

Cornell University University Assembly

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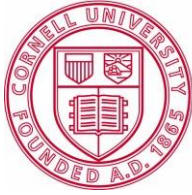
Agenda

Codes and Judicial Committee
University Assembly
September 12th, 2018
4:45pm – 6:00pm
Day Hall Room 163

- I. Call to Order (Chair)**
 - i. Call to Order (2 minutes)
- II. Introductions and Committee Overview (6 minutes)**
- III. Approval of Minutes (Chair)**
 - i. May 9, 2018 (1 minute)
- IV. Business of the Day**
 - i. For Discussion: Conclusion's of the CJC's Working Group on Hate Speech and Harassment (20 minutes)
 - ii. For Discussion: AY 2017-2018 Resolution 24 (15 Minutes)
 - iii. For Discussion: Conclusions of President Pollack's Task Force on Campus Climate (15 minutes)
- V. Executive Session**
 - i. Executive Session (15 minutes)
- VI. Adjournment**
 - i. Adjournment (1 minute)

Attachments

- 1. CJC Meeting Minutes 05.09.2018



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Minutes

Codes and Judicial Committee

University Assembly

May 9th, 2018

4:30pm – 5:45pm

163 Day Hall

I. Call to Order

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 4:37pm.
 - ii. M. Battaglia congratulated D. Barbaria for being elected Chair of the Codes and Judicial Committee (CJC) for the 2018-2019 academic year.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bense, M. Horvath, R. Lieberwitz, V. Price, C. Riley
 - ii. *Absent:* K. Karr, G. Kaufman, J. Kruser, D. Putnam, E. Winarto, K. Zoner
 - iii. *Others Present:* M. Lee

II. Approval of Minutes

- a. April 25, 2018
 - i. M. Battaglia motioned to approve amendments.
 1. Minutes **approved** by unanimous consent.
- b. May 2, 2018
 - i. V. Price motioned to approve the minutes.
 1. Minutes **approved** by unanimous consent.

III. Business of the Day

- a. Working Group Update and Preliminary Report
 - i. R. Lieberwitz commended the Working Group on a job well done. She said that the Group attempted to create as broad a discussion as it could, and has drafted preliminary proposals based on public forums, which had greater turnout than expected. She added that the Group has decided to put together a draft report, which will be circulated among

its members within the next few weeks and formally given to the CJC for consideration next semester.

- ii. R. Lieberwitz said that members of the public raised concerns about issues of justice through public forums. She said that one of the Group's suggestions is to amend Title I of the Campus Code of Conduct, which includes the statement of principles and policies. She said that the Committee recommended adding positive aspects of university principles and values to Title I, such as including the "any person... any study" motto that affirms diversity and inclusion.
- iii. R. Lieberwitz said that the Working Group will refer to the preliminary reports from the Presidential Task Force on Campus Climate and its subcommittees, which are available online.
- iv. R. Lieberwitz said that the Group raised concerns about clarifying the language on harassment in Title III, Article III. D. of the Code. She said that the Group recommended clarifying the definitions of harassment and specific types of harassment to incorporate language from Policy 6.4. She said that the Group also recommended expanding the provisions of stalking and defining it in line with New York laws and model codes.
- v. R. Lieberwitz said that the Group recommended that the CJC and other university offices create guidance along the lines of the U.S. Office for Civil Rights or Equal Employment Opportunity Commission to expand the meaning of terminology in statutory provisions.
- vi. R. Lieberwitz said that the subcommittee of the Presidential Task Force has outlined recommendations for distinguishing prohibited speech or conduct from protected academic freedom. She said that the Working Group does not have specific recommendations for this matter but has discussed ways in which classroom activity needs to be protected.
- vii. M. Battaglia said that the Group has also discussed provisions outside of the Code.
- viii. M. Horvath said that intentionality may be difficult to prove when expanding the definition of stalking.
 1. R. Lieberwitz said that the Group discussed not to bring in the matter of specific intent.
 2. M. Horvath said that it may still be challenging for the Hearing Board to make a distinction based on the university's current standard of proof.
 3. M. Battaglia said that the Hearing Board's prior decisions have a persuasive but non-binding effect.
 4. M. Horvath said that the Office of the Judicial Administrator interprets any past decision as binding.
 5. R. Lieberwitz said that the Group anticipated such discussions to take place.
 6. D. Barbaria asked whether Hearing Board precedents will be put into the Code as binding or persuasive.
 - a. M. Battaglia said that they will be publicly available and that the Judicial Codes Counselor will allude to the precedents if they can be used.
 7. K. Ashford said that the process of protecting campus climate includes affording due process protections and that the higher intentionality requirement should not be completely dismissed.

