

Office of the General Counsel Annual Report FY2024

EXECUTIVE SUMMARY

In this briefing, we describe several aspects of the Office of the General Counsel (OGC) including the major areas of focus over the last year, areas of increased volume and complexity related to the growth of and innovation at the university, and an overview of outside counsel engagement.

The key takeaways in this briefing are:

- 1) In FY24, OGC focused support in areas such as athletics, free speech, inclusive excellence, transactions, legislative changes, compliance, public safety, and employment. As the university grows and innovates, OGC's advisory work in these and other areas will become more extensive and complex.
- 2) OGC effectively manages legal strategy and costs by engaging outside counsel for specific litigation and special expertise, aligning with OSU's values and keeping defense litigation rates low. Although FY24 saw a significant rise in litigation costs due to the Pac-12 litigation, costs remained similar to last year in other areas.
- 3) OGC provides proactive legal advice and training to the OSU community and stays current on higher education issues through engagement with the National Association of College and University Attorneys (NACUA) and national networks.

BACKGROUND

The Vice President and General Counsel provides an annual report to the President and the other Executive, Audit and Governance Committee members to assist with their governance and oversight responsibilities as outlined in the committee charter.

The Office of the General Counsel (OGC) serves as a key resource, providing legal advice on a wide array of issues facing this complex and large organization. The OGC statement of philosophy and staffing details are provided in Attachment 1.

MAJOR AREAS OF FOCUS FOR FY24

Major areas of focus for the OGC in 2023-24 fell into several categories:

- *Athletics* – The volume and complexity of OGC advising in this area continues to increase substantially, driven by significant changes in NCAA policy, the shifting legal landscape and high-risk profile of college athletics. This year, OGC targeted even more support to this area given the destabilization of the Pac-12 conference. For much of FY24, this highly complex situation required very significant OGC focus and resources, managing the litigation against the Pac-12 and the resulting settlement with the departing 10 universities and continued advising in myriad areas surrounding conference re-alignment. Additionally, OGC advised on other athletics issues such as:
 - Name/Image/Likeness (NIL) (generally, as well as group licensing and donor collective issues),
 - *A/ston* educational benefits,
 - National challenges in courts/agencies seeking to have student athletes found to be employees,
 - NCAA rules surrounding pay-for-play and inducement,
 - Antitrust issues (and advising surrounding the implementation of the recent

- global antitrust NIL NCAA/House settlement),
 - Coach contracts and other employment-related matters,
 - Student athlete conduct issues,
 - safety/injury issues, and
 - Gender equity.
- *Free speech and academic freedom* – OGC advised on the university’s updated Freedom of Speech and Expression policy (<https://policy.oregonstate.edu/free-speech>). OGC also provided increased free speech and academic freedom advising this year, especially during the encampment demonstration in the spring.
- *Diversity and inclusion efforts* – OGC continued to work proactively to support inclusive excellence at OSU without significantly compromising the university’s legal defenses against individual lawsuits. Enhanced focus included advising on OSU’s approach to supporting Jewish and Middle Eastern students during the protests in the spring, especially given the complex legal landscape on how university obligations under Title VI layer with free speech rights. Also, as the university continued to work to support diverse students in compliance with the Supreme Court’s recent affirmative action rulings, OGC advised on questions related to scholarships, admissions and other programs.
- *Transactions supporting innovation, research and infrastructure* – OGC advised on large, mission-critical projects, including complex research projects, innovative endeavors and business collaborations, critical infrastructure improvements, real estate acquisitions, and new buildings or operations. Our involvement as strategic thought partners included advising on options and risks/benefits of particular deals, structuring, drafting and negotiating complex contracts, resolving disputes with partners and identifying compliance obligations. Many of the projects are ongoing due to their complexity, size and duration. OGC continued advising on the large Regional Class Research Vessels (RCRV) project; the complex PacWave wave energy project; analyzing opportunity, risks and potential terms for management of the Elliott Forest; procurement, environmental, construction and permitting issues related to the Cascades Innovation District (including acquisition of a snowboard company); procurement issues in preparation for the construction phase of the Huang Collaborative Innovation Complex; the Antarctic Research Vessel proposal; the Administrative Modernization Project (AMP); acquisition of existing off-campus facilities to support University Housing and Dining Services operations; regional research hub proposals; supporting OSU’s efforts in expanding Ecampus domestically and internationally; advising on risks and mitigations for OSU’s Extension Fire Program; and continued support of telecommunications and network initiative agreements.
- *State and federal legislative or policy changes* – OGC supported government relations colleagues and others during the 2024 Oregon legislative session, interpreting bills and their impact to OSU and engaging with others to strategize OSU’s response. Additionally, OGC advised on federal policy or law changes related to borrower defense claims, gainful employment regulations, ADA digital accessibility regulations, Title IX regulations and federal Office of Civil Rights policy guidance surrounding antisemitism and Islamophobia under Title VI.
- *Compliance issues* – Compliance issues continued to take focus because of the

increased complexity and quantity of regulations in recent years, as well as heightened agency/court enforcement and public focus nationally. Tackling compliance is difficult in a large, decentralized university with diverse compliance topic areas, making OGC's partnerships with the Office of Audit, Risk and Compliance and key compliance partners critical. Title IX continued to require a substantial amount of focus, including reviewing and advising on the new Title IX regulations and advising on individual cases (especially as reporting and responding parties increasingly engaged lawyers). Additionally, as with other universities across the country, OSU has seen an increase in disability accommodation requests and claims by students and employees and OGC targeted increased focus and advising in this area this year. Other specific areas of compliance focus included cybersecurity, national security, workplace safety, hemp/cannabis/psilocybin research/education, and the Native American Graves Protection and Repatriation Act (NAGPRA).

