Date: October 17, 1980
From: Office of the University Counsel and Vice Chancellor for Legal Affairs
Subject: Amendment of Rules for the Maintenance of Public Order (Hazing)

On September 24, 1980, the State University Board of Trustees amended the University's Rules for the Maintenance of Public Order, effective with the 1980-81 academic year. This action was taken pursuant to a recent amendment to Section 6450(l) of the Education Law relating to the regulation of conduct generally denoted as hazing (Chapter 676, Laws of 1980). For your convenience, we have included the text of the complete set of Rules and amendments (Part 535 of Title 8, Official Compilation of Codes, Rules and Regulations of the State of New York).

The regulations, as amended, provide a new category of prohibited conduct relating to the reckless or intentional endangerment of mental or physical health and the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization. This new category is applicable to individuals and organizations which authorize such conduct. The new regulations also outline procedures for the enforcement of the rules against organizations, including the prescribed sanction of rescission of an organization's permission to operate on campus property.

In accordance with the statute and the regulations, copies of these amended rules must be given to all enrolled students. Campus publications containing student conduct rules should be revised to include the full text of the amended regulations as soon as practicable. Although such publications may have already been distributed, we recommend that efforts should be made as soon as possible to transmit copies of the amended rules to students by all reasonable means. This should include, among other methods, newspaper publication, posting, mail and hand distribution.
The amendments adopted by the State University Trustees satisfy the regulation requirement of the new law for all State-operated institutions. At the community colleges, however, each board of trustees must separately adopt amendments to the college's existing rules for the maintenance of public order in order to comply with the new law. These amendments must be filed with the Commissioner and the Board of Regents within ten days after adoption by submission of a certified copy to:

Ms. Theodora M. Thayer
Associate Coordinator
Office of Postsecondary Research,
Information Systems and
Institutional Aid
State Education Department
Cultural Education Center - Rm. 5B44
Empire State Plaza
Albany, New York 12230

This office remains available to answer any questions you may have regarding this matter. The State Education Department has also requested that we forward the attached Memorandum to Chief Executive Officers (80-17), issued October 1, 1980, which provides additional background information.

Sanford H. Levine

Attachment

This memorandum addressed to:

Presidents, State-operated campuses
Presidents, Community Colleges

Copies for Information only sent to:

Deans, Statutory Colleges
President Neville
Vice Provost Spencer
STATE UNIVERSITY BOARD OF TRUSTEES RULES FOR THE MAINTENANCE OF PUBLIC ORDER

(Part 535 of Title 8, Official Compilation of Codes, Rules and Regulations of the State of New York)

[Underlined portions denote recent amendments]

CHAPTER V STATE UNIVERSITY § 535.2

PART 535

RULES OF THE BOARD OF TRUSTEES

(Statutory authority: Education Law, § 6450)

Sec. 535.1 Statement of purpose

Sec. 535.2 Application of rules

Sec. 535.3 Prohibited conduct

Sec. 535.4 Freedom of speech and assembly: picketing and demonstrations

Sec. 535.5 Penalties

Sec. 535.6 Procedure

Sec. 535.7 Enforcement program

Sec. 535.8 Communication

Sec. 535.9 Notice, hearing, determination

Historical Note


Decisions

1. Applicability

Held that Part 535 et seq. of the rules and regulations of the Board of Trustees of the State University relating to the maintenance of public order (8 NYCRR Part 535 et seq.), are applicable not only to campus disorders which involve militant students demonstrating against National policy, racial discrimination, the Vietnam War, etc., but also to apply a situation where, after having engaged in a heated intramural basketball game, a student allegedly took part in a resulting and injuring several players on the opposing team; an official, and other students. Matter of Egan v. State University of New York at Binghamton, 39 AD 2d 255 (1972).

