

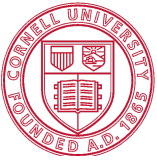
# Cornell University University Assembly

Agenda

May 1, 2020

University Assembly: Codes and Judicial Committee  
Zoom

1. Call to Order
2. Approval of the Minutes
  - a. 4-10-2020 Minutes
  - b. 4-17-2020 Minutes
  - c. 4-18-2020 Minutes
  - d. 4-24-2020 Minutes
3. Business of the Day
  - a. Review of Public Comment
    - i. Section 4.3 of Procedures: Transcript Notations
    - ii. Section 7.3 & 7.4 of Procedures: Rights to Appeal
    - iii. Section 7.5 of Procedures: Timeline of Appeals
    - iv. Other Sections as needed



Cornell University  
University Assembly

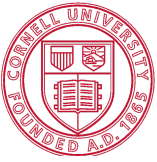
**The Codes and Judicial Committee  
of the University Assembly**

Minutes of the April 10th, 2020 Meeting

9:00 AM – 10:30 AM

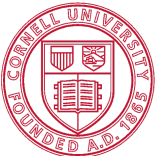
Held via Zoom

- 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:* B. Krause, C. Liang, 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



**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.



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- 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  
University Assembly

**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:

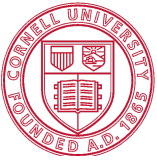
- a. Section 2.5.1: Should it be as written to move to VP SCL to determine?
  - i. Vote: 6-2, this section will be maintained as written.
- b. Section 2.5.3: Should it be up to an appeal panel of VP SCL?
  - i. Vote: 7-1, this section will be maintained as written.
- c. Section 3: Should mental health 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.





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- 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.



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- 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.



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- 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.



## Cornell University University Assembly

### 2020 Proposed Amendments to the Campus Code of Conduct Online comments received (as of 5:00 PM Thurs., 4/30/20)

#### **Feedback from a team of professional academic advisors**

Submitted by Lisa A. Ryan on Thu, 2020-04-30 16:45

Feedback from a team of professional student services academic advisors

Section 1.2 The JCC or other advisors should not speak for students in a hearing. While they should seek advice and support, students should speak for themselves as part of the educational process to talk about their behavior and learn from the choices made and impact on the community.

Section 1.4: JCCs should at least have a dotted line of supervision to Student and Campus Life

Section 2.4: Formal notification should be sent by Secure Drop Box or Maxient in addition to mailing a letter

Section 4.2: We suggest three years for suspension as sufficient because that is a lifetime developmentally for students in their early 20s, and in three years curriculum changes can make completion of degree challenging. For reasons including possibly rapidly changing curriculums, many college withdraw student who have been gone longer than five years.

Section 4.3: There should be no notation made on a transcript while a Formal Complaint or investigation is pending. This is consistent with Academic Integrity procedures because charges can be false or inaccurate. We agree that The University should not withhold awarding a degree otherwise earned until after the resolution of the Formal Complaint unless the respondent does not enter into a separate agreement with the University. The student would likely be motivated to enter an agreement in order to receive their degree to help them secure employment or graduate school.

Section 5.1: Disciplinary probation can and should be administrative decisions hearing. Full hearing boards are typically used for suspension or dismissal and reviewing lower level cases is extreme and time consuming.

Section 5.4: We believe that all hearings should be private, consistent with Academic Integrity hearings. The respondent question a witness seems inappropriate in all circumstances and the chair should moderate questions.

Section 6.5: We believe that all hearings should be private, consistent with Academic Integrity hearings.

Section 6.6: We have no power to enforce relevant witnesses to participate in a hearing unless they are charged with a code violation, making the process longer. If someone files a complaint and gives a report to a trained Cornell investigator, the report or representative should suffice.

Section 6.7: 10 minutes for oral closing statements seems unnecessary and time consuming. More appropriately the Chair could ask if either party has something they'd like to add at the end of the hearing.

Section 6.9: Preponderance of evidence is the best practice in higher education as endorsed by professional associations such as ASCA (Association of Student Conduct Administrators) and other student affairs/services organizations. There are years of precedence and research to support this approach. Preponderance of evidence is used in Title IX, hazing and academic integrity cases. Additionally, clear and convincing evidence is extremely difficult to prove in a college environment. As this process is deemed an education process and to support our community's wellbeing, it would be detrimental to only sanction/educate when there was a clear and convincing burden.

## Re: Proposed Procedural Amendments 1.4, 4.3, 6.9, and 8.4

Submitted by Violet G Nieves Cylinder on Thu, 2020-04-30 14:48

I submit the below comment on the Proposed Amendments to the Campus Code of Conduct on behalf of myself, Violet G. Nieves, and Emily Van Dyne. We are J.D. Candidates for the Class of 2022, and we write as members of Cornell Law School. Our comment is also available at the following link: [https://drive.google.com/file/d/1vWXYW3zb0DaWTCVVD2qKSG\\_iMYh\\_4zMC/view?usp=sharing](https://drive.google.com/file/d/1vWXYW3zb0DaWTCVVD2qKSG_iMYh_4zMC/view?usp=sharing).

We write to express our support for **Proposed Amendments to Procedural Sections 1.4 and 4.3** and our opposition to **Proposed Amendments to Procedural Sections 6.9 and 8.4**.

**Section 1.4: The Judicial Codes Counselors should be law students.** We agree that the Counselors should remain law students. As Professor Kevin M. Clermont writes in his comment, the position is legal in nature. The Counselors provide fundamentally legal advice and therefore require legal training and supervision. We believe that giving this responsibility to individuals with no legal training would not provide respondents with sufficient due process or adhere to normative standards of fairness. We are not confident that students without legal training can properly advise respondents in administrative proceedings. Indeed, we seriously question whether this would comport with basic standards of legal ethics. Insofar as the administrative process is opaquely legalistic, law students are better situated to manage the proceeding's legal aspects, and thereby reduce that burden for individuals who lack legal training. Furthermore, we balk at the insinuation that the educational value of this experience should rank in importance with the quality of counsel and due process concerns. However, even considering potential educational value to Counselors, that education is most valuable to law students.

