

# New Mexico State University: Hazing in Basketball

By Martin J. Greenberg and Danelle A. Welzig

Hazing has ubiquitous recognition when it comes to the Greek life party culture of American universities. What is lesser known is that this is not only do fraternities and sororities have an issue with this type of behavior, but so do athletic departments. The NCAA estimates that about 74% of student-athletes experience some form of hazing.<sup>1</sup> While alcohol is not always front and center in the hazing that goes on in athletic departments, forced participation in activities that can range from harassment to assault and battery can and do take place.

## I. Hazing

### A. United States Legislation

In testimony before the U.S. Senate Committee on Health, Education, Labor and Pensions, Dr. Elizabeth Allan of StopHazing.org, the Hazing Prevention Consortium, and the University of Maine stated, “[w]e ... need to eliminate hazing to promote educational environments that are most conducive to learning and the development of ethical leaders who treat others with the dignity and respect each deserves.”<sup>2</sup>

Federal legislation introduced in April of 2021 as S.744, Report and Educate About Campus Hazing Act, states that:

‘hazing’ means any intentional, knowing, or reckless act committed by a student, or a former student, of an institution of higher education, whether individually or in concert with other persons, against another student (regardless of that student's willingness to participate), that—

(I) was committed in connection with an initiation into, an affiliation with, or the maintenance of membership in, any organization that is affiliated with such institution of higher education (including any athletic team affiliated with that institution); and

(II) contributes to a substantial risk of physical injury, mental harm, or degradation or causes physical injury, mental harm, or personal degradation.<sup>3</sup>

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<sup>1</sup> Bruce, Susie and Holly Deering, *Addressing student-athlete hazing*, NCAA.ORG, <https://www.ncaa.org/sports/2016/9/26/addressing-student-athlete-hazing.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> *Report and Educate About Campus Hazing Act*, S.744, 117<sup>th</sup> Cong., 2021, <https://www.congress.gov/bill/117th-congress/senate-bill/744>.

## B. Nature of United States Hazing Laws

In 2021, the State University of New York published “A 50-State Summary of Hazing Laws.” The SUNY Student Conduct Institute concluded that there are three main trends to hazing laws:

1. Law is in the criminal code, but not in the education code and does not require institutions to have a policy or enforce the legal requirements;
2. Law is in the criminal code and requires institutional enforcement; and
3. Law is in the education code and requires institutional enforcement, each institution to have their own policy, or both.<sup>4</sup>

Researchers identified New Mexico, South Dakota, Wyoming, and Washington D.C. as having no hazing laws, either in the criminal or education code.<sup>5</sup>

Additionally, SUNY identified that the majority of laws use some form of the following definition for hazing:

intentionally, knowingly, or recklessly engaging in or participating in acts, which endanger another for the purpose of initiation into, admission into, affiliation with, holding office in, or as a condition for membership in a school or school sponsored team, organization, program, club, or event.<sup>6</sup>

With respect to criminal codes, as of 2019 only thirteen states had hazing laws on the books that made hazing a felony when it resulted in death or serious injury.<sup>7</sup> The vast majority of hazing laws that are in state criminal codes only result in a conviction as a misdemeanor.<sup>8</sup>

## C. New Mexico Hazing Legislation

Even though the majority of states have anti-hazing laws, New Mexico does not.<sup>9</sup> However in light of the allegations that were brought forth at New Mexico State University, Governor Lujan Grisham issued the following Press Release on April 28, 2023:

Gov. Lujan Grisham to pursue anti-hazing legislation in next session

Gov. Michelle Lujan Grisham issued a statement following the filing of another lawsuit against a public higher education institution related to sexual abuse:

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<sup>4</sup> Tylock, Angela, *A 50-State Summary of Hazing Laws*, STUDENT CONDUCT INSTITUTE, Apr. 21, 2021, <https://system.suny.edu/sci/news/4-21-21-hazing/index.html>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Steward, Tilghman, Fox, Bianchi, & Cain, *Nationwide Hazing Laws*, <https://www.stfblaw.com/hazing-lawyers/nationwide-hazing-laws/>.

<sup>8</sup> *Id.*

<sup>9</sup> StopHazing, (n.d.). *States with Anti-Hazing Laws*, STOPHAZING CONSULTING, <https://stophazing.org/policy/state-laws/>.

‘I am appalled by the allegations at New Mexico public universities involving hazing and abuse – outrage doesn’t go far enough. It is the responsibility of higher education leadership and governing boards to establish a safe, healthy environment for students, and I’m incredibly disappointed that it does not appear to be a priority at some of the state’s public colleges and universities.

‘I — along with my administration — have ZERO tolerance for abuse of any kind, and I will root out cultures of hazing and abuse at every higher education institution in New Mexico.

‘In the next legislative session, I will be putting anti-hazing and abuse legislation on the call, making it unequivocal in state law that hazing is a crime and those who do harm to others will be held accountable to the fullest extent of the law.’

New Mexico is one of just six states that does not have an anti-hazing law in place.<sup>10</sup>

In reviewing recent legislative bills introduced in New Mexico, it appears that Representative Sheryl Williams Stapleton introduced an Anti-Hazing Act in the 2017 (House Bill 200<sup>11</sup>) and 2021 (House Bill 27<sup>12</sup>) House sessions. The Act proposes to make hazing a misdemeanor in the State of New Mexico and states that hazing

consists of a person who is a student of a public or private post-secondary educational institution willfully taking an action or creating a situation that recklessly or intentionally endangers the mental or physical health of another current or prospective student of the educational institution when the person takes that action or creates that situation for the purpose of the current or prospective student's induction, initiation or admission into or maintenance of membership in a student organization, student body or private athletic club, regardless of whether the organization, body or club is officially recognized, sanctioned or authorized by an educational institution. Hazing does not include coaching, training, conditioning, physical education, customary athletic events or school-sanctioned events.<sup>13</sup>

Given that there were two civil lawsuits filed against two separate universities in April of 2023, when the next legislative session in New Mexico takes place, we hope to see an anti-hazing act yet again introduced. We also hope that this is expanded to the education code for New Mexico as well, and that it encompasses the actions of all persons and not just students at post-secondary educational institutions.

