

Cornell University
University Assembly

Agenda

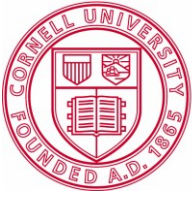
Codes and Judicial Committee

Cornell University Assembly
Agenda of the October 7, 2019 Meeting
1:00 PM – 2:30 PM
Location TBD

- I. Call to Order**
 - a. Call to Order
- II. Approval of the Minutes**
 - a. September 30, 2019
- III. Business of the Day**
 - a. Updates from the October 1, 2019 University Assembly meeting
 - i. President Pollack code recommendations
 - ii. UA member code recommendations
 - b. Campus Code of Conduct
 - i. Continuation of recommendations through Google Docs
 - ii. Delegation of tasks to be completed by October 28, 2019 meeting
 - c. University Hearing and Review Boards
 - i. Update on vacancies
 - ii. Creation of subcommittee
- IV. Adjournment**

Attachments

- 1. CJC Meeting Minutes: September 30, 2019
- 2. University Counsel Procedural Draft



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University Assembly

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Minutes

Codes and Judicial Committee
University Assembly
September 30th, 2019
1:00pm – 2:30pm
305 Day Hall

I. Call to Order

- a. Call to Order
 - i. L. Kenney called the meeting to order at 1:12pm.
- b. Roll Call
 - i. *Present:* J. Anderson, R. Bensel, J. Bogdanowicz, M. Hatch, L. Kenney, R. Lieberwitz, J. Michael
 - ii. *Absent:* G. Martin, L. Taylor, K. Wondimu
 - iii. *Others Present:* K. Clermont, G. Giambattista, M. Lee, M. O’Gara

II. Approval of Minutes

- a. September 23, 2019
 - i. M. Hatch requested to have his name reflected accurately.
 - ii. J. Michael moved to accept the friendly amendments and approve the minutes.
 1. Minutes **approved** by unanimous consent.

III. Business of the Day

- a. Discussion of Questions for the President
 - i. L. Kenney said that President Pollack will attend the University Assembly (UA) meeting tomorrow at 4:30pm. She said that she has requested that the she, on behalf of the Codes and Judicial Committee (CJC), be given time to ask questions to the President.
- b. Campus Code of Conduct – M. Hatch Proposed Resolution
 - i. L. Kenney recommended to table the resolution either indefinitely or for a specified period of time, as it is merely reinforces the rights of the CJC which are already within the bylaws. She opened the floor for discussion.
 - i. M. Hatch recommended to include R. Bensel as one of the sponsors of the resolution, based on what was discussed last meeting.
 - ii. R. Bensel said that tabling makes sense but passing the resolution today

- would help L. Kenney be better equipped for the UA meeting tomorrow.
- iii. M. Hatch recommended friendly amendments to the resolution for accuracy.
 - iv. R. Bensel moved to pass the resolution.
 - v. R. Lieberwitz said based on her understanding, the intent of the resolution is to make clear that the CJC will consider whether to have a separate Student Code of Conduct, but the Committee hasn't decided to do that. She said that she would be for passing the resolution if the Committee is making clear that it is not committing to a decision on whether to have a separate Student Code.
 - vi. L. Kenney said that her rationale for tabling the resolution was for that precise reason – so that the Committee is not giving any indication that it is writing a Student Code of Conduct.
 - vii. M. Hatch said that was why the resolution states that several amendments have been proposed, but it doesn't point to any specific type of Code that the Committee is considering. He said that there are reasons not written in the resolution as to why the Judicial Administrator (JA) and President want a student Code. He also said that the CJC is vested with the responsibility of the Code by approval of the former President and the Board of Trustees, but he has heard of the possibility that the Board of Trustees could reject the UA/CJC's charge of the Code and is uncertain how that could take place.
 - viii. K. Clermont said that he believes the Board of Trustees has the plenary power to do so.
 - ix. L. Kenney introduced guest K. Clermont as professor of law and one of the original drafters of the Code.
 - x. K. Clermont said that mentioning a Student Code of Conduct may potentially legitimize the suggestion.
 - xi. M. Hatch said that the fourth "Whereas" clause that includes the language of a Student Code of Conduct could be removed.
 1. R. Bensel accepted the friendly amendment.
 - xii. R. Lieberwitz and J. Bogdanowicz proposed friendly amendments for grammatical accuracy.
 - xiii. L. Kenney said that with that, she agrees with the Committee in that the resolution equips the CJC and reaffirms its goals.
 - xiv. R. Bensel called the question to vote on the motion.
 1. Motion to pass the resolution as amended – approved by a vote of 5-0-2.
- b. Campus Code of Conduct – Continuation of Recommendations
- i. L. Kenney said that she was told that she would be receiving the procedural portion of the University Counsel's draft Code, but she has yet to receive it.
 - ii. R. Lieberwitz said that it feels that the administration is trying to separate the procedures from the substance of the Code.

- iii. L. Kenney suggested discussing questions to ask the President while the Committee waits for the Google Doc on recommendations to the Code to be projected on the board.
- iv. M. Hatch said that the University Counsel's draft has been presented to the Committee as a Student Code of Conduct, but the Committee has decided not to have a separate Student Code of Conduct.
- v. L. Kenney said that the Committee has voted to work from the University Counsel's draft as a template and has decided to focus on the student portion of the Code for now.
- vi. M. Hatch moved to discuss working on the Campus Code of Conduct instead of the student portion of the Code of Conduct.
 1. R. Lieberwitz seconded.
- vii. M. Hatch said that in passing the amendment to the resolution to remove the language on a Student Code of Conduct, the Committee affirmed that it will consider recommendations through the Campus Code of Conduct. He said, however, that is not what the Committee is currently doing as it amends the University Counsel's draft.
- viii. R. Lieberwitz suggested to decide whether to flag the idea of a Student Code of Conduct with an understanding that the Committee will revisit it or decide now whether the Code would apply to everyone.
- ix. K. Clermont said that the alternative would be to work on the draft on the University Counsel's website, which deals with a Campus Code of Conduct without mention of a Student Code of Conduct.
- x. J. Anderson said that he believes it makes sense for the Committee to continue working on the current Google Doc version. He said that this is the most simplified version and it would be appropriate to flag the idea of a Student Code of Conduct for now.
- xi. L. Kenney said that she believes the Committee should continue working off of this draft with an understanding that some violations are more pertinent to students and that this would not necessarily be a Student Code of Conduct. She also said that many of these definitions apply to the community, and it would be a mistake to look at the current document as just tailored to students.
- xii. R. Lieberwitz said that it appears that there is a general agreement on the notion that principles and values should apply to everybody.
- xiii. M. Hatch said that even if the word student is removed, the document makes it appear as if there is a broader implication that the Office of the Judicial Administrator (JA) would move to be understood within the realm of student affairs. He said that assumes that everything adjudicated under the Code of Conduct would be adjudicated such that the JA would be a JA for students, which undermines the sense that this is a Campus Code.
- xiv. L. Kenney said that the Committee should wait to discuss procedures until it

- receives the procedural portion from the Counsel.
- xv. R. Bensel said that considerations on the Office of the JA should be discussed later in the draft when the Committee reaches that point.
 - xvi. K. Clermont said that the principles and values section in the Google Doc draft seems more compact than what is currently in the Campus Code. He asked if anyone has gone through the current Code to consider whether anything important has been left out.
 - xvii. R. Lieberwitz said that what is currently in the document is what has been recommended by Committee members. She said that the Committee should make progress on items that it agrees on first.
 - xviii. L. Kenney said that the Committee agreed to use the draft as a loose template, and it is not necessarily what will be sent to the UA. She said that the Committee does need to address whether the document will no longer be called a Cornell Student Code of Conduct.
 - xix. R. Lieberwitz moved to amend the document as a part of a greater Campus Code of Conduct for the time being instead of naming it a Student Code of Conduct.
 1. M. Hatch suggested to defeat the motion and said that he strongly urges the Committee to abandon the draft as it has been presented to the Committee.
 2. L. Kenney said that the Committee is voting solely on whether to not commit to a student portion of the Code for the time being, until the Committee receives the specific language tasked by the President.
 3. L. Kenney called the question to change the name of the working draft from a Student Code of Conduct to a Campus Code of Conduct.
 4. Motion approved by a vote of 4-2-1.
 - xx. M. Hatch moved to table the current draft version and first seek clarification from the President regarding what is necessary to amend within the current Campus Code.
 - xxi. R. Lieberwitz seconded and said that if the Committee goes back to a Campus Code, this may create even more friction than already exists. She said that the Committee should instead go through what the administration has provided first and incorporate suggestions.
 - xxii. R. Bensel said that he agrees and that the Committee should consider the Counsel's proposals first before outright rejecting them.
 - xxiii. M. Hatch said that he accepts the viewpoints of other members of the Committee. He suggested, however, that the Committee also remains cautious about the implications within the draft. He said that the Code is meant to be a Campus Code and not a Student Code.
 - xxiv. J. Michael said that as a new member, she is unaware of the context and

history of the Code. She asked what the major concerns are and what the Committee has been charged to do.

