

OFFICE OF THE DEAN

Robert L. Clark
Professor and Dean



HAJIM
SCHOOL OF ENGINEERING
& APPLIED SCIENCES
UNIVERSITY of ROCHESTER

Personal and Confidential

June 2, 2016

Richard Aslin
Brain and Cognitive Sciences

Redacted

Jessica Cantlon
Brain and Cognitive Sciences

Redacted

Re: Policy 106 Complaint Determination

Dear Professors Aslin and Cantlon:

Beginning on or about March 11, 2016, you each submitted complaints through the University's Office of Counsel in which you alleged that Associate Professor Florian Jaeger may have violated University Policy 106 by engaging in a series of romantic relationships with graduate students and prospective students over the course of several years. Your allegations were that:

1. Jaeger engaged in sexual relationships with graduate students and at least one prospective graduate student in the BCS department and that Jaeger exercised some academic supervision over some of those individuals;
2. Jaeger engaged in a pattern of sexually promiscuous behavior that involved having sexual relationships/encounters with women in the BCS field, such as visiting students and visiting faculty;
3. Knowledge among UR BCS students of Jaeger's sexual behavior has created an environment in which female students do not have equal access to Jaeger;
4. Jaeger created a sexually hostile academic environment by making derogatory sexual comments about females that has negatively impacted females generally and one former graduate student (now faculty member) in particular, Celeste Kidd.

Pursuant to Policy 106, the University's Policy against Discrimination and Harassment, the matter was assigned to Catherine Nearpass for investigation.

Ms. Nearpass's extensive investigation involved interviews of 31 witnesses, including both of you. On May 23, 2016, Ms. Nearpass sent me her investigative report for review and a determination as to whether the conduct/issues complained of constitute a violation of University Policy 106.

OFFICE OF THE DEAN

Robert L. Clark
Professor and Dean



HAJIM
SCHOOL OF ENGINEERING
& APPLIED SCIENCES
UNIVERSITY OF ROCHESTER

Ms. Nearpass' 19-page investigative report is too detailed to be summarized here, but reached the following overall conclusions:

- Jaeger does not appear to have ever been involved in a sexual relationship with a student that violated the relevant Faculty Handbook provision.
- Jaeger was only involved in one relationship with a graduate student at UR while on the faculty (from 2008-09) and the relationship was consensual.
- Jaeger's sexual behavior vis a vis individuals in the field appears to have been vastly overstated (i.e., there was no evidence that he had a sexual relationship with an advisee in his lab, no evidence that he brought in visiting speakers for the implied purpose of sleeping with them, and no basis for pursuing investigation into the allegation that he attempted a sexual encounter with a visiting graduate student in 2014).
- There have been no previous complaints about Jaeger having engaged in sexual harassment.
- There is insufficient evidence to conclude that Jaeger engaged in sexually harassing behavior toward Kidd or to other female students in his lab.
- There were no concerns raised by current students despite speculation that current students were leaving his lab because they felt uncomfortable.

Although there are aspects of Jaeger's past behavior that warrant review and discussion, I think those are issues best addressed between the Chair and Jaeger, and I will discuss that with the Chair. Based on the totality of the information contained in the detailed report, however, I am unable to conclude that there was a violation of Policy 106.

Due to the confidential nature of these matters, I am unable to provide you with a copy of the investigative report, but you can contact Ms. Nearpass's assistant ^{Redacted} or contact my assistant, ^{Redacted} to arrange a mutually convenient date and time to read the report. Policy 106 provides you the right to appeal my decision to Provost Peter Lennie within 15 business days of my decision.

Also, you should consider this letter to be confidential to each of you, and it should not be shared with others.

Please know that I appreciate your bringing your concerns to the University's attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Clark".

