

Cornell University
University Assembly

Agenda

Codes and Judicial Committee

Cornell University Assembly

Agenda of the November 25, 2019 Meeting

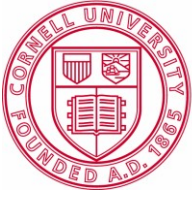
1:00 PM – 2:30 PM

Day Hall, B12

- I. Call to Order**
 - a. Call to Order
- II. Approval of the Minutes**
 - a. November 11, 2019
- III. Business of the Day**
 - a. Campus Code of Conduct
 - i. Continuation of work
 - b. University Hearing and Review Boards
 - i. Update on subcommittee work
- IV. Adjournment**

Attachments

- 1. CJC Meeting Minutes: November 11, 2019
- 2. Code edits by the OJA (2) documents



Cornell University
University Assembly

109 Day Hall
Ithaca, NY 14853
p. 607.255.3175
f. 607.255.2182
e. assembly@cornell.edu
w. <http://assembly.cornell.edu>

Minutes

Codes and Judicial Committee
University Assembly
November 18th, 2019
1:00pm – 2:30pm
305 Day Hall

I. Call to Order

- a. Call to Order
 - i. There were not enough members present for quorum. The Committee moved into an informal discussion on potential edits for the draft Code of Conduct revisions. Suggestions and agreements from the discussion were noted in the Google Doc in blue font. L. Kenney asked that members look into the highlighted language on the second page: “If a question-and-answer period [...] invidious categories” before the next meeting.

II. Approval of Minutes

- a. November 11, 2019
 - i. **Tabled** to the next meeting.

III. Adjournment

- a. Adjournment
 - i. There was no adjournment of the meeting.

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

C. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement

The following basic policies will apply in situations where misconduct violates both a University conduct regulation and the public law:

1. The Code does not govern criminal conduct, though criminal conduct can violate both the Cornell Student Code as well as criminal statutes. **However, the ability to be a Cornell student is not a right, and is a distinct and separate issue from being a member of a community governed by laws.** Thus, the Judicial Administrator [~~Replace with new title, once established~~] has discretion to pursue even serious breaches of the law under the Campus Code of Conduct. Timely dealing with alleged misconduct is vital. Nevertheless, the Judicial Administrator should consider whether justice counsels withholding the exercise of University jurisdiction until public officials have disposed of the **conduct** case by conviction or otherwise.
2. When the Judicial Administrator determines that misconduct does not constitute a serious breach of the law and that the interests of justice would be served by handling such misconduct within the University jurisdiction he or she shall:
 - a. attempt to exercise jurisdiction in a manner to avoid dual punishment for the same act;
 - b. cooperate with public officials so that the exercise of University jurisdiction ordinarily will not be followed by public prosecution of the individual's misconduct; and
 - c. withhold the exercise of University jurisdiction, when prompt public prosecution is anticipated or is under way, until public officials have disposed of the case by conviction or otherwise.
3. Policies covering conduct that violates both a University conduct regulation and the public law, where feasible, should be based on jurisdictional understandings and procedures jointly developed and periodically reviewed by University and local officials. To the maximum extent feasible, jurisdictional understandings shall be made known to the University community.

D. Other Policies on the University's Role in Public Law Enforcement

1. When public officials apprehend an individual for a violation of the public law, whether or not the misconduct is also a violation of a University conduct regulation, the University shall neither request nor agree to specially advantageous disposition of an individual's case by police, prosecutors, or judges solely because of that individual's status as a member of the University community. Nonetheless, the University stands ready to assist student defendants and to cooperate with public officials to promote equitable application of the law. Should a student charged with law violation request assistance from the University, a representative of the Office of the Dean of Students or Office of the University Ombudsman will meet with such student and may advise him or her and, if requested, may facilitate the student's retention of suitable counsel. If the law violation does not also constitute a violation of a University conduct regulation, and if the student defendant consents, the University ordinarily will cooperate with the request of appropriate law enforcement officials for programs of probation or rehabilitation. Notwithstanding the above provisions, if the prosecution, the complainant, and the accused all

~~consent, minor breaches of the law may be handled exclusively within the University jurisdiction, except in case of repeat offenses.~~

2. The University's cooperation with law enforcement, at the request of public officials, shall be exercised in each particular case with a view to safeguarding the interests of the educational community, especially that community's confidence in the University.

