



TUETH KEENEY | DIFFERENT BY DESIGN™

## Higher Education Practice

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### Our Law Firm is Different by Design

Our Higher Education practice group epitomizes Tueth Keeney's core values:

- We are recognized leaders in the field of Higher Education law in our region.
- We provide the highest quality legal services to colleges, community colleges, and universities at substantially greater value than our competitors, some of whom are large, profit driven legal enterprises.
- We form lasting working relationships and friendships with our Higher education clients – we strive to be viewed not just as great lawyers, but also as colleagues who enthusiastically tackle the challenges facing our college, community college, and university clients/colleagues.

We have purposefully structured our Firm so that we may provide the most effective representation to our Higher Education clients by providing the most cost-effective legal strategies and solutions to large and small institutions alike. Put another way, we provide “big firm” quality but with significantly greater efficiency and at a lower cost to our clients.

We are proud that our dedication to our core values allows us not only to provide thoughtful and collaborative counsel to large public and private universities, private colleges, and urban and rural community colleges throughout Missouri and Illinois, but also that we have been able to keep our priorities where they should be: on serving our clients. Our singular focus is on providing the highest quality legal services at the lowest cost while creating deep, satisfying relationships with our college and university clients. To put it bluntly, we did not become Higher Ed lawyers to maximize our profit; we did it because we are committed to serving the interests of our Higher Education clients and because we are passionate about their mission.

Our attorneys have been recognized as leaders in Higher Education law. Ian is a member of the highly selective College of Labor and Employment Lawyers and has been regularly recognized by Super Lawyers™ and Best Lawyers™ for his employment litigation expertise. Ian has tried to verdict and argued appeals in numerous cases involving colleges, universities, and community colleges. Ian leads the Firm's Higher Education litigation practice. Kate Nash has been recognized by Super Lawyers™ for her expertise in education law and leads the Firm's general counseling and compliance practices for Higher Education clients. Melanie Keeney has also

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been repeatedly recognized by Super Lawyers™ and Best Lawyers™ for her expertise in immigration law, and was recently named the St. Louis Immigration Lawyer of the Year by Best Lawyers™. Melanie leads the Firm's Higher Education immigration practice.

We invite you to read more about how we create enduring personal relationships, deliver the highest quality of legal services, and provide unparalleled efficiency to our college, university, and community college clients.

### General Counsel Services to Boards and Administration

We serve as outside general counsel to institutions of all sizes and types, offering practical advice that is tailored to the individual needs of the particular college or university. We regularly provide guidance on a wide variety of legal matters including:

- policy development, revision, and implementation
- board governance
- legal and regulatory compliance reviews and oversight
- contract creation, review and compliance
- employee counseling / discipline / termination
- collective bargaining, negotiation, and other union matters
- personnel investigations
- student and employee accommodation issues
- student rights and discipline
- litigation oversight and monitoring
- finance, funding, and donor matters
- construction document review and oversight
- real estate and property transactions
- business-related legal issues

Our attorneys also provide general counsel services through training, counseling, and even by providing secondment services (acting as in-house counsel when other inside counsel is unavailable).

Some examples of our general counsel services include providing a comprehensive policy review to various public and private colleges and universities in mid-Missouri, investigating allegations of misappropriation of funds at a private institution in Kansas City, overseeing construction contracts at a public institution in Illinois, and conducting all-staff training on harassment policies at numerous institutions.

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## Higher Education Litigation

Tueth Keeney routinely partners with colleges, universities, and community college administrators to develop strategies to avoid litigation. But it is no secret that litigation – including administrative processes, arbitrations, and lawsuits – are an ever-present part of the complex legal landscape facing Higher Education institutions. This seems particularly true in Missouri, given recent developments under the Missouri Human Rights Act. We are both experienced and skilled in efficiently handling all aspects of litigation impacting colleges and universities in our region.