- *Public Safety* – OGC maintained focused advising to support OSU's newer sworn law enforcement unit as it continued to grow its programs and services and to engage with OSU response/support offices and the larger OSU community.
- *Employment Matters* – OGC continued to support University Human Resources (UHR) as collective bargaining agreements were being negotiated with labor unions. OGC supported UHR and others in advising on or resolving a variety of individual employment matters. OGC also resolved claims made to the Oregon Bureau of Labor and Industries (BOLI) and advised in several union grievances, promotion & tenure appeals, and faculty senate grievance committee appeals.

See Attachment 2 for an overview of key subject areas in addition to the high focus areas listed here.

LITIGATION AND ADMINISTRATIVE CLAIMS

OGC works with leaders of all levels to address problems early and resolve concerns before they reach the litigation stage. But, where lawsuits are filed in court against OSU, OGC manages the defense and works closely with outside litigation counsel.

A snapshot of defense litigation rates over the past five years is provided in Attachment 3.¹ OSU has traditionally had extremely low litigation rates compared to similarly situated national peers, but those rates have been expected to rise as OSU has grown in size, complexity and profile. As can be seen in Attachment 3, OSU's defense litigation rate increased substantially in FY21, although the total number of cases was still at the low end of national peers. In that year, there was not a discernible trend or pattern to explain the increase, other than OSU experiencing litigation in areas in which it had not seen litigation previously, *i.e.*, sponsored research, COVID-19, fair credit reporting act, public records, and potential research forest acquisition. Moving to FY22, OSU's litigation rate substantially decreased, with just one employee and one student case filed in court. That low litigation rate was not expected to continue (even based on OSU prior history) and OSU did see a slight increase in FY23 that remained consistent with the range

¹ The defense litigation over this five-year period involved employment disputes, injuries, allegations of veterinary medical malpractice, breach of contract, breach of trust, student discrimination and retaliation claims, a research sponsor dispute, a claim of fraud related to a Department of Energy Wave Energy prize contest, a claim of violation of the Fair Credit Reporting Act, and defense of a public records decision. In FY24, there were two small claims matters filed in court. While these are claims filed in court against OSU, they are under \$10,000 and do not permit attorney representation, so we do not include this data in the defense litigation rates chart.

of OSU's litigation rate over the last decade. Interestingly, the FY24 rate decreased back to FY22. The low number of cases remains outside the norm compared to national peers.

OGC also manages all civil rights and administrative claims to and investigated by outside agencies. These include complaints filed by employees or students in agencies such as the federal Department of Education's Office for Civil Rights (OCR), the federal Equal Employment Opportunity Commission (EEOC), and the state Bureau of Labor & Industries (BOLI). Attachment 4 includes a snapshot of the numbers and types of these administrative claims over the past five years. OSU experienced a slight increase in student claims in FY24 with employee claims remaining the same as FY23. The rate remains in the range of the last five years. Two of the claims this year were related to the same department and interpersonal conflict in that department. Other than those two claims, there is no discernible trend identified in the claims.

Management of other types of pre-litigation property or personal injury claims is coordinated by OSU's third-party administrator, Berkley Risk Management, along with OSU's Office of Risk Management. OGC advises the Office of Risk Management as needed on those claims.²

WORKING WITH OUTSIDE COUNSEL

OGC engages the assistance of outside counsel in several types of situations. Even when outside counsel is engaged, OGC lawyers work closely with that counsel on strategy, communication and implementation, as well as on ensuring that the advice is tailored to and consistent with OSU's context, values and goals.

The most common situation where outside counsel is engaged is where the area of expertise is highly specialized and where it is inefficient or infeasible to build that specialized expertise in-house. Additionally, although several OGC attorneys have backgrounds as litigators, litigation matters take more time, resources and attorneys than is feasible to handle in-house at the current OGC size. The office also engages outside counsel for matters in which it is advisable or required to have an independent review or opinion. Finally, there are times that outside counsel is engaged because the work and needed timelines surpass the capacity of the office; however, efforts are made to minimize this approach given the higher cost of outside counsel. Staffing numbers of in-house counsel versus outside counsel are monitored to ensure provision of the most cost-effective legal services.

It is encouraging that it remains the case that most university-wide outside counsel costs are to support OSU's proactive endeavors, rather than traditional defense-related costs (see Attachments 5 and 6).