**Section 1.4: The Office of Judicial Codes Counselor should remain independent.** We agree that the OJCC should remain independent from the Office of Student and Campus Life. As the Judicial Codes Counselors have written in their comment, we disagree with the suggestion that incorporating the OJCC into the OSCL will increase accountability or transparency. Rather, we suspect that such a move would create a perceived or actual conflict of interest. The JCCs are accountable to their clients, not to the administration. We question whether transparency in this context would not result in, at minimum, the perception of administrative interference in a confidential relationship. The OJCC's continued independence encourages participants to trust its guidance and advocacy, and thereby preserves their trust in the administrative

process. Additionally, we worry that moving the OJCC to the OCSL would further intimidate and confuse participants who are already uncomfortable or lack experience with administrative proceedings.

**Section 4.3: Transcript notations should not be permitted prior to a final finding.** We support the Proposed Amendment prohibiting transcript notations prior to a final finding. Preliminary notations to respondents' transcripts will unfairly harm respondents who are ultimately found not responsible. These notations may damage respondents' professional and academic prospects, precluding them from jobs, internships, grants, or scholarships while a complaint is pending. Respondents who miss such opportunities may in turn need to explain gaps in their work or academic history, irrespective of whether they are ultimately found responsible. These errors are particularly burdensome to respondents who lack access to finance or professional connections. The Proposed Amendment will reduce these errors and their consequences, and provide more robust due process. Even respondents who are ultimately found responsible should not preemptively bear those consequences.

**Sections 6.9 and 8.4: The burden of proof regarding violations should be clear and convincing evidence.** We disagree with the Proposed Amendments to lower the burden of proof. The preponderance of evidence standard of proof is not high enough to guarantee respondents due process. These administrative proceedings often adjudicate conduct that, were it prosecuted outside of the University, would require a finding beyond reasonable doubt. *See generally Substantive Section 4.* Furthermore, lowering the burden of proof may exacerbate existing inequities between the parties. Students with the resources to obtain external advocates and guidance may be advantaged, while students who lack such resources will lack choices about how to present their case, while operating under a burden of proof that may favor their well-resourced University and peers. Finally, we fail to see that the University has a compelling interest in lowering the burden of proof.

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## Complainants' Advisors Comments on Section 1.4

Submitted by Morgan Lindsay Anastasio on Thu, 2020-04-30 14:27

### **Complainants' Advisors Comments on Section 1.4 The Office of the Judicial Codes Counselor**

Complainants' Advisors (CAs) are law students who serve as procedural advisors, free of charge, to Complainants under Cornell's Policy 6.4. Like the Judicial Codes Counselors (JCCs), CAs are housed in the law school and are advised by a Professor of Law. We write to voice our support for proposed Section 1.4 The Office of the Judicial Codes Counselor, Office Members and Office Independence.

#### **(1) Section 1.4 The Office of the Judicial Codes Counselor – Office Members**

***We support the CJC's vote in favor of ensuring that JCCs are law students.***

In addition to the JCCs' work under the Campus Code of Conduct and Academic Integrity, the JCCs also serve as procedural advisors to Respondents under Cornell Policy 6.4 (Title IX). While Respondents are free to have an advisor of their choice, they are offered a JCC free of charge. Many Respondents cannot afford to hire outside counsel and so rely on JCCs to guide them through the complex Title IX process. JCCs should remain law students for the following reasons:

*First*, due process values would be better served by law-student advisors. It is imperative that Respondents and Complainants understand the external, legal implications of Policy 6.4. Specifically, many of the policy violations found in 6.4 are also criminal acts. Complainants can and do bring civil or criminal charges against Respondents concurrently with or consecutively to their Title IX Complaints. Importantly, because the Title IX

process is not privileged, anything uncovered in the investigation or hearing can be used in subsequent legal action. While an undergraduate student may learn the intricacies of the Title IX process, law students are better served to advise Respondents in a way that appreciates and considers possible legal consequences. Moreover, law students, while knowledgeable of common legal implications of Policy 6.4, understand the limits of their role and when to refer a client to a licensed attorney. This is especially true regarding the new Procedures on Prohibited Discrimination, which have extensive civil legal implications. Law students are also likely to have more familiarity with applicable law that governs their actions, such as the requirements of the Family Educational Rights and Privacy Act (FERPA).

*Second*, JCCs have a particularized skillset. Policy 6.4 is complex. The JCCs have years of institutional knowledge and experience not only guiding Respondents through the Title IX process, but also writing effective and creative procedure-based arguments. Non-law students often emphasize narratives that are not as relevant to the policies at hand and can miss effective procedural arguments. Given that Respondents face serious consequences under Policy 6.4, such as expulsion, it is important that their advisors have years of experience defending these cases and the necessary legal training to make effective procedural arguments.

*Third*, JCCs are better suited to maintain professional relationships. In addition to advising students, JCCs may represent faculty and staff in the Title IX process. A law school advocate will engender greater trust than an undergraduate student for other students, and in particular for faculty or staff. Moreover, mandatory ethics and experiential learning classes help law students navigate confidential relationships and conflicts of interest. Understanding the balance between being a procedural advocate and offering emotional support can be difficult. Law students have experience balancing these dynamics through ethics courses, clinical work, externships, and summer jobs. Lastly, CAs and JCCs have a close working relationship that would be better fostered with law-student JCCs. Specifically, we attend trainings together and collaborate when advocating for policy clarification or changes that impact our clients. As law students ourselves, CAs would have a better working relationship with law-student JCCs, made even easier by being housed in the same building.

*Fourth*, equitable representation. In the Campus Code of Conduct and Academic Integrity, the imbalance between student and University is sharpened when the student is represented by someone with no legal training and the University is represented by the OJA. The same is true for Title IX. Complainants under Policy 6.4 are often advised by a CA, who will remain a law student, or an attorney. Students advised by non-law students will thus be at a disadvantage. Additionally, JCCs will serve as better advocates to these students because law students have greater time and energy to dedicate to this work compared to undergraduates who often participate in multiple student groups while taking more credits per semester compared to law students. Moreover, many JCCs and CAs are pursuing careers directly related to the work they do for the school, and use their role as a JCC or CA to sharpen their advocacy skills. Thus, law-student JCCs are more likely to dedicate the time and energy it takes to successfully represent their clients through these complex procedures.

