

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

March 1, 2017

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SUMMARY

The California Court of Appeal unanimously held that substantial evidence supported UCSD's findings of student misconduct findings, that its procedures provided the accused student with a fair hearing, and that the suspension imposed was not an abuse of discretion.

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CALIFORNIA COURT OF APPEAL UPHOLDS UC SAN DIEGO'S DISCIPLINE OF STUDENT FOR SEXUAL MISCONDUCT

The California Court of Appeal, Fourth District, issued a [unanimous published opinion](#) on November 22, 2016, upholding UC San Diego's decision to suspend a student (Respondent) who violated UCSD's Student Conduct Code by engaging in sexual conduct involving a female student (Complainant) without her consent. The court ultimately found that (1) UCSD's findings were supported by "substantial evidence" based on Complainant's testimony during a formal hearing and the University investigator's report, (2) the University provided Respondent with a fair hearing, and (3) UCSD's sanction of a one year and one quarter suspension was not an abuse of discretion. The Respondent's request for further review by the California Supreme Court was denied on February 16, 2017.

Factual Background and Litigation History

After Complainant filed a complaint with UCSD alleging sexual misconduct, a UCSD investigator found that there was a sufficient basis to believe that Respondent had committed sexual misconduct. Pursuant to policies in effect at the time, a three-member student conduct panel held a hearing. The panel found that Respondent had engaged in sexual activity with Complainant without her consent, a violation of UCSD policy, and recommended a one-quarter suspension. UCSD sanctioning guidelines provided for a minimum sanction of one year for this type of policy violation. After considering the panel decision, its sanction recommendation, the evidentiary record, and statements from both Complainant and Respondent, the Dean imposed a one-year suspension. Respondent appealed the finding of responsibility and the sanction to UCSD's Council of Provosts. On March 20, 2015 the Council upheld the panel's findings and increased the suspension to one year and one quarter.

Respondent filed a lawsuit in San Diego Superior Court alleging that UCSD's decision was not supported by the evidence, that UCSD failed to give him a fair hearing, and that the sanction was unlawful. The Superior Court granted Respondent's petition and ordered UCSD to set aside the finding of responsibility and the sanction. The Regents appealed that decision to the California Court of Appeal.

The Court of Appeal's Decision

The Court of Appeal reversed the Superior Court on each of the three major issues: The Court of Appeal found that substantial evidence supported UCSD's findings, its procedures provided Respondent with a fair hearing, and the sanction imposed was not an abuse of discretion. In reaching these conclusions, the Court of Appeal reasoned:

- A reviewing court should give substantial deference to UC's factual findings.
- An investigation report prepared by UC employees may be considered as evidence because formal hearsay rules do not apply to student conduct proceedings.

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“A student disciplinary hearing must provide the accused student with notice and an opportunity to respond but need not provide all of the formalities applicable in criminal courts.”

- A student disciplinary procedure must provide the respondent with notice and an opportunity to respond but need not provide all of the formalities applicable in criminal courts.
- UC may require respondents to submit written questions to witnesses instead of conducting live cross-examination and may use a screen to physically separate students at a hearing.
- Consideration of a respondent’s decision to selectively answer some questions and avoid others does not violate the respondent’s Fifth Amendment rights.

Guidance for UC Professionals

This case did not consider UC’s current *Sexual Violence and Sexual Harassment Student Adjudication Framework* (PACAOS Appendix E)—which became effective January 2016 and therefore after the student disciplinary procedure at issue in this case. UC continues to take seriously its obligations to provide a safe educational environment and to ensure that students accused of policy violations are afforded a fair process. As legal determinations are often fact-specific, campus administrators who have any questions about these processes are strongly encouraged to consult with their Campus Counsel or Oakland-based attorneys in the Office of the General Counsel.