Outside counsel work ebbs and flows with the needs of new initiatives and issues. In FY24, OSU saw a significant increase in litigation expense with OSU as the plaintiff. (See Attachments 5 and 6). The departure of 10 universities from the Pac-12 resulted in an example of how high-profile litigation (either as defendant or plaintiff) can result in very high related costs. OGC's

² The Office of Risk Management also manages OSU's insurance program. All of the former OUS institutions, with the exception of the University of Oregon, participate in the Public Universities Risk Management and Insurance Trust (PURMIT), which is a self-insurance program allowed by statute. PURMIT is a separate legal entity from OSU, with separate legal counsel. OSU's Chief Risk Officer, however, sits on the PURMIT Board of Trustees, and OSU has a number of OSU-specific insurance policies (e.g., maritime policies).

response to the circumstances surrounding the destabilization of the Pac-12 was to assemble a nationally recognized team of outside litigation counsel. OGC attorneys worked very closely with outside counsel, with the goal of preserving for OSU and WSU their positions as the sole voting members of the conference. The investment in this outside counsel team to protect OSU's interests was critical to an outcome that ultimately resulted in a historic litigation victory and settlement. The litigation and settlement bought OSU the flexibility, time and substantial monetary resources that were needed to provide the best opportunity to chart a positive future on behalf of OSU student athletes and Beaver Nation.

Attachment 7 provides a five-year snapshot of OSU-wide outside counsel costs with and without the Pac-12 litigation. When Pac-12 expenses are excluded from the total, this year's total costs were about the same as last year's, but the mix shifted in a few areas. The research area decreased due to differing needs this year for the PacWave project; transactions costs decreased; real property development needs decreased this year; even without the Pac-12 matter, litigation costs related to OSU as the plaintiff increased this year due to OSU filing cases to protect its interests in several construction and contractual matters; immigration costs continued to increase due to increased international employee hiring and the complexity of the processing time now involved with permanent residency cases; and employment-related costs increased due to increased labor union bargaining and grievance activity.

PREVENTATIVE LAW – OUTREACH AND TRAINING

OGC attorneys engage in the practice of preventative law every day, serving as key members of OSU teams in proactive planning and pre-decision phases. This advance advising often avoids or mitigates legal action later. Additionally, serving as thought partners with leaders of all levels as they address particular issues presents opportunities to provide education on applicable laws and policies. OGC also takes opportunities to provide more formal training in a variety of arenas.

OGC Statement of Philosophy

The Office of the General Counsel (OGC) serves as a key resource to Oregon State University, as we provide legal advice on all manner of issues facing this complex and large organization.

In providing legal advice, we add value by crafting creative and pragmatic solutions, fostering critical analysis, and facilitating resolution towards common goals across a spectrum of agendas and viewpoints. Our attorneys bring a high level of knowledge, judgment and common sense to every issue on which they advise, and their advice is contextualized and specific to OSU's needs. To be effective advocates and advisors, we take a genuine interest in and ensure understanding of OSU's history, culture, current activities/challenges and goals.

In working with OGC, OSU employees can count on impeccable ethics and integrity, as well as respect, collaboration and inclusivity. Building and maintaining relationships across OSU is paramount to our ability to provide excellent service. OGC is just one part of a large and multi-faceted team at OSU, and our attorneys respect the expertise, judgment and business decisions of OSU leaders. It is imperative that we be viewed as partners, advisors, and problem-solvers.

Although OGC is a fast-paced and often high-pressure environment that calls for a level of professional autonomy in each employee, our attorneys, paralegals and assistants work together to provide the university with seamless service and to support and guide each other collaboratively. The principle of teamwork that is integral to the relationships with constituents outside the office is evidenced in our working relationships within OGC.

OGC Staff

The office includes seven (7) attorneys (including the Vice President/General Counsel), two (2) paralegals, an executive assistant and an administrative assistant. While the office is staffed leanly compared to national benchmarks, OGC provides high quality legal services in an efficient way. The university has a collaborative culture of bringing OGC in early in planning and problem-solving and the attorneys strive to practice preventative law in all arenas. OGC's success in providing efficient legal services is dependent on both of these conditions — leaders of all levels utilizing OGC in this proactive manner and a focus on preventative law. OGC also connects often with colleagues within the state and nationwide to stay ahead of the curve on best practices for efficient and cost-effective services.

DYNAMIC ADVISING ACROSS DIVERSE SUBJECT AREAS

OGC provided advice in the following key areas in 2023-24³:

Athletics issues – Coordinated with the Pac-12 GC on matters of common interest (especially once OSU and WSU Presidents were the sole Board members), as well as continued to provide support to OSU's Department of Intercollegiate Athletics regarding increasingly complex and high-profile issues. Advised on matters regarding student athlete conduct, concerns regarding student athlete criminal or student conduct history, drug testing, diversity and inclusion efforts, discrimination complaints, scholarships, gender equity in athletic opportunity and facilities, coach contracts, personnel matters, concussions and other injuries, antitrust, use of student athletes' name/image/likeness, pay-to-play and contracts for services or other business collaborations and grant of media rights.

Bankruptcy/collections matters – Advised on student and corporate vendor or contractor partner insolvencies, bankruptcies and collections matters to the extent they impacted OSU.

Civil rights investigations/issues – Advised on discrimination, retaliation, sexual assault and bullying investigations, as well as disability accommodations and facilities accessibility reviews. Advised leaders across the university on civil rights and constitutional law issues.

