

**Kennesaw State University Response
to University System of Georgia Hotline Reports
USGB 14-09-0001 and KENN-14-09-0002**

1. The Allegations.

Kennesaw State University received two reports concerning a student, Mr. Sage Gerard, through the USG Hotline on September 3rd, 2014. The first hotline report (USGB-14-09-0001) stated that:

“Sage Gerard has been posting stickers in the restrooms for a national organization that is not part of the university . . . For an unknown period of time, Sage Gerard has been posting stickers in male and female restrooms throughout the university. The stickers advertise an organization by the name of A Voice for Men. Sage has posted a video online of him posing the stickers. In the video, Sage wears protective gloves when he enters the restrooms and indicates that he wears the gloves in order to prevent leaving his finger prints . . . Sage’s actions have created a hostile work environment.”

The second report (KENN-14-09-0002) stated that:

“Among other similar offenses by the same individual, a KSU student (Sage Gerard) posed as a custodian and entered the women’s bathrooms on campus, placing stickers intended to intimidate women. Sage is the head of KSU Men, a purportedly men’s human rights organization on campus. Through his actions and online presence, it is clear that neither Sage Gerard nor KSU men are actually interested in men’s issues. Rather, they are interested in insulting, and harassing women who they perceive to be feminists. I fully support the right of this or any group to communicate their message. However, Sage Gerard’s behavior indicates contemplation of violence against women (he posts art depicting guns pointed at women’s symbols, as well as other violently anti-feminist themes). His behavior has created a hostile work environment for multiple KSU employees who do not only fear intimidation and harassment, but actual physical violence against themselves and their families. KSU students have also expressed real fears for their own physical safety on campus . . . I do not feel safe on this campus. As an advocate of women, I feel strongly that I am at real risk of becoming the target of violent retaliatory actions perpetrated by Sage Gerard and the organization sponsoring him. A Voice For Men.”

2. Inquiry into the Allegations.






On September 4th, 2014, the university advised Mr. Gerard of the charges against him. Since Mr. Gerard posted a YouTube video¹ that clearly confirms that he entered a

¹ <http://www.youtube.com/watch?v=Euv3GBSfMdQ>

women's restroom and posted stickers for A Voice for Men, he was also directed to cease and desist entering women's restrooms, misrepresenting himself, or conducting unauthorized solicitation for non-KSU groups. Mr. Gerard was also instructed to refrain from contact with anyone he perceived as a complainant.

On behalf of KSU, Mr. Reggie Lampkin, Assistant General Counsel, and Ms. Mary Ellen McGee, Director of Equal Employment and Title IX Administration² interviewed Mr. Gerard and several others who were identified as potentially having relevant information.

Several witnesses reported that they **felt** uncomfortable around Mr. Gerard, and their perception appeared to arise from several factors:

- **Several witnesses stated that their perception of Mr. Gerard was colored by what others had told them about him (e.g., one or more of the bullets below).** 
- Some **witnesses**  perceived Mr. Gerard as intense, disrespectful, impatient, strange or hostile during their interactions with him.
- **Witnesses reported that Mr. Gerard filmed and/or recorded his interactions with them, which they found unnerving.** 
- Witnesses were disturbed by Mr. Gerard's association with Paul Elam and the group A Voice for Men, whom they view as misogynistic and threatening.
- Witnesses perceived a threat of violence from Mr. Gerard's cartoon showing a gun pointed at the female symbol³. *Note: The cartoon in question also shows a gun pointed at the male symbol, with a comedy mask matched with male symbol and a tragedy mask matched with the female symbol. **The overall message appears to be a criticism of an alleged double standard in how people view violence against men and women.*** 
- Witnesses were unnerved by Mr. Gerard's "sticker run," in which he entered the women's restroom to place the A Voice for Men stickers.
- Witnesses viewed Mr. Gerard as threatening based on his statement that, "I've once fantasized about having a feminist screaming at me and I just slap one of these (a sticker for A Voice for Men) right over her mouth. It'd be hilarious⁴." 

No one reported that Mr. Gerard used profanity or raised his voice with them. No one reported that he threatened violence against any specific person, or that he committed

² Mr. Lampkin and Ms. McGee conducted the inquiry, but left KSU before the report was finalized. Mr. Andrew Newton, Associate General Counsel for KSU, completed the report.

³ <http://vzen.us/cartoons/>

⁴ Between 8:00 and 8:15 at: <https://www.youtube.com/watch?v=Euv3GBSfMdQ>

any acts of violence. Mr. Gerard has no history of misconduct at KSU or, to our knowledge, elsewhere.

When interviewed, Mr. Gerard stated that he understands the concerns that the students and faculty have, and that he also understands how they could interpret his communications with them as hostile and aggressive. He stated that people have a hard time understanding his personality. Mr. Gerard said that he feels that he is misunderstood and he does not want anyone to be afraid of him. He also said that he understands that people have different sensibilities and that they can interpret his behavior in ways that he did not intend.

Mr. Gerard also indicated that he would like to have a conversation with the women of the Department of Interdisciplinary Studies to explain himself and his views. He wants them to have a better understanding of him to ease their concerns regarding their safety. Mr. Gerard stated that he wants a fresh start with everyone on campus.

By his own admission, and as shown in the video he made of the incident, Mr. Gerard entered a women's restroom on campus, misleadingly announced himself as a housekeeping or janitorial worker, and posted stickers for a non-KSU group. This occurred in March of 2013, and there have been no reports that it has happened again.

