



Cornell University University Assembly

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Minutes

Codes and Judicial Committee
University Assembly
February 27th, 2019
4:45pm – 6:00pm
Day Hall Room 163

I. Call to Order

- a. Call to Order
 - i. D. Barbaria called the meeting to order at 4:51pm.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, R. Bensel, A. Brooks, K. Kebbeh, R. Lieberwitz, S. Vura
 - ii. *Absent:* D. Geisler, L. Kenney, A. Viswanathan, K. Zoner
 - iii. *Others Present:* J. Anderson, M. Battaglia, M. Horvath, M. Lee

II. Approval of Minutes

- a. February 5, 2019
 - i. Minutes **approved** by unanimous consent.
- b. February 20, 2019
 - i. M. Battaglia motioned to postpone approval of the minutes.
 1. Minutes **tabled** by unanimous consent.

III. Business of the Day

- a. Approval of UHRB Applicant Questions
 - i. D. Barbaria said that last meeting, the Committee decided to remove questions 9 and 10, and significantly alter questions 11 and 12 of the University Hearing and Review Boards (UHRB) applicant questions. He said the Committee is yet to decide whether to include question 11(c).
 - ii. M. Battaglia said that question 11(c) helps the Committee see applicants' thought processes.
 - iii. M. Horvath said that 11(a) and 11(b) are stronger questions that already address the issue of thought process.
 - iv. D. Barbaria said that question (c) has not officially been added to the list of UHRB applicant questions.

- v. J. Anderson said that question 11(c) informs applicants about the rights of respondents, but he hopes that it could be rephrased.
- vi. M. Battaglia said that he agrees with J. Anderson and that reference to an individual entity can be removed if there is concern about the current wording. He also said that question 9, which was stricken last meeting, has elicited thoughtful responses in the past in which applicants exhibited their understanding of discipline and its effect on people. He suggested having a similar question such as “How do you believe going through the discipline process of Cornell affects an individual’s perspective”. He said this informs the Committee of the applicant’s thought process while wording the question neutrally.
- vii. M. Horvath said that applicants should understand that they are expected to find individuals both responsible and not responsible in order to maintain a safe community. She said that the most important part of the applicant’s job is to adhere to the values of the community, which include maintaining a safe educational environment.
- viii. M. Battaglia said that the Committee should not lead applicants to respond in a certain manner by specifically mentioning complainants. He said that asking how a certain incident would affect the community addresses the issue of sanctions, which directly relates to the role of the Hearing Boards.
- ix. R. Bensel said that an open-ended question is important as there are broader issues that are not addressed in other questions.
- x. D. Barbaria asked the Committee how 11(c) addresses an issue that is different from question 8, which asks about the purpose of the Boards.
- xi. J. Anderson said that question 8 could encapsulate both M. Battaglia and M. Horvath’s points, as it addressed the role in the judicial system but also its effect to the campus as a whole.
- xii. K. Ashford said that the Committee decided to strike question 9 last meeting because of potentially deterring candidates from applying. K. Ashford proposed to add the following question to the applicant questions: “What, if any, life experiences would make you a more conscientious board member?”
 - 1. M. Battaglia seconded.
 - 2. M. Battaglia motioned to vote.
 - a. By a vote of 4-0-3 “What, if any, life experiences would make you a more conscientious board member?” was adopted as an additional UHRB applicant question.
- xiii. M. Battaglia proposed to add “and their effect on the campus as a whole” to the end of question 8.
 - 1. M. Horvath proposed a friendly amendment to change “judicial system” to “Code of Conduct”.

2. M. Battaglia said that he would not perceive that as a friendly amendment.
 3. M. Horvath yielded.
- xiv. R. Bensel proposed to add “If two or more of these considerations were in tension with one another, how would you reach a decision?” to M. Battaglia’s amendment to question 8.
1. R. lieberwitz said that while she understands R. Bensel’s intent, she doubts whether an applicant would be able to fully understand the question.
 2. R. Bensel yielded.
- xv. M. Battaglia said that the Committee should create a document that outlines which questions garner the best responses at the end of the year in order to better select UHRB members in the future.
- xvi. M. Battaglia **called the question** on the amendment to question 8.
1. The additional language was adopted by unanimous consent.
- xvii. J. Anderson said that he believes question 11(c) is important to add.
1. M. Horvath said that question 11(b) already calls for the applicant’s thought process, making 11(c) unnecessary to add in.
- xviii. M. Battaglia said that (c) helps the applicant outline their thought process in greater detail.
- xix. R. Bensel said that he cannot conceive of a situation in which a Board member recognizes a procedural error without the respondent recognizing it. He proposed to strike 11(c).
- xx. D. Barbaria asked if anyone would propose to include 11(c): “an advisor to an individual charged with a violation of the Code does not raise an objection to a procedural error.”
1. The question was **withdrawn** by unanimous consent.
- xxi. M. Battaglia asked what the timeline will be for the UHRB applications.
1. D. Barbaria said that Director of the Office of the Assemblies will proceed with preparing the application form sometime between next Monday and Wednesday. He said that the application can be sent out by the end of next week, and due during the beginning of spring break, with the Office of Assemblies preparing the forms while students are on break. He said that the Committee can decide on this timeline further.
 2. M. Battaglia asked that D. Barbaria clearly communicates with the Office to ensure there are no issues with anonymization.
 3. D. Barbaria said that the date is set for anonymization of the application.
 4. M. Battaglia said that the Committee reserves right to interview candidates.