8. R. Lieberwitz said that it would be useful to garner feedback regarding this matter. She said that the Group discussed that specific intent is a rather high standard, which is not used by New York State.
- ix. R. Lieberwitz said that the Group also discussed considering Greek organizations as university registered organizations under the Campus Code of Conduct. She said that this issue was also raised from the subcommittee of the Presidential Task Force.
- x. R. Lieberwitz said that the Group recommended that the CJC develops guidance for what constitutes a “serious violation” that extends jurisdiction beyond the campus. She also said that the Group recommended expanding the jurisdiction of the Code to clarify provisions on electronic communications. She added that the Group recommends that the Committee considers whether it would be necessary for the President to be involved in the decision to expand jurisdiction.
- xi. M. Horvath asked what the conversation on on-campus jurisdiction entailed.
 1. R. Lieberwitz said that some off-campus incidents of assault and harassment were close to campus, raising questions of whether the Code should include events that take place beyond campus borders.
- xii. C. Riley said that it is important for the university to protect students under all circumstances. He said that while fraternities may not be considered under the Code, they are student organizations that affect students.
- xiii. V. Price said that opinions from the community may warrant extending jurisdiction.
- xiv. M. Horvath said that the Judicial Administrator (JA) views “serious violation” as incidents such as off-campus drug sales, physical altercations, hazing, and severe property damage.
 1. R. Lieberwitz asked how often the JA has asserted off-campus jurisdiction.
 2. M. Horvath said that the figure was at around 50 to 70 times this year.
- xv. R. Bensel said that the notion of extended jurisdiction appears to have three dimensions – university activities, serious violations, and space. He raised concerns about the ambiguity of serious violations.
- xvi. K. Ashford asked whether the matter of extending jurisdiction is more focused on categories such as drugs and physical assault, or on applying the Code more broadly by considering all issues under the Code.
 1. R. Lieberwitz said that it entails both. She said that part of the recommendation was to clarify the term “serious violation” in the form of guidance and consider whether guidance should be considered as a separate document to clarify the scope of jurisdiction.
- xvii. V. Price said that it is more important to shift university community members’ understanding that the Code should apply to them wherever they are, rather than draw jurisdictional lines.
- xviii. K. Ashford said that extending jurisdiction over off-campus electronic communication may be difficult legally unless there is a material disruption.
 1. R. Lieberwitz said that the Committee should ensure that members of the community do not feel expanded jurisdiction as an additional layer of surveillance.

- xix. R. Bensel suggested extending jurisdiction through a non-arbitrary metric such as density of residential students per square mile.
- xx. R. Lieberwitz said that some of the Group's recommendations call for greater clarity in the language of the Code.
- xxi. M. Battaglia said that a guidance document could diminish ambiguity without directly amending the Code itself.
- xxii. M. Horvath noted that the Code covers not only students but also faculty and staff.
- xxiii. D. Barbaria said that mentioning population density may increase fairness but not clarification.
- xxiv. R. Bensel said that the principle would include members of the Cornell community regardless of who they are, based on the probability of personal contact.
- xxv. M. Horvath said that anyone who is associated with the university should abide by the university's values.
- xxvi. R. Lieberwitz said that these discussions raise useful questions.
- xxvii. R. Lieberwitz said that the Group supported encouraging the CJC to expand its use of alternative dispute resolution (ADR) and restorative justice programs. She said that this allows the Code to be educational rather than merely communicative.
- xxviii. R. Lieberwitz said that the CJC should be involved with actions and provisions that increase transparency. She said that the Group recommended greater comprehensive and ongoing training to safeguard the educational aspect of the Code. She added that the Group recommended that Cornell have a bias assessment response team.
- xxix. R. Lieberwitz suggested increased representation and diversity on governance bodies and greater support for academic programs such as Latin studies, Asian studies, Feminist, Gender and Sexuality studies.
- xxx. R. Lieberwitz noted that serving as Chair on the Working Group has been rewarding.
- xxxi. M. Battaglia thanked everyone on the Working Group and Codes and Judicial Committee for all their efforts. He said that President Pollack is interested in the Group's work, and that the Group and Task Force are essentially on the same page. He said that a guidance portion could make the Code more transparent and informative.
- xxxii. D. Barbaria asked if the guidance document would be legally binding.
 - 1. M. Battaglia said that the Committee has a full range of options. He said that increased transparency in reporting should not require changing the Code each time.
 - 2. R. Lieberwitz said that this is a complex question. She said that the Committee needs to discuss how this guidance document would be used next year.
 - 3. D. Barbaria said that if a guidance document were to be put in place, it should be followed by the Hearing Board.
 - 4. C. Riley suggested including provisions in the Code for Hearing Board members to see relevant information on the guidance document. He said that this would ensure that the members at least reference the document.
- xxxiii. M. Horvath motioned to extend the meeting.
 - 1. Motion **approved** by unanimous consent.

