

Cornell University University Assembly

Agenda

April 24, 2020

University Assembly: Codes and Judicial Committee
Zoom

1. Call to Order
2. Approval of the Minutes
3. Questions for Committee Vote:
 - a. Discussion on Sanctions and Remedies
 - b. OSCCS description in the procedures section
 - c. Administrative, Hearing, and Appeal Panelists and Chairs
 - d. Definitions
 - i. Living Group



Cornell University
University Assembly

The Codes and Judicial Committee
of the University Assembly

Minutes of the April 17th, 2020 Meeting

9:00 AM – 10:30 AM

Held via Zoom

- I. Call to Order
 - a. J. Anderson called the meeting to order at 9:05am.
 - b. *Members Present:* C. Huang, R. Lieberwitz, J. Michael, A. Llahos-Vinas, M. Adeghe, J. Hong, L. Taylor, B. Corrigan.
 - c. *Members Absent:* G. Martin, U. Chukwukere.
 - d. *Also Present:* B. Krause, C. Liang, G. Kanter, V. Ciampolillo (OJA), G. Giambattista, J. Pinchak (JCC).
- II. Approval of the Minutes
 - a. J. Anderson discussed the path forward. They could endorse G. Kanter and R. Lieberwitz's version in general, and then have a supplement document where people make comments and can sign opinions about it that will go to the UA.
 - b. There was discussion of this path forward.
 - c. Approval of the Minutes from 4/10 was not discussed.
- III. Procedures draft
 - a. Section 1.2 Respondent
 - i. B. Krause: overall objective is to make the process less cumbersome and legalistic for students.
 - ii. R. Lieberwitz called the question.
 1. Vote on incorporating OJA comments: 6-1 in favor of leaving it as originally proposed.
 - b. Section 1.4 JCCs
 - i. The Committee will be voting on who can serve in the office of JCC. Should it be limited to law students?
 - ii. B. Krause: OJA doesn't believe it should be limited to law students.
 - iii. G. Kanter: JCC office does not have time to train people for a couple months. If opened it up, other students could do it, but don't believe they would be able to jump in as quickly as law students. Very similar to clinics law students have already done. There are fundamentals to the job we just don't have time to teach.



Cornell University University Assembly

- w. G. Kanter: there are two different questions: who can be an advisor versus who can be a JCC. Anyone can be an advisor under the code, but JCC is different.
- v. Called the question on should only law students serve as JCCs?
 - 1. Vote of 4-3, recommend that only law students serve as JCCs.
- c. Section 2.1 -- Making it clear Code applies to study abroad (regardless of length).
 - i. Moved on-- this was addressed in substantive violations.
- d. Section 2.2 -- Limitations period
 - i. B. Krause: students should be subject to code for actions when they are students.
 - ii. J. Anderson: do you agree with the current language as stated or should the university not be required to wait until legal matters are resolved to proceed?
 - iii. R. Lieberwitz recommended looking at the Limitations stuff tomorrow, because she needs more time to compare with other parts.
 - iv. Discussion delayed until tomorrow's (4/18) meeting.
- e. Section 2.4 -- Use of secure email and Seven day limit
 - i. B. Corrigan: concerned emails slip by, having notifications in writing in addition to email is good.
 - ii. G. Kanter: with secure email, the office can see if a student opens it or not.
 - iii. Vote on whether to keep the part about notifying respondents in writing or removing the in writing part.
 - 1. By a vote of 4-2, in writing notification will stay in procedures.
 - iv. Discussion of 7 calendar day limit, discussed changing to "promptly, ordinarily with 7 calendar days", there were no objections.
- f. Section 2.5.1 -- Review of Decisions regarding interim measures.
 - i. B. Krause introduced the OJA comment.
- g. J. Anderson: to prepare for tomorrow, please put your remaining comments on the document by 3 PM today. J. Anderson will then take all of these questions and put each of them on the Agenda. Then people can prepare tonight and tomorrow. Understands that this is a time crunch and not the best of circumstances, but it is what we have to do.

The meeting was adjourned at 10:31 AM.

