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Commentary
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WHERE DOES TRADITION END AND HAZING BEGIN? IMPLICATIONS FOR SCHOOL DISTRICT POLICY^a

In a Milton Area High School initiation, a senior player paddled five 10th-grade football players in the locker room prior to a pep rally. The Pennsylvania incident left all boys with bruises and one bleeding.

The Daily Item, October 14, 2004

Three days into the 2004 school year fifteen senior women at St. Paul's School in Concord, New Hampshire, engaged in a sexually charged "welcoming ritual" for twelve new students that precipitated a criminal investigation by the local police department and, ultimately, the suspension of the fifteen women.

Concord Monitor, September 21, 2004

A Sandwich High School freshman football player suffered a ruptured spleen that required surgery and seven days in the hospital from a hazing-related incident called "freshman beat down." Two students were charged with assault and battery (a felony) and several others with hazing (a misdemeanor).

Cape Cod Times, October 15, 2004

These hazing incidents represent only a few high school examples from the opening of the 2004 school year. Hazing, long considered a problem of postsecondary education, affects about 1.5 million high school students each year.¹ The rituals and traditions that subject many students to devastating abuse and humiliation are frequently viewed as harmless pranks and expected rites of passage. For many victims, however, the consequences have been far from harmless, often leaving them with physical and emotional scars and, in some instances, resulting in death. With reported incidents in recent years escalating in severity and consequences,² school officials must give serious attention to the rituals in their schools that may lead to abuse. In the age of reality television where *Fear Factor* and *Survivor* glamorize risk-taking dares, the stakes are raised in teenage circles to create ever more challenging initiation acts.

*20 In this article, **hazing** and its legal implications for schools are examined. We provide an overview of **hazing** and state anti-**hazing** laws, review the lessons learned from *Gendelman v. Glenbrook North High School*³ and related cases for conduct away from SCHOOL CAMPUSES, AND Discuss the implications for school systems.

UNDERSTANDING HAZING

Until recently, most data about high school students' experience with **hazing** was anecdotal or related to specific school districts. In 2000, researchers at Alfred University conducted a comprehensive national study of **hazing**.⁴ In this study, Hoover and Pollard defined **hazing** as "any humiliating or dangerous activity expected of you to join a group, regardless of your willingness to participate."⁵ The study findings showed that **hazing** is far more prevalent than many expected; 48 percent of the high school students reported that they had experienced **hazing**. Of that group, 30 percent indicated they were required to perform potentially illegal acts. Although both males and females were subjected to **hazing**, male students were found to be at the highest risk, especially for dangerous acts. **Hazing** was reported across all types of districts and in states with and without anti-**hazing** laws. The Alfred University study issues a wake up call: high school students who join a group face the potential risk of **hazing**.

Hazing should not be confused with common initiation rites of organizations. Most high school groups have some bonding experiences for new members to build a sense of belonging and camaraderie. These requirements may be inane (such as wearing shirts inside out, bowing to all upper-class members, etc.) but they do not endanger, abuse, or humiliate. **Hazing** practices involve more risky actions—consuming alcohol, binge drinking, using illegal drugs, stealing, physical abuse, sexual abuse, vandalizing property, skipping school, body piercing, and consuming disgusting substances.⁶ If **hazing** is to be avoided, understanding the difference between harmless *21 rituals and damaging practices is essential for all members of the school community—students, teachers, administrators, coaches, and all other personnel who work in the school. Adolescents' strong need to be accepted by their peers makes them particularly vulnerable to succumbing to harmful and illegal demands imposed by their peers. This places an onerous burden on school officials to be vigilant in countering **hazing** activities.

Responding to the potential devastating consequences of **hazing**, 44 state legislatures have imposed anti-**hazing** laws.⁷ The impact of the laws on deterring **hazing**, however, is questionable. Haynes reports that amid a national furor over the death of a pledge at Cornell University, Illinois adopted what is believed to be the first anti-**hazing** law directed at discouraging activities that would subject any student to ridicule for the pastime of others.⁸ This law, passed on May 10, 1901, and subsequent anti-**hazing** laws in other states have been criticized for being too weak or for simply not being enforced.