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<sup>10</sup> Press Releases, Gov. Lujan Grisham to pursue anti-hazing legislation in next session, OFFICE OF THE GOVERNOR, Apr. 28, 2023, <https://www.governor.state.nm.us/2023/04/28/gov-lujan-grisham-to-pursue-anti-hazing-legislation-in-next-session/>.

<sup>11</sup> House Bill 200, 53<sup>rd</sup> Legislature, State of New Mexico, 2017, <https://www.nmlegis.gov/Sessions/17%20Regular/bills/house/HB0200.pdf>.

<sup>12</sup> House Bill 27, 55<sup>th</sup> Legislature, State of New Mexico, 2021, <https://www.nmlegis.gov/Sessions/21%20Regular/bills/house/HB0027.pdf>.

<sup>13</sup> *Id.*

#### D. National Collegiate Athletic Association

While the NCAA does not seem to have any regulations requiring member institutions to have anti-hazing policies, it does set forth a framework for institutions to develop plans for preventing and responding to hazing. The NCAA defines hazing as

any act committed against someone joining or becoming a member or maintaining membership in any organization that is humiliating, intimidating or demeaning, or endangers the health and safety of the person. Hazing includes active or passive participation in such acts and occurs regardless of the willingness to participate in the activities. Hazing creates an environment/climate in which dignity and respect are absent.<sup>14</sup>

While bonding activities can bring a team closer together, the NCAA also points to a study which shows that engaging in hazing is “associated with lower team cohesion and can put personal, academic, and athletic goals out of reach.”<sup>15</sup> The NCAA also provides resources for member institutions to help educate athletic department administrators and team members.

We have long requested that the NCAA commit to a harder public stance and impose rules and regulations upon their member institutions to help prevent student-athlete abuse. As more cases come forward, we remain hopeful that at some point the NCAA will create policies that member institutions have to follow or be sanctioned.

#### E. New Mexico State University Hazing Policies

New Mexico State University does include a Prohibition on hazing in its policies and procedures. Administrative Rules and Procedures (ARP) Section 3.80, Prohibition of Bullying, Hazing, and Hostile Misconduct (Non-Discriminatory), states that the purpose of this ARP Section is to promote a “safe and healthy environment for students and employees who participate in university sponsored activities or chartered student organizations, reside in university housing, or work on campus.”<sup>16</sup> This rule also “protects from retaliation individuals who report an alleged violation of this rule or participate in the administrative processes related to enforcement of this rule.”<sup>17</sup>

Part 2 of this Rule defines hazing as

An act or omission [ . . . ] committed by one or more individuals, occurring on or off campus, where:

1. The act or omission is committed in connection with an initiation into, an affiliation with, or the maintenance of membership in, any organization. For the

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<sup>14</sup> Bruce, *Supra note 1*.

<sup>15</sup> *Id.*

<sup>16</sup> Administrative Rules and Procedures, § 3.80, New Mexico State University, <https://arp.nmsu.edu/3-80/>.

<sup>17</sup> *Id.*

- purpose of this policy, “organization” means an intercollegiate or intramural athletic team; chartered student organization; or other association, order, society, corps, cooperative, club, department, unit, division or similar group that is officially or unofficially affiliated with the university and whose membership consists primarily of enrolled students or employees of the university; and
2. The act or omission creates an unreasonable risk of emotional or physical harm, or causes actual physical harm, mental duress or degradation, or unreasonably interferes with a person’s academic endeavors or progress, or work environment.<sup>18</sup>

Part 4 of the Rule details a prohibition of Hostile Misconduct (which includes hazing) and Retaliation:

- A. Prohibition of Hostile Misconduct and Retaliation: Hostile Misconduct and Retaliation are prohibited. Students and employees participating in such misconduct are subject to disciplinary measures. External parties engaging in such conduct may be banned from the campus or subject to other sanctions. The acquiescence or consent of the individual subjected to the misconduct constituting Hostile Misconduct is not a defense. The following non-exhaustive list describes conduct that may contribute to a finding of a violation of this rule, if substantiated by the facts:
  1. Abusive or demeaning verbal acts or name calling; graphic and written statements in any media (e.g. texting, email, social media);
  2. Threats of harm or actual harm;
  3. Physical abuse, such as whipping, beating, branding, pushing, shoving, or tackling, use of physical restraints or objects;
  4. Forced physical activity, such as consumption of food, liquor or drugs, or sleep deprivation;
  5. Theft and/or destruction of property;
  6. Yelling, screaming, or calling members (prospective or actual) demeaning names, or restricting or substantially altering an individual’s regular routines, including social interaction;
  7. Conduct that a reasonable, similarly situated individual would consider humiliating and or degrading to others;
  8. Forcing, requiring or endorsing another individual, including but not limited to prospective or new members of organization, to violate university policies, organization/association bylaws, team rules and/or any local, state, or federal law.<sup>19</sup>

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

Part 5 of the Rule, Duty to Report and Cooperate, explicitly states that:

[t]he prevention of Bullying, Hazing, Hostile Misconduct and Retaliation is the responsibility of every member of the university community. Each organization, association, athletic team, department, unit, division, as well as each individual student and employee must report incidents believed to be associated with Bullying, Hazing, Hostile Misconduct or Retaliation and cooperate with any investigation as requested by the involved NMSU offices.<sup>20</sup>

It is clear from the Administrative Rules and Procedures of New Mexico State University that when an athlete reports abuse to a coach or staff member, it is incumbent upon that University employee to follow the procedure that is set forth in Section 3.80. With demands placed upon University employees that they “must report” then there it is well within the bounds of University administration to fire an employee that does not report incidents of Bullying, Hazing, Hostile Misconduct or Retaliation.

