



FRATERNAL LAW™

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Pennsylvania Federal District Court Dismisses Case Regarding Hazing

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A Federal District Court in Pennsylvania dismissed a case¹ against Bucknell University, essentially finding that the University had no duty to prevent a fraternity hazing incident that resulted in alcohol poisoning and a concussion. The injured party had sued the University, as well as the chapter, national fraternity, and several of the chapter members.

The Court had originally dismissed the case against Bucknell, but did so in a manner that gave the Plaintiff the opportunity to amend his Complaint in order to make a second try at stating a claim against the University. However, the Court found that even the amended Complaint failed to state facts that, if proven, would demonstrate the University's liability. In trying to make his case, Plaintiff claimed that the University had disciplined the fraternity chapter for a hazing incident a decade earlier and alleged that Bucknell created "a permissive campus environment for fraternity life" that resulted in students drinking on a regular basis "in the open, out in the street, on campus, within full view of campus security and admissions officials."² But, as the Court pointed out, the Complaint did not even claim that Bucknell either knew about the event where the injury occurred, or had approved the event (or in any way promoted or funded it).

¹ Jean v. Bucknell Univ., No. 4:20-CV-01722, 2021 WL 4145055 (M.D. Penn. Sept. 9, 2021).

² *Id.* at *1.

The original Complaint did cite four alleged hazing incidents between 2015 and 2019. One of those involved the men’s swimming and diving team, another involved an all-male acapella singing group, and only two involved fraternity groups, which were not parties to this litigation. In dismissing the original Complaint, the Court had ruled that imposing the higher duty of care Plaintiff’s sought would “create a massive burden on the University’s resources and capabilities, explaining that ‘beyond shuttering every fraternity suspected of or disciplined for hazing, or requiring direct supervision of any such fraternity, it is not clear how Bucknell would be able to meet this duty.’”³

The Court went on to point out that the additional facts pled in the amended Complaint did not change the conclusion, pointing out that Plaintiff’s allegations about “hazing conducted by non-Greek organizations—specifically, men’s and women’s school-sponsored sports teams and an acapella group— imposing on Bucknell a heightened duty ‘owed to students related to hazing’ would effectively require the absolute prohibition of *all* student groups or, at the very least, student group gatherings without direct university supervision.”⁴

The Court also considered Plaintiff’s argument that under the relatively new Pennsylvania Timothy Piazza Anti-Hazing Law, the University “intentionally, knowingly, or recklessly promotes or facilitates” hazing. The Plaintiff essentially argued that Bucknell made it easier to engage in hazing and therefore violated Pennsylvania’s criminal law against hazing. The Court responded, saying:

It is difficult to conceive of any act or omission by a university bearing on its student organizations that could not be characterized as ‘making it easier’ for hazing to occur. Allowing student organizations to gather outside the presence of a university employee would arguably ‘make it easier’ for hazing to occur. Indeed, merely allowing student organizations to exist would ‘make it easier’ for hazing to occur. Endorsing this interpretation would thus institute a dramatic shift in public policy,

³ *Id.* at *6.

⁴ *Id.* (Emphasis in original.)

effectively imposing on colleges and universities an *in loco parentis* duty—something the Pennsylvania Supreme Court has explicitly rejected for more than 30 years.⁵

This case would have been entirely different had there been facts showing that the University had some advance knowledge that hazing would take place and failed to act. The logic the court used in dismissing the University may well be applied in the defense of national fraternal groups that have rules against—and training to prohibit—hazing, but that lack any advance knowledge of a hazing incident about to take place against those rules and training.

High Profile Suicide Raises Concerns About University Discipline and Student Mental Health

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On March 1, 2022, Katie Meyer was found dead in her on-campus residence at Stanford University. She was twenty-two (22) years old. Meyer was the championship-winning Goalie and Captain of the Stanford Women’s Soccer Team. Her tragic death was later declared a suicide.

In the aftermath of Katie’s death, her parents appeared on the Today Show to provide their perspective. They explained that prior to her decision to take her own life, Katie was subject to potential discipline from Stanford University. Specifically, her father stated, “Katie, being Katie, was defending a teammate on campus over an incident, and the repercussions of her defending that teammate”⁶ put her in the position of potential discipline from the University. Additionally, her

⁵ *Id.* at *8.