Robert L. Clark
Professor and Dean
Senior Vice President for Research

OFFICE OF THE DEAN

Robert L. Clark
Professor and Dean



HAJIM
SCHOOL OF ENGINEERING
& APPLIED SCIENCES
UNIVERSITY OF ROCHESTER

Redacted

Redacted

Mark B. Taubman, MD
CEO, University of Rochester Medical Center and UR Medicine
Dean, School of Medicine and Dentistry
Senior Vice President for Health Sciences



UNIVERSITY of
ROCHESTER
MEDICAL CENTER

MEDICINE of THE HIGHEST ORDER

CONFIDENTIAL & PERSONAL - NOT FOR DISTRIBUTION

August 15, 2016

Richard N. Aslin
William R. Kenan Professor
Brain and Cognitive Sciences

Redacted

Jessica Cantlon
Associate Professor
Brain and Cognitive Sciences

Redacted

Dear Professors Aslin and Cantlon:

Thank you for your July 15, 2016 appeal relating to the Policy 106 investigation conducted relating to your complaints about another faculty member in the Department of Brain and Cognitive Sciences. I considered your appeal carefully, and read the complaints, the investigative report, the extensive witness testimony, the determination of Provost Clark, Ms. Nearpass's interview notes and email exchanges with all 30+ witnesses, and met with Ms. Nearpass and Department Chair Greg DeAngelis.

Standards for Appeal

As you know, the purpose of appeal under Policy 106 is not to have a complete re-review of the facts and conclusions. It is not my role to second-guess the investigator's conclusions or Provost Clark's findings, and so I will limit my discussion to the permissible grounds for appeal. The grounds are limited, and indeed the appeal was based on three of those grounds: (1) new evidence not previously available to the investigator or the decision maker; (2) material defects in the process leading to the decision (in this case alleged bias in the conducting of the investigation), and (3) the inappropriateness or lack of severity of a sanction.

My impression is that although the appeal acknowledges these grounds, in substance it provides little if any new evidence and consists primarily of disagreement with the conclusions drawn from evidence that was present in the investigative report and considered during the investigation. In that regard, it should be noted that a considerable amount of the testimony, and particularly that cited in the appeal, involved hearsay; despite the large number of witnesses, there was a limited amount of first-hand testimony. A second focus of the appeal rested on how University policies should be interpreted and your opinion of perceived weaknesses, in particular, with the consensual relationship policy set forth in the Faculty Handbook (approved by the Faculty Senate and the Board of Trustees). As a matter of necessity, due process to an individual requires that behavior complained of be evaluated in the context of the policy in place at the time of the behavior in question. With respect to Policy 106,

it is my understanding from the Office of Counsel that the policy was updated in 2013 to include some broader policy statements (including adding a Title IX statement), to add and/or clarify the definitions used in interpreting matters decided under the policy, as well as to streamline what otherwise was a lengthy (11 page) policy, but that substantively the policy has been interpreted the same way from the 2007 version. Policy 106 is a University policy which was approved by the University Board of Trustees.

1. New Evidence

Two major arguments presented in the appeal were: (1) that the faculty member had a relationship with an undergraduate student and that relationship was not mentioned and/or intentionally omitted in the report, and (2) that something might have happened with a prospective graduate student who visited in 2015. It was also alleged that there was bias relative to these issues specifically by the investigator.

Undergraduate Relationship

It was alleged that an undergraduate student had a sexual relationship with the faculty member "while she was in his lab." In fact, the original investigation revealed that although this individual had been an undergraduate at the University, she had graduated almost a year earlier and had been working as a lab manager in another faculty member's lab at the time their relationship began. In fact, the precise timing of their first date was easy to recall because it coincided with an event that was important to one of the parties. It should be stressed that both parties concur that the relationship began well after the individual graduated from the University; there was no testimony by any witness that contradicted this or otherwise suggested that the relationship occurred while the individual was an undergraduate. As such, the characterization of the individual as an "undergraduate" is not appropriate. Consensual relationships between employees, in the absence of a supervisory relationship, are a matter between those individuals and don't represent a violation of Policy 106. Given these facts, I think it was reasonable for Ms. Nearpass not to mention it in the report for at least one reason actually mentioned in the appeal – that the complaint is not about policing the sexual practices of colleagues. In sum, I do not find this information to be new evidence not previously available to the investigator nor do I find the investigator's decision not to include mention of a consensual relationship with a staff employee to be evidence of bias.

