

October 20, 2011



UNIVERSITY OF
DENVER

Office of the Provost

Arthur Gilbert

Dear Arthur:

On October 10, 2011, you submitted to me an apparent appeal of Dean Christopher Hill's disposition of the grievance that you filed against him on August 9, 2011. Your grievance cited "unethical procedures followed in connection with the complaint for sexual harassment filed against" you. In your grievance, you cite a mishandling of the ODEO determination, ignoring DU policy, and the dean acting as "judge, jury, and executioner."

Dean Hill responded to your grievance on August 19, 2011. He noted that he had received two written complaints about the classroom environment you created in a course that you were teaching, as well as verbal complaints about the same from other students. Because these complaints referred to a sexualized environment, and in accordance with University policy, Dean Hill appropriately referred them to the University's Office of Diversity and Equal Opportunity (ODEO). No matter from whom such possible harassment complaints come in our community, and no matter to whom they are directed (students, faculty members, staff members, or administrators), they are all immediately referred to the ODEO for consideration and disposition. The receipt of this complaint was communicated to you in a letter from Director Susan Lee on April 6, 2011. Given the nature of the complaint, the ODEO director initiated an investigation, and you were put on paid administrative leave until the inquiry was complete. Both acts are wholly consistent with University policy and practice, and the fact that the accused may be a faculty member has no bearing.

On June 14, 2011, you received a communication about the findings of the investigation undertaken by the director of the ODEO. The investigation concluded it was more likely than not that, absent an academic justification, you created a "sexual harassment hostile environment in your class." Dean Hill then ordered you to undergo sensitivity training in a memo dated July 14, 2011. He upheld that position in his August 19 response to your grievance.

On August 26, 2011, and consistent with the University's grievance policy recently endorsed by the Faculty Senate and approved by the Board of Trustees, you requested that the University's Faculty Review Committee (FRC) - which, as stated in the constitution of the Faculty Senate, is an advisory committee - consider your grievance against Dean Hill. According to that policy, the grievant may solicit a determination of the FRC before the grievance is submitted to the respondent's

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supervisor. In this case, the respondent is the dean and the supervisor is the provost. In your request, you cite "an unrelenting attack on [your] teaching ... culminating in Dean Hill's charge of sexual harassment against [you]." You also claim that your academic freedom was violated, that Dean Hill misread and distorted "the report issued by Human Resources" (presumably the finding of the ODEO), that Dean Hill had a "conflict of interest" in the matter, that the dean "ignored DU rules of procedure," and that the dean "behaved in a manner sharply at variance with academic practice."

On October 4, 2011, the FRC communicated its determination of your requested review of your grievance against Dean Hill. The FRC found the ODEO findings regarding sexual harassment, which were detailed in five sufficient facts on the record, as "equivocal at best." The stated equivocation apparently hinges on the ODEO report's qualification of its findings with the statement, "absent an academic justification." For the record, it is not the role of the ODEO to determine the nature of academic appropriateness. Its statement "absent an academic justification" is language acknowledging that limited role. The FRC as a faculty committee might have weighed in on the nature of an "academic justification," but it chose not to do so.

The FRC also noted that Dean Hill was late in his reply to your initial grievance, though you did not choose to grieve that fact. Dean Hill was reportedly traveling and out of the country during that period, which contributed to his late response. The FRC also noted that, in response to your charge of conflict of interest, a dean logically may not recuse himself from a grievance if he is the respondent.

The FRC's determination also states, "we believe there was a violation of academic freedom in this case." It supports that belief with the observation that there is no record of members of the faculty being consulted by the dean, by the Office of Human Resources, or by the ODEO in "determining Professor Gilbert's teaching methods constituted sexual harassment."

It should be noted that neither the dean nor the Office of Human Resources "determined" that your teaching constituted sexual harassment. Neither is in a position to do that. Consistent with University policy, that finding was reached by the ODEO. The ODEO, "consistent with federal, state and local law and University policies related to non-discrimination ... conducts neutral investigations of complaints of discrimination (including harassment)." That investigation concluded that you had created a "sexual harassment hostile environment in your class."

The dean did decide in consultation with the Office of Human Resources what to do about that finding. The dean reports that he also consulted with members of the faculty about how to respond both to the letters and complaints he received from students in your class and how to respond to the finding of the ODEO. He reports that he did so in accordance with best practice as an academic dean, not because –

as referred to elsewhere in the FRC's report – he has a “distinguished professional record, but ... is new to academe.” In any case, nothing in the materials examined by the FRC indicates anything about Dean Hill's professional record or his familiarity with academe.

Finally, the FRC's determination concludes, “to summarily remove a member of the faculty from the classroom and ban that person from campus ... is outrageous and in variance with time-honored tradition in academe. This violates academic freedom and overall concepts of fairness.” The University's policy and practice is for the ODEO to determine, on the basis of complaints directed to its office, if charges are serious and credible enough to initiate an investigation. That determination “with sufficient information” was made by the ODEO and communicated to you on May 23, 2011.

Your removal from the classroom (the workplace at which the alleged activity took place) during the investigation is entirely consistent with University practice. The University's Equal Opportunity/Sexual Harassment Policy covers all members of the University community. It does not matter whether the respondent is a faculty member, a staff member, or an administrator. As we all can agree, there is no tradition in academe of ignoring charges of sexual harassment. The issue here is not academic freedom; it is the University taking seriously its commitment to “create and maintain a community in which people are treated with dignity, decency and respect” (University of Denver Equal Opportunity/Sexual Harassment Policy). That includes people with the least power in any University community – students enrolled in our classes.

My review of the materials of your grievance and the path it has taken through the University leads me to conclude that the actions taken by Dean Hill are substantially correct. It is crucial that you understand your obligations to treat *all* students enrolled in your classes with dignity, decency, and respect.

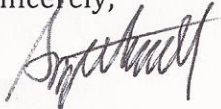
That the ODEO found specific Allegations B, C, H, and I not supported by sufficient evidence or contributing to a sexual harassment hostile environment is not relevant to whether that environment was created by other actions or statements.

The ODEO did find that Allegations A, D, E, F, and G support the conclusion that you “created a sexual harassment hostile environment in your class.” Allegation A (commenting often that males should masturbate and ejaculate) and Allegation E (frequently using the word “fuck” in class) are not tempered by the statement that it was beyond the scope of the investigation to determine whether these were related to course content. Allegations D, F, and G include that statement. In the interest of treating *all* students with dignity, decency, and respect (including those who do not share your mores), however, it is entirely reasonable to ask you to communicate to your students how a “highly sexualized” classroom environment, how showing film clips and films that are sexually graphic, and how passing around a vibrator to students in class are related to the course and contribute to learning.

I uphold Dean Hill's response to your grievance, with one modification. Instead of requiring you to attend sensitivity training, I am asking you to meet with Kathryn Grove, Director of the Office of Diversity and Equal Opportunity, to discuss what creating a sexual harassment hostile environment entails and how you must avoid that. I will refer to this as a conversation, not a training.

Consistent with the University of Denver's grievance policy, my decision as provost in this process is final.

Sincerely,



Gregg Kvistad
Provost

C: Christopher Hill, Dean, Josef Korbel School of International Studies
Amy King, Director, Human Resources
Kathy Ohman, Chair, Faculty Review Committee
Kathryn Grove, Director, Office of Diversity and Equal Opportunity