Transcript Notations

~~Transcript notations related to Code proceedings, including during the pendency of a conduct matter, [MRH add after] or when a student withdraws or takes a leave of absence with a conduct charge pending, will be made in accordance with the University Registrar's transcript notation policy (<https://registrar.cornell.edu/grades-transcripts>).~~

All notations will conform to the Cornell University Registrar's transcript notation policy, and include the following:

1. Temporary transcript notation:
 - a. When a student takes a leave with conduct charges pending;
 - b. When a student has been temporarily suspended; and,
 - c. When a conduct matter is charged to a University Hearing Board.
2. Permanent transcript notation:
 - a. Dismissal after a finding of responsibility,
 - b. Suspension after a finding of responsibility, and
 - c. Withdrawal from the institution while such a matter is pending.

Cornell Student Code of Conduct

Click here for [[Cornell Student Code of Conduct](#)] PDF version.

Section A: Principles and Values

Section B: Definitions

Section C: Scope

Section D: Prohibited Conduct

The Cornell *Student Code of Conduct (Code)* contains the University's behavioral standards for its students.

For information about the *processes* for investigating and resolving alleged violations of the Code, please review, *Student Conduct Procedures* or *Conduct Procedures for Recognized Student Organizations and Recognized Sororities and Fraternities*.

Separate policies and procedures govern:

Academic Integrity, <http://theuniversityfaculty.cornell.edu/academic-integrity/>; and *Sexual Misconduct, Prohibited Bias, Discrimination, Harassment, Dating & Intimate Partner Violence, and Related Misconduct: Cornell Policy 6.4. 4.*

In addition, individual colleges or programs may have student conduct expectations and policies supplemental to this Code; those policies may be enforced through procedures established by the respective college or program.

Some additional resources and links may be found at the end of this Policy.

SECTION A: INTRODUCTION

A. Principles and Values

Cornell University has developed a **Student Code of Conduct** (“Code”) to communicate Cornell’s *behavioral* expectations applicable to all Cornell students, registered student organizations, and recognized living groups (fraternities and sororities) on Cornell’s campuses or property, excepting the Weill Cornell Medicine campuses. Behavioral standards contained in the Code are based in Cornell’s historical educational origins and mission. These standards reflect the founding vision and values of Ezra Cornell and Andrew Dickson White. Cornell’s educational legacy embodies personal growth through higher learning and Ezra Cornell’s aspiration to ‘... *found an institution where any person can find instruction in any study*’.¹ This Code is intended to preserve a higher education community and residential campus where ‘any person’ in the community can pursue their scholarship in a secure and educationally nourishing environment.

¹ Ezra Cornell, First Inaugural Address, Oct 7, 1868; *Motto* magazine, Top Motto Among All American Colleges and Universities, “*Top 10 Motto List*”, 2007.

University Counsel Draft_082919 Substantive Sections for Comments and Review

Cornell's institutional legacy as a private university combined with its public land-grant mission and membership among outstanding Ivy League peers makes Cornell distinguishable from any other institution of higher learning. Critical core values embrace the *inclusion of all persons*, *civility* toward others, the attainment of genuine *understanding* versus mere tolerance of personal differences, a breadth and continuum of life *perspectives and experiences*, the expression of *bold ideas*, and *civil discourse* between community members *focused upon ideas* not personal attacks. Essential to Cornell's attainment of its distinctive higher education mission and effective operation is the protection and preservation of its teaching, learning, and research environments.

The Student Code contains not only Cornell's conduct expectations and standards, but non-punitive educational objectives embodying opportunities to demonstrate growth from mistakes, restorative justice, and sanctions inclusive of and advancing Cornell's educational goals.

The principle of freedom with responsibility is central to Cornell University. Freedoms to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully are essential to academic freedom and the continuing function of the University as an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

Thus, individual rights are central to Cornell's history and identity. The Code is drafted to safeguard individual rights as well as those rights conferred by the University reflecting its dedication to fairness in the treatment of all members of the university community. The University must simultaneously address misconduct when it unduly imposes upon the inherent rights of others or compromises the effective operation of the University in the fulfillment of its educational mission.

When individuals, recognized sororities, fraternities or student organizations are alleged to have violated the Code's academic or behavioral expectations, the Code provides the framework to address allegations of prohibited conduct. **Student Conduct Procedures** ("Procedures") are used to uphold the Code and instruct participants in the conduct process, the respective rights and responsibilities of participants, and the roles of University representatives in the conduct processes at each respective stage – alleged violations, administrative resolution versus hearing procedures and, if applicable, the imposition of sanctions.

