

[MUSIC PLAYING] JOE ANDERSON: OK so hi everyone. Good afternoon. And for those who might not be on Eastern Standard Time, hello from wherever you're at. My name is Joe Anderson, I'm the chair of the Code Judicial Committee, and I thank you for coming to this online forum today, on the proposed changes to the Campus Code Of Conduct.

Just some quick logistical things before we get started, the chat function has been disabled for this forum, so you won't be able to use that. And as we go along, basically the agenda for today's meeting is I will give a short brief high level presentation on what some of the code changes are, kind of what the Codes and Judicial Committee has been tasked to do.

And from there, we'll turn it over to you all, to be able to raise your hand at the chat function, in the Participants tab, to pose questions to us, or a comment. We would prefer if you kind of posed everything you say as a question. So it provides us an opportunity to respond, and make sure that it is fair to everyone that if you have a question, we're not clogging time with long, extensive comments.

So I hope that you all consider that as we go through this whole entire forum today. As we go forward, I want to introduce my rest of the panelists. We have members of the CJC, Risa Lieberwitz and Jen Michael. Risa's a professor of labor and employment law.

Jen is the director of AAP. We have Gabrielle, who is the judicial code counselor. And Francesca, who is representing the Office Of Judicial Administrator. So we will be responding to your questions from our various perspectives. All of us have a different background in kind of bring our self to the CJC, bringing our perspectives.

And so all of us might not share the same perspective some of us might differ. And so I want to make that very clear from onset that, you know, due to our different backgrounds, we're going to have different answers for you. And that's kind of the beauty of shared governance. In a sense, we're all coming together with different perspectives.

In addition, I also want to be clear, yesterday as many of you might know the Department of Education released Title IX regulations that have some changes. The content of this forum, we'll be focusing solely on the Campus Code Of Conduct. We're not going to say how Cornell university is responding to Title IX.

We don't know that. We're not the people that have that answer yet. And so I would really appreciate if people can kind of just focus their comments on these amendments to the Code Of Conduct. So I will start into our of overview of amendments to the campus Code Of Conduct for spring 2020.

So the overview of the work, the Codes and Judicial Committee is a committee of the University Assembly. And a couple of years ago, it was charged by the Campus Climate Task Force from the president to review some changes that they proposed to the Campus Code Of Conduct. And below on the screen, you'll see a couple of these bullets.

If you can't see them, I will check the QA section for the chat function real quick just to make sure. OK so the first is reworking the codes to have a more educational and aspirational tone rather than punitive, simplifying the code and having a use quote unquote, plain English. Narrowing its focus to students, separating standards of behavior from administrative procedures for managing conduct.

Simplifying the administrative procedures, expanding the treatment of harassment, and permitting enhanced penalties for harassment or assaults that are motivated by bias, in considering moving less serious types of misconduct to the Office Of The Dean Of Students for resolution. So all of this was recommended that we take a look at.

We've taken a look at some of them. Not all of them, and we tried our best to incorporate changes that we've agreed with. So we will go through some of those changes now. First is organizational structure.

So first is organizational structure. The Office Of Judicial Administrator is now going to be renamed the Office Of Student Conduct and Community Standards. Or OSCCS. The director of OSCCS will report to the dean of students and then ultimately to the vice president of student and campus life.

There will be subsequent name changes for other office staff, and these will be decided upon after the ratification of these amendments. OSCCS would be essentially an administrative unit under the dean of students and student campus life. And the director would receive performance reviews and other professional development plus HR treatment, just like any employee at the university.

For context before this, the OJA was an independent group outside of any kind of formalized organizational structure, in which the JA was appointed by the president and confirmed by the university assembly. So this is a change in where the OJA, now being named OSCCS, will be placed in the organizational charts of the university.

The next is a change of scope. The scope of the code has narrowed to include just students, undergraduate, graduate, and professional. This comes with an understanding that currently, greater than 90% of the cases that come under the code are already undergraduate students alone. And so a substantial amount of caseload is already being done primarily with students.

So there is, to the best of my knowledge, four employee and faculty cases that have gone through the JA in the past year or two years. The jurisdiction have also been changed to a jurisdiction that's a little bit more detailed, and a little bit broader.

And so I'll run through the definition that we are using for jurisdiction real quickly. It appears on the screen, but I'll say it. The code covers behaviors by all Cornell students, university recognized or university registered student organizations and living groups, including fraternities and sororities. The code generally applies to conduct on any

campus of the university, or on any other property used by it for educational purposes, or on the property of the university-related residential organization.

That 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 one, behavior occurs in the context of the university program or activity, or two 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.

Substantial threat includes the following, a, the selling of drugs, b, physical contact exceeding a shove, c, hazing, d, property damage or theft valued at over \$500, and e, unique violations which shall be left to the discretion of the dean of students as requested. This code applies to Cornell students between terms regardless of whether the university is in session.

