

Cornell University University Assembly

Agenda

April 17, 2020

University Assembly: Codes and Judicial Committee
Zoom

1. Call to Order
2. Approval of the Minutes
3. Business of the Day
 - a. Draft Procedures Comment Walkthrough



Cornell University
University Assembly

The Codes and Judicial Committee
of the University Assembly

Minutes of the April 10th, 2020 Meeting

9:00 AM – 10:30 AM

Held via Zoom

- I. Call to Order
 - a. J. Anderson called the meeting to order at 9:04am.
 - b. *Members Present:* A. Llinas Vahos, R. Lieberwitz, C. Huang, J. Hong, M. Adeghe, U. Chukwukere, J. Michael, L. Taylor, B. Corrigan, G. Martin.
 - c. *Members Absent:* none.
 - d. *Also Present:* J. Pinchak (JCC), V. Ciampolillo (OJA), S. O’Connell (Cornell Daily Sun).
- II. Approval of the Minutes
 - a. A motion was made to approve the Minutes from 2/14, the Minutes from 3/6, the Minutes from 3/13, the Minutes from 3/27, and the Minutes from 4/3.
 - i. G. Kanter motioned to amend the Minutes from 4/3, section III-b-5, to read: “The OJA's concern about the JCC involvement during the hearings misses the point because the hearings are used in only a small number of cases where the other mechanisms using educational conferences and ADR do not work; these are appropriate times for the JCCs to be involved.”
 - ii. J Anderson motioned to amend the Minutes from 4/3 to read the Meeting started at 10:05 AM.
 - iii. Both Amendments passed with unanimous consent.
 - b. J. Michael made a motion to approve all the Minutes. The Minutes were approved 8-0-1.
- III. Business of the Day
 - a. Standard of Proof
 - i. B. Krause: OJA believes the Preponderance standard best balances the needs and interests of the community with the rights of accused students.
 - ii. G. Kanter: the cases where this matters the most are the cases where the student feels they did not do the conduct they are accused of. The Clear and Convincing standard is needed. We can’t just compare this to the University being held to the Preponderance standard in a civil suit--some students accused of some of these things could face criminal ramifications, and therefore there should be a higher standard.
 - iii. J. Pinchak: the more serious the outcome the higher the standard should be.



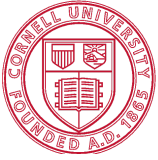
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- iv. R. Lieberwitz: Clear and Convincing means the University has to prove something was “highly probable.” This is accusing someone of violating a code, not an educational measure, let’s put something in here that reflects that. Providing students assurance that due process will be carried out is educational.
 - v. B. Krause: we have to remember the goal is to move to an educational process, not to follow the legalistic route which the Code has taken in the past.
 - vi. R. Lieberwitz: moving OJA to Student and Campus Life should not justify taking away people’s rights. The best practice for Faculty facing suspension or dismissal uses the Clear and Convincing standard (American Association of University Professors). In labor law, discharge is the industrial form of capital punishment, so we use a higher standard.
 - vii. J. Pinchak: we should aspire not to just be like other campuses. We should come to the best decision and hope other Universities will follow us.
 - viii. J. Michael: the best practice from the ASCA is Preponderance.
 - ix. J. Anderson asked for the Committee to vote on which Standard they prefer in the Zoom chat:
 - 1. Preponderance: 6 votes in favor.
 - 2. Clear and Convincing: 4 votes in favor.
 - x. J. Anderson will include majority and minority comments for both of these to the UA.
- b. Run through of Procedures draft
- i. J. Anderson shared a draft of the “Student Code of Conduct Procedures” to review comments made by those in the Committee.
 - ii. Section 1.1-- striking “in the capacity of counsel.”
 - 1. B. Krause: OJA tried to get rid of legalistic verbiage when it wasn’t helpful.
 - 2. G. Kanter would caution about taking out that language if we aren’t clearly articulating whether or not the advisor can speak.
 - 3. B. Krause: students should be speaking.
 - 4. R. Lieberwitz: now that the standard is lowered to Preponderance, they need more protection. If someone feels comfortable having someone work on their behalf, that seems more efficient and fair.
 - 5. J. Michael: the advisor can still be there, and they can side conversation with them, or talk with them separately. But respondents talking about themselves is really important to the educational process.



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6. J. Anderson: let's come back to things that we need to come back to next week.
- iii. Replacing "Judicial Codes Counselor" with "Respondent's Code Advisor"
 1. B. Krause: taking out the word "judicial" here.
 2. G. Kanter: the JCC office prefers "Cornell Defenders", but "Respondent's Code Advisor" is our second choice.
- iv. Change where the advisor is not permitted to participate actively in hearings.
 1. R. Lieberwitz: at a certain point this is not an educational process. We should admit that.
 2. B. Corrigan: when it reaches certain stakes, advisors should be able to speak for respondents.
 3. G. Kanter: students participate in hearings, in a very educational way. JCC works with students to write questions and statements. We don't have the resources of a normal attorney.
 4. C. Liang: maybe we should let hearing members ask all the questions.
 5. B. Krause seconded that.
 6. G. Kanter: the procedures that R. Lieberwitz and she proposed lets the administrative panel dictate which witnesses are called.
- v. J. Anderson: let's keep scrolling through the document. The ones we need to talk about more we will, but just for now let's see what is in the document.
- vi. Discussion of Section 1.4 Office of Judicial Codes Counselor.
 1. G. Kanter: JCCs should have legal background. Particularly important when navigating conflicts of interests and ethics.
 2. C. Liang: the idea that OJA staff and JCC counselors can't be a part of shared governance seems sad. Very small group of people who are excluded from shared governance.
 3. G. Kanter: an important way to build trust and rapport with students is by being independent.
- vii. Section 2.1
 1. J. Micahel: change to "students" plural?
 2. B. Krause: was asked to raise the point that the Code applies to students on short and long abroad trips.
- viii. 2.2 -- Limitations period
 1. C. Liang: it's important in some cases to let students file after they graduate.
- ix. 2.4 -- Seven day limit on initiating a Formal Complaint
 1. B. Krause: it may take more than 7 calendar days to figure out if we should bring a case.



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2. G. Kanter: needs to be timely, but in a feasible manner. All information needs to be sent (allegation and request to schedule a meeting) at the same time.
 - x. Discussion of respondents being able to present information on their mental health if such information is relevant to a determination of responsibility.
 1. Issue over if it should apply to determination of responsibility. Could apply to sanctions instead.
 - xi. 4.41 -- Discussion of phrasing on Educational conferences.
- c. J. Anderson: there is a lot of big picture stuff that needs to get filled out in these Procedures. We need to tackle those big decisions in a way that is fair in the next meeting. If that would be better to do at a longer weekend meeting that might be better. He will send out a poll to determine this.

The meeting was adjourned at 10:30 AM.

Respectfully Submitted,
Matthew Ferraro
Clerk of the Committee