#### **Section 1.4 The Office of the Judicial Codes Counselor – Office Independence**

***We support the CJC's vote to keep the JCC Office independent from the Office of Student and Campus Life.***

The JCC office should remain independent from the Office of Student and Campus Life. CAs share the JCCs' concern that Respondents would not trust their advisors if they fell under the same umbrella as the entities investigating them. This concern is even greater when it comes to Policy 6.4. Respondents and Complainants have the right to file complaints against the University with the New York State Division of Human Rights (DHR) and federally through the Office of Civil Rights (OCR). When they do this (sometimes concurrently with a 6.4 investigation), New York or the federal government initiates an investigation into the Title IX office and process. Respondents who file a complaint with DHR or OCR will not trust an advisor that is part of the same



entity they are complaining about. Moreover, this creates the potential for a conflict of interest, as JCCs may both advise Respondents through the DHR/OCR process but also become a subject of the investigation. Lastly, because CAs will remain an independent office supervised by law school faculty, like the JCCs are now, there would be an imbalance if Respondents are not granted independent advisors by those investigating them, but the complainants are.

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## Standard of Evidence

Submitted by Anonymous Committee Member on Thu, 2020-04-30 11:23 (user name hidden)

It is concerning to me that so many alumni (many of whom seem to be Greek and are a part of IFC chapters) fail to recognize that the current Greek Judicial System uses the preponderance of the evidence standard. In addition, they do not seem to understand that greek organizations have always been subject to a separate system, under a different lower standard than the Code. Therefore, what this seems to be is a blatant play to raise the standard of evidence for the greek system alone as they recognize that greek life might be incorporated into the Code and view this as a chance to change the system. I feel that moving greek life under the code and having a preponderance of the evidence standard is the only way to ensure that there is a balance between what it means to be a Cornell student, a greek, community interests, and due process. I say that with experience in both the Code/JA and the greek judicial process.

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## These Changes Will Eliminate Fair Process for Students

Submitted by Anonymous Committee Member on Thu, 2020-04-30 11:11 (user name hidden)

The proposed change to lower the burden of proof is a travesty and Cornell should be ashamed of itself for proposing to eliminate a fair process for students.

The higher burden of proof of "clear and convincing" signals to the entire campus community that students can trust they will be ensured a fair process. The punishment for certain violations can be as high as suspension or expulsion, so we as a community should want to err on the side of being more certain if we are punishing students in such a way that can have long-term ramifications for their education and career. The "clear and convincing" standard has been the long-time standard and there is no data offered suggesting that the clear and convincing standard is either no longer workable nor no longer beneficial.

On the other hand, I strongly support that the current changes include continuing to provide for students to have representation during their hearings by law student advisors, and I urge that the final version of the code maintain that commitment. This is especially important for students from low socio-economic backgrounds or for whom English is not a native language. This is an equity issue as not all students have had access to the same training to defend themselves in a hearing, or are able to speak in English with a comfort level that would provide themselves an adequate defense. Other students may suffer from anxiety and stress, compounded by having to face an employee of the JA's office (who is typically a barred attorney) and the serious ramifications that can result from being found in violation of the Code of Conduct. By not allowing advisors to speak on behalf of their clients during hearings, these rules strip fairness from the system and make a mockery of the values Cornell supposedly stands for.



I will not mince words, if you vote to lower the standard of proof or deprive students of the opportunity to have their law student advisors represent them in a hearing, you will be betraying the values of equity and fairness that Cornell has stood for since it opened its doors 1865. For the student unable to adequately defend themselves who will be convicted of a charge that they did not commit because you voted for to change these rules, you will carry the weight of their ruins.

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## Student Perspective

Submitted by Anthony Nunziato Cicileo on Thu, 2020-04-30 00:25

I agree with the comments put forth by the Cornell University Alumni IFC ("CUAIFC") in regard to the proposed changes for the Campus Code of Conduct. The proposed changes, as they currently stand, overexert Cornell's jurisdiction and inhibit an impartial judicial system. CUAIFC is raising these concerns with the best intentions to protect the rights of students and invested alumni in the campus judicial process. Additionally, these comments expose the flaws in the proposed changes which will deter future accepted (prospective) students from choosing a university where they are not provided judicial process.

The most concerning of these changes is in regard to burden of proof. Further reducing the standard of proof from "clear and convincing evidence" to a "preponderance of evidence" would be an egregious loss of due process. 51 percent likelihood is an undefendable threshold that will establish a guilty until proven innocent judicial system. With this standard, students' entire futures rest on findings that are biased in favor of the Judicial Administrator (as prosecutor). As a Cornell student I feel especially unprotected by these proposed standards and would not consider becoming an involved alumnus if I knew my time, energy, and money were held to such judicial process standards. I encourage serious reconsideration of these proposed changes.

Anthony Cicileo  
Chi Phi Xi Chapter President

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## JCC Eligibility / Student and Campus Life; Public Hearings

Submitted by Anonymous Committee Member on Wed, 2020-04-29 13:55 (user name hidden)

"The CJC voted 4-3 to keep the language above. The 3 members who voted against believed that the position of the JCC should be open to any graduate, professional, or undergraduate student who is interested and goes through the necessary application process. In addition, some members believed the Office of Judicial Codes Counselor's should be moved into Student and Campus Life to increase accountability, understanding of other aspects of student life, and make the process less legalistic and more educational. In addition, the name might be subject to change."

I agree with the members who voted against this proposed change. Being a member of the Cornell community gives them a greater understanding of the various situations that students and faculty are facing, which gives them better context with which to make decisions.

"The CJC voted 5-3 to make all hearings private. The 3 who voted against believed that there should be some exceptions to allow for a public hearing. The existing code allows for public hearings in certain circumstances and believed those exceptions should be included."

This is somewhat concerning. As detailed in the current Code of Conduct, in cases where neither party is at risk of harm from a public trial, the accused should have the right to opt for a public hearing. This provides for greater accountability, and increases transparency in the hearing process.