Significant variability exists in the state laws. Typical definitions, such as the one specified in Georgia's anti-**hazing** law, note a general prohibition of any conduct that subjects "a student to an activity which endangers or is likely to endanger the physical health of a student, regardless of a student's willingness to participate in such activity."⁹ A few states provide detailed definitions with extended examples of prohibited conduct, such as the newly enacted Michigan law that specifies conduct that endangers others in connection with pledging, initiating, affiliating, participating, or maintaining membership and then lists conduct that violates the law.¹⁰ Most laws stipulate that a student's consent or acquiescence to **hazing** is not a defense in the prosecution for **hazing**.¹¹

*22 Although some statutes specify that **hazing** may constitute a felony, most state laws characterize it as a misdemeanor.¹² Penalties may involve fines from \$10 to \$1,000, jail time of a few days to one year, a combination of fines and jail time, and expulsion from school. The lack of severe penalties leaves many victims and their families frustrated with the outcome when they pursue the perpetrators of **hazing**. Furthermore, the reluctance of victims to report **hazing** results in few prosecutions.

Individual state anti-**hazing** laws suffer from a range of deficiencies that may limit their effectiveness.¹³ A specific law may include only initiation rites,¹⁴ apply only to post-secondary institutions,¹⁵ and allow the consent of the victim to be used as a defense.¹⁶ Anti-**hazing** policies play a significant role in conveying that **hazing** is not merely unacceptable but illegal. Yet, only thirteen of the state laws require educational institutions to adopt policies and merely three of those require public school districts to implement a policy.¹⁷ Only a few states contain a provision regarding penalties for educators who do not report **hazing**, and they tend to be minimal fines.¹⁸

Understanding what constitutes **hazing** is the first step in addressing humiliating and intimidating behavior in a school system that affects almost all groups of students. The statistics convey clearly that **hazing** conduct is pervasive and often

accepted or ignored as venerated rituals. State anti-hazing legislation and school policies can raise the awareness of the school and community about eliminating hazing and minimizing its harm.

*23 LESSONS FROM CASE LAW

A 2003 Illinois hazing case, *Gendelman v. Glenbrook North High School*,¹⁹ is instructive for school administrators as they undertake a review of their policies and practices related to student hazing. Specifically, attention must be given to how incidents of off-campus hazing are treated.

Unlike most incidents of hazing, Glenbrook North High School's debacle came into our living rooms through vivid, degrading videotape. What began as a Sunday afternoon girls' touch-football game quickly escalated into violence that resulted in five girls requiring treatment at a local hospital and the suspension of 31 students for ten days. This was not a new event; female students had organized this annual off-campus "powder puff" football game between junior and senior girls since the late 1970s. The federal judge in *Gendelman* lamented that "the activities which took place cannot be described in powder puff terms or as some sort of game."²⁰ He went on to characterize the conduct as "hazing and harassment of an extreme sort."²¹

Two of the suspended senior girls challenged the school board's authority to impose disciplinary measures for behavior occurring off-campus and requested a temporary restraining order (TRO) against the board's suspension decision. The court denied their motion, noting that the school board had authority to impose the disciplinary action. The students had asserted that the school board exceeded its authority because the event was not school sanctioned or sponsored. Although the student handbook specified suspension or expulsion for gross disobedience or misconduct on campus and at all school-sponsored events, the federal judge said, "That same school handbook, however, expressly prohibits hazing and harassment engaged in by any student district wide and is not limited to school sponsored events."²² The judge commented on the strong nexus between the egregious off-campus conduct and Glenbrook North High School that justified the disciplinary action against the offending students. He further elaborated, "When one set of students sets to prey upon another set of students in a ritualistic exercise, the consequences of which will necessarily affect the students' relationships while they are all in attendance at the same school, the ability of school officials to act in the area and discipline those who went beyond the pale of tolerable student behavior is manifest."²³

