



Hazing Bootcamp January 21, 2022



Bricker & Eckler
ATTORNEYS AT LAW

Our Speakers



Jessica Galanos



Joe Hall



Kasey Nielsen

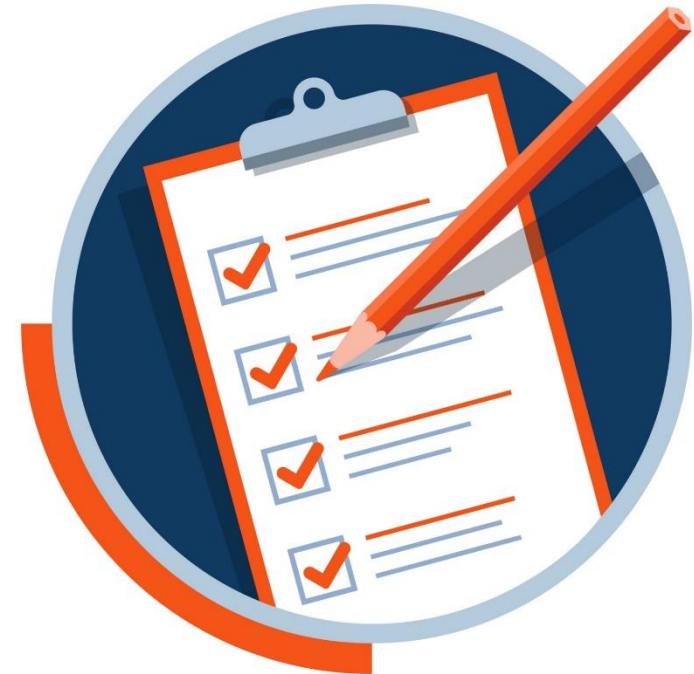
Disclaimer



- We are not giving you legal advice. Consult with your legal counsel regarding how best to address a specific situation.
- Use chat function to ask general questions and hypotheticals.
- We have a variety of stakeholders here, so keep that in mind!
- If you registered using your email, you will get a copy of the slides. Watch for “Thank You For Attending” email.

Today's Agenda

- Context
- Collin's Law Overview
- Best practices for addressing a report of hazing on your campus
- Investigative tools for obtaining information
- Practice with hypothetical report of hazing
- Drafting investigative reports



Context: Student Data



Hazing in View: College Students at Risk, Initial Findings from the National Study of Student Hazing, E. Allan & M. Madden (2008)

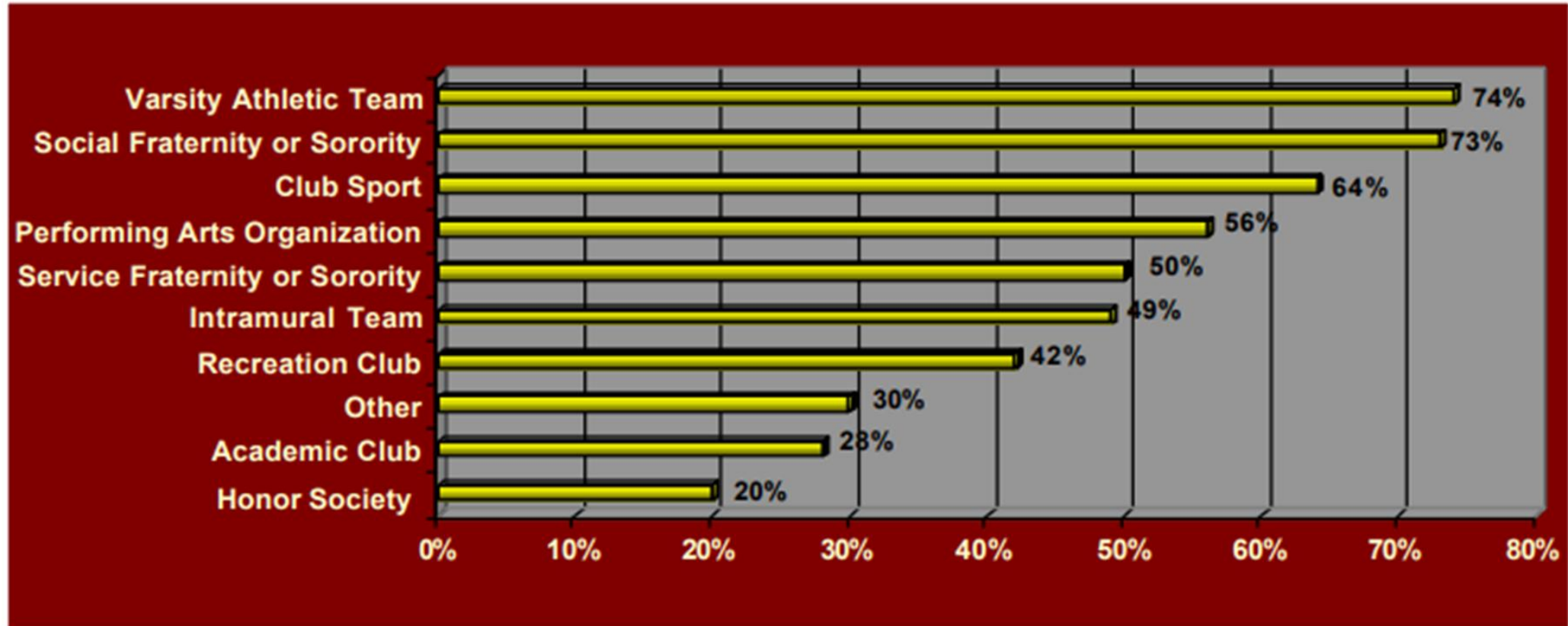
- A survey of 11,482 students at 53 post-secondary institutions
- Perceptions about hazing on their campus
- Awareness of institutional hazing policies
- Consequences of hazing; and
- Experiences with hazing prior to college.
- www.stophazing.org