We believe that our record of success in higher education litigation is truly impressive. For instance, we:

- Won summary judgment (and won on appeal) in a federal lawsuit brought by a student under Title IX alleging sexual misconduct by an Emeritus professor
- Defeated certification of a class action brought by applicants for university police positions claiming reverse discrimination
- Defeated challenges in an arbitration to University practices under a faculty Collective Bargaining Agreement
- Won summary judgment in an MHRA age discrimination case brought against a Community College
- Won dismissal of a class action brought by students claiming unlawful deprivation of statutory tuition benefits (and won on appeal)
- Won a defense verdict in a disability discrimination and retaliation jury trial where a former University employee in Jackson County, Missouri sought more than \$9,000,000 in actual and punitive damages (and won on appeal)
- Won dismissal by the trial court of First Amendment claims by a student organization at a public university
- Won summary judgment against a doctoral student who claimed he was dismissed from the program due to a disability
- Won dismissal of constitutional, contractual, and statutory claims in a federal lawsuit brought by a professor claiming unfair treatment under a University's sexual harassment policy
- Won a trial against the Missouri Commission on Human Rights involving a "public accommodation" claim under the Missouri Human Rights Act in the context of an academic program
- Won dismissal of a breach of contract claim brought by a resident following her removal from a medical school
- Obtained dismissal of a sexual harassment Charge asserted by a coach against an athletic director

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- Won dismissal of a lawsuit brought by a former student Trustee at a public university contesting the results of an election
- Won a defendant's verdict in a gender discrimination and retaliation jury trial against a large public university in Illinois
- Won summary judgment in a state court lawsuit brought by a student who attempted suicide while enrolled at a private college
- Won summary judgment in a Title VII lawsuit brought by four minority campus police officers claiming discrimination
- Won dismissal of a lawsuit brought by a former faculty member who claimed the college improperly used her syllabus
- Won summary judgment (and on appeal) in a whistleblower lawsuit brought under a qui tam statute.

Our attorneys are skilled at all aspects of handling complex higher education litigation including:

- Trying jury trials – from jury selection to closing argument
- Briefing and arguing appeals – we have successfully handled appeals for higher education clients in every appeals court in Missouri, many in Illinois, and the United States Courts of Appeal for both the 7th and 8th Circuits
- Handling class certification proceedings and collective actions claims – we have defeated class certification in a variety of contexts and have defended against other multi-plaintiff claims
- We have filed briefs in the United States Supreme Court, including an amicus brief on behalf of the American Council on Education, the American Association of Community Colleges, and the American Association of State Colleges and Universities

In short, our attorneys have the experience, skill, and results to efficiently handle all aspects of Higher Education litigation. We have also long been selected by United Educators and other insurers to represent Higher Education clients in insured litigation.

Of course, where claims may and should be resolved, we are skilled negotiators with regard to the disputes that impact colleges and universities – whether we are negotiating with opposing counsel, the Office of Civil Rights, or the Equal Employment Opportunity Commission. Most importantly, we work closely with our college and university clients to analyze the factual and legal issues involved, to assess the strengths and weaknesses of the claims, and to develop goals for the resolution of the dispute in the manner most satisfactory to our Higher Education clients/colleagues.

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## Immigration

We are proud to have one of the largest and most sophisticated Higher Education immigration practices in our region. We have in-depth expertise in representing colleges, universities, community colleges, and individuals with respect to a broad range of immigration-related needs.

Our attorneys regularly provide the following immigration services to our Higher Education clients:

- Obtaining temporary and permanent employment-based visas
- Providing specialized immigration services for physicians, researchers, and scientists, which includes seeking various J waivers
- Assisting clients in consular processing and travel-related issues
- Representing clients in the naturalization process
- Advising institutions regarding issues related to compliance and sanctions
- Conducting E-Verify and I-9 audits, investigations, and defense
- Advising institutions on a wide range of student immigration issues, including the availability of financial aid, grants, and benefits for students lacking immigration status.

