

## YOU AND THE LAW

# Hazing: Post-Assault Deliberate Indifference

*Mike Stocz and Tony Aquilina*

*Doe v. Plainfield Community Consolidated School District 202,*  
No. 21 C 4460 (N.D. Ill. Mar. 9, 2023).

Plainfield Community Consolidated School District filed a motion to dismiss all charges stemming from an alleged series of hazing incidents.

## Complaint

The U.S. District Court of Illinois, Eastern Division, heard arguments from the defendants (Plainfield Community Consolidated School District, and various affiliated individuals, herein Plainfield), as they asked the Court to dismiss various claims, including violations of federal rights, equal protection, *Monell* claim<sup>1</sup>, Title IX, and sexual assault. This was the third attempt for the plaintiffs (the Doe family, redacted to protect the two minors involved in the case) to keep their case alive in federal court, as previously this Court rejected claims of procedural and substantive due process, Title IX, and state law jurisdiction.

---

<sup>1</sup>Monell claim refers to *Monell v. Department of Social Services*, a 1978 case in which the U.S. Supreme Court uprooted absolute immunity for public entities and held that a municipality may be accountable for the actions of employees if the actions alleged are unconstitutional pursuant to a policy statement, ordinance, regulation, or decision officially adopted and promulgated by officers.

---

Mike Stocz, Department of Kinesiology, University of New Hampshire. Tony Aquilina, Department of Business, Alfred State College of Technology. Please send author correspondence to michael.stocz@unh.edu

## Facts of the Case

In October 2019, both Doe children were allegedly sexually assaulted by Plainfield Central High School (herein, Plainfield Central) football team members. They were the latest victims of an ongoing hazing ritual known as “Code Blue,” which was known among team coaches and players alike. Both Doe children were freshman football players who were allegedly violated with a broomstick by unknown assailants in a locker room that was not monitored at that time. A different student told one of the coaches that freshman team members were subjected to this hazing, including and extending beyond the Doe children that week. Two coaches went to the locker room immediately after and found it empty, and they eventually asked the Doe children about the assaults. Further, the Doe children were not separated from varsity football team members and were subjected to further ridicule.

That same day, the athletic director and assistant principal were informed of the incident. The following day, school administrators held a meeting with team parents to discuss the incident, although the sexual assaults were initially not acknowledged. After school officials conducted an investigation, they would not return inquiries from the parents. The Doe children were subject to ridicule, being told that nobody raped them; were nicknamed “broomstick”; and had a Snapchat video of the assault circulated around the school. The alleged varsity main perpetrators received a 3-day suspension, whereas other assailants received no suspensions. Both Doe children transferred schools, although one student was not granted an athletics transfer waiver to play immediately at the new school, the other child allegedly had to sign a release requiring them not to mention the assault, harassment, and bullying that occurred. Thus, the Doe parents brought willful and wanton conduct claims, claims of violations of their Fourteenth Amendment rights, *Monell* claims, claims of Title IX violations, and willful and wanton state claims against Plainfield and other defendants (namely, coaches and administrators).

## Court Analysis

The Court analyzed the defense’s motion to dismiss the entirety of the complaint. Beginning with the Fourteenth Amendment

claims, the Court found that the Doe children were not treated significantly different enough from other sexual assault victims at Plainfield Central High School, nor did the claim of discrimination and unequal protection. Plaintiffs further alleged *Monell* claims, which needed to prove that harm resulted from a constitutional violation and that the local government body was responsible for said harm. These complaints were dismissed as well, due to the lack of a constitutional violation. Under the Title IX complaint, plaintiffs claimed one count of heightened risk of sexual harassment, two claims of post-assault deliberate indifference, two counts of post-assault retaliation, and direct sex-based discrimination by Plainfield. Heightened risk of sexual harassment was thrown out simply because the plaintiffs failed to provide facts showing Plainfield completely ignored sexual harassment allegations previously. The post-assault deliberate indifference claims were not dismissed, as the Court found that the response of Plainfield may be unreasonable due to Plainfield's lack of total response to the allegations, including the punishments, full investigation of the claims, and support structures for the Doe children. The retaliation claims under Title IX failed to prove that Plainfield had a motive to retaliate and were thus vacated. The plaintiffs did not respond to sex-based discrimination dismissal arguments; thus, this count was vacated. For the willful and wanton conduct claims at the state level, the plaintiffs failed to argue how the specific defendants (football coaches) acted with extreme indifference or conscious disregard for the plaintiff's safety; thus, these counts too were dismissed.

### **Court's Decision**

The District Court of Illinois determined that of the 14 counts alleged against Plainfield, only two counts (post-assault deliberate indifference) would not be dismissed.

### **Risk Management Discussion**

K-12 athletics staff need to take every part of hazing seriously. While awareness surrounding and attempts to prevent hazing incidents are growing, the follow-through is falling short. The dismissal of all but two complaints stemming from post-assault deliberate indifference seems to reveal the need for proper care for assault victims. While proving post-assault deliberate indifference is difficult, it

may be easier to prove if athletic departments and schools do nothing to rectify the complaint operationally. Schools can take actions such as separating students from the alleged assailants, giving severe enough punishment to the alleged assailants, fully investigating the allegations, and helping the students to transfer schools and receive immediate playing time. A lack of action is why this lawsuit is set to continue, and more meaningful actions to help the students by the school may have made this lawsuit moot.

Proactive prevention is always key. It is essential for organizations to plan for frequent and severe risks, including alcohol and drug use, hazing, and ability to assess for injuries. Aside from locker room supervision, other preventive measures can help reduce the chance of hazing, including having preseason meetings between coaches, administrators, and student-athletes, where they clearly outline policies and expectations on hazing, drug and alcohol use and discuss other team issues (Cotten & Wolohan, 2020). While this does not guarantee the occurrence of hazing in an athletic department, these measures establish an organization's intent to keep students safe, although greater levels of supervision are necessary. Additional sexual harassment training may also help institutions be better protected from liability, although these programs need to be vetted properly, as evidenced by a lack of substantive sexual harassment training (Stocz & Stewart, 2022).

K-12 sport administrators need to take seriously and handle accusations of hazing in a meaningful, and "human," way before, during, and after these events. While this problem seemingly will not go away, acting in a caring, thoughtful, and safe manner can save physical educators, schools, and sport administrators precious resources from a hazing-related lawsuit.

## References

- Cotten, D. J., & Wolohan, J. (2020). *Law for recreation and sport managers* (8th ed.). Kendall Hunt Publishing Company.
- Doe v. Plainfield Community Consolidated School District 202*, No. 21 C 4460 (N.D. Ill. Mar. 9, 2023).
- Stocz, M., & Stewart, S. (2022). Unlawful sexual conduct with a minor case appeal for a high school basketball coach. *The Physical Educator*, 79(2), 230–234.