Finding 1: 55% of college students involved in student organizations experienced hazing



- **55%** of respondents report they had experienced at least one behavior that meets the researcher’s definition of hazing
- **61%** of male respondents and **52%** of female respondents experienced behaviors that met the definition
- ***“Hazing is an activity expected of someone joining or participating in a group that humiliates, degrades, abuses, or endangers them regardless of the person’s willingness to participate.”***

Hazing Reported by Type of Organization



* Other includes religiously-affiliated organizations, culture clubs and organizations, and student government.

Common Hazing Practices

Male Membership



Table 4. Most Frequently Reported Hazing Behaviors: Male Membership Experiences

Participate in a drinking game	31%
Sing or chant by self or with select others of groups in public in a situation that is not a related event, game, or practice	19%
Drink large amounts of alcohol to the point of getting sick or passing out	17%
Be screamed, yelled, or cursed at by other members	16%
Associate with specific people and not others	14%
Deprive yourself of sleep	13%
Be awakened during the night by other members	12%
Drink large amounts of a non-alcoholic beverage	13%
Perform sex acts with opposite gender	10%
Endure harsh weather conditions without appropriate clothing	9%
Attend a skit or roast where other members of the group are humiliated	9%

(N=3,462)

Common Hazing Practices

Female Membership

Table 5. Most Frequently Reported Hazing Behaviors: Female Membership Experiences

Participate in a drinking game	23%
Sing or chant by self or with select others of groups in public in a situation that is not a related event	16%
Associate with specific people and not others	10%
Deprive yourself of sleep	10%
Drink large amounts of alcohol to the point of getting sick or passing out	9%
Be awakened during the night by other members	7%
Drink large amounts of a non-alcoholic beverage	7%
Be screamed, yelled, or cursed at by other members	6%
Get a tattoo or pierce a body part	5%
Wear clothing that is embarrassing and not part of a uniform	5%

(N=5,590)

Finding 2: Common hazing practices include alcohol consumption, humiliation, sex acts

How might hazing intersect with other policies and concerns for your campus?

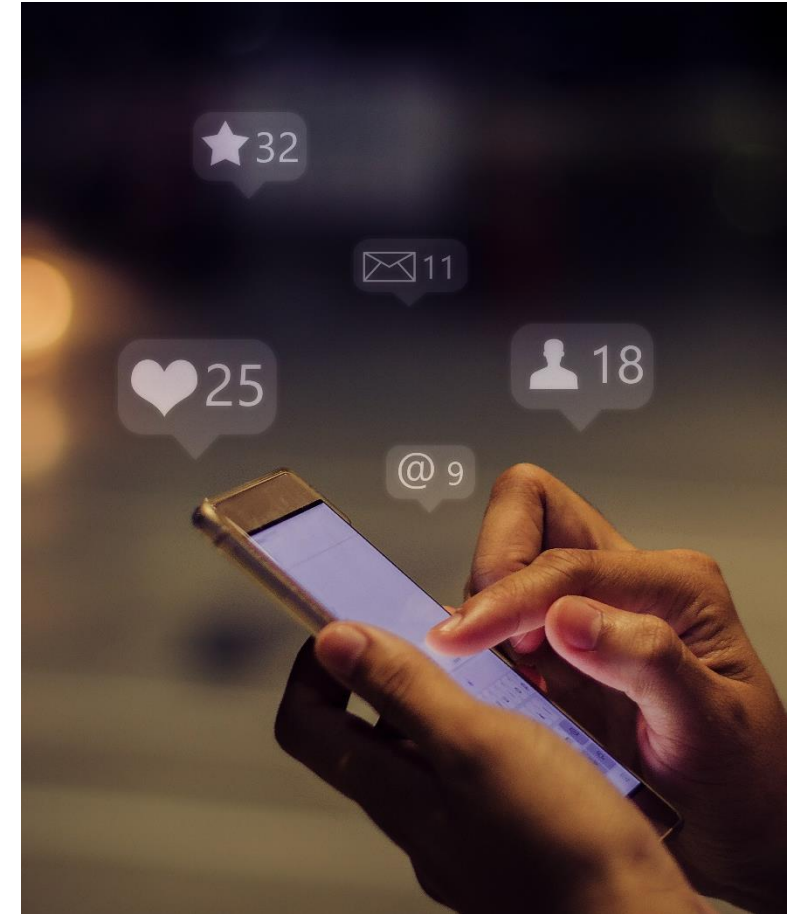


Finding 3: Knowledge of hazing extends beyond the student groups (1 of 3)