Prospective Visiting Student

On pages 14-15 of the appeal, it is suggested that a prospective graduate student who stayed at the faculty member and his partner's home in 2015 during her visit should have been interviewed because she "acted very strangely" during the recruitment weekend. It was also suggested that possibly something happened with the student because of an alleged sexual encounter years earlier involving the faculty member and his partner with a third person. Again, this is not new evidence. In fact, in the course of her investigation, Ms. Nearpass was unable to find any person with any relevant or direct knowledge of the allegation, and so did not address it in her report given that it appeared to be based entirely on speculation.

I should note that the appeal included additional statements as new evidence, but these statements must be considered as 'hearsay' because there were no witnesses named. In reviewing the considerable amount of information gathered in the original investigation, it appears that much of the knowledge within the department about sexual relationships was the result of rumors or assumptions. Upon discussion with those with direct knowledge, Ms.

Nearpass was unable to verify many of the rumors or allegations. Her investigation confirmed only one relationship from several years earlier with a University of Rochester graduate student. That student was not supervised by the faculty member and the relationship was consensual. The other confirmed "student" relationship did not involve a current student at UR, but rather an individual who had been a student elsewhere and who later sought admission to, and came to, UR as a graduate student. The appeal suggested that the faculty member was remiss in failing to disclose the relationship. However, disclosure of such a relationship was not required under the rules in place at that time.

One of the concerns raised in the appeal was that the actions of the respondent had created a hostile environment and one that deprived students of potential educational experiences. What constitutes a hostile environment is far from precise and is largely subjective, but there also is an objective component to that assessment. Despite the extensive testimony, there were relatively few concrete instances of behavior that were verifiable and based upon first hand testimony. In addition, the instances – namely involving offensive comments or stories – were spread over a fairly long period of time, with none being recent. Ms. Nearpass' conclusion that there was not enough information to support a finding of a hostile environment certainly appears to be reasonable when one takes into account the totality of the information available to her.

2. Bias in the Investigation

The complaint argues that the Office of Counsel is inherently biased because of its desire to protect the University and/or the accused.

One of the principle arguments in that regard was the handling by the investigator of the issue related to the alleged relationship with an "undergraduate" student. As noted above, this relationship was in fact not with an undergraduate student and its handling cannot be construed as indicating bias. Similarly, her decision not to fully investigate allegations based upon speculation, and not supported by any witness (first or second hand), such as discussed above for the perspective student, should be viewed as good judgment and not bias.

A second argument was that there were potential witnesses who were not examined. To say the least, the investigative file is vast and there is more documentation in this instance than in any other investigation I have reviewed. In the process of deciding whom to interview, Ms. Nearpass had multiple meetings or communications with many people, including each of you and received your input in writing. However, it is perfectly appropriate for her to have exercised professional judgment to decide whom to interview, whom not to, and what areas to cover. It is also necessary for any investigator to assess (and address) witness credibility, particularly when she receives information from multiple sources that raise questions of reliability. I cannot conclude that Ms. Nearpass was biased because she exercised that judgment. I am convinced that she did so in good faith and with the objective of getting to the truth of the matter.

I might also note that this is not a process that is intended to allow others or the public to examine every detail in order to determine what they believe the facts are, and that is why the underlying statements and notes are not made available. It is an internal, administrative process intended to be handled confidentially to the extent possible. Importantly from my perspective, we exist in a country which has as one of its fundamental principles that people are innocent until proven guilty and that investigations should be conducted in a way that allows one to address the allegations, but at the same time is done so in a way that protects the accused from unwarranted publicity by broadcasting widely that he is under investigation. Interviewing

every person who has come in contact with the respondent, such as applicants or students who complained to no one about the respondent, would not conform to that standard.

I also cannot credit the assertion that the Office of Counsel biases its investigation because it purportedly wishes to protect the University by favoring the respondent. In this era, no University would believe that it is in its interest to protect personnel whose behavior violates its standards. I believe that what protects the University is an investigation that is thorough and balanced and fair to all involved in the process, and provides enough information to support a reasoned conclusion. From my review of the extensive file and my discussion with Ms. Nearpass, that kind of investigation was done in this case.

