

# UNIVERSITY INDUSTRY GROUP

## Helping University Clients Focus on Education

Winstead attorneys are trusted advisors and counsel to major higher education institutions in Texas and beyond. Our understanding of the special legal needs for university and college clients ranges from public private partnerships, real estate, sports facilities, and healthcare to intellectual property, construction and finance. Being able to navigate local and state government and develop community relationships affords our clients the opportunity to focus on their primary goal: education.

### REPRESENTATIVE SERVICES

#### Sports

Applying well-coordinated and strategic teamwork helps our sports, entertainment and public venue clients to succeed. Winstead assists clients in a variety of transactions, including development of high-profile, complex sports facilities projects and leasing and construction projects for colleges and universities, national and regional teams, organizations, associations, and financial institutions. Recent projects in which Winstead has been involved include the development of a new multi-use arena for The University of Texas, the development of the Dallas Cowboys Stadium, Reliant Stadium, and SoFi Stadium, the renovation of Arrowhead Stadium in Kansas City, the development of the new Houston Dynamo Soccer Complex, representation of Southern Methodist University in the move to the Big East Conference, and representing Texas A&M University in its move to the Southeastern Conference.

#### P3, Infrastructure & Project Finance

Winstead's multidisciplinary project finance group has substantial experience in financing for higher education institutions. The group covers every aspect of the planning, financing and development of public-private partnerships (P3) at a level of sophistication not typically found in other Texas firms with procurement or public finance experience. Our infrastructure attorneys possess a thorough understanding of the unique construction, procurement, financing, and tax matters that arise in P3 transactions, particularly in the context of Texas law. Winstead works closely with its clients to weigh the risks and benefits of the transaction, maximizing both public and private resources to achieve the most efficient outcome and optimize community impact. We have represented all parties at the negotiating table, including governmental entities, developers, lenders, and investment banks. This background gives us the ability to understand the needs and motivations of all parties involved.

#### Corporate

Winstead's Corporate, Securities/Mergers & Acquisitions Practice Group is a leader in representing and providing advice to university and college clients in all types of corporate and securities transactions and compliance with applicable regulations. Recent projects include representing a private university in connection with extensive stadium renovations, representing an alumni organization in marketing, license and sales agreements, and representing a university in licensing and intellectual property to companies in exchange for royalties and equity. Our firm has also handled procurement and contracts for schools.

#### Litigation

Representing clients in commercial litigation is a significant part of Winstead's practice. As with our other clients, we are acutely aware that higher education institutions want their lawsuit or dispute to go away. We work with our clients to develop and implement effective and efficient litigation strategies, but also work with our clients in communicating information with various stakeholders like Boards of Regents and academic departments.

### Construction

Winstead's construction attorneys have extensive experience in representing public and private universities from drafting and negotiating all of the contracts involved in the construction process to helping clients find efficient and effective solutions to disputes that may arise during or after the construction of a project. Representative experience includes preparation and negotiation of a football stadium renovation project, a building transaction for a collaborative research center, a construction defect/design defect suit a student services/classroom building, and continuing representation of a public college district as their chief "outside" counsel for construction-related matters, including drafting design and construction contract forms.

### Real Estate

Winstead's Real Estate Development & Investments Practice Group is one of the leading real estate practices in the United States with extensive experience with higher education clients. Recent transactions include closing of the George W. Bush Presidential Library (on behalf of Southern Methodist University), creation of a commercial condominium structure and related tax and leasing work for a collaborative research facility at Rice University, representation of Houston Baptist University in a retail development and related ground leasing, representation of the University of Houston in a lawsuit against a commercial construction company for defective design, and representation of Baylor University in a ground lease, development and operating agreements for a golf course that houses practice and tournament facilities for Baylor men's and women's golf teams. The firm also has experience in privately developed student housing projects.

### Intellectual Property

Winstead's seasoned Intellectual Property team represents higher education clients engaged in the development of advanced technology. We craft tailored strategic and protective IP policies that can be enforced and defended, enabling these institutions to support, protect, commercialize, license and capitalize on their IP assets. Our attorneys are highly skilled and possess extensive engineering and scientific backgrounds. We counsel regional, national and international clients in areas where science, technology and commerce intersect. They range from local start-ups to well-established companies around the world.

### Technology Transfer

Winstead attorneys possess the experience to assist universities with the spin-out of technology for start-up, emerging or established companies through licensing and collaboration agreements, material transfer agreements, strategic partnering arrangements or other structures.

### Employment

The attorneys in Winstead's Labor and Employment Practice Group serve as lead and co-counsel on employment issues to higher education institutions and represent employers across the broad spectrum of the employment relationship, addressing the needs of management in the multifaceted and increasingly complex area of employees' individual rights. Winstead's attorneys are proactive counsel who provide clients with valuable advice and training aimed at preventing employment-related complaints and lawsuits. We have the knowledge and experience necessary to defend any form of workplace litigation.

### Immigration

Winstead has an outstanding record in obtaining visas, work authorization documents, green cards and United States citizenship. We assist companies in maintaining their employees' lawful immigration status, and provide counsel for the hiring, transfer, promotion and termination of foreign national employees.

### Healthcare

Winstead has experience in a variety of transactions, compliance, government investigations and dispute resolution matters involving the healthcare business sector. We recognize the complex legal and management challenges confronting universities in today's strictly regulated healthcare and business marketplace. Winstead's broad range of attorneys assist with healthcare legal, regulatory, compliance and corporate issues, as well as restructuring, governance, management, finance and operational matters.

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## College Athletes May be Paid for Name, Image & Likeness

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These are indeed "Strange times." No, I am not referring to effects of COVID-19, social distancing, and face masks.

On April 29, 2020, the NCAA Board of Governors announced support of rule changes which would allow college athletes to earn money via activities which market the name, image and likeness of those athletes. The vote was the latest in fast-paced changes underway in the relationship of athletes, their respective institutions, and those associated with the business aspects of collegiate sports.

The State of California set an initial timeline, enacting a law which will take effect in 2023. Since that bill passed and signed into law, other states have filed similar legislation, but with different terms and earlier effective dates. Members of the United States Senate and the House of representatives have also become involved in the debate.

The situation remains very fluid, with frequent developments. On the NCAA front, the Board of Governors vote is but one very necessary step toward formulation of an NCAA position. Presumably, the NCAA will act no later than January 2021, to take effect for the 2021-2022 academic year.

The April 29 vote supports compensation for third-party endorsements, as well as opportunities via social media and personal appearances. The board directed all three NCAA divisions to consider rule changes based on recommendations from the previously appointed Federal and State Legislation Working Group, co-chaired by Big East Commissioner Val Ackerman and Ohio State University Athletic Director Gene Smith.

There remain many decisions to be made by entities involved in and affected by this process.

Obviously involved are the student-athletes, their advisers, the universities, and the NCAA. However, there will be some familiar faces and some new actors. Existing holders of media rights and sponsorships will be involved as this movement goes forward.

Many college athletes are minors, hence contracting is problematical until the age of majority is reached. Traditional professional services such as lawyers, accountants, media advisers, marketing specialists, and untold others will be necessary. But, the universities may be precluded from assisting with such or offering advice.

Some fear that this shift could result in recruiting abuses. Will market values for activities swing wildly from one school to another? Others say gender equity will suffer. Olympic sports may see differences, of varying degree and magnitude, from traditional revenue sports. Agency representation for NIL purposes but unrelated professional sport becomes an issue.

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