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# SETTING *a* High BAR

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Rochester looks to set higher standards for itself as it moves forward from a sexual harassment investigation.

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*By Kathleen McGarvey*

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When philosopher and former dean of the College Richard Feldman was appointed interim president of the University in January, he sent a message to the campus community: it is time to better define and articulate Rochester's values. His words came in the wake of a report by independent investigators who examined allegations of sexual harassment against a member of the faculty.

The investigation found that the professor's actions early in his career were "inappropriate, unprofessional and offensive" and led some young women scientists to avoid working with him, but the report affirmed that he didn't violate University policies or federal laws.

The legalistic distinction left many frustrated, disappointed, and angry—reactions that Feldman acknowledged:

"Many different community members have shared their views that adherence to law and formal policy is not sufficient, and that our community needs to hold its members accountable to higher standards. I agree. To do so, we need to carefully define and articulate the community values that determine those standards."

Since taking on a new leadership role, Feldman has been listening to and talking with faculty, staff, and student leadership groups. It's a first step in meeting a three-month deadline set by the report to strengthen Rochester's policies and procedures and improve the supportive bonds of its community.

"The University of Rochester," Feldman says, "has an opportunity to be a model for other institutions, not just in the letter of our policies and procedures but in the spirit of our actions, measured by our respect for each other and our differences in a campus community that is safe and inclusive for all."

## What happened?

Former U.S. Attorney Mary Jo White, senior chair of the law firm Debevoise & Plimpton, was hired in September by a special committee of the Board of Trustees to investigate how the University had handled complaints about the conduct of T. Florian Jaeger, a faculty member in the Department of Brain and Cognitive Sciences (BCS). Those complaints alleged that—largely between 2007, the time of Jaeger's hiring, and 2013—Jaeger engaged in sexual harassment, had intimate relationships with students, and created a hostile environment for women graduate students in his department.

The University carried out its own investigations in 2016, concluding that Jaeger's conduct had not violated its policies then in place and that the University had not retaliated against those who had made allegations against him.

In August 2017, the complainants filed a formal complaint against the University with the Equal Employment Opportunity Commission (EEOC), a federal agency that enforces civil rights laws in the workplace.

The EEOC granted the complainants a "Right to Sue," and a lawsuit is pending.

White was commissioned to examine the issues raised in the EEOC complaint. Her 207-page report was released on January 11. In it, she called on the

University to “promptly take a number of bold steps, including but not limited to the Recommendations in this Report, to repair the resulting wounds and distrust that have occurred.”

## What now?

The report makes several recommendations:

### **Create and begin using a brochure, written in plain language, that outlines the rights of sexual harassment claimants, witnesses, and those accused, and the procedures to be followed in making and investigating a claim.**

White made this recommendation in response to what happened in the University’s initial investigation of the charges, in spring of 2016, when BCS faculty members Richard Aslin—a founding member of the department and at that time, a senior professor—and associate professor Jessica Cantlon reported to the University alleged sexual harassment of graduate students by Jaeger.

A lack of clarity, White found, contributed to how events surrounding the Jaeger case developed. She writes that the complainants—who eventually grew to a group of nine current and former BCS faculty members and students—“allege that complainants, the accused and witnesses are not informed of their rights, their entitlement to confidentiality or how the process will unfold.”

“By providing this information at the outset of an investigation in a straightforward, uniform way, the University could help avoid subsequent frustration with the process, as was experienced in this case,” White writes.

### **Develop a diverse pool of trained advisors—including academic deans, faculty members, and other officers—who can advise claimants, potential claimants, and faculty members accused of sexual harassment. Make readily known the availability of these advisors, the range and purpose of their services, and the confidentiality accorded to their consultations.**

White says that these changes “would align the University with many other universities’ policies, including those of Harvard, Columbia, Case Western and Cornell, which allow both parties to have advisers during the investigative process,” as does Rochester’s Sexual Misconduct Policy for students.

“This change also will provide parties with additional guidance throughout the investigative process—guidance that to some extent was lacking in connection with the investigations that took place in this matter,” she writes.

### **Undertake and complete a review of**

### **the University’s current mandatory training on sexual harassment for faculty, students, staff, and trainees, with the goal of providing the best possible training at least annually and when anyone joins the University community.**

Throughout the history of this case, both faculty and students were uncertain of what the University’s policies allowed, prohibited, and required, says White. That uncertainty was especially acute before 2013, she says, when campuswide sexual harassment training for all employees was implemented, but such training did not solve the problem: “While the change in 2013 was a step in the right direction, the current training for employees does not deal at all with faculty-student relationships. The significance of this gap in training is underscored by Jaeger’s conduct and the University’s and the claimants’ responses to such conduct.”

White argues that discussing faculty-student relationships in future training will help prevent instances like the Jaeger case, and that including training initiatives as part of the evaluation process for department chairs will help ensure that training receives the attention and funding it requires.