It is my understanding that when functioning as an investigator, Ms. Nearpass cannot give legal advice on matters that she investigates and that in her investigative role she is not governed by any conflicting legal obligation to the University. She can, however, and sometimes needs to remind individuals of the confidentiality of the process and to allow her to conduct the investigation. I do not view her efforts to allow her to do her job and to attempt to minimize influence of participants on other witnesses during the investigation to be evidence of bias.

Ultimately, the question is not whether you, or I for that matter, would have done the investigation the same way, but rather whether Ms. Nearpass based her investigative decisions on her good faith professional judgment, which I am satisfied that she did.

3. Sanctions

Since there was no finding of a violation, technically an appeal cannot be based on inappropriate sanctions, because there was no "sanction" under Policy 106. Of course, this does not mean that the matter goes entirely unaddressed and perhaps that is simply a misunderstanding on the part of those involved.

This is an important point. The appeal appears to have been issued in part on the belief that the "no violation" determination meant that nothing would be done to address your concerns and that the respondent experiences no consequence whatsoever. But as indicated in Provost Clark's letter, although he did not find that the behavior in question rose to the level of a violation under Policy 106, he did not condone any inappropriate or offensive behavior revealed through the investigation. Rather, Provost Clark noted that some things were "troubling" and directed the chair to follow up with the respondent. Through my discussions with Greg DeAngelis, I am confident that appropriate and reasonable steps are being taken (which includes some of the relief you requested) to address the concerns and ensure that similar behavior does not recur in the future. This is precisely the purpose of reporting these concerns and I appreciate your having brought the concerns forward so that the University has an opportunity to address the concerns.

Conclusion

In closing, I wish to address one additional point related to the concern that the process focused too narrowly on Policy 106 and the Faculty Handbook consensual relations policy, to the exclusion of Title IX. My understanding is that Policy 106 is itself focused entirely on discrimination and harassment as the law (including Title IX) defines it; a Title IX statement appears on the first page of Policy 106. Policy 106 was developed to provide a process by which the University can investigate whether behavior has occurred that is either unlawful or has the potential to become unlawful, so that the University can take corrective actions to

prevent a recurrence of those behaviors. The standards and definitions of Policy 106 were in fact drawn from Title IX and other similar anti-discrimination laws.

I believe, based on my review of the file and a discussion with Ms. Nearpass that, though there were some comments made and other behaviors that evidenced, in my opinion, poor judgment and that I otherwise cannot condone, overall, the behavior did not rise to the level of severity or pervasiveness required to constitute a hostile academic environment. I also am unable to conclude that there was any "unreasonable" interference with students' access to education. To the extent that a few students (both male and female) indicated they avoided the professor, there were a whole mix of reasons provided, most of which had nothing to do with alleged sexual relationships. In my experience, this also is not atypical of any research laboratory. It is my understanding that the respondent's laboratory continues to attract both male and female students. In addition, according to my discussions with Greg DeAngelis, there does not appear to have been any discernable decrease in the total number of applicants, the number of female matriculants, or the quality of applicants during the respondent's employment.

In addition, the vast majority of students who were in fact aware of any real or rumored relationship did not indicate to Ms. Nearpass that such knowledge negatively impacted their environment or education. I agree that the experience of the one graduate student (now faculty member) mentioned in your appeal is troubling, but discerning almost eight years after-the-fact how much of that perception is due to what clearly was an ill-advised and roommate situation which strained their relationship and/or due to alleged offensive comments of a sexual nature is difficult. Regardless, the behavior alleged would not be appropriate and rest assured that those specific concerns will be reviewed by the Department Chair with the faculty member appropriately.

In sum, it is not my role in this appeal to second-guess or re-determine conclusions drawn by either Ms. Nearpass in her investigative report or by Provost Clark in reaching his determination that there was no violation of Policy 106. Nevertheless, I believe that Provost Clark's conclusion that the faculty member's behavior did not rise to a level which would constitute a violation of Policy 106 was appropriate based on the overall totality of the information based upon my review of the entire investigative file, including all witness interviews.

