

## EDUCATION

### Our Clients

Katten represents a variety of companies in the education industry across the United States, Europe and Asia, including private and publicly held for-profit, post-secondary education companies and institutions; private equity and other investors; investment banks providing services to these institutions; and other companies that provide resources and products to the education industry. We work with education companies at all stages of growth—from entrepreneurial ventures to established public companies.

### Our Services

Katten's strength in the education industry is derived from the depth of our experience across multiple practices, including Mergers and Acquisitions, Private Equity, Transactional Tax Planning, Litigation, Securities, Intellectual Property and Technology. Employing a multidisciplinary approach, we take advantage of the vast resources of a large law firm, combined with the cost-effectiveness and agility of a smaller firm.

We understand the shifting landscape in the education industry—from regulatory hurdles and government scrutiny, to enrollment-rate fluctuations and technology advancements that are driving a steady stream of new companies and online degree programs. Education companies are responsive to multiple constituencies—students, teachers, investors, shareholders, the US Department of Education (ED), state boards and accrediting bodies—which creates a number of challenges for senior leadership as they strive to grow their business and enhance their educational programs.

Our attorneys help clients address the myriad challenges they face and institute policies to avoid issues, while also developing strategies to achieve their business goals and capitalize on new opportunities.

The core focus areas of our Education practice include:

- corporate and securities matters, including mergers and acquisitions, private equity investments, and private and public offerings of securities;
- regulatory inquiries and investigations involving accreditors, the US Department of Education, the US Department of Justice (DOJ), the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC) and state Attorneys General;
- internal investigations and responses to whistleblower complaints;
- litigation, including student class actions, securities and derivative litigation, *qui tam* lawsuits, Telephone Consumer Protection Act (TCPA) claims, whistleblower and wage and hour lawsuits, and intellectual property litigation;
- compliance reviews and training;
- information technology matters, including drafting and negotiating contracts for technology used to develop and administer educational institutions; and
- intellectual property matters, including acquisition due diligence, licensing and policy development.

## **Our Experience**

### **GENERAL CORPORATE MATTERS AND TRANSACTIONS**

#### ***General Corporate, Mergers and Acquisitions, Public Securities, Private Equity and Joint Ventures***

- Representation of a publicly held, for-profit education company in the disposition of a provider of technology-enabled curricula.
- Representation of a global education company in connection with its IPO of common stock and subsequent follow-on public offerings.
- Representation of a global education company in the acquisition of a publicly held, proprietary provider of career-oriented secondary education.
- Representation of a global education company in the acquisition of a culinary arts school.
- Representation of a global education company in the acquisition of a for-profit college focused on the health care industry.
- Representation of a global education company in the acquisition of a provider of culinary arts/restaurant management and pastry arts education programs.
- Representation of a global education company in the acquisition of a publicly held culinary academy.
- Representation of a global education company in the acquisition of a publicly held, international university offering specialized, flexible degree programs.
- Representation of a global education company in the acquisition of a provider of higher-education programs.
- Representation of a large US educational fund in its establishment of an international school in Chengdu.
- Representation of a United Kingdom-based company that specializes in setting up joint ventures with universities as counsel in the acquisition of a US company, several joint ventures with US-based universities and as US counsel in an equity recapitalization.
- Representation of a fund placement group in connection with the IPO of one of the largest graduate student communities in the nation.
- Representation of a fund placement group in connection with a follow-on offering by one of the largest, publicly held, international higher-education institutions.
- Representation of a leading, growth-oriented private equity firm in the sale of a distance-learning college to a multibillion-dollar private equity fund.
- Representation of a company providing adaptive learning technologies and test preparation programs for the PSAT, SAT and ACT, in connection with the sale of substantially all of its assets to the K–12 division of an education technology provider. The combined entity delivers a suite of integrated solutions for improving college readiness.
- Representation of a private equity firm in the acquisition of an accredited private career institute dedicated to training drivers for careers in the trucking industry.
- Representation of a leading, growth-oriented private equity firm in the acquisition of a controlling interest in a distance-learning college.
- Tax and equity counsel to a leading, growth-oriented private equity firm in the acquisition of a leading provider of top-quality online education programs.
- Representation of a leading, growth-oriented private equity firm in the acquisition of a large international provider of higher education.
- Representation of a leading, growth-oriented private equity firm in the acquisition of a preparatory school by an international family of college preparatory schools.
- Outside counsel for a nonprofit founded to bring environmental education to the classroom and develop young leaders in sustainability. The organization partners with a public school district, organizing bike rides to raise funds for clean energy technology. As a result of the nonprofit's first two bike rides, nine schools with a total enrollment of 11,000 students (from elementary through high school age) have solar panels and environmental programs on-site. Katten has also assisted the organization with a number of legal concerns resulting from its rapid growth, ranging from 501(c)3 incorporation to trademark licensing, as well as a dispute with one of its vendors.
- Representation of a consortium of independent ABA-approved law schools and a leading, growth-oriented private equity firm portfolio company in the

sale of preferred units representing a minority interest in the company.