#### F. Effects of Hazing

In its hazing prevention materials available online, Northwestern University, which has a football program currently under fire for hazing, discusses the impact hazing has on its victims. Northwestern holds that studies have shown that over 70% of those who have been hazed suffer negative consequences as a result.<sup>21</sup> The consequences as listed include, but are not limited to:

- Physical, emotional, and/or mental instability
- Sleep deprivation
- Loss of sense of control and empowerment
- Decline in grades and coursework
- Relationships with friends, significant others, and family suffer
- Post-traumatic stress syndrome
- Loss of respect for and interest in being part of the organization
- Erosion of trust within the group members
- Illness or hospitalization with additional effects on family and friends<sup>22</sup>

Northwestern also discusses the impact hazing can have on the persons who initiate the hazing, which includes, but is not limited to:

- Decline in grades and coursework
- Relationships with friends, significant others, and family suffer
- Loss of connection to alums through the organization
- Media scrutiny
- Damage to one’s personal reputation

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<sup>20</sup> *Id.*

<sup>21</sup> Hazing Prevention, Impact, Northwestern University Student Affairs, <https://www.northwestern.edu/hazing-prevention/responsibilities/impact.html>.

<sup>22</sup> *Id.*

- Warped sense of leadership
- Feelings of shame and guilt<sup>23</sup>

Finally, Northwestern details the impact on the organization in which the hazing takes place, which can include, but is not limited to:

- Loss of reputation within the campus community, local area and nationally
- Loss of recognition for the organization, team or club and/or other privileges revoked
- Civil damages may be levied against the organization
- Organization's officers may be held responsible
- A gradual erosion of the true meaning and values of the organization<sup>24</sup>

We believe, on the whole, that universities have worked to develop policies to help stop hazing on campuses and in athletic programs. Yet, this behavior persists on campuses across the United States.

## II. New Mexico State University Hazing Incident

### A. Report of Hazing

William “Deuce” Benjamin, Jr. and Shakiru Odunewu were both excited to join the New Mexico State University's basketball team. However, almost as soon as training started, so did the alleged hazing.<sup>25</sup> Further, when reported to coaching staff, the Plaintiffs were met with a complete dismissal of their reports as not being the coach's concern.<sup>26</sup>

After detailing for his father the incidents he was being subjected to and the lack of response he was getting when he reported the incidents to the coaching staff, William Benjamin insisted that his son make a police report in February of 2023.<sup>27</sup>

The ensuing police report prompted New Mexico State to abruptly shut down its men's basketball program and place its coaching staff on administrative leave. Heiar was fired for cause a few days later, as the university pledged to investigate.

The hazing allegations came just a few months after another Aggies player, Mike Peake, exchanged gunfire with a University of New Mexico student on Nov. 19. Peake sustained a gunshot wound to his left leg, while a UNM student named Brandon Travis was killed.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Shad, Tom, *Former New Mexico State men's basketball players file lawsuit over hazing allegations*, USA TODAY, Apr 19, 2023, <https://www.usatoday.com/story/sports/ncaab/2023/04/19/new-mexico-state-hazing-incident-victims-step-forward-file-lawsuit/11697129002/>.

<sup>26</sup> Complaint: Benjamin & Odunewu, Case Number D-307-CV2023-00911, Apr. 19, 2023, <https://www.scribd.com/document/639475334/041923-Complaint-Benjamin-Odunewu-v-NMSU#>.

<sup>27</sup> *Id.*

The incident drew further scrutiny after authorities saw on surveillance video that some of Peake's teammates had arrived on the scene before police, and Peake had put his gun and a tablet in the trunk of their car. The weapon and tablet later wound up in the hands of assistant basketball coaches, who turned them over to police.

The two scandals have resulted in an overhaul of the Aggies' men's basketball program, and an almost complete exodus of players.<sup>28</sup>

The prior incidents of violence and the lack of intervention shows just how deeply torturous behavior of hazing was ingrained into the culture of New Mexico State's basketball program. As a result of the police report by the Benjamins, the basketball coaching staff was placed on administrative leave and the basketball season was canceled.<sup>29</sup>

'We took this action after receiving reports of alleged hazing incidents within our men's basketball team,' said [New Mexico State chancellor Dan] Arvizu. 'Our players and coaches were in California at the time preparing to play Cal Baptist. To ensure we fully understood this situation, we canceled that game, called the team back to Las Cruces and placed the coaching staff on paid administrative leave. Once our student-athletes arrived on campus, they were met and interviewed by university personnel who are specially trained to conduct investigations into these kinds of matters.'<sup>30</sup>

The three main perpetrators of the traumatizing events were the named student-athlete Defendants. "According to a police report obtained [ . . . ], three players are facing a trio of offenses, including one count of false imprisonment, one count of harassment and two counts of criminal sexual contact."<sup>31</sup> Other teammates were more than likely too intimidated to come to the aid of the alleged abused Plaintiffs. The attacks occurred not only on campus, but also while on the road with the team, including on the team bus with coaches and staff present.<sup>32</sup>

'Student athletes, like others on college campuses, have the right to be free from harmful and offensive contact by others,' the lawsuit states. 'When the behavior continues for months, it cannot be viewed as an initiation rite; instead, it is harassment and abuse. And when coaches and universities do not take adequate action to prevent or stop such behavior, they have failed their student athletes and are complicit in the abuse.'<sup>33</sup>

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<sup>28</sup> Shad, *Supra* note 25.