## Compliance

Compliance issues are increasingly at the forefront for institutions of higher education. Tueth Keeney attorneys regularly advise colleges and universities on a wide variety of compliance issues, including the Clery Act, Title IX and the Campus SaVE Act, FERPA, and Title IV student financial aid issues. Our attorneys draft and revise related policies, offer proactive programming assistance to facilitate compliance and avoid litigation, assist with related governmental audits and program reviews, and provide related training for these and other compliance-related considerations. For instance, our attorneys:

- Drafted and revised policies for a variety of institutions to comply with Title IX and Campus SaVE Act requirements
- Conducted all-staff training related to Title IX and Campus SaVE Act requirements
- Created and revised policies and conducted all-staff training on FERPA compliance requirements
- Prepared Annual Security Report and related policies to bring a private institution into compliance with the Clery Act
- Assisted public institution during Department of Education Title IV Program Review
- Created and revised policies to ensure compliance with Higher Education Opportunity Act requirements

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- Assisted institutions with compliance issues related to the Fair Housing Act and campus residence halls
- Assisted private college with ADA accessibility standards OCR compliance review
- Assisted institutions with compliance issues related to food allergies
- Routinely draft and revise policies and provide training to ensure institutional compliance with all manner of employment statutes such as Title VII, the ADA, the ADEA, the EPA, and the FLSA
- Advised entities on export control regulations.

### Board of Trustees Policy, Duties, and Responsibilities

We work closely with boards of trustees on all matters related to board governance. For public institutions, this includes advice regarding compliance with laws and policies governing public entities, including the Missouri Open Meetings Act, the Illinois Open Meetings Act and conflict of interest laws. Our attorneys are also experienced with the policy considerations important to not-for-profit institutions, and assist boards in revising by-laws and related policies. Tueth Keeney attorneys work with both appointed and elected boards, and understand the unique dynamics and issues that accompany different types of higher education boards of trustees.

Our attorneys frequently provide training to boards regarding governance and compliance matters. In addition, maintaining current and up-to-date institutional policies is often a challenge. Because of the breadth of the Firm's general higher education law knowledge, it is able to assist institutions in developing and modifying policies in compliance with the law. For instance, our attorneys

- Revised and updated bylaws to bring them into conformity with actual college practices and legal requirements
- Provided training to trustees at public institutions regarding Open Meetings Act requirements
- Advised the board of a private institution when whistleblower allegations were made against a high level administrator
- Assisted with a comprehensive review and rewrite of all personnel policies at a public community college
- Advised the board of a private university and negotiated the separation of employment with the university's president
- Advised boards of public institutions through difficult issues regarding real and perceived conflicts of interests
- Advised a board of a private university regarding termination of a president for misconduct
- Advised a board concerning admission of student trustees to the board

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- Regularly work with boards to prepare employment agreements for the institution's top administrator.

## Employment and Personnel Issues

We regularly work with institutions of higher education on a range of employment issues. Our attorneys counsel colleges and universities and work hand-in-hand with HR professionals and in-house counsel on all aspects of the employment relationship, and assist with issues such as hiring policies and practices, accommodation requests, discrimination and harassment complaints, contractual issues, FMLA and leave-related matters, and wage and hour issues. In addition, our attorneys assist institutions throughout the tenure process – including issues related to denial of tenure and employment termination of tenured faculty members. For instance, our attorneys

- Regularly advise institutions on difficult leave and accommodation issues for faculty and staff that implicate disability discrimination and leave laws, as well as workers' compensation
- Routinely assist colleges and universities in responding to claims of discrimination or harassment, sometimes conducting internal investigations on behalf of the institution to determine the veracity of allegations
- Routinely draft and revise policies and provide training to ensure institutional compliance with all manner of employment statutes such as Title VII, the ADA, the ADEA, the EPA, and the FLSA
- Advised college conduct board during proceedings adjudicating student's claim of discrimination against tenured faculty member
- Successfully represented institutions in promotions and tenure disputes and litigation
- Advised institutions on issues of shared governance
- Obtained numerous dismissals of Charges of Discrimination filed by current and former employees with the Missouri Commission on Human Rights and the Equal Employment Opportunity Commission

## Student Rights and Discipline

Students are the center of higher education, and colleges and universities face a myriad of student-related legal issues that begin before matriculation and may continue long after a student graduates or otherwise separates from an institution. We help institutions with all the legal issues that arise along the way – including drafting and revising admissions policies, assisting institutions with devising reasonable and appropriate student accommodations, advising on student speech issues, addressing issues related to dangerous and distressed

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students, advising on student financial aid issues, drafting and implementing student conduct codes, and assisting during student disciplinary proceedings.