⁶ Joshua Rhett Miller, *Katie Meyer Faced Possible Stanford Discipline Before Suicide, Parents Say*, N.Y. POST (Mar. 4, 2022, 11:18am), <https://nypost.com/2022/03/04/katie-meyer-faced-possible-discipline-from-stanford-parents-say/>.

parents shared their belief that while the disciplinary process was ongoing for several months, Katie received an email from the University informing her that she would indeed be subject to a disciplinary hearing shortly before her death. Her parents believe this likely triggered Katie's decision to commit suicide.

Mental health concerns are often deeply complex, and we at Fraternal Law Partners are not mental health experts. However, we do possess significant experience in supporting students and student groups when subjected to the university disciplinary process.

There is no question that navigating the university disciplinary process can be extremely challenging for students. While universities often claim that their disciplinary process is intended to be an educational experience for their students, it is usually quite the opposite. Intentional or not, the university disciplinary system commonly makes students feel as if they are in a powerless position. The individuals investigating and deciding the fate of students often have master's degrees or doctorates. They have access to financial resources and to skilled attorneys. They have navigated the disciplinary process hundreds or even thousands of times before.

Meanwhile, accused students are often facing this situation for the first time. They are tasked with reading and understanding handbooks and codes of conduct that can be hundreds of pages long and noticeably outdated. Between the cost and needless university-imposed restrictions, students are often unable to have attorneys accompany them during university proceedings, and even when attorneys can be present, university rules frequently impose significant restrictions on the scope and manner of attorney participation. Certainly, one can understand how this process can be daunting to students and can further exacerbate mental health challenges students may be experiencing.

Many who knew Katie Meyer described her as larger than life and on top of the world. She was a national champion athlete, team captain, star of her own “Be the Mentality” talk show, and student on the cusp of graduation from an elite university. Ultimately, her parents believe her suicide was triggered by the likelihood of a hearing involving potential university discipline.

One can only hope that the tragic death of Katie Meyer will provide those who run university disciplinary processes with the opportunity to critically reexamine how the processes are conducted. While there is no dispute that universities need to have a system in place to discipline wrongdoers, there is also no dispute that the system should be more supportive of students who find themselves enmeshed in it. Students should only be subjected to the system when there is credible evidence of serious misconduct. When so, those students should be provided with the resources (both mental health and legal) necessary to defend themselves, and other roadblocks must be removed. Finally, it is time to eliminate the fallacy that the conduct process is meant to be educational, and it should instead be treated like the high-stakes process it has become where the futures of students and student organizations are often on the line. The university disciplinary process can be improved, and students can feel better supported, to hopefully avoid this tragedy from reoccurring.

Virginia Poised to Adopt New Anti-Hazing Law, The Adam Oakes Law

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Adam Oakes died on February 27, 2021, of alcohol poisoning resulting from a hazing incident at a Virginia Commonwealth University fraternity. A year later, he joins Timothy Piazza in Pennsylvania, Max Gruver in Louisiana, and Collin Wiant in Ohio, in having new anti-hazing law adopted in his name.

The Virginia law,¹ expected to be signed shortly by the Governor, deals with hazing prevention training and the reporting of hazing incidents. It requires that the advisor for each student organization undergo training and provide “extensive, current, and in-person education to all members as well as new members.” Each institution of higher education must also provide hazing prevention training to all potential new members of student groups.

Immunity from discipline is provided to those who, in good faith, report an act of hazing “in advance of or during an incident of hazing that causes injury or is likely to cause injury.”

The institution of higher education must report the name of a student organization found to have engaged in hazing, when the organization was found responsible, the date the hazing occurred and a description of the incident. These reports must be available on the institution’s website homepage and its Greek Life homepage. Annually, each institution must report actual findings of violations of hazing laws or university code of conduct to the Timothy J. Piazza Center for Fraternity and Sorority Research and Reform at the Penn State University.

¹ H.B. 525, Gen. Assemb. (Va. 2022).

While this new law does not increase any criminal penalties associated with hazing violations, that may not be far behind. Bills are pending in the Virginia state legislature that would increase hazing from a misdemeanor to felony status under the state’s criminal law.

Adam Oakes’ parents were in the Richmond Capitol when the law was passed by the legislature. The Richmond Times Dispatch quoted the Lieutenant Governor, Winsome Earle-Sears, as telling Adam’s parents that “your son did not die in vain. Adam is making his mark on the world by having a law passed that will help someone else’s child and for that we thank Adam that he was born and that you gave him to us.”²

One can only wish that there be no further need for other states to name laws after new victims of hazing.

