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Legal Considerations: Student Activities, Organizations & Greek Life

John Sanders

Western Kentucky University, john.sanders332@topper.wku.edu

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Legal Considerations

Sotomayor & Kagan Task Force

Student Activities, Organizations & Greek Life

THIS ISSUE

How to keep yourself and your university out of court!

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Organization Behavior & Membership

So you and a group of friends have come up with a great idea and want to start a new student organization to bring to your campus. That is awesome and we congratulate you! So how can you make this idea into a reality and what are some steps you should take to achieve a successful new organization?

Step 1: Start by visiting your student center or student activities office and they should be able to help you with the application process.

Step 2: Research about all of the opportunities and aid available for becoming a university recognized organization.

Step 3: Look into the specific bylaws that will benefit your organization.

Step 4: Consult with a university official about what regulations you may have to put into your bylaws to be accepted by the university.

Step 5: Pick a great faculty advisor that you know will help contribute to your new organization and help it to be successful.

Step 6: Turn in your application and become a university recognized organization!!

After you have become an organization, it is important to educate your new organization on your university's student rights and responsibilities bylaws. Also, set up a program that educates incoming new members about these university bylaws. This will really help with any future potential risk management violations. A great place to start with this type of education would be to ask someone from the university to give a presentation on the university bylaws, which can help set a solid foundation.



The Do's for Colleges and Universities

- ◇ Do provide quality options for clubs, activities and organizations that aid in the proper development of the student body.
- ◇ Do provide organization(s) with resources such as, facilities, personnel, technology and other program specific materials that may be needed.
- ◇ Do make organizations and students aware of the laws, policies, rights, responsibilities, and regulations that apply to them.
- ◇ Do state the laws, policies, and regulations clearly.
- ◇ Do make them easily accessible.
- ◇ Do provide resources that give the organizations an opportunity to flourish
- ◇ Do uphold institutional standards for the organizations to keep members accountable.



The Don'ts for Colleges and Universities



- ◇ Do **NOT** allow major issues or concerns to go un-addressed.
- ◇ Do **NOT** allow organizations to violate the rights, safety, and security of any person (s) involved with, or aspiring to be involved with, any campus organization.
- ◇ Do **NOT** allow organizations to engage in any actions that will probably cause negative publicity for the college or university.
- ◇ Do **NOT** allow any act(s) that would show the college or university to be negligent, resulting in legal consequences.

Clubs and Organizations

- ◇ Do make sure that the guidelines for both application and membership to said organization protect the rights, safety, and security of all parties involved.
- ◇ Do make sure that the policies and activities of the club or organization are consistent with the laws, policies, and guidelines that have been put in place by the college or university.
- ◇ Do **NOT** allow discrimination that is based on age, race, gender, ethnicity, or sexual orientation.
- ◇ Do **NOT** allow members or aspiring members of clubs or organizations to participate in club or organizational activities that will probably lead to them being harmed in any way. This will help to prevent adjudication at all levels.



Members of the Campus Student Body

- ◇ Do get involved with clubs and organizations
- ◇ Do take advantage of learning opportunities that your college or university can provide outside of the class room.
- ◇ Do report any unfair practices of members of a club or organizations that you are a member of, or hope to become a member of
- ◇ Do **NOT** participate in activities that you feel will be harmful to you in anyway.
- ◇ Do **NOT** avoid learning opportunities that take place outside of the classroom.

Contracts, Liability & Negligence



Basic Definitions

Contract

“A promise enforceable by law.”

Liability:

“A duty, obligation, debt, responsibility, or hazard arising by way of contract, tort, or statute.”

Negligence:

“The failure to meet a standard of behavior established to protect society against unreasonable risk.”