5. D. Barbaria said that the Committee can discuss specifics of the timeline at the next meeting.
- xxii. R. Bensel motioned to approve UHRB applicant questions.
1. UHRB applicant questions were approved by a vote of 5-0-1.
 2. D. Barbaria said that he will send out the questions with amendments to Committee members today and send them to the Office tomorrow.
- b. For Discussion: Individual amendments contained in reorganized Campus Code of Conduct
- i. M. Battaglia provided an update of the process of the reorganization of the Campus Code of Conduct. He said that he had just sent out an email to the Committee outlining substantive change. He also said that in speaking with the administration about the Code revisions and processes, they were supportive of reorganizing and simplifying. He said that as long as the Committee does not make further substantive changes outside of what has been discussed so far, the reorganized version can be sent out for public comment by the end of the semester.
 - ii. M. Battaglia said that he has also spoken with the Office of University Counsel regarding the issue of regulation of maintenance of public order concerning Title IV. He said that he does not anticipate the need to devote a formal section on the issue of Title IV that would require approval from the Board of Trustees.
 - iii. M. Battaglia said that in addressing the issue of whether faculty and staff should be included under the Code, the Working Group on Hate Speech and Harassment recommended to change the name of the “Campus Code of Conduct” to the “Cornell Code of Conduct” to expand its reach. He said that the administration was on board with keeping everyone in the Code and making the procedures clear.
 - iv. D. Barbaria asked how the Committee anticipates receiving confirmation that the Board of Trustees is on board with making changes based on Title IV.
 - v. M. Battaglia said that the Office of the University Counsel would recommend a sign-off.
 - vi. D. Barbaria asked what would happen if the Board of Trustees rejects the Counsel’s recommendation.
 - vii. M. Battaglia said that he thinks such a case would be highly unlikely. He said that Title IV will continue to exist separately if that is the case.
 - viii. D. Barbaria said that receiving pre-approval from the Board would be desirable if the Committee is to make such a substantive change.
 - ix. M. Battaglia referred members to his email. He said that the definitions of

harassment, stalking and assault are similar to the recommendations made by the Working Group and in accordance with New York State law. He also said that the definition of harassment includes an expanded list.

- x. M. Horvath asked what “an individual or group of individuals” refers to.
 - 1. M. Battaglia said that his understanding of a group of individuals is a small group that is being targeted because of a shared characteristic.
 - 2. M. Horvath recommended keeping the original language of “an individual or organization”, since organizations retain rights that a group of people do not.
- xi. M. Horvath proposed to strike the descriptions in (i), which defines assault. She said that there is no general assault provision in the Code.
- xii. R. Bensel suggested adding political belief to the list of harassed groups.
- xiii. R. Lieberwitz said that she also believes that political belief should be added and that this is in line with the comments she added to the Box.
- xiv. R. Lieberwitz said that on M. Horvath’s question about individuals or group of individuals, the Working Group recommended this to include that harassment could take place against a group, not just individuals. She said that “organization” seems to exclude a smaller group that is physically together.
- xv. M. Horvath said that some of the complainant’s rights may be taken away if the definitions are to be so broad. She said that such language may leave room for confusion, when there are already different protections between individuals and organizations.
- xvi. R. Lieberwitz said that she does not see the language to be confusing as it refers to either individuals or a group of individuals.
- xvii. D. Barbaria asked what would happen if physical groups of individuals are harassed altogether.
- xviii. M. Horvath said that each individual has their own rights.
- xix. K. Ashford asked what the difference is between the definition of harassment in (c) and (d) from the language presented in the email. She said that (d) merely appears to be broader.
- xx. R. Lieberwitz said that (c) is actually broader than (d). She said, for example, bullying could be a violation of the code under (c) but not under (d) because it is not a protected status. She said that the specificity in (d) is important for readers of the Code to observe that the Code pays attention to specific protected groups but is also broad.
- xxi. K. Ashford asked whether a violation could be charged under each provision singularly.
- xxii. M. Horvath said that logistically they would be charged under both provisions.
- xxiii. J. Anderson said that besides naming the protected classes themselves in (d),

- there is little difference between (c) and (d). He suggested placing the protected classes in (d) into the values section and striking (d).
- xxiv. M. Battaglia said that (d) also serves as a signaling function. He said that adding a separate offense could be seen as an escalation.
 - xxv. J. Anderson said it would not make sense for a harassment violation to be examined under both provisions (c) and (d).
 - xxvi. R. Lieberwitz said that she understands the concerns raised, but (c) refers to harassment while (d) specifically refers to the discriminatory hostile environment. She said that the Working Group purposefully added (d) in response to the realities that people were facing as a result of recent events and the discriminatory hostile environment.
 - xxvii. R. Bensel said that protected statuses are assigned categories that do not rest on any ultimately fundamental distinction.
 - xxviii. R. Lieberwitz said that retaining both (c) and (d) would demonstrate that the university recognizes the historical discrimination that has taken place against certain groups.
 - xxix. M. Battaglia said that the Committee should strive to be economical with language without removing too much detail. He also said that the Committee should decide on whether to include political persuasion as one of the protected groups.
 - xxx. R. Lieberwitz motioned to add political beliefs to the categories of protected statuses in (d).
 - 1. Motion approved by unanimous consent.
 - xxxi. R. Bensel said that there is a distinction between freedom of speech and political belief.
 - xxxii. D. Barbaria said that the Committee will be sending these provisions to the University Assembly to have a wider discussion.
 - xxxiii. R. Bensel asked whether there was any discussion about holding fraternities and sororities accountable under the Code.
 - xxxiv. J. Anderson said that the committee examining the judicial process for Greek organizations seems hesitant to provide a recommendation on the Campus Code of Conduct until there is a finalized version.

IV. Adjournment

- