



# FRATERNAL LAW™

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## **Greek Life Revitalization Report**

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Northern Illinois University, located in DeKalb, Illinois, had seen its student population decline from a high of 18,200 in the 1990's, to 11,834 in the 2020-21 school year. Greek life on the campus, in that same period, had declined even more drastically, from approximately 2,500 members to 691 members.

In what can only be described as an unusual, but very welcome, move in this period when Greek life is under such criticism, Dr. Lisa C. Freeman, the University's President, established a Presidential Task Force on the revitalization of Greek life.

President Freeman's charge in creating the Task Force noted that:

A healthy and vibrant Greek community is an important aspect of a residential campus and is consistent with NIU's desire for students to build communities and support one another in our University.

The Task Force, composed of a mix of students, alumni, and University representatives, along with a community member from Opportunity DeKalb, issued its final 32-page Report in November.

The Report begins by recognizing that the challenges faced by both the University and the NIU Greek live community are "not dissimilar from challenges faced by many Greek life communities at other regional, comprehensive universities: declining enrollment, shifting demographics and a shift to a compliance/risk management mind-set within the fraternity/sorority community." The Task Force does not shy away from recognizing that "the reputation of Greek

systems across the nation has been called into serious question with incidents of rampant alcohol and drug abuse, racism, sexual misconduct, and hazing that resulted in harm and loss of life.” But it goes on to recognize the enormous potential Greek life has to benefit students and the University.

Specifically, it emphasizes the opportunity to benefit from five shared values identified by the chapter presidents and the leadership of the four Greek councils on campus—the Interfraternity Council (IFC), the Multicultural Greek Council (MGC), the National Pan-Hellenic Council (NPHC) and the Panhellenic Conference (PHC). Those shared values are service, scholarship, siblinghood,<sup>1</sup> leadership, and cultural awareness.

The Report clearly states the expectations and assumptions of the Task Force. Included among its eight expectations are a desire to ensure that Greek life on campus should be “open to all students regardless of race, religious affiliation, color, creed, national origin, sexual orientation, marital status, physical disability and other characteristics protected by state or federal law.” Additionally, the University should continue to “vigorously embrace its students’ rights to the legitimate freedom of expression, speech and association” while recognizing that the Student Code of Conduct represents the bare minimum of acceptable behavior and expects Greek life’s commitment to adhere to a higher standard of behavior, “not because they are required to do so, but because a commitment to a values-based Greek life dictates it.”

The report carefully analyzes the governance and organization of Greek life on campus, identifies core themes, and makes fifty-six specific recommendations in areas such as recruitment, housing, alumni, university policies and procedures, and in safety, accountability, wellness, and service. Included in those recommendations is both an increase in the staffing in the University’s

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<sup>1</sup> Siblinghood is defined by the Report as “the process of providing equitable resources, opportunities and creating an inclusive environment for co-existing in harmony and appreciation of each other while holding each other accountable.”

Fraternity and Sorority Life (FSL) Office, as well as a specific recommendation that that office “must move away from a mindset focused solely on policy compliance and embrace a philosophy of support and advocacy for all Greek councils and chapters.” Toward that end, it recognizes that doing so requires “a shift from the significant level of time and effort spent on issues related to policy enforcement, event registration, and compliance, to issues related to chapter coaching/support, community visibility, and community health.” It goes on to add that a strategic plan for that Office should prioritize “personal relationships with chapter leaders, community health, and community growth, as well as intentional partnerships with chapter advisors, national headquarters, alumni, and other stakeholders.” The Report recognizes that “the University currently has no distinct written procedures for how allegations of misconduct involving registered student organizations will be investigated and adjudicated beyond the Code of Student Conduct.” As a result, as the Report states “the process lacks clarity and consistency and is viewed as overly punitive.” It recognizes instead that the University should “develop a separate policy outlining how allegations of misconduct involving registered student organizations will be investigated and adjudicated.”

The Report specifically recommends the University stop requiring additional insurance from fraternities and sororities. It notes that no other type of student organization has that requirement and, as a result, the requirement is “unfair and unreasonable.”

Greek life itself is held to a high standard, as noted in its conduct expectations. And it specifically notes, for example, that “the Task Force learned that fraternity chapters have GPAs lower than the rest of the student population (that is not the case for sorority chapters).” The Report makes a series of recommendations, starting with the general statement that “the fraternities should

recommit to their shared community value of scholarship: the prioritizing and planning of, and responsibility for, high academic achievement as members and chapters.”

