

The Legal Framework of High School Hazing

YOU'VE SEEN THE HEADLINES: High school football players in Maryland and New Jersey accused of sexually assaulting teammates with broomsticks, cheerleaders in Utah smearing peanut butter on a squad member with allergies, marching band members in Ohio covering newcomers in plastic wrap and throwing them into a lake.

It's unclear whether high school hazing is on the rise or is just getting more notoriety through smartphones and social media. Regardless, it's now a high-profile problem garnering the attention of school officials, law enforcement and state legislatures across the country.

Like in-person or cyber bullying, hazing involves targeted harassment of fellow students, yet there are important differences. Bullying seeks to exclude or ostracize the student victim. Hazing usually involves organized rituals framed as rites of passage to *include* students in some exclusive group. This is significant, from a legal standpoint, because those on the receiving end often know what's coming and, in a very narrow sense, may consent to some measure of it — until, of course, things turn tragic and someone gets hurt or even killed.

Hazing Defined

There's another important distinction with significant legal implications for your school district. Bullying occurs randomly. Hazing, on the other hand, often involves longstanding traditions well known to the organization's members, past and present. It thus comes as no surprise that coaches, advisers and other staff are sometimes aware of this activity and condone or, even worse, participate in it. This is used as a sword by victims seeking to hold school districts legally responsible for victims' injuries and as a shield by accused students seeking to minimize their own personal responsibility.

At least 46 states have adopted anti-hazing statutes. Some address the problem through criminal laws. Some tackle it through their education laws requiring adoption of policies defining prohibited hazing, investigative procedures and consequences for this misbehavior. Others combine both approaches.

Because the primary aim of anti-hazing laws is prevention, the most important feature

is the definition of hazing, as it puts students on notice of what's considered impermissible conduct. Each state has its own definition, but most include conduct posing either physical or emotional harm. Some are quite specific. New Jersey, for example, proscribes any activity that:

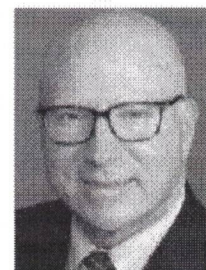
- ▶ causes, coerces or otherwise induces another person to consume any food, liquid, alcoholic liquid, drug or other substance that subjects the person to a risk of emotional or physical harm;
- ▶ subjects another person to abuse, mistreatment, harassment or degradation of a physical nature, including, but not limited to, whipping, beating, branding, excessive calisthenics or exposure to the elements;
- ▶ subjects another person to abuse, mistreatment, harassment or degradation of a mental or emotional nature, including, but not limited to, activity adversely affecting the mental or emotional health or dignity of the individual, sleep deprivation, exclusion from social contact or conduct; or
- ▶ subjects another person to abuse, mistreatment, harassment, or degradation of a sexual nature.

Gray Dividing Line

One of the challenges of anti-hazing legislation has been how to ban unacceptable behavior, while not curtailing other traditions and "tough love" coaching practices that may be unpleasant yet are deemed tolerable methods of preparing students for the physical and mental rigors of intense competition. Most of us would not consider it hazing if a football coach ordered a player to run extra laps for slacking off in practice, as long as the coach doesn't cross the line into abusive behavior. The goal is to set reasonable boundaries that reflect the culture of the community and ultimately don't place students in harm's way.

A place for tradition and ceremony exists in public school activities, but no place exists for dangerous hazing that exposes students to humiliation, injury and risk of death. Be sure to check with your school district's legal counsel to remain in sync with your state's law on hazing and do what's necessary to keep your students safe.

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