Compliance – In addition to Title IX compliance, advised on many different regulatory compliance areas, including, for example, Clery Act timely warning/crime reporting, export control, Title VI and VII, IT security compliance, environmental health/safety regulations, HIPAA/FERPA, NCAA rules, financial aid regulations (including but not limited to borrower defense claims this year), Native American Grave Repatriation Act (NAGPRA), controlled substances, and human/animal subject research regulations.

Contracts, industry partnerships, association collaborations, real property development – Advised on variety of procurements and contracts including high value or complicated construction and goods/services agreements and transactions, as well as industry collaborations, sponsored research agreements and consortium/association agreements. Advised on land use and water rights issues involved in the development or use of OSU real property.

Employment issues – Advised on faculty grievances (through UAOSU CBA or faculty senate grievance committee), staff grievances (through SEIU and CGE CBAs), labor arbitrations, potential terminations-for-cause, reassignments, agency complaints, tort claims, personnel management issues, employment law compliance, collective bargaining, benefits and athletics employment contract issues.

Ethics/audits – Advised on government ethics issues and internal/external audits.

Extension and Engagement – Advised statewide extension programs, including 4-H, Master Gardeners and Outdoor School, on a variety of issues related to funding, religious rights,

³ OGC works with many offices at the university who have primary responsibility in these areas (e.g., the Office of Human Resources and Office of Faculty Affairs for employment issues, the Office of Equal Opportunity and Access on discrimination issues, the Office of Student Conduct and Community Standards on student conduct issues, Procurement and Contract Services on transactions, OSU Advantage Intellectual Property & Licensing team on licensing). OGC is consulted when legal advice is needed, or matters are particularly complicated, high value or high profile.

equal access, volunteer, program participant, and employment issues.

Foundation – Advised OSU employees and coordinated with OSU Foundation counsel on variety of contract, gift and ethics questions.

Intellectual property issues – Advised on patent, copyright and trademark issues regarding commercialization and ownership of technology, research, and course curricula.

International issues – Advised on issues related to international research endeavors, export control and heightened federal national security concerns on research/education collaborations, student study abroad and athletic/music/academic team international travel, employee travel, immigration and travel ban issues, overseas employee compliance, international transactions and federal regulations regarding foreign gift reporting. Also advised OSU regarding INTO relationship, as well as international compliance issues regarding extending Ecampus to students residing in other countries.

Legislation – Advised regarding variety of bills in the 2024 Oregon legislative session. Advised regarding variety of proposed federal bills, regulations or agency guidance.

Policies – Advised on variety of proposed university policies or policy revisions, especially partnering with the Office of Audit, Risk and Compliance and the director of policy and standards on university's long-term policy modernization effort. Advised Faculty Senate and ASOSU on their policy efforts as critical shared governance partners.

Public finance – Advised on transaction to refinance existing university debt by buying back outstanding taxable bonds and replacing them with tax-exempt bonds, resulting in the reduction of the outstanding par amount of OSU debt and aggregate debt payments; advised on establishment of a new university short term-debt financing program.

Public Records and Meetings – Advised on myriad public records requests and appeals; advised on public meetings law questions.

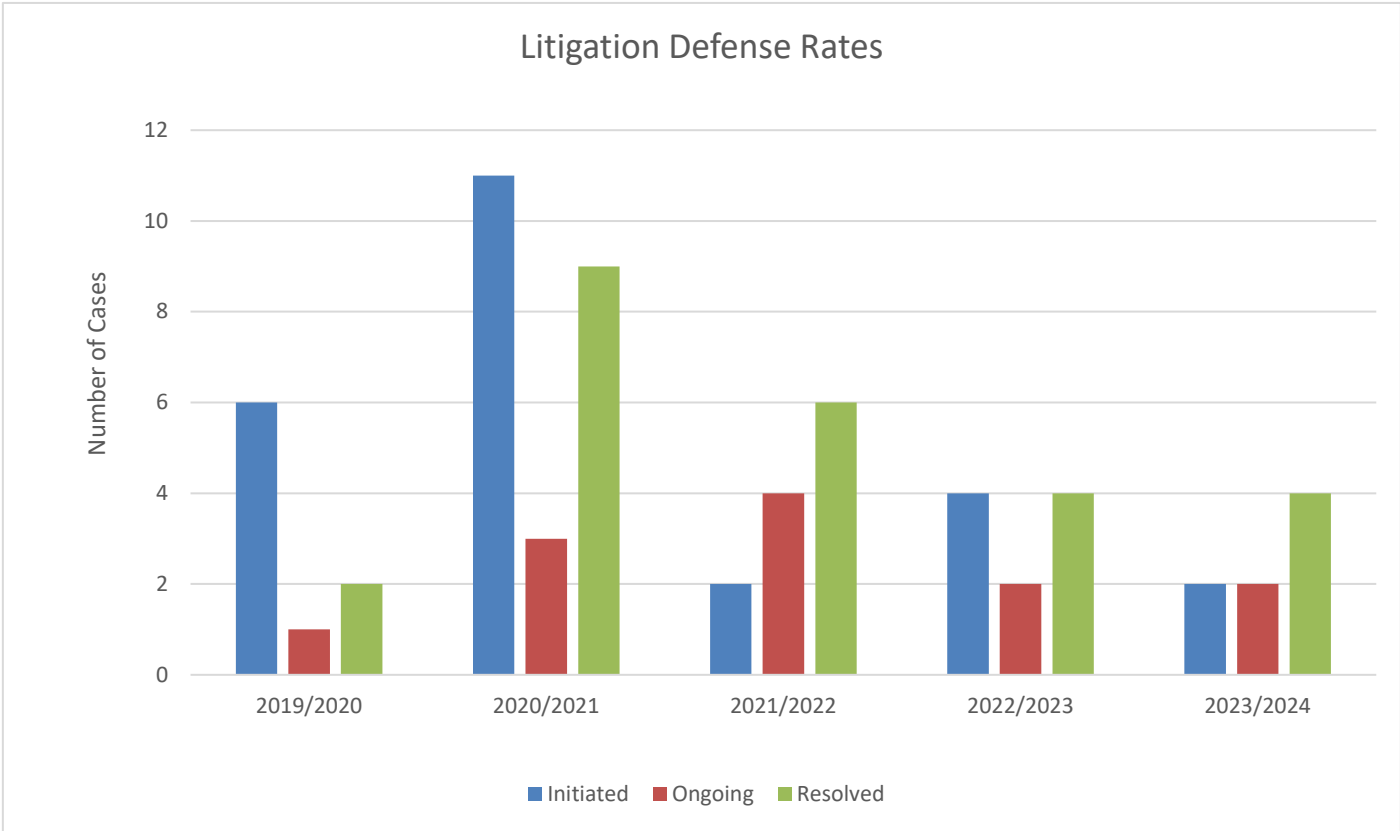
Research issues – Advised on large research projects, hemp/marijuana/psilocybin research questions, research compliance questions, questions related to conflict of interest in research, research misconduct actions, technology transfer issues, and liability/risk issues regarding research vessels and field work.