Respectfully Submitted,
Matthew Ferraro
Clerk of the Committee



Cornell University
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**The Codes and Judicial Committee
of the University Assembly**

Minutes of the April 18th, 2020 Meeting

11:00 AM – 3:00 PM

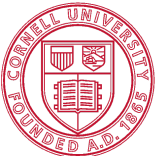
Held via Zoom

I. Call to Order

- a. J. Anderson called the meeting to order just after 11:00 am.
- b. *Members Present:* B. Corrigan, L. Taylor, J. Michael, A. Llinas Vahos, J. Hong, R. Lieberwitz, U. Chukwukere, C. Huang, M. Adeghe (late).
- c. *Members Absent:* G. Martin.
- d. *Also Present:* B. Krause, C. Liang, G. Kanter, V. Ciampolillo (OJA), J. Pinchak (JCC), A. Li.

II. Questions for Committee Vote:

- a. Section 2.5.1: Should it be as written to move to VP SCL to determine?
 - i. Vote: 6-2, this section will be maintained as written.
- b. Section 2.5.3: Should it be up to an appeal panel of VP SCL?
 - i. Vote: 7-1, this section will be maintained as written.
- c. Section 3: Should mental health be presented earlier in the process or later?
 - i. Changed mental health to “personal circumstances and wellbeing”
 - ii. Vote: 7-0, “personal circumstances and wellbeing” will be included.
- d. Section 4.2: Should prior conduct mean “any prior conduct from any other prior institution” or just limited to previous conduct at Cornell?
 - i. Also noted in Section 5.6
 - ii. Vote: by unanimous consent, changed to just previous conduct at Cornell.
- e. Section 4.2: Should suspension be up to 3 years, up to 5 years, or limitless?
 - i. Limitless option removed.
 - ii. Vote between 3 years or 5 years:
 1. Votes in favor of 3 years: 2
 2. Votes in favor of 5 years: 5
 - iii. By vote of 2-5, the Committee supports up to 5 year suspensions.
- f. Section 4.2: For individuals, should we add restitution in full/part?
 - i. Should restitution be added as a potential sanction for individuals?
 - ii. Vote: 7-0, restitution added.
- g. Section 4.2 For organizations, should we add
 - i. Restitution in full/part?
 1. Vote: 7-0, restitution added for organizations.
 - ii. Oral warnings?
 1. Vote: 5-2, oral warnings added for organizations.



Cornell University University Assembly

- iii. Probation for organizations?
 - 1. Vote: 6-0 probation added for organizations.
- iv. Suspension for organizations?
 - 1. Vote: 6-0 suspension added for organizations.
- h. Section 4.3: Should a transcript notation be added while the conduct process (any part) is in progress?
 - i. Vote: 3 votes in favor of not allowing transcript notations for pending cases. 5 in favor of allowing some sort of transcript notations for pending cases.
- i. Section 5: Quick description of Administrative Panel
 - i. Still need to define the logistics of the Chair, this will be done later.
 - ii. Discussed the narrative written to describe the administrative panel process, in "5.1 Goals of the Hearing Process"
 - iii. Vote: 5-2 "disciplinary probation" will be staying at the hearing panel level.
- j. Section 5.2: Consistent time frames
 - i. There was not a question on the section.
- k. Section 5.3: Should a proposed administrative resolution be presented, or should it be up to the panel?
 - i. Related in Section 5.6: Should OSCCS be allowed an opportunity to propose appropriation sanctions after the finding of the panel?
 - ii. B. Krause: OJA waived concerns it had about section 5.3 and 5.6 in terms of an administrative resolution.
 - iii. Because of this, the issue was resolved.
- l. Section 5.4: Should the hearing proceed if the respondent doesn't show up?
 - i. Vote: 8-0 will be adding language that says hearings may proceed if respondent doesn't show up.
- m. Section 5.4 (and in further relevant sections): Should formal rules of evidence apply?
 - i. Considered moot: the Committee did not vote on it.
- n. Section 5.4 (and in further relevant sections): Should there be public hearings?
 - i. Flipped question, vote on "should all hearings be private?"
 - 1. Vote: 4-3 in favor of all meetings being private (but missing Laura and Uche's vote-> will come back to it next Friday).
- o. Section 5.4: Should all questions go through the Chair?
 - i. Vote: 1-7, this section will be maintained as written. Votes will not go through the Chair.
- p. Section 6.3: Should it be 3 or 5 days to exchange exhibits to be used?
 - i. B. Krause deferred this question.
- q. Section 6.6:
 - i. Should the complainant be required to testify?
 - 1. Vote: 7-0-1, this section will be maintained as written.
 - ii. Should the hearing panel have the ability to order a witness to testify?
 - 1. Vote: 6-2, this section will be maintained as written.



