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## Judge: UCSD unfair to accused student



By Gary Warth · Contact Reporter

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A Superior Court judge has ruled that a UC San Diego board's disciplinary action against a student accused of sexual misconduct was unfair and not supported by evidence.

The student, who had faced a suspension of one year and a quarter, will be allowed to remain in school under the ruling handed down Friday by Judge Joel Pressman.

The school issued a statement Monday that it was evaluating the decision and considering whether to appeal.

Attorney Mark Hathaway, who represented the student known as John Doe in the lawsuit, said the ruling could send a message to other universities who may be overzealous in pursuing penalties against students accused of sexual misconduct.

"It's encouraging to see courts recognizing that sexual misconduct complaints on campus cannot be resolved at the expense of constitutional rights and fundamental fairness," Hathaway said.

The undergraduate facing suspension claimed in a lawsuit filed in April that he had been wrongly accused of sexual misconduct by a female UC San Diego student over an incident Feb. 1, 2014, and that the university had unfairly investigated the case.

Pressman agreed that UCSD investigators were unfair to the student because they did not allow him to present questions that would challenge his accuser's claims. The judge also wrote in his decision that evidence did not support the investigator's findings and that the university abused its discretion by increasing sanctions without explanation after the student appealed the penalty.

According to the lawsuit, the then-20-year-old male student and the then-19-year-old female student had consensual sex after a night of heavy drinking at a party the night of Jan. 31, 2014. The next morning, the male student made physical advances to the other student by touching her in a sexual way, but stopped after she repeatedly told him to leave her alone.

The couple had consensual sex in her apartment the following night, but the two later had a falling out, according to the suit. Four months after the incident, the female student reported the Feb. 1 morning incident to the UCSD Office for the Prevention of Discrimination and Harassment.

A complaint resolution officer who reviewed the claim found the incident violated the university's Student Sex Offense Policy.

The male student denied the incident at an administrative resolution meeting last October. In December, he appeared before a Student Conduct Review Panel, which recommended the school suspend him for a quarter.

Dean Sherry Mallory increased the suspension to one year last January. The student's attorney at the time filed an appeal to a panel of provosts, which then increased the suspension to a year and a quarter.

Hathaway saw the increased penalty as the school sending a message to discourage other students from appealing decisions about sexual misconduct.

He also said he suspects the university's pursuit of sanctions against the student was prompted by a 2011 letter from the U.S. Department of Education telling schools they must pursue investigations about campus sexual violence claims or risk losing federal money.

Hathaway called the federal action well-intended, but said it put pressure on schools that may violate students' civil rights as claims are blindly pursued.

In Pressman's decision, the judge wrote that he was concerned about the male student's due process right to confront and cross-examine adverse witnesses. The student's questions were reviewed in advanced by the panel chair, who refused to ask seven questions and paraphrased three others.

Hathaway said that since the 2011 U.S. Department of Education letter, students across the country have filed lawsuits claiming schools have denied them due process after they were accused of sexual misconduct. He said he believes this is the first case in California that resulted in a judge's decision.

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