- xxxiv. R. Benseal said the guidelines should either be incorporated into the Code or removed once fully revised.
- xxxv. R. Lieberwitz said that having a reference of the guidelines in the Code does not mean that it is unenforceable, but that they reflect considerations about educating the public.
- xxxvi. R. Benseal asked if Appendix A can be changed without amending the Code.
 - 1. R. Lieberwitz said that it can be changed if the CJC wishes. She said that this warrants further study on what guidance means.
- xxxvii. M. Battaglia said that the greatest question lies in how to manageably express shortcomings in the Code. He commended the Working Group for its efforts.
- b. For Discussion: University Hearing and Review Boards Staffing Update
 - i. M. Battaglia said that the Committee received the decoder key last week. He said that Joel Cisne will inform him of members who wish to renew.
 - ii. M. Horvath said that she believed ranked members were submitted to the University Assembly.
 - 1. M. Battaglia said that this could not happen procedurally.
 - iii. M. Horvath said that she will need a full Board, as there is a possibility of seven hearings over the summer.
 - 1. M. Battaglia said that he hopes this will be completed within the next couple of weeks before current terms expire on May 31.
- c. For Discussion: The role of ADR in the Code, Reorganization of the Code Update, and UHRB Hearing/Sanctioning Guidelines
 - i. M. Battaglia said that the reorganization of the Code is ongoing. He said that a guidance document warrants a larger discussion of how the reorganization all fits together. He said that it would remove superfluous language while ensuring balance.
 - ii. M. Battaglia said that Committee members had brought forth questions about retention policies and asked the Committee to reference the retention policy document for this matter.
- d. Update Concerning the Previously Passed Amendments to the Campus Code
 - i. M. Battaglia said that the JA reappointment language was approved by the Committee last week and that amendments from this Committee were addressed. He said that the President informally supported it, and that he expects the language to go forward.
 - ii. M. Battaglia said that he has posted the Code amendments as an advertisement in the Cornell Daily Sun and has held public office hours.
 - iii. M. Battaglia said that the President has recommended adding a date in the JA reappointment language in lieu of “indefinite suspension”. He said that this language may be slightly amended, but it will be formally adapted by the end of the week or early next week.
 - iv. M. Horvath said that she did not see Code revisions in Resolution 4.
 - 1. M. Battaglia said that this was a logistical mistake and that they are broken up as requested by the Committee.
- e. Closing Remarks
 - i. M. Battaglia said that the University Assembly passed a formal resolution to thank

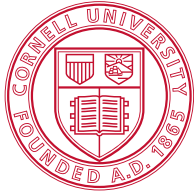
everyone on the Codes and Judicial Committee, University Hearing and Review Boards, and Working Group. He also personally thanked the Committee for its hard work.

- ii. M. Battaglia said that the Committee may revert to biweekly meetings as weekly meetings may be onerous.
 1. R. Bensel suggested meeting biweekly, but doubling the length of meeting times.

IV. Adjournment

- a. The meeting was adjourned at 6:00pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Codes and Judicial Committee Clerk



U.A. Resolution # 24

Finalizing Housekeeping Amendments to the Campus Code of Conduct

May 29, 2018

**Sponsored by: Matthew Battaglia, Graduate and Professional; Chair, Codes & Judicial
Committee**

On Behalf Of:

**The University Assembly Codes and Judicial Committee: K. Ashford, D. Barbaria, R.
Bensel, J. Kruser, R. Lieberwitz, V. Price, C. Riley, E. Winarto, K. Zoner**

Whereas, pursuant to Article Three, § 3.1 of its Charter and Title One, Article IV, of the
Campus Code of Conduct the University Assembly (the “Assembly”) may propose changes to
the Campus Code of Conduct (the “Code”) subject to the University President's approval; and

Whereas, the object of the University Assembly, “...is to improve and sustain the involvement
of the campus community in the governance of campus affairs affecting the broad campus
community by establishing open, effective, and efficient channels of communication between
and amongst the community and university administration” [University Assembly Charter,
Article Two]; and

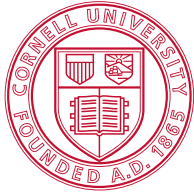
Whereas, the Assembly views its custodianship of the Code as crucial to facilitating dialogue
between the University Administration and wider Campus Community; and

Whereas, the Assembly strives to execute its responsibility to the Campus Code of Conduct and
Community with the utmost professionalism and care; and

Whereas, the Assembly strives to be responsive to the needs and requests of the Campus
Community and the needs and requests University Administration; and

