

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

JOHN DOE,
Petitioner,

vs.

Ref. No.: 17-0028AP-88B
UCN: 522017AP000028XXXXCI

UNIVERSITY OF SOUTH FLORIDA
ST. PETERSBURG,
Respondent.

ORDER AND OPINION ON REHEARING

Upon consideration of Petitioner's Motion for Rehearing and Motion for Rehearing En Banc, filed on July 5, 2018, the University's Response to Petitioner's Motion, filed on July 12, 2018, and the oral arguments presented to the Court on December 18, 2018, the Motion for Rehearing is granted, and the Motion for Rehearing En Banc is denied. This Court's prior opinion dated June 12, 2018, is withdrawn, and the attached opinion is issued in its place. No further motions for rehearing will be entertained.

Petitioner challenges the final decision by the University's Dean of Students affirming the University Conduct Board's formal hearing outcome letter, which found Petitioner in violation of the Student Code of Conduct and expelled him from the University. For the reasons set forth below, the Petition for Writ of Certiorari is granted.

Facts and Procedural History

In September 2016, Petitioner was a student at the University of South Florida St. Petersburg. A female student filed a formal complaint with the University alleging that Petitioner engaged in non-consensual sexual contact and non-consensual sexual intercourse with her. The matter was investigated by a Title IX investigator, who completed a Final Investigative Report. Based on the Report, Petitioner was charged with violating the Student Code of Conduct

(“Code”) through Non-Consensual Sexual Intercourse (USF6.0021.IV.A.(4.14(b))) and Non-Consensual Sexual Contact (USF6.0021.IV.A.(4.14(c))). *See* Univ. of S. Fla. Sys., Regulations, USF6.0021, *available at* <http://regulationspolicies.usf.edu/regulations/pdfs/regulation-usf6.0021.pdf>. After being charged, Petitioner elected to have a formal hearing before the University Conduct Board pursuant to USF6.0021.IV.B.4. The University’s Charging Administrator was the sole witness at the hearing. After the hearing, the Conduct Board found Petitioner guilty and expelled him from the University. Petitioner appealed to the Dean of Students, who affirmed the Conduct Board’s decision. Petitioner then filed the instant Petition for Writ of Certiorari.

Standard of Review

“When a party seeks review of an administrative action in a circuit court, the circuit court must determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether there was competent, substantial evidence to support the administrative findings and judgment.” *McDougall v. Van House*, 801 So. 2d 118, 121 (Fla. 2d DCA 2001) (citation omitted).

Discussion

Petitioner raises a myriad of arguments in the Petition asserting that the University violated his due process rights, departed from the essential requirements of law, and issued a decision not supported by competent, substantial evidence. We write only to address the issue that requires the Petition for Writ of Certiorari to be granted.

Procedural due process

Petitioner asserts that the University violated his due process rights when it failed to provide him with an opportunity to view all of the documents related to the allegations against him, prohibiting him from presenting an adequate defense. In school disciplinary cases, “a relaxed due process standard is followed.” *Morfit v. Univ. of S. Fla.*, 794 So. 2d 655, 656 (Fla. 2d

DCA 2001) (citation omitted). However, procedural due process always “requires both fair notice and a real opportunity to be heard.” *Keys Citizens For Responsible Gov't, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001). To meet this requirement, “the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive.” *Dep't of Highway Safety & Motor Vehicles v. Hofer*, 5 So. 3d 766, 771 (Fla. 2d DCA 2009) (citation and internal quotation marks omitted).

Petitioner’s due process issue rests on the interpretation of the University’s Code. The Code, under “Rights of the Charged Student and Complainant,” states that “[t]he Charged Student may review the evidence in the possession of the University that *will be presented against* the Charged Student.” USF6.0021IV.D.1.c. (emphasis added). Under “Stages of Conduct Process,” the Code states that the Charged Student will be provided with “information including the rights of the Charged Student to . . . schedule a time to review the documents in the file that *may be used in the Formal Hearing*.” USF6.0021IV.B.4.b. (emphasis added). According to the University’s Response to the Petition, the Charging Administrator “did not introduce any exhibits into evidence [at the hearing]. Instead, she verbally summarized her interpretation of the Final Investigative Report.” The Response also indicates that the Final Investigative Report was the only document on which USF relied in presenting its case, and Petitioner was allowed to view it before the hearing.

If nothing was submitted into evidence at the hearing, “presented against” and “may be used in” must take on a broader meaning. The Court finds that evidence “presented against” and “used in” is not limited to specific documents laid before the tribunal. The only way “presented against” and “used in” can withstand scrutiny is if they include any and all evidence that might be used against a charged student directly or indirectly, including but not limited to use through admission into evidence at the hearing, testimony of any witnesses at the hearing, and any

information possessed by someone who testifies. Accordingly, Petitioner's due process rights were violated by the nondisclosure of information that either directly or materially affected what was actually presented at the hearing. *See Morfit*, 794 So. 2d at 656 (holding that when a school's own code guarantees a right, it is a violation of due process for the school to deny a student that right).

Conclusion

Because the University denied Petitioner his due process rights not only at the hearing, but also in the Dean of Student's final decision, which held that Petitioner had been afforded due process, it is

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is **GRANTED**.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this

_____ day of December, 2018.

Original Order entered on December 21, 2018, by Circuit Judges Jack Day, Amy M. Williams, and Pamela A.M. Campbell.

Copies furnished to:

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