

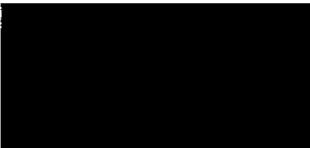


SWARTHMORE

Rebecca Chopp, President

(610) 328-8314 • fax (610) 328-8547

July 16, 2013



Dear [REDACTED],

On June 7, 2013, you filed a timely appeal from the written decision of the Swarthmore College Judiciary Committee (“CJC”). The CJC found you responsible for sexual assault, sexual harassment, and illegal entry, based on a complaint by [REDACTED] (the “Complainant”). The CJC imposed the sanction of expulsion. I have very carefully considered the issues raised in your request for an appeal and have very carefully reviewed the material considered by the CJC Panel. I must deny your request for an appeal.

The published Swarthmore College Judicial Procedures govern and limit my role in this matter. They provide that any appeal to me “shall be limited to considering new evidence or procedural error by the Hearing Panel.” I am not permitted to re-evaluate the factual findings of the CJC Panel. I am also not permitted to substitute my judgment of an appropriate sanction for theirs. In your June 7, 2013, letter, you address a number of alleged procedural errors. For the reasons set forth below, I do not agree that any of the issues raised in your letter warrant a new hearing.

Timing of the Hearing

You claim that scheduling the hearing on May 30, 2013, violated the following provision from the Student Handbook: “Hearings are scheduled when classes are in session and not during college breaks.” The full paragraph states as follows:

The hearing shall be held as expeditiously as possible while providing sufficient time for both sides to prepare for the hearing. An effort is made to schedule the hearing when the accused and complainant can reasonably attend. Supporter and witness schedules are considered, but their unavailability will not be the sole factor in selecting the timing of the hearing. Hearings are scheduled when classes are in session and not during college breaks. In the event that a complaint is filed during a break period or within the final week prior to a break, the Associate Dean in consultation with the Dean, will determine whether the hearing will be scheduled when classes resume or if the complaint should be referred to a dean or other appropriate office for more immediate adjudication.

You were notified that ██████ requested a CJC hearing in early May 2013. Efforts were made to schedule the hearing as expeditiously as possible, but ██████ was studying abroad in ██████, which made the logistics difficult for making the evidence available for review and conducting the hearing. The hearing was originally scheduled for May 21. Ultimately, in order make sure that everyone had sufficient time to prepare for the hearing and that both parties could be physically present, the hearing was rescheduled to May 30, 2013, several days prior to Commencement.

The hearing was requested before exams ended, and the hearing was held before graduation, so the hearing was not “scheduled . . . during [a] college break[.]” And, even if the College was, in fact, in a break period, the Handbook also authorizes the Dean’s office to hold hearings during break periods where it deems it appropriate to do so.¹ Given the gravity of the charges, it was certainly appropriate here for the Dean’s office to schedule the hearing “as expeditiously as possible” and not wait until classes resumed in the Fall.

Further, you identify no prejudice that resulted from holding the hearing at this time. You did not object to the timing of the hearing prior to the hearing. Extending the hearing date to May 30 provided you more, rather than less, time to prepare. While you cite to the fact that you were required to fly back from ██████, I understand the College paid for your trip, and you do not explain how this fact could have affected the outcome of the hearing.

Allowing the Title IX Coordinator to Answer a Question at the Hearing

You claim that there was a procedural irregularity because, at the hearing, the Title IX Coordinator was called to offer certain limited testimony. I understand that the Panel asked ██████ a question about a particular email, ██████ provided a substantive oral answer and also stated that she had already provided the same answer to the Title IX Coordinator, Sharmaine LaMar, in an email. At the request of the Panel, the Title IX Coordinator briefly appeared solely to confirm that ██████ had previously provided that answer, as ██████ had testified. No written documentation on this point was offered to the Panel. You claim that this was improper because the “statement by the Complainant had not been in the copy of materials that I was permitted to review in advance, and I had no ability to prepare to respond to it, much less 48 hours’ time.”

Allowing the Title IX Coordinator to answer this question did not violate any provision in the policy. Indeed, the parties were told prior to the hearing that the Panel (or parties) may call the Title IX Coordinator or the Deputy Title IX Coordinator as a witness to answer any questions about the report or investigation. It was ██████ who provided oral, substantive testimony in

¹ The Handbook states that a matter that arises during break periods may be “referred to a dean or other appropriate office for more immediate adjudication.” The Handbook goes on to state that “[w]henver possible, hearings will be scheduled so that five designated Committee members may be present. If at any time a hearing must be held but fewer than five current Committee members are available to participate, former members of the Committee will be asked by the Observer to participate. If there are still fewer than five members, deans will be asked to participate.” Because it was possible to obtain five members to sit on the Panel by adding a former member and a dean, it was appropriate for the Dean’s office to have a panel of five decide the matter rather than an individual dean. Similarly, as explained below, there was nothing irregular about the composition of the Panel.

response to a panel question. The Title IX Coordinator did not offer any new evidence; she simply confirmed that [REDACTED] had previously told to her the same fact already substantively testified to. At most, the testimony simply rebutted any inference that [REDACTED] had misled the Panel in her answer to a question. There was nothing for which you needed to “prepare to respond” in this regard, and you identify no other prejudice which resulted from allowing this testimony, nor do you explain how it could have altered the result of the hearing.

