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Proposed Antihazing Law Imposes New Requirements for Enforcement and Reporting by Educational Institutions

by Michael D. O'Mara and Adam J. Pettit

Last week the Senate took a step closer to changing Pennsylvania law when it unanimously approved the proposed Timothy J. Piazza Antihazing Law, which would see a comprehensive rewrite of the state's rules on hazing liability. Pennsylvania's current law prohibits hazing by a "person," which is punishable as a misdemeanor, and requires that educational institutions adopt a written policy and rules that prohibit hazing. The proposed legislation on its way to the House for consideration would expand liability to "organizations" and "institutions" for injuries or deaths caused by hazing on or off campus and impose new disclosure obligations on schools. We previously highlighted the balance colleges, universities and other schools must maintain between their ability to discipline student conduct when imposing off-campus discipline (<https://www.stradley.com/insights/publications/2018/04/education-alert-april-16-2018>) and their overall obligation to supervise, so as not to assume a broader duty over its students. This proposed antihazing bill raises new important questions, not the least of which is its impact in potentially extending the reach of a school's responsibility, and therefore its liability, beyond the four corners of the campus.

In reaction to the tragic death of a Penn State University student and the recent dismissal of the most serious charges brought against the 11 fraternity brothers being prosecuted for Timothy Piazza's death, including felony aggravated assault and involuntary manslaughter, the Timothy J. Piazza Antihazing Law would establish a more expansive, tiered system for grading hazing offenses with increased penalties for hazing acts that result in someone's injury or death. The proposed legislative changes are intended to provide flexibility to prosecutors addressing hazing offenses. Hazing that injures someone would be a misdemeanor carrying a punishment of up to one year in jail, while an incident resulting in severe injury or death would be a felony punishable by up to seven years' incarceration. For the first time, crimes of "organizational" and "institutional" hazing would also be established. For example, "organizational hazing," which carries exposure of felony charges and the forfeiture of assets involved in the hazing, would reach a broad range of "organizations" including not only fraternities, sororities, clubs, associations and other social groups, but also their affiliated national or international organizations. Schools, on the other hand, would be subject to charges of "institutional hazing" and punishable with fines up to \$15,000 for each hazing violation. The proposed bill also would require schools to have policies and procedures in place designed to prevent hazing and inform students and their parents of hazing activity on and off campus.

A critical question for institutions of education is whether these enforcement and disclosure obligations could expand the scope of their duty of care to students off campus. The proposed legislation includes a mandate that schools impose discipline for off-campus hazing incidents, rather than the mere ability to do so. Schools would be required to adopt a

written policy against hazing and rules prohibiting students or other persons associated with an organization operating under the school's recognition from engaging in hazing. Critically, such a policy must be applied to hazing conduct which **occurs on or off campus or school property**. Beginning with the 2018-2019 academic year, schools would have to maintain a report of all violations of their antihazing policy or federal or state laws relating to hazing that are reported to campus authorities or local law enforcement. An initial report would then have to be posted on the school's website by Jan. 15, 2019, and updated biannually thereafter. Each report would have to include, among other things, the date the school initiated its investigation and a general description of the incident, the findings, and if applicable, any sanctions or charges levied.

We previously reported that courts have declined to broaden a school's duty of care for off-campus incidents based on the mere fact that its code of conduct reaches off-campus behavior. However, where compelling facts exist, courts might revisit this majority view in light of the broadened obligations imposed on schools by the proposed legislation. If the bill is passed, its new requirements would add a layer of complex requirements, and it would be important for administrators to seek counsel as they implement and administer the new mandates.

A complete copy of the Senate-approved bill can be found here (<http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?sYear=2017&sInd=0&body=S&type=B&bn=1090>).



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