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## Best Practices for Judicial Affairs

Submitted by Anonymous Committee Member on Wed, 2020-04-29 13:36 (user name hidden)

I have previously worked in Student Affairs at James Madison University (JMU) and during my time there I volunteered to sit on on their Judicial Affairs “Accountability Board” which helped determine judicial decisions for student code violation cases. JMU’s Judicial Affairs office has since been renamed the Office of Student Accountability and Restorative Practices (OSARP). JMU’s OSARP office is deeply grounded in Student Development Theory, and I believe there are some areas of this Cornell Campus Code of Conduct that could be improved upon to better align with JMU’s best practices for Judicial Affairs. For example:

- Accused JMU students speak on their own behalf
- Witnesses to the JMU code violation case also speak on their own behalf (I don’t believe witnesses are required to participate, as enforcing this would cause more headaches)
- JMU Students are notified of their “alleged policy violation” through an email sent to the student’s official JMU e-mail address (as students are expected to check this email regularly)
- Accused JMU students first have to complete a 1 on 1 conversation (or “case review”) with an OSARP staff member, and that staff member makes an initial decision of “Responsible” or “Not Responsible”. If the student would like to appeal this decision, even minor cases would then be reviewed by an “Accountability Board” made up of faculty, staff, and student volunteers. I served as one of these volunteers during my time at JMU, and we all had to complete an in-person training in order to volunteer.
- During training to sit on the Accountability Board, volunteers are made aware that all repercussions (for students that are deemed “Responsible” for their accused code violation) are designed to be educational and restorative in nature. Students deemed “Responsible” might be sanctioned to attend an educational training that is related to their code violation, or they might be sanctioned meet with a faculty/staff mentor for a set number of hours/meetings, etc.
- Rather than looking for 100% certainty or “beyond a reasonable doubt” (as they look for in a court of law), Accountability Board volunteers were instead trained to look for “reasonable doubt” or a 51% chance that the student committed the code violation. During our training, the OSARP office explained that the reason we were being asked to make a decision based on only 51% certainty was because 1) this is not a court of law, and 2) the cases that we were being trained to review were minor, and the corresponding sanctions were educational, so there was no need for 100% certainty. I believe the 51% certainty benchmark was raised to a higher percentage for Title IX cases or cases that involved the possibility of Probation or Dismissal, but I personally was not trained to sit in on those cases.
- Here are some links with more information: <https://www.jmu.edu/osarp/handbook/OSARP/accountability-process.shtml> and <https://www.jmu.edu/osarp/handbook/OSARP/standards-policies.shtml> and <https://www.jmu.edu/osarp/handbook/OSARP/ap-case-review-procedures.shtml>

These are all areas in which I believe JMU's OSARP office sets an excellent example, and areas in which I believe Cornell's Campus Code of Conduct could improve, in order to better align with nation-wide standards for best practices in Judicial Affairs. Thank you for your time and consideration.

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## Timing of These Changes

Submitted by Anonymous Committee Member on Wed, 2020-04-29 09:31 (user name hidden)

Hi I would just like to comment that attempting to make these changes during a pandemic when students are off campus dealing with a lot of issues feels inappropriate. Many students aren't aware these changes are being made due to being off campus and thus a large portion of the people who might want to comment and express an opinion won't be able to. I would suggest revisiting these changes at a later, better time.

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## Fundamental Flaws and Improvement Opportunities to Address

Submitted by Richard W. Kauffeld Jr on Sun, 2020-04-26 20:23

As an engaged fraternity advisor for the past eight years, I appreciate Cornell's need and the CJC's efforts to enhance our Code of Conduct and judicial procedures. The Substantive Sections articulate aspirational principles and values with high standards for student conduct. Living-up to these values requires the CJC to address some fundamental flaws, primarily in the procedural sections: 1. The draft Code seeks to remove fairness protections in the current Code and violates students' rights to due process. A Cornell student or organization can be suspended or expelled without "clear and convincing evidence" (the current standard), but by a "preponderance of evidence" standard that simply means the offense was more likely than not. The severe sanctions only require 3 of the 5 panelists, of which 3 are students, to decide that the offense was probable – at a Hearing that was called after the OSCSS "determined that it has met the burden of proof" and recommends sanctions of probation, suspension or expulsion (6.1). The procedures put an incredible amount of power in the hands of students who are seeking approval and recommendations from the university, with an unconscionably low burden of proof for the damage that they can inflict on other students' lives. If the Administrative and Hearing Panels pull from a common pool, the OSCSS should ensure that those serving on a Hearing Panel have already demonstrated their capabilities and judgement on the lower panel, risks of errors or bias are not as high.) 2. As drafted, the Code appears discriminatory rather than applying to all students and all student organizations fairly. The Respondent (1.2) is described as a student, University-recognized organization, or University-registered organization (2.1 includes "group of students", 3A "University-related residential organization", and somewhere there is a reference to "living groups"). These organizations are not defined in the Code and it is not clear whether there are classes of non-recognized organizations that are exempt or somehow treated differently by the Code. There are no standards to determine when a group of students would be Respondents or the entire organization(s) to which they belong. If organizations are to be restricted or sanctioned for the misconduct of individuals or groups of members, the organizations must be broadly complicit and organizational accountability must apply not only to fraternities and sororities, but equally to all organizations, including sports teams and other clubs. Finally, the restrictions on Unrecognized Student Organizations (4.1) should not be construed to prohibit the freedom of recognized same-sex organizations, including gender-specific sports teams and non-coed

fraternities and sororities. 3. The Administrative Procedures (5.2) lack guidelines or standards for determining “less severe” vs “most severe” offenses subject to Probation, Suspension or Expulsion. Such guidelines (perhaps as described as “Grave Misconduct” in the current Code”) should be clear and consistently apply across individuals and organizations. 4. The procedures for less severe misconduct with modest sanctions remain complex, cumbersome and legalistic. Procedures for conduct and sanctions that would not go on a student’s permanent record could be further streamlined. 5. The Code should use clear language and accurate descriptions. A Code that applies only to students and beyond campus is a Student Code of Conduct (not a Campus Code). Is OSCCS necessarily better than JA or just OSC? The Administrative and Hearing Panels both involve administrative hearings. Shouldn't we accurately call them the Misconduct Panel and the Severe Misconduct Panel? The CJC and UA should address these issues and opportunities before moving ahead with this Code. Rich Kauffeld '80

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## Rights of Cornell Community Members