- Representation of an investment banking firm in connection with a follow-on offering by one of the largest, publicly held, international higher-education institutions.
- Representation of an investment banking firm in connection with the IPO of a world-leading provider of IT training and business training.
- Provision of assistance to a national early education organization that recruits and trains college students and community volunteers to serve preschool children in low-income neighborhoods, in connection with the review of the organization's form agreements with its partners.
- Co-counsel to an investor group led by the chairman and CEO of an international provider of higher education in its successful bid to acquire the company.
- Legal counsel to a group of investors and affiliates of a leading, growth-oriented private equity firm; the senior management of a pre-K–12 education services company; and certain equity co-investors in the acquisition of the education services company in a \$600 million going-private transaction.
- Representation of a leading, growth-oriented private equity firm in the acquisition of an education marketing company.
- Representation of a leading, growth-oriented private equity firm in the acquisition of a premier digital media arts college.
- Representation of a provider of hands-on, experience-based learning in the negotiation of a program development agreement with a nonprofit farm and education center. The program development agreement will enable the farm to establish a presence within New York City, while allowing Katten's client to deepen its curriculum with the expertise and hands-on learning opportunities provided by the farm. Ultimately, the two organizations hope to start a mobile classroom built into a food truck, bringing food and sustainability education to students throughout the New York metropolitan area.
- Representation of the owner of a leader in helping nonprofit universities drive growth, create new

revenue streams and expand options for the universities and their students in connection with a \$15 million convertible subordinated debt financing transaction with a leading provider of business consulting services.

- Representation of a provider of educational services to US universities and colleges in completing a \$36 million convertible notes offering. The client recruits international students to universities and colleges, and partners with the schools to create and manage programs that educate international students and/or prepare them for progression to a university or college for degree completion.
- Representation of an operator of elementary schools in its sale of six schools to a world-leading operator of premium schools for approximately \$575 million. Katten also represented the client in connection with a corporate reorganization, including a spinoff of four retained schools and a sale of a minority interest in one of the retained schools.

## **LITIGATION AND DISPUTE RESOLUTION**

### ***Government Investigations and State Attorney General Matters***

- Representation of publicly held, for-profit education companies in connection with numerous investigations by the SEC, DOJ, ED and FTC.
- Representation of a for-profit education company in connection with a New York Attorney General investigation into potential financial aid fraud and failure to comply with state tax laws.
- Representation of a publicly held, for-profit education company in connection with a New York Attorney General investigation into compliance with certain New York state consumer protection, securities, finance and other laws.
- Provision of assistance with the representation of a publicly held for-profit education company in connection with several individual state Attorney General investigations as well as a multi-state Attorney General investigation.
- Representation of a publicly held, for-profit education company in connection with an ED Office of Inspector General investigation into the company's recruitment, enrollment and retention practices; its internal controls to identify and prevent

fraud; and its employment practices regarding its enrollment, finance and academic counselors.

- Representation of a publicly held, for-profit education company in connection with an ED compliance assessment regarding the company's placement rates, graduation rates and advertising practices.

### **Internal Investigations**

- Numerous internal investigations on behalf of education companies into potential violations of ED regulations; federal and state law; accreditation requirements; and related corporate policies with respect to admissions, academic, financial aid and career services activities.
- Provision of assistance to legal departments of education companies in developing policies and procedures surrounding the treatment of whistleblower complaints and handling internal investigations.

### **Derivative and Securities Litigation**

- Representation of officers and directors of a publicly held, for-profit education company in a series of stockholder derivative and class actions alleging that the company misrepresented the extent to which it was successfully placing graduates in employment positions related to their fields of study.
- Representation of a publicly held, for-profit education company and certain officers and directors in a consolidated securities class action alleging misrepresentations and omissions of key revenue drivers in financial statements, including bad debt reserves.

### **Qui Tam Litigation**

- Representation of a publicly held, for-profit education company in connection with a pending *qui tam* lawsuit filed in the US District Court for the Northern District of Georgia. Allegations include violations of certain provisions of the HEA including the incentive compensation ban, and alleged non-compliance with certain accreditation standards.
- Representation of a publicly held, for-profit education company in connection with a pending *qui tam* lawsuit filed in the US District Court for the District of New Jersey. Allegations include violations of certain provisions of the HEA including the

incentive compensation ban, ED's misrepresentation regulation and satisfactory academic progress requirements.

- Representation of a publicly held, for-profit education company in connection with *qui tam* litigation filed in the US District Court for the District of Arizona and a related retaliatory discharge complaint filed before the US Department of Labor. Allegations included violations of certain provisions of the HEA, including the incentive compensation ban. Katten convinced the government to decline intervention and successfully resolved the matter.
- Representation of a publicly held, for-profit education company in connection with several contemporaneously filed *qui tam* lawsuits filed in the US district courts for the Northern District of Georgia, Middle District of Florida, Central District of California and Northern District of Illinois. Allegations included violations of various provisions of the HEA, including the incentive compensation ban, and other regulations relating to marketing and student recruitment practices, financial aid administration and career services. All matters were dismissed after Katten convinced the government to decline intervention.

