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## **Federal court again recognizes that a duty of reasonable care applies in a disciplinary process, as the issue remains pending before the Eighth Circuit**

By Steven M. Richard

With the Department of Education's issuance of its Title IX regulations, colleges and universities will direct considerable attention to the new regulatory provisions by the August 14, 2020, effective date. At the same time, courts will adjudicate challenges to disciplinary processes based upon both federal law, such as Title IX, and state law, such as contract or negligence claims. Consequently, colleges and universities must concurrently evaluate the administrative and judicial landscapes.

Last year, we issued an [alert](#) addressing the Minnesota Federal District Court's ruling in *John Doe v. University of St. Thomas*, 368 F. Supp. 3d 1309 (D. Minn. 2019), *appeal pending*, No. 19-1594 (8th Circuit), which recognized a common law "duty of reasonable" care in the handling of disciplinary proceedings for college and university students attending private institutions. Specifically, the court found that the university's duty of reasonable care applied in the implementation of its policies and the investigation and resolution of the sexual misconduct complaint against the accused student, suggesting that the duty parallels the due process protections afforded to students at public institutions. While the court recognized this legal duty, it held factually that there was no breach by the university and entered summary judgment in its favor. In the plaintiff's appeal before the United States Court of Appeals for the Eighth Circuit, the university argues that the judgment should be affirmed, on alternative grounds, because it did not owe the plaintiff a common law duty of reasonable care.

While *St. Thomas* remains on appeal, the Minnesota Federal District Court recently revisited its negligence analysis and reached the same conclusion in *Vanegas v. Carleton College*, No. 19-cv-01878 (May 1, 2020). The ruling was made by a second judge of the court, Judge Michael J. Davis, who accepted a magistrate judge's report and recommendation and agreed with the "persuasive" analysis in *St. Thomas*.<sup>1</sup>

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<sup>1</sup> Minnesota Federal District Court Judge John R. Tunheim issued the *St. Thomas* ruling.

## **Background**

In the *Carleton College* case, two college students socializing at a campus event drank together, strayed off, and proceeded to a dorm room where they engaged in sexual activity. Thereafter, the students had different perceptions and recollections of what happened, with the female student later filing a sexual misconduct complaint against the male student.

The college investigated the complaint, interviewed the accused student, and held a hearing before a conduct board, which found the accused responsible for violating the sexual misconduct policy and recommended his suspension for three terms. Both students appealed, with the appellate officer amending the sanction to permanent expulsion based upon evidence that the complainant was incapacitated during the incident.

The student sued to challenge his expulsion, asserting statutory claims of Title IX gender and Title VI racial discrimination, as well as a common law negligence claim. The college filed a motion to dismiss the plaintiff's complaint, which was referred to a magistrate judge for a report and recommendation.

## **The magistrate judge's report and recommendation**

Magistrate Judge Leo I. Brisbois recommended the dismissal of the gender and racial discrimination claims, but allowed the negligence claim to survive in part. Regarding the negligence claim, the plaintiff pled alleged breaches of the duty of reasonable care that fell into three categories: (1) bias, (2) deficiencies in the college's sexual misconduct policy, and (3) failure to reasonably implement the sexual misconduct policy. Applying *St. Thomas*, the magistrate judge concluded that the plaintiff failed to plead a plausible claim under the first two categories, but plausibly pled that breaches occurred during the implementation of the disciplinary process.

Regarding the alleged bias, the plaintiff contended that the college failed to have a "fair and neutral fact-finder," which the magistrate judge found to be too conclusory. Further, the plaintiff claimed that he should have been notified of the existence of additional evidence, should have been allowed to conduct his own investigation, and should have received more process during the hearing. Rejecting these contentions, the magistrate judge concluded that the plaintiff was afforded with the procedures under the college's sexual misconduct policy. The plaintiff failed to plead that the policy's procedures were deficient. Yet, the magistrate judge recommended that the plaintiff should be allowed to proceed with his allegations that, in the implementation of its policy, the college rushed its investigation and ignored evidence in its investigative report and during the hearing.

## **The district court judge reaffirms the duty of reasonable care**

In its objection to the report and recommendation, the college requested that Judge Davis, as the trial justice assigned to the case, reconsider the court's ruling in *St. Thomas*. The college argued that *St. Thomas* effectuates an unsupported extension of state law that wrongfully imposes broad, tort-based duties in the college-student relationship. The college cited to Minnesota's common law precedent, pre-dating *St. Thomas*, that imposed a narrow duty on colleges and universities not to expel students arbitrarily. The college argued that *St. Thomas* deviates from the arbitrariness standard, enabling a lower bar to recovery.

Holding firm to *St. Thomas*, Judge Davis found that while colleges and universities have discretion in student conduct matters, "unfettered discretion is not appropriate, given the broad impact a

discipline may have on a student.” Judge Davis held that, under Minnesota law, a private college and university must use reasonable care before making disciplinary decisions, given its “unique relationship” with its students.

## **Takeaways**

The impact of this negligence analysis may extend beyond a question of Minnesota law, as courts nationally address complaints pleading multiple and often alternative theories to challenge disciplinary processes. As an initial consideration and a matter of comity, there may be questions about the extent to which a federal court may or should expand unclear or unresolved questions of state common law. Also, some courts have found that negligence claims are misplaced if a contractual relationship exists under state law between the school and its students, concluding that the school does not owe a duty extending beyond the terms of the parties’ contract. The Eighth Circuit’s ruling in *St. Thomas* may provide clarification regarding the viability of negligence-based claims in judicial challenges to disciplinary processes.

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