In addition, we regularly represent colleges and universities in complaints before the Office for Civil Rights of the United States Department of Education, successfully defending institutions of higher education by obtaining dismissals and negotiating reasonable resolutions. For instance, our attorneys

- Drafted, revised, and updated numerous student conduct codes and related disciplinary policies
- Advised student conduct boards and responsible administrators through all levels of student conduct hearings
- Assisted institutions in disputes with students regarding financial aid matters
- Advised public institutions on First Amendment issues related to student organizations
- Provided training to public institutions on the First Amendment rights of students and student organizations
- Negotiated resolution with student and obtained dismissal of OCR complaint involving national advocacy organization
- Successfully negotiated resolution of OCR complaint by former student alleging race discrimination
- Conducted all-staff training regarding the rights of pregnant students
- Conducted all-staff training related to Title IX and Campus SaVE Act requirements
- Assisted institutions with compliance issues related to the Fair Housing Act and campus residence halls
- Assisted institutions with compliance issues related to food allergies.

### Labor Union Issues and Collective Bargaining

We regularly assist colleges and universities with informal negotiations and more traditional collective bargaining, including negotiations with faculty groups, support personnel, and other bargaining units.

We serve as the lead spokesperson for the institution's bargaining team, negotiating directly on behalf of the interests of colleges and universities, and acting as facilitators, working to bring the parties to agreement. We represent our clients' interests assertively and effectively. At the same time, our approach is generally typified by a non-confrontational style, and our relationship with the NEA, the SEIU, and other unions representing higher education bargaining units remains positive.

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In many other cases, we have successfully assisted institutional bargaining teams in their negotiations by working behind the scenes, helping to prepare proposals and counter-proposals in advance, and offering feedback, advice and guidance to bargaining team members regarding negotiations strategy. Our willingness and ability to assist districts as much, or as little, as they request is a hallmark of our practice in higher education collective bargaining.

### Administrator, Faculty, & Staff Training

Our attorneys pride themselves on their client training activities – training that is designed to not only satisfy legal mandates, but also to increase client awareness of potential legal problems and preventative solutions. Members of our Higher Education Practice are often asked to present legal training and in-services to boards of trustees, college and university administrators, faculty and staff.

We are regularly asked to present at seminars and conferences sponsored by state and national organizations, including the Missouri Community College Association, the University Risk Management & Insurance Association, the Central Association of College and University Business Officers, the National School Boards Association, the Missouri School Boards Association, among others.

Examples of training we have provided to our Higher Education clients include:

- Identifying, preventing, and responding to sexual harassment
- Improving employee performance evaluations
- Compliance with Title IX and the Campus SaVE Act
- Best practices for hiring and terminating employees
- Missouri Human Rights Act updates
- First Amendment issues impacting community colleges

### Business, Real Estate, and Construction Law

We provide sophisticated legal advice with regard to contractual, real estate, and construction issues facing colleges and universities. Our attorneys have provided the following representation to colleges, universities, and community colleges:

- Pursued multi-million dollar construction claims against contractors and sub-contractors for faulty design and workmanship of university dormitories;

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## Representative Clients

Blackburn College  
Columbia College of Missouri  
Culver-Stockton College  
East Central College  
Hesston College  
Lewis & Clark Community College  
Lincoln University  
Logan University  
Metropolitan Community College  
Mineral Area College  
Missouri Baptist University  
Missouri State University  
Missouri University of Science & Technology  
Moberly Area Community College  
Northern Arizona University  
Principia College  
Rend Lake Community College  
School of the Art Institute of Chicago  
St. Charles Community College  
St. Louis Community College  
St. Louis College of Pharmacy  
State Fair Community College  
Stephens College  
Southern Illinois University Carbondale  
Southern Illinois University Edwardsville  
Truman State University  
University of Missouri University of Missouri – Kansas City  
University of Missouri – St. Louis  
Washington University  
Westminster College  
William Woods University

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