Authority and administration of the Code and Procedures are vested with the ***Vice President for Student and Campus Life (SCL)***, in consultation with the University Assembly. Student conduct matters are delegated to the Office of Student Conduct, overseen by the Dean of Students. The conduct of University *faculty* and *staff* are separately administered pursuant to policies and procedures applicable to employees of the University.

The Code does not govern criminal conduct, though criminal conduct can violate both the Cornell Student Code as well as criminal statutes. Accordingly, because violations of *public laws* are handled through criminal prosecution or civil litigation for entirely distinct public policy purposes, the Cornell Student Conduct Code process and separate criminal or civil processes

may run concurrently where the alleged conduct implicates both the Code and local, state or federal criminal or civil statute(s) and ordinances.

The Commitment to Responsible Speech and Expression

Cornell University has long evidenced its commitment to free expression within its Code of Conduct.

- Only members of the Cornell community or permitted users may hold or host events on Cornell-owned property. Subject to certain source of funding requirements, any registered or recognized campus organization or living group is free to invite a speaker to address its own membership in a private, closed meeting under ground rules set by the inviting organization. Such organizations are also encouraged to enrich campus discourse by inviting speakers to address the broader community. Regulations governing both private group and public speaking events are found at: <https://ccengagement.cornell.edu/campus-activities/event-planning> <http://eventplanning.cornell.edu/>
- Freedom of expression, within commonly accepted limits of safety and civility, is a paramount value in a university community. The University recognizes and respects rights to academic freedom.
- In a university community, as in society as a whole, freedom of speech cannot be absolute; expression being subject to both reasonable time, place, and manner restrictions and to limited exceptions defining conduct outside the parameters of protected expression. University rules regarding the erection of symbolic structures on campus, use of campus facilities, and demonstrations can be found at: *[new url linking to Policy Outdoor Space Working Group language will be included here]* <https://ccengagement.cornell.edu/campus-activities/event-planning/reserving-space> <http://news.cornell.edu/stories/2019/02/new-event-planning-policies-unveiled-following-student-input> The rights of recruiters are found at <https://hr.cornell.edu/our-culture-diversity/diversity-inclusion/equal-opportunity-and-affirmative-action/equal-education> together with the Law School statement on the Solomon Amendment: <https://www.lawschool.cornell.edu/spotlights/Military-Recruitment-at-Cornell.cfm> Within commonly accepted legal limits, freedom of speech is of paramount value in our university community.
- Once members of the university community have extended an invitation to a speaker, others will not be permitted to disrupt the speech, or interfere with the rights of others to hear the speaker on the grounds that any given person finds the expression offensive, stupid, immoral, or dangerous.
- The University President has the ability and the duty to protect the community and maintain public order in rare cases where imminent threats to health and safety require it. Any intervention by the President in campus rights of expression and assembly shall be timely reported to the community, with an explanation of the basis for the actions taken.
- The President shall consult with the University Assembly and other elected campus governance bodies on a regular basis to ensure that the community's fundamental commitments to free expression and respect for others are being safeguarded.

SECTION B: DEFINITIONS

1.0 Definitions. The following definitions apply to the Code.

University Counsel Draft_082919 Substantive Sections for Comments and Review

1.1 The term "campus" includes property owned, leased, used, or controlled by Cornell; it also includes streets, sidewalks, and pathways adjacent to or in the immediate vicinity of Cornell campus or property.

1.2 The term "University" means Cornell University, as well as any affiliated programs or virtual spaces including, but not limited to, University programs in remote locations within or outside of New York or the United States.

1.3 The term "student" includes:

- o Undergraduate, graduate, medical, veterinary, executive, and professional students upon their commencement of attendance, defined as the earliest of: the first day of the term for which they were admitted; their first day residing in a university residence hall; or the first day of a university-sponsored pre-orientation trip, activity, or academic program for which they are participating – whichever is earliest. A student's status ends – with some exceptions noted in related Conduct Procedures – when a student withdraws or is withdrawn from the University, is dismissed (expelled) from the university, or their enrollment is terminated.

SECTION C: SCOPE

2.00 Scope

The Code covers behaviors by all Cornell students, and University registered or recognized student organizations and living groups (fraternities and sororities), excepting Weill Cornell Medicine campuses. The jurisdiction and scope of the Code is addressed in greater detail in the Student Conduct Procedures, however, the Code generally applies to campus owned or controlled properties as well as the operation of programs associated in any way with University activities, however, conduct expectations can also apply to certain behaviors that occur off-campus and implicate the health and safety of individuals (whether or not those individuals are affiliated with the University), the University community, or the University's reputation, or that suggest a student's presence on campus may pose unreasonable health and safety risks to individuals or the Cornell community. The final determination as to whether conduct is subject to this Code will be made by [the Dean of Students] or their designee. In addition, a student's online activities and conduct – whether a student is on or off-campus – as well as the use of University computing resources is similarly subject to the jurisdiction of the Code. The Code further applies between terms and whether or not the University is in session.