<sup>29</sup> Cobb, David, *New Mexico State halts men's basketball program for remainder of season after hazing allegations*, CBS SPORTS, Feb. 12, 2023, <https://www.cbssports.com/college-basketball/news/new-mexico-state-halts-mens-basketball-program-for-remainder-of-season-after-hazing-allegations>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Shad, *Supra* note 25.

<sup>33</sup> Shad, *Supra* note 25.



## B. Greg Haier Contract

Greg Haier entered into a Head Coach Employment Agreement with New Mexico State University with a commencement date on March 28, 2022 and an expiration date of April 30, 2027.<sup>34</sup> Section 1.4 of the Agreement states that

Coach understands that a primary goal of the University is to provide a high quality educational opportunity to all its students, including student athletes, and that this goal is paramount to the goals of any of its athletics programs or sports teams. Consistent with this primary goal of the University, Coach will observe and uphold all academic standards, requirements and policies of University and encourage Program's team members to consistently attend all classes in which the student-athlete is enrolled and to devote sufficient time and attention to their academic studies to successfully pass those classes. Coach must fully cooperate with the student athlete support services staff, all academic counselors or similar persons designated by University to assist student-athletes, and must use his/her personal best efforts to encourage and promote those academic status.<sup>35</sup>

Section 1.5, Personal Conduct and Public Statements states that

Coach agrees to represent University positively in public and private forums and must not engage in conduct that reflects adversely on University or its athletics programs. Coach must perform his duties and personally comport himself at all times in a manner consistent with good sportsmanship and with the high moral, ethical and academic standards of University and its Department of Athletics. Coach agrees that any public or external statements or comments he makes about University policy, Director, or senior administrators must be positive and constructive, and understands that any negative or critical statements constitute a material breach of this Agreement. Coach agrees that he will not use, and will not allow his staff or team members to use, any tobacco products during team practice, team events and meetings, or team competition.<sup>36</sup>

Section 1.6, Sportsmanship and Social Conduct states

Coach will use best efforts to ensure that both the coaching staff and the student-athletes exercise good sportsmanship and appropriate social conduct at all times. Coach is responsible for providing team leadership and ensuring that student athletes abide by the University's Student Athlete Code of Conduct as set forth in the Student Athlete Handbook. Coach's inability to control the behavior of the staff and student-athletes in the Program, as represented by significant or repeated

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<sup>34</sup> NMSU Head Coach Employment Agreement with Greg Haier, on file with the author.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

violations of University rules or the Student Athlete Code of Conduct, is a breach of this Agreement.<sup>37</sup>

Section 5.3, Termination by University for Cause, states that the

University may, at its option and discretion, terminate this Agreement for cause, upon the occurrence of any one or more of the following events:

- a) Coach's refusal or unwillingness or inability to perform such duties in good faith after reasonably specific written notice has been given to Coach by the Director or Director's designee, and Coach has continued such neglect, inattention, refusal, unwillingness or inability during a subsequent period specified by University.
- c) Material, significant or repetitive violation or breach by Coach of this Agreement, or of the Rules, or of University policy, rules or regulations.
- d) Commission by Coach of a crime, whether prosecuted or not (excluding minor traffic offenses). Termination under this clause will be at the sole discretion of the NMSU Chancellor or equivalent.
- e) Fraud or dishonesty by Coach in the performance of his duties or responsibilities under this Agreement.
- f) Coach's actions or inactions which permit, encourage or condone fraudulent or dishonest acts by any person in any matter relating to the Program or compliance with the Rules, provided that Coach had actual knowledge of such fraudulent or dishonest acts or reasonably should have known about such fraudulent or dishonest acts.
- g) Failure by Coach to respond accurately and fully, within a reasonable time, to any reasonable request or inquiry by University, NCAA, the Conference or other governing body having supervision over the athletics programs of the University, relating to the performance of his duties while serving as Coach for University, or relating to the performance of his duties during his prior employment at any other institution of higher learning.
- i) Counseling or instructing by Coach of any person to fail to accurately and fully within a reasonable time to any reasonable request or inquiry concerning a matter relevant to University's athletics programs or other institution of higher learning which may be propounded by University, NCAA, the Conference or other governing body having supervision over the athletics programs of University, or as required by law, governing athletics rules or University rules and regulations.

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<sup>37</sup>*Id.*

- m) Failure by Coach to report promptly to the Director any violations known to Coach of the Rules, or University policy, rules or regulations, by assistant coaches, students or other persons under the direct control or supervision of Coach.
- o) Commission of, or participation in, by Coach of any act, situation, or occurrence which, in University's reasonable judgment, brings Coach into public disrepute, contempt, scandal or ridicule, or failure by Coach to conform his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon University's reputation and overall primary mission and objectives.
- p) A serious or intentional violation (or if University has a reasonable basis for believing that a serious or intentional violation occurred) by Coach (or any other person under Coach's supervision and direction) or any law, rule, regulation, constitutional provision, bylaw or interpretation of University, the Conference or the NCAA. It is recognized and agreed that this sub-section encompasses findings or determinations of violation during employment of coach at University or at any other institution of higher learning.<sup>38</sup>

In February of 2023, New Mexico State fired men's basketball head coach Greg Heiar.<sup>39</sup> "As I've stated previously, hazing has no place on our campus, and those found responsible will be held accountable for their actions," Arvizu wrote in the letter. "I am committed to the safety and well-being of all members of our campus community, as well as to the integrity of our university."<sup>40</sup> In July of 2023 it was reported that Heiar had been hired by Mineral Area College, a junior college in Missouri, just four months after being fired by NMSU.<sup>41</sup>

### C. State Complaint

On April 19, 2023, William "Deuce" Benjamin, Jr, William Benjamin, and Shakiru Odunewu, the "Plaintiffs," brought forth a lawsuit against the Board of Regents of New Mexico State University, Head Coach Greg Heiar, Associate Head Coach Dominique Taylor, and fellow student athletes – Kim Aiken, Jr., Doctor Bradley, and Deshawndre Washington, collectively referred to herein as "New Mexico State," in the Third Judicial District Court, County of Dona Ana, State of New Mexico.