Submitted by Homer William Fogle, Jr on Sat, 2020-04-25 12:17

Since my time as an undergraduate, a half-century ago, I have seen Cornell University become increasingly authoritarian, repressive and intrusive. The mantra of “diversity, inclusiveness and safety” has been used to shut down student organizations and stifle dissent. This is the expected course of any one-party leftist state, and Cornell is no exception. Consider what is missing from the Campus Code of Conduct: a clear statement of the fundamental “natural” rights that Cornellians deserve, but do not have and will never have. • The right of all Cornellians, faculty, staff and students, to speak about, to endorse or to oppose any state, faction, group or person, on any issue, political, social or moral, in a non-abusive manner is absolute and shall not be abridged, regardless of the claimed sensitivities of those criticized or offended. • The right of all Cornellians to assemble in any body of their own choosing and, by mutual consent, to exclude others therefrom, and the right to conduct their affairs in said body as the members alone shall dictate, shall not be abridged. • The right of all Cornellians to be secure in their persons against unreasonable searches, seizures and surveillance. A good example of what is happening occurred last year when President Trump signed an executive order on 11 December that, according to the New York Times, essentially defines Judaism as a race or national origin, not just a religion, under the Civil Rights Act, expands the definition of anti-Semitism to include some anti-Israel sentiments, and compels the U.S. Government to withhold funds to any college or university that allows speech critical of the Jewish State. Inevitably, this will “stifle free speech and legitimate opposition to Israel’s policies toward Palestinians in the name of fighting anti-Semitism.” Firstly, the Cornell Administration reacted with absolute silence to this affront. We conclude that Day Hall was satisfied that this policy provided cover for the University’s own efforts to suppress speech offensive to Cornell’s most powerful faction. But that is not the end of the story. The Cornell Daily Sun refused to print an alumnus letter protesting the Trump policy, again out of fear that such “speech” would offend. So, this amended Campus Code of Conduct will give Day Hall another hammer to use on those students and student organizations that do not buy into the uncompromising demands of “diversity, inclusiveness and safety.” H. William Fogle, Jr. '70 (Engineering) 25 April 2020, Mesa, AZ

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## Some Thoughts on Proposals

Submitted by Jeffrey B. Deutsch on Sat, 2020-04-25 11:39

Arielle Rose Johnson raises some interesting points.<br><br> "There is no 'objective' perspective on sexual harassment and assault. Ask Kate Manne, a famous scholar who works on sexual harassment and misogyny and is based at Cornell!"<br><br> What Professor Manne is perhaps best known for is the concept of "himpathy" -- that powerful men overly sympathize with other powerful men.<br><br> In other words, a subjective perspective...and one that is wrong. How is it wrong? Because we know <b>objectively</b> that we need to look at the evidence, facts and logic when evaluating someone's behavior...not at their level of power, gender let alone race.<br><br> Without objective standards, we have either anarchy (or at least people harassing and worse at will, because <b>their</b> subjective standards are what matter) or totalitarianism (or at least punishing anyone and everyone accused, because the <b>accusers'</b> subjective standards are what matter).<br><br> "Some assault isn't 'intended' to be abusive or humiliating, but absolutely is."<br><br> In other words, Ms. Johnson wants an objective standard. I completely agree.<br><br> There's a middle ground between "intended harm" and "innocent". It's "reckless/negligent". Objectively, under the circumstances someone should have known something was abusive or humiliating but did it anyway. It could be simply negligent, when the person didn't know better, or just forgot or made a small mistake in judgement. Or it could be reckless, say when the person was so ticked off s/he didn't care about crossing the line.<br><br> Abuse doesn't have to be intentional to be culpable.<br><br> "And sometimes a person can't verbally say no, but it's abundantly clear from non-verbal cues that they mean no."<br><br> And yes, we do need objective standards of clarity here. Also keep in mind that different individuals have different levels of ability to read non-verbal cues -- especially given how culturally bounded the cues must be.<br><br> As most of us know, a small number of people are on the autism spectrum and have a difficult time reading non-verbal cues. We should extend them at least a little mercy.<br><br> More broadly, in a diverse community like Cornell's, people will from time to time misread -- and just plain miss -- others non-verbal cues. Too strict an objective standard risks being culturally narrow.<br><br> Let's also keep in mind the classic knowledge curse: We all tend to assume others know what we know. The corollary is that all tend to overestimate how obvious our own signals are. In fact, snarling at or punishing people for missing them is something I call minefielding.<br><br> I think one value the Code of Conduct should encourage is directness: At least when reasonably safe, we should use our words and make clear what we mean so as to avoid ballooning misunderstandings. And when a complainant says s/he didn't spell out what s/he meant, sometimes the only thing the authorities can or should do is simply tell the respondent something like: "Sally [or John or whoever] didn't feel able to tell you to stop calling her, so we're telling you: Stop calling. And don't retaliate for reporting this, or you'll be severely punished."<br><br> All that having been said, I completely agree that an instructor talking about a student's breasts (presumably not in a clinical context, eg, an advanced biology class discussing breast cancer) in front of the whole class is way out of line. As in, I'd seriously consider firing the instructor over that.<br><br> "4.16: Need to make an exception here for survivors of traumatic experiences (e.g. sexual assault) who have unclear memories of the experience or give slightly differing stories at different times as a result of trauma."<br><br> In other words, Ms. Johnson wants people to be judged on their intent, not only or even mainly on the effects of their actions. I completely agree.<br><br> I for one think it should go without saying that Policy 4.16 should apply only to intentional behavior. By all means, specify that if it will help.<br><br> Finally, I completely agree with Professor Kevin M. Clermont: The JCC should have legal training and should be independent. That will help Cornell University maintain due process -- a value it's justly famous for.

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## Off-campus activities (International)

Submitted by Chris Cook on Fri, 2020-04-24 11:56

I would like to first like to thank the CJC for their hard work on this and for, as I read it, addressing a gap in the current code, namely, off-campus jurisdiction. As the Associate Director of International Travel Health and Safety, the current code language has led to concerns and practical applicability when it comes to Cornell-related international activities such as study abroad. A few colleagues and I have spent quite a lot of time working with the Judicial Administrator's office (JA) and the Codes and Judicial Committee (CJC) this past year and a half to get clarifying language put into the Campus Code of Conduct. Our attention was on language that specifically addressed international activities from a jurisdiction/applicability standpoint. The current code reads, "This Title shall apply to conduct on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area." (Title Three: Article I. Applicability). It is welcome to see Section 2: Definitions-2: "The term "University" means Cornell University, as well as any affiliated programs or virtual programs, computing, and spaces including, but not limited to, University programs in remote locations within or outside of New York or the United States" and, "Section 3: Scope and General Provisions: "The Code applies to conduct that involves the use of University computing and network resources from a remote location, and to online behavior. The Code will apply regardless of the location of the conduct when: (1) the behavior occurs in the context of a University program or activity; or (2) poses a substantial threat to the University's educational mission, the health or safety of individuals (whether affiliated with the University or not), or the University community" in the revisions. While these revisions still stand as a draft, I would like to encourage the CJC to maintain the awareness that instruction takes place off-campus and in unique situations where the Code is an essential component to enforcing behavior that represents Cornell well in the eyes of our partners and takes into account the cultural norms, geopolitical risks, and group safety that is inherent in education abroad activities. Justification for specifically calling out -perhaps even more so than the revisions already do -the Code's applicability in international settings has been identified as:

- Expanded Code jurisdiction will help enforce off-campus activity guidelines because it is part of a student's permanent record.
- Expanded Code jurisdiction will elevate the authority of program-specific guidelines/rules because it is part of a student's permanent record.
- Expanded Code jurisdiction will show institutional support of the authority of an Off-Campus Activity Leader who is responsible for the safety and education of a group of travelers in a short amount of time and unconventional environments.
- Off-campus activities are unique in the risks from and response to misconduct as they occur in settings that have limited resources and time but can impact vast amounts of people and the Cornell reputation in the public opinion.
- Off-campus activities are Cornell activities and carry weight, in terms of reputation, as such (ie., Prohibited drinking in a host family's home is not, reputationally, the same as drinking underage in one's apartment off-campus).

