Hazing is often thought to be a university sports and Greek life problem, and bullying is often thought to be a grade school problem, but both occur at every level and within many different types of organizations. Hazing is common in schools, colleges, universities, sports leagues, youth organizations, and even in military settings. Bullying is similarly common and has only been amplified with the explosion of social media. Despite an increase in anti-hazing and anti-bullying policies and laws, deaths from bullying and hazing remain widely reported, and non-fatal incidents are even more common. Statistics suggest that even institutions with robust policies in place are likely to encounter allegations of bullying or hazing eventually.

Careful planning is essential to investigating bullying and hazing allegations, which may appear deceptively simple at the outset. Investigative plans must start with an under-
standing of the broad range of conduct encompassed by these terms, the institutional obligations and legal landscape of bullying and hazing, and the difficulties investigators may experience in getting to the bottom of hazing and bullying allegations. Only with this foundation can institutions effectively investigate and remedy instances of bullying and hazing.

**Understanding Bullying and Hazing**

The terms bullying and hazing have broad definitions and include misconduct ranging from subtle to severe. Bullying is commonly understood as repeated aggressive and intimidating behavior in which the perpetrator exploits an actual or perceived power imbalance to exclude the victim from a group. The intent of hazing is opposite that of bullying: it is conduct that is a condition for admission or acceptance into a group. Hazing is commonly understood as harassing, abusive, or humiliating conduct that endangers the mental or physical health of the victim.

A common rationale for bullying is that the victim brought it upon him/herself or deserved it, because of his or her behavior, personality, reputation, or appearance. Other frequently cited reasons for bullying include race, religion, sexual orientation, and social class. Sometimes bullying is simply dismissed as “kids being kids.”

At first blush, the rationales for hazing often appear to be more socially acceptable, making them that much more dangerous. Hazing is often euphemized as an “initiation ritual” and described as a tradition or rite of passage, with perpetrators believing because it was done to them, it is acceptable to do to others. Hazing is justified as a means of team building and promoting cohesion. Perpetrators often say the victim seemed willing to cooperate or participate, even though the consent of a victim is not a defense.

Bullying and hazing include both emotional and physical misconduct. Emotional misconduct may include name calling, teasing, threats, and verbal assaults; social isolation or exclusion; use of social media to publicly shame or embarrass; and physically aggressive and intimidating behaviors that stop short of physical contact. Physical misconduct may include hitting, punching, and kicking; forced ingestion of drugs, alcohol, or repugnant substances; involuntary confinement; and denial of basic necessities such as food, drink, sleep, or hygiene. Whether the conduct is physical or emotional, the impact on victims can be severe.
Laws Involved in Bullying and Hazing

No federal law addresses bullying or hazing directly, but federal civil rights laws such as Title IX are implicated when the behavior is based on race, national origin, color, sex, age, disability, or religion. When the bullying or hazing behavior involves discriminatory harassment based on these attributes, federally-funded educational institutions are obligated under federal law to address the harassment. When an institution receives a complaint, it must promptly, thoroughly, and impartially investigate so that it can address the harassment and prevent its reoccurrence. Some activists and lawmakers have pushed for broad federal anti-bullying laws, but none have been enacted to date.

Every state has some type of anti-bullying and/or anti-hazing law, but there are significant state-to-state differences. Some states have a single law, while others have multiple laws. Some state laws impose civil liability, while others carry criminal penalties. Additionally, most states have criminal laws that classify hazing as either a misdemeanor or a felony offense, with maximum penalties including fines and jail time. In some states where hazing and bullying are civil offenses, victims may also be able to recover against school personnel for failing to follow statutory requirements. Traditional criminal charges such as assault, conspiracy, unlawful acts related to minors, alcohol offenses, and in some cases even involuntary manslaughter may also be involved in hazing and bullying cases.

In addition to state statutes, a number of tort claims can be brought against institutions in hazing and bullying cases, including assault, battery, false imprisonment, negligence, negligent infliction of emotional distress, and negligent supervision. Some courts have imposed upon universities a duty to protect students based on an assumption of responsibility or under landlord liability respondeat superior theories.

In addition, any time a bullying or hazing allegation involves a minor, institutions should be cognizant of their state’s mandatory reporting laws. Every U.S. state and territory has statutes requiring certain individuals to report suspected child abuse and neglect to an appropriate agency. Teachers, principals, counselors, health care workers, and others having frequent contact with children are among those required to report suspected abuse. Institutions should be aware of their state’s reporting requirements and penalties for failure to report, and should educate their personnel about the signs of bullying and hazing and the agencies to which they are required to report such suspicions.
The Challenges Investigators Face
Given the wide range of conduct that can constitute bullying and hazing, investigators are frequently called upon to distinguish between behavior that is merely bad or disrespectful and behavior that rises to the level of bullying or hazing. Investigators must strip away proffered rationales and focus on the nature, frequency, severity, and impact of the conduct.

The complexity of investigations into bullying and hazing is enhanced because it often occurs within close-knit groups where victims and witnesses fear retaliation and are reluctant to speak up. Hazing, in particular, is often done covertly. With the exception of cyber-bullying, there is often little physical evidence of the alleged conduct, and investigations are interview-based by default. The witnesses are often minors and young adults who may lack an appreciation of their rights and obligations during an institutional investigation. In these circumstances, a well-planned, thoughtful approach is essential.