Charge Letter

You claim a procedural error when the charge letter was amended before the hearing to change the charge of “harassment through communication” to “sexual harassment.” The Student Handbook provides that “[t]he formal charge letter shall be presented in writing including the names of the appointed panel, the time, date, and location of the hearing typically 24 hours in advance of the hearing.” First, the final charge letter (with the sexual harassment charge) was provided to you more than 24 hours in advance of the hearing, so the Handbook provision was complied with. Second, you identify no prejudice from the correction that was made to the charge letter. You were aware of the facts [REDACTED] was putting at issue and those facts were properly defined as sexual harassment under the Student Handbook, rather than harassment by communication. The essential facts that were at issue did not change, and you do not identify anything that you could have or would have done differently had the charge presented been “harassment by communication” rather than “sexual harassment.”

Panel Composition

You contend that the CJC Panel composition was improper because it consisted of “the Convener, the Observer, two faculty members, two staff members, and only one student.” In fact, the Panel consisted of the Convener, the Observer, two faculty members, a dean ([REDACTED]), a staff member, and a student. The Student Handbook provides:

Whenever possible, hearing will be scheduled so that five designated Committee members may be present. If at any time a hearing must be held but fewer than five current Committee members are available to participate, former members of the Committee shall be asked by the Observer to participate. If there are still fewer than five members, deans will be asked to participate to reach a quorum of five panel members.

As you acknowledge in your appeal, you were advised that a former CJC member, who was a faculty member, would be added to the Panel. Contrary to the assertion in your appeal, a dean, rather than a staff member, was substituted for a student. That is specifically permitted by the policy where, as here, other active CJC members were not available. I also note that you raised no objection to the composition of the Panel prior to the hearing. I find no procedural error warranting a new hearing in this regard.

Evidentiary Issues

You raise three different evidentiary issues. The first concerns the issue with the Title IX Coordinator's testimony, which I discussed above.

Second, you contend that it was improper for a statement that you had provided during the course of the Title IX investigation to be used as evidence. But Swarthmore's Sexual Misconduct Policy clearly states that the Title IX Report "will be forwarded to the Dean's Office and included in the evidence for any judiciary action." The language you cite, "[s]tatements made during the investigation by the accused generally are not shared at the hearing unless made public by the accused," is not to the contrary. The context of the sentence makes clear that the policy is here referring to informal statements that an accused might make with a dean in the context of preparing a charge letter, not formal statements submitted by a student as part of a Title IX investigation. Here, it was clearly appropriate to include your written statement as evidence as it was part of the Title IX report. I also note that you did not object to its inclusion in the material.²

Third, you claim that the "hearing materials contained reference to my past sexual history." The Convener did redact certain references to your alleged past sexual history and actions and rejected a request by the Complainant to offer the testimony of another woman who claimed that you assaulted her. The Panel was permitted to see a portion of [REDACTED]'s statement where she claimed that, during the encounter in which you had intercourse, she "was extremely disturbed and frightened by the way that [you] talked about [your] past sexual experiences" and offered some examples of what you allegedly said. However, the Convener allowed this statement not to prove that you were more likely to have assaulted [REDACTED], but to explain her state of mind and actions during the incident in question. The Convener acted well within his discretion, and I see no procedural error.

[REDACTED]'s Absence For a Short Portion of the Proceedings

Finally, you claim that there was a procedural irregularity when [REDACTED] was permitted to leave the proceedings for a period of time.³ While the Student Handbook generally provides a **right** for each party to be present during the hearing to hear all the evidence, it creates no such **obligation**. The Complainant was well within her rights to leave during a portion of your

² In a separate communication, you claim two additional errors. First, you claim that the Title IX report should conclude within 60 days, and state that "[a]lthough the initial period of the investigation did conclude in that time frame, the investigation was re-opened several months after its initial closure." Nothing in the Handbook prohibits a Title IX investigation from being re-opened, nor does it prohibit a complainant from filing charges at any time after the report is completed. Second, you state that you were not given the opportunity to provide a written response to the investigator's report. However, you were not deprived of any such opportunity, rather you were provided the final version of the investigative report several days prior to the hearing and you made no request to submit any written statement. I note you were also given the opportunity to say whatever you wished about the report during oral statements at the hearing.

³ To the extent that you are also asserting an issue with the Title IX Coordinator's testimony, that issue is resolved above.

testimony if she wished to do so. And you do not identify any prejudice which her decision caused you.

* * *

None of the alleged procedural deficiencies identified in your request for an appeal constitute violations of the Student Handbook, and you also do not articulate how any of the identified actions could have materially affected the outcome of the proceeding or somehow deprived you of fundamental fairness. I also do not have the authority under our policies to substitute my judgment of an appropriate sanction for that of the CJC. I am therefore compelled to deny your request for an appeal.

Sincerely,


Rebecca Chopp