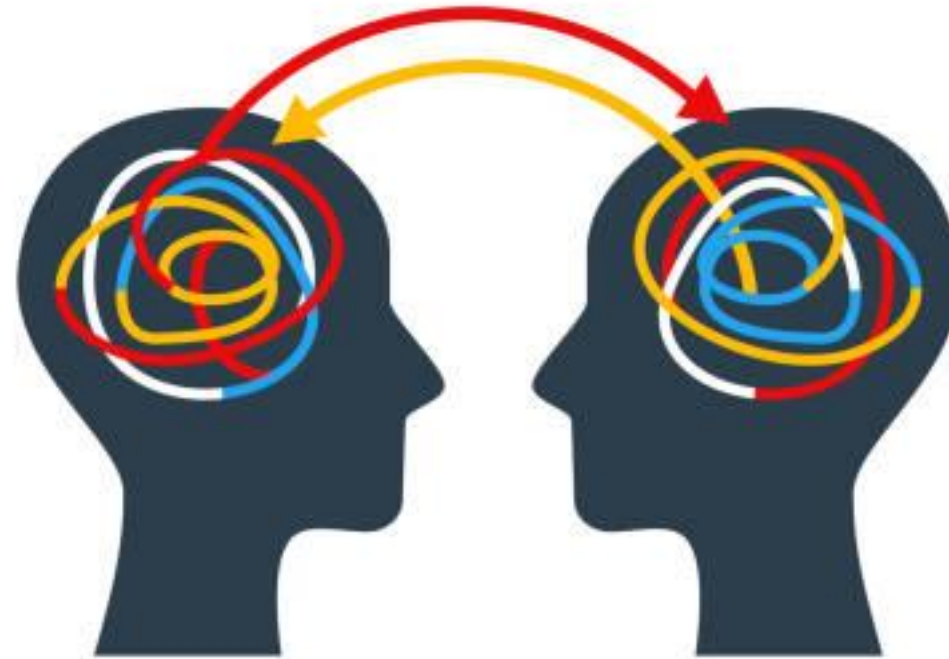
- **25%** of students who reported experiencing hazing behavior stated that the ***hazing occurred in a public place on campus***
- Nearly **50%** indicated hazing occurred **during the day**
- The majority of hazing behaviors occurred off campus (**57%**)
 - 11% of the off-campus hazing activity occurred in a public space while 46% occurred in a private space off campus.

Finding 3: Knowledge of hazing extends beyond the student groups (2 of 3)

- 25% of students believed *coaches and/or advisors were aware of the activities*;
- 25% of hazing experiences, students reported that *alumni were present*;
- 53% of respondents say a member of their team or organization *posted photos of the hazing activity to a public website* (Facebook) and
- 42% report *posting the hazing photos*



Finding 3: Knowledge of hazing extends beyond the student groups (3 of 3)



Agents/Employees
Knowledge

=

Institutional
Knowledge

Collin's Law (SB 126) Background



- Named for Collin Wiant, a freshman student at Ohio University who died of asphyxiation in 2018 after inhaling nitrous oxide and collapsing at a fraternity house.
- Collin's parents worked with lawmakers to pass anti-hazing legislation, but those efforts initially failed.

Background (cont.)



- In March 2021, Stone Foltz, a sophomore student at Bowling Green State University, died of alcohol poisoning after he was allegedly required to drink a full bottle of alcohol in order to join a fraternity.
- Collin's Law eventually received unanimous approval from both the Ohio House and Senate.
- Signed into law by Governor DeWine on July 6, 2021.
- Effective date: Oct. 7, 2021

Collin's Law: The Ohio Anti-Hazing Act



Effective Date: October 7, 2021

(134th General Assembly)
(Amended Substitute Senate Bill Number 126)

AN ACT

Full text of
Senate Bill 126
can be found
[here](#).

To amend section 2903.31 and to enact sections 2903.311, 3333.0417, and 3345.19 of the Revised Code to enact Collin's Law: The Ohio Anti-Hazing Act with regard to hazing policies at colleges and criminal prohibitions against hazing.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 2903.31 be amended and sections 2903.311, 3333.0417, and 3345.19 of the Revised Code be enacted to read as follows:

Sec. 2903.31. (A) As used in this section, "~~hazing~~";

(1) "Hazing" means doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization or any act to continue or reinstate membership in or affiliation with any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person, including coercing another to consume alcohol or a drug of abuse, as defined in section 3719.011 of the Revised Code

Florida – “Andrew’s Law”



§ 1006.63 Fla. Stat.



- Effective 2019 – Hazing was made a felony
- Law overhauled in response to the death of Andrew Coffey, a Florida State University Student
- As we work through Ohio law, we’ll compare to Florida’s law


Expanded Definition of Hazing



Old Anti-Hazing Statute	Collin's Law
<p>“doing any act or coercing another, including the victim, to do any act of initiation into any student or other organization that causes or creates a substantial risk of causing mental or physical harm to any person.”</p>	<p>PLUS acts of hazing intended to “continue or reinstate membership in or affiliation with any student or other organization,” and specifies that <u>hazing includes coercing others to consume alcohol or drugs</u></p>
Ohio Revised Code, § 2903.31(A) and (D)	Ohio Revised Code, § 2903.31(A)(1)



What is prohibited? What is the penalty? (1)


