

From: **Mary Beth Snyder** <[mbsnyder@oakland.edu](mailto:mbsnyder@oakland.edu)>  
Date: Mon, Mar 5, 2012 at 11:02 AM  
Subject: Response to Your Appeal Regarding Student Conduct Hearing  
To: Joseph Corlett  
Cc: Mary Beth Snyder <[mbsnyder@oakland.edu](mailto:mbsnyder@oakland.edu)>

**VIA ELECTRONIC AND FIRST CLASS MAIL**

March 5, 2012

Joseph Corlett  
[contact information redacted]

Re: Pamela Mitzelfeld (Complainant) v. Joseph Corlett (Respondent)  
Response to Appeal

Dear Joseph:

I never received a final appeal from you so this is in response to your email that forwarded a "preliminary unlocked" version of your Appeal Request dated Monday February 13, 2012.

Your appeal seeks to overturn the January 19, 2012 University Conduct Committee decision which found you responsible for violating the *Unlawful Individual Activities* regulation referenced in the University's Student Handbook, which includes prohibited behaviors that "...in any way intimidate, harass, threaten or assault any person engaged in lawful activities on the campus." You cite two grounds on appeal; procedural errors and substantial new evidence. I will address each in turn.

**Procedural Due Process**

The parameters of due process, in the context of university student discipline, are well settled. In that regard, a university is an academic institution, not a courtroom or administrative hearing room. Similarly, a university student disciplinary proceeding is not a criminal trial, nor is a student accused of misconduct entitled to all of the procedural safeguards afforded criminal defendants in full-scale adversarial proceedings. While universities cannot ignore their obligations to treat students fairly, neither are they required to transform classrooms into courtrooms. A student facing discipline must be given only *some* kind of notice and only *some* kind of hearing, and not the traditional standards of due process which must be given to parties in criminal and civil law proceedings

In the end, the only process that is due is that which provides rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from the university. It is against this backdrop that I will respond to your allegation that "a series of highly prejudicial and particularly egregious procedural errors" deprived you of the process due you:

1. Claim: Failure to keep my confidential education records and the records of this student disciplinary case confidential as required by OU's own Policy and

federal law, specifically the Family Educational and Rights Privacy Act of 1974 ("FERPA").

Response: This claim is conclusory. You do not state what criterion of procedural due process was affected or how such an alleged violation, if it occurred, deprived you of that criterion. Moreover, you have failed to identify in any way how an alleged FERPA violation by the University, if proven, would relieve you of responsibility for your actions. Therefore, as an independent basis for appeal, your claim #1 is denied.

2. Claim: Failure to disclose the contents of my confidential education records (*i.e.*, my Daybook) upon request, in violation of OU's Student Handbook and FERPA.

Response: Your Daybook was accepted as evidence by the University's Conduct Committee during your disciplinary hearing. Therefore, as an independent basis for appeal, your claim #2 is denied.

3. Claim: Failure to provide me with appropriate notice of the student disciplinary charges against me (specifically, a description of the specific act or acts that allegedly violated the cited Code of Conduct provisions) in advance of the January 19, 2012 University Conduct Committee Hearing, in violation of OU's Student Handbook and federal law.

Response: You were given written notice of the charge against you. In addition, the Assistant Vice President for Students Affairs and Dean of Students and Assistant Dean of Students advised you verbally and met with you to discuss the situation and charges against you and to explain the University's Conduct Committee hearing process. In addition, you were represented by the Assistant Vice President for Student Affairs before and during the hearing, and she advised you of the charges against you and helped you prepare for, and present, your defense. Therefore, as an independent basis for appeal, your claim #3 is denied.

4. Claim: The failure and/or refusal (acting through the Committee Chairman) to permit me to present relevant, properly introduced evidence and information during the course of the Hearing, which includes, but is not limited to: (a) the legal standards applicable in cases involving free speech rights and harassment allegations (*i.e.*, the Committee Chair prohibited me from introducing/offering the 2003 Department of Education "Dear Colleague" Letter during the Hearing, which explaining the Title IX definition of the term "harassment"); (b) evidence of OU's violation of my First Amendment free speech rights pursuant to binding legal precedent; (c) evidence of OU's violation of my privacy rights under FERPA, including OU's unlawful disclosure of the content of my Daybook (a personally identifiable education record protected from disclosure) to individuals with no legitimate educational interest in such records under FERPA.