Sincerely,



Mark B. Taubman, M.D.

cc: Robert Clark, Provost
Gregory DeAngelis, Chair

OFFICE OF THE DEAN

Gloria M. Culver
Dean



SCHOOL OF
ARTS & SCIENCES
UNIVERSITY OF ROCHESTER

CONFIDENTIAL

October 4, 2016

Celeste Kidd

Redacted

Re: Policy 106 Complaint Determination

Dear Professor Kidd:

This letter concerns your complaint, in a letter dated July 21, 2016 to me and Dean Peter Lennie, that Florian Jaeger retaliated against you for your participation in a prior Policy 106 investigation by making derogatory statements about your credibility to others in the Brain and Cognitive Sciences (BCS) department. Your letter also complained that the investigator breached your confidentiality by identifying you by name in her report, and that you were also named in Provost Clark's determination letter sent to Professor Jaeger. Your familiarity with the complaint is assumed and not all of its allegations are repeated in full here.

As you know, because your complaint was, in part, about the actions and/or inactions of Catherine Nearpass, the investigator in the first investigation, your complaint was assigned to an independent outside investigator, Cynthia Maxwell Curtin, Esq., for investigation under the University's Policy against Discrimination and Harassment (Policy 106). On September 26, 2016, Ms. Curtin sent me her 19-page investigative report, for review and a determination as to whether the conduct complained of constitutes a violation of University Policy 106.

Given the length and detailed nature of the report, I will not attempt to quote from or paraphrase the entirety of that report in this letter. However, the investigator found sufficient evidence that (1) despite knowledge of the expectation of confidentiality, the first investigation was widely discussed in the department and on many occasions by you, the initial Complainants, the Accused, and others, and (2) the report in the prior investigation discussed your credibility based on information from witnesses interviewed but did not use the word "unreliable" at any time (though the Complainants in the first investigation used that term in their communications about the report and in their appeal). The investigator found there was "insufficient information" to find that (1) references were made to you being a liar (or that information from you was lies), (2) that references to allegations being "made up" or "untrue" were specifically in regard to you, (3) references to the information that you provided in the first

Redacted

OFFICE OF THE DEAN

Gloria M. Culver
Dean



SCHOOL OF
ARTS & SCIENCES
UNIVERSITY OF ROCHESTER

investigation or of your motive originated with the Accused, and (4) that any comments regarding you made by the Accused were in retaliation against you, but rather were in defense of his own reputation after he was approached by others stating rumors about him or conclusions about the investigation that were not true or otherwise not accurately reported. The report provides a significant amount of detail as to the reasons for these findings.

The report also acknowledges that you were named in the report because the initial complaint largely was about misconduct against you, your name was mentioned in the initial complaints from the complainants, and your identity was otherwise obvious from certain unique facts and circumstances described in the report. Ms. Curtin did note that, even though you volunteered to be identified in the report (to the prior investigator), you had expressed concern about witnesses being identifiable to the accused. Ms. Curtin found though that the prior investigator did not get back to you prior to issuing her report which included your name (while deidentifying other witnesses).¹ I do not, however, believe this was in retaliation for your role in the investigation; rather, it was clear to the investigator that all of those involved knew your identity. In addition, your name was not used in the decision maker's letter to Professor Jaeger. I do understand your concern about your name not being previously known to either decision maker, but can assure you that deans and provosts understand they cannot take a faculty member's participation in a 106 investigation into account when making tenure decisions, which are based on teaching, research, and service.

Based on the totality of the information in the report, my determination is that there was no retaliation by either Professor Jaeger or Ms. Nearpass against you in violation of Policy 106. Policy 106 provides any party (complainant or either accused) the right to appeal my decision to the Provost, Rob Clark, within 15 business days of my decision. For more information on appeals, please see page 5 of Policy 106 at this link:
<http://www.rochester.edu/working/hr/policies/pdfpolicies/106.pdf>.

Due to the confidential nature of these matters, I am unable to provide you with a copy of the investigative report, but you can contact Redacted to arrange a mutually convenient date and time to read it. Given the facts and circumstances that have led us to this point, I want to emphasize the need for confidentiality as it relates to this letter, the report, and this investigation. The purpose of reviewing the report is to allow you, as the complainant, to understand the basis for my findings and to assess whether you wish to appeal. You are not permitted to copy or photograph the report, although you may take notes (though those notes also must be kept confidential).