Disciplining students for behavior away from the school campus has been regularly upheld when evidence shows that the behavior has a detrimental *24 impact on students, teachers and the school environment.²⁴ The Illinois hazing case echoes the "Old Jack Seaver" decision handed down in 1859. In *Lander v. Seaver*, an 11-year-old boy referred to his teacher as "Old Jack Seaver" in front of classmates as he drove cows past the teacher's house.²⁵ The Vermont Supreme Court ruled that the teacher could punish the student for his disrespectful behavior because of its impact on the school and the teacher's authority. Establishing this connection has enabled school officials to impose sanctions for a range of student conduct: making threatening remarks on a website created at home,²⁶ stealing car parts,²⁷ assaulting and attempting to stab someone off-campus,²⁸ and compiling a "shit list" of other students ascribing derogatory characteristics to them.²⁹ These cases, among others, establish that schools can take disciplinary actions against students for off-campus behavior when a tangible nexus exists to the school.³⁰

Two early cases, specifically, indicate that courts will hold school districts liable for off-campus hazing conduct that results in injuries.³¹ In *Chappel v. Franklin Pierce School District*, the Washington Supreme Court reversed a lower court's dismissal of a student's claim for damages for an injury that he suffered in a student service organization's off-campus initiation.³² The school district argued that the activity was away from school premises and beyond its scope of supervisory authority and control since the initiation rite did not involve any educational or cultural value. The state supreme court disagreed, noting that the club itself was recognized by the school and was supervised by a faculty sponsor, albeit not present at the initiation ceremony. Furthermore, school officials had known that the club's initiation rites had been conducted away from campus for several years and had required initiates to perform various physical ordeals prohibited by the school's hazing policy. Similarly, the Florida Supreme Court in *Rupp v. Bryant* held that the school's duty to students extended to initiation activities off-campus.³³ Because the particular club in this case had a history of problems, the school already had it under close supervision even though the club advisor was not present during the *25 meeting when the hazing occurred. The court noted, "Not only was this harm foreseeable, but the school had actually anticipated it through regulations which it failed to follow. The errant reputation of the club bespoke its unreliability and need for supervision, enhancing foreseeability."³⁴

These cases alert school officials to the need for strong measures to prevent **hazing** in all school activities regardless of where the impermissible conduct occurs. The *Glenbrook* court explicitly noted, “The school has a right, and a duty, to retard the growth of incivility among its students”³⁵ and that right *and* duty are not constrained by the boundaries of the schoolyard.

IMPLICATIONS AND RECOMMENDATIONS

Case law is instructive in several arenas for school administrators as they develop policies and procedures for dealing with student **hazing**—disciplining students for off-campus behavior, providing adequate due process prior to imposing sanctions, developing a clear anti-**hazing** policy, and educating all members of the school community about expectations.

Factors to Consider When Developing a School Board Policy

An anti-**hazing** policy can be incorporated in the broad context of school safety or it can stand alone as a separate policy limited to **hazing**. In either case, a philosophical statement should frame the policy and establish a no tolerance approach to all forms of **hazing**. A brief summary of the applicable state laws should be included both for reference and to provide the context for the policy. Policies developed for the public K–12 environment need to be consistent with the discipline code, communicated broadly to students, staff, and parents, and provide procedures for investigation, documentation, and follow-up.³⁶

A school board policy dealing with **hazing** in high school must be precise in language as many myths and misconceptions about the practices cloud the need for such a policy and the danger inherent in **hazing** activities. State school board associations generally provide guidance to their members in defining the terms **hazing**, harassment, intimidation, bullying, and menacing in their sample policies.³⁷

High school students are particularly vulnerable to peer pressure and are often willing participants in **hazing** activities. The school board policy must be clear that the willing participation of the victim is irrelevant in the consequences applied to the perpetrators and, in fact, there can be consequences for the victim as well as for the hazers.