	Prohibited	Who	Penalty	Cite
	Reckless participation in hazing	Any person	Second degree misdemeanor	Ohio Revised Code, § 2903.31 (B)(1) & (D)
	Recklessly permit hazing	Administrators, employees, faculty, <u>teachers, consultants, alumni, volunteers</u>	Second degree misdemeanor	Ohio Revised Code, § 2903.31 (B)(2) & (D)


90 days in jail and/or fine of \$750

What is prohibited? What is the penalty? (2)

Hazing + “coerced consumption of alcohol or drugs of abuse resulting in serious physical harm to that person” = More **SEVERE** penalties

	Prohibited	Who	Penalty	Cite
	Reckless participation in hazing that includes coerced consumption resulting in serious physical harm	Any person	Third degree felony	Ohio Revised Code, § 2903.31 (C)(1) & (D)
	Reckless permit hazing that includes coerced consumption resulting in serious physical harm	Administrators, employees, faculty, <u>teachers, consultants, alumni, volunteers</u>	Third degree felony	Ohio Revised Code, § 2903.31 (C)(2) & (D)



**Prison sentence
and/or fine of \$10,000**

Full chart on what is prohibited by Collin's Law

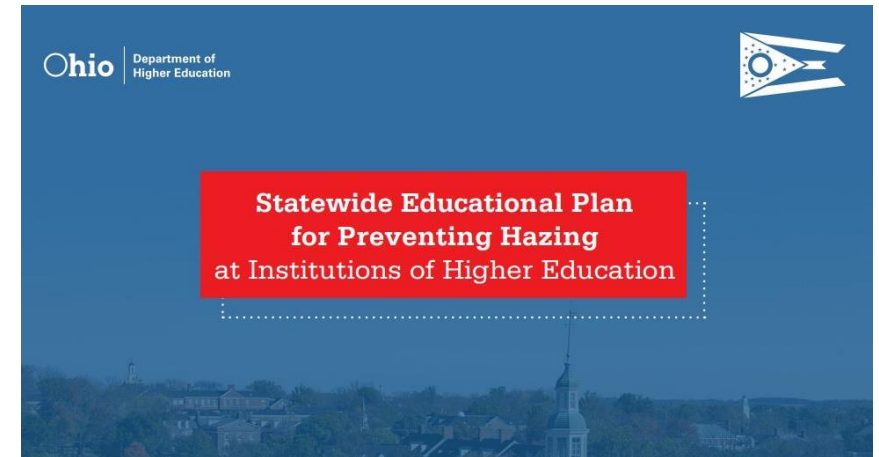


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ODHE Statewide Educational Plan for Preventing Hazing

Includes:

- A model anti-hazing policy
- A list of comprehensive policy components that are not required by Collin's Law, but may be helpful in creating a comprehensive policy
 - Ex: Amnesty to those who report hazing
- Guidelines regarding anti-hazing education and training for students enrolled at the institution, administrators, faculty members, and individuals employed by an institution, and organizations recognized by, or operating under the sanction of, an institution



Click [here](#) for the link

Training/Education Req'd by Collin's Law



Ohio Revised Code § 3345.19(E)(1) and E(2)

(E)(1) Each institution shall provide students with an educational program on hazing, which shall include information regarding hazing awareness, prevention, intervention, and the institution's policy developed under division (B) of this section. The educational program may be conducted in-person or online. The institution must offer at least one opportunity for students to complete the program during a new student orientation session. Each institution shall verify each student's attendance at the program. Each institution shall prohibit a student who does not attend the program from participating in an organization recognized by or operating under the sanction of the institution until the student attends the program. An organization shall not accept or initiate any person who has not attended the program.

(2) Each institution shall provide all staff and volunteers that advise or coach an organization recognized by or operating under the sanction of an institution and who have direct contact with students with mandatory training on hazing, which shall include information on hazing awareness, hazing prevention, and the institution's policy adopted under division (B) of this section.

Training/Education Req'd By Collin's Law *Students*

Ohio Revised Code § 3345.19(E)(1)

Requirements

- In-person or online
- At least on opportunity during new student orientation
- Student attendance must be tracked by the institution
- Institutions SHALL prohibit students from participating in an organization until the student completes this training



Subject Matter

- Hazing awareness
- Prevention
- Intervention
- Hazing policy adopted in compliance with Collin's Law

Training/Education Req'd By Collin's Law *Staff & Volunteers*

Ohio Revised Code § 3345.19(E)(2)

“All Staff and Volunteers”

- “that advise or coach an organization recognized by or operating under the sanction of an institution and
- Who have direct contact with students”



Subject Matter

- Hazing awareness
Hazing Prevention
Hazing policy adopted in compliance with Collin's Law

Remember that certain prohibitions apply more broadly to administrators, employees, faculty members, teachers, consultants, alumnus, or volunteer of any organization

Collin's Law and Reporting Hazing Violations

Starting next year (2022-23 academic school year), institutions will be required to maintain a report of all violations.