“Annual training on key policies is increasingly a standard tenet of compliance programs at large institutions, not only in the business world, but also in other sectors,” White writes. “We believe the University should be at the forefront of this trend.”

For students, she recommends increased peer-training to augment the online training for students that is already mandatory.

### **Amend the University’s Policy 106—the policy on gender-based discrimination and sexual harassment—to specify examples, use clear language, and indicate the range of disciplinary and other remedial actions that may be taken. The University should also consider adding a statement to encourage University community members to report sexual harassment by anyone subject to the policy.**

Policy 106 lies at the heart of much that unfolded in the Jaeger case. The White report explains: “The law and UR Policy 106 recognize two types of sexual harassment: (1) *quid pro quo* harassment, in which an adverse employment or academic action (e.g., termination, pay cut, bad grade) results from a refusal to submit to a supervisor’s or professor’s unwelcome sexual demand or where submission to such a demand is made a condition of receiving employment or academic benefits; or (2) hostile environment harassment, in which sexual harassment is so ‘severe or pervasive’ that it creates an abusive working or academic environment.”

The independent investigation found no evidence that Jaeger had engaged in unlawful sexual harassment, given the policies then in place, or that the University had retaliated against those who brought complaints against him.

## NEXT STEPS

### Cultivating a Culture of Respect

In an effort to share progress and plans for responding to the report, the Office of the President launched a website in February to keep the University community up-to-date.

With the theme of “Cultivating a Culture of Respect,” the site—[Rochester.edu/respect](http://Rochester.edu/respect)—outlines the report’s recommendations and other issues related to the campus climate.

The site, which will be updated regularly to show progress on key steps and which includes a forum for feedback, is one of several steps under way in response to the report. Others include:

- A new Board of Trustees committee has been created to oversee implementation and compliance with deadlines.
- The Office of the President is working with the Faculty Senate and the newly created Commission on Women and Gender Equity in Academia as both groups develop their own recommendations.
- Work has begun to create a new role in the president’s cabinet to strengthen and coordinate University activities related to diversity, equity, and inclusion.
- A Student Task Force to Review Sexual Misconduct Policy is planning to publish its own set of recommendations.

“We credit, as the complaints allege, that during the earlier period of 2007–13 (and especially during the earlier years in that period), Jaeger engaged in behavior that was inappropriate, unprofessional, and offensive,” the report states. But “there is no evidence that Jaeger ever engaged in so-called *quid pro quo* sexual harassment, or ever had any non-consensual sexual contact with any person.”

White notes that, in response to the unfolding Jaeger case, BCS department chair Greg DeAngelis sought “to tighten the relevant policies for at least BCS.” She also writes that “[citing] inherent conflicts of interest, lack of sufficient support for claimants, confusion about the reporting and investigative process and lack of transparency in reporting investigative results and remedial actions, the claimants also urged changes and enhancements to the relevant policies, procedures and process used by the University to address claims of sexual misconduct by faculty members.”

### Retain expert outside counsel to advise the president and general counsel on developing new procedures regarding the confidentiality of investigations of claims of sexual harassment or sexual misconduct by faculty members—with the aim of adopting, within six months, formal procedures that more carefully and flexibly balance needs for confidentiality and transparency.

Investigators found a tangle of expectations among those involved regarding confidentiality and transparency, ambiguities that fueled grievance and frustration on all sides.

“The current policy leaves uncertainty as to what will be kept confidential and in what circumstances,” White writes. “We found that there was confusion among the Complainants, witnesses and Jaeger about whether information they provided in connection with the investigation would remain confidential, whether information they knew about the investigation needed to remain confidential, and whether information collected by the [University’s Office of Counsel] during the investigation would remain confidential. Witnesses were not notified when the investigation had concluded unless they followed up actively. . . .”

White notes the “need for confidentiality surrounding an investigation” and the fact that “lack of communication created confusion and distrust toward the University’s administration.” She urges the University to take steps to “achieve an optimal balance between the important interests served by confidentiality and transparency.”

### Publish annual data about complaints and their resolution.

The release of such data, White writes, “would serve to increase transparency and community awareness.”

### Clarify IT policy, making clear the process for reviewing email.

When Aslin and Cantlon made allegations to the University about Jaeger’s conduct—allegations that involved Celeste Kidd ’13 (PhD), who is now an assistant professor in BCS—the University investigated the allegations.

Following that investigation, Kidd filed another claim in July 2016. Her allegations included retaliation against her for her part in the investigation. That claim led to a second investigation, during which the University’s Office of Counsel (OOC) requested access to BCS faculty members’ emails to trace issues of confidentiality.