The Report is careful to include specific recommendations for assisting NPHCD and MCG organizations.

Even over the course of the year that the Task Force did its work, and before the final report was issued, the task force had a positive impact on campus. For example, three years ago, the University had committed to the establishment of an NPHC Yard that would recognize the importance of the Divine Nine, historically African-American Greek organizations. It was a promise long unfulfilled, but the Task Force, by responding to the NPHC concerns, convinced the University to fulfill that promise. Consequently, the NPHC Yard was finally completed in time for Homecoming in October 2022.

Similarly, when the Task Force learned that the Delta Zeta National Housing Foundation (“DZ”) had placed its NIU chapter house on the market, the Task Force worked with DZ and the University to reverse that decision. According to the Report, “the DZ house was taken off the market and the local DZ chapter moved back into the house for the 2022-2023 school year. The local chapter had a strong spring and fall rush and is well on its way to returning to viability.”

Overall, the Report offers a balanced approach to the need to revitalize Greek life on campus. It does so, recognizing that the Greek community has to be a part of that effort and held to high standards. Critically, what makes this Report uniquely deserving of attention, is its recommendation that a university’s relationship with Greek life is not just enforcement and discipline; it really is a partnership.

[The Report can be accessed at https://www.niu.edu/fraternity-sorority-life/\\_files/greek-life-revitalization-report.pdf.](https://www.niu.edu/fraternity-sorority-life/_files/greek-life-revitalization-report.pdf)

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**New Suit Alleging Procedural Deficiencies Filed Against USC**

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On January 4, 2023, an unidentified Petitioner, who was the former president of his fraternity at the University of Southern California (“USC” or the “University”), filed a Petition for Writ of Administrative Mandate (“Petition”) against the University and some of its employees, alleging that he was improperly expelled following the University’s mishandling of its Title IX investigation.<sup>1</sup>

The Title IX investigation began after the University received a formal complaint from a female student with whom the male student claims he had consensual sexual relations in October 2021. No criminal charges were ever filed against the Petitioner, but USC nonetheless expelled him after finding him responsible for engaging in “multiple instances of non-consensual anal penetration.”<sup>2</sup> Although the male student sought to appeal the University’s findings, his appeal was denied by the University’s Interim Vice President of Student Affairs, who is also named as a Defendant in the Petition.

A single Clery Act report was sent out to the entire USC community about both the allegations of sexual assault against an (unnamed) individual member of a fraternity, and the fraternity’s alleged misconduct (unrelated to the sexual misconduct by the former president). The Petition alleges that this prompted significant backlash from the media and community, including the publication of a statement by the University’s Undergraduate Student Government calling upon the University to take significant action against the male student and the fraternity as a whole. This

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<sup>1</sup> *Petition*, Doe v. Univ. of S. Cal., *et al*, No. 23STCP00014 (Sup. Ct. Los Angeles Cty., Jan. 4, 2023).

<sup>2</sup> *Id.* at ¶ 46.

backlash included “protests, vandalism, and open destruction of [Petitioner’s] reputation.”<sup>3</sup> However, despite claiming that the University failed to protect the Petitioner during this backlash, the Petitioner does not also allege that he ever requested from the University any supportive measures, which both parties are entitled to request under the current Title IX regulations.<sup>4</sup> Because neither the Clery Report nor any subsequent statements by University representatives mentioned the Petitioner’s individual name, it is unclear from the Petition how Petitioner plans to establish that the University’s own conduct resulted in reputational harm.

However, the Petition does present sufficient facts which, if proven true, would likely result in a court ruling in Petitioner’s favor on his general concerns regarding procedural irregularities in the disciplinary proceedings. The Petition describes USC’s process as “utterly lacking in due process,” and specifically alleges that the University’s “process failed to follow procedures provided for in the code, failed to allow and properly consider mitigating evidence...and allowed for media bias to pressure a decision that was not supported by substantial evidence.”<sup>5</sup>

It claims Petitioner was denied a fair hearing by virtue of the University’s failure to provide all relevant evidence to him prior the hearing, refusal to allow the presentation of certain impeachment evidence during the initial disciplinary hearing, denial of a request to postpone the hearing due to new evidence and/or unavailability of critical witnesses, and biased treatment of the parties by virtue of the University’s willingness to allow delays in the proceedings at the female accuser’s request.