WHAT

- ✓ Name of subject
- ✓ Date of when subject was charged with violation
- ✓ Description, investigation & findings, penalties
- ✓ Date matter was resolved
- ✗ **No PII, subject to FERPA**

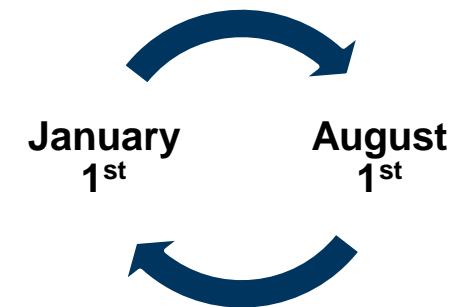
WHERE

- Institution's website



WHEN

- Initial report: **January 15, 2023** (*reports of past 5 years*)
- Subsequent reports:



Florida Law Only – Defenses



Not defenses:

- “The student consented to the hazing”
- “It wasn’t *technically* an official organization event”
- “Death wasn’t required for membership”

Actual defenses:

- “I was there, was the first person to call 911, and I waited for the ambulance, and cooperated when help arrived.”
- “I rendered aid to the victim before help arrived.”

Best Practices for Addressing Reports of Hazing



Be Prepared



Be Quick



Be Transparent



Be Flexible



Be Cooperative





Be Prepared

Reporting System

- Develop a strong and centralized reporting system
 - Remember, training compliance and reported violations must be tracked
 - Should the person/office responsible for tracking also be the office that receives reports of hazing activity?
 - Will vary by institution
 - Use hotlines and other anonymous reporting systems
 - Is retaliation prohibited by your policy?
 - Not req'd by Collin's Law, but a recognized Comprehensive Policy Component by ODHE
 - Communicate the availability of anonymous reporting and anti-retaliation provisions





Be Prepared *Stakeholders*

- Work with Stakeholders Ahead of time

Student Conduct
Offices/Student
Activity Offices

Fraternity and
Sorority Life

Athletics

Human
Resources

Alumni

Local Law
Enforcement

Title IX

Confidential
Resources/
Counseling

General Counsel

Communications/
Public Relations



Be Prepared

Identify Your Process

- How will reports be addressed?
 - Collin's Law requires that Universities adopt a policy that prohibits hazing and includes "a method to enforce the policy"
 - Will this be treated as student conduct/student organization conduct matter? Or another process?
 - Right to an advisor? If so, are there any limitations on who that might be?
 - If you had to explain the steps of your process to someone unfamiliar with your campus, could you do it?
 - Be consistent
 - Create a flowchart or step-by-step process in your policy
 - Publicize the process



Be Prepared

Identify Your Team

- Identify Your Investigators, Hearing Panel Members, etc.
 - Who is in the best position to investigate reports of hazing, generally?
 - Neutral and without conflicts of interest
 - Consider the intersection with other types of cases
 - Ex: Could this be a Title IX matter? Refer to trained Title IX investigators
 - Ex: Civil rights matter? HR matter? Consider a joint investigation
 - Consider the types of cases that should be handled externally
 - Claims of institutional bias or cover-up
 - Large or complex investigations
 - Conflicts of Interest





Be Quick

Notify Law Enforcement

- Evaluate for law enforcement involvement
 - Possible felony behavior? Mandatory report in OH
 - Violation of the “Hazing” definition in Collin’s Law?
 - **“No administrator, employee, faculty member, teacher, consultant, alumnus, or volunteer** of any organization, including any primary, secondary, or post-secondary school or any other public or private educational institution, who is **acting in an official and professional capacity** shall recklessly fail to **immediately report** the knowledge of hazing **to a law enforcement agency** in the county in which the victim of hazing resides or in which the hazing is occurring or has occurred.” Ohio Revised Code 2903.311(B)
 - When in doubt – report to local law enforcement