The Plaintiffs' complaint against New Mexico State opened its Preliminary Statement by stating that "[s]tudent athletes, like others on college campuses, have the right to be free from harmful and offensive contact by others, including intentional conduct anticipated to cause

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<sup>38</sup>*Id.*

<sup>39</sup> ESPN News Services, *New Mexico State fires men's basketball coach Greg Heiar*, ESPN.COM, Feb. 14, 2023, [https://www.espn.com/mens-college-basketball/story/\\_/id/35660932/new-mexico-state-fires-men-basketball-coach-greg-heiar](https://www.espn.com/mens-college-basketball/story/_/id/35660932/new-mexico-state-fires-men-basketball-coach-greg-heiar).

<sup>40</sup> *Id.*

<sup>41</sup> Associated Press, *Fired New Mexico State basketball coach Greg Heiar hired by Missouri junior college*, ESPN.COM, Jul. 1, 2023, [https://www.espn.com/mens-college-basketball/story/\\_/id/37947056/fired-new-mexico-state-basketball-coach-greg-heiar-hired-missouri-junior-college](https://www.espn.com/mens-college-basketball/story/_/id/37947056/fired-new-mexico-state-basketball-coach-greg-heiar-hired-missouri-junior-college).

physical harm, humiliation and emotional distress.”<sup>42</sup> The complaint details the alleged hazing and sexual assault perpetrated against the Plaintiffs by their fellow teammates.<sup>43</sup> The causes of action pled in the Complaint included Negligence, Loss of Consortium between father and son, Sexual Assault, Battery, and False Imprisonment, Vicarious Liability, and Violation of the New Mexico Civil Rights Act.

New Mexico State said in a statement that it does not comment on pending litigation, but ‘we want to assure everyone that this issue is being taken seriously.’ ‘As we announced earlier this year, the university is working with Greenberg Traurig to look into these allegations,’ the school said in the statement. ‘Their work is underway and running in parallel to our own internal investigation into this matter.’<sup>44</sup>

‘The most important job I have as Chancellor of the NMSU System is to ensure our students are safe and protected from harm,’ added Arvizu. ‘That’s why I was so heartbroken and sickened to hear about these hazing allegations. Hazing is a despicable act. It humiliates and degrades someone and has the potential to cause physical and emotional harm, or even death. Sadly, hazing can become part of an organization’s culture, if left unchecked. NMSU policy strictly prohibits hazing, in all forms, and it’s something we simply will not tolerate.’<sup>45</sup>

In April of 2023, Arvizu and the New Mexico State Board of Regents agreed to a mutual separation with Dr. Jay Gogue stepping in as Interim Chancellor.<sup>46</sup>

It should be noted that also in April of 2023 a group of Jane Doe student-athletes who were part of the Eastern New Mexico University Women’s Basketball team sued the Board of Regents, Coach Meghan De Los Reyes, Athletic Director Paul Weir, Glen’s Fitness Lab, and the Coach’s husband, Glen De Los Reyes in the United States District Court for the District of New Mexico alleging causes of action for Negligence, Sexual Battery, Violation of the New Mexico Human Rights Act, Retaliation in Violation of the New Mexico Whistleblower Protection Act, Violation of the New Mexico Civil Rights Act, Invasion of Privacy, and Discrimination in Violation of Title IX.<sup>47</sup> There was allegedly a years worth of reported issues by multiple student-athletes regarding Glen De Los Reyes’s “treatments” that were pushed by Coach Meghan De Los Reyes.<sup>48</sup> When reported to Athletic Director Paul Weir, no action was taken and everything reported by the student-athletes found its way back to the Coach who allegedly retaliated against the student-athletes.<sup>49</sup> “A

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<sup>42</sup> Complaint, *Supra* note 26.

<sup>43</sup> *Id.*

<sup>44</sup> Schad, *Supra* note 25.

<sup>45</sup> Cobb, *Supra* note 29.

<sup>46</sup> McKee, Chris, *NMSU parts ways with Chancellor Dan Arvizu, names new interim leader*, KRQE NEWS, Apr. 7, 2023, <https://www.krqe.com/news/new-mexico/nmsu-parts-ways-with-chancellor-dan-arvizu-names-new-interim-leader/>.

<sup>47</sup> Goldberg, Julia, *Gov Wants Anti-Hazing Law in NM*, SANTE FE REPORTER, May 1, 2023, <https://www.sfreporter.com/news/morningword/2023/05/01/gov-wants-anti-hazing-law-in-nm/>.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

university statement said an investigation into the women’s basketball program has resulted in ‘no findings of an abusive nature.’”<sup>50</sup> Truly there was a no more vulnerable position than to be a member of a basketball team with a husband/wife team that were allegedly perpetrating and coercing their student-athletes into abusive “professional” relationships. Since the story broke in April of 2023 there has been little to no updated reporting on the allegations and no indication reported that there is a criminal investigation. Given the nature of the allegations we expect that this case may cost the State of New Mexico taxpayers an even greater amount than the settlement of the NMSU hazing case.