Risk management – Advised on Enterprise Risk Management initiative, as well as threat assessment, emergency response plan update, hazardous waste and environmental health and safety issues, Veterinary Hospital client claims, personal injuries on university property, university property damage, infectious disease issues, travel policy, large or particularly risky events, and other matters.

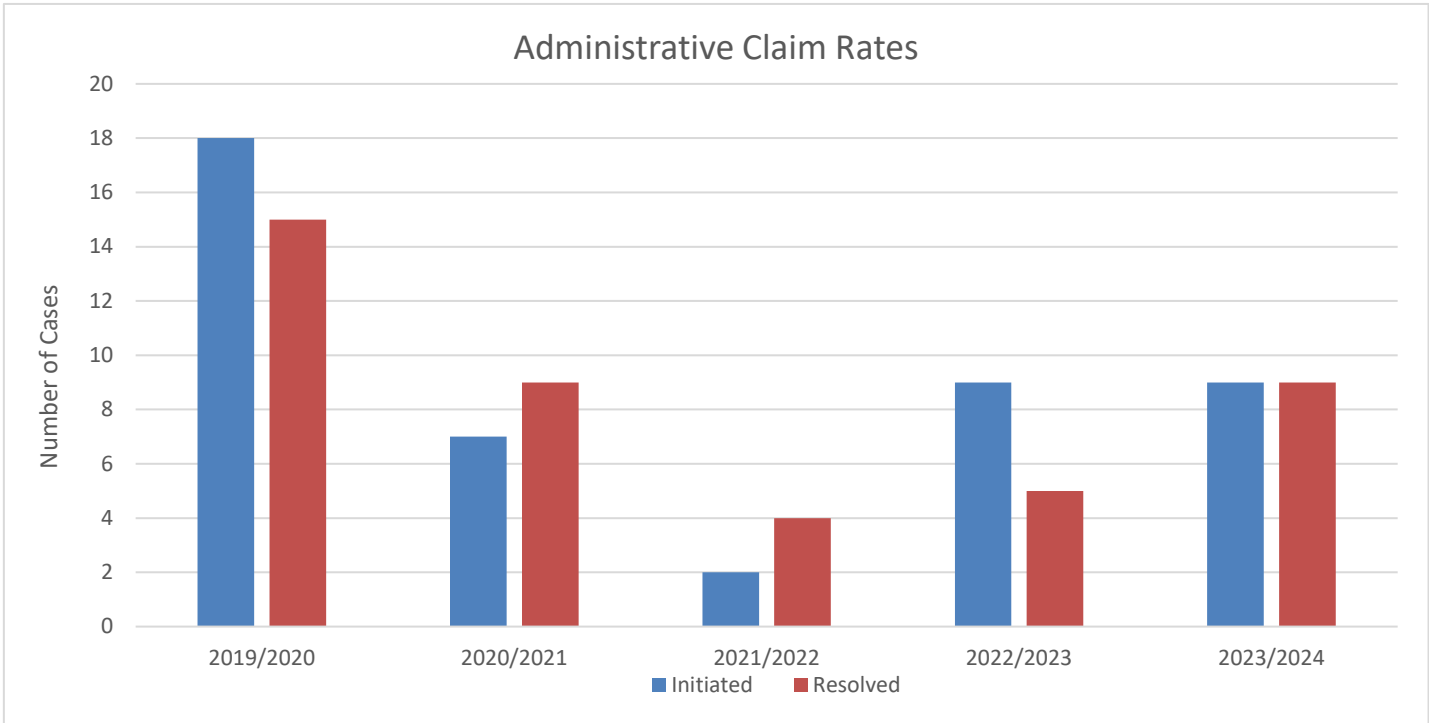
Subpoenas for records or testimony – Advised on subpoenas served on OSU for records or witness testimony.