Section 535.1 Statement of purpose. The following rules are adopted in compliance with section 6450 of the Education Law and shall be filed with the Commissioner of Education and the Board of Regents on or before July 20, 1969, as required by that section. Said rules shall be subject to amendment or revision and any amendments or revisions thereof shall be filed with the Commissioner of Education and Board of Regents within 10 days after adoption. Nothing herein is intended nor shall it be construed to limit or restrict the freedom of speech nor peaceful assembly. Free inquiry and free expression are indispensable to the objectives of a higher educational institution. Similarly, experience has demonstrated that the traditional autonomy of the educational institution (and the accompanying institutional responsibility for the maintenance of order) is best-served to achieve these objectives. These rules shall not be construed to prevent or limit communication between and among faculty, students and administration, or to relieve the institution of its special responsibility for self-regulation in the preservation of public order. Their purpose is not to prevent or restrain controversy and dissent but to prevent abuse of the rights of others and to maintain that public order appropriate to a college or university campus without which there can be no intellectual freedom and they shall be interpreted and applied to that end.

Historical Note

Sec. added and subd. 21st Oct. 1969.

535.2 Application of rules. These rules shall apply to all State-operated institutions of the State University except as provided in Part 550 as applicable to the State University Maritime College. These rules may be supplemented by additional rules for the maintenance of public order heretofore or hereafter adopted for any individual institution, approved and adopted by the State University Trustees and filed with the Commissioner of Education and Board of Regents, but only to the extent that such additional rules are not inconsistent herewith. The rules hereby adopted shall govern the conduct of students, faculty and other staff, licensees, invitees and all other persons, whether or not their presence is authorized, upon the campus of any institution to which such rules are applicable, and also upon or with respect to any other premises or property, under the control of such institution, used in its teaching, research, administrative, service, cultural, recreational, aesthetic and other programs and activities, provided, however, that charges against any
student for violation of these rules upon the premises of any such institution other
than the one at which he is in attendance shall be heard and determined at the
institution in which he is enrolled as a student.

Historical Note

535.3 Prohibited conduct. No person, either singly or in concert with others,
shall:
(a) Wilfully cause physical injury to any other person, nor threaten to do so
for the purpose of compelling or inducing such other person to refrain from any act
which he has a lawful right to do or to do any act which he has a lawful right not
to do.
(b) Physically restrain or detain any other person, nor remove such person
from any place where he is authorized to remain.
(c) Wilfully damage or destroy property of the institution or under its juris-
diction, nor remove or use such property without authorization.
(d) Without permission, expressed or implied, enter into any private office of
an administrative officer, member of the faculty or staff member.
(e) Enter upon and remain in any building or facility for any purpose other
than its authorized use or in such manner as to obstruct its authorized use by others.
(f) Without authorization, remain in any building or facility after it is normally
closed.
(g) Refuse to leave any building or facility after being required to do so by
an authorized administrative officer.
(h) Obstruct the free movement of persons and vehicles in any place to which
these rules apply.
(i) Deliberately disrupt or prevent the peaceful and orderly conduct of classes,
lectures and meetings or deliberately interfere with the freedom of any person to
express his views, including invited speakers.
(j) Knowingly have in his possession upon any premises to which these rules
apply, any rifle, shotgun, pistol, revolver, or other firearm or weapon without the
written authorization of the chief administrative officer whether or not a license
to possess the same has been issued to such person.
(k) Wilfully incite others to commit any of the acts herein prohibited with
specific intent to procure them to do so.

(1) Take any action, create, or participate in the creation of any situation which recklessly or intentionally
endangers mental or physical health or which involves the
forced consumption of liquor or drugs for the purpose of
initiation into or affiliation with any organization.

535.4 Freedom of speech and assembly; picketing and demonstrations. (a) No
student, faculty or other staff member or authorized visitor shall be subject to any
limitation or penalty solely for the expression of his views nor for having assembled
with others for such purpose. Peaceful picketing and other orderly demonstrations
in public areas of ground and building will not be interfered with. Those involved
in picketing and demonstrations may not, however, engage in specific conduct in
violation of the provisions of the preceding section.