For reference and suggestions on how to further clarify jurisdiction in the Code revisions, I list below examples from other institutions:

Duke: The honor code at Duke is named the community standard because it expresses our institution's core values and a concomitant set of expectations for behavior. Because behavior is derivative of fundamental values, the standard applies off-campus as well as on. Students may be held accountable by the university for their behavior off-campus, from Durham to Dubai. The university reserves the right to respond to any report of alleged misconduct on or off-campus.

Northwestern: The University reserves the right to investigate and resolve any report or incident in which a student is alleged to violate any of the principles or policies published by the University or local, state, or federal laws or policies, regardless of the location where the incident occurs. Students are also expected to follow the policies and procedures of institutions that they may visit, including during international travel.

Georgetown: When alleged violations of University regulations or local laws take place off-campus and come to the University's attention, the university reserves the right to take appropriate action when, in the judgment of University officials, the alleged conduct has a negative impact on the University community, the pursuit of its mission, or the broader community in which we live. Georgetown's Code of Student Conduct and the procedures through which it is implemented apply to students studying abroad. Students should also be aware that while studying abroad they will be subject to local laws of their host country and regulations of their host institution.

ASU: Sanctions may be imposed for acts of misconduct that occur on university property or at any university-sponsored activity. As further prescribed in these rules, off-campus conduct may also be subject to educational

interventions or discipline. "University-sponsored activity" means any activity on or off campus authorized, supervised, or controlled by a university. <https://public.azregents.edu/Policy%20Manual/5-308-Student%20Code%20of%20Conduct.pdf> USF: In the code, the jurisdiction and discipline extends to "conduct which occurs on University premises or which adversely affects the University community and/or the pursuit of its mission. Specifically, University officials may initiate disciplinary charges for conduct off-campus when the behavior relates to the good name of the University; the integrity of the educational process; or the safety and welfare of the University community, either in its public personality or in respect to individuals within it; or violates state or federal law." <http://regulationspolicies.usf.edu/regulations/pdfs/regulation-usf6.0021.pdf> Uni of Illinois at Urbana-Champaign (1) all actions that are violations of law or Board of Trustees' action or any University rule of conduct and that occur on University premises or property (2) all actions that violate any of the laws or regulations cited in section (a) above and that substantially affect the University community's interest, even though such actions do not occur on University premises or property (for further information about the criteria used by the Senate Committee on Student Discipline in determining the kinds of conduct covered by this jurisdiction, see [www.conflictresolution.illinois.edu](http://www.conflictresolution.illinois.edu) or § 1-111 Student Code 9 contact the Office for Student Conflict Resolution) Uni of Oklahoma 9.) Failure to comply with the direction of a University official who is performing his or her duties. This responsibility includes complying with faculty/staff requirements and directions of study abroad programs, including off-limits designations and other restrictions or instructions.

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## OFFICE OF THE JCC

Submitted by Kevin M. Clermont on Tue, 2020-04-21 16:36

I am a law professor and the long-time advisor to the JCCs. Proposed Section 1.4 of Section 5 on procedures is also a very good provision. The proposal provides that the JCCs will be law students and that the Office is to be independent. It should be adopted despite the expressed concerns, which are particularly uninformed. First, it is essential that the JCCs have law training. Any disciplinary code, no matter how "educational" it is meant to be, will present an endless flow of legal questions. The general populace may not appreciate this unavoidable fact, but I do. I stand in utter admiration of how well these upperclass law students use their legal education and research skills. Nonetheless, many questions prompt them to consult with me. Their questions are truly hard. I have to research them too. And then discuss the questions with people who can understand them. The job of the JCCs, which they pursue with wondrous dedication and effort, is a very hard job. The JCCs also work collaboratively. They must do so, because of the extraordinary demands of the position. They operate out of an office provided by the Law School. We would lose a lot more than esprit de corps by spreading the JCCs across the campus. The JCCs do a lot more that help with the Code. For instance, they advise respondents under Policy 6.4. That is a job strictly for the law-trained. The issues there are very legalistic, and respondents' whole futures are at stake. Advising them is certainly not a task suited to the fair-minded and well-meaning lay person. Second, it is essential that the JCC office remain independent. A good part of the job involves standing up to the Day Hall machine. I hope the reader is never charged under the Code, but if you are, I promise you that you will want an advisor from outside the bureaucracy. I can say that in all my years at this University I have never encountered a group more impressive in carrying out their function than the JCCs. They rise to the challenges and perform them with ardor, skill, energy, knowledge, and devotion that I could never describe. I am in awe. Do not mess with this singular success.

