

## INDUSTRY

## Higher Education &amp; Private Schools

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## OVERVIEW

## HIGHER EDUCATION &amp; PRIVATE SCHOOLS

Institutions of higher education and private schools throughout Massachusetts, in New England and beyond regard Bowditch as a leading source of legal counsel and representation. More than 30 institutions rely on our attorneys for help with complex issues involving students, faculty and staff, facilities and campus development and administration. These clients include colleges, universities and research institutions, independent elementary and secondary schools and ancillary associations, such as educational consortia and athletic conferences.

Our higher education clients run complex organizations that use the full breadth of our firm's experience and legal expertise in business and finance, employment and labor, real estate and environmental law, federal, state and local regulatory compliance, intellectual property and exempt organizations law. [Here are examples of how we can help:](#)

## Student Affairs

- Accommodations for students with disabilities/student appeals and grievances
- Academic grievances/grade appeal procedures
- Admissions/revocation of admission/suspensions/voluntary and involuntary withdrawals
- Diversity and affirmative action (in admissions, financial aid, scholarships)
- Office for Civil Rights investigations/negotiation of resolution agreements
- Financial aid (Department of Education regulations)
- Student Handbook review/conduct code and other student life policies
- FERPA and student privacy and records retention
- Residence life matters (student accommodations in housing; housing contracts, housing discipline issues and removal from housing)
- Student safety and campus security

## PARALEGALS

Kristin M. Pavao

- Student disciplinary proceedings
- Student life (student clubs, lotteries and raffles, liability waivers)
- Study abroad programs
- Title IX, sexual harassment, and other claims of discrimination

### Faculty and Staff

- Diversity and affirmative action in hiring
- Retirement and employee benefits (early retirement/window programs/phased retirement)
- Employment and discrimination (hiring, discipline, termination, sexual harassment, wage/hour, and FMLA, defending employment-related claims)
- Employee handbooks and employee training
- Employment agreements, including for college presidents and heads of school
- Employment compliance issues, including recordkeeping and posting requirements
- ERISA compliance

### Facilities and Campus Development

- ADA accessibility issues
- Design and construction agreements/dispute resolution
- Dover Act and land use litigation
- Environmental matters related to permitting, compliance, release responses, enforcement actions, audits
- Joint institutional/private development
- Comprehensive real estate matters including acquisitions, development, zoning and permitting, leasing, construction, code compliance, renovation of historic buildings
- Tax-exempt bond financing for capital projects (representation of institutions and underwriters)
- Telecommunications/campus-wide distributed antenna licenses and agreements
- Facilities licensing
- Renewable and clean energy projects on campus (power purchase agreements, site licenses, sustainability initiatives)

### Institutional Administration

- Board governance and Board policies including bylaw revisions
- Business and vendor contracts (for goods or services – dining, parking, security, bookstores, etc.)
- Consulting agreements
- Enrollment contracts
- Intellectual property (copyright, trademark, mechanical and engineering patents, and software)

development and licensing)

- Internal investigations
- Litigation in courts and administrative agencies
- Risk management – athletics, student programs, business enterprises
- Social media use for faculty, staff and students
- Technology licensing/software agreements
- Summer conferences and summer camps

For over a decade, we have provided the higher education community with a *College and University Roundtable Seminar Series*, a program that addresses legal issues in higher education. As a result of our long history of serving colleges, universities and independent schools, along with the in-house experience of a number of our attorneys, we have a thorough understanding of the practical problems and diverse issues facing educational institutions. We understand that how legal issues are resolved can affect public perception of your school and relations with your students and student groups, with faculty and unions and with alumni and donors.

## EXPERIENCE

### Dealing with a high-profile student safety issue

A university client was faced with a significant student conduct issue when a female student showed aggressive behavior toward other students. It was a complicated case, with safety and disability concerns combined with the active involvement of the student's parents. By working with the client and its communities, we developed a timely, workable strategy that would meet subsequent challenges in the courtroom. The university removed the student while providing reasonable accommodations by making arrangements for her to finish her studies off campus.

### Using a retirement plan to fix the tax consequences of an executive's compensation

The long-time, much-loved head of an independent school in the Mid-South wanted a retirement package that primarily addressed his compensation. The client had never given much attention to what he was being paid. With less than 10 years to go before he planned to retire, he realized that his employer wasn't paying him enough and that he wanted a retirement package to fix that. We began by reviewing the head of school's existing plan and discovered that the man had been significantly over taxed. Working closely with the client, we drafted a supplemental retirement plan, which was later adopted, that addressed the complex compensation issues and their tax consequences.

### Getting the IRS to accept an amendment to a plan because of an earlier error

A senior official at a large university in the Northeast caught a drafting error (despite annual outside audits and a previous OK from the IRS) when the school's retirement plan had been amended years earlier. The mistake involved complicated compensation issues and the over-extension of benefits to eligible employees, exposing the university to tens of millions of dollars in over payment. What happened was that the client amended its plan and added a benefit without removing the old benefit, which took a while to figure out. Thanks to our good relationship with IRS regulators, we were able to explain the error over the course of several conversations with the agency, and the IRS allowed the client to amend its plan as if the error had never happened. The error ended up not costing the university a penny.

## Complex charter school financing

In late 2015, we helped close a structurally complex \$10 million transaction on behalf of an education-sector client with a private foundation. The project, located in an older, Boston neighborhood, was financed by a bond issue that leveraged New Market Tax Credits. We worked with the client to set up a separate entity involving a land transfer as well as addressed tax issues and problems involving use requirements.