And then final determination as to whether off campus conduct is subject to this code will be made by the dean of students or their designee. And further, students required to inform their guests as Cornell's behavioral standards and expectations. Students can be held responsible for their guests' misconduct in which the student is complicit.

So that [INAUDIBLE] any area in which the code [INAUDIBLE] the behavioral contact in different sets of contexts. And so this was a change to kind of really broaded it, but also assign a lot more detail to jurisdiction, which wasn't really there. We've kind of used, in crafting this definition, the CJC has these current practices that have been used in student conduct in the past at Cornell, just to make sure that when there is an assessment of jurisdiction, if the conduct does fall within scope, it is very clear and it provides the provides an ability to understand.

Next, we will move on to three large substantive amendments we have made. So first, the definition of harassment has been standardized with the university definition that is used in Policy 6.4. Again, since that is a 6.4 Title IX, that might be subject to change based off how Cornell University looks at its definition of harassment. But the current one we have right now is currently in line with how 6.4 also defines sexual harassment.

This would be harassment that would be potentially racially based, or another protected category. Second is the inclusion in Greek life or university-recognized organization. That has been incorporated into the code. And that is a change, because previously the campus Code Of Conduct only applied to university-registered organizations. And lastly, the definition of hazing has been updated to a definition that captures the totality of the violation of hazing, and it was developed in part by the Skorton Center for Health Initiatives.

So prior to this amendment, the definition of hazing was largely very broad, and very condensed into one paragraph. The way we crafted hazing is that defines potential harms that hazing may happen, whether it be

physically or emotionally, things that weren't always captured in the previous definition of hazing, but could potentially fall under hazing. And so we made this definition a little bit more detailed and a little bit clearer to the reader, to make sure that if I'm a student reading this code, I'll be able to, as I read this definition, understand it fully.

Next are some procedural amendments. And I just want to give a sample flow of how a case coming into this process might look like. This is an extremely high level overview, and I encourage those who have questions on specific details to please ask us during the Q&A. And also please make sure that you look online at the input and issues on the office assembly site to read into the details more, if you do have questions on it.

So here is an example of flow would go. First, the report comes in and is triaged by a member of OSCCS. This is to make sure that there is no immediate harm to anyone that might be reporting something that would require a temporary, or some interim measure just to make sure everyone is safe and secure, and public safety is OK. And so after it gets triaged, an investigation would occur.

Someone, an investigator, would go ask students questions, be able to get a full scope of what happened, what was the event, what was happening, what were the players involved, and could eventually produce a report on that. Every violation has the option to be remedied by an educational conference/mediation, or alternative dispute resolution, as long as all parties agree that is appropriate.

So a key aspect that we wanted to make in this code was to allow students, and allow anyone to really go and understand their behavior. We want a greater focus on education. We wanted a greater focus on restorative justice within this code. And this was a huge aspect that wasn't necessarily as detailed before.

And we've added a lot of detail into this section. By including it as part of what anyone can go through, we've allowed students the opportunity to really show that instead of going through a fully realized process, and getting to the end, we can really work with students on an individual basis, and really provide them the education and developmental tools that they'll need, so that when they do graduate Cornell, they will be-- they'll be able to have some better understanding of what might be acceptable behavior, or not, to ensure that people are safe.

So if no educational conference occurs, or if that is not possible, depending on sanctions students have two pathways. The first would be an administrative panel. And these would be for all possible sanctions, except for disciplinary probation, suspension, or expulsion. So this would be a panel that's mostly done in writing dealing with lower level sanctions.

And this would allow a little bit of quickness in the process. The students would not have to go through a very long process. The second would be a hearing panel, and a hearing panel would be used if a possible sanction is disciplinary, probation, suspension, or expulsion. So this is

a panel that there is more done in person. It's a longer process because it recognizes the severity of these potential sanctions.

And then lastly, after an administrative panel, hearing panel, if one of the parties does not agree on the ruling of that panel, there can be an appeals panel. And then there's a set of processes for appeals, or I'm looking for the word, reasons to appeal, essentially. If someone believes that the panel erred its understanding of a definition, or if there was a big procedural error that caused the issue, there can be an appeal to an appeals panel.

So that's a very, very high level overview. Feel free, as we get into the Q&A, to ask specific questions about what might happen. And also please look on the website to see the specific language. Just a key point, suspension.

The CJC voted 5 and 2 to make suspension up to five years, and the majority believes so because some academic programs are longer than four years, for undergraduate students, and graduate students are even longer. And this will be allowed for any affected student to be able to safely graduate. And so this suspension is up to five years.

So there is an ability of judgment to say maybe three years would be more appropriate, because by that time the affected student wouldn't be at the university. The two who voted against believe that up to a 3-year suspension was appropriate. So that is just something that the CJC has asked the public to consider when weighing in public comment. Standard of proof.

I realize that there isn't a lot of discussion around the standard of proof. So a quick update, this past Friday the CJC did meet and we re-evaluated the stance on standard of proof. And so what we've done is we've voted to create a bifurcated system around the standard of proof. So much like our administrative panel and hearing panel, we said that if the administrative panel shall use the preponderance of the evidence, while the hearing can also use the clear and convincing standard.