Students are further required to inform their guests as to Cornell's behavioral standards and expectations, and students can be held responsible for complicit misconduct arising from the behavior of their guests.

Transcript notations related to Code proceedings, including during the pendency of a conduct matter or when a student withdraws or takes a leave of absence with a conduct charge pending, will be made in accordance with the University Registrar's transcript notation policy (<https://registrar.cornell.edu/grades-transcripts>).

For incidents for which the reporting party is not an enrolled Cornell student, the University may (but is not obligated to) proceed as the Complainant.

Proceedings under the Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings concerning the same conduct. Decisions about the timing of University proceedings will be at the sole discretion of the Dean of Students or designee.

SECTION D: PROHIBITED CONDUCT

3.00 Prohibited Conduct²

The following conduct is prohibited and subject to conduct charges handled pursuant to the applicable University Procedures. It is also a violation of this Code to attempt to commit any of the following violations.

Furthermore, in determining the appropriate sanctions for a violation of sections 3.2, 3.8, and 3.9, the decision-maker shall take into account whether the behavior was motivated by a person's or group's age, race, ethnicity, creed, color, national origin, sexual orientation, military status, sex, gender identity or expression, disability, predisposing genetic characteristics, familial status, or marital status.

- 3.1 Alcohol-Related Behavior
- 3.2 Assault and Endangerment
- 3.3 Collusion
- 3.4 Disorderly Conduct
- 3.5 Disruption of University Activities
- 3.6 Drug-Related Behavior
- 3.7 Failure to Comply
- 3.8 Harassment
- 3.9 Hazing
- 3.10 Invasion of Privacy and Appropriation of Identity
- 3.11 Misrepresentation
- 3.12 Misconduct Related to Student Organizations or Groups
- 3.13 Property Damage
- 3.14 Theft and Intellectual Property Infringement
- 3.15 Unauthorized Entry or Use of Space
- 3.16 Violations of Public Law(s)
- 3.17 Weapons

3.1 Alcohol-Related Behavior

To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol, including, but not limited to:

- a. Providing alcohol to an individual who is under the legal drinking age

² The Code, together with Procedures for the enforcement of the prohibited conduct comply with New York Consolidated Laws, Education Law – EDN §6430 for the maintenance of public order on Cornell's campus.

- b. Selling alcohol without a license
- c. Consuming alcohol or possessing alcohol while under the legal drinking age
- d. Possession of identification by a person under the legal drinking age if the date of birth on the identification would make the person legal to consume alcohol
- e. Possessing alcohol in unauthorized spaces regardless of age
- f. Operating a motor vehicle under the influence of alcohol
- g. Possessing of alcohol paraphernalia including, but is not limited to, kegs, funnels, ice luges, and other items used to facilitate the consumption of alcohol
- h. Public intoxication

3.2 Assault and Endangerment

To or threaten to engage in conduct that does or can reasonably be expected to result in physical harm, or significant emotional or psychological harm to another person, including, but not limited to:

- a. Any unwelcome physical contact (e.g., spitting, striking, slapping, hitting, biting, punching, shoving, kicking)
- b. Any action that is abusive, threatening, intimidating, harassing, humiliating, or endangers the health or safety of another person.

3.3 Collusion

To assist another person to commit a violation of the Code.

3.4 Disorderly Conduct

To cause or create a risk of disruption to the University community or local community, including, but not limited to:

- Violent, or threatening behavior
- Unreasonably loud or belligerent behavior
- Obstruction of vehicular or pedestrian traffic
- Public urination or defecation
- To prevent a person (through physical or psychological means) from leaving a location (including part of the location, such as one part of the room) or to force a person to go to a location against their will.
- To expose a private or intimate part of one's body in a lewd manner or commit any other lewd act in a public place
- To traffic, for profit or otherwise, in goods or services in a manner incompatible with the interests of the University community or local community