Student issues – Advised on issues related to student conduct, student wellness, student government, academic appeals, academic programs, Greek life and other student organizations, free speech, firearm rights, undocumented students, admissions policy, and scholarships/financial aid.

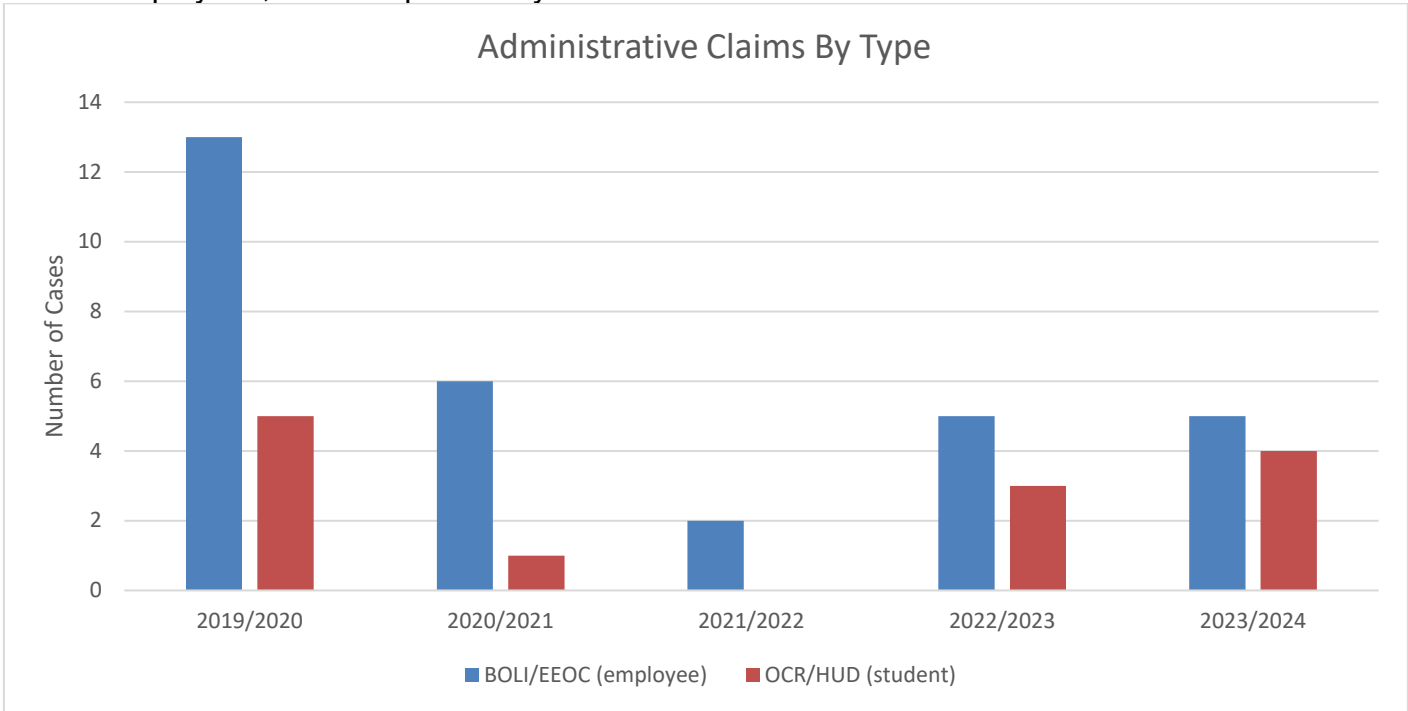
Defense Litigation Rates: Five-year snapshot showing number of court cases filed against OSU and resolved each year, as well as those carried over from previous years.