Third Circuit Finds University Owed Student Title IX Protection Against Non-Student Offender

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Back in March 2017, David Westol wrote about a Title IX lawsuit filed in the Eastern District of Pennsylvania.² The parents of Karlie Hall, a freshman at Millersville University (the “University”) who was murdered by her partner in her dorm room following ongoing harassment and assaults, brought suit against the University for failing to protect their daughter. They claimed

² Eric Kolenich, *Virginia Legislature Passes Bills to Require Hazing Prevention Training on College*, RICHMOND TIMES DISPATCH, Feb. 28, 2022, https://richmond.com/news/local/education/virginia-legislature-passes-bills-to-require-hazing-prevention-training-on-college-campuses/article_6935f177-c1de-5dbc-b224-90fc78cfb496.html.

¹ Haellie Gordon is a law clerk at Manley Burke and is a first-year law student at the University of Cincinnati.

² David Westol, *New LawsUIT Filed*, 147 FRATERNAL L. 1, 4-5 (Mar. 2017).

the University was on notice that Karlie's partner, a non-student visitor, conducted himself in a manner that violated Karlie's Title IX rights.

The District Court found the University was not on notice prior to Karlie's death that non-students could place the school in violation of Karlie's Title IX rights. Accordingly, the trial court granted summary judgement to the University, freeing it from liability.

On January 11, 2022, the Third Circuit Court of Appeals reversed the lower court's summary judgement. The Third Circuit noted the U.S. Supreme Court's clear findings,³ as well as the University's own policy,⁴ that Title IX protections extend to the conduct of individuals other than students. While the lower court interpreted Title IX as only applying to invitees of the University, the appellate court cited the Office of Civil Rights' guidance that Title IX requires action when the University has "substantial control" over both the visitor or non-student offender and the circumstances in which the harassment occurred.⁵ Here, evidence suggested the University previously exercised control over Karlie's partner by removing him from campus months before the murder.⁶ Additionally, the University had knowledge of the ongoing harassment and assaults through official reports from the dorm's resident assistant.⁷

Ultimately, the Third Circuit found the University to have acted with "complete indifference" to the harassment. The University's deputy Title IX coordinator admitted to making no efforts to send the resident assistant's report to the Title IX coordinator or to contact Karlie regarding the reported harassment, both of which violated the University's Title IX policies.⁸

³ *Davis v. Monroe Cty. Bd. Of Edu.*, 526 U.S. 629, 643–46 (1999); *see also* *Simpson v. Univ. of Colo. Boulder*, 500 F.3d 1170 (10th Cir. 2007).

⁴ *Hall v. Millersville Univ.*, No. 19-3275, 2022 U.S. App. LEXIS 715 (3d Cir. Jan. 11, 2022).

⁵ *See e.g.* Office for Civil Rights; Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034-01 (Mar. 13, 1997).

⁶ *Hall*, 2022 U.S. App. LEXIS at *27.

⁷ *Id.* at *33-34.

⁸ *Id.*

The Third Circuit's decision outlines Title IX as requiring universities to take action when they have knowledge of and the power to act when serious, ongoing sex-based violence occurs against its students, regardless of whether the offender is a student. The University has not appealed as of yet, but Fraternal Law will continue to provide updates as this matter progresses.

Announcement

We have some exciting news to share! Effective with this March 2022 edition, Ilana Linder is the new Editor of the *Fraternal Law Newsletter*. An associate with Manley Burke since 2018, Ilana becomes the fifth editor in the Newsletter's 40-year history. She also becomes the first woman to serve in this role. Ilana takes the reins from Micah Kamrass, who has served as Editor since 2015. Micah will continue to regularly contribute to the Newsletter.

Ilana earned her bachelor's degree from Tufts University before attending law school at Indiana University Maurer School of Law. While in law school, she served as an Articles' Editor for the Indiana Journal of Law & Social Equality. After law school, she earned her Master's in Educational Leadership and is currently working toward obtaining her Ph.D. in Education Policy at the IU School of Education.

Ilana frequently provides legal counsel to fraternities and sororities, especially as they navigate university disciplinary processes or investigate potential wrongdoing.

In addition to her regular contributions to the *Fraternal Law Newsletter*, Ilana serves on the Board of Directors of the Education Law Association.

"Ilana will build upon the Newsletter's strong, 40-year foundation of providing our readers with relevant and timely updates on legal issues for fraternal organizations," said outgoing Editor,

Micah Kamrass. “We are confident that the Newsletter will become an even more valuable resource for you under her leadership.

If you are interested in contributing to the Newsletter or have topic(s) you would like to see covered in future editions, please let Ilana know by emailing her at ilana.linder@fraternallaw.com.

The goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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