Although this case is in its very early stages of legal proceedings, similar allegations have been successful in other cases over the last few years. For example, in 2018, the California Court

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<sup>3</sup> *Id.* at ¶ 47.

<sup>4</sup> Interestingly, supportive measures are mentioned in several of the materials Petitioner attached to his filing.

<sup>5</sup> *Id.* at \*1.

of Appeals took issue with the University of California, Santa Barbara's (UCSB) untimely disclosure of relevant evidence and selective application of evidentiary rules during its disciplinary proceedings of a student who was seeking to overturn his suspension from the school.<sup>6</sup> Ruling in the suspended student's favor, that appellate court confirmed that schools must comply with their own policies and procedures, and that students at public colleges and universities are entitled to certain constitutional guarantees, including due process and fundamental fairness in disciplinary proceedings.

The UCSB case was decided in 2018, a few years before the current Title IX regulations took effect. Today, as set forth in the recently-filed Petition, students sanctioned by schools for sexual misconduct are entitled to assert claims for violations of not only their constitutional due process rights under the Fourteenth Amendment and state law, but also of the procedural safeguards set forth under Title IX. It does not sound like USC complied with procedural requirements, which may be sufficient for a court to vacate the current expulsion and reinstate the student.

We will continue to monitor this case and report on any interesting developments as it proceeds.

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<sup>6</sup> See generally, *Doe v. Regents of Univ. of Cal.*, 28 Cal.App.5th 44 (2018).

## **Cornell University vs. New York Chapter of Phi Kappa Psi Association**

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Members of Phi Kappa Psi were part of the first graduating class at Cornell University in 1869, and for the next century and a half, the University and the Fraternity maintained a beneficial symbiotic relationship. But the consequences of an October 24, 2019, dirty rush party at the Phi Kappa Psi chapter house and the death of Antonio Tsialas, who fell to his death in the Fall Creek Gorge while apparently on his way back to his dormitory from the party, brought that relationship to an end.

The N.Y. Alpha Chapter of Phi Kappa Psi Association, Inc.,<sup>1</sup> and the University are now locked in litigation over the long-time Phi Kappa Psi chapter house known as “The Gables.” The suit filed by the Association on December 14th has five causes of action: breach of contract, breach of terms of gift, breach of duty of good faith and fair dealing, promissory estoppel, and loss of personal property.<sup>2</sup>

The Complaint that initiated the litigation carefully tracks the history of Phi Kappa Psi at Cornell and concentrates on a series of agreements that relate to the construction of the chapter house by the Fraternity.<sup>3</sup> These were entered into between the late 1950’s and the mid 1960’s, all of which ultimately resulted in the construction of The Gables and its dedication at the Cornell Homecoming in October 1998.

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<sup>1</sup> The Association is referred to in the litigation, and in some of the documents on which the litigation is based, as “Group Sponsor.”

<sup>2</sup> *New York Alpha of Phi Kappa Psi Association, Inc. v. Cornell University* is pending in the Supreme Court of the State of New York for the County of Tompkins.

<sup>3</sup> Edward Y. Crossmore, Esq., of Ithaca, New York filed the litigation on behalf of the Association.

Of critical importance is a page-and-a-half long Agreement between Cornell and the Association. That Agreement recognized that the Association had sold its prior chapter house property to the University at a discounted price, that it did so at the request of the University to support the Cornell University Residence Plan of 1958 to provide for a greater number of participating fraternities, and contained the following critical language, as quoted in the Complaint:

That the occupancy and possession of the University-owned facilities at 525 Stewart Avenue shall be *in perpetuity* upon good behavior of the priority group [the Association], and if upon the suspension or termination of said Priority Group, the Group House No. 4, being the facilities at 525 Stewart Avenue and its curtilage, shall be *reserved* for reorganization of the same Priority Group by the Group Sponsor here contracted with.

(Emphasis in original.)

According to the Complaint, as a part of a settlement related to Antonio Tsialas's death, in September of 2020 "the University's current administration took the unprecedented step of purporting to permanently revoke the recognition of Phi Kappa Psi." Arguing that "the meaning of 'in perpetuity' needs no elaboration" and that "the meaning of 'reserved' is equally clear and unambiguous," the Complaint highlights its claim that Cornell violated the Association's legal rights.