(b) In order to afford maximum protection to the participants and to the institutional
community, each State-operated institution of the State University shall
promptly adopt and promulgate, and thereafter continue in effect as revised from
time to time, procedures appropriate to such institution for the giving of reasonable
advance notice to such institution of any planned assembly, picketing or demonstra-
tion upon the grounds of such institution, its proposed locale and intended purpose,
provided, however, that the giving of such notice shall not be made a condition
precedent to any such assembly, picketing or demonstration and provided, further,
that this provision shall not supersede nor preclude the procedures in effect at such institution for obtaining permission to use the facilities thereof.

Historical Note

Decisions
1. Use of campus meeting facilities—union organizing efforts
Held that although its collective bargaining agreement with petitioner employers’ organization precluded it from granting “meeting space in State facilities” to outside organizations, respondent State University of New York at Stony Brook nevertheless validly gave permission to members of rival hospital union to speak at campus meeting sponsored by student organization. Respondent could not constitutionally preclude use of its facilities to outside organizations for purposes unrelated to union organizing efforts. Civil Service Employees Association, Inc. v. State University of New York, 83 Misc 2d 354 (1974)

535.5 Penalties. A person who shall violate any of the provisions of these rules (or of the rules of any individual institution supplementing or implementing these rules) shall:

(a) If he is a licensee or invitee, have his authorization to remain upon the
campus or other property withdrawn and shall be directed to leave the premises. In the event of his failure or refusal to do so, he shall be subject to ejection.

(b) If he is a trespasser or visitor without specific license or invitation, he shall be subject to ejection.

(c) If he is a student, be subject to suspension or such lesser disciplinary action as the facts of the case may warrant, including suspension, probation, loss of privileges, reprimand or warning.

(d) If he is a faculty member, having a term or continuing appointment, be guilty of misconduct and be subject to dismissal or termination of his employment or such lesser disciplinary action as the facts may warrant including suspension without pay or censure.

(e) If he is a staff member in the classified service of the civil service, described in section 73 of the Civil Service Law, be guilty of misconduct, and be subject to the penalties prescribed in said section.

(f) If he is a staff member other than one described in subdivisions (d) and (e), be subject to dismissal, suspension without pay or censure.

Historical Note

Sec. added, filed Oct. 14, 1965; amd. filed authentic material in first sentence.

§ 535.6 Procedure. (a) The chief administrative officer or his designee shall inform any licensee or visitor who shall violate any provisions of these rules (or of the rules of any individual institution supplementing or implementing these rules) that his license or invitation is withdrawn and shall direct him to leave the campus or other property of the institution. In the event of his failure or refusal to do so such officer shall cause his ejection from such campus or property.

(b) In the case of any other violator, who is neither a student nor faculty or other staff member, the chief administrative officer or his designee shall inform him that he is not authorized to remain on the campus or other property of the institution and direct him to leave such premises. In the event of his failure or refusal to do so such officer shall cause his ejection from such campus or property.

Nothing in this subdivision shall be construed to authorize the presence of any such person at any time prior to such violation nor to affect his liability to prosecution for trespass or loitering as prescribed in the Penal Law.

(c) In the case of a student, charges for violation of any of these rules (or of the rules of any individual institution supplementing or implementing these rules) shall be presented and be heard and determined in the manner hereinafter provided in section 531.5 of this part.

(d) In the case of a faculty member having a continuing or term appointment, charges of misconduct in violation of these rules (or of the rules of any individual institution supplementing or implementing these rules) shall be made, heard and determined in accordance with title D of Part 288 of the policies of the Board of Trustees.

(e) In the case of any staff member who holds a position in the classified civil service, described in section 73 of the Civil Service Law, charges of misconduct in violation of these rules (or of the rules of any individual institution supplementing or implementing these rules) shall be made, heard and determined as prescribed in that section.

(f) Any other faculty or staff member who shall violate any provision of these rules (or of the rules of any individual institution supplementing or implementing these rules) shall be dismissed, suspended or censured by the appointing authority prescribed in the policies of the Board of Trustees.

Historical Note

Sec. added, filed Oct. 6, 1965; and filed new (a), (c), (d), (e), (f).