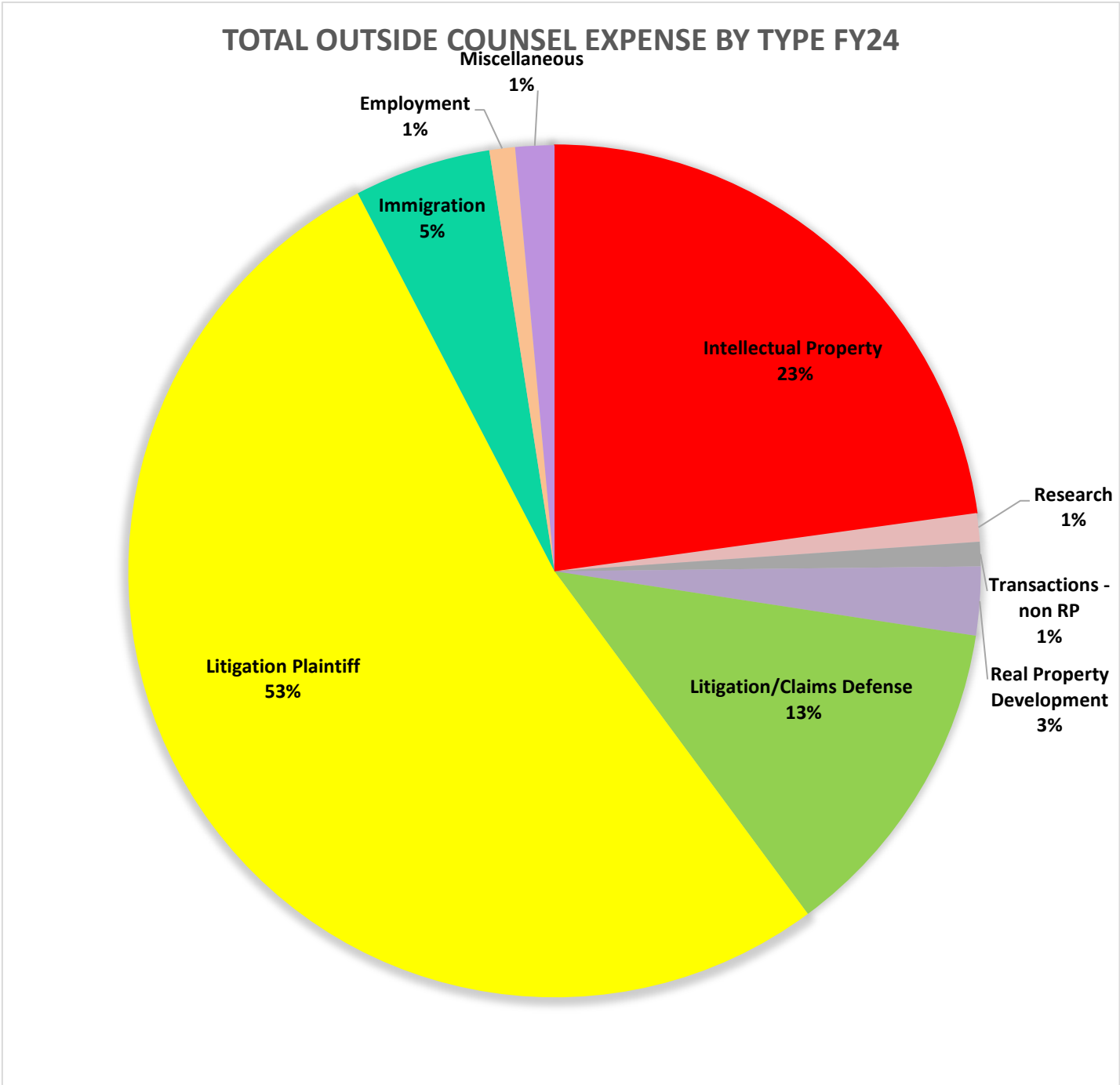
Administrative Claim Rates: Administrative claims (claims by students or employees to and investigated by outside agencies) made over the past five years. Claims are generally resolved within a one-year period but may carry over from year to year.



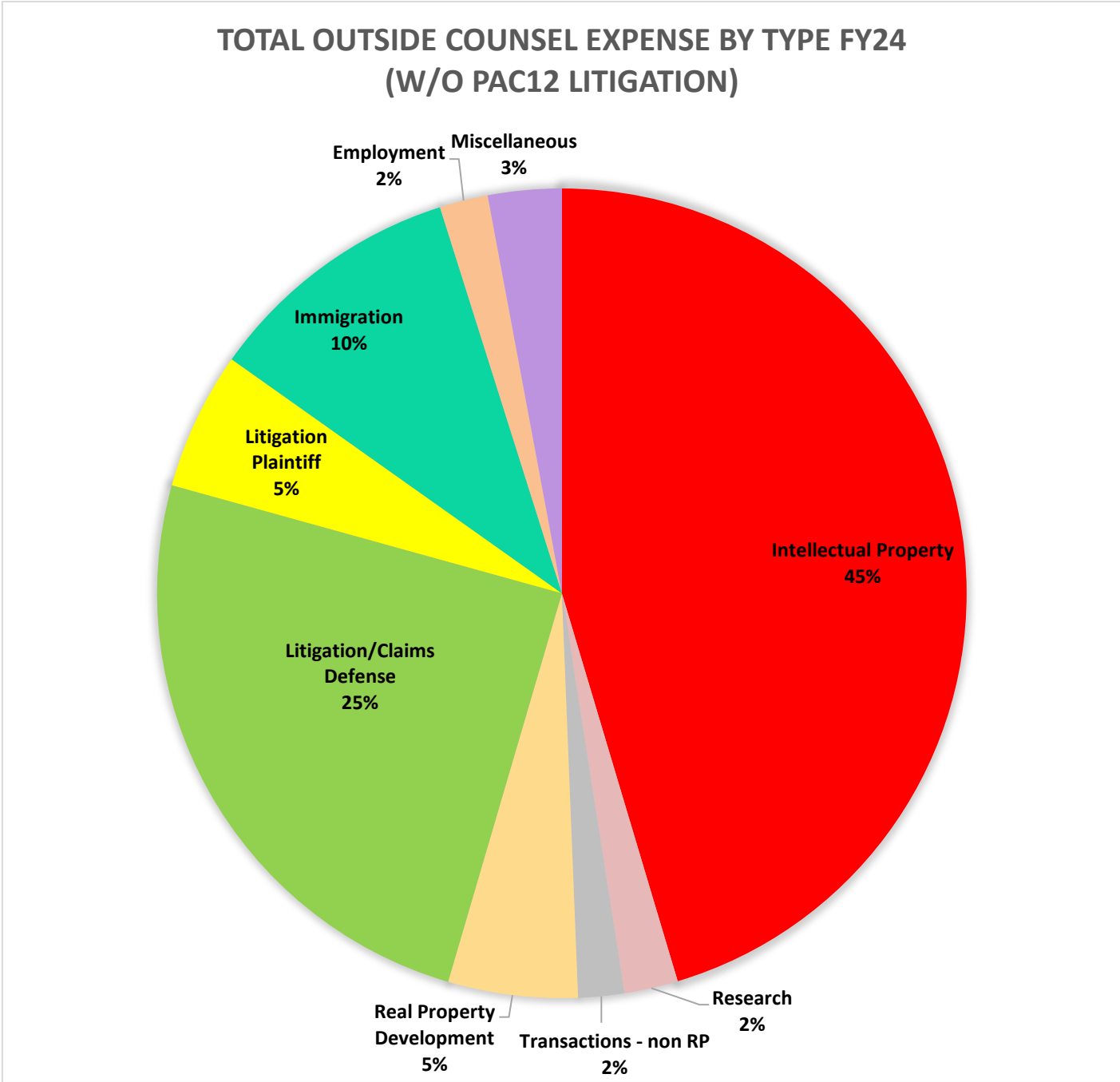
Administrative Claims by Type: Administrative claims broken out by those from students versus employees, over the past five years.