In response, the Association, attempting to exercise its rights in perpetuity to the property, proposed to lease The Gables to Cornell's veteran student population working with the Cornell Military Network and the Cornell Undergraduate Veteran's Association. The University refused to cooperate in that effort and instead placed the Cornell University Veteran's Association in a "vastly inferior, privately owned house." As the Complaint indicates, the University did so "because it had previously made a foolhardy promise to another fraternity. . .that it could take the possession of The Gables."

Just last month, the University ordered Phi Kappa Psi to remove all its personal property from The Gables. The members of the Fraternity had paid to build, renovate, and maintain The Gables to the total tune of over ten million dollars at “present-value,” according to the Complaint.

Obviously, the litigation is in its very early state, but even now there are at least two lessons to be learned. One is that the consequences of alcohol abuse, whether involving hazing or not, can result in the host institution taking drastic action to punish, not necessarily the bad actors who engaged in the misconduct, but the property owner that had nothing to do with the wrong-doing and only sought to maintain a home for future members of the Fraternity. Second, in entering into an agreement with a university to provide for the construction of housing that would be paid for by the fraternity and its members, critical care needs to be provided to ensure the protection of the fraternity’s investment. How successful Phi Kappa Psi was in doing that more than a half century ago will now be determined in court.

## Hazing Death Settlements: Serafin-Bazan and Foltz

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Sebastian Serafin-Bazan was a freshman at the University at Buffalo when, in April 2019, he passed away days after being found unresponsive in the yard of an off-campus fraternity house.<sup>2</sup> His death followed an alleged Sigma Pi hazing incident where he was ordered to perform exercises that led to physical distress and ultimately, cardiac arrest.<sup>3</sup> It is also alleged that Serafin-Bazan suffered from blunt-force injuries and ulcers in various places on his body<sup>4</sup>; no drugs or alcohol were found to be in Serafin-Bazan's system.<sup>5</sup>

In July 2020, the mother of Serafin-Bazan filed a lawsuit in the Westchester County State Supreme Court, seeking \$800,000 against UB Heights Housing LLC, four unidentified fraternity members, Sigma Pi Fraternity, the Epsilon-Omicron Chapter of Sigma Pi, the state of New York, and the University at Buffalo.<sup>6</sup> The lawsuit originally alleged that hazing caused Serafin-Bazan's death, and that the defendants "acted recklessly in failing to ensure the Plaintiff received medical attention and caused and/or contributed to his death by their reckless disregard for his wellbeing."<sup>7</sup> The Complaint also alleged that the Defendants "permitted hazing to occur and recklessly allowed the Fraternity to exist despite prior violations and suspensions as a result of prior similar conduct."<sup>8</sup>

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<sup>1</sup> Gracie Woodyard is a legal intern at Manley Burke and is a second-year law student at the University of Dayton.

<sup>2</sup> Jay Tokasz, *\$500,000 Offered to Settle Suit Over 2019 Death of UB Student in Alleged Frat Hazing*, BUFFALO NEWS, (Jan. 9, 2022), [https://buffalonews.com/news/local/crime-and-courts/500-000-offered-to-settle-suit-over-2019-death-of-ub-student-in-alleged-frat/article\\_3619d09e-8252-11ed-a90c-2b2f97c65220.html?utm\\_source=Iterable&utm\\_medium=email&utm\\_campaign=campaign\\_5893484\\_nl\\_Dail](https://buffalonews.com/news/local/crime-and-courts/500-000-offered-to-settle-suit-over-2019-death-of-ub-student-in-alleged-frat/article_3619d09e-8252-11ed-a90c-2b2f97c65220.html?utm_source=Iterable&utm_medium=email&utm_campaign=campaign_5893484_nl_Dail).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Charlie Specht, *Family of UB Student Files Lawsuit in Hazing Death*, WKBW (Aug. 24, 2020, 1:46 PM), <https://www.wkbw.com/news/local-news/family-of-ub-student-files-lawsuit-in-hazing-death>.

<sup>6</sup> Tokasz, *supra* note 2.

<sup>7</sup> Complaint at \*100, *Correa v. UB Heights Hous. LLC*, No. 57952/ 2020 (N.Y.S.C. July 31, 2020).

