IHE with purchasing the assets of another private institution and addressed related accreditation issues and student financial aid compliance concerns
- Assisted a private higher education institution in drafting and negotiating contracts for the sale and provision of services related to teaching, transportation, remote learning, and event management



Jim Newberry

Team Leader

(502) 423-2052

jim.newberry@steptoe-johnson.com



Susan Llewellyn Deniker

Team Leader

(304) 933-8154

susan.deniker@steptoe-johnson.com