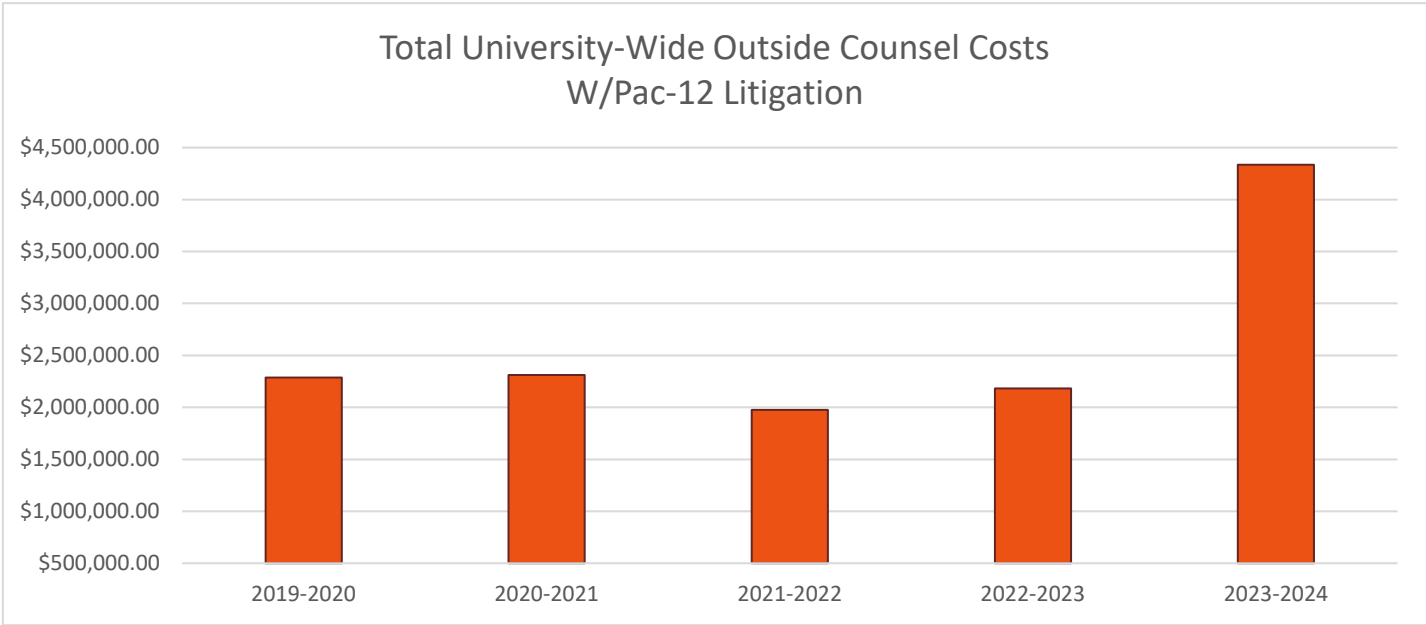
University-wide outside counsel expenses broken out by type. Litigation Plaintiff includes Pac-12 litigation.



University-wide outside counsel expenses broken out by type. In this chart, Litigation Plaintiff excludes the Pac-12 litigation.



University-wide outside counsel expenses annually over the past five years, including Pac-12 litigation.



University-wide outside counsel expenses annually over the past five years, excluding Pac-12 litigation.