We can't always hold individuals accountable for their actions from a purely moral sense as proposed by Jean-Jacques Rousseau, hence the need for contracts. The most basic form of the modern day contract consists of two parts:

1 *Performance*

What a party agrees to do

2 *Enforcement*

Measures taken against the party should it not perform what it agreed to

3 Helpful Hints When Writing Contracts

1. Have a written copy
2. Include EVERYTHING
3. Account for unforeseen circumstances
4. Make it clear and concise

When Do Higher Education Institutes Assume Liability



Universities have to perform a risk/benefits analysis with student groups in order to determine how much liability it is willing to assume. Typically, when universities are held liable, plaintiffs claim negligence. In order to do so, the claim must pass the negligence test.

Negligence Test

1. University Owes Care

In Loco Parentis
Assumed Duty
Special Relationships
Campus as Landowner

**Injury or damage occurred on campus*
**University was aware of dangerous conditions*
**University did not act reasonably in preventing the potential for injury/damage.*

2. University breached this duty
3. This breach of duty was directly/indirectly responsible for harm caused.

Determining Liability Levels

Due to the fact that there is no clear-cut policy as to when higher education institutes are held liable, each institution has to determine when it will hold itself liable for its student organizations. There are two paradigms of thought when considering liability policy in relation to student organizations.

Give all control to student groups requiring policies that will make the university least likely to be held liable for injury or third property damage.

Recognition doesn't include acceptance of liability, sponsorship, or endorsement by the university

Student orgs shouldn't lead third parties to believe that anything opposite of the previous statement is true

If university provides financial or purchasing management services, then student orgs have to realize that they will be held accountable for fulfilling duties within those services

Faculty advisors can't be chosen by the university or serve as a university representative in any way

Strictly control all student groups, which results in a higher possibility of liability falling on the university.

Have to set firm policies for when the university will assume control for student org actions (creating a duty of care)

Must continuously enforce those regulations

Not become unnecessarily entangled in any student organization

Maintain control over organizational activities

Sexual Assault, Harassment and Misconduct on Campus



Sexual Assault, Harassment and Misconduct can be a problem on any college campus. You read and hear about cases involving students all too frequently. As an organization it is important to understand your legal responsibilities when talking about these issues.

Most universities/colleges have a student code of conduct or student handbook that outlines appropriate/expected behavior for their students. These documents usually outline steps that will be taken should there be

violations to these policies. It is important when forming your organization, you do everything possible to protect your members from any form of sexual assault, harassment and misconduct, while at the same time protecting yourself from any legal fallout that could come from such incidents.

It's very important to know your legal responsibilities as you prepare to form your organization.

"If you have knowledge, let others light their candles with it."
Winston Churchill

What is Sexual Assault, Harassment and Misconduct?

It's hard to know how to protect yourself if you don't know what you are protecting yourself from.

Harassment is defined as physical abuse, threatening comments, or intimidation of any person on University owned or controlled property or at University sponsored or supervised functions, or conduct which threatens or endangers the

health or safety of any member of the University community or any other person or persons. Such conduct includes, but is not limited to stalking, cyber stalking, harassment, and retaliation as a result of complaints or alleged misconduct.

Misconduct (Inappropriate Behavior) is defined as unacceptable or improper behavior, which can include non-consensual

sexual contact including but not limited to sexual assault or abuse, rape acquaintance rape, or sodomy.

Sexual Assault is defined as sexual intercourse or penetration (anal or vaginal) with another person by means of forcible compulsion, or with a person incapable of consent by reason of age and/or mental or physical incapacity. Physical/Mental incapacity includes, under the influence of drugs or alcohol, or otherwise unable to communicate consent.

As an organization what can you do to protect yourself?

There are some important things you need to do when forming an organization that will help to protect yourself.

- Develop a formal policy for your organization that presents a zero-tolerance policy toward any form of sexual abuse, harassment and/or misconduct.
- Educate your members about inappropriate behavior including verbal harassment and physical and sexual assault.
- Confront inappropriate behavior according to your organization's policies and constitution.



Make sure that your organization has a policy in place to address these issues.

Establishing Standards at University Events⁴



“...establish standards for alcohol use that allow for safe social interactions as an integral part of the development process.”