3.5 Disruption of University Activities

- Deleted: with the intent to consume
- Commented [CL1]: Is this referencing dry halls?
- Commented [CL2]: Any amount of alcohol? Or only if it is over the legal limit?
- Deleted: mass
- Deleted: consumption
- Deleted: on campus. Mass consumption paraphernalia
- Deleted: includes
- Deleted: drinking
- Commented [MFW3]: This is not currently addressed under the Code; we've seen however in other school's provisions. Offered for consideration/comments. If used would need to be clear doesn't apply for example to an approved graduate party on campus where a keg/beer is being offered!
- Deleted: implements
- Deleted: of large quantities of
- Commented [CL4]: Too vague
- Deleted: assault or
- Deleted: to a person, or to threaten to do so,
- Deleted: , such as
- Deleted: or
- Deleted: Subjecting another person or group to
- Deleted: or
- Deleted: actions
- Deleted: Any action that threatens or endangers the physical health or safety of any person or causes reasonable apprehension of such harm, including displaying a weapon, using firecrackers or flares, throwing or firing projectiles
- Formatted: No bullets or numbering
- Deleted: aid or
- Deleted: tumultuous,
- Commented [CL5]: We believe this should be a separate provision and not under disorderly conduct.
- Commented [CL6]: We believe this should be a separate provision and not under disorderly conduct.
- Deleted: his or her
- Deleted: This is a violation whether accomplished through physical or psychological means.
- Commented [CL8]: We believe this should be a separate provision and not under disorderly conduct.
- Commented [MFW9]: We've left this in, but we think it should be deleted. Not sure what it adds beyond legalese.
- Commented [CL10]: We believe this should be a separate provision and not under disorderly conduct.

To disrupt or materially interfere with any instructional, research, service, judicial, or other University operation or function of the University, including, but not limited to:

- Disrupting, obstructing, or interfering with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual, by:
 - using or threatening physical force or violence to harass, endanger, injure, abuse, intimidate, or coerce another person, or to cause damage to or loss of property
 - obstructing or causing to be obstructed the lawful use of, access to, or egress from University premises or portions thereof, or by making unauthorized entry upon or use of a University property or facility or by unlawfully remaining in or on the same
 - by intentionally obstructing or restraining the lawful movement of another person or obstructing or restraining his or her lawful participation in an authorized activity or event, such as regular and special curricular activities, extracurricular activities, employment interviews, and recruiting activities
- Directly or indirectly preventing a speaker from speaking at a lecture, debate, or any public forum, obstructing the passage of others, or creating an imminent threat of such disruption or obstruction
- Disrupting or obstructing any speaker invited to appear on the campus by the University or a University-recognized organization
- Bribing a University official
- Refusing to participate, without a substantial reason, as a witness in an investigation of or proceeding brought to enforce potential violations of this Code
- Destroying evidence or otherwise obstructing the application of this Code

3.6 Drug-Related Behavior

To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances, including prescription medication not prescribed to the user, as defined by state or federal law, including, but not limited to:

- Possessing drug paraphernalia
- Operating a motor vehicle under the influence of marijuana or any controlled substance, including prescription medication not prescribed to the user

3.7 Failure to Comply

Failure to comply with:

- The proper directive of a University official
- A policy or operational rule that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format, including life safety regulations and technology regulations

Commented [MFW11]: MIT has an interesting take on this, adding "substances generally recognized as dangerous." Could be considered.

- Any term of a sanction imposed or agreed to pursuant to this Code or other conduct policy, including Policy 6.4
- The requirement that all persons must leave a University building after a fire alarm has sounded or other notice of fire has been given, whether or not a drill

3.8 Harassment

Subjecting another person or group to uninvited or unwelcome behaviors that are abusive, threatening, intimidating, or humiliating, when the conditions outlined in (1) or (2) below, are present.

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's participation in any of the University programs or activities or is used as the basis for a decision affecting the individual.
2. Such conduct creates a hostile environment. A hostile environment exists when the conduct unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's programs or activities. Conduct must cause unreasonable interference from both a subjective and an objective perspective. The fact that the conduct targets a group that has historically experienced discrimination may be relevant to a contextualized judgment about whether the conduct creates a hostile environment.

Because of protections afforded by free speech and academic freedom, expression will not be considered harassment unless the expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons, or
- it persists despite the reasonable objection of the person or person targeted by the speech.

Offensive conduct that does not by itself amount to harassment as defined above may be the basis for educational or other non-punitive interventions to prevent such conduct from becoming harassment if it were repeated or intensified. Mere disagreement with a particular viewpoint of another person – as opposed to the means or manner by which the person communicates – shall not be the basis for any intervention, even a non-punitive one.

Actions that constitute stalking or sexual harassment as defined by Policy 6.4 (“Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct”) shall be handled pursuant to that Policy and its associated Procedures.

3.9 Hazing

To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes

public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.