- xxv. M. Hatch said that multiple events have taken place in the past, such as protests relating to speech, that have prompted a revisit of the Code.
- xxvi. J. Anderson said that from a student perspective, having a process to change the Code is important. He said that over the last couple of years, hate crimes took place across campus, during which black students fundamentally believed that the Code was not protecting students. He also said that over the last couple of years, some recommendations were given but there was little being done. He added that from an undergraduate perspective, amendments to the Code will benefit students and especially protect marginalized students.
- xxvii. J. Michael said that she believes it is important to think about how students advocate for their safety in a system that governs them.
- xxviii. L. Kenney said that she would not typically vote as a Chair, but she did so in the previous motion to ensure that the Committee is aware of potential implications for other members of the community. She asked that the Committee consider how to make the Code more readable first without opening up a discussion on whether there would be a separate Code for faculty and staff.
- xxix. J. Michael asked if there is a separate faculty handbook.
- xxx. R. Lieberwitz said that there are two major lines of concern regarding the Code – the first being a substantive concern on whether it protected students with regard to issues such as harassment, speech and conduct. She said that in regard to this issue, the Working Group on Hate Speech and Harassment produced a report and this issue would continue to be part of a larger discussion. She also said that the other line of concern is broader in that the Code needs to be streamlined as it is currently too long and too difficult to read. She added that the CJC has been committed to a Campus Code, where members of the community share rights. She suggested that the Committee first work on the first portion of the draft and consider what it agrees on.
- xxxi. R. Bensel said the Code is about shared governance. He said that the Office of the JA is a representation of shared governance, as the role is currently suspended between the UA and administration. He also said that some of the concerns raised can be addressed in later discussions.
- xxxii. J. Michael asked who the JA reports to.
- xxxiii. R. Bensel said that the JA reports to the Committee and the Committee can call in the JA for any issue. He also said that the Committee has failed in some ways to exercise that jurisdiction.
- xxxiv. K. Clermont said that the history of amendments to the Code date further back than two years. He also said that streamlining the Code is synonymous to eliminating rights prescribed within the Code, and that the Committee

- should be careful about the motives.
- xxxv. L. Kenney said that the Committee is merely using the language from the University Counsel as a template, and that the Committee has never voted to use the draft for end all means.
 - xxxvi. J. Anderson suggested making progress in the current Google Doc draft and change it as the Committee sees fit.
 - xxxvii. L. Kenney suggested looking at the original Code in conjunction with R. Bensel's proposals from last year for the principles and values section. She said that she has not been provided with the actual language of what the President has tasked the Committee with. She also suggested discussing questions the Committee has for the President for the time being to have a better idea of what the administration hopes for the CJC to accomplish. She said that within the bylaws, the Committee can consider these tasks but is not required to incorporate them.
 - xxxviii. M. Hatch **withdrew** his motion. He also suggested L. Kenney to first ask the President what she wishes to have done with the current Campus Code of Conduct. He said that if the President states that the Code merely needs to be clarified, the Committee could make a statement that it will work on that.
 - xxxix. L. Kenney said that she will ask for the task language directly from the President's Office. She also said that she will try to get the President to meet directly with the CJC.
 - xl. R. Lieberwitz said that asking the President on her general views on the Campus Code and any changes that need to be made would be helpful. She said that the time at the UA meeting gives L. Kenney a chance to reassert the CJC's job and what it is trying to do in terms of coming up with a final recommendation. She suggested conveying that the Committee will consider everyone's views and plans to consult broadly.
 - xli. L. Kenney said that she will reiterate the importance of transparency and that the Committee will seek public comment when ready.
 - xlii. J. Anderson shared the language from the Office of the President's website on Diversity and Inclusion Initiatives dealing with the Campus Code.
 - xliii. L. Kenney said that moving towards a more aspirational and non-punitive tone is important for the Code. She said that she will ask the President whether she envisions a separate Student Code of Conduct, and what that would mean for different members of the community.
 - xliv. M. Hatch said that the language from the President's website states that recommended changes are being reviewed, not necessarily that the Committee will adopt them.
 - xlv. K. Clermont said that the language suggests that faculty and employees are not considered in the Code revisions. He also said that the "educational and aspirational tone" does not suggest a means for restorative justice but rather administrative procedures without rights.

- xlvi. J. Anderson said that he disagrees with this notion.
- xlvii. L. Kenney said that the Committee could choose to read the “aspirational” language as a move towards focusing on restorative justice.
- xlviii. R. Bensel requested L. Kenney to emphasize when the Committee would be receiving the procedural portion of the University Counsel’s draft. He also said that it may not be helpful to have the President attend the meeting as this is too early in the process and she may not be willing to make specific commitments. He further suggested stating to the President that there is a strong predisposition in the CJC to see the Code as a unified document applying to everyone.
- xlix. J. Anderson recommended including questions about the President’s vision for the Office of the Judicial Administrator.
 - 1. R. Lieberwitz said it would be best to keep the questions vague and general instead of making it seem like the Committee is asking for instructions.
 - li. R. Bensel agreed and said that this could be prefaced by expressing that the Committee has not been receiving enough information from the administration.
 - lii. R. Lieberwitz said that the Committee would be reminding the community that it believes in a transparent process and will gather information from all constituents.
 - liii. J. Anderson said that he would like the Committee to keep in mind that the President has the final approval mechanism.
 - liv. R. Bensel asked if the Committee could receive the Counsel’s draft as was provided.
 - lv. L. Kenney said that she will send it again to the Committee after the meeting today.
 - lvi. L. Kenney recommended that the Committee first delve into the Principles and Values section and prepare to discuss that. She also said that the Committee should reiterate its intent to ensure that it is seeking to retain rights across the University.
 - lvii. R. Lieberwitz asked the Committee to take a look at the suggestions she added to the Principles and Values section of the Google Doc draft.
- c. University Hearing and Review Boards (UHRB)
 - ii. L. Kenney said that she does not yet have an update on UHRB vacancies and will check with M. Horvath regarding numbers. She also said that the Committee will need to revisit the process and explore whether it would be possible to reappoint those who have already gone through the training process.
 - iii. L. Kenney said that she will create a Google Doc with a set of questions to ask President Pollack at the UA meeting. She said that she will send out this Google Doc to members of the Committee for suggestions and will then

send it to the President ahead of time.

IV. Adjournment

- a. R. BenseI moved to adjourn the meeting.
 - i. The meeting was adjourned at 2:32 pm.

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

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1 DESIGNATION AS COMPLAINANT AND RESPONDENT

A person initiates a Formal Complaint of prohibited conduct under these procedures will be designated as the “complainant.” A student or University-registered organization against whom such a report or Formal Complaint has been made will be designated as the “respondent.” Both the complainant and respondent are referred to as “party” or “parties” throughout these procedures.

2 EFFECTIVE DATE OF THESE PROCEDURES

The effective date of these procedures is [TBD].

These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after [TBD].

Where the date of the alleged prohibited conduct precedes the effective date of these procedures or a subsequent update to these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures or subsequent updates to these procedures, regardless of when the conduct occurred.

3 DEFINITION OF STUDENT

The term student will be interpreted to mean any person, whether or not incidentally on the University payroll, who is in attendance at any of Cornell University’s colleges, schools or major academic units. A new student is considered in attendance on the first day of the semester/term for which they were admitted; on the first day of their class(es); on their first day residing in a university residence hall; on the first day of a university-sponsored pre-orientation trip, activity, or academic program in which they are participating; or on the first day of a graduate assistantship for the first semester/term for which they were admitted, whichever is earliest. Students remain in attendance between terms and while on leave of absence or under suspension from the University.

Graduates of the University are no longer students unless or until they commence attendance in a subsequent University degree program or for-credit course.

Individuals participating in non-credit bearing programs or who attend class(es) on a non-credit basis are not students for the purposes of these Procedures. Individuals who attend class(es) at the University on a for-credit basis while still an elementary, middle, or high school student, or foreign equivalent, are not students for the purposes of these Procedures.

4 JURISDICTION

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These procedures will apply to prohibited conduct by any student or University-recognized or -registered student organization on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization.^{1,2}

All actions by a student that involve the use of the University computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus.

These procedures will apply regardless of the location of the conduct where the Dean of Students or their designated representative in the person of the SJA determines that either:

- the alleged prohibited conduct has occurred in the context of a University program or activity; or
- the conduct poses a substantial threat to the University's educational mission or to the health or safety of individuals (whether or not those individuals are affiliated with the University), the University community, or to the University's reputation.

These procedures will not apply where the alleged prohibited conduct has been investigated and adjudicated pursuant to another, separate university policy.