#### D. State Response

On April 24, 2023, Cabinet Secretary for the New Mexico Higher Education Department, Stephanie M. Rodriguez, issued the following demand to New Mexico State University’s Board of Regents and Interim Chancellor Dr. Jay Gogue in response to the hazing complaint filed by the Benjamins and Odunewu:

In light of new information regarding the horrific hazing incident in the New Mexico State University’s Men’s Basketball Program and multiple students coming forward with serious concerns about a culture of corruption within the university’s athletic program, the New Mexico Higher Education Department is directing leadership at New Mexico State University take immediate action to address these mounting concerns.

Two student athletes reported incidents of ongoing hazing and sexual assault to the Men’s Basketball coaching staff in February, but state that no action was taken at any level in response to these reports. One of those students has stated that he was asked to leave the program by newly appointed Coach Jason Hooten. If true, this action constitutes retaliation against a local, home-grown athlete and new Mexican for the act of coming forward with legitimate concerns and allegations of abuse and hazing.

All students, including those who decide to stay in their home communities to pursue higher education and compete in college athletics, must be kept safe and welcomed on our college and university campuses. Ensuring the safety and well-being of all students pursuing higher education in New Mexico is a top priority for the State of New Mexico and a critical responsibility of all governing boards and leadership at our colleges and universities. Incidents of violence, abuse, and corruption have been protracted at New Mexico State University, and we have grave concerns about the university’s ability to adequately address ongoing

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<sup>50</sup> Associated Press, *3 New Mexico college women basketball players allege assault*, ASSOCIATED PRESS NEWS, Apr. 28, 2023, <https://apnews.com/article/womens-college-basketball-alleged-assaults-1c36e0f5cc743ed7f8b629969ea65096>.

corruption related to the Men's Basketball Program and the athletic program as a whole.

New Mexico State University must conduct a thorough independent investigation of all university-sponsored athletic programs, including the current leadership, coaches, and coaching staff, to identify the extent of misconduct and protect any student who comes forward with information or concerns without retaliations. This investigation should include a rigorous review of personnel, policies, documented complaints, and discipline. Additionally, the University should open another independent investigation regarding Coach Hooten's comments recommending that a student continue his basketball career elsewhere, dismissing the legitimate concerns of the student, and potential retaliation.

The New Mexico Higher Education Department requests a written response outlining the specific steps that the University is taking to address violence, abuse, and corruption in the athletics program by May 1, 2023. Below are the points that must be addressed:

1. What is the university doing to address and resolve this matter;
2. The results of the new independent investigation of the Men's Basketball Program surrounding the recent alleged comments and decisions made by the new coaching staff that on their face appear to be retaliatory; and
3. A detailed plan for an independent investigation of the university's athletic program, including all university-sponsored athletic programs, current leadership, and personnel, in addition to a rigorous review of personnel at all levels, policies, documented complaints, and discipline within the athletics program.

Irrespective of the results of any independent investigation, the university must inform all students of their rights and process under Title IX for the reporting of incidents related to hazing, violence, abuse, and corruption, in addition to a new system implemented by New Mexico State University in which all reports are immediately set to and addressed by the university's leadership in the Office of the Chancellor and athletic program. Within this system, New Mexico State University shall provide written acknowledgement to the student confirming the university has received the report and the student is provided appropriate information about who to contact to report incidents at the federal level. Additionally, incidents must be reported to the New Mexico Higher Education Department and appropriate officials from the State of New Mexico.

The current culture and climate in New Mexico State University's athletics program does not reflect values under which the university was established nor the standard that New Mexico students deserve. We must ensure that all New Mexico students are safe and fully supported at all times. We expect that New Mexico State University will step up to uphold that duty to our students and New Mexicans.

On April 27, 2023, Interim Chancellor Jay Gogue responded to Cabinet Secretary Stephanie Rodriguez as follows:

Thank you for the care and concern you have shown for New Mexico State University (NMSU), especially during this time. We are in receipt of your letter dated April 24, and enclosed are the responses to the items you highlighted. The Board of Regents and I look forward to continuing our collaboration with you and your department as we work through our current situation. Please know that New Mexico State University is committed to restoring integrity in our basketball program and to working together to ensure our entire university is moving forward.

Please find attached to this letter a memo that was sent to all NMSU students earlier this week, informing them of their rights and the processes for the various methods available for reporting matters involving hazing, violence, abuse, corruption and issues related to Title IX. For many years, this information has been included in the syllabus for courses taught at NMSU. From time to time, we also provide this information to our entire campus community, and we appreciate the opportunity to remind them of the resources the university has in place.

- 1. What is the university doing to address and resolve this matter?**
  - a. NMSU shares your sentiments in ensuring a safe environment for all students. Please see attached timeline that demonstrates actions the university has taken after being notified by the NMSU Police Department. This timeline also shows events that will occur over the summer and into the fall.
- 2. The results of the new independent investigation of the Men’s Basketball Program surrounding the recent alleged comments and decisions made by the new coaching staff that on their face appear to be retaliatory; and**
  - a. As you may be aware, NMSU, through its University General Counsel office (“UGC”), has commissioned the Greenberg Traurig (“GT”) law firm to conduct an independent and confidential investigation of the allegations of hazing occurring among student-athletes and other persons associated with the Men’s Basketball Program (the “*Hazing Investigation*”). NMSU will also request that GT open a separate investigation specifically to look into the interaction between Coach Hooten and the player. We will ask them to expedite their efforts in order to provide you with the information as timely as possible.
- 3. A detailed plan for an independent investigation of the university’s athletic program, including all university-sponsored athletic programs, current leadership, and personnel, in addition to a rigorous review of personnel at all levels, policies, documented complaints, and discipline within the athletics program.**
  - a. The Board of Regents met on Tuesday, April 25 evening for the purpose of discussing pending litigation and limited personnel matters. They

have charged me with securing a reputable firm/agency to complete a full investigation of our 16 NCAA sponsored athletic programs and all athletic personnel as noted above. We are in the procurement stages and I expect the firm to begin next week. I will meet today, April 27, with the entire coaching staff, athletics leadership team and student leaders to discuss this work. I will demand full cooperation from all of athletics staff and coaches. We will provide updates to you as soon as the work is complete. I anticipate the investigating agency to be on campus next week and complete their work within three weeks.