In closing, it is important that you remember that retaliation is prohibited, both by law and University policy, against any person who complained, the accused, or persons

¹ I disagree with Ms. Curtin's finding that the prior investigator took no steps to mitigate your concerns about the accused knowing the identity of other witnesses. That is simply untrue.

OFFICE OF THE DEAN

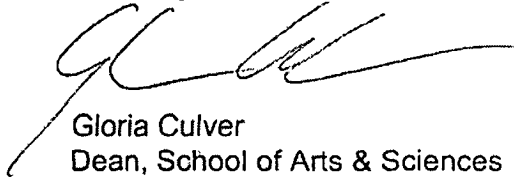
Gloria M. Culver
Dean



SCHOOL OF
ARTS & SCIENCES
UNIVERSITY OF ROCHESTER

who participated in this investigation. Should you experience any behavior you believe may be retaliatory, I encourage you to let me know and I will follow up accordingly.

Sincerely,



Gloria Culver
Dean, School of Arts & Sciences

OFFICE OF THE PROVOST

Robert L. Clark
Provost
Senior Vice President for Research



VIA HAND DELIVERY
CONFIDENTIAL

November 17, 2016

Ms. Celeste Kidd
Assistant Professor
Department of Brain and Cognitive Sciences

Redacted

Re: Policy 106 Appeal

Dear Professor Kidd:

This letter constitutes my decision regarding your appeal of Dean Gloria Culver's determination denying your claim of retaliation against Florian Jaeger and HR investigator Catherine Nearpass.

I have reviewed the following: your memorandum to Deans Lennie and Culver of July 19, 2016 (the complaint), your letter to them of August 19, 2016, Dean Culver's determination letter of October 4, 2016, your letter of October 11, 2016, and Dean Culver's response of October 14, 2016, along with the investigative report and other information in Ms. Curtin's investigation file.

Under Policy 106, grounds for appeal are limited:

Appeals are not for the purpose of having a second investigation or review of all facts but are limited to considering (1) evidence not previously available to the Investigator or the Official (or designee); (2) material defects in the process leading to the decision; or (3) severity or appropriateness of the imposed corrective action.

Your appeal of October 31 appears to consist mostly of arguments about the merits of Dean Culver's decision, and about the conduct and result of the *initial* investigation. I will not revisit those issues here.

The only language I see in your appeal which appears to identify a permitted ground for appeal under the policy is your suggestion in footnote two that Cynthia M. Curtin's investigation of your retaliation complaint was biased. You seem to base this conclusion on your belief as to how the investigation was or should have been conducted, but you otherwise state no facts in support of your claim. In fact it was precisely to avoid a claim of bias that the University hired an outside investigator to look

Redacted

Ms. Celeste Kidd-2
November 17, 2016

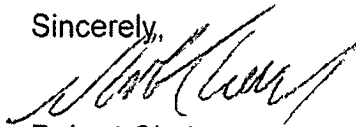
into your complaint of retaliation. My review shows that her investigation was appropriate based on the complaint received. I saw nothing in the investigation, nor can I discern anything from your allegations, that reveal any bias by the investigator.

I do, however, wish to clarify the meaning of retaliation under the policy. Retaliation is defined in Policy 106 as (1) an adverse action (2) by the University (3) taken because of a person's participation in a complaint or investigation of discrimination. Although you have shown some evidence that the acts you complain of might dissuade a reasonable person from participating in the process, that conclusion is not dispositive because the first parts of the retaliation definition were not met.

There must first be an adverse action, taken by the University, because of (motivated by) the complaint or participation in the investigation. According to the investigator, nothing like that happened here.

In sum, for all the reasons noted above, I am upholding Dean Culver's decision that there was no retaliation by either Professor Jaeger or Ms. Nearpass against you in violation of Policy 106. I am copying Professor Jaeger and Ms. Nearpass on this letter so they are aware of my decision and what I have communicated. I also am copying Dean Culver as the initial decision maker; if she decides that any of your questions merit further response she may follow up with you directly. To be clear, though, this letter concludes the appeal process.

Sincerely,



Robert Clark
Provost

cc: Dean Gloria Culver
Professor Florian Jaeger
Ms. Catherine Nearpass