This is again to recognize the severity of sanctions that might happen. So since there are more severe sanctions that the hearing panel, the standard of evidence is higher. And then any appeals on these panels would utilize the same burden of proof. So if I appeal from that-- if I appeal a decision of the hearing panel, that appeal panel will use the clear and convincing standard. While if I appeal from an administrative panel, I will use a preponderance of the evidence standard.

That was changed that was adopted by the CJC last Friday, as I said. The other change that was adopted by the CJC last Friday was public hearings. And so originally the CJC voted to make all hearings private. However, on last Friday we did reevaluate that stance. And so we've created-- we've inserted this language. So it said that all hearings shall be private, unless a, the respondent notifies the OSCCS no later than two business days before the hearing that the respondent wishes for a public hearing.

And b, the administrative panel chair our hearing panel chair, depending on which one they're at, I just pulled this language from the administrative panel side, determined that a public hearing would not result in undue intimidation of the named complainant or witnesses. In the event of a public hearing, the administrative panel chair shall convene in quarters that accommodate a reasonable number of the public, but may limit the number in interest of preserving the decorum and dignity of proceedings.

So this is really for opportunities where the full public could get education. One of the examples that we've talked about is if there are substantial protests on campus, potentially public hearings or a way to educate the community about what that protest was about, and what happens, instead of keeping everything private. And so that was a massive change that we reevaluated.

And that is the end of my quick overview on everything. And as we move into question, let me get back to the Zoom view quick. Perfect. Great. So as we go in, it seems as though I haven't looked at the chat, they don't have an option to switch the gallery view, because of the way we've configured this webinar.

And so it would just switch participants as needed. So OK. As long as people can at least here one of us, then I think we should be good. Let me stop talking. Let me have someone else on the panel talk just real quick for technical purposes. So [INAUDIBLE]

Sure, hi.

The people in the Q&A could respond to see if they could hear that. Good, good. Oh, they heard it. Yeah. So we'll be moving into the Q&A portion. I will-- I believe participants have an ability to raise their hands, if you go to the participants tab, and click raise hand, I can see them as they come in.

And they'll be placed in chronological viewpoint. So as people do that, I can call in people, and I'll be able to unmute you, and you can pose a question to one of the panelists. Or you can just say a quick comment to one of us about your thoughts on the code changes. So I allow that.

And if you're more comfortable typing it out, please put it in the Q&A tab, and I'll keep an eye on that as well as everything else. So feel free to do that. One of the questions we just got in the Q&A for people who did come late, could you please explain the difference between the hearing panel and administrative panel?

Sure, so I think the broadest sense is if the administrative panel is dealing with sanctions, all sanctions except for its disciplinary probation, suspension, and expulsion. And so at the administrative panel, the other major difference is that the standard of evidence that is used at the administrative panel is preponderance of the evidence, which is a lower standard. While at the hearing panel, this is dealing with sanctions of disciplinary probation, suspension, and expulsion.

And the standard of evidence used is the clear and convincing standard, which is higher. So we have a question on the window of feedback being short. And so we can, because the CJC is a committee of the University Assembly, we were asked by the University Assembly for a tight timeline to get this done.

And so we tried our best to do that. The first we put up the code in multiple parts. The first part being the substantive version. So the violation section. And we put that up. That was up for, I believe, in its third or fourth week now.

The dates are starting to blur in my head. And the procedural section has been up for about two weeks now, or three weeks. Again, I'm sorry if. The dates are really difficult. And the forum is definitely, definitely very hard. And it's definitely hard using them. I can acknowledge that, as an individual. I see a hand or attendee Charles Walcott. You're allowed to speak.

CHARLES WALCOTT: Unmute myself. OK, my question is what was the rationale for moving the administration from of the JA from being an independent office to being under the dean of students?

JOE ANDERSON: That is a great question. I can take it, yeah. So I'll take it. So the rationale for that was that because a lot of the procedures, and a lot of what goes through the OJ currently-- a lot of it is based within Student Campus Life, it is student conduct. And so this would allow the OJA, or OSCCS, the new name of the unit, to be able to better collaborate with the other units under Student and Campus Life, to be able to recommend different courses of education for students.

Instead of just going through the same old, same old. So it provides a greater set of resources available to students. Whether they be responded to complainants, and really helps us emphasize the educational component that we've been wanting to get on. So it grants them more access to resources for educational conferences, alternative dispute resolution, but also allows them to evaluate cases on a better manner.

So if there is a case involving a Greek organization, there can be collaborate-- a better understanding of what that situation might be, by talking with the Office Of Sorority And Fraternity Life, which is also under Student and Campus Life. So I think there was just a recognition that the independence of the OJA was actually starting to hinder the functionality of the OJA.