**Response to 1. What is the university doing to address and resolve this matter?**

February 10, 2023 University Police contacted the Office of Institutional Equity (OIE) and other campus leaders to discuss the need for a timely warning regarding a reported sexual assault. Lt. Gaham shared information that a student came (with their father) to the police department to report a sexual assault and continued harassment.

February 11, 2023 Chancellor releases memo to campus community about the reported hazing incidents and the decision to cancel the men's basketball game in California. The team was called back to Las Cruces at this time.

Athletics leadership met with the basketball staff on their return and placed them on administrative leave with pay.

The Dean of Students and the Athletic Director also met with the student athletes upon their return at that time, it was explained to the players what the situation was and that they would need to meet with investigators and be honest and cooperative. The Dean of Students reiterated the need to be honest and encouraged the students to ask questions if they had them.

The Office of Institutional Equity began interviewing 42 students and staff with an internal investigation.

February 12, 2023 The Dean of Students sent an email to men's basketball players expressing concerns for their well-being and safety and provided information about mental health resources on campus including Aggie Health & Wellness Center, YOU@NMSU, and a resource document entitled Taking Care of Yourself after a significant event, loss, or trauma.

The Dean of Students and Athletics leadership met with the Men's Basketball team to notify them the season was being cancelled. A mental health counselor was onsite when this meeting occurred.

February 13, 2023 Head Football coach addressed the entire football program regarding hazing.



Head Women's Basketball coach spoke to every member of the women's basketball team.

February 14, 2023 Head Men's Basketball coach, Greg Heiar, was notified he would be terminated.

February 15, 2023 Press conference was held announcing Greg Heiar was terminated as the head coach.

February 21, 2023 Athletics Director held monthly head coaches meeting and addressed hazing.

Athletics leadership met with the Men's Basketball team regarding hazing.

February 23, 2023 Athletics leadership met with women's soccer team.

February 28, 2023 Athletics leadership met with all cleared (fall event) Men's Basketball student-athletes to introduce them to Casey Owens, a former head coach with the LA Lakers who lived in Las Cruces, to help with workouts for those student-athletes approved to return.

March 24, 2023 Jason Hooten was hired as the new Men's Basketball coach.

March 26, 2023 Press conference was held naming Jason Hooten as the head coach.

April 18, 2023 The Office of Institutional Equity issued a 72-page draft investigative report following conclusion of 42 student/staff interviews.

On or about May 1, 2023 Receive final investigative report from outside investigator Greenberg Traurig law firm.

On or about May 1, 2023 NMSU to launch a full-scale investigation of the Athletics Department including all NCAA sponsored sports and athletic department personnel.

Summer/Fall 2023 Senior Women's Administrator, Dean of Students, athletics representatives, and members of band, Student Life, and ROTC will attend the Hazing Prevention Symposium, June 11-12 in Indiana.

National speaker Kim Novak of Novak Talks, a national expert on hazing, will come to campus and present to all student-athletes.

To our knowledge, this is only one of the few instances in which the Governor and state agency have stepped in to demand an independent investigation and sweep of an entire athletic department to work to about face a seemingly toxic departmental culture. We hope to see the State of New Mexico follow through and hold NMSU's feet to the fire with respect to the demands placed upon NMSU because without appropriate sanctions for failure to perform the State could lose credibility to enact and enforce changes necessary to protect student-athletes across New Mexico.

On April 28, 2023, Greenberg Traurig (“GT”) released an Executive Summary of their findings.<sup>51</sup> Contrary to Interim Chancellor Jay Gogue’s representation that the firm was conducting “an independent and confidential investigation of the allegations of hazing occurring among student-athletes and other persons associated with the Men’s Basketball Program,” the Executive Summary states that the firm’s scope of retention was “focused on a programmatic review of NMSU’s anti-hazing policies and procedures” and that “GT was not retained to investigate the 2023 Allegations themselves.”<sup>52</sup>

If GT’s statement regarding the nature of their engagement is true, this is contrary to statements made by Interim Chancellor Gogue that GT was investigating the hazing allegations, and not just performing a policies and procedures review. If the only investigation into the hazing allegations was done by the Office of Institutional Equity as detailed in New Mexico State University’s response, then it is plausible that New Mexico State University did not comply with the dictates of the New Mexico Higher Education Department’s demands.

### III. Settlement Agreements

By June of 2023, the New Mexico State lawsuit was settled for approximately \$8 million paid for by the State of New Mexico’s risk management insurance policy.<sup>53</sup>

‘They had the courage to speak out,’ said [Joleen] Youngers [who represents the Benjamins]. ‘In many cases, persons such as Deuce are presented with a pseudonym, or as a John Doe. That frequently happens. But, by divulging who they were and standing up, they also acknowledged, ‘I don’t need to hide in the shadows.’

