

Failure To Provide Fair Resolution Procedures Can Provide Basis For Gender Discrimination Claims By Students Accused of Sexual Misconduct

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Claims of sex discrimination brought against institutions by students accused of sexual misconduct are becoming more and more common. As a result, decisions issued by Courts in these cases are beginning to more clearly define the facts and actions that can support a finding of liability against an institution.

In Austin v. University of Oregon, et al., Case No. 6:15-cv-02257-MC, filed in the United States District Court for the District of Oregon, the Plaintiff and two others were accused of sexual violence by a fellow female student. Although the district attorney decided not to press charges against the Plaintiff, the University of Oregon addressed the incident by offering the students the option of an administrative conference or a mixed panel hearing by students, staff, and faculty, which encompassed a full range of sanctions, the right to appeal, and the right to cross examine.

The students chose the administrative conference option because expulsion was removed as a possible sanction. The University found that the students had engaged in sexual misconduct as defined by the Student Conduct Code and suspended the students for four to ten years, which was effectively an expulsion. The students sued the University and others, alleging, among other things, that the University violated Title IX by imposing a nearly immediate suspension, conducting a hearing with insufficient process, and denying the students an opportunity to appeal the school's decision.

Although the Court dismissed the case because the students had insufficiently pled facts to support their claims, the Court underwent an extensive discussion of what constitutes sufficient factual pleadings in circumstances where a male student alleges sex discrimination after a university suspends him for sexual misconduct, essentially laying out a roadmap analysis for cases of this type and highlighting how other courts handle similar cases.

Client Tip: *Courts require different levels of pleading in these types of cases, so it is imperative that your school has*

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adequate procedures in place that provide for reliable and impartial investigation, an opportunity for both parties to present witnesses and evidence, written notice of the outcome of the complaint, and the reasoning behind the outcome.

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