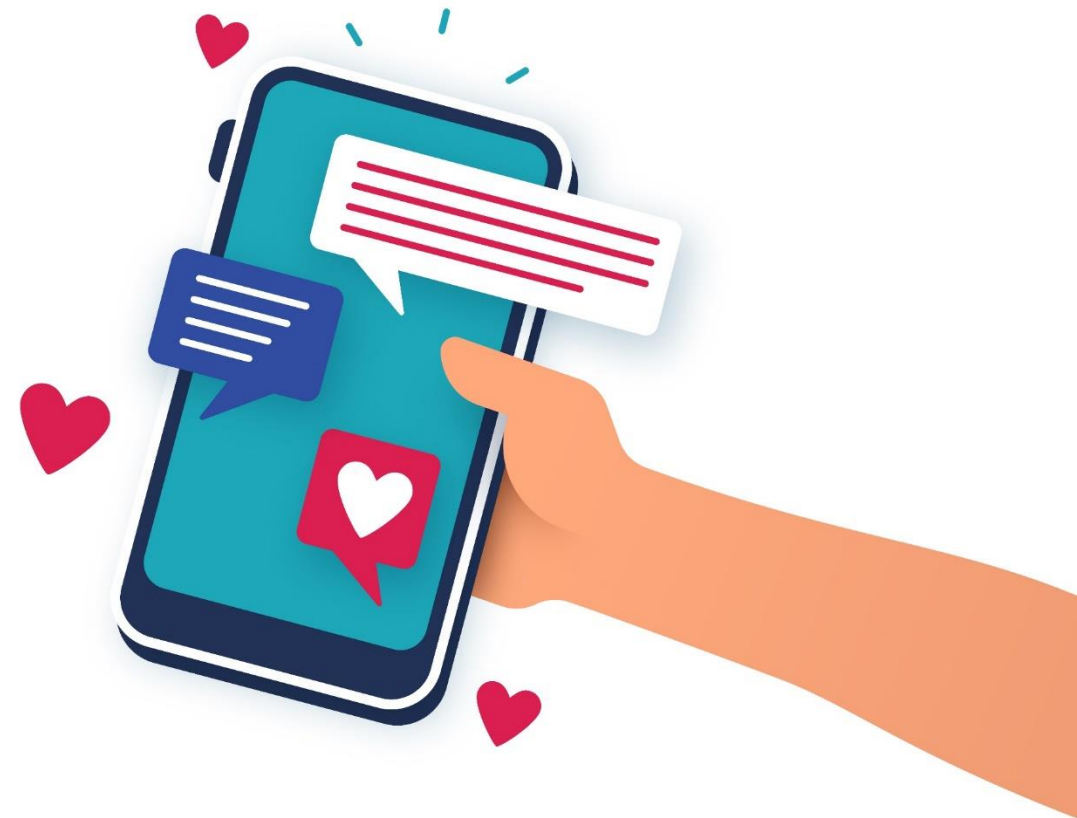




Be Quick

Think about Evidence

- What evidence may exist, and who should be collecting it?
 - Forensic evidence
 - Social media posts, videos
 - Text messages, Snapchat, Phone call records





Be Quick

Identify and Contain

Who has relevant information?

In what form?

What about large scale interviews in a contained environment?





Be Quick

Identify and Contain (cont.)

- Large scale interviews in a contained environment
 - Can we ask all members of the relevant organization to...

- attend a single meeting?
- refrain from using their phones during interviews?
- show us their social media, text messages, group chats, etc.



- What does cooperation/non-cooperation mean under your institution's policies?
- **Work with GC**

- allow us to search their rooms and/or private belongings?



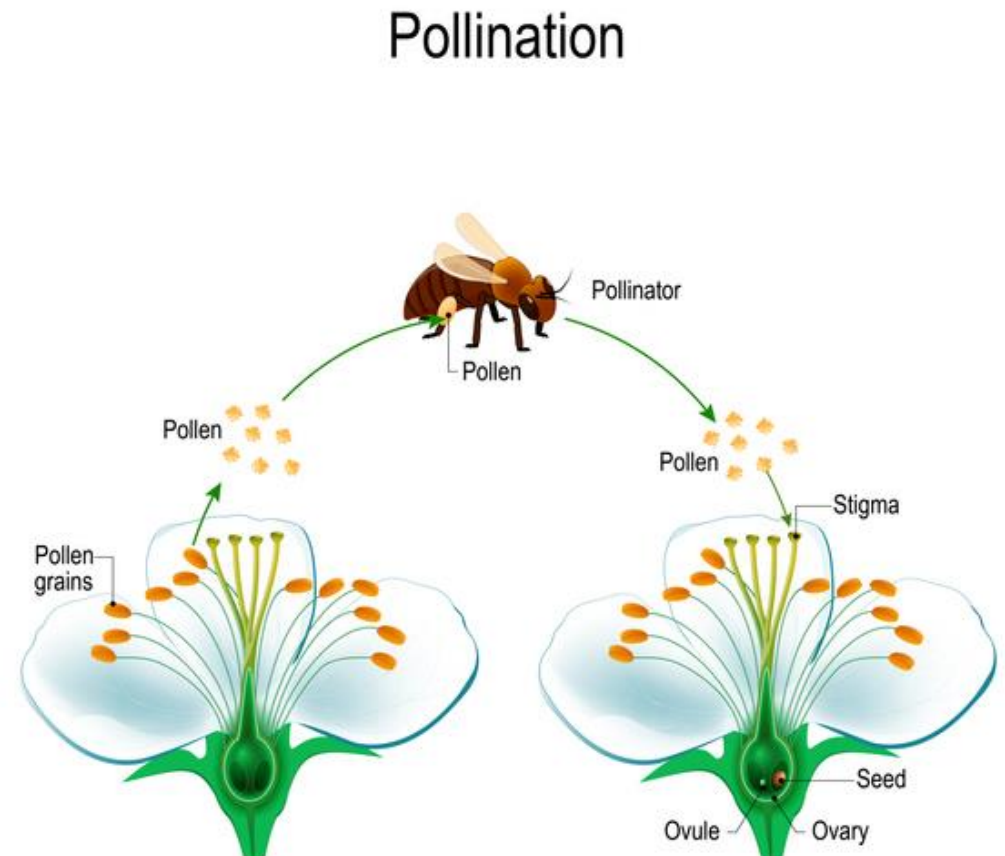
- If this is necessary – re-consider whether you need law enforcement involvement
- **DEFINITELY work with GC**



Be Quick

Prevent Cross-Pollination

- Sometimes achievable by containment efforts – but not always
- When conducting interviews, always ask who the person has spoken with about the situation
 - Who, what, where, when, why, how
 - Take screenshots of messages, if willing to share
 - Determine whether they have personal knowledge of the information they are sharing





Be Transparent

- What notice is required by your policy or typical practice?
 - To the organization and its leaders
 - To any individual student who has been accused
 - To coaches, advisors, volunteers, etc.
- Be as transparent as possible
 - Meet with organization leadership (presidents, team captains, advisors) to advise of the allegations and the process
 - If conducting large-scale interviews – this may be done at one time while all members are present
 - Building a rapport and trust early on may result in better information
 - Warn that you may be required to report criminal activity



Be Flexible

- Once the investigation starts, recognize that things may shift
 - Allegations may change
 - The approach may need to change
 - May need to wait for law enforcement clearance to proceed
 - May need to shift away from a large-scale interview session to more personalized interviews



Be Cooperative

- If working with a team, check in often to ask about trends, themes, consistencies, and inconsistencies
 - This may inform the questions you ask
 - This may suggest collusion among members
- Remember those stakeholder meetings?
 - Who can you work with to gain context, documents, better information?
 - Can you work with those stakeholders to

Investigative Tools for Obtaining Information

- Breaking the Conduct into Elements
- Plan your Investigation
- Ask Questions & Request Documents
- Document, Document, Document



Breaking the Conduct into Elements



1. Review the **definition**.

2. **Break down** the definition into elements by making a checklist.