Response: As mentioned before, the University's student Conduct Committee is not a court of law and its processes are not intended to serve legal judicial purposes. The University's Conduct Committee panels are not judges deciding legal cases or precedents. Your claims, (a), (b) and (c), are all premised upon you presenting technical legal definitions and standards in defense to charges that are neither technical nor legal in nature, but rather, would be considered intimidating, harassing, threatening or

assaultive behavior in the context of the University's academic, educational environment. Therefore, as an independent basis for appeal, on the grounds of legal substantiality, your claim #4 is denied.

5. Claim: OU's request that I withdraw from my classes at OU *PRIOR* to the date of the formal University Conduct Committee Hearing, prior to OU's final determination of this student disciplinary case, and prior to even affording me any meaningful opportunity to be heard, in violation of the University's own Student Handbook and fundamental right to due process of law.

Response: The process which is due in a student conduct hearing clearly allows an educational institution to implement interim steps to address a situation provided that notice and a hearing are provided after the interim steps have been taken. Therefore, as an independent basis for appeal, your claim #5 is denied.

6. Claim: OU's (acting through Dean McIntosh, Dr. Snyder, and other designated officials and administrators) continued support of Out's (sic) adjudication of this student disciplinary matter despite his express acknowledgement that I had not "threatened anybody," which mandated that OU cease its pursuit of the complaint in this case due to the wholly insufficient allegations contained therein (*i.e.*, failure to allege facts sufficient to constitute sexual harassment or intimidation under the Student Handbook).

Response: Dean McIntosh is not the arbiter of student conduct complaints and the "express acknowledgment" you allege was nothing more than a preliminary reaction that was not based upon all of the evidence presented at the hearing. Your claim, ostensibly that the University should have summarily accepted your position and rejected the faculty member's and cancelled the disciplinary hearing without the University's Conduct Committee hearing any evidence, does not represent a violation of a criterion of procedural due process. Therefore, as an independent basis for appeal, your claim #6 is denied.

7. Claim: OU's failure to adequately train those officials, administrators, faculty and students designated to investigate and adjudicate student disciplinary cases involving allegations of sexual harassment or misconduct, in violation of the University's own Student Handbook and federal law.

Response: This claim is conclusory. You do not support your claim with any facts. Therefore, as an independent basis for appeal, your claim #7 is denied.

8. Claim: OU's failure to adequately ensure that the Committee's determination of my student disciplinary case was not improperly motivated by sex or other impermissible bias, predisposed notions or procedural error(s).

Response: This claim is conclusory. You do not support your claim with any facts. Therefore, as an independent basis for appeal, your claim #8 is denied.

9. Claim: OU's failure to treat both the accuser and the accused equally throughout the investigation and adjudication of this matter, in violation of the University's Student Handbook, as well as state and federal law.

Response: This claim is conclusory and not supported by the facts available to me in consideration of your appeal. Therefore, as an independent basis for appeal, your claim #9 is denied.

10. Claim: OU's consistent and widespread failure to comply with the procedural mandates of Title IX, the implementing regulations thereunder and the mandates enumerated in OCR's April 4, 2011 "Dear Colleague" letter, including OU's failure to comply with its express obligation to publish and follow specific investigation and adjudication procedures for sexual harassment complaints, and to not impose a burden of proof higher than a "preponderance of the evidence" in determining such cases.

Response: This claim is conclusory. You do not support your claim with any facts. Therefore, as an independent basis for appeal, your claim #10 is denied.