In light of the case law discussed here, it is significant to include a statement that the consequences of participation are not limited to acts of **hazing** that take place on the school grounds or in school-sponsored activities. The definition of **hazing** should make this clear since many **hazing** activities take place off the grounds and out of sight of school officials (i.e., **hazing** includes abuse and humiliation of newcomers in a group by the “elders” of the class or group and is not specific to place).

Policy Checklist

We suggest the following checklist as a guide for developing a comprehensive policy to prevent high school **hazing**.

1. A statement of zero tolerance for **hazing**.
2. Precise definitions of terms, especially **hazing**, harassment, and bullying.
3. Specific language to illustrate prohibited behaviors and an inclusionary statement about like behaviors that are not illustrated.
4. Clear rules and defined consequences, including the potential for criminal charges, the reality of

consequences for **hazing** off school property, and the consequences for an adult employee who ignores the reality of **hazing**.

5.Procedures for reporting acts of **hazing**, including the procedure for anonymous reporting.

6.Procedures for the investigation of charges, including assurances that investigations will be thorough and unbiased.

7.Procedures for responding to the public about the investigation during and at the conclusion including who the spokesperson will be (by title not name).

8.A statement that this policy should be published in all student and staff handbooks and disseminated broadly to students, staff, parents, and community members.

What Schools Can Do To Prevent Hazing

School personnel can be a significant force in the prevention of student **hazing**. Some suggestions include the following:

1.Adopt strict rules and procedures for dealing with **hazing**.

2.Provide information about the dangers of **hazing** to students, teachers, parents, coaches, and others who come in contact with the high school students.

3.Organize community forums to discuss **hazing**.

4.Develop a contract for parents and students to sign about **hazing**.

5.Require students to meet behavioral standards to participate in extra-curricular activities (much like the academic requirements).

6.Establish a record of taking strong disciplinary action against **hazing** incidents.

7.Notify parents and police of suspected **hazing** activities

8.Develop bonding activities that will not humiliate or physically harm participants.

The consequences of **hazing** in schools can be devastating socially, emotionally, and physically for students. School officials can be the first line of defense by sending forceful messages that demeaning, abusive, humiliating behavior will not be tolerated. Too often students proclaim that they did not report **hazing** incidents because coaches or other school supervisors stood by while the **hazing** occurred. Such comments point to the imperative of focusing preventive measures on all individuals in the school and ensuring that adopted anti-**hazing** policies are enforced.

Footnotes

- ^a The views expressed are those of the authors and do not necessarily reflect the views of the publisher. Cite as 196 Ed.Law Rep. [19] (May 5, 2005).
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- ¹ NADINE C. HOOVER & NORMAN J. POLLARD, INITIATION RITES IN AMERICAN HIGH SCHOOLS (2000).
- ² With increased concern about **hazing**, the National Federation of State High School Associations is developing a **hazing** prevention handbook that it plans to circulate to 17,000 schools.
- ³ 2003 WL 212090880, No. 03 C 3288 (N.D. Ill. May 23, 2003).
- ⁴ HOOVER & POLLARD, *supra* note 1.
- ⁵ *Id.* at 4. The researchers included humiliation (defined as socially offensive, isolating, or uncooperative behaviors) because of its close link to illegal acts in **hazing**. Over one-half of the students who reported humiliation indicated they were also expected to engage in potentially illegal acts. Dangerous activity was defined as substance abuse (abuse of tobacco, alcohol, or illegal drugs) and dangerous **hazing** acts (hurtful, aggressive, destructive, and disruptive behaviors).
- ⁶ See, e.g., Stephanie Ebbert, *3 Students Face Charges for Incident on Team Bus*, BOSTON GLOBE, October 7, 2004 at http://www.boston.com/news/local/massachusetts/articles/2004/10/07/3_students_face_charges_in_incident_on_team_bus/ (reporting intimidation and assault by three students on a soccer team bus); Mark Hornbeck, *Boy Recalls Terror of Team Hazing*, DETROIT NEWS, March 10, 2004 at <http://www.detnews.com/2004/schools/0403/10/b01-87483.htm> (reporting an incident of “eighth-grade hit day” resulting in multiple breaks and surgery to a 12-year-old boy’s leg); Chris Golembiewski, *E.L. Hazing Death Leads Police to Alter Policy*, LANSING STATE JOURNAL, October 13, 2003 at http://www.lsj.com/news/ocl/p_031013hazing_1a-5a.html (reporting a 14-year-old’s suicide after he was assaulted by upper classmen and smeared with raw eggs and syrup); Mark Shaffer, *Athletes Indicted in Sex Assaults*, ARIZ. REPUBLIC, May 10, 2000, at B1 (reporting five athletes were charged with twenty-two acts of sexual assault in the **hazing** of teammates); FRANK NUWER, HIGH SCHOOL **HAZING**: WHEN RITES BECOME WRONGS (2000).
- ⁷ Michigan enacted a new anti-**hazing** law in 2004, MICH.COMP.LAWS, 750 § 411t(7)(b) (2004).
- ⁸ V. Dion Haynes, *Across the U.S., Hazing Lives Despite Laws*, CHICAGO TRIBUNE, May 26, 2003, at 1.
- ⁹ GA.CODE ANN. § 16-5-61 (2004).
- ¹⁰ MICH.COMP.LAWS, 750 § 411t(7)(b) (2004).