Cornell University University Assembly

- iii. Should the investigative report be admissible evidence, and should the investigator be able to testify as a witness? (Might split this question in two)
 1. Changed to three-prong amendment:
 - a. Changed the section to state that if the investigative record or report is admitted, the investigator must testify.
 - b. The investigator may testify without a report, and anyone mentioned can be called as a witness
 - c. If the investigative report is admitted, the party has the right to call anyone named in the report as a witness.
 2. Vote on the three-prong amendment: 7-0, the Committee adopted the amendment.
- iv. Is audio recording a substitute for verbatim recording?
 1. Vote: 7-1 in favor.
- r. Section 6.7: Should there be written closing statements?
 - i. Vote: 6-1, this section will be maintained as written. There will be written closing statements.
- s. Section 6.9 (and in further relevant sections): Should there still be formalized dissenting opinions?
 - i. B. Krause deferred this question.
- t. Section 7.3: Should there be more stringent standards for appeals?
 - i. See relevant comment.
 - ii. B. Krause deferred this question.
- u. Section 7.3: Should complainant, respondent, and OSCCS have the same right to appeal?
 - i. B. Krause noted she does not know if the CJC can deal with this issue at the moment. The code currently distinguishes between sanctions and remedies. This redraft groups those together. If there is a decision about who can appeal what that distinguishes between sanctions and remedies, it should be consistent with language elsewhere.
 - ii. J. Anderson noted that the committee is still considering remedies and sanctions in terms of appeals and will request feedback.
- v. Section 7.4: Should grounds for appeal be the same for Administrative Panel and Hearing Panel?
 - i. Vote: 2-5, this section will be maintained as written. Grounds for appeal for Administrative Panel and Hearing Panel should not be the same.
- w. Section 7.4: Should complainant and respondent have the same right to appeal?
 - i. J. Anderson noted that the committee is still considering remedies and sanctions in terms of appeals and will request feedback.
- x. Section 7.5: Should there be a shorter timeline for appeal?
 - i. Vote: 6-0, the committee agreed there should be a shorter timeline for appeals.
 - ii. J. Anderson noted that the committee will request feedback regarding the appropriate specific number of days. They will return to this issue at a later time.



Cornell University University Assembly

- y. Section 7.5: Should there be a hearing associated with an appeal?
 - i. B. Krause deferred this question.
- z. Section 8.3: What circumstances would prior findings of responsibility not be admissible?
 - i. J. Anderson explained the committee made the decision that only prior Cornell conduct would be noted and not overall conduct.
 - ii. B. Krause added that past findings unrelated to the current charges would be unduly prejudicial.
 - iii. Changed to strike the word “regularly” in the Past Findings point.
- aa. Section 8.5: Is it necessary to include the VP SCL or let the body decide on conflicts of interest? Should conflict of interest decisions be up to the individual or up the body (in this case the appeal panel)?
 - i. Changed to read that any individual with a conflict of interest can notify the Vice President of Student and Campus Life (VP SCL), who will notify the panel that will make the decision. Anyone in the process could notify the VP SCL that a panelist might have a conflict of interest.
 - ii. Vote on amendment: amended with a vote of 6-0.
- bb. J. Anderson will be cleaning up the document, making changes, and highlighting sections with significant disagreement. He will then ask for final revisions with the intention for public comment to conclude on May 1. He will also be preparing one-pagers for the UA that he will circulate with the committee. The UA has three meetings left. The April 28 meeting they will present what the CJC has worked on and discuss mostly substantive parts. The May 5 meeting will be a deep dive on violations and procedures. The final vote on all documents will occur at the May 12 meeting.
- cc. J. Michael noted that the burden of proof vote was very close. According to a document from the Department of Education, in order for Title IX to have a burden of proof of preponderance of evidence, preponderance of evidence will also need to be in the code. She noted it is almost like the committee does not have an option.
 - i. R. Lieberwitz said Title IX matters are in flux. The current Department of Education has proposed changes and it is unclear what they are going to do.
 - ii. J. Anderson noted his guidance from the Office of University Counsel was for the committee to make its decisions regardless.

III. Adjournment

- a. J. Anderson adjourned the meeting at 2:29pm.

Respectfully submitted,
Matthew Ferraro & Catherine Tran,
Clerks of the Committee and the Employee Assembly, respectively.