<sup>8</sup> *Id.*

The Complaint was amended twice: the first time involved moving the claims against the state of New York and the University at Buffalo to the Court of Claims, into a separate suit seeking \$20 million, and to name eight (8) additional fraternity members as defendants in the Westchester County case.<sup>9</sup> The second amendment to the Complaint was to add six (6) more fraternity members as named defendants.<sup>10</sup> After an investigation by the Erie County District Attorney's Office, and unlike in other recent hazing death cases in which the students involved have simultaneously faced criminal hazing charges, no criminal charges were brought against any individuals connected to this death.<sup>11</sup>

Earlier this month, Serafin-Bazan's family was offered \$500,000 to settle the wrongful death lawsuit currently pending against the non-state actor defendants (e.g. the Fraternity and individual members), but there has been no report of acceptance.<sup>12</sup>

Meanwhile, Stone Foltz's family has reached a settlement with Bowling Green State University (BGSU) to resolve its claims against BGSU following the tragic death of Stone Foltz. Specifically, BGSU will pay the Foltz family \$2.9 million dollars, which has been reported to be the largest payout by a public school in Ohio in a hazing case.<sup>13</sup>

As with Serafin-Bazan's separate case against the state actors in the NY Court of Claims, the Foltz's had filed a separate cause of action against the public university in Ohio's Court of Claims, and that is the case for which the \$2.9 million settlement pertains. However, unlike in the Serafin-Bazan matter, eight (8) individuals were either convicted or pled guilty to various criminal

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<sup>9</sup> Tokasz, *supra* note 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Sheridan Hendrix, *Bowling Green State University Settles Hazing Suit with Stone Foltz's Family for Record \$2.9M*, COLUMBUS DISPATCH (Jan. 23, 2023, 2:46PM), <https://www.dispatch.com/story/news/education/2023/01/23/stone-foltz-hazing-lawsuit-settlement-with-bowling-green-state-university-bgsu/69828757007/>.

charges related to Foltz's death. This settlement with BGSU does not impact the remaining claims in the Foltz's *other* civil case, which is still pending against several individual fraternity members. Pi Kappa Alpha has already settled with the Foltz family and therefore was dismissed from the case last year.

Rex Elliott, the attorney representing the Foltz family in the civil cases, called the settlement representative of a "historic day in the battle to end hazing."<sup>1</sup> He also proclaimed that "Greek organization will not survive if hazing doesn't come to an end,"<sup>2</sup> a sentiment that certainly does not fall on deaf ears.

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<sup>1</sup> *Id.*

<sup>2</sup> Associated Press, *Family Gets Nearly \$3M Settlement in Hazing Death Lawsuit*, TV6 (Jan. 24, 2023, 1:40AM), <https://www.uppermichiganssource.com/2023/01/24/family-gets-nearly-3m-settlement-hazing-death-lawsuit/>.

## **“We’ve Got You Covered” – Qualified Immunity Provides Protection to University’s Title IX Investigators**

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On December 22, 2022, the Kentucky Court of Appeals reaffirmed the protection of university employees and officers performing investigations of misconduct, such as Title IX investigations, under qualified immunity.<sup>2</sup>

Loandrea Dahmer was a student at Western Kentucky University (WKU) and an active participant in the Student Government Association (SGA).<sup>3</sup> Upon her election to president of the SGA during the 2017-2018 school year, Dahmer and other female members experienced “disrespect and hostility” from numerous male SGA members.<sup>4</sup> Initially, this involved several male members’ refusals to call female leaders by their titles, as well as continuous interruptions by the males when females were speaking.<sup>5</sup> Dahmer eventually brought up these issues to WKU’s Coordinator of Sexual Assault, but Dahmer declined to make a formal complaint. However, Dahmer did request that WKU’s Coordinator of Sexual Assault speak with the SGA regarding Title IX.<sup>6</sup> Shortly thereafter, WKU’s Assistant General Counsel and Title IX coordinator reached out to Dahmer regarding any potential inappropriate gender-based behavior she experienced, but Dahmer failed to respond.<sup>7</sup>

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<sup>1</sup> Haellie Gordon is a legal intern at Manley Burke and is a second-year law student at the University of Cincinnati.

<sup>2</sup> *Dahmer v. W. Ky. Univ.*, No. 2021-CA-1244-MR, 2022 Ky. App. Unpub. LEXIS 757 (Ct. App. Dec. 22, 2022).

<sup>3</sup> *Id.* at \*1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at \*2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at \*2–3.