Whereas, the Assembly believes that it has been and continues to be responsive to both the
needs and requests of the Campus Community and the needs and requests of the University
Administration; and

Whereas, the Assembly's Codes & Judicial Committee (the “Committee”) during this year
undertook a number of initiatives to seek to improve the Conduct including convening a



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Working Group on Hate Speech and Harassment, beginning the process of examining the Code holistically, and working with the Assembly's Executive Committee and University Administration to revise the Judicial Administrator appointment process; and

Whereas, the Committee and Assembly are greatly pleased with the outcome and expediency with which the improvements to the Judicial Administrator appointment process were drafted, implemented, and approved; and

Whereas, in the Fall of 2017, the Committee proposed, and the Assembly approved a series of "Housekeeping Changes" to the Code prior to beginning a larger review; and

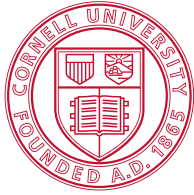
Whereas, the President returned several of the changes with comments and suggestions for improvement as well as a request for greater community notice and opportunity for comment generally; and

Whereas, in discussions with the University Administration it was made clear that the Assembly and Committee had full discretion in how they sought to provide additional notice and opportunity for comment; and

Whereas, the Committee spent the entirety of the Spring 2018 Semester discussing the suggested changes and undertaking to address the concerns raised; and

Whereas, the Committee has accepted several the proposed changes, partially accepted others, and undertaken to drastically increase the opportunity for public comment by:

- 1) Holding the Code changes on its Agenda for the vast majority of the semester,
- 2) Taking out advertisements in the *Cornell Daily Sun* advertising the pending Code Amendments and detailing multiple ways to provide feedback and input,
- 3) On several occasions holding public office hours concerning the pending Code Amendments for members of the Campus Community to attend,
- 4) Answering questions posed by members of the Campus Community at the public office hours, via email, and at public meetings and incorporating feedback received into the proposed changes,
- 5) Creating and circulating an anonymous "Comment Box" for community members to register their comments,
- 6) Requesting the Office of the Assemblies open its electronic Netid comment system for the pending Code amendments on multiple occasions,
- 7) On multiple occasions throughout the semester presenting, providing notice to, and updating some of our constituent Assemblies as to the scope of the changes as well as their exact substance,
- 8) Undertaking to discuss the pending changes with various additional stakeholders throughout the Spring Semester,



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- 75 9) Delaying the formal passage of the Code amendments for as long as possible in the term
76 by the Assembly tentatively approving the language at its last meeting of the semester but
77 waiting to finally approve it for an additional few weeks to allow the maximum
78 timeframe for the community to be aware of and comment on the pending changes,
79 10) Numerous other initiatives designed to facilitate maximum community notice and input
80 concerning the changes; and
81

82 **Whereas**, the Committee and Assembly believe these extra steps sufficiently address the
83 concerns raised by the President in the Fall Semester about providing adequate community
84 notice and opportunity for comment; and
85

86 **Whereas**, Assembly notes that the Judicial Administrator appointment amendments, due to the
87 requirements of the adopted timeline, received a shorter period for community feedback yet were
88 extensively promulgated for public comment prior to a formal vote and received a level of public
89 notice and comment that both the Assembly and President are satisfied with; and
90

91 **Whereas**, the Committee and Assembly greatly appreciate the opportunity to continue to work
92 collaboratively with the President and University Administration to maintain and improve the
93 Code; therefore
94

95 **Whereas**, the Committee proposes the following four sub-resolutions, grouped topically, to
96 contain the Code amendments from the fall as well as new ones identified by our constituents
97 and those involved in the University's Judicial System this semester; and
98

99 **Be it Resolved**, the appended changes in sub-resolutions A – D be incorporated to the Campus
100 Code of Conduct and are approved such that each sub-resolution is internally non-severable:

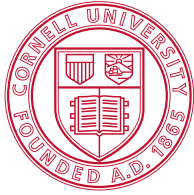
U.A. Resolution # 24 – Subpart A

Amendments Addressing Suspension within the Campus Code of Conduct

May 8, 2018

101 **Whereas**, during the Fall Semester, the Assembly passed three amendments relating to the
102 Code's usage of suspension in various forms; and
103

104 **Whereas**, those changes include 1) Language to address to the suspension length, definition, and
105 reporting date for organizations, 2) Language to address the immediate suspension for non-
106 compliance of sanctions, and 3) Language regarding removal of indefinite suspension; and



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Whereas, the President provided comments, feedback, and minor proposed modifications concerning some of the approved amendments; and

Whereas, the Committee considered and accepted the proposed modifications and appreciates the valuable feedback provided by the President; therefore

Be it Resolved, the changes appended in Appendix A (Amendments Addressing Suspension within the Campus Code of Conduct) be incorporated to the Campus Code of Conduct and are approved in a non-severable manner.