(7) As used in this section:

(b) “**Hazing**” means an intentional, knowing, or reckless act by a person acting alone or acting with others that is directed against an individual and that the person knew or should have known endangers the physical health or safety of the individual, and that is done for the purpose of pledging, being initiated into, affiliating with, participating in, holding office in, or maintaining membership in any organization. Subject to subsection (5), **hazing** includes any of the following that is done for such a purpose:

(i) Physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity.

(ii) Physical activity, such as sleep deprivation, exposure to the elements, confinement in a small space, or calisthenics, that subjects the other person to an unreasonable risk of harm or that adversely affects the physical health or safety of the individual.

(iii) Activity involving consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance that subjects the individual to an unreasonable risk of harm or that adversely affects the physical health or safety of the individual.

(iv) Activity that induces, causes, or requires an individual to perform a duty or task that involves the commission of a crime or an act of **hazing**.

¹¹ See, e.g., [WIS.STAT. § 948.51](#) (2004); [NEV.REV.STAT. § 200.605](#) (2004); MASS.GEN.LAWS 269.17 (2004). *But see* text with note 16, *infra*.

¹² See [Stophazing.org](http://www.stophazing.org) (the site lists state laws and the various penalties for violating **hazing** statutes) at <http://www.stophazing.org/laws>.

For example, [IND. CODE § 35–42–2–2](#) (2004), specifies **hazing** may be a misdemeanor or felony depending on the nature of the injury:

(b) A person who recklessly, knowingly, or intentionally performs:

(1) an act that creates a substantial risk of bodily injury to another person; or

(2) **hazing**;

commits criminal recklessness, a Class B misdemeanor. However, the offense is a:

(1) Class A misdemeanor if the conduct includes the use of a vehicle;

(2) Class D felony if it is committed while armed with a deadly weapon; or

(3) Class C felony if it is committed by shooting a firearm from a vehicle into an inhabited dwelling or other building or place where people are likely to gather.

(c) A person who recklessly, knowingly, or intentionally:

(1) inflicts serious bodily injury on another person; or

(2) performs **hazing** that results in serious bodily injury to a person;

commits criminal recklessness, a Class D felony. However, the offense is a Class C felony if committed by means of a deadly weapon.

¹³ Scott R. Rosner & R. Brian Crow, *Institutional Liability for Hazing in Interscholastic Sports*, 39 HOUS.L.REV. 275 (2002).

¹⁴ See, e.g., [ALA. CODE § 16–1–23](#) (2004).

¹⁵ See, e.g., [FLA.STAT. § 1006.63](#) (2004); KY.REV. STATE ANN. § 164.375 (2004).

¹⁶ See, e.g., [ALA. CODE § 16–1–23](#) (2004); [COLO.REV.STAT. § 18–9–124](#) (2004).