3. Analysis & Findings.

Mr. Gerard is accused of creating a hostile work environment for employees⁵. In legal terms, a "hostile environment" is a form of harassment and discrimination that violates federal law⁶. The U.S. Equal Employment Opportunity Commission, which enforces these laws, publishes this summary:


"Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people⁷."

⁵ Although we have not received formal complaints that Mr. Gerard has created a hostile environment for students, the legal standard under the applicable law in that context (Title IX of the Education Amendments of 1972, as amended) is substantively the same as Title VII in the employment context. See section V. A. at: <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

⁶ Specifically, Title VII of the Civil Rights Act of 1964, as amended. See: <http://www.eeoc.gov/laws/statutes/titlevii.cfm>


⁷ See: <http://www.eeoc.gov/laws/types/harassment.cfm>

Here, the alleged unwelcome conduct is based on sex and/or gender, and Mr. Gerard's relevant words and actions clearly relate to gender issues. The next question is whether Mr. Gerard's conduct "is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive." **We find that it is not.**

Notably, the hotline complaint does not assert that Mr. Gerard directed unwelcome conduct or words at specific individuals. Rather, the report concerns his internet postings, and his group activities through KSU Men (a KSU student organization) and A Voice for Men (an organization unaffiliated with KSU). **There is no evidence that Mr. Gerard subjects employees to his internet postings. They must seek them out.** While it is possible for someone to create a hostile environment without specifically targeting someone, Mr. Gerard's online postings are less "pervasive" and "unwelcome" **because they are heard only by those who choose to go to his websites.** 


Some witnesses felt uncomfortable with Mr. Gerard when they dealt with him in person. **However, the witnesses' reports of how they felt around Mr. Gerard do not appear to be based on any words or actions by Mr. Gerard during their interactions,** beyond a general sense that he seemed impatient or irritated (while he was waiting to see someone). **Rather, they seem to be based primarily on what they had heard about Mr. Gerard, or what they had read or seen of him on-line.**

Mr. Gerard has an extensive on-line presence. He is an active advocate and spokesperson for men's rights, and he is closely affiliated with the group A Voice for Men, and its founder, Paul Elam. Both that group and its founder are controversial.

 **They have their supporters and their detractors, including many who find the group, and Mr. Elam in particular, to be misogynistic.** This colors people's perceptions of Mr. Gerard. Nonetheless, we must judge Mr. Gerard by his own words and actions. In the hotline reports and the information gathered through witness interviews, **we find no words or actions by Mr. Gerard that rise to the level of a hostile work environment under the law⁸.**

In addition to reviewing these allegations under federal harassment laws, KSU must also consider the first amendment rights of Mr. Gerard and his critics. Accordingly, we must only sanction speech that violates harassment laws, or that is otherwise

⁸ For examples of conduct that is or is not sufficiently severe or pervasive to create a hostile work environment, see: Evan D. H. White, *A Hostile Environment: How the "Severe or Pervasive" Requirement and the Employer's Affirmative Defense Trap Sexual Harassment Plaintiffs in a Catch-22*, 47 B.C.L. Rev. 853 (2006), pp. 866-869. Available at: <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=2339&context=bclr> , and: Judith J. Johnson, *License to Harass Women: Requiring Hostile Environment Sexual Harassment to Be "Severe or Pervasive" Discriminates Among "Terms and Conditions" of Employment*, 62 Md. L. Rev. 85 (2003). Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol62/iss1/6> .

unprotected. Since we find that Mr. Gerard has not violated applicable law, his speech is protected, **despite the offense or discomfort it causes**⁹ 


This report does not deny that there are those who feel that Mr. Gerard creates a hostile environment, based on their standard of what that means. That is real to them, and the fact that the law may use a different standard does not diminish that. While Mr. Gerard's words and conduct have not created a hostile environment in the legal sense, they could do so if they become targeted, severe **and** pervasive.

It is clear that Mr. Gerard entered a women's restroom and posted stickers for a non-KSU group. This was inappropriate behavior, and it contributes to the **negative perception** of Mr. Gerard.

4. Recommendations.

Since Mr. Gerard has not created a hostile environment according to the applicable legal standard, **we do not recommend that any misconduct charges be brought against Mr. Gerard.**

While his entry into a women's restroom and posting stickers for an outside group is clearly inappropriate, this behavior occurred on **only one occasion** some time ago. Therefore, misconduct charges at this point are not warranted.

We do recommend that Mr. Gerard continue to refrain from further contact with the persons who made the hotline reports (or those who Mr. Gerard believes may have made them), to avoid any real or perceived retaliation. **In addition, we recommend that Mr. Gerard refrain from further contact with the members of the Interdisciplinary Studies Department to avoid escalating the situation to the point that it becomes a hostile environment in the legal sense.** 



Andrew Newton
Associate General Counsel
December 11, 2014

⁹ For some references regarding the first amendment issues here, see: <http://www2.ed.gov/about/offices/list/ocr/firstamend.html> , and, Nadine Strossen, *The Tensions between Regulating Workplace Harassment and the First Amendment: No Trump - The Kenneth M. Piper Lectureship Series*, 71 Chi.-Kent. L. Rev. 701 (1995). Available at: <http://scholarship.kentlaw.iit.edu/cklawreview/vol71/iss2/11>