In the following months, the misconduct escalated, as male members began making gender-based comments towards Dahmer, derogatory and hostile messages about Dahmer circulated among male SGA members, and several SGA members attempted to impeach Dahmer and another female executive board member.<sup>8</sup> It was not until February 2018 that this misconduct was officially reported via a formal complaint to WKU's Title IX Office.<sup>9</sup>

During this time, Dr. Charles L. Pride, who was also WKU's Director of Student Activities, Organizations, and Leadership, oversaw the SGA. When Dahmer sought Pride's help with the ongoing mistreatment she endured, Pride acted protectively of the male SGA members and made inappropriate comments to Dahmer while in his office.<sup>10</sup> Pride's misconduct was also reported as part of Dahmer's formal Title IX complaint.

WKU's investigation ultimately found no violation of Title IX, but did find violations of the University's Student Code of Conduct, and that Pride acted inappropriately. Based on these findings, the students were forced to resign from their SGA positions, and Pride stepped down from his role as faculty advisor to the SGA.<sup>11</sup>

In August 2018, Dahmer filed an action alleging WKU violated Title IX and 42 U.S.C. § 1983 in its handling of her harassment claims, along with several claims against WKU employees individually. The Court found that (1) WKU was not subject to liability under 42 U.S. § 1983; (2) the individual WKU employees were entitled to qualified immunity for discretionary acts involving the enforcement of Title IX; and (3) Dahmer failed to show that Pride violated a clearly

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<sup>8</sup> *Id.* at \*3–4.

<sup>9</sup> *Id.* at \*4.

<sup>10</sup> *Id.* at \*1–2.

<sup>11</sup> *Id.* at \*4–5.

established constitutional right. Dahmer has since filed an appeal, which is pending before the Sixth Circuit Court of Appeals.<sup>12</sup>

In March 2021, Dahmer filed a very similar, but separate, action in the Warren Circuit Court, asserting a variety of claims against WKU, WKU's President (Caboni), WKU's Assistant General Counsel and Title IX Coordinator (Anderson), and Pride. In September 2021, the trial court granted the Defendants' motion for summary judgment and dismissed Dahmer's claims against WKU and the individual employees. Dahmer then appealed the dismissal of her negligence claims against Caboni, Anderson, and Pride individually. Dahmer's main argument was that the trial court erred in finding the Defendants were entitled to qualified immunity.<sup>13</sup>

On appeal, the Kentucky Court of Appeals affirmed the trial court's decision. Determining the applicability of qualified immunity to the named defendants boiled down to whether the employees were performing *ministerial duties* or *discretionary acts* by conducting Title IX investigations. Ministerial duties include those acts that do not involve the employee's own judgement and ultimately give the employee "no choice but to do the act."<sup>14</sup> Discretionary acts, on the other hand, are considered "good faith judgement calls made in a legally uncertain environment and involve personal deliberation, decision, and judgement."<sup>15</sup>

While Dahmer insisted that the enforcement of Title IX is merely a "ministerial duty," as it only requires an application and enforcement of established policies, the Court did not find this argument to be persuasive.<sup>16</sup> Instead, the Court held the investigation process involved far too much discretion in the initiation, investigation, and final judgment to be considered ministerial.

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<sup>12</sup> *Id.* at \*5.

<sup>13</sup> *Id.* at \*6–7.

<sup>14</sup> *Id.* at \*10.

<sup>15</sup> *Yanero v. Davis*, 65 S.W.3d 510, 522 (Ky. 2001).

<sup>16</sup> *Dahmer*, 2022 Ky. App. Unpub. LEXIS at \*12.

The Court concluded that “the enforcement of general supervisory duties is often considered a discretionary function, *particularly where the school officials are only responsible for investigating misconduct when brought to their attention.*”<sup>17</sup>

The Court noted there was no evidence that any Defendant knew what occurred in SGA prior to the February 2018 report. Further, despite Anderson being aware of potential issues within SGA, the Court agreed that there was no direct reason to investigate until the February 2018 complaint, reaffirming the discretionary nature of the investigative process.<sup>18</sup>

This case provides clarity as to what constitutes a “discretionary act” within higher education, and consequentially, where the limits of qualified immunity lie. These are important distinctions for fraternal organizations and their members to note, especially in the context of Title IX investigations that are considered “discretionary.”

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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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<sup>17</sup> (Emphasis added.) *Id.* at \*13.

<sup>18</sup> *Id.*