3.10 Invasion of Privacy and Appropriation of Identity

To intentionally invade privacy or misappropriate property rights, by means of videotaping, photographing, audiotaping, or otherwise making any video, picture, or sound recording, or to appropriate or use someone's likeness, identifying personal data, or documents.

3.11 Misrepresentation

- To furnish false information to the University with intent to deceive.
- To use, create, sell, or possess forged, fraudulently altered, or falsified documents, electronic records, or permits.
- To claim falsely to represent the University or a University-registered organization.
- To access the documents or records of the University or person without authorization, whether physical or electronic (i.e., "hacking").

3.12 Misconduct Related to Student Organizations or Groups

Student living groups and organizations may be charged with violations of the Code. A student group or organization may be charged and held responsible collectively, or its officers or members may be charged and held responsible individually, for violations of the Code.

Positions of leadership in a student group, organization, or athletic team entail specific responsibilities both ethically and practically. Student officers cannot permit, condone, or acquiesce in any violation of this Code by the group or organization. The Code is designed to hold groups or organizations – including its members and leadership – responsible for Cornell's behavioral expectations and culture.

Further, to knowingly affiliate with groups, teams, or organizations that have had their University recognition or registration withdrawn, suspended or permanently revoked by the University for disciplinary reasons can constitute a violation of the Code. The definition of affiliation includes joining, rushing, pledging or being involved in any activity that would normally be associated with being a member of such an organization. This applies to organizations that were created by members of a de-recognized organization in an attempt to continue its presence on campus.

This prohibited conduct does not apply to unrecognized student groups who have never had University recognition or who are currently not recognized by the University because of non-disciplinary disbandment. However, known members of unrecognized student groups may be held accountable for prohibited conduct by these groups.

3.13 Property Damage

Commented [MFW12]: We need a broader conversation about the topic of Greek misconduct and sanctions to complete this section.

Actions that result in or can be reasonably expected to result in damage to property, including electronic data, files, or other information. This includes, but is not limited to, property owned by the University, property owned by individuals affiliated with the University, and property owned by individuals or entities not affiliated with the University.

3.14 Theft and Intellectual Property Infringement

To steal or knowingly possess stolen property or information, including by such acts as misappropriation of data or University funds, or to infringe upon another person's trademark, copyright, patent, or other intellectual property rights.

3.15 Unauthorized Entry or Use of Space

To enter upon or make use of University or private property or facilities without authorization, including:

- To enter any waters of Fall Creek, Cascadilla Creek, or Beebe Lake that are on or traverse the campus for the purpose of swimming or bathing, except in those waters officially designated as swimming or bathing waters
- Tampering with or improper activation of a fire alarm, covering or otherwise compromising the proper functioning of a smoke detector or fire sprinkler, theft or improper use of a fire extinguisher, igniting or attempting to ignite a fire on campus without authorization
- Building a structure on the campus without a permit or in violation of the conditions of a permit

3.16 Violations of Public Law(s)

Violation of any federal, state, or local law, regulation, or ordinance.

3.17 Weapons

To possess, carry, or use any weapon or other object that can be used to cause physical harm, that can be used to threaten physical harm, or that, by its appearance, could reasonably be perceived as a weapon or object that could be used to cause physical harm (e.g., replica firearms). This includes firearms (defined as any projectile-firing device including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances.

4.0 Links to Applicable Procedures & Responsible Offices

Statement of Ethical Conduct
Standards of Ethical Conduct Policy 4.6

Student Code of Conduct Procedures

How to File A Complaint

Hearing Panel Procedures

Student Rights & Responsibilities

Respondent Rights & Responsibilities and Resources

Complainant FAQ & Resources

Title IX Office

Procedures for Resolution of Reports Against Students Under Cornell University Policy 6.4

Forms

Dean of Students

Office of Student Judicial Hearings

DRAFT

In what follows, I provide comments about the draft portions of the code relevant to the Judicial Codes Counselors and relevant to our role throughout the process. Next, I address the CJC's recent focus on restorative justice from the Judicial Codes Counselors' perspective.

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.

Commented [gk1]: This is not a good name for our office because it may confuse the role we have on campus. Currently, our name "Judicial Codes Counselor" describes the type of work we do (that we advise on all the codes of conduct for *all people*, including faculty and staff members). Even if the CJC and UA decide to separate the student and faculty codes, this confuses our role within 6.4 where we do advise faculty and staff. With this change "Student Codes Counselor" describes who we are (that we are law students) but does not accurately describe what we do. Changing the name will cause unnecessary confusion and cause a chilling effect for faculty and staff who may be unwilling to seek out our help, or unaware that they can.