Apr. 13, 1970 eff. From chapter 211, page 483.
§ 535.7 Enforcement program. (a) The chief administrative officer shall be responsible for the enforcement of these rules (or of the rules of any individual institution supplementing or implementing these rules) and he shall designate the other administrative officers who are authorized to take action in accordance with such rules when required or appropriate to carry them into effect.

(b) It is not intended by any provision herein to curtail the right of students, faculty or staff to be heard upon any matter affecting them in their relations with the institution. In the case of any apparent violation of these rules (or of the rules of any individual institution supplementing or implementing these rules) by such persons, which, in the judgment of the chief administrative officer or his designee, does not pose any immediate threat of injury to person or property, such officer may make reasonable effort to learn the cause of the conduct in question and to persuade those engaged therein to desist and to resort to permissible methods for the resolution of any issues which may be presented. In doing so such officer shall warn such persons of the consequences of persistence in the prohibited conduct, including their ejection from any premises of the institution where their continued presence and conduct is in violation of these rules (or of the rules of any individual institution supplementing or implementing these rules).

(c) In any case where violation of these rules (or of the rules of any individual institution supplementing or implementing these rules) does not cease after such warning and in other cases of willful violation of such rules, the chief administrative officer or his designee shall cause the ejection of the violator from any premises which he occupies in such violation and shall initiate disciplinary action as hereinafter provided.

(d) The chief administrative officer or his designee may apply to the public authorities for any aid which he deems necessary in causing the ejection of any violator of these rules (or of the rules of any individual institution supplementing or implementing these rules) and he may request the State University counsel to apply to any court of appropriate jurisdiction for an injunction to restrain the violation or threatened violation of such rules.

535.8 Communication. In matters of the sort to which these rules are addressed, full and prompt communication among all components of the institutional community, faculty, students and administration, is highly desirable. To the extent that time and circumstances permit, such communication should precede the exercise of the authority, discretion and responsibilities granted and imposed in these rules. To these ends each State-operated institution of the State University shall employ such procedures and means, formal and informal, as will promote such communication.

535.9 Notice, hearing and determination of charges against students. (a) The term chief administrative officer, as used in these rules, shall be deemed to mean and include any person authorized to exercise the powers of that office during a vacancy therein or during the absence or disability of the incumbent.

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(b) Whenever a complaint is made to the chief administrative officer of any State-operated institution of the University of a violation by a student or students of the rules prescribed in this Part or of any rules adopted by an individual institution supplementing or implementing such rules) or whenever he has knowledge that such a violation may have occurred, he shall cause an investigation to be made and the statements of the complainants, if any, and of other persons having knowledge of the facts reduced to writing. If he is satisfied from such investigation and statements that there is reasonable ground to believe that there has been such a violation he shall prepare or cause to be prepared charges against the student or students alleged to have committed such violation which shall state the provision prescribing the offense and shall specify the ultimate facts alleged to constitute such offense.

(c) Such charges shall be in writing and shall be served on the student or students named therein by delivering the same to him or them personally, if possible, or, if not, by mailing a copy of such charges by registered mail to such student or students at his or their usual place of abode or attending college and also to his or their home address or addresses, if different.

(d) The notice of charges so served shall fix a date for hearing thereon not less than 10 nor more than 15 days from the date of service which shall be the date of mailing where necessary to effect service by mail. Failure to appear in response to the charges on the date fixed for hearing, unless there has been a continuance for good cause shown, shall be deemed to be an admission of the facts stated in such charges and shall warrant such action as may then be appropriate thereon. Before taking such action the hearing committee, hereinafter referred to, shall give notice to any student, who has failed to appear, in the manner prescribed in subdivision (c), of its proposed findings and recommendations to be submitted to the chief administrative officer and shall so submit such findings and recommendations 10 days thereafter unless the student has meanwhile shown good cause for his failure to appear, in which case a date for hearing shall be fixed.

(e) Upon demand at any time before or at the hearing the student charged or his representative, duly designated, shall be furnished a copy of the statements taken by the chief administrative officer in relation to such charges and with the names of any other witnesses who will be produced at the hearing in support of the charges, provided, however, that this shall not preclude the testimony of witnesses who were unknown at the time of such demand.