“A new problem erupted in BCS in January [2017],” White writes, when the OOC shared some of those emails with BCS department chair DeAngelis. At a faculty meeting that month, he “announced that he had in front of him a stack of emails that showed ‘manipulation and deception of faculty members’ and the ‘smearing’ of Jaeger,” White says.

She writes that “the OOC’s decision to provide DeAngelis with the emails did not violate any University policy” and that it “was done in an effort to help DeAngelis effectively lead BCS.” But she adds that “the judgment to do so resulted in deepening the divide between the claimants and others in the department and was inconsistent with the emphasis that Policy 106 places on confidentiality.”

As a result, White recommends that the University “review its IT policy to make clearer the range of circumstances that justify review of emails and to specify criteria for sharing emails outside of OOC.”

### Improve online access to policies and procedures, and provide easy-to-use contact information for the Title IX coordinator, the intercessor, and other relevant staff members.

The independent investigation report bases its findings on federal laws and University policies. Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, and the New York State Human Rights Law prohibit sexual harassment, as does Policy 106.

Making such information easy to find and digest is key, White says, advising that Rochester's policies and procedures "should be streamlined and presented in an intuitive format, with separate sections based on the identity of the accused and the nature of the claim.

They should provide examples of conduct that would violate the policy. The revised policies should clearly lay out the full range of potential discipline and other remedial action that may be taken when there is a policy violation, and set forth a range of potential consequences for conduct that does not rise to the level of a policy violation, but is still problematic."

The benefit of such specificity, White says, is that "members of the University community will know exactly where to go to report a concern and what the process will entail should they choose to move forward with a complaint, as well as what to expect in terms of sanctions."

## **The Board of Trustees should direct the president and provost to initiate consideration by the Faculty Senate of proposed amendments to the Intimate Relationships Policy flatly prohibiting all intimate relationships between faculty and students in the same department.**

This recommendation grows out of the investigation's findings concerning Jaeger's intimate relationships with multiple BCS students. "We found that these relationships contributed, at least in part, to making some female graduate students in BCS uncomfortable; in some cases, these women actively avoided pursuing academic opportunities with Jaeger," White writes.

At the time of those relationships, the University's policy strongly discouraged but did not prohibit intimate relationships between faculty and students. In 2014, the policy was revised to make it a violation for a faculty member to have an intimate relationship with an undergraduate or with any member of the University community over whom the faculty member has authority.

Jaeger's conduct, and the allegations made by the complainants, involved both the University's Intimate Relationships Policy and Policy 106, which concerns sexual harassment. They "thereby highlighted the potential tension between the two policies—and the acute challenges that can arise when intimate relationships between faculty and students are permitted," says White.

Her advice is to banish ambiguity as much as possible: "[W]e believe that in light of the University's experiences in this matter, a bright-line rule would be beneficial. Although the University has strengthened its policies recently, we believe that they can and should be further reinforced as described above." What she recommends, she notes, is "stringent" but in line with what peer universities have done.

## **Dedicate an office to investigating sexual harassment or misconduct involving faculty.**

The complainants voiced concerns that there is at the least the appearance of conflict of interest in having the OOC handle Policy 106 claims.

"It is true that if a party disagrees with the outcome of a UR Policy 106 investigation and decides to sue the University in an administrative proceeding or in court, the OOC defends the University," White writes. "We therefore recommend that such investigations be handled by a separate office in order to avoid the perception of a conflict."

She notes that the University is an "outlier" in allowing the OOC to deal with sexual harassment claims. Most universities have a separate office designated to handle such claims.

## **The president should appoint a senior, cabinet-level official to oversee the implementation of the report's recommendations, including compliance with deadlines.**

White makes this recommendation in response to the importance of the issues raised in the Jaeger case and "the challenges of taking into account the interests of all relevant groups and stakeholders."

## **Create a trustee-level committee to oversee implementation of the recommendations and deadline compliance, as well as other initiatives at the University to combat sexual harassment, misconduct, discrimination, and retaliation throughout the University.**

White suggests this measure to further ensure comprehensiveness and accountability.

## **Setting the Bar**

"In our view," White writes, "the University and all involved here now have a unique opportunity to make such amends as can be made, heal and work hard to become the thought and moral leader for the academic community in preventing and dealing fairly with allegations of sexual harassment and all forms of discrimination in the academic workplace. Set the bar and set it high. 'Ever Better' is what UR is about."

Responding to the report and creating a transparent campus dialogue are Feldman's top priorities as interim president. Progress, he stresses, will be rooted in careful deliberation and in the broad participation of faculty, students, alumni, and staff.

The conversation will involve not only formal groups, but all who care about the University.

"I am committed to making deliberations as open and inclusive as I possibly can," Feldman says.

He's confident that the voices he hears will lead Rochester in the right direction, setting a course to determine the kind of community that Rochester wants to be.

"The challenges before us are significant, but our strength and talent run deep." 