5 STUDENT JUDICIAL ADMINISTRATOR

5.1 The Student Judicial Administrator

The Student Judicial Administrator ("SJA") manages cases arising under the Student Code of Conduct ("Code"). The SJA receives and investigates accusations of violations of the Code, or of any other regulation as the University Assembly, the University President, or Board of Trustees may direct. The SJA shall hire and train competent individuals to undertake careful, fair, and objective investigations of complaints. The SJA is also responsible for the training and administration of the University Hearing Board and University Review Board, with the intention of ensuring fair and consistent adjudication, findings of responsibility and as appropriate, sanctions.

The fundamental role of the SJA is to ensure that complaints are handled with fairness, integrity, and objectivity for all parties concerned. Anyone can direct questions about the student conduct system to that office.

¹ Nothing in these procedures will preclude the President or the President's designee, under the authority of the Board of Trustees as expressed in the University Bylaws, from taking appropriate and lawful action for *Grave Misconduct*, pursuant to a *Presidential Override*, as set forth in the Cornell University Student Code of Conduct.

² These procedures apply to all units of the University except for Weill Cornell Medicine, which administers student discipline under Weill Cornell Medicine procedures absent misconduct occurring on Cornell's Ithaca, Geneva, or Cornell Tech campuses.

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No employee of the SJA shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a student conduct board.

The SJA shall be appointed by and reports to the Vice President for Student and Campus Life. The Vice President shall consult with the University Assembly prior to appointment and shall request representatives from the University Assembly to serve on the search committee when a new SJA is hired. The Student Conduct Administrator shall undergo an annual review overseen by the Vice President (or designee). The Vice President shall request and thoughtfully consider feedback from the University Assembly as part of the SJA's annual review.

The SJA shall provide an annual report to the Vice President, the University Assembly, and its Codes and Judicial Committee on the operation of the office and the student conduct system as a whole.

6 OFFICE OF THE STUDENT CODES COUNSELOR *[Note, Counsel are recommending one office to secure and train those representing both complainants and respondents rather than two separate offices. Indeed, we recommend that counselors be trained so that they can represent either party in a complaint process. This is typical of other student conduct systems in our experience, and brings insight and compassion to those advising/representing opposing parties in a dispute. It is also a more efficient administrative structure versus creating two separate offices whose similar purpose is supporting students in university disciplinary proceeding and ensuring their rights are respected.]*

The Office of the Student Codes Counselor provides free assistance and representation within the student conduct system to both complainants and respondents involved in the Student Code of Conduct process and to students charged with violations of the Code of Academic Integrity.

To the extent permitted by law, Student Codes Counselors shall not reveal any information provided by those being represented unless the individual expressly requests that the information in question be confided to another person. Student Codes Counselor's services are not meant to be a substitute for professional legal advice or for the legal assistance provided by an attorney. The Student Codes Counselors primarily explain how the student conduct system works and assists the parties in the selection of counsel or an advisor. With the consent of the Student Codes Counselor, an individual may choose a Student Codes Counselor as their advisor.

No individual involved in of the Office of the Student Codes Counselor shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a student conduct board.

The Student Codes Counselor shall be appointed for a two-year term. A Student Codes Counselor can be reappointed for additional terms. Upon the University Assembly chair's receipt of notice of the Student Codes Counselor's resignation or removal, the chair shall convene a search committee, composed of no more than four members appointed by the University Assembly and no more than two members appointed by the Vice President for Student and Campus Life. A chair for the search committee shall be jointly selected by the Vice President and the University Assembly Executive Committee from one of the appointed members. The Vice President shall appoint a candidate with the concurrence of the University Assembly. The Vice President may ask the search committee to present additional candidates if they do not feel that any of the nominees presented merit selection.

The Student Codes Counselor shall be solely responsible for the Office of the Student Codes Counselor. The Student Codes Counselor shall be independent, although an administrative relationship should exist with the University administration that will support that office. The Student Codes Counselor shall be subject to removal during the term of office only by action of the Board of Trustees.

7 STUDENT CONDUCT BOARDS

7.1 University Hearing Board

A five-person panel of the University Hearing Board shall adjudicate cases under the Student Code of Conduct. The Student Judicial Administrator shall appoint one or more persons to serve as hearings Chair and preside over five-person Hearing Panels' proceedings. Hearing Board Chair shall ensure the fair and consistent application of procedural and evidentiary rulings and management of hearings processes. The chair does not vote.

7.2 University Review Board

A three-person panel of the University Review Board shall hear appeals under the Student Code of Conduct. The Student Judicial Administrator shall appoint one or more persons to serve as appeals Chair and preside over Review Board proceedings. The Appeals Chair shall ensure the fair and consistent application of procedural and evidentiary rulings and management of hearings processes. The chair does not vote.

7.3 Pool of Board Members

The University Hearing Board and University Review Board pool shall comprise 55 members confirmed by the University Assembly: 25 students, 15 faculty members, and 15 nonfaculty employees. Faculty members are nominated by the Dean of the Faculty. For other candidates, the Office of the Assemblies will solicit written applications, and the Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.

No person shall serve on the University Hearing Board and University Review Board pool who is at the same time a member of the University Assembly or its Codes and Judicial Committee or is an employee of the Office of the Assemblies.

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.
- 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.
- c. The Student Judicial Administrator 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 Student Conduct Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process.

8 TIME LIMIT TO FILE FORMAL COMPLAINTS

To promote timely and effective review, the University strongly encourages complainants and other persons with knowledge of possible violations of the Student Code of Conduct to make reports as soon as possible, ideally within one year of the alleged prohibited conduct. A delay in reporting may affect the Office of the Student Judicial Administrator's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the imposition of appropriate discipline upon a student who has engaged in prohibited conduct.

While prompt reporting is encouraged, the SJA will consider as timely any Formal Complaint that is filed under these procedures as long as the respondent is a "student," as defined by these procedures, (e.g., has not graduated or permanently left the University).

If the respondent is no longer a student at the time of the Formal Complaint, and the SJA is unable to pursue resolution, it will still seek to, as feasible, take appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

9 COMPUTATION OF DEADLINES

In computing any time period specified in these procedures, the day of the event, act, or default that initiates the period will be excluded.

10 THE RESPONSE TO A REPORT OF PROHIBITED CONDUCT

10.1 Initial Assessment

Upon receipt of a report of alleged prohibited conduct by a student, the SJA³ will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. Where the identity of the complainant is known, the SJA will ensure that the complainant receives a written explanation of all available resources and options and is offered the opportunity to meet promptly to discuss those resources and options. Where a report is filed but the identity of the

³ Throughout these procedures, various University officials, such as the SJA, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.

complainant is unknown, the SJA will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with these procedures.

Upon completion of an initial assessment, or at any other stage of these procedures, the SJA may consider whether alternative dispute resolution, including mediation and restorative justice, is appropriate in consultation with **[insert appropriate parties]**. The SJA may refer any matter to alternative dispute resolution rather than continuing under these Procedures, regardless of whether or not a formal complaint is filed. Similarly, either the respondent or complainant may request to engage in alternative dispute resolution at any point in the process. Such request will be considered by the SJA and granted or denied at their sole discretion.

10.2 Actions Following an Initial Assessment

Upon completion of the Initial Assessment, the SJA will determine the course of action under these procedures as follows:

10.2.1 Where the Complainant Seeks Resolution Under These Procedures

In any case where the complainant reports prohibited conduct and requests resolution under these procedures, the SJA will promptly initiate an investigation. This process begins with the complainant making a signed, written Formal Complaint.

10.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures

Where a complainant does not wish to pursue a Formal Complaint under these procedures, the University will honor the complainant's wishes unless doing so would not adequately mitigate the risk of harm to the complainant or other members of the University community. The SJA will consider the following factors, among others, when determining whether to honor the complainant's wish that no resolution be pursued under these procedures:

1. Whether the respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
3. The increased risk that the respondent will commit additional acts of violence;
4. Whether the respondent used a weapon or force;
5. Whether the complainant is a minor;
6. Whether the University possesses other means to obtain evidence such as security footage; and
7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Regardless of whether the complainant chooses to file or participate in a Formal Complaint, the SJA will assist the complainant with reasonable and available accommodations or Interim Measures in appropriate cases. Where no Formal Complaint has been filed and an Interim Measure impacts the respondent, the respondent will be provided with written notice of the report, which includes, as known,

the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the complainant. Therefore, certain Interim Measures may not be available if the complainant wishes to maintain anonymity.

The SJA may also take proactive steps, such as training or awareness efforts, to address misconduct in a general way that does not identify the complainant.

Where the complainant declines to participate in an investigation, the SJA's ability to meaningfully investigate and respond to a report may be limited.

10.2.3 SJA Determination That the Complainant's Request(s) Can Be Honored

Where the SJA determines that the office can honor the complainant's request that no Formal Complaint be pursued under these procedures, the SJA may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the complainant and the University community. Those steps may include offering the complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.

The complainant may later choose to pursue a Formal Complaint within the time limits for filing a Formal Complaint under these procedures.