(f) The chief administrative officer may, upon the service of charges, suspend the student named therein, pending the hearing and determination thereof, whenever, in his judgment, the continued presence of such student would constitute a clear danger to himself or to the safety of persons or property on the premises of the institution or would pose an immediate threat of disruptive interference with the normal conduct of the institution's activities and functions, provided, however, that the chief administrative officer shall grant an immediate hearing on request of any student so suspended with respect to the basis for such suspension.

(g) There shall be constituted at each State-operated institution a hearing committee to hear charges against students of violation of the rules for maintenance of public order prescribed by or referred to in this Part. Such committee shall consist of three members of the administrative staff and three members of the faculty, designated by the chief administrative officer, and three students who shall be designated by the members named by the chief administrative officer. Each such member shall serve until his successor or replacement has been designated. No member of the committee shall serve in any case where he is a witness or is an officer or employee of the institution or has been directly involved in the events upon which the charges are based. In order to provide for cases where there may be such a disqualification and for cases
§ 535.9

(a) Organizations. Organizations which operate upon the campus of any State-operated institution or upon the property of any State-operated institution used for educational purposes shall be prohibited from authorizing the conduct described in subdivision (1) of section 535.3 herein.

(b) Procedure. The chief administrative officer at each state-operated institution shall be responsible for the enforcement of this section, and, as used herein, the term chief administrative officer shall include any designee appointed by said officer.
(1) Whenever the chief administrative officer has determined on the basis of a complaint or personal knowledge that there is reasonable ground to believe that there has been a violation of this section by any organization, the chief administrative officer shall prepare or cause to be prepared written charges against the organization which shall state the provision proscribing the conduct and shall specify the ultimate facts alleged to constitute such violation.

(2) Such written charges shall be served upon the principal officer of the organization by registered or certified mail, return receipt requested, to the organization's current address and shall be accompanied by a notice that the organization may respond in writing to the charges within ten (10) days of receipt of said notice. The notice of the charge so served shall include a statement that the failure to submit a response within ten (10) days shall be deemed to be an admission of the facts stated in such charges and shall warrant the imposition of the penalty described in subdivision (c) herein. The response shall be submitted to the chief administrative officer and shall constitute the formal denial or affirmation of the ultimate facts alleged in the charge. The chief administrative officer may allow an extension of the ten (10) day response period.

(3) Upon written request, by an authorized representative of the organization, the chief administrative officer shall provide the representative organization an opportunity for a hearing. A hearing panel designated by the chief administrative officer shall hear or receive any testimony or evidence which is relevant and material to the issues presented by the charge and which will contribute to a full and fair consideration thereof and determination thereon. The organization's representative may confront and examine witnesses against it and may produce witnesses and documentary evidence on its behalf. The hearing panel shall submit written findings of fact and recommendations for disposition of the charge to the chief administrative officer within twenty (20) days after the close of the hearing.

(4) Final authority to dismiss the charges or to make a final determination shall be vested in the chief administrative officer. Notice of the decision shall be in writing; shall include the reasons supporting such decision; and shall be served on the principal officer of the organization by mail in the manner described in paragraph (2) above within a reasonable time after such decision is made.
(c) **Penalties.** Any organization which authorizes the prohibited conduct described in subdivision (1) of section 535.3 shall be subject to the rescission of permission to operate upon the campus or upon the property of the State-operated institution used for educational purposes. The penalty provided in this subdivision shall be in addition to any penalty which may be imposed pursuant to the Penal Law and any other provision of law, or to any penalty to which an individual may be subject pursuant to this Part.

(d) **Bylaws.** Section 6450(1) of the Education Law requires that the provisions of this Part which prohibit reckless or intentional endangerment to health or forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization shall be deemed to be part of the bylaws of all organizations which operate upon the campus of any State-operated institution or upon the property of any State-operated institution used for educational purposes. The statute further requires that each such organization shall review these bylaws annually with individuals affiliated with the organization.

(e) **Distribution.** Copies of the provisions of this Part which prohibit reckless or intentional endangerment to health or forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization shall be given to all students enrolled in each State-operated institution.