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## WITHHOLDING DEGREES

Submitted by Kevin M. Clermont on Tue, 2020-04-21 15:59

I am a law professor and the advisor to the JCCs. Proposed Section 4.3 of Section 5 on procedures is a very good provision. It should be adopted despite expressed concerns. It says: "If the OSCCS believes that the respondent may graduate or otherwise leave the university prior to the resolution of a Formal Complaint, the OSCCS must first attempt to enter into a separate agreement with the respondent to allow the University to maintain jurisdiction over the respondent if the respondent graduates prior to the resolution of the Formal Complaint, including the completion of sanctions/remedies agreed to or imposed. The University may not withhold awarding a degree otherwise earned until after the resolution of the Formal Complaint unless the respondent does not enter into a separate agreement with the University." The current Code says this: "The University may withhold awarding a degree otherwise earned until the completion of proceedings, including compliance with a prescribed penalty or remedy." The current practice is routinely to withhold degrees until the completion of proceedings under the Code (or under Policy 6.4). Additionally, there is no way for the would-be graduate to challenge the interim measure of withholding the degree. Some last-minute-before-graduation filings have resulted in unjust results. Indeed, there have been trumped-up cases brought at the last minute just to victimize, and the degree was withheld. The lengthy adjudication process has then resulted in jobs and graduate admissions put in jeopardy, professional examinations precluded, and settlements accepted because the delay in getting the degree was unbearable. This practical penalty may be completely out of proportion to the offense, even if the respondent is found responsible. Because there is none of the balancing used for all other interim measures and no consideration of the merits at all, as well as no possibility of appeal, it appears that the Code's concern must be with preserving jurisdiction over the graduate. A much fairer approach would follow from amending the Code to provide in effect for withholding the degree unless the OSCCS exercises discretion to enter into an agreement with the respondent to preserve the University's jurisdiction over the respondent for the Formal Complaint and to provide revocation of the degree as an available final sanction or remedy.

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## Two Major Issues

Submitted by Keenan Thomas Ashbrook on Mon, 2020-04-20 16:19

I am a current student member of the University Hearing and Review Boards and have served in that capacity since 2018. I have comments on two major issues that I believe still must be resolved in the Code of Conduct. \*\*\*\*\* #1. University Policy 4.7 does not give any leeway to alter the reporting period for violations. The text of the current proposed Code amendments includes the following passage in Section 3: Disciplinary Record Reporting by the Student Conduct Office is based on the seriousness of the underlying violation, with recognition of the educational and rehabilitative purpose of this Code. Towards that end, the following guidelines shall generally apply to such reporting: (1) minor offenses are not reported; (2) probationary status may be reported until the student graduates; if the student departs the university prior to graduation, then at the point of departure if the student has incurred no further Code violations; (3) suspension is reported until it has been fully served, the student has demonstrated one-year of good conduct without subsequent Code violations, and a request has been reviewed and approved by the Dean of Students; (4) expulsion is reported permanently. I want to emphasize that under Policy 4.7 in its current form, this proposed text is untenable. The reporting period for violations (e.g. the mandatory duration for retaining a record of the violation) is not set by the Code, \*\*\*it is set by Policy 4.7.\*\*\* Policy 4.7 currently



mandates the following durations for record retention: Expulsion: permanent (matches proposed new language) Suspension: permanent (conflicts with proposed new language) Disciplinary probation: retained at discretion of the OJA (may or may not conflict with new language depending on OJA practice) Written reprimand: until graduation (conflicts with proposed new language) Oral warning: not retained (matches proposed new language) Proposed guideline (1) is particularly in conflict with the existing policy. It is the practice of the OJA to issue a written reprimand for \*\*\*essentially all violations\*\*\* no matter how minor. The OJA has explained to the UHRB that oral warnings are reserved for extremely rare circumstances, and the office is hesitant to issue them because they believe a lack of a written record fails to ensure accountability for students found responsible for code violations. The OJA's default action is to issue a written reprimand for all violations. This means that, contrary to the intent of the new proposed language, Policy 4.7 currently makes minor violations reportable until graduation because these violations almost always carry a penalty of written reprimand. Guidelines (2) and (3) are also problematic from the standpoint of Policy 4.7. The policy allows the OJA to retain records of disciplinary probation at their discretion, and my understanding is that the OJA's current practice is to retain such records for some years after graduation. I do not know if the OJA would be obligated to follow the proposed new language in the revised Code, or if it could maintain its right to retain the records at its discretion pursuant to Policy 4.7. Clearly proposed guideline (3) is also in conflict with Policy 4.7, which states records of suspension will be maintained permanently. It has been my long-standing belief that the UHRB should have discretion to alter the duration of the reportability of violations (though I have no problem with default durations being set by the Code). This is because reportability is itself a de-facto punishment, and the UHRB is supposed to have discretion to adjust the severity of sanctions based on the circumstances of each individual case. Reporting requirements are often "hidden sanctions" themselves, with the ability to severely impact a student's future career and graduate school prospects. Inflexible reporting requirements force the UHRB into a very difficult position when determining sanctions. Increasing the "level" of sanction (from oral warning to written reprimand, probation, etc.) also increases the duration of reporting requirements in a way the board cannot control. For example, the UHRB may feel a violation would otherwise warrant probation, but be hesitant to impose this sanction because of the long reporting period and feel compelled to impose a written reprimand. Moreover, this problem is compounded by the fact that most cases are resolved through Summary Decision Agreements (SDAs) and very few make it before a hearing board. Since the OJA's practice is to propose a written reprimand by default, this means that potentially hundreds of students are agreeing to sanctions with reportability periods that they do not know can be challenged. In theory, it is possible for a student to reject a such proposed SDA with a written reprimand and argue to the UHRB that the sanction should be reduced to an oral warning so as to avoid the reporting requirement. But very few students are in a position to know about (much less opt for) this complex and arcane maneuver, especially those accused of low-level violations unlikely to be working with a JCC. My understanding is that Policy 4.7 is the responsibility of the University Counsel. I would strongly recommend opening a discussion with the University Counsel on amending Policy 4.7 so that it supports the objectives outlined in the proposed amendments to the Code, which I believe are laudable. Numerous Cornell students have likely been saddled with inflexible reporting requirements for even the most minor of Code violations--requirements that can have a major negative impact on their futures in a way disproportionate to their violations. I also recommend adding language to the Code allowing the UHRB discretion to change reportability durations, so that the board retains its ability to set sanctions at a level appropriate for the offense. \*\*\*\*\* #2. The expansiveness of the "Obstruction" provision (4.16) risks exaggerating the seriousness of a respondent's conduct if a disciplinary record is created. The text of the current proposed Code amendments includes the following passage in Section 4: 4.16 Obstruction with Code of Conduct Investigation and Adjudication Process Obstruction or interference with, or failure to comply in, Code of Conduct processes, including, but not limited to: Falsification, distortion, or misrepresentation of information; Failure to provide, destroying or concealing information during an investigation of an alleged Code violation; Attempting to discourage an individual's proper participation in, or use of, the campus conduct system; Harassment (verbal or physical) and/or intimidation of a member of a campus conduct body prior to, during, and/or following a campus conduct proceeding; Influencing, or