Upon receipt of new or additional information, the SJA may reconsider the complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

10.2.4 SJA Determination That the Complainant's Request(s) Cannot Be Honored

Where the SJA determines that the office cannot honor the complainant's request that no Formal Complaint be pursued under these procedures, the SJA will promptly initiate the resolution process under these procedures by filing Formal Complaint on behalf of the University community.

The SJA will notify the complainant that the office intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the complainant.

The SJA will make reasonable efforts to protect the privacy of the complainant. However, typically, the complainant's identity would have to be disclosed as part of the SJA's investigation.

The complainant is not required to participate in any proceedings that follow. However, if the complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the SJA's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

11 NOTICE TO COMPLAINANT AND RESPONDENT OF SJA ACTIONS

The SJA will promptly inform the complainant and the respondent of any actions undertaken that will directly affect either party, including the filing of a Formal Complaint.

12 ADVISORS AND SUPPORT PERSONS

At all stages under these procedures, both the complainant and respondent will be afforded the assistance of an advisor provided through the Office of the Student Codes Counselor to assist and advise.

As an alternative or in addition to utilizing an advisor offered by the University, each party has the right to select and consult with an advisor of their own choosing.

Both the complainant and respondent also have the right to a support person of their choice to provide emotional support.

Advisors and support persons may be any person, including an attorney, who is not a party or witness or otherwise involved in the case.

Advisors and support persons may accompany the party to all meetings, such as investigative interviews, and proceedings, but may not speak on the party's behalf or otherwise interfere with meetings or proceedings.

During hearings, advisors and support persons may confer with the party, and on the party's behalf, at the time and in the manner prescribed by the Hearing Chair, submit written requests and objections to the Hearing Chair.

Throughout the proceedings, advisors and support persons may also help the party prepare written submissions.

By accepting the role of advisor or support person, all advisors and support persons agree to comply with the rules and processes set forth in these procedures, including rules regarding process privacy.

The SJA will not interfere with the parties' rights to have an advisor and support person of their choice and fully expects advisors and support persons to adhere voluntarily to these procedures. In extreme cases, where either the SJA or Hearing Chair determines that an advisor's or support person's conduct undermines the integrity of these procedures, the advisor or support person will be prohibited from continuing to serve as advisor or support person in that case. The affected party will be permitted to obtain a substitute advisor or support person.

If the SJA determines that an advisor or support person has a conflict of interest, the advisor or support person will be prohibited from continuing in their role. The affected party will be permitted to obtain a substitute advisor or support person.

If a party seeks to have multiple support persons and/or advisors accompany them during an investigative interview or the hearing, the investigator during the investigation and the Hearing Chair during the hearing may request that the party limit the number of individuals accompanying them to three.

13 WRITTEN SUBMISSIONS

For all written submissions permitted by these procedures, other than the written objections and requests specifically permitted during hearings, the documents must be submitted by the parties. Written submissions from an advisor, support person, or other individual made on behalf of a party, other than the written objections and requests specifically permitted during hearings, will not be included in the investigative or hearing records.

Where a form has been developed by the SJA for a written submission, the party must use the form for the submission. Where required by these procedures, the party must sign the written submission.

14 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

At all stages of the process, all Cornell University community members are expected to provide truthful information. “Furnishing false information to the University with intent to deceive” *[NOTE: will need to be updated to align with the final version of the Code]* is prohibited and subject to disciplinary sanctions under the University’s Student Code of Conduct. This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

15 DUTY TO COOPERATE

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of reports and Formal Complaints of prohibited conduct under these procedures.

16 INTERIM MEASURES

16.1 Overview of Interim Measures

Following a report of prohibited conduct, the complainant and respondent will be provided information about an appropriate range of resources, support services, and measures to protect the safety and well-being of the parties and promote an accessible educational environment. Some such measures are Interim Measures, which are utilized pending resolution of a case under these procedures.

Interim Measures might be in the form of support or accommodations for or restrictions upon one or both parties.

Restrictive Interim Measures will be calibrated to address a perceived risk, but tailored to minimize to the extent possible the impact on the affected party or parties, whose underlying case of prohibited conduct has not yet been adjudicated on the merits.

Interim Measures are designed to accomplish a number of goals:

- to support and protect the safety of the complainant, the respondent, the University’s educational environment, and the University community;
- to deter retaliation; and
- to preserve the integrity of the investigation and resolution process pursuant to these procedures.

Interim Measures may be issued based upon a party's request or at the University's own initiative. In all instances, the University will, at its discretion, determine whether any given Interim Measure is reasonable and appropriate.

Interim Measures are available regardless of whether a Formal Complaint has been filed under these procedures, with the exception of a Temporary Suspension, which may be imposed only if a Formal Complaint has been filed.⁴

Interim Measures are available regardless of whether the complainant chooses to report the prohibited conduct to law enforcement.

Interim Measures become effective when notice of the Interim Measures is provided.

Where a Formal Complaint has been filed, typically, Interim Measures will remain in place pending the resolution of the Formal Complaint.

Violations of Interim Measures that are orders by a University official constitute prohibited conduct under the Code of Conduct.

16.2 Examples of Interim Measures

Potential Interim Measures include but are not limited to:

- "No-contact" orders (curtailing or prohibiting contact or communications between or among individuals);
- temporary suspensions of students; and
- temporary suspensions of University-registered organizations.

16.3 Issuance of Interim Measures

The SJA is responsible for issuing Interim Measures.⁵

Interim Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected.

In issuing Interim Measures, the SJA will make reasonable efforts to communicate with any impacted party to address safety and emotional and physical well-being concerns.

Where no Formal Complaint has been filed and an Interim Measure impacts the respondent, the respondent will be provided with written notice of the report, which includes, as known, the date, time,

⁴ There are a number of requirements that apply to Temporary Suspensions.

⁵ The power to impose a Temporary Suspension rests with the President, who may delegate to the SJA or other University official the authority to impose a Temporary Suspension.

and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the complainant. Therefore, certain Interim Measures may not be available if the complainant wishes to maintain anonymity.

Interim Measures are not, in and of themselves, permanent resolutions under these procedures. Rather, they are actions taken by the SJA based on information known at the time that the Interim Measures are issued. Accordingly, the SJA has the discretion to issue, modify, or remove any Interim Measure at any time additional information is gathered or circumstances change.

16.4 Requested Review of SJA's Decisions Regarding Interim Measures (Excluding Imposition of Temporary Suspensions of students and Temporary Suspensions of University-Registered Organizations)

Both parties may at any time request that the SJA issue, modify, or remove Interim Measures based upon a change in circumstance or new information that would affect the necessity of any Interim Measures.

Both parties may petition the Vice President of Student and Campus Life in writing to review the SJA's decision whether to issue, modify, or remove Interim Measures. A party may seek such review only if the Interim Measure directly impacts that party. A party seeks review by submitting a letter explaining the reason for their request for review and including any written evidence in support of such request. The materials should be submitted to the SJA, who will forward all materials to the VPSCL. The SJA will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the Vice President is considering issuing, modifying, or removing an Interim Measure, the Vice President will invite the non-petitioning party and the SJA to submit responses and will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the Vice President determines that the SJA's decision should be set aside, the SJA will be instructed to vacate the prior decision on Interim Measures immediately. At that time, the SJA may impose alternate reasonable and appropriate Interim Measures. The Vice President may, but is not required to, provide the SJA with guidance regarding appropriate alternate Interim Measures.

The Vice President will provide a written decision to the parties and the SJA. The decision of the Vice President is final; there is no right to appeal.

16.5 Temporary Suspensions Pending Resolution

Once a Formal Complaint has been filed, in extraordinary circumstances, where immediate action is necessary to protect the complainant or University community, the President or the President's designated representative in the form of the SJA or other appropriate University official will have discretionary power to suspend the respondent pending resolution of the underlying case.

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Suspension may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or designee.

Understanding that the underlying allegation of prohibited conduct has not been adjudicated on the merits, a Temporary Suspension may be imposed only when less restrictive Interim Measures are deemed insufficient to protect the complainant or University community.

In determining whether a Temporary Suspension is appropriate, the following factors, among others, should be considered:

- whether the respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
- whether there are facts indicating a risk that the respondent will commit additional acts of violence; and
- whether the respondent used a weapon or force.

Both parties may at any time request that the SJA or other University official acting as the President's designee impose, modify, or lift a Temporary Suspension based upon a change in circumstance or new information that would affect the necessity of a Temporary Suspension.

16.6 Review of Temporary Suspensions of Students and Temporary Suspensions of University-Registered Organizations

The University Hearing Board will conduct the review of a decision to impose a Temporary Suspension. The decision not to impose or to lift a Temporary Suspension is reviewed in accordance with the procedures set forth above.

The Respondent may petition the University Hearing Board in writing for a review of the decision to impose a Temporary Suspension.