And moving it under Student and Campus Life allows it to actually be able to receive the grand scope of what has been going on, on campus overall. So thank you. The next individual I have is Elise Gold.

ELISE GOLD: Does this affect the university hearing review boards and how they operate?

JOE ANDERSON: So it would, in a sense, yes, change the structure. So it would no longer be a university hearing or review board, it would be the

administrative panel and hearing panel. The exact operations the procedures are detailed in the proposal that we put out.

And I believe that there might be some minor changes under the administrative panel is mostly done in paper, while the hearing panel is mostly done in person. So there is a bit of difference that happens in there.

And that's addressed in our in our full documented draft. But some of the more procedural aspects of how this progressed through hearing, a lot of it I believe has tried to maintain as much similarity as possible. But recognizing that there are still some differences based off the panel construction that we did.

So I have a couple in the Q&A. We have someone-- what will the future status of the JCC office? What will be the future status of the JCC office? I'll let Gabriella answer this one.

SPEAKER 3: I think others might need to jump in. But I would hope that the JCC stays the same as is written in this proposal, the JCC office still exists. The JCC's advised only respondents. So according to this draft, it maintains the integrity of the office. But that might be an incomplete answer, so others might want to jump in.

SPEAKER 2: Joe, how do we jump? Do I just talk?

JOE ANDERSON: Yeah, just go for it, yeah.

SPEAKER 3: All right, just to build on it, well I mean, I think the idea here in the code, as proposed by the CJC, is that the status of the JCC's office remains the same, that it's been a really successful office for advocating for and representing students.

And that it would remain the same, with the students who are trained to do this. For law students, and who have a history of doing an excellent job. So that's the proposal, is to maintain the independence of the JCC's office as it has been, and to maintain the membership and the training. And the work that they do.

JOE ANDERSON: Great. And how we reach them. We have another question about-- someone is curious if there's a difference between the clear and convincing standard and beyond a reasonable doubt standard, which is a term more people may have heard? If you could go a little bit on that it, that would be great, I think, for everyone.

SPEAKER 3: OK, thanks for the question. Right, standards of proof in general are refer to the level of certainty that the decision maker, decision makers, need to decide that there's been a violation. So we'll just assume there's a panel, and they need a certain level of certainty.

So preponderance of evidence is more likely than not. That's the lowest standard. It's used in many civil, i.e. non-criminal cases. More likely than not has oftentimes been viewed as 50% plus one. So preponderance of

evidence means that there can be a significant amount of information which that goes in favor of non-responsibility.

And a significant amount of information that goes in favor of responsibility. But that all you need is a 50% plus something else that says, yeah, we think this person is responsible for violating the code. Even if there is 49% of the information that says the person is not responsible. So it does make it easier to actually find a violation. Clear and convincing evidence is oftentimes described as highly probable.

So it's more than that 50% plus something. There can still be evidence on both sides, with regard to responsible for violation or not. But the decision makers should be convinced at the level of something is highly probable. The evidence shows it's highly probable that a violation was committed.

And as Joe explained, in the current proposal from the of the code from the CJC, clear and convincing is used for cases where this sanction is quite serious, in terms of the outcome, the potential outcome for somebody's life. So disciplinary probation, suspension, and expulsion are clear and convincing because that's commensurate with the potential really life-altering outcome that can occur to somebody who faces that kind of sanction.

Now, clear and convincing evidence is quite different from beyond any reasonable doubt. Beyond reasonable doubt is the criminal law standard. And it's one that says that where the state can use its power to remove somebody's liberty, that the decision maker, could be a bench trial, could be a jury.

The decision maker needs to be so convinced of guilt that it's beyond not just-- it's not beyond any doubt, but it's beyond any reasonable doubt. It's heavily weighted in favor of finding not guilty, which is quite different from clear and convincing, which is highly probable.

JOE ANDERSON: Thank you for that. I have someone with their hand up, Morgan.

MORGAN: Hi, there. Since someone had to ask about the status of the JCCs, I just wanted to voice my support for the proposals, now which is that the JCC office remains law students and independent. For some context, I'm here on behalf of the complainants' advisors, who are also law students who advise complainants under Cornell policy 6.4.

So throughout the Title IX process. So like the JCCs will represent respondents, we are on the other side representing complainants. And I think it's really important. I want to point out two things. We submitted comments, and I don't want to duplicate what I wrote there since I know everyone's time is limited.

But I wanted to highlight two quick things. One is the legal implications of especially policy 6.4. Many of the behaviors that policy captures is criminal, and can be criminal. And everything that happens in Title IX proceedings can be discoverable in subsequent civil or criminal actions.

And so it's really important that advisors understand that, and understand how to help counsel their clients through a process where what they're saying can be used against them later. And second is the potential for conflicts of interest. If the JCC's become under the Office of Student and Campus Life, specifically that respondents and complainants routinely file complaints with the Division Of Human Rights in New York, or the Office of Civil Rights federally, which will investigate the school. And the investigative process.

So if the advisors become a part of that entity, then that creates a very real conflict of interest, if they are both advising someone who is bringing a complaint against the entity that they are a part of.

JOE ANDERSON: Thank you for your comment. One of-- we received a question on the sixth floor. I can't seem to find it the Q&A, but where would sexual assault violations fall? The campus code of conduct does not deal with sexual assault. That it belongs in policy 6.4 realm.

And that is not something that we have amended or touched in this process. That's a different policy entirely. So just want to make that clear, because I did see that pop up. We have a question about-- it is unclear to me how a five-year expulsion for an undergraduate team could be viewed as anything other than de facto expulsion?

I mean, you're setting up a situation where a 21-year-old, for example, could receive that and not be permitted to return and receive their bachelors degree until they are 26 years old.

I think that is a concern. However, when considering what a suspension is, it's not saying you're automatically going up to the five-year process, it's allowing students who might be affected by that type of violation. And since suspension is one of the more intensive and more severe sanction, there has to be a substantial violation that would warrant a suspension up to that.

So this would be something that would be pretty severe, most likely. And so the suspension is really to make sure that the effective student would not have any fear of retaliation for that process. And so I think, yes, it is a substantial period of time. And someone might be getting their bachelor's degree at the age of 26. But that decision by the hearing panel would not be taken lightly, because the violation would match that severity, or at least is our hope to when drafting this procedure.

So I hope that we can acknowledge the impact, but we can also say that there is the rationale for it. So I am-- so I have Joshua.

JOSHUA: Hi, thanks. What kind of violation-- if sexual assault and stuff falls outside the jurisdiction of CJC, what kind of violation do you guys believe would warrant a five-year suspension?

JOE ANDERSON: I think that's a good question. I'll let-- I can answer it if my panelists want me to. Or if someone wants to jump in to do it real quick, because I'm sure people have been, but it's not. OK. So I think

context really matters, and in these situations, not everything is so-- I think there's a lot of context around it.

So I could see a very substantial physical assault, of one student on another student. And a very substantial hazing on one student or another. So I think you really have to look at yes, a violation can occur. But what is the severity of that? What is the impact on that on someone who might be a complainant.

And so I think that's really-- I think that's important to recognize. We could run through a litany of hypotheticals and scenarios in which we show a lot of severity. But I think that's really-- but in determining, that that's really up to the hearing panel.

That's really up to the group of people who are sitting there deciding upon it. Because it is really important. It is really important. So I can't give you a clear cut, 100% definition of it, 100% answer to that, because I think that a lot of what student conduct is very contextual based off what has happened. So I apologize.

JOSHUA: No, I mean thank you for your answer. But isn't that kind of part of the problem in giving that kind of authority, though? Is that yes, I agree it is difficult to define all the potential eventualities and particulars of each individual case.

But wouldn't that be a good argument then for not extending that authority? If we can't define exactly what kind of things would warrant the extent of that authority, and I agree that is a difficult thing to define, then I think it is dangerous to extend that level of authority.

JOE ANDERSON: I think that it's not-- I think that there seems to be a definite in that. I think we have to provide an ability to do so in the most severe cases, recognizing that in the last two years, the number of suspension has only been 10. And so I think there's a lot of context around what has been previous practice that has been formed into allowing authority under this current code to still be there.

And ensuring that there is, at the most severe sanctions, a substantive amount of due process provided, to make sure that there is a process that recognizes the severity of it, like we've done with the hearing panel with a clear and convincing standard. I appreciate your comment and your question. Thank you so much. I have Caitlin.

CAITLIN: Yeah, so I think that the main thing is like when you say-- when I say de facto expulsion, what I mean is that if you're giving the hearing panel the power to suspend someone for five years, isn't that a way to just give them the power to basically expel someone without having to say they're expelling them, and keeping their expulsion numbers low?

Like is the likelihood of someone coming back after five years and finishing their degree at 26 really a possibility? Or is it just giving the hearing panel power to expel someone without saying they're doing it?

JOE ANDERSON: I think what's built into to that-- and I'm not a practitioner in the space. I'm someone who's sat with it. 26 years old, you're still given the ability to come back to Cornell. There's still a process of potentially petitioning the university to come back from a suspension.

I don't know what that process looks like. Well I mean, what the exact of that process is. But there is an ability to petition after a certain period of time, I believe. So I think you could say de facto. But you still have the possibility of coming back, I would say to that.

We will move into some of the other questions we've gotten in the Q&A. Trying to find. So many of us were in the wrong [INAUDIBLE]. OK, so just for some definitions because some people do come in late, and I don't want to bog it down.

The CJC is the Codes and Judicial Committee. It is a committee made up of undergraduate students, graduate and professional students, employees and faculty. It is a committee of the University Assembly, which is a assembly in shared governance that is made up of all four major constituencies.

The JCCs are the judicial code counselors, which are law students who are provided free to any respondent throughout this process, and provides them any support that they need. And helps them through the process. Gabriele can better explain what her office does.