At Eastern Illinois University the “Guidelines for Fraternity and Sorority Use of Alcohol” has been written to assist fraternities and sororities in educating their members in the responsible use of alcohol, and minimizing the liability of the chapters and their officers. These guidelines serve as a good example for any university to establish standards for alcohol use that allow for safe social interactions as an integral part of the development process. The university’s goal is to set high standards for the students and chapter members that contribute to the quality of education available at EIU. The guidelines discuss general alcohol policies, outline types of events that allow alcohol and sets up a safe transportation plan for all Greek affiliations.

While EIU, like most colleges or universities, has campus alcohol and drug policies it is still good practice to have separate guidelines for the fraternities and sororities affiliated with the university, as they are often vulnerable to litigation concerning alcohol and/or drug offenses. The eighteen general alcohol policies cover both the possession, sale, use or consumption of alcohol and drugs, as well as the purchasing any alcoholic beverages as well. The guidelines also put restrictions on any drinking games or “hazing” activities. The university cites that Greek events are invitation-only parties and that all recruitment strategies may not include alcohol. Finally, EIU prohibits organizations from advertising events, co-sponsoring events with alcohol distributors, having unregistered events, and having events during specific times of the year (e.g. final exam week).

In addition to fraternities and sororities following the strict 18 guidelines that EIU has set forth, they must also be within the range of acceptable types of events. These include chapter parties, formals/semi-formals, date parties, BYOB events, and barn dances. Any of these events, or others that are considered on an individual basis, that involve alcohol must register with the Social Event Agreement Process. This process ensures that chapters know their limitations are being held responsible for any future complications. The responsibilities of the fraternities and sororities include maintaining a guest list, having a safe transportation plan, having two Designated Chapter Liaisons that will oversee the functions of the event and serve as sober representatives if law enforcement or emergency officials are contacted.

Additionally, to supplement the above guidelines, EIU requires Safe Transport Plans for all fraternity and/or sorority events when alcohol is present, supplemental protocol for BYOB events, and a written agreement that all responsibilities within the Third Party Vendor Checklist are in compliance. Within the overall guidelines, leaders within the fraternities and sororities must sign documentation stating that they understand their responsibilities and take full accountability if and legal issues arise as a result of their event.

While many university officials, and most Greek organizations, may cringe at this long list of necessary paperwork, I feel that it is a step toward the future of student organization events. Every year we hear about another legal case involving a crazy fraternity party that resulting in alcohol poisoning and student death. Eastern Illinois University is setting policies in place for future issues so that if the time ever comes that something terrible happens, they will not get the finger pointed back at them. Moreover, they are helping to inform the students who are traditionally the largest population of heavy drinking of the impending dangers and consequences of drug and alcohol abuse. Dissemination of the alcohol and drug policies is a practice that most colleges and universities exercise annually, but by continually reminding students and Greek Life affiliates of the penalties for violations is going above and beyond the call of duty. It shows students that the university is invested in keeping them safe and hopefully, in turn, will result in the students taking a more proactive approach when it comes to university events.

To read all of the “Guidelines to Fraternity and Sorority Use of Alcohol” visit:
<http://www.eiu.edu/grklife/12alcoholpolicy.pdf>.



University Responsibilities & Precautions⁵

There are always sources of liability that colleges and universities must be cautious of when dealing with the combination of student organizations and alcohol and illegal drug use. Below we have categorized the main issues to be aware of and how they can be controlled by university officials.

- 1) Negligence is defined as “the failure to meet a standard of behavior established to protect society against unreasonable risk” and can be broken in a number of different ways. Liability for negligence occurs where each of the following elements are met:
 - * There is a legally recognized duty or standard of care
 - * There is a breach of duty by an affirmative act or failure to act
 - * There is an injury
 - * There is a close relationship between the breach of duty and the injury
- 2) Duty, or the standard of care required, is defined differently in different states. For example, in the United States there are 8 states that do not have a Dram Shop Law—a statute that requires anyone selling or serving liquor to a drinker who is obviously intoxicated or close to it, liable to anyone injured by the drunken person or guest. If a duty, such as providing alcohol to minors, is breached then negligence is likely to follow.
- 3) Liabilities such as Dram Shop or Social Host Liabilities, can be civil as well as criminal. While it is a criminally illegal offence to provide alcohol to minors, it is also a matter of civil liability as well. While juries often decide if a breach of duty was the cause of injury, the court system is charged with determining what duty is owed to others.