The petitioning party commences the review by submitting a petition explaining the reason for their request and including any written evidence in support of such request. The materials should be submitted to the SJA, who will forward all materials to the University Hearing Board. The SJA will also inform the non-petitioning party that a petition has been filed and provide a copy of the petition to that party.

The non-petitioning party may submit a written response, but is not required to do so. The response should be submitted to the SJA. Any written response must be submitted within three (3) business days of receipt of the petition. The SJA will offer a written response to such petition within four (4) business days of receipt of the petition. For good cause, the University Hearing Board may grant requests for extensions.

The University Hearing Board will consider the petition no later than five (5) business days after it receives the petition, with exceptions for good cause. However, given the gravity of a Temporary Suspension, it is expected that a University Hearing Board will seek to meet this deadline.

If the University Hearing Board determines that good cause was not shown for the Temporary Suspension or that circumstances have changed so that the suspension is no longer necessary, it will instruct the SJA to lift the Temporary Suspension immediately. At that time, the SJA may impose alternate reasonable and appropriate Interim Measures. The University Hearing Board may, but is not required to, provide the SJA with guidance regarding appropriate alternate Interim Measures. The University Hearing Board will provide a written decision to the parties and the SJA as soon as practicable.

The University Hearing Board's decision is final; there is no right to appeal.

Where the University Hearing Board has already entertained a petition and issued a decision regarding a Temporary Suspension, it may decline a party's request to review a determination regarding a change of circumstance or new information.

17 PENDING CRIMINAL INVESTIGATIONS

In cases where there is a criminal investigation, the University process will run concurrently with such investigation. The University may grant temporary delays reasonably requested by law enforcement for evidence gathering.

18 NOTICE TO PARTIES UPON THE ISSUANCE OF A FORMAL COMPLAINT

At the issuance of a Formal Complaint, the SJA will notify the complainant and the respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Formal Complaint, the Code of Conduct, and these procedures. Such notice will:

- identify the complainant and the respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the factual allegations pertaining to the prohibited conduct;
- specify any sanctions that may be imposed, including the University's transcript notation policy;
- identify the investigator;
- include information about the parties' respective rights and obligations under the Code of Conduct and these procedures;
- inform the parties of their right to seek the assistance of an advisor provided by the University, a second advisor (including an attorney), and a support person for emotional support, all of whom may accompany the respective parties to meetings and proceedings;
- inform the parties of the range of available resources, including mental health and academic support resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

19 THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING

Both the complainant and the respondent may decline to participate in the investigation and/or hearing. However, the SJA may continue without a party's participation, completing the investigation, and the Hearing Board may issue sanctions based on the record available. Additionally, a party's decision not to participate in the investigation will limit the party's ability to participate in the hearing, as explained below.

19.1 Declining to Participate in the Investigation

If a party declines to participate in investigative interviews deemed necessary by the investigator, the party will forfeit the opportunity at the hearing to give a written opening statement, testify, and give oral and written closing statements.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Hearing Chair, upon the Chair's discretion, may permit the party to participate. If the Hearing Chair permits the party to participate in the hearing, the Hearing Chair will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the investigative record and report. The Hearing Chair will also re-open the pre-hearing submission process, if appropriate, so that the parties may respond to the new information.

19.2 Declining to Attend or Participate in the Hearing

Neither party is required to attend a hearing for the hearing to proceed. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed, and applicable sanctions may be imposed.

The parties are not required to testify at a hearing and the University Hearing Board will not draw a negative inference from a party's silence. However, where a party declines to testify, the University Hearing Board's ability to hear information necessary to make an informed decision in that party's favor may be limited.

20 DISMISSAL OF A FORMAL COMPLAINT

The SJA may dismiss a Formal Complaint and close a case where:

- there is no jurisdiction under these procedures;
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures; or
- the complainant fails or refuses to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures, including where the complainant cannot be located, the complainant fails or refuses to be available for interviews or meetings, or the complainant fails to provide necessary information.

If the SJA determines that a Formal Complaint should be dismissed, they will provide the complainant with a written decision explaining the reason for the dismissal and notify the respondent of the dismissal. The complainant will be given an opportunity to seek review by a University Hearing Board. The complainant must commence the review within ten (10) business days by submitting a letter explaining

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why they think the dismissal is erroneous and including any written evidence in support of their position. The materials should be submitted to the SJA, who will forward them to the University Hearing Board and Hearing Chair.

The SJA will also inform the respondent that a request for review has been filed and provide a copy of the complainant's letter and any supporting materials to the respondent.

The Hearing Chair in consultation with the University Hearing Board will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.

The University Hearing Board will conduct its review based upon a standard of clearly erroneous, meaning that the University Hearing Board will not disturb the SJA's decision by substituting its own judgment for the judgment of the SJA unless the University Hearing Board determines that the dismissal was clearly in error.

If the University Hearing Board determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures.

If the University Hearing Board determines that the dismissal was not clearly erroneous, it will affirm the dismissal.

The University Hearing Board will provide a written decision to the parties and the SJA. The decision of the University Hearing Board is final; there is no right to appeal.

In accordance with the procedures set forth below, after completing an investigation, the SJA may dismiss a Formal Complaint upon a threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing.

21 CONSOLIDATION OF REPORTS, FORMAL COMPLAINTS, AND HEARINGS UNDER THESE PROCEDURES

Generally, at the discretion of the SJA, multiple reports or Formal Complaints under these procedures that are factually related will be joined in one investigation. Formal Complaints joined in one investigation may be joined in one hearing or resolved in separate hearings, as discussed below.

At the discretion of the Hearing Chair, in consultation with the investigator, multiple Formal Complaints, whether or not joined in one investigation, and multiple investigations under these procedures may be joined in one hearing if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders. In determining whether to consolidate, the Hearing Chair will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings.

Multiple Formal Complaints and investigations may be so joined whether they involve single or multiple complainants or respondents. In all hearings involving multiple respondents, the Hearing Panel will consider singly the sanctions and remedies appropriate for each respondent.

22 ALTERNATE RESOLUTION OF A FORMAL COMPLAINT

[To be further developed – to include restorative justice model – in consultation with campus partners]

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Alternate Resolution, an administrative process. Participation in Alternate Resolution is entirely voluntary; the SJA will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

In every case, the SJA has discretion to determine whether the matter is appropriate for Alternate Resolution and to determine the appropriate terms.

Before the SJA approves the Alternate Resolution process or the terms of any Alternate Resolution, the SJA will determine that they have sufficient information about the matter to make these decisions. Before the Alternate Resolution process commences, both the complainant and the respondent must agree to explore Alternate Resolution as a potential means of resolution.

The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire Alternate Resolution process.

If the process is terminated for any reason, the matter will be resolved pursuant to the Formal Complaint resolution process under these procedures. For this reason, the investigator will not participate in Alternate Resolution.

The SJA will oversee the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation.

The SJA will consult separately with both parties and recommend to the parties the terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Board after a hearing under these proceedings. Both parties must agree to the terms before an Alternate Resolution agreement becomes effective. At any time before a written agreement is effective (see below), the complainant or the respondent may withdraw from the Alternate Resolution process, and the SJA may also, at their discretion, terminate the process.

If the respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the University, there will be a transcript notation consistent with University policy.

If both parties are satisfied with the SJA's recommendation, the matter will be resolved with a written agreement.

The SJA will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.

Once a party has returned the signed agreement to the SJA, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the SJA in person or in writing. Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the Formal Complaint.

After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the SJA will promptly notify both parties in writing that the agreement is final. Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the Alternate Resolution. Noncompliance may be subject to proceedings under the Student Code of Conduct.

If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the SJA nor the parties will disclose to the Hearing Chair, University Hearing Board, or University Review Board either the fact that the parties had participated in the Alternate Resolution process or any information learned during the process.

23 INVESTIGATIONS OF A FORMAL COMPLAINT

23.1 Overview of Investigations of a Formal Complaint

The SJA's investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the complainant, the respondent, and any third-party witnesses, will be treated with sensitivity and respect.

The investigation will generally include individual interviews of the complainant, the respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator. The investigative report will explain the scope of the investigation and summarize the information gathered. The investigator does not make any findings or recommendations as to responsibility, other than to make an assessment as to whether there is sufficient evidence for the case to proceed to a hearing to determine responsibility. In the event of a hearing, the final investigative record and report become part of the hearing record.

The complainant and the respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator;
- propose questions to be asked of witnesses and the other party; and

- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

At the hearing, the University Hearing Board will rely upon the final investigative record as well as any additional statements and information provided to the University Hearing Board pursuant to the procedures set forth below.

23.2 Time Frame of and Time Limitations During the Investigation

The investigation will be completed as expeditiously as possible.

Throughout the investigation, both parties will receive reasonable notice of any meetings at which their attendance is requested, and the parties will be updated at regular intervals on the status of the investigation.

The investigator will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties must adhere to these time limits.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will result in forfeiture of a party's ability to participate in that aspect of the investigation.