But I think that's short and quick. And the OJA is the Office Of Judicial Administrator. Gabrielle, you can explain the JCCs, and I'll let Francesca explain the OJA.

SPEAKER 2: Yeah, I mean, you pretty much summed it up, that we work with any respondent who approaches our office. We advise students under this code, the Campus Code Of Conduct, as well as academic integrity and Policy 6.4. We work with them in a confidential way.

We are currently comprised of five law students, and we have a faculty advisor in the law school.

JOE ANDERSON: Thanks, and the OJA, a quick definition?

SPEAKER 3: So the OJA is tasked with investigating any potential violations to our campus code of conduct. In doing that we conduct investigations. We also propose potential resolutions to cases. And if the case is going to a hearing, then we represent the complainant, whether that be an individual complainant, or the university as a complainant.

JOE ANDERSON: Thank you. Another question we have is what is the role of the ombudsman in all of this? Are you talking about violations only or not incidents that could benefit from mediation? No, when we say violations, that is just the substantive part of the code. Any violation can go to some sort of educational conference, restorative justice approach, alternative dispute resolution.

The ombudsman could potentially be a resource in that. But a lot of it is-- these violations are not necessarily things that always go to administrative panel, or hearing panel.

They can potentially-- every violation, or any complaint given to the OJA that is properly investigated may be, if all parties agree that it's appropriate, can be resolved through an educational mediation, or restorative justice practice. Someone who has their hand up is violet?

VIOLET: Yes, hi. Can you hear me? Great, OK. My name is Violet [? Yeves. ?] I'm a student at the law school. My co-president of the National Lawyers Guild and I, Emily Van Dyne, wrote a comment. I'm not going to bore you with the details of that. But I just want to say two things.

One, I want to second everything that's been said about maintaining the independence of the judicial codes counselors. We're deeply concerned about the idea, myself and Emily Van Dyne, are deeply concerned about this conflict of interest that could occur if the office were basically subsumed into Campus Life.

And we are concerned about the fact that the process is very judicial, and that legal experience is required to address those elements of the process. But another thing I wanted to comment on is something that's been touched on a bit here, which is the idea that the prohibitions are quite safe. I understand that this code is large and confusing.

And that this is an enormous undertaking. But I want to second something that was submitted by Professor Garvey, which was discussing the way that some of the prohibited conduct is quite vague and overbroad. And I think that this could really be resolved by tightening up some of the language, and even providing hypotheticals.

I read the [INAUDIBLE], I'm a law student, and some of this stuff was like Greek to me. It was unclear what some of the different provisions were really trying to punish, or to arbitrate. And I think that if you want to make a more transparent and effective code, you're going to need to really nail down the kinds of conduct that you're trying to fit in. So that's one of my big concerns.

SPEAKER 2: If I could just quickly add that, I think that's a really good idea. And I think this isn't necessarily something that we were doing in the CJC during. But I do think moving forward, if this is adopted or something, adding some sort of like footnote, or almost like a practitioner's guide to what these things mean in practice, is a really great idea.

JOE ANDERSON: Yeah, and on that, I think the code is a living document. And it's constantly being looked at to make amendments to. And if this version is ratified, my hope is that next semester, when given more time, the CJC will have that ability to be able to add more, to provide more of that context. Because I think that's really important. I have Joshua.

JOSHUA: Again, I think it's a bit of a copout to say that well, we'll get to the specifics eventually. Just pass us, just give us the power now. Let us do what we want now, and then we'll get back to giving you the specifics you need.

Governments do this shit all the time, and it never works out in people's favor. So like you say it's a living document, sure, yes that's true. But like any quote unquote living document, it is exceedingly difficult, and an excruciatingly long and painful process to actually change or amend these documents.

So it is more important before we give this authority over that we have these specifics. I don't understand why there's so much resistance to establishing these things, before asking for that extra authority.

SPEAKER 2: Can I just respond briefly?

JOE ANDERSON: Yes.

SPEAKER 2: So I think I certainly agree with you that it is giving a lot of discretion to the JA's office. That's not something that I necessarily support. So I completely agree with you. But I also think that the majority, especially of the violation section, maintains the status quo of what exists in the Campus Code Of Conduct right now.

Some of the definitions have changed. Like hazing has changed a little bit. But actually, with a little bit more clarity. But generally, the components of the substantive portions that have changed, is jurisdiction. It's other parts, not necessarily the definition.

So while I completely agree with kind of the premise of your question, I think it is something that could be built into the document that doesn't necessarily move us any different from the status quo right now.

JOE ANDERSON: Thank you. We have a question about the JCC office, and how the JCCs intend to increase and recruit more potential JCCs of color. And what is the recruit-- and Gabrielle, maybe you can explain more, what is the current recruitment process for JCCs?

SPEAKER 2: Sure, yeah. So I just want to mention first that our office is actually pretty diverse. So there has been-- so I head JCC this year. Marissa [? Ogura ?] will be taking over next year.

So that's two women in a row leading the office. Our office currently, next year I know it will be three-fifths people of color. And so I definitely disagree with the idea that her office is not diverse. But the way that the application process works-- so it's a pretty extensive process.

We recruit when students are in their first year of law school. Because the position is a two-year position, we view the first year as essentially a training position. So the older JCCs are much more involved in helping the students understand the process, learn how to work with clients, draft documents.

And then you maintain more of that role on your own, as a second-- as a third year law student, a second year as a JCC. So we recruit in that first year really beginning in January. And we start having interviews at that time with just our office. There's two rounds of interviews with our office.

And then there is a much larger interview with representatives from all over campus. So this year, I know the UA was represented. There was someone representing Academic Integrity. The Title IX coordinator was there. The OJA's office was there. Dean Minor, the dean of students at the law school was there.

Our faculty advisor, and then me and Marissa representing the JCC office. And then that person is recommended to the UA, or recommended to President Pollack, who then recommends a person to the UA. So it's a very extensive process that involves the entire community.

JOE ANDERSON: Great, thank you. And some another one in a comment, has the committee considered defining codes regarding prohibited conduct in Section 4, which are quite often listed in the student disciplinary record, such as Code 4.2 relate to alcohol. Currently a student who is an example, that one to unlawfully manufacture distribute, dispense, possess, use, or sell alcohol. And so I want to ask the OJA kind of how does that currently get reported on a student's transcript when there is a violation?

SPEAKER 3: So I am here on behalf of Barbara Krause, who is the interim JA. Unfortunately she couldn't be here because she has a conflict, pretty serious conflict in her time. But I will say that disciplinary records are separate from your academic transcripts. And so notations for disciplinary matters only appear on academic transcripts when they affect your academic standing. For example, in the case of suspension or dismissal.

JOE ANDERSON: Great, thank you. Next, I have Paul.

PAUL: Hi, guys. I totally agree with what Josh was saying earlier. And as well as the individual who spoke before for him. Gabrielle, I want to challenge something that you said. I didn't think Cornell to abide by anybody's status quo.

I came here to challenge and push it. So if the status quo has been the goal of this entire process, I'm ashamed. It could have been much more transparent. And not been pushed in such an expedited manner. Students could have had a much more lenient time to think about these very important issues. Once again, Cornell does not abide by the status quo, we challenge that. Thanks.

SPEAKER 2: Can I just clarify briefly? Yes, I didn't mean this code maintains the status quo at all. I didn't, I'm sorry if that came off that way. I was just saying that the violation section, in particular the substance of what could be a violation of the code, is very similar to what currently exists.

And so the most of the concerns are over provisions unlike that. And I don't purport to say that those provisions at all are currently the status quo.

JOE ANDERSON: Next, I have Alex.

ALEX: Hi there. So I'm a third year law student in the law school as well, and co-chair of the Student Leadership Council there. And I TA take a class for information science focusing on ethics law and policy. And we talk about the ability of unconscious bias to work its way into different decision making processes.

Usually around like AI. But I think one comment that kind of highlighted this is Professor Garvey's comment about the unclear definitions, and how they can become overly broad. And as well, like when definitions are overly broad, they allow for greater discretion to enter the process.

And is therefore as well unconscious bias that comes with that. And I'm just kind of wondering, I guess maybe this is maybe more of a question for Gaby, but lowering this burden of proof as well can give that greater discretion, that greater unconscious bias more weight in the decision making process.

And so I'm kind of wondering which burden of proof do you think is best to protect against this unconscious bias that's able to enter? Whether that's a clear and convincing standard, or the preponderance of evidence standard?

SPEAKER 2: I mean, I would definitely support clear and convincing evidence for all of the violations, and not just if disciplinary probation, or above is on the table. Because I agree, I think it provides an important check on the system, particularly because of the way that this system is structured.

If you compare this to Policy 6.4 with Title IX, there's the-- Title IX office is kind of in the middle of the complainant and the respondent. Whereas in this system, the way that the OJA is not only investigating, but they're also making initial decisions about whether someone is responsible or not.

And so, the clear and convincing standard does provide a very important check on the front end of curbing that standard. I also think it's important to emphasize that when we are thinking about lowering the standard of proof, you should also be considering what the potential for sanctions are.

And so while I think that clear and convincing definitely is better for all potential violations, it is very important where you have something like disciplinary probation that can be on someone's misconduct record for a long time, up to six years right now and above. So.

ALEX: Thank you.

JOE ANDERSON: Sorry. I have Zachary.

ZACHARY: Hi. Yeah, thank you. I just have one question. I put this in the Q&A. But I'm just curious, could someone with a little knowledge on the current proposal go a little into detail about how the term educational is being used?

Only because some of the proposed amendments are primarily or solely justified with the idea that it would be more educational, particularly lowering the burden of proof. But to me, that's a rather conclusory statement. So could you give me an example of how lowering a standard of proof makes the process more educational for somebody?

JOE ANDERSON: So I think when we say educational in this context a lot of that happens in that educational area, that educational conference, that alternative dispute section, the mediation. I think that, when we say education, we make a lot of it in that area of the world, I think by building in and codifying a lot of language around that, that wasn't already present in the procedures, of what is currently existing Campus Code Of Conduct, and by making sure that it's a defined option that can be utilized, it's allowing for more of those things to happen.

In addition, I think a lot of what the committee attempted to do was in recognizing what the full system was doing, so moving the Office Of Judicial Administrator into Student and Campus Life, and providing the resources to access potential areas or the diversity inclusion portfolio of the dean of students, to allow students to understand if there was an action motivated by bias, and ability to have in that process a built in area that allows that to be addressed.

And so I think, and that's in the context of the education. You asked specifically about standard of proof, and how preponderance the evidence fits into that. I think what a lot of proponents of preponderance of the evidence state on the committee is that it creates a balance between community interest, complainants and respondents, and that allows the community to really recognize when an action of a respondent has affected a full community.

Rather than just you know what single individual. And I think with the preponderance standard, it really about the community to participate on equal footing as a potentially impacted party, depending on the violation. And so I think that's what a lot of the proponents of preponderance of the evidence on the committee have stated.

And I think when we look at how we've placed preponderance of the evidence on the administrative panel, being a less severe sanction, it provides an opportunity to really say if there is a community harm, what's that? Let's not go through the intensive administrative panel process, if everyone agrees, if the respondent says no, I want the process, the respondent can have the process.

But it provides an opportunity for people to potentially step back and say we would just like to talk and talk this out. And so that has been really vocalized as to why that standard has been associated with it

more. But a lot of our comments and education really came in the sense that we've built in educational modules before, and that's never really been done before.

It's really been more so done on an ad hoc basis. Thank you. So I'm going to do one last question in the Q&A. We are at 4:00 PM. And it was scheduled to end, but I'm going to do one last question from the Q&A from someone who just submitted it. Does the current draft of the code include codified ability for the office to summon or compel people to participate in hearings?

How does the fact finding ability for this office relate to the standard of proof? Does anyone on the panel want to take a crack at that one? Just want to offer it up.

SPEAKER 3: Could you repeat the question? I only got part of that.

JOE ANDERSON: Yep. So it says does the current draft of the code include codified abilities of the office to summon or compel people to participate in hearings? And how does the fact finding abilities of this office relate to the standard of proof? Would you like that one, Risa? Or no?

SPEAKER 2: Well, I think it'd be useful. I'm looking now on my computer to find a section where we have that in there, and the procedures. If somebody can get that up, I think that'll be the most useful aspect of it.

JOE ANDERSON: I believe that in the hearing panel section of the procedures, I don't have it up right now with me, there is in that part an ability for the hearing panel to request that witnesses do testify if they're deemed extremely relevant to the case, to make sure that a full totality of information is available.

To make sure, and to provide the opportunity for both the complainant and responded to provide-- to ask questions to that witness, to make sure that it is appropriate. The exact language I don't have in front of me right now, so I do apologize.

[INTERPOSING VOICES]

SPEAKER 3: You gave me some time.

JOE ANDERSON: OK.

SPEAKER 3: So this is in 6.6 of the Procedures On Witnesses And Evidence. And it states if a witness with information of importance to the case refuses to testify, the USCCS or the respondent may ask the hearing panel chair to order the witness to testify. The hearing panel chair shall, in the chair's sole discretion, grant or deny the request based on the balance of equities for the witness, the complainant, or victim, the respondent, and the university.

If a witness does not appear for a scheduled hearing, the hearing panel chair may decide whether to delay the hearing, pending the witness's testimony. So that's one part, but there is another part. And actually I just don't have that right in front of me, as Joe was referring, to that does on discuss the ability to compel somebody to testify.

Maybe we can follow up, since we're basically out of time, with the questioner. Or post that answer so people can know exactly where that is in the procedures.

JOE ANDERSON: I will take down that individual's name for us to send an email reply out. But it is, we are at time. And I do apologize for being out of time. And I am very grateful for everyone who did come today, and posed questions to us, asked us questions in the chat.

I again encourage people to go on to the Office Of The Assembly's website. That is [assembly.Cornell.edu](http://assembly.Cornell.edu). Go to the Input And Issues tab. And see the proposed amendments of the campus code of conduct. We encourage you to continue submitting your public comments to everyone, to make sure that the individuals, the voting members of the University Assembly who are the body who oversees this committee have the ability to read all this comments, be able to understand where everyone is thinking.

And we do greatly appreciate all of you for coming out today through our virtual forum. Unfortunately, we weren't able to answer all of your questions, but I hope we answered a lot of questions that people did have. So we really do appreciate it, thank you so much. Have a wonderful rest of your day, a wonderful weekend, and please continue to post on the public comment website. All right. OK, thank you.