#### Substantial New Evidence

You state that the following evidence was not available at the time of your disciplinary hearing:

11. Claim: Communications of any form or type (*e.g.*, electronic, written, etc.) among members of the Oakland University English Department administration, faculty and staff, and/or any other members of the OU campus community, addressing or relating to the organization and execution of an on-campus meeting/gathering which-based upon information which I have received and discovered following the University Conduct Committee Hearing - may have been planned by Prof. Mitzelfeld, English Department Chair Hawkins, and/or Dr. Snyder (and/or other additional member(s) of the OU English Department and/or campus community at-large), and during which my confidential educational records a (sic) and records of this student disciplinary case (including the contents of my Daybook) were improperly disclosed to and discussed with various members of the OU English Department and the campus community at-large with no legitimate educational interest in reviewing the same for the purpose of garnering support for Prof. Mitzelfeld's student disciplinary complaint in this case, and rallying the OU community against me.

Response: A meeting was held in December 2011, in the presence of the University's legal counsel, for the purpose of discussing potential improvements to the University's administrative procedures for responding to faculty complaints, not your disciplinary process or hearing. Therefore, as an independent basis for appeal, your claim #11 is denied.

12. 12. Claim: The contents of Oakland University's online Sexual Harassment Training Module, which was published by the Office of the Dean of Students, and which provides several specific examples of speech constituting non-harassing, protected speech, and harassing speech which is not protected and thus violates certain provisions of the Student Handbook. The examples set forth in this OU online Sexual Harassment Training Module lend extremely strong support to this Appeal Request and a finding that I have not violated any provision of the Student Handbook in this matter.

Response: The module you reference is an employee training module that employees must take and has been on the University's website since about 2003. As such, this is not substantial new evidence that was not available to you prior to the hearing. Therefore, as an independent basis for appeal, your claim #12 is denied.

### Other Claims

You also by implication include other claims to support your appeal, namely:

13. 13. Claim: In addition to the standards and requirements set forth in OU's own Student Handbook, Oakland University is required to comply with various state and federal anti-discrimination and equal opportunity laws.

Response: This claim is conclusory. You do not support your claim with any facts. Therefore, as an independent basis for appeal, your claim #13 is denied.

14. 14. Claim: An objective review of the procedural and evidentiary record in this matter depicts that Oakland University has engaged in a systematic, unapologetic and ongoing course of action with respect to my student disciplinary case in direct violation of the requirements of Title IX, FERPA and the due process clause of the Fourteenth Amendment.

Response: This claim is conclusory and not supported by the facts available to me in consideration of your appeal. Therefore, as an independent basis for appeal, your claim #14 is denied.

15. 15. Claim: The record demonstrates that OU has committed numerous material breaches of contract by failing to follow its published policies and procedures in handling my disciplinary case.

Response: The University has no contractual relationship with you, and it is well recognized in Michigan that neither admission to a public university nor the university's student handbooks, etc., create contractual relationships. In addition, the University's Student Handbook specifically provides that "This Student Handbook, in its entirety or in its component parts, is not a contract and cannot be utilized, construed or relied upon as a contract". Therefore, as an independent basis for appeal, your claim #15 is denied.

16. Claim: Beyond Oakland University's violation of federal and state law, as well as its own policies and procedures, the University's unwavering commitment to achieving a predetermined result with deliberate disregard for the likely consequences and grievous harm that I would suffer is particularly troubling. Indeed, as a direct result of Oakland University's unlawful actions throughout the investigation and adjudication of my case, I have suffered significant reputational and monetary damages.

Response: This claim is conclusory and not supported by the facts available to me in consideration of your appeal. Therefore, as an independent basis for appeal, your claim #16 is denied.

### Decision

Your appeal is denied for the reasons stated above

I noted that you did not rely upon the tape recordings of your disciplinary hearings to support your appeal. In considering your appeal I discovered that, because of human error, the University's Conduct Committee did not tape record the hearings. However, because your stated grounds on appeal (the procedural errors and substantial new evidence you allege) were not dependent upon the existence of the tape recordings, I deem the lack of existence of the tape recordings to be harmless error.

### Relief

Based upon my decision, the relief you requested is denied.

Please feel free to call me with any questions.

Sincerely,

Mary Beth Snyder

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