If a party declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, the party will have waived their right to do so upon the issuance of the final investigative record and report.

23.3 Investigative Interview Process

The investigator will gather information from the complainant, the respondent, and other individuals who have relevant information.

The parties will have the opportunity to request in writing witnesses they would like the investigator to interview and questions and topics they would like the investigator to ask witnesses, themselves, and the other party.

The investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the investigator will determine which witnesses to interview.

In general, the investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses may be audio recorded at the discretion of the investigator.

At the start of an interview session, the investigator will inform an interviewee that the session is being audio recorded, if applicable.

Parties and witnesses will receive copies of audio recordings of their own interviews, if applicable. If applicable, the parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews. Upon receiving the transcripts, the parties may listen to audio recordings of interviews of the other party and any witnesses during business hours at a secure and private campus location, with access facilitated by the SJA.

All persons being interviewed, including the parties, are prohibited from recording interviews. In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record. The failure will not constitute grounds for appeal.

23.4 Evidentiary Materials

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator to seek to obtain.

The investigator has the discretion to determine the relevance of any requested evidentiary materials, and, accordingly the investigator will determine what evidentiary materials to seek to obtain.

23.5 Expert Testimony and Materials

If the investigator determines that expertise on a topic will assist the University Hearing Board in making its determinations, upon the investigator's own initiative or at the request of a party, the investigator may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator deems relevant and reliable.

The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigative record.

Requested expert testimony or materials not included in the investigative record will not be considered by the University Hearing Board.

The results of polygraph tests and other "lie-detection" techniques are inadmissible in the proceedings.

23.6 Evidence to be Excluded or Redacted from the Record

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At the request of a party or witness, the investigator during the investigation or the Hearing Chair during the hearing process will exclude and, as necessary, redact content falling into one of the four categories enumerated below.

1. Past Findings: During both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own past school disciplinary findings. Such findings are admissible at the stage of the hearing for determining sanctions.
2. Mental Health Treatment and/or Diagnosis: Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own mental health diagnosis and/or treatment.
3. Sensitive Personal Identifying Information and Medical Records: Throughout these proceedings, sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded.

The investigator during the investigation and the Hearing Chair during the hearing process will also exclude and, as necessary, redact content that is impermissible or these procedures. Exclusions and redactions will be noted and thereby become part of the investigative record. Excluded or redacted content not included in the investigative record will not be considered by the University Hearing Board. The parties should make all requests for exclusions and redactions to the investigator during the investigation prior to the issuance of the final investigative record and report.

23.7 Draft Investigative Record and the Parties' Review

Upon completion of the investigation, the investigator will prepare and provide to the parties an electronic or hard copy of a draft investigative record that will include:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses, if applicable; and
- copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation.

As part of the investigative process, both parties have an opportunity to review and comment upon a draft investigative record before the investigator finalizes it and issues an investigative report.

The parties will have five (5) business days to review the draft investigative record and submit in writing:

- comments about content, including requests for redaction;
- requests for additional meetings with the investigator; and
- requests for the investigator to conduct further investigation or questioning.

The parties' written comments and requests will become part of the final investigative record.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Any extension granted to one party will be granted to the other party.

Delays simply to prolong the process will not be permitted and failure to make submissions within five (5) business days or any approved extensions will result in a forfeiture of the right to do so later.

23.8 Final Investigative Record and Report

The investigator will issue a final investigative record and an investigative report.

The investigative record is a compilation of the investigative interviews, evidentiary materials, and expert testimony and materials, if any.

In the report, the investigator will explain the scope of the investigation and summarize the information gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence.

The investigator will not render an opinion on responsibility, other than to make a threshold determination as to whether there is sufficient evidence to proceed to a hearing (see below).

The investigative report is not evidence.

23.9 Threshold Determination by Investigator and Review by Hearing Panel

Upon completion of the investigation, the investigator will make a threshold determination as to whether there is sufficient evidence to advance the Formal Complaint to a hearing.

If the investigator concludes that when viewing the evidence in the light most favorable to the complainant, there is no reasonable basis to find that the respondent committed the alleged prohibited conduct, the investigator will make the threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing. The proceedings will be terminated, the Formal Complaint dismissed, and the parties so notified.

If the investigator makes a threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing, the investigator will provide the parties with a written decision explaining the threshold determination.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must commence the review within ten (10) business days by submitting a letter explaining why they think the threshold determination is erroneous and including any written evidence in support of their position. The materials should be submitted to the SJA, who will forward them to the University Hearing Board and Hearing Chair (who provides guidance to the University Hearing Board but does not have a vote in a decision).

The respondent will be informed that a request for review has been filed and provided a copy of the complainant's letter and any supporting materials.

The Hearing Chair in consultation with the University Hearing Board will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.

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The University Hearing Board will conduct its review based upon a standard of clearly erroneous, meaning that the University Hearing Board will not disturb the threshold determination by substituting its own judgment for the judgment of the investigator unless the University Hearing Board determines that the threshold determination was clearly in error.

If the University Hearing Board determines that the threshold determination was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures.

If the University Hearing Board determines that the threshold determination was not clearly erroneous, it will affirm the threshold determination.

The University Hearing Board will provide a written decision to the parties and the SJA. The decision of the University Hearing Board is final; there is no right to appeal.

24 HEARINGS

24.1 Overview of Hearing Process

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by a five (5) member University Hearing Board and a non-voting Hearing Chair. The University Hearing Board shall be composed of three students, one faculty member, and one nonfaculty employee, all randomly drawn from the University Hearing Board and University Review Board pool.

A member of the University Hearing Board may voluntarily withdraw from participation for good cause. Knowledge of the events at issue shall not disqualify a member, unless they has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the members shall be excused by a vote of the University Hearing Board. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Board Chair. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Hearing Chair.

At least four members of a five-person University Hearing Board must sit for a given case, in addition to the nonvoting Hearing Chair, and at least three votes shall be required for any decision.

The hearing is intended to provide the parties with a fair opportunity to present relevant information to the University Hearing Board and enable the University Hearing Board to make informed decisions regarding responsibility and sanctions/remedies.

The parties are entitled to provide brief written opening statements and oral and written closing statements and to testify.

Through a pre-hearing submission process explained below, the parties are also entitled to propose questions/topics for those testifying, including questions either party believes should be asked of the opposing party by the Hearing Board.

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The parties will also be asked to submit a written or recorded Impact/Mitigation Statement, which may be submitted up to the start of the hearing.

At the request of either party, the parties with their advisor(s) and support person, if applicable, will be in separate rooms.

The University Hearing Board and Hearing Chair exclusively conduct all questioning.

24.2 Presumption of Non-Responsibility and Standard of Proof

The respondent will be presumed “not responsible” unless and until a University Hearing Board determines the respondent is responsible.

The University Hearing Board will determine whether the respondent is responsible by a majority vote using a XXYY standard of proof.

*[*****NOTE from Counsel – the standard of evidence to be required is an important discussion. We believe serious consideration must be given to this topic by the UA, university administration, and the Title IX Coordinator. Policy 6.4 cases have been set at the “preponderance of evidence standard” since the Obama administration’s Title IX guidance on this. That guidance has since been revoked by the Trump administration. OCR has now suggested they will require the same standard to be used in all student conduct cases (whether preponderance or clear and convincing). Whether this guidance is legally binding is unclear at this time. In contrast to Policy 6.4, the current Code of Conduct sets a clear and convincing evidence standard. We need a discussion about how to best address this very complex issue.]*

If the University Hearing Board does not find the respondent responsible for any prohibited conduct under the Code of Conduct, it will dismiss the case. If the University Hearing Board finds that the respondent is responsible under the Code of Conduct, it will consider appropriate sanctions and remedies.

24.3 Positions of University Hearing Board and Hearing Chair

The Hearing Chair will provide procedural guidance to the University Hearing Board and make evidentiary and procedural rulings both prior to and during the hearing.

The Hearing Chair will draft the University Hearing Board decision, reflecting the University Hearing Board’s findings of fact and rationales for their determinations regarding both responsibility and sanctions and remedies. The Hearing Chair will obtain the University Hearing Board’s approval before issuing a written decision.

The Hearing Chair will be non-voting.

24.4 Notice of Hearing

At the completion of an investigation, if a case is referred to a University Hearing Board for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at

issue; a brief summary of the alleged prohibited conduct; the date, time, and place of the hearing; the name of the Hearing Chair; and, if determined, the University Hearing Board members.

If the notice does not include the name of the University Hearing Board members, the parties will be so notified, in writing, at a later time, prior to the hearing.

All efforts will be made to provide the Notice of Hearing no later than seven (7) business days prior to the hearing and to schedule the hearing as soon as practicable.