- Make sure that each element is independent of the others. Don't put multiple elements into one, as it makes the analysis more difficult.
- Make it clear when there are multiple options for an element. For example, "Must have one of the following..."

3. Re-read the definition. Have you accounted for **all of the language** in the definition?

4. Are there any **other definitions** that should be included in your element checklist?
Examples: Student, Advisor, Initiation, etc.

Plan Your Investigation

[ELEMENT 1]

[ELEMENT 2]

[ELEMENT 3]

- What information do you already have regarding each element?
- What information do you need regarding each element?
- Are there specific questions that you should ask of specific people to address a particular element?

- Consider writing your questions out – particularly if you are working with a team
 - Ensures consistency
 - Acts as a checklist
 - BUT – be flexible and make sure to ask necessary follow-up questions!

Interviews & Requests for Evidence

(1 of 8)



- Remember how much information (if any) has already been provided to the interviewees
 - Do they know which event you'll be asking about?
 - Do they know the alleged conduct?
 - If not, be transparent where you can,
 - Without showing all your cards



Interviews & Requests for Evidence

(2 of 8)



- Inform them of the process, and their rights in the process, to build trust
- Discuss confidentiality, retaliation, amnesty (if your policy has one) and what will happen with the information they share with you
- Document all the introductory information that you share with them



Interviews & Requests for Evidence (3 of 8)



- Ask open-ended questions and go broad at first
- Elicit a monologue about the incident
- Then follow-up with details
 - Get dates, locations, ask for the spelling of names, ask to explain acronyms
 - Any time they mention a social media post, text message, Snap, video, etc., ask if they have a copy and if they will share it with you
 - Take screenshots in the interview, or
 - Ask them to send it to you via text or email while you are together

Interviews & Requests for Evidence (4 of 8)

Types of Evidence

- Electronic communications
- Security information
- Pictures, videos, audio
- Police reports
- Personnel files
- Prior complaints against the organization, student, volunteer, etc.



Interviews & Requests for Evidence (5 of 8)



Asking Challenging Questions

- Ask the question, then show them the evidence (and document that it occurred in that order)
- Lay out the contradiction for them
- “Help me Understand”

Interviews & Requests for Evidence (6 of 8)



Attempts by an Advisor to Control the Interview

- Review the role of the advisor in the policy
- Explain that you need to hear the information in the person's own voice
- Offer to take a break so the interviewee and advisor can speak freely in private
- Warn that if the advisor continues, the interview will be rescheduled and the advisor may not be permitted to return
- Consult with GC, organization leadership, other administrators

Interviews & Requests for Evidence (7 of 8)

Before concluding the interview

- Review your notes
- Review the elements of each allegation
 - Have you elicited all of the information this witness might have about each element?
 - Do you have an understanding of how the witness obtained the information they shared?
 - Have you explored whether there's been cross-pollination?



Interviews & Requests for Evidence (8 of 8)

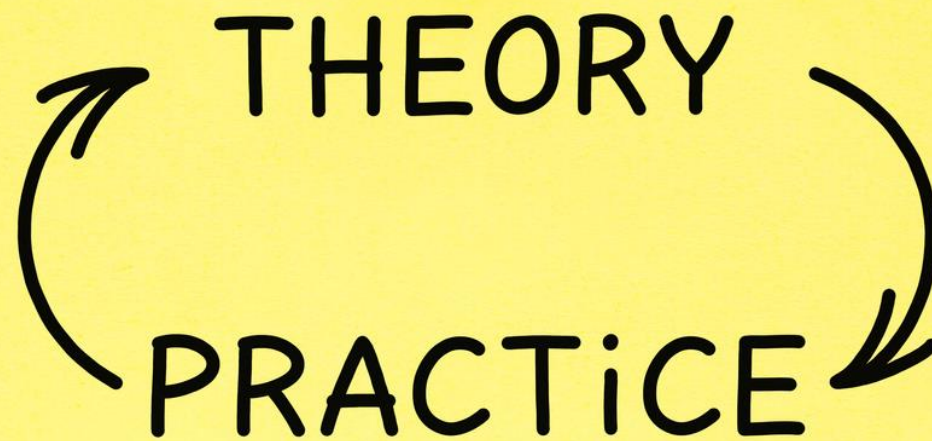
Before concluding the interview (cont.)

- Repeat back to them the information they've provided
- Ask if there is anything else they want to share
- Ask if there are any documents they want to provide



After Each Interview

- Update your co-investigators, if necessary
- Review notes, make corrections/clarifications
- Write down any questions that now need to be asked of other witnesses
- How should you document the interview?
 - Interview notes
 - A written summary of the interview
- Has anything changed with respect to your obligations to law enforcement? Allegations of misconduct?