attempting to influence, another person to commit an abuse of the campus conduct system; Refusing to participate, without a substantial reason, as a witness in an investigation of or proceeding brought to enforce potential violations of this Code; Failure to comply with the sanction(s) imposed by the Code or other conduct policy, including Policy 6.4. I have major concerns about how the Code (both present and proposed) treats students who fail to complete their sanctions in a timely manner. No matter whether a student intentionally refused to complete sanctions or just procrastinated, they are charged with obstruction of the Code. The proposed text of this section, like the OJA's current practice of charging respondents who fail to complete sanctions with obstruction (Title Three, Article II, Section A(3)(g)) is problematic because the language of the Code can be read to exaggerate the seriousness of violations falling under the last bullet point. The disciplinary record that will be created by a written reprimand for this Code violation under Policy 4.7 includes \*\*\*no context about the circumstances of the violation\*\*\* other than the language of the obstruction provision in the Code. Someone reading the disciplinary record of a student who was charged under this provision because of failure to complete sanctions could infer that the respondent also committed such serious violations as destroying evidence, lying to an investigator, or taking other active measures to hamper an investigation. There is an incredibly wide gap between the seriousness of these offenses and such actions as missing a deadline to complete sanctions. But this gap would not be perceptible to any individual (e.g. a graduate school admissions officer) reading the respondent's disciplinary record with no additional context. It would be up to the respondent to provide the context that they were only charged under the last bullet point, which the OJA is under no obligation to corroborate. There is a serious risk in this scenario that some students' graduate school or job prospects could be unduly damaged by the omission of context from the disciplinary record created by a written reprimand. It is certainly reasonable for there to be a Code provision punishing failure to complete sanctions, but this should not be lumped in with the other extremely serious violations covered in 4.16, which would be felonies in the actual criminal justice system. There should be a separate, stand-alone provision for punishing students who fail to complete their sanctions.

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## Ideas for improvements to Section 4

Submitted by Arielle Rose Johnson on Thu, 2020-04-09 13:16

In 4.1 I have no idea what "affectional preference" means and it isn't clarified elsewhere. Does it mean gender presentation? Racial/ethnic presentation? Who you choose to be romantically/sexually involved with as opposed to sexual orientation? (e.g. a bi woman is romantically involved with another woman?) If "affectational preference" could just be clarified that would be great. Also 4.1: I notice that disability is excluded from the list, which, again, is: "To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a basis for exclusion from university or group activities on campus." I realize that some groups can't have physically disabled members just for logistical reasons, e.g. an outdoor rock climbing club, but disability should be included in this list. Maybe something like "disability status (except in cases where a physical disability is incompatible with an activity and no reasonable accommodations can be made)". Also 4.1: "political persuasion"... interesting... you have to let a Republican join the Cornell Democrats? Not sure I would change this, but just noting that it does seem odd given how many campus groups are explicitly political. 4.2: I think it's fine for graduate and professional students who are of legal drinking age to be publicly intoxicated on campus sometimes, e.g. at the BRB during TGIF. Is there a way to make that clarification? 4.4: I really like that "unwelcome" is in there to clarify that e.g. BDSM in a campus dorm room is fine. Keep that word in the final version! 4.7: Do protests violate the campus code of conduct? I really think that there should be a way for students to protest without breaking the code of conduct. 4.9: Might need to clarify that students with legal medical marijuana can be in possession of it on campus (as long as they also have their card with them) and can use it in their dorm

rooms? I guess the "unlawful" wording might already take care of that? 4.10: Really? If you fail to comply with any policy issued in an informal way by a departmental administrator, e.g. "Make sure to rinse out the coffee pot after you use it!" you're in violation of the code of conduct? Maybe clarify which types of policies this actually applies to. 4.12: Remove "Conduct must cause unreasonable interference from both a subjective and an objective perspective." There is no "objective" perspective on sexual harassment and assault. Ask Kate Manne, a famous scholar who works on sexual harassment and misogyny and is based at Cornell! Also 4.12: In terms of needing to meet one or more of "- it is meant to be either abusive or humiliating toward a specific person or persons; or - it persists despite the reasonable objection of the person or person targeted by the speech.": Some assault isn't "intended" to be abusive or humiliating, but absolutely is. And sometimes a person can't verbally say no, but it's abundantly clear from non-verbal cues that they mean no. (Again, consult Kate Manne on this.) Consider the example of a creepy graduate student instructor talking in detail about an undergraduate student's breasts in front of the whole class. The graduate student "intends it as a compliment" and not as abuse or humiliation, but it is abusive and humiliating. The undergraduate student doesn't speak up or say anything because they're shocked and humiliated, but they absolutely do not want for it to be happening. A graduate student instructor talking about an undergraduate student's breasts in front of a class should violate the code of conduct but it doesn't under these criteria. 4.16: Need to make an exception here for survivors of traumatic experiences (e.g. sexual assault) who have unclear memories of the experience or give slightly differing stories at different times as a result of trauma. General note: it may be better to lean more heavily on referring to Policy 6.4 than to effectively make new ideas about what constitutes harassment, etc. in this Campus Code of Conduct document. Thanks for the ongoing good work!

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## Amendments to the codes

Submitted by Rich Gourley on Wed, 2020-04-08 13:11

I would hope that during this time of reviewing and amending the code that the University recognizes that the time of having a two tiered system of accountability must end. Currently there is a carve out that Fraternities & Sororities are not held to be accountable to the code of conduct as it relates to their activities. That means that for all intents and purpose approximately 20% of the student population is exempt from the code of conduct. The explanation has always been the IFC's self governance and judicial review are adequate. I can tell that after 32 years of seeing the disparity, it in fact does not work and that a protected class has been allowed to exist. It's time to end this carve out and make ALL students/staff/faculty held to the same standard.

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## Application of Code of Conduct

Submitted by Daniel J. Mansoor on Wed, 2020-04-08 09:51

- Code of conduct must be applied consistently across all student groups. Clubs and sports teams (whether club or varsity level) should be held to the same requirements as fraternities and sororities. There is a perception that there is a set of rules for Greek members and a separate (lax) standard for varsity athletes.
- I would be more explicit on "public intoxication" to include "pre-gaming" which in addition to being physically dangerous to users, also has been an excuse to claim that an event is "dry" -- where no alcohol is being

served but participants are intoxicated. • Is there a way to place an emphasis on healthy or reasonable use of alcohol (regardless of age)? Seems to me not only would alcohol abuse be reduced but so would the behaviors linked to over-consumption of alcohol: sexual assault and harassment; hazing,...

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