24.5 Request to Reschedule Hearing

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

24.6 Newly Discovered Evidence

If after the issuance of the final investigative record and investigative report and prior to the issuance of the University Hearing Board decision, a party or the investigator seek to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant admission of the evidence such request upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where a Hearing Chair permits a party to introduce a newly discovered witness or evidence, to prevent surprise to the other party, the Hearing Chair will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Hearing Chair will also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

24.7 Pre-Hearing Submissions by the Parties

Prior to a hearing, the parties will be asked in writing by the SJA to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

There are two stages at which the parties will be asked to make Pre-Hearing Submissions.

- First, the parties will be asked to submit in writing (1) opening statements and (2) names of any requested witnesses.
- Second, once witnesses are approved, the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, including themselves, as explained below.

All Pre-Hearing Submissions are optional but waived if not completed by the stated deadlines, including any approved extensions.

Prior to the hearing, the SJA will distribute each party's Pre-Hearing Submissions to the other party for their review.

24.7.1 First Pre-Hearing Submission – Written Opening Statements and Witness Requests

Upon providing the parties with copies of the final investigative record and report, the SJA will instruct the parties, in writing, that they have the opportunity to prepare a written opening statement and submit a written list of proposed witnesses.

The parties will be given five (5) business days for such submissions.

Within the five (5) business days, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

24.7.2 Written Opening Statements

The parties may prepare a written opening statement, not to exceed 2500 words.

These statements are the parties' opportunity to tell the University Hearing Board why it should find in the party's favor.

These statements must be signed by the parties.

The parties may not add or address information not contained in the investigative record, as the University Hearing Board will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The University Hearing Board does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements. The parties should include specific page citations to the final investigative record.

24.7.3 Witness Requests

All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Panel. If a party wants the University Hearing Board to hear directly from a witness, the party must submit a written request within the five (5) business days.

Such a request should include:

1. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify.
2. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the University Hearing Board in determining responsibility. For example, the party should explain why a witness's interview statement contained in the final investigative report is not sufficient for the University Hearing Board to make its finding.
3. The parties are encouraged to include proposed questions for or general topics to be addressed by each witness. The parties will have an opportunity to supplement and revise their requests for

questions and topics once they learn who will testify at the hearing. However, by indicating proposed questions and topics at this juncture, the parties will help the Hearing Chair and University Hearing Board understand why the parties would like to hear from specific individuals. The parties may request only witnesses who were interviewed by the investigator during the investigative process.

24.7.4 Second Pre-Hearing Submission – Questions and Topics

The Hearing Chair and University Hearing Board will review the parties' witness requests. After consultation with the University Hearing Board, the Hearing Chair will rule on the parties' requests.

The Hearing Chair, in consultation with the University Hearing Board, may call witnesses not requested by the parties.

The parties will be provided with a witness list and informed in writing that they have an opportunity to propose, also in writing:

1. Questions and topics for the witnesses. The parties may:
 - a. revise and supplement any questions and topics they already submitted and
 - b. propose new questions and topics.
2. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture, but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.

The Hearing Chair will establish a reasonable deadline for the submissions, typically no longer than five (5) business days.

Within the deadline established by the Hearing Chair, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

In exceptional circumstances, the Hearing Chair, in consultation with the University Hearing Board, may permit late requests only where the necessity for such could not have been reasonably anticipated in advance.

The Hearing Chair, in consultation with the University Hearing Board, will determine which of the parties' requested questions will be asked or topics covered.

The Hearing Chair will approve in substance all questions or topics that are relevant and that are not prohibited by these procedures or applicable laws, unduly prejudicial, or cumulative of other evidence.

At the hearing, the parties will have an opportunity to propose additional questions and topics.

The University Hearing Board and Hearing Chair will be permitted to ask their own questions.

24.8 Impact/Mitigation Statement

The parties will be permitted, but not required, to prepare a written or recorded Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing.

The statements would be distributed to the University Hearing Board only if the University Hearing Board finds the respondent responsible. The statements would be distributed to both parties only upon a finding of responsibility, and, in that instance, when the SJA distributes the University Hearing Board's written decision to the parties.

24.9 Hearing Process and Format

24.9.1 Overview of Hearing Process and Format

All hearings will be private. The only persons present will be the parties, their advisor(s) and support person, witnesses (when testifying), the University Hearing Board and Hearing Chair, the investigator, and any staff necessary for the conduct of the hearing.

At the request of either party, the parties with their advisor(s) and support person, if applicable, will be in separate rooms.

If separated, the parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies and gives their oral closing statement, generally, they should do so in the presence of the Hearing Panel and Hearing Chair; they may be accompanied by their advisors and support persons.

Witnesses may be present only for their own testimony.

The Hearing Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format, providing the parties with equal opportunities to participate. The Hearing Chair may adjourn the hearing, once commenced, and later reconvene the hearing in consideration of factors including, but not limited to, the unavailability of a witness, party, Hearing Chair, University Hearing Board member, or needed personnel; inclement weather; late hour; or in order to make an evidentiary or procedural ruling.

Formal rules of evidence will not apply.

Evidence that was excluded or redacted from the investigative record as impermissible under these procedures will not be admissible at the hearing.

Typically, the format of the hearing will be as follows:

- Introduction by the Hearing Chair. The Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony by the complainant.
- Testimony by the respondent.
- Testimony by any witnesses.
- Closing statements by the complainant followed by the respondent.

24.9.2 Testimony

Testimony is conducted through a question-and-answer format.

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Questioning will primarily be conducted by the University Hearing Board, but the Hearing Chair may supplement the University Hearing Board's questioning. The Hearing Chair will ask persons being questioned to affirm that they will testify truthfully.

Both the complainant and the respondent may testify or decline to testify and may make their election when their turn to testify arises.

If a party testifies, they are expected to answer all questions asked.

At the conclusion of testimony by any individual, there will be a brief adjournment so that the parties may propose additional questions, which may be approved at the discretion of the Hearing Chair, in consultation with the University Hearing Board. A party who testifies will be given full opportunity to propose supplemental questions that they wish to answer. The Hearing Chair, in consultation with the University Hearing Board, reserves the right to call a witness not on the witness list but previously interviewed by the investigator. In such case, the parties will be given time to propose questions for the witness.

If a party proposes a witness not requested prior to the hearing, but interviewed by the investigator, the Hearing Chair, in consultation with the University Hearing Board, may grant the request where the necessity for such could not have been reasonably anticipated in advance.

24.9.3 Closing Statements

The parties may provide both oral and written closing statements.

This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions.

The parties may not add or address information not contained in the hearing record, as the University Hearing Board will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The University Hearing Board does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Hearing Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Hearing Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Hearing Chair may provide the parties with limited additional time to submit their statements.

Each party's written statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Hearing Chair, and University Hearing Board for their review.

These statements must be signed by the parties.

24.10 Deliberations on Findings of Responsibility

After closing arguments, the University Hearing Board may begin its deliberations.

Deliberations will be in private and they will not be audio-recorded.

The University Hearing Board will make its decision based upon a majority vote.

Deliberations will be completed as expeditiously as possible.

24.11 Deliberations on Sanctions and Remedies

A Hearing Board that finds the respondent responsible will continue its deliberations to consider sanctions and remedies.

It will issue its findings on responsibility and sanctions/remedies simultaneously.

Prior to deliberating on sanctions and remedies, the Hearing Chair will distribute to the Hearing Board any written or recorded Impact/Mitigation Statements previously submitted by the parties, subject to any redactions required by these procedures.

If the respondent has a Cornell disciplinary record, a known disciplinary record from another institution, or a known criminal conviction, prior to deliberating on sanctions and remedies, the Hearing Chair will also distribute to the University Hearing Board a copy of such disciplinary and/or criminal records. (Where an educational record, including a Cornell disciplinary record, is being considered solely for sanctions, it will not be shared with the complainant.)

Deliberations will be in private and they will not be audio-recorded.

Deliberations will be completed as expeditiously as possible.

The Hearing Chair may support the deliberative process deliberations but may not express views on the merits and may not vote.

The University Hearing Board will determine sanctions and remedies by a majority vote.

In determining sanctions and remedies, the University Hearing Board will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the complainant;
- the impact of the prohibited conduct and sanctions and remedies on the community;
- the impact of the prohibited conduct and sanctions and remedies on the respondent;
- prior misconduct by the respondent, including the respondent's previous school disciplinary record, both at Cornell University and elsewhere, and any criminal convictions;
- the goals of the Code of Conduct and these procedures; and
- any other mitigating, aggravating, or compelling factors.

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The Hearing Panel may impose one or more of the following sanctions and remedies for students:

- Measures similar in kind to the Interim Measures specified under these procedures.
- Appropriate educational steps (such as alcohol or drug education, reflection papers, counseling, or directed study).
- Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Student Conduct Administrator.
- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer.
- Restrictions or loss of specified privileges at the University for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.
- Suspension from the University for a stated period not to exceed five (5) 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 will be submitted to the SJA 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 SJA agrees with the respondent's petition, after consulting with appropriate professional colleagues and receiving approval of the Hearing Chair, the SJA may permit the readmission without the petition being considered by the University Hearing Board.
 - If the University Hearing Board denies the petition, the respondent may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the Hearing Panel.
 - While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree.
- Dismissal (i.e., expulsion) from the University.