¹⁷ Scott R. Rosner & R. Brian Crow, *supra* note 13.

¹⁸ See R.I.PUB. LAWS § 11–21–2 (2004): Every person, being a teacher, superintendent, commandant, or other person in charge of any public, private, parochial, or military school, college or other educational institution, who shall knowingly permit any activity constituting **hazing**, as defined in § 11–21–1, shall be guilty of a misdemeanor and shall be fined not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100).

¹⁹ 2003 WL 21209880, No. 03 C 3288 (N.D. Ill. May 23, 2003).

20 *Id.* at 1.

21 *Id.* at 2. In the written opinion, the judge noted only offensive and physical contacts that involved violence. News coverage, including videotapes, documented the extreme aspects of the conduct. Junior girls were bombarded with animal feces, urine and fish entrails. Some girls reported that they were forced to eat mud and were choked, kicked and hit with a variety of objects.

22 *Id.* at 5.

23 *Id.* In denying the TRO, the judge did not find that the defendant students were likely to succeed on the merits nor did they present evidence that the suspensions would result in irreparable harm. Adequate due process had been provided in the initial suspension hearing and evidence, particularly the videotapes, “irrefutably established instances of participation by each Plaintiff in a gathering gone amok.”

24 See NELDA CAMBRON-MCCABE, MARTHA MCCARTHY, & STEPHEN THOMAS, PUBLIC SCHOOL LAW: TEACHERS’ AND STUDENTS’ RIGHTS (2004); Perry Zirkel, *Disciplining Students for Off-Campus Misconduct*, 163 Ed.Law Rep. [551] (2002).

25 32 Vt. 114 (1959). See also *O’Rourke v. Walter*, 102 Conn. 130, 128 A. 25 (1925) for another early example.

26 *J.S. v. Bethlehem Area Sch. Dist.*, 807 A.2d 847 [170 Ed.Law Rep. [302]] (Pa. 2002).

27 *Felton v. Fayette Sch. Dist.*, 875 F.2d 191 [53 Ed.Law Rep. [850]] (8th Cir. 1989).

28 *Pollnow v. Glennon*, 757 F.2d 496 [23 Ed.Law Rep. [1219]] (2d Cir. 1985).

29 *Donovan v. Ritchie*, 68 F.3d 14 [104 Ed.Law Rep. [80]] (1st Cir. 1995).

30 If the requisite connection is not made, school officials cannot impose sanctions. See *Flaherty v. Keystone Oaks Sch. Dist.*, 247 F.Supp.2d 698 [175 Ed.Law Rep. [188]] (W.D. Pa. 2003); *Beussink v. Woodland R-IV Sch. Dist.*, 30 F.Supp.2d 1175 [131 Ed.Law Rep. [1000]] (E.D. Mo. 1998)

31 See Daniel B. Weddle, *Dangerous Games: Student Hazing and Negligent Supervision*, 187 Ed.Law Rep. 373 (2004). The author provides a detailed examination of school liability for negligent supervision including the duty to supervise and failure to supervise as the proximate cause of hazing injuries. For potential federal liability under 42 U.S.C. § 1983 and Title IX of the Education Admndments, see David S. Doty, *Enough is Enough: The Legal Responsibility of Public Schools and Universities to Prohibit Hazing*, 134 Ed.Law Rep. [423] (1999).

32 426 P.2d 471 (Wash. 1967).

33 417 So.2d 658 [5 Ed.Law Rep. [1309]] (Fla. 1982).

34 *Id.* at 669.

35 *Gendelman v. Glenbrook High School*, 2003 WL 21209880, No. 03 C 3288 at 5 (N.D. Ill. May 21, 2003).

36 See Kelley R. Taylor, *Hazing: Harmless Horseplay?* PRINCIPAL LEADERSHIP, March 2001.

³⁷ See, e.g., Oregon's School Board Association Policy Example at http://www.osba.org/policy/samples/gbna_jfcfrg1.pdf.

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