Practice with a Hypothetical Report

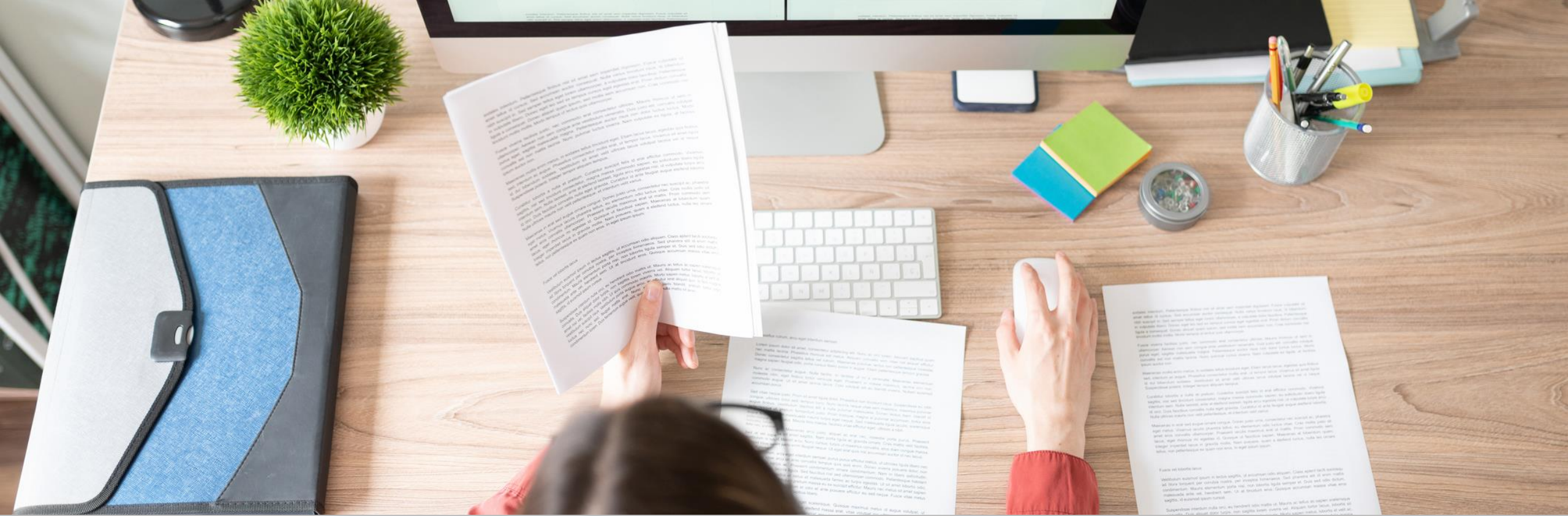


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Don't Stop Believin'

Sarah and the Soccer Team





Drafting Investigative Reports



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Create Investigative Report (1 of 4)



Follow your institution's process

- What should the report look like?
- Who receives a copy?
- Is there an opportunity for correction and/or feedback by the interviewees?
What about the individuals or organizations accused of misconduct?
- Does the investigator make any decisions? Assess credibility?

Create Investigative Report (2 of 4)



Start with Basic Information

- Who are the parties (if there are any)?
- Who investigated the matter?
- What witnesses participated?
- Did anyone decline to participate?

Create Investigative Report (3 of 4)



Natural and Neutral Suggestions for an Organized Report:

- Chronological order
- By topic or allegation
 - Perhaps by chronology within each topic or allegation
- By chronology of how the information came into the investigation
- By witness

Create Investigative Report (4 of 4)



Make sure to include:

Description of the allegations

How the complaint make its way to the investigators

The applicable definitions

Witnesses interview(s)

Witnesses not interviewed (and why not)

The procedure followed, step-by-step

Any decisions to exclude information and the rationale

Relevant documentation gathered during the investigation

Finished Product



Know what comes next

- Will your report be considered by an administrator or hearing panel?
- What happens if the report of hazing is founded?
- Collin's Law requires that your institution's policy include appropriate penalties for violations of the policy, which may include any of the following:
 - Fines
 - Withholding of diplomas or transcripts pending compliance with the rules or payment of fines
 - Revocation of permission for an organization to operate on campus or under the recognition of the institution
 - Probation, suspension, dismissal, or expulsion

Closing Thoughts



- Review your policy on hazing (if in Ohio, it should comply with Collin's Law)
- Remember that being PREPARED ahead of time will allow you to be
 - Quick
 - Transparent
 - Flexible, and
 - Cooperative when reports are made
- Report to law enforcement when necessary
- Ensure that your community is trained and your culture is NOT accepting of hazing

Next Events



- Free Webinars (all held at noon EST) – www.bricker.com/events
 - January 28th – Data Privacy and the Growing Impact of Privacy on Campus
 - February 15th – “Candid Conversations” on Black History Month
 - February 16th – NCAA Sexual Misconduct Update
 - March 24th – Clery Compliance and Enforcement
 - April 20th – Name, Image, and Likeness Update
 - May 12th – Title IX Litigation Update
- Ongoing Title IX Training Program – www.bricker.com/titleix

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