Commented [gk2]: This is a bad approach. How would the office function when we have confidential information about the complainant and respondent in the same investigation/adjudication? Because we only assist individuals who seek out our resources, it would be impossible to predict conflicts that might arise before they occur. Also, the JCCs only work in this position for 2 years, so we are constantly learning. To become the best advocates for the individuals we advise, we must have an open dialogue between members of the office about the best way to advocate for advisees. If the same office represented both complainants and respondents, the members of our office would be forced to work on our own cases alone to prevent sharing confidential information from the complainant's advisor to the respondent's advisor. To illustrate how difficult this process would be to administer, imagine someone from our office helping an individual fill out an incident report and then the same JCC advocating for the respondent when they reach out to the office. That doesn't work. We're too small of an ... [1]

Commented [gk3]: We already work with students who file cross-complaints and gain "compassion and insight" that way.

In the overwhelming majority of cases, the complainant is the "university." For example, with underage drinking, the university is the complainant. Even in the circumstances where there may be a student-complainant, the OJA provides support and guidance, and assists students in filling out incident reports/complainant forms. However, if the CJC believes the current system is inadequate, a better solution would be to add the Complainant's Advisors into the Campus Code of Conduct system.

Commented [gk4]: This sentence removed the portion stating "Although the Judicial Codes Counselor traditionally has had some legal training and is frequently a law school student" from the CCC. Is the JCC no longer supposed to have any legal training? This would be a step in the wrong direction. While there are important differences between a campus misconduct system and a legal system (and we respect those differences) the skills that are required to be an effective advocate in both systems are similar. We frequently use the training we've received in our oral advocacy and writing classes to advocate for students. If the JCCs were to lack these skills and training altogether, it would do our advisees, and therefore, the university community as a whole, an incredible disservice.

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.

Commented [gk5]: As stated above, the better option would be to include the Complainant's Advisors when the complainant is a student.

Commented [gk6]: If the goal is to create a less adversarial process, the way to do that is not to silence the advisor. For example, advisors cannot speak in Policy 6.4 and the process is very adversarial. Limiting the advisor's ability to speak in meetings is problematic because the advisor frequently serves as a mechanism to help the student communicate with the case handler. This ensures that both parties (the student and the OJA) are able to informally and honestly speak before the matter must be referred to a hearing board. Further, students are intimidated and scared when going through this process. If students must also defend themselves because their advisors are silenced, they will always be at an unfair disadvantage against the university. In Policy 6.4 *all parties* are silenced. Only the neutral investigators, who are not parties, may speak. The Campus Code system is inherently different because the complainant is almost always the university. Because the university will always be represented by the JA, who is able to speak during proceedings, this approach simply tips the scales so far against the student's ability to have a meaningful voice in the process.

Commented [gk7]: The OJA has expressed support for the current formulation of the code instead of this change: the JCCs can always speak during the hearings but attorneys can only speak when suspension or dismissal is pursued. We are intimately involved in the system, have developed a working relationship with the OJA and the hearing chairs, and know what to expect at the hearings. In contrast with attorneys, our only role is to advocate on the student's behalf. The attorney may be an advocate but may also pursue other goals. Our level of knowledge and our working relationship with the system should be reflected through the level of involvement allowed within the campus disciplinary system.

Commented [gk8]: Again, if the JCC Office is required to support both complainants and respondents, conflicts of interest will be inevitable and frequent. As a result, if the JCC is prevented from participating, the party may be forced to identify a substitute advisor (who is not from the JCC Office) who lacks the same level of familiarity with the campus judicial system, thereby undermining the student's ability to advocate for themselves.

The CJC has had conversations recently about the difference between a restorative justice model and an “adversarial” model. I support everything the JCCs present have said during the meetings, but I wanted to add a few points for consideration. First, it is wrong to assume that granting students *procedural rights* is inconsistent with restorative justice. The true difference between the model currently used and a purely restorative justice model is *not* the procedures used but the punishments imposed. Restorative justice models are meant to hold individuals accountable while simultaneously avoiding the counterproductive consequences of punishing students. Thus, restorative justice focuses on how to best address the harm to the students involved and the community instead of focusing on the code provision that was violated. Because the majority of referrals to the OJA involve the “harm to the university” resulting from underage drinking and drug use, the goals of a restorative justice model are harder to conceptualize. The harm is more abstract than when two people get into a fight or when someone trespasses on another student’s property. Instead of approaching the code as if there must be a trade-off between granting students protection through procedural rights, we can accomplish both goals by determining how the code may be more appropriately tailored to the *type of harm* that occurs.