U.A. Resolution # 24 – Subpart B

Amendment Addressing the Role of Non-Matriculated Minors within the Campus Code of Conduct

May 8, 2018

Whereas, during the Spring of 2017, the Committee was approached by the Office of Risk Management (“Risk Management”) and asked to address the manner in which non-matriculated minors are treated within the Code; and

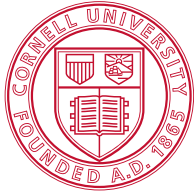
Whereas, during the Spring and Fall of 2017, the Committee and Assembly considered and passed the amendment proposed by the Office of Risk Management, to address non-matriculated minors, verbatim; and

Whereas, the President provided comments, feedback, and a proposed modification concerning the approved amendment requesting the provision’s scope be expanded and that a “saving” clause, stating that if a non-matriculated minor was not subject to other written behavioral guidelines the Code would continue to apply, be removed; and

Whereas, the Committee considered and accepted the expansion of scope and appreciates the valuable feedback provided by the President; and

Whereas, in discussions with the Administration members of the Committee learned that while the Office of Risk Management had proposed the amendment the current President had not formally approved it prior to it being presented to the Committee; and

Whereas, when the amendment was proposed to the Committee, the Office of Risk Management described the “saving” clause as a “safety valve” that virtually certainly would never be utilized as Risk Management would not approve any program for non-matriculated minors without written behavioral guidelines; and



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141
142 **Whereas**, while the Assembly and Committee also hope and believe the “saving” clause likely
143 will never be required to be utilized, we believe creating a situation where any individual could
144 end up in a state of procedural “limbo” with no written behavioral guidelines is not good practice
145 and is not supported by the Campus Community; and

146
147 **Whereas**, the Assembly and Committee are confident the Office of Risk Management and
148 University Counsel will ensure the “saving” clause need never be utilized as the Administration
149 has within its power the ability to ensure that no program for non-matriculated minors exists
150 without written behavioral guidelines of some sort; and

151
152 **Whereas**, in her response the President emphasized a need for “the units that directly supervise
153 non-matriculated minors, in partnership with appropriate administration offices including Risk
154 Management and University Counsel, [to] be able to develop appropriate policies that meet those
155 unique needs” and the Assembly and Committee do not believe that retaining the “saving” clause
156 interferes in any way with the ability of Risk Management, University Counsel, and the various
157 units to devise “appropriate policies that meet those unique needs” as the clause only requires
158 that such policies or procedures be written and grants the enables the Administration full
159 freedom in all other aspects of these policies; and

160
161 **Whereas**, the Assembly and Committee took the President’s recommendation exceedingly
162 seriously prior to coming to a conclusion and appreciate the time and input provided by various
163 members of the Administration in their discussion of this topic; and

164
165 **Whereas**, based upon, but not limited to, the preceding factors, the Committee and Assembly
166 respectfully decline to accept the President’s request that a “saving” clause be omitted from the
167 removal; therefore

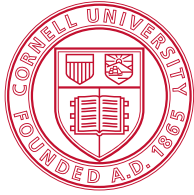
168
169 **Be it Resolved**, the changes appended in Appendix B (Amendment Addressing the Role of Non-
170 Matriculated Minors within the Campus Code of Conduct) be incorporated to the Campus Code
171 of Conduct.

U.A. Resolution # 24 – Subpart C

Amendments Addressing the Operations of the University Hearing and Review Boards and Hearing Mechanics

May 8, 2018

172 **Whereas**, during the Fall Semester, the Assembly passed an amendment relating to the Code’s



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provisions for appointment and re-appointment of members to serve on the University Hearing and Review Boards (the “UHRB”); and

Whereas, the President provided comments and feedback on the proposed amendment; and

Whereas, the Committee considered and accepted changes to address the President’s recommendation to require input from the Dean of the Faculty when handling Faculty member reappointments to the judicial boards¹; and

Whereas, the Committee also drafted, proposed, and the Assembly adopted a new Bylaws appendix outlining in considerable detail how the Assembly will conduct UHRB appointments and reappointments moving forward; and

Whereas, during the Spring Semester the Committee met with the Chairs of the University Hearing and Review Boards (the “Chairs”) to discuss this proposed amendment, other proposed amendments concerning the judicial boards, as well as other matters concerning the operation of the Hearing and Review Boards; and

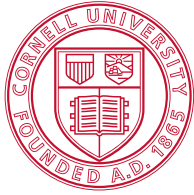
Whereas, the Chairs supported the proposed amendments and provided valuable feedback to the Committee which was incorporated into the amendments also resulting in the drafting of additional amendments; and

Whereas, the final set of approved amendments include 1) Language clarifying UHRB appointment procedures (previously passed in the fall), 2) Language increasing the judicial boards pool size (new), 3) Language clarifying Hearing Board removal process (new), 4) Language concerning Hearing and Review Board Procedures (new), and 5) Language addressing public hearing notice timeframe (new); and

Whereas, the language increasing the judicial boards size was passed after the direct and explicit request of the Chairs for a larger board pool and was supported by both the Judicial Administrator nor Judicial Codes Counselor; and

Whereas, the language concerning the removal process for currently sitting members of the judicial boards was drafted in consultation with the Chairs who expressed their support for it

¹ N.B. The President’s response outside of its formal recommendation concerning the Dean of the Faculty (which has been accepted) also discussed in passing that the proposed amendment would “remove the ... Office of the Assemblies from exercising any oversight over HB members after their initial appointment.” The Office of the Assemblies as an entity of the University Administration presently does not and has never exercised oversight over UHRB members and does not nor has it ever appointed members to the boards. The Assembly strongly opposes any expansion of the Office of the Assemblies’ role to include oversight over UHRB members and believes that such an expansion would be entirely improper.



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after the Judicial Administrator noted an ambiguity concerning the language presently inside the Code; and

Whereas, the new removal language is designed to ensure community input through the Committee prior to the removal of a judicial board member noting that board members are appointed by a community body and therefore a community body should also play a role in the removal process; and

Whereas, with a larger pool size, a more detailed removal process is not likely to impede the sound operation of the boards; and

Whereas, the language concerning Hearing and Review Board Procedures (the “Procedures”) was drafted in consultation with the Chairs who expressed their support for it after the Chairs and the Committee separately identified the Procedures as an area needing additional community involvement and examination and the Chairs explicitly asked the Committee to assist them in improving the Procedures; and

Whereas, the language concerning Hearing and Review Board Procedures seeks to ensure that the Procedures do not conflict with the Code, as they might have in the past, that the Committee is more aware of and involved when edits are made to the Procedures, and that the Committee is able to assist and work with the judicial boards to draft functional procedures that do not inadvertently go against the spirit or function of the Code; and

Whereas, the language concerning the public hearing notice timeframe was drafted in consultation with Judicial Administrator and Judicial Codes Counselors who expressed their support for it after a recent public hearing brought to light the need for additional notice prior to a public hearing taking place; therefore

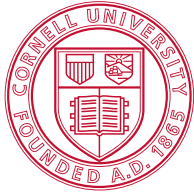
Be it Resolved, the changes appended in Appendix C (Amendments Addressing the Operations of the University Hearing and Review Boards and Hearing Mechanics) be incorporated to the Campus Code of Conduct and are approved in a non-severable manner.

U.A. Resolution # 24 – Subpart D

Amendment Adding Discretion to Interim No Contact Directive Procedures

May 8, 2018

Whereas, during the Fall Semester, the Assembly proposed and passed a Code amendment relating to the Code’s procedures for Interim No-Contact Directives; and



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Whereas, that proposal was based upon information furnished to the Committee over preceding years and discussions with various campus entities; and

Whereas, the information furnished outlined concerns about interim measures being utilized over a considerable length of time, in some circumstances for many months, such that in many ways they were no longer “interim”; and

Whereas, the President provided comments, feedback, and proposed modifications concerning parts of the approved amendment; and

Whereas, the Committee appreciates the feedback provided by the President; and

Whereas, the Committee engaged in discussions with individuals involved in victim advocacy concerning language making Interim No-Contact Directive’s mutually binding; and

Whereas, in discussions with individuals involved in victim advocacy, minimal, if any, concerns about making Interim No-Contact Directive’s mutually binding were raised; and

Whereas, the Committee notes that the Judicial Administrator has stated it is her present policy to only issue mutually binding no-contact directives even though the Code does not formally require it; and

Whereas, the Committee believes it is prudent to codify this best practice to provide stability and notice to members of the Campus Community; and

Whereas, from these discussions with individuals involved in victim advocacy and discussions with other stakeholders, the Committee removed the appeal process, as suggested by the President, and formulated a different procedure to strive to ensure that interim measures are both flexible and robust when necessary but also mindful that no hearing on the merits has been held and cognizant of the significant impact on an individual’s lives interim measures can have; therefore

Be it Resolved, the changes appended in Appendix D (Amendment Adding Discretion to Interim No Contact Directive Procedures) be incorporated to the Campus Code of Conduct.

U.A. Resolution # 24 Appendices

Appendix A (Amendments Addressing Suspension within the Campus Code of Conduct)

1) Language to address to the suspension length, definition, and reporting date for organizations

Assembly Approved Language (Title Three, Art. III, Sec. D.4 (pg. 24, 2017).

4. Limitations Period

Any charge of a violation of this Code must be initiated by the filing of charges by the Judicial Administrator within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:

- a. In cases where the charge involves fraud, the period shall be one calendar year from the alleged fraud or 60 calendar days from the filing of a complaint alleging fraud, whichever is longer, but in any event no more than three calendar years from the alleged fraud.
- b. In cases where the individual to be charged is absent from the University because of either (1) a leave of absence, (2) a termination of employment, or (3) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within 60 calendar days of his or her return to the jurisdiction of the University judicial system, whichever is later.
- c. In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within 60 calendar days of the final disposition of such prosecution. Should it appear that the individual will leave the University before such time, the President or his or her designee may cause the individual's degree to be withheld for the period in which the Judicial Administrator may file charges.
- d. In cases where the Respondent is a University-Registered Organization the period shall be no more than three calendar years from the alleged violation.

~~e.-d.~~ The Judicial Administrator may request a Hearing Board Chair to extend any limitations period by up to an additional six calendar months, without required notice to any other person but upon a showing of special circumstances justifying such an extension, provided that the Judicial Administrator delivers such written request to a Hearing Board Chair prior to the expiration of that period.

(Title Three, Art. IV, Sec. A.1.c.6 (pg. 25, 2017).

(6) Suspension of all privileges for a stated period not to exceed ~~one year~~ **five years**.

Language to address to immediate suspension for non-compliance of sanctions

Passed Language (Title Three, Art. III, Sec. D.4 (pg. 24, 2017).

2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator ~~shall~~ **may suspend the offender or issue a lesser penalty. In the event the JA elects to suspend, the JA shall** notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.

Passed Language (Title Three, Art. II, Sec. A.3 (pg. 18, 2017).

(m) To refuse to comply with any valid penalty or remedy dispensed by the Office of the Judicial Administrator and/or University Hearing or Review Board

Language regarding removal of indefinite suspension

Passed Language (Title Three, Art. II, Sec. E.1.c (pg. 24, 2017).

Circumstances Requiring Hearing

~~e. The offender may petition in writing for readmission from indefinite suspension.~~

(Title Three, Art. IV, Sec. A.1.a.8 (pg. 34, 2017).

(8) Suspension from the University for a stated period not to exceed five years, ~~or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission after the academic term following the academic term in which the suspension occurred. Such petition shall be submitted no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester. If the Judicial Administrator agrees with the petition of the accused, he or she may permit the readmission without the petition being considered by the University Hearing Board, after consulting with appropriate professional colleagues and receiving approval of a Hearing Board Chair. If the University Hearing Board denies the petition, the accused may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the University Hearing Board. While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree. [Add footnote reading “The Code previously allowed for indefinite suspension. While indefinite suspensions are no longer given as of [date of changes being accepted], any student indefinitely suspended at the time of indefinite suspensions being removed shall continue to be indefinitely suspended and subject to the appeals provision in-place at the time of removal.]~~

(Title Three, Art. IV, Sec. A.2.b (pg. 34, 2017).

b. Ordinarily, the penalty for a third violation by a student within a twelve-month period should be probation or suspension from the University for a stated ~~or indefinite~~ period and denial of academic credit for the term in which the suspension occurs. The penalty may be reduced if a lesser penalty would more appropriately serve the interests of justice and if, in addition, the offender expressly agrees not to engage in misconduct of specified kinds in the next twelve months. ~~In such a case of indefinite suspension, the offender may petition the University Hearing Board in writing for readmission, but no application for readmission for the academic term following the academic term in which the suspension occurred will be permitted~~

Appendix B (Amendment Addressing the Role of Non-Matriculated Minors within the Campus Code of Conduct)

Language to address the role of non-matriculated minors

Passed Language (Title Two, Art. I, Sec. B.2 (pg. 10, 2017).

1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:

- a. a degree candidate in any of Cornell’s undergraduate or graduate divisions;
- b. a special student in the undergraduate divisions; or
- c. a non-degree-candidate in the graduate school.

2. The term student shall be interpreted to mean also persons not officially registered, and not faculty members or other University employees, if they are:
- a. currently enrolled in or taking classes at the University, with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent, so long as such individuals are subject to written behavioral expectations, policies or procedures;
 - b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities, with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent, so long as such individuals are subject to written behavioral expectations, policies or procedures; or
 - c. currently on leave of absence or under suspension from being a student of the University.

Appendix C (Amendments Addressing the Operations of the University Hearing and Review Boards and Hearing Mechanics)

Language clarifying UHRB appointment procedures

Passed Language (Title Two, Art. IV, Sec. C.3 (pg. 14-15 2017).

3. Members of the University Hearing Board and University Review Board pool shall serve terms of office as follows:
- a. All members shall be appointed for two-year staggered terms, except for students entering their final year of study, who shall be appointed for one-year terms.
 - b. Terms of office shall begin June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency shall become effective immediately. Appointments made to fill a vacancy arising mid-term shall be granted the balance remaining of that term.
 - c. Currently serving members may be appointed for additional terms if reconfirmed by the University Assembly after review by the Codes and Judicial Committee. Faculty members seeking renewal will be reviewed by the Codes and Judicial Committee who shall receive input from the Dean of the University Faculty prior to reconfirmation by the University Assembly.
 - d. The Chair of the Hearing Board or Review Board shall have the authority to remove a member of the pool if the member is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process.

Language increasing the judicial boards pool size

Passed Language (Title Two, Art. IV, Sec. C.1 (pg. 14 2017).

C. Pool of Board Members

1. The University Hearing Board and University Review Board pool shall comprise **75** members confirmed by the University Assembly: **35** students, **20** faculty members, and **20** nonfaculty employees.

Language clarifying Hearing Board removal process

Passed Language (Title Two, Art. IV, Sec. C.3.c (pg. 15 2017).

c. **Any** Chair of the Hearing Board(s) or Review Board(s) shall have the authority to **begin removal proceedings against** a member of the pool if the member is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process. **Upon a Chair beginning removal proceedings, the Chair shall furnish to the Codes & Judicial Committee of the University Assembly the following:**

1. The name of the board member.
2. A rationale for their removal from the boards.
3. Prior steps taken to attempt to resolve the relevant issue(s).
4. Indication that the board member received at least fourteen days' notice of a Chair's intent to seek removal.

Upon receipt of the information, the Codes & Judicial Committee may remove the board member by a two-thirds vote of its seated membership. The Codes & Judicial Committee may request additional information from a Chair or other parties as part of their deliberation. For instances involving faculty members, the Dean of the Faculty shall also be consulted.

Language concerning Hearing and Review Board Procedures

Passed Language (Title Two, Art. IV, Sec. C.5 (pg. 15 2017).

5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:

- a. The judicial boards **in consultation with the Codes & Judicial Committee of the University Assembly** shall be responsible for establishing their own internal rules and procedures not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.

(1) Such rules and procedures must not conflict or contradict provisions in this Code.

- (2) Such rules and procedures must be published in the Cornell Chronicle before going into effect.
- (3) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.

b. All changes to the judicial board's rules and procedures must be provided to the Codes & Judicial Committee of the University Assembly at least 14 calendar days prior to approval by the boards. The Codes and Judicial Committee may reject any proposed change by a majority vote of its seated membership.

c. The Codes & Judicial Committee of the University Assembly may choose to modify the judicial board's rules and procedures by a majority vote of its seated membership. Changes made by the Codes & Judicial Committee follow the same public notice procedures as apply to the judicial boards.

d. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly. When a report is requested, the boards shall provide it in the manner requested within thirty calendar days of receipt.

Language addressing public hearing notice timeframe

Passed Language (Title Three, Art. III, Sec. E.3.b (pg. 28 2017).

(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than ~~two~~ **three** business days ~~before~~ **after the scheduling of** the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses.

Appendix D (Amendment Adding Discretion to Interim No Contact Directive Procedures)

Language adding discretion to Interim No Contact Directive procedures

Passed Language (Title Three, Art. III, Sec. B.2 (pg. 19, 2017).

- a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a No-Contact Directive, **binding upon all involved parties.**
- b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.

c. In the event the Judicial Administrator is notified of a violation of the terms of the No-Contact Directive, the accused shall be provided with an opportunity to review the matter with the Judicial Administrator within two business days. If the Judicial Administrator determines, based upon the information available, that the No-Contact Directive has been violated, he or she may impose additional interim measures or suspend the accused temporarily, pending resolution of the underlying case.

c. Such directives may be initially issued for a duration of up to 21 calendar days. Should the Judicial Administrator believe a No-Contact Directive remains necessary after that time, he or she may petition a University Hearing Board Chair to renew the directive for up to an additional 21 calendar days. Should the Chair choose to extend the directive, he or she may modify the directive's terms but may not supersede an active court order. Prior to a directive being renewed, the parties to the directive may submit written statements to the Chair for consideration. If additional renewals are requested by the Judicial Administrator, a different Hearing Board Chair shall review each additional request. Chairs may evaluate multiple renewal requests on the same case only if all other currently available Chairs have already reviewed an equal number of requests on that case.