‘The significance in this case is that it matters for victims to come forward and be heard, and it matters that we listen to them,’ said Youngers.<sup>54</sup>

Pursuant to the Settlement Agreement and Release of All Claims the Board of Regents of New Mexico State University agreed to pay William “Deuce Benjamin, Jr. and William Benjamin the sum of \$4.125 million and Shakiru Odunewu the amount of \$3.875 million.<sup>55</sup> “Settlements can reflect the significance of the harms and losses sustained by the victims,” said attorney Joleen

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<sup>51</sup> Guzman, Sam, *Greenberg Traurig releases investigation summary about NMSU men’s basketball team hazing allegations*, KISM EL PASO, May 3, 2023, <https://www.msn.com/en-us/news/us/greenberg-traurig-releases-investigation-summary-about-nmsu-men-s-basketball-team-hazing-allegations/ar-AA1aHrZp>.

<sup>52</sup> *Id.*

<sup>53</sup> Grammer, Geoff, *State to pay former NMSU basketball players \$8 million to settle hazing, sexual assault lawsuit*, ALBUQUERQUE JOURNAL, Jun. 28, 2023, [https://www.abqjournal.com/sports/state-to-pay-former-nmsu-basketball-players-8-million-to-settle-hazing-sexual-assault-lawsuit/article\\_4fe35b56-160b-11ee-9543-c7c5931fa833.html](https://www.abqjournal.com/sports/state-to-pay-former-nmsu-basketball-players-8-million-to-settle-hazing-sexual-assault-lawsuit/article_4fe35b56-160b-11ee-9543-c7c5931fa833.html).

<sup>54</sup> Laughlin, Ryan, *Attorney speaks on \$8M settlement in NMSU hazing case*, KOB 4 NEWS, Jun. 28, 2023, <https://www.kob.com/new-mexico/attorney-speaks-on-8m-settlement-in-nmsu-hazing-case/>.

<sup>55</sup> Settlement Agreement and Release of All Claims, on file with the author.

Youngers [. . .].<sup>56</sup> “To me, what the amount says is the defense in this case took the lawsuit very seriously and respected the harms and losses of those involved.”<sup>57</sup>

In the Release, Discharge, and Indemnification provisions, the Plaintiffs agreed that:

1. In consideration for the payment described herein, Plaintiffs and their successors, assigns, or agents, hereby waive, release, and discharge the Defendant, its Regents, administrators, coaches, officers, managers, attorneys, insurers, employees, agents and representatives in any capacity from all manner of liabilities, claims, demands, obligations, damages, costs, and causes of action, known or unknown, fixed or contingent, arising in the past, present, or future which the Plaintiffs now or may have or claim to have against the Defendant arising out of the above mentioned case. This shall be a fully binding and complete settlement between the Parties.

2. Plaintiffs understand that this is a general release encompassing all of their claims arising under federal, state, or local law.

6. It is expressly understood and agreed that the payment of the sum described in the below paragraphs, and the additional consideration designated below, has been reached purely on a compromise basis and is not and shall not be construed as an admission of liability by the Defendant. The Plaintiffs are settling and compromising disputed claims to which the Defendant expressly denies any liability.<sup>58</sup>

Pursuant to the Settlement Agreement and Release of All Claims that the Plaintiffs have executed it is clear that the NMSU Board of Regents is not taking responsibility for the actions that occurred at their university. It is also of note that this Agreement does not seem to include any of the individual Defendants (Greg Heiar, Dominique Taylor, Kim Aiken, Jr., Doctor Bradley, or Deshawndre Washington).

‘We’re pleased this situation has now come to a resolution and all parties are able to move forward,’ Justin Bannister, a spokesman for the university, said in a statement. ‘Our university has more than 400 student-athletes who are making a positive difference each day in the classroom, on their teams and in our community.’<sup>59</sup>

Youngers stated: ‘The resolution is a way of buying peace for both sides, and it becomes particularly true for my clients. Victims of type of assault we’re talking about, to go through months or years of litigation can be a second victimization. It’s not very easy for these gentlemen to be unnoticed in Las Cruces. So, this gives

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<sup>56</sup> Grammer, *Supra* note 53.

<sup>57</sup> *Id.*

<sup>58</sup> Settlement Agreement and Release of All Claims, on file with the author.

<sup>59</sup> Grammer, *Supra* note 53.

them a turn toward healing. Ongoing litigation can be like a wound that isn't allowed to heal.<sup>60</sup>

It has been reported that the New Mexico Attorney General's office is investigating whether or not criminal charges should be brought.<sup>61</sup>

#### IV. Conclusion

It would seem that the time has passed for when administrations could sweep alleged student-athlete abuse cases under the rug and whitewash the behavior of their coaches. In the time that we have handled around twenty such abuse cases, we have been warning universities for many years that this would be the coming trend in handling these such matters. As more cases are filed against universities and police reports are made against coaches, we hope to finally see university leadership take these matters for the serious breach of fiduciary duty that they are. Student-athletes hold a uniquely vulnerable position in which their very livelihoods and careers can hinge on the decisions made by a coach. If universities do start to cooperate with independent investigations, and start working to make changes necessary, then perhaps universities can avoid these types of lawsuits and the burdensome liability of multi-million-dollar settlements in the future.

Danelle Anderson Welzig holds a Bachelor of Science in Psychology from the College of Charleston, as well as an Associate Degree in Criminal Justice and Certificates in Paralegal Studies, Law Enforcement, and Corrections. Danelle has been a paralegal for 20 years in the areas of complex construction litigation, real estate and sports law. She has been a paralegal with The Law Office of Martin J. Greenberg, LLC since 2013. Over the past eight years, Danelle has been intricately involved in over 20 of Attorney Greenberg's high school and college athletic abuse cases.

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<sup>60</sup> Coltharp, Richard, *NMSU hazing civil suit ends in quick resolution*, LAS CRUCES BULLETIN, Jul. 5, 2023, <https://www.lascrucesbulletin.com/stories/nmsu-hazing-civil-suit-ends-in-quick-resolution,48890>.

<sup>61</sup> Grammer, *Supra note 53*.