
New Appellate Court Case Holds College Not Required to Hold Live Evidentiary Hearing before Issuing Written Reprimand

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The California Court of Appeal has held that a community college's issuance of a written reprimand to a student found in violation of the college's policy against harassment does not entitle the student to a live evidentiary hearing. (*Knight v. S. Orange Cmty. Coll. Dist.* (Feb. 10, 2021) Case No. G058644, 2021 WL 486518.) In reaching its decision, the court distinguished a written reprimand from a suspension or expulsion and discussed a string of recent California cases that have ruled on procedural fairness or due process requirements for a post-secondary student accused of sexual assault or harassment.

Background

Marcus Knight was a male student with autism, cerebral palsy, and learning disabilities enrolled at Saddleback College, a school within the South Orange County Community College District. During the 2017-2018 academic school year, two female students raised complaints against Knight, alleging he followed them on campus and touched them. One of the female students further alleged Knight took photographs of her, which made her feel uncomfortable. With respect to both allegations, the college provided Knight with notice of the specific allegations and more than one opportunity to explain his conduct. The first female's complaint was resolved informally, at the complaining student's request. The college conducted a formal investigation into the second student's complaint, in which Knight's conduct was found to have occurred. Following the investigation, the college issued Knight a letter of its intent to suspend him. The letter included information related to Knight's appeal rights, which consisted of a live, evidentiary hearing conducted by a Disciplinary Hearing Panel. Knight appealed the decision, and the college notified him that he could continue to attend classes while he awaited the results of the appeal.

Due to witness unavailability, the college cancelled the hearing and issued Knight a written reprimand in lieu of suspension. Knight filed a petition in superior court to set aside the college's decisions, including all findings and sanctions against him. He argued that where an accused student faces severe consequences and the determination of facts turns on credibility, the opportunity to be heard must include a live, evidentiary hearing. The superior court granted Knight's petition and ordered the college to set aside its decisions against him, including all findings and sanctions.

Appellate Court Decision

On appeal, the Court of Appeal reversed. The appellate court found Knight received the appropriate level of due process throughout the disciplinary proceedings, specifically in that the college afforded him notice of the allegations and an opportunity to explain his conduct. In reaching its decision, the court cited the landmark United States Supreme Court opinion, *Goss v. Lopez* (1975) 419 U.S. 565, in which the Supreme Court distinguished between two levels of due process that apply to student discipline matters. Under *Goss*, the first-level of due process consists of notice and an opportunity to explain the alleged conduct. The *Goss* court found that basic due process for a student suspension up to 10 days consisted of notice and an opportunity to explain. The second-level of due process under *Goss* expanded upon the first to include a formal evidentiary hearing, with witnesses and cross examination.

In Knight's case, the appellate court noted that in more recent California cases dealing with student suspension and expulsion in the post-secondary context, accused students are afforded a hearing with live testimony only before the penalty of suspension or expulsion is imposed upon an objecting student. However, the court found no support that a student is entitled to a live hearing before receiving a written reprimand. The court found the college never barred Knight from campus or classes, nor did it ever actually suspend him. With respect to both female students' complaints, the court found the college provided Knight with appropriate notice of the allegations and more than one opportunity to explain his conduct.

Takeaways

Navigating the current Title IX landscape, particularly with respect to procedural fairness or due process for accused students, is fraught with complication. With the recently issued August 14, 2020 Title IX regulations—the permanency of which is far from certain—schools are faced with mounting pressure to ensure their policies and practices adhere to an ever-evolving set of rules. *Knight* demonstrates just how quickly schools have had to respond.

The conduct at issue in *Knight* took place between 2017 and 2018, prior to the August 14, 2020 new regulations under Title IX. Had the allegations arisen post August 14, 2020, and assuming the facts aligned with all other new Title IX requirements, the court's holding here might very well be inconsistent with the new regulations, which require a live, evidentiary hearing with witnesses and cross examination in the post-secondary context, regardless of any proposed discipline.

It is critical for schools and any other entities receiving federal funding under Title IX to stay apprised of new developments related to Title IX and to ensure their policies and practices adhere to prevailing case law and the new Title IX regulations.

If you have any questions about Title IX in general, please contact the author of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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