### **Consumer (Student) Litigation**

- Representation of a publicly held, for-profit education company in three separate class actions in the Los Angeles and Santa Barbara Superior Courts, filed on behalf of a putative class of more than 10,000 students in three for-profit colleges and universities that alleged fraud, violations of the California Education Code and violations of consumer protection statutes based on alleged misstatements of graduate success rates and improper recruitment practices. While these actions were pending, Katten represented the schools in corresponding state regulatory and accreditor investigations.
- Representation of a culinary school in San Francisco in a putative class action filed on behalf of more than 8,000 former students that alleged fraud and violations of consumer protection statutes arising out of alleged falsification of placement statistics and other supposedly misleading marketing practices.
- Representation of a culinary school in Los Angeles in a putative class action lawsuit filed on behalf of

8,500 former students and multiple individual actions on behalf of more than 1,000 students.

- Representation of educational institutions in lawsuits filed in Maryland, Missouri and Illinois alleging fraud in connection with admissions and financial aid practices including allegations of falsification and/or exaggeration of graduate placement statistics, entrance requirements and exclusivity of the schools.
- Representation of a culinary school in San Francisco in a putative class action filed on behalf of co-signers of student debt who alleged they were misled into co-signing high-interest student loans, alleging causes of action including fraudulent and negligent misrepresentations in addition to violations of various consumer protections statutes.
- Representation of a private, for-profit culinary school in a putative class action pending in the US District Court for the Southern District of New York in which the plaintiffs, two former students, allege misrepresentations and non-disclosures in connection with their enrollment.

#### ***Intellectual Property Litigation and Enforcement Activity***

- Representation of major text book publishers in Federal Court proceedings involving counterfeiting and copyright infringement.
- Representation of an educational technology company in IP enforcement and litigation in various courts.
- Representation of a nonprofit and related entities in trademark enforcement related to its designs for high-performance education systems.
- Representation of a post-secondary education company in connection with its global trademark enforcement.
- Representation of an education technology company in patent and trademark litigation related to its smart whiteboard technology.
- Retention by another law firm to advise on complex copyright issues involving an educational publishing company and the ED.
- Representation of an online education and learning technology company in contract litigation against an online education content provider.

#### ***Other Litigation***

- Representation of an online education company in defense of claims of several former employees alleging violations of state whistleblower laws and retaliatory discharge.
- Representation of several educational institutions in the defense of claims arising out of the Telephone Consumer Protection Act including numerous individual claims and several putative class actions involving the alleged use of an automatic telephone dialing system and text-messaging marketing campaigns.
- Representation of a publicly held, for-profit education company in a declaratory judgment action to defend against a multimillion-dollar contractual indemnification demand following sale of a European company.
- Representation of a publicly held, for-profit education company in a wrongful termination and wage and hour collection action brought by two former employees.

#### ***INTELLECTUAL PROPERTY (IP) AND INFORMATION TECHNOLOGY (IT)***

- Representation of a post-secondary education company in connection with its global trademark portfolio and all clearance, prosecution, enforcement and associated licensing issues.
- Representation of a nonprofit and related entities in trademark clearance and protection related to its designs for high-performance education systems.
- Representation of a company in regard to licensing of a prestigious global brand for culinary schools, and associated curriculum and product development agreements.
- Representation of an educational technology company in connection with its global trademark and copyright portfolio.
- Representation of an educational technology company in patent and trademark acquisition and licensing related to its smart whiteboard technology.
- Representation of educational services companies in connection with trademark license agreements.

- Representation of a nonprofit focused on educating young learners through online portals in regard to trademark and other IP-related matters.
- Representation of a rapidly growing endurance sports company in connection with IP issues associated with a new educational learning program and curricula.
- Representation of a company in connection with IP issues related to an educational learning program, course materials and curricula for preparing Navy SEAL candidates.
- Preparation of IP and technology-related policies for a post-secondary educational company and its related schools.
- Representation of an online educational services company in connection with advertising, marketing, lead generation, curriculum and content license agreements.
- Preparation of website terms of use and privacy policies for a variety of educational institutions.
- Preparation of work-made-for-hire and assignment agreements for use with employees and consultants at various educational institutions and other education-related companies.
- Representation of an international K–12 educational services company in connection with an agreement for administrative software and related services.
- Representation of an online education and learning technology company in the negotiation of custom contracts for e-learning services with universities and associations.
- Representation of a nonprofit in connection with agreements related to multiple scholarships and post-graduate fellowships.
- Counsel regarding university technology transfer and IP licensing agreements with third parties.