It is these 3 separate sources of liability that colleges and universities must be aware of when dealing with student organizations and alcohol and drug use. It is very easy for schools to come into “special relationships” - one person takes custody of another and deprives the person of normal power of self-protection—with students and be held liable when issues arise. The ways in which colleges and universities set guidelines and policies can help them stay out of trouble, as well as keep their students safe. As alcohol and drug abuse continue to be a problem with our nation’s youth, we must continue to look for ways to protect and education the, while still covering our own bases. The governmental charge of reducing drug use is a nation-wide initiative and must be taken seriously by our community leaders.

There are many ways to prevent and educate students about alcohol and drug use but setting guidelines and policies for student activities, organizations and Greek life is paramount to protecting the university. These pockets of the student body represent the university in many ways and are ultimately tied to the schools in many ways. Events that happen within these student organizations, especially Greek life, a notorious for having and/or supplying alcoholic beverages to members and non-members alike. Because of these relationships universities must it a habit to inform organization leaders of important alcohol and drug related policies and set strict guidelines that are enforced on a consistent basis by university officials. By taking a stand against the national alcohol and drug abuse epidemic that is plaguing our youth, universities are not only helping students but are saving themselves a lot of time in court.

Steps to Take

- 1) Establish alcohol and drug policies that cover the use, possession, production, manufacture, sale, possession with intent to sell, trafficking, or distribution of one or both issues.
- 2) Outline and follow judicial procedures and consequences for staff and students.
- 3) Set requirements for student organizations to follow regarding alcohol and drugs.
- 4) Create standards for events and activities that are student run and require faculty involvement.
- 5) Follow rules of negligence so you don’t have to go to court!

Hazing



Basic definition:

Any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization -KRS 164,375

Each university has their own unique definition to hazing, please reacquaint yourself with this definition to better determine if hazing is happening on your campus.

Organizations on campuses all across the U.S. are requiring new members to perform de-meaning and often times dangerous tasks in order to gain membership into their respective chapters.

As student affairs professionals it is your charge to insure that these acts do not take place on your campus.

Organizations and involvement within them is still one of the best ways to help develop our students .

Signs that hazing is occurring::

- Required "greeting" of members in a specific manner when seen on campus .
- Required carrying of certain items (such as pledge pins).
- Appearance of sadness or expressions of inferiority.
- Changes appear in his sleep-ing and eating patterns.
- A drop in Academic perfor-mance .

What is our liability?

Universities throughout history have no carried burden of care for their students. Within the past twenty years the Supreme

Court has started to change their views on these types of issues, adopting a mindset that if you set out a anti-hazing policy, it is your duty to protect students to the best of your ability.

"If you properly enforce and demonstrate a dedication to your universities hazing policy, you will be protected for legal ramifications"

Proper risk management training for university organizations can go a long way to protecting yourself from civil lawsuits.

These students do not understand the risk and implications that they are involved with when they participate in hazing activities.

A continuous reminder of the university code of conduct and the potential loss of scholarships and academic standing can go a long way to deter participating in these events.



Changing a Culture

To effectively stop hazing on your campus, it is important to change the culture that these organizations were brought up in.

Many of the ideas behind the hazing activities are valuable lessons, that have been delivered in a way that does not promote the actual practice of these lessons.

Reasons Organizations Haze:

- Tradition
- Reality Checks
- Personality Transformation
 - Unity
 - Respect
- Building relationships stronger than friendships

Teaching students in leadership roles to reevaluate their value system and to come up with a more workable system of achieving these values can go a long way towards ending the fight against hazing.

There is no perfect way to stop hazing on a campus, as student affairs professionals of this generation, this is one of the tasks we have been charged with finding and answer for, so let us stop hazing.



Organization Behavior and Membership

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