Planning and Executing Effective Bullying and Hazing Investigations
There is no one-size-fits-all approach to investigating bullying and hazing. Any investigation must be informed by the nature of the allegations and the context in which they occurred. However, some basic preparation and planning can help the investigator and the institution weather the many twists and turns these investigations can take.

An investigation should almost always begin with a comprehensive interview of the alleged victim, who should be allowed to provide an uninterrupted, narrative description of the conduct he or she is reporting. After eliciting the overall narrative, the investigator should review it, request additional details as appropriate, and fill in any blanks. An effective interviewer should not be satisfied with a general statements, but rather have the alleged victim identify the specific actions that were undertaken that the victim believes constitute the bullying or hazing. The alleged victim should be asked to identify witnesses and provide any evidence that he or she may have. The investigator should provide contact information and let the alleged victim know that he or she may contact the investigator with any additional information and that the investigator may call with follow-up questions.

Before doing any further interviews, the investigator should create a timeline of events based on the initial complaint. The investigator should determine whether documentary or physical evidence can be obtained such as photographs, videos, text messages, social media posts, email communications, medical records, and law enforcement reports.
Additionally, where possible, the investigator should take steps to ensure that potentially relevant evidence is preserved, such as securing email data held on an institution’s server, video footage, and swipe card information. Finally, the investigator should identify any relevant institutional policies that provide guidance on the prohibited conduct or the investigative process. Care should be taken to respect the rights of the alleged victim and the rights of the alleged perpetrator as defined by the institution’s policies.

With the timeline, relevant documents, and applicable policies in hand, the investigator can turn to witness interviews. Witnesses are often interviewed before the alleged perpetrator is interviewed, so that the investigator has a thorough understanding of the facts before asking the alleged perpetrator to respond. Concerns about possible retaliation or witness tampering may, however, dictate a different order of interviews. In instances where this is a particular concern, the investigator may consider using other trained colleagues to conduct multiple interviews simultaneously.

The investigator should create a list of potential witnesses, rank them to the extent possible by the likelihood that the witness will have relevant information, and begin by interviewing the witnesses with the greatest potential to inform the investigation. Not every witness on the list may need to be interviewed to gain an understanding of the relevant facts.

It is often useful for the investigator to conduct interviews using a standard-form interview outline. Such an outline ensures that every witness receives a consistent explanation of the scope of the investigation, the role of the investigator, and his/her obligation to cooperate, tell the truth, maintain confidentiality, not retaliate, and report suspected retaliation. Substantively, a standard-form interview outline can help the investigator ensure that no topics are missed. Of course, the investigator should be guided by the witness’ answers rather than rigidly adhering to a checklist of questions.

Interviews should begin with open-ended questions followed by more narrow questions to fill in relevant details. Typically, it is helpful to elicit a complete narrative before sharing documents and other evidence with witnesses, so as not to get into the details too quickly and miss the complete story and overarching context. Every witness should be asked if he or she has relevant documents or if there are other witnesses with whom the investigator should speak and should be provided with the investigator’s contact information for follow-up purposes. It is often useful to end an interview with broad, open-ended questions, such as “is there anything you thought I would ask you about today that I didn’t?”
Following witness interviews, the alleged perpetrator should be interviewed and given a full and fair opportunity to respond to the allegations and documentary evidence. The alleged perpetrator should be asked for relevant evidence and witnesses, and the investigator should conduct reasonable follow-up. The follow-up may include re-interviewing the alleged victim to address any discrepancies with respect to material facts.

It is critically important for the investigator to keep an open mind throughout the investigation and follow the facts as presented through the interviews and other evidence. The investigator should not draw his or her conclusions until all of the evidence is collected and analyzed in light of the applicable policies and law.

Finally, the investigator, in conjunction with the institution and guided by the applicable policies, should determine how the investigation will be documented. Often, but not always, a fair, accurate, and impartial written report is the best way to memorialize the findings of the investigation.

**Additional Considerations**

It is impossible for one article to address the myriad of issues that can arise in an investigation of alleged bullying or hazing. In addition to the basic suggestions outlined above, institutions should anticipate issues such as:

- Whether to retain outside counsel
- How to deal with requests for confidentiality by the alleged victim or witnesses
- Whether to seek parental consent or allow parental involvement when the alleged victim, perpetrator, or witness is a minor
- How to deal with uncooperative witnesses
- Whether the alleged perpetrator has a right to counsel in the interview
- What disciplinary and remedial measures are appropriate
- How to respond to inquiries about the investigation, and
- How to document and communicate institutional policies.
Anticipating these issues, planning, and preparation can mean the difference between an efficient, effective investigation and one that is dogged by avoidable and costly mistakes.

**The Importance of a Proper Investigation**

Bullying and hazing are serious forms of misconduct with potentially damaging consequences for not just the victims, but the institutions in which they occur. Bullying and hazing are based on power and control, tend to be progressive in nature, and can be cyclical, with victims eventually becoming perpetrators. Bullying and hazing can cause serious and lasting physical and emotional harm to the victim. Allegations of bullying and hazing, if unsubstantiated, can likewise cause reputational and emotional harm to the alleged perpetrator. It is therefore important for an institution to demonstrate that when these issues arise, they are taken seriously and addressed through a prompt, thorough, and competent investigation conducted impartially, thoughtfully, and with integrity.