The Hearing Panel may impose one or more of the following sanctions and remedies for University-registered organizations:

- Measures similar in kind to the Interim Measures specified under these procedures.
- Appropriate educational steps for members (such as alcohol or drug education, reflection papers, counseling, or directed study).
- Community work performed by members, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Student Conduct Administrator.
- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer.
- Restrictions or loss of specified privileges at the University for a specified period of time.
- Written reprimands.
- Dismissal, i.e., rescission of permission to operate on University property.

Ordinarily, the penalty for a second violation, whenever such violation occurs, should be more severe than for a first violation.

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.

Without intending to limit the assessor's ultimate discretion, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily should be imposed. Such violations include acts of violence; violations that are motivated by bias; or any other violation that substantially threatens the University's educational mission or property or the health or safety of University community members.

The University Hearing Board may also recommend to the SJA that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct. Sanctions and remedies will be effective immediately unless otherwise specified by the University Hearing Board.

24.12 Decision of the University Hearing Board

The University Hearing Board will issue a written decision as expeditiously as possible upon completion of deliberations. The SJA will provide the written decision to the parties simultaneously and as soon as practicable.

The decision will include:

- The specific prohibited conduct for which the respondent was found responsible and not responsible,
- the findings of fact and the rationale for the University Hearing Board's determinations regarding both responsibility and sanctions, and
- any dissenting opinion.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the University Hearing Board deems appropriate.

The decision will include instructions and time limits for appeals.

Both the complainant and the respondent will be informed simultaneously of any sanctions and remedies, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

24.13 Interpretation

Because the student conduct system utilizes the decision of the University Hearing and Review Boards to define or interpret violations, public records of all decisions of those boards shall be kept on file in the SJA, including a brief summary that describes the nature of the case and its disposition but with names of individuals and other identifying information redacted.

24.14 Hearing Record

An audio recording will be made of all hearings, but not of deliberations. The parties may listen to the audio recording of the hearing during business hours at a secure and private campus location, with access facilitated by the SJA.

In the event of any failure rendering the audio recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input from the parties, any witnesses whose testimony is at issue, the University Hearing Board, and Hearing Chair. Such failure will not constitute grounds for appeal.

Individuals appearing before the University Hearing Board, whether as a party or witness, are prohibited from recording any portion of the hearing.

University Hearing Board members are also prohibited from recording any portion of the hearing.

Immediately after issuing the University Hearing Board decision, members will destroy any notes they took during the hearing.

The hearing record will include: the audio recording of the hearing, the University Hearing Board's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, written submissions permitted by these procedures made to the Hearing Chair or during the hearing, and the parties' Impact/Mitigation Statements (if considered by the University Hearing Board). The hearing record may also include a transcript of the hearing.

25 APPEAL OF A UNIVERSITY HEARING BOARD DECISION

Both the complainant and the respondent may appeal a decision of the University Hearing Board. Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by a three (3) member University Review Board and a non-voting Hearing Chair. The University Review Board shall be composed of one student, one faculty member, and one nonfaculty employee, all randomly drawn from the University Hearing Board and University Review Board pool.

A member of the University Review Board may voluntarily withdraw from participation for good cause. Knowledge of the events at issue shall not disqualify a member, unless they has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the members shall be excused by a vote of the University Review Board. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Board Chair. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Hearing Chair.

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The member of the University Hearing Board selected to serve on any one University Review Board will be selected in the same manner as the members of a University Hearing Board are selected to serve on any one University Hearing Board. However, no person who served on the University Hearing Board will sit on the University Review Board in the same case.

All appeals will be based solely upon the hearing record. When relevant to a stated ground for appeal, the University Review Board may supplement the record on appeal with evidentiary materials excluded or redacted from the investigative record or newly discovered evidence. If the University Review Board reverses a finding of not responsible, the record on appeal will be supplemented with the parties' Impact/Mitigation Statements.

Appeals may be brought only upon one or more of the following grounds:

1. The sanctions or remedies are not commensurate with the injury/violation or are unjust.
2. A University official or officials, including the University Hearing Board, assigned responsibility for performing specific functions by these procedures, violated the fair application of relevant University procedures, and such violation may have had a prejudicial effect upon the outcome.
3. A University official or officials, including the University Hearing Board, assigned responsibility for performing specific functions by these procedures, committed an error in interpreting the Code of Conduct, these procedures, and such error may have had a prejudicial effect upon the outcome.
4. The University Hearing Board rendered a decision that is clearly erroneous.
5. New evidence was discovered after the decision that could not have readily been discovered before the decision and that would have probably changed the outcome.

The appealing party commences an appeal by submitting a written statement to the SJA within ten (10) business days of service of the University Hearing Board's decision.

The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement will be limited to 3500 words.

Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

Within the ten (10) business days, the appealing party may request an extension of time by submitting a request to the SJA explaining the reason(s) for the request. The University Review Board will have discretion to grant such a request upon a finding of good cause for the delay.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the SJA. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party.

The response will be limited to 2500 words.

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The University Review Board will establish a reasonable schedule for issuing a written decision, typically no later than thirty (30) business days after receipt of the non-appealing party's submission or the time for submission has expired.

The decision will be final and binding on all parties.

Any decision will be based solely upon the hearing record and, in appropriate cases, upon a showing of new evidence relevant to the ground for appeal.

The decision must be by a majority vote of the University Review Board and will include the rationale for the University Review Board's decision and any dissenting opinion. Findings of fact will not be set aside unless clearly erroneous.

Harmless error will be ignored.

The University Review Board may affirm the decision of the University Hearing Board or sustain any of the above-specified grounds for appeal, in which case the University Review Board may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original University Hearing Board for clarification or reconsideration consistent with the University Review Board's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case;
- remand a case for a new hearing to either the original University Hearing Board or a newly composed University Hearing Board; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original investigator or to a new investigator.

If the University Review Board calls for the admission of new evidence, if possible, it will remand the case to the University Hearing Board from which it originated for a new hearing.

Upon remand from the University Review Board, as necessary and possible, a University Hearing Board may remand a case to the investigator from which it originated for further investigation.

26 REQUEST FOR A STAY PENDING APPEAL

The University Review Board has discretion to stay any sanctions pending a final decision on the appeal. It may, but is not required to, stay a sanction where the appealing party demonstrates the need for a stay by a clear showing.

An application for a stay must be submitted to the SJA. The SJA will provide a copy of the stay application to the Appeal Panel and the other party, who is entitled to respond to the stay application by submitting to the SJA a written response.

The University Review Board will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application.

The University Review Board has discretion to reconsider its decision on a stay at any time during the appeal.

The stay expires at the conclusion of the appeal.

27 TRANSCRIPT NOTATIONS AND WITHHOLDING DEGREES

Pursuant to the Office of the University Registrar transcript notation policy for student conduct matters, the following actions will result in a permanent transcript notation for a student:

- dismissal (i.e., expulsion) after a finding of responsibility;
- suspension after a finding of responsibility; and
- withdrawal from the University while a Formal Complaint is pending.

If the underlying finding of responsibility is vacated for any reason, the transcript notation will be removed.

Degrees will not be awarded to the respondent while a Formal Complaint under these procedures is pending. The University may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.

The University will temporarily note the respondent's transcript once a Formal Complaint is made pursuant to these procedures. The University will temporarily note the respondent's transcript if the respondent has been temporarily suspended pursuant to these procedures. These temporary notations may not be appealed and will be removed upon resolution of the underlying matter.

28 RESTORING RESPONDENT'S REPUTATION UPON A DISMISSAL OF A FORMAL COMPLAINT

Upon completion of all proceedings, including any appeals, if a Formal Complaint has been dismissed, where appropriate, the SJA will attempt to restore the reputation of the respondent. To the extent permissible by law and University policy, the SJA may take such steps as deleting records and, unless the respondent prefers otherwise, notifying persons who participated in the proceedings of the dismissal and/or making a public announcement of the outcome.

29 Potential Hearing Chair, University Hearing Board, or University Review Board Member Conflict of Interest

Upon receipt of written notice of the identity of the Hearing Chair and/or the members of the University Hearing Board,⁶ if a party believes that they have a potential conflict of interest with either a University

⁶ Notice of the Hearing Chair may precede notice of the University Review Board members.

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Hearing Board member or Hearing Chair, the party should notify the SJA, who will forward the notification to the Hearing Chair. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Chair has discretion whether to remove a member of the University Hearing Board or to recuse themselves. Upon receipt of written notice of the identity of the members of the University Review Board, if a party believes that they have a potential conflict of interest with an University Review Board member, the party should notify the SJA, who will forward the notification to the relevant University Review Board member. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. University Review Board members have discretion whether to recuse themselves.