The most direct way to shift towards a restorative justice model is to change the types of sanctions imposed. If the focus is meant to be on *education* and *rehabilitation*, why are the majority of students developing a disciplinary record for first-time violations? This is what makes the process adversarial—not procedural protections for accused students. I pasted section 24.11 from the draft code below and added in the percentage of the types of sanctions imposed in the 2018-2019 year (these numbers come from the OJA’s annual report). The restorative sanctions below include educational steps, community work, reflection papers, and counseling. Punitive sanctions include written reprimands, loss of privileges, disciplinary probation, suspension, and dismissal; these punitive sanctions cannot be presented under the guise of being educational. A suspension may have educational or rehabilitative effects, but its underlying purpose is not restorative, it is punitive. Similarly, a disciplinary probation has important educational aspects, but when that sanction may be reportable on someone’s disciplinary record for up to six years after graduation, that sanction is punitive and creates additional harm to the community.

Currently, the OJA’s policy is such that a first-semester freshman cited for the first time for underage drinking will receive a written reprimand. In fact, unless there is an exceptional circumstance warranting something less, everyone referred to the OJA and found responsible will receive at least a written reprimand. A written reprimand creates a disciplinary record, making this sanction punitive. The OJA contends that this is not punitive because students have to give consent to send their disciplinary record to outside employers or graduate schools, suggesting that because the students know when the information is disclosed it takes the punitive aspect away. This is not true. Especially for a first-year student, this is punitive. When students spend their time worrying about whether they will be able to apply for certain graduate schools or jobs, it detracts from their ability to learn and increases stress and anxiety, compromising their mental well-being. Why is an oral warning imposed in only 0.2% of cases? The OJA’s justification is that an oral warning does not create a disciplinary record, so it is the functional equivalent of never getting referred to the OJA. Students, however, take these warnings seriously, and regardless, almost always fulfill other educational sanctions, including the decision-making class, counseling, and reflection papers.

Although a different context, consider the following example given by leading scholars in restorative justice. Those scholars argue against sex offender registries because they constitute needlessly punitive measures. Although it is up to the registrant (who has already served a prison sentence, paid his debt to society, and is fully rehabilitated) to apply for gainful employment, the primary effect of the registries is to scare employers and thereby deter them from employing otherwise capable and rehabilitated applicants. This result inevitably casts a shadow of “otherness” on the applicant and creates a never-ending cycle of punishment, as opposed to accountability and harm reduction. The OJA’s narrow conception of what is “punitive” creates the same sense of “otherness” and unnecessary anxiety for students.

Thus, *if* the goal is actually to create a code based on restorative justice, then the focus should be to shift the system away from punitive, record-creating sanctions and towards *exclusively* educational sanctions (except where more serious circumstances require punitive sanctions). It is not the process that stands in the way of restorative justice—it is the punitive measures advanced by the OJA, through the sanctions chosen and the long-term reportability of those sanctions, that creates an adversarial system.

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.

Commented [gk9]: AOD 1 – 33.3%
AOD 2 – 2.8%
AOD 1.5 – 0.6%

Commented [gk10]: 31%

Commented [gk11]: AOD 3 (counseling) – 0.1%
Facilitated Dialogue – 1.1%
Decision making class – 6.6%

Commented [gk12]: Emergency Health and Safety – 0.8%
Research paper – 0.1%

Commented [gk13]: 0%

Commented [gk14]: 0.7%

Commented [gk15]: 0.2%

Commented [gk16]: 42.4%

Commented [gk17]: 0.9%

Commented [gk18]: 0.3%

Commented [gk19]: 0%

This is a bad approach. How would the office function when we have confidential information about the complainant and respondent in the same investigation/adjudication?

Because we only assist individuals who seek out our resources, it would be impossible to predict conflicts that might arise before they occur. Also, the JCCs only work in this position for 2 years, so we are constantly learning. To become the best advocates for the individuals we advise, we must have an open dialogue between members of the office about the best way to advocate for advisees. If the same office represented both complainants and respondents, the members of our office would be forced to work on our own cases alone to prevent sharing confidential information from the complainant's advisor to the respondent's advisor.

To illustrate how difficult this process would be to administer, imagine someone from our office helping an individual fill out an incident report and then the same JCC advocating for the respondent when they reach out to the office. That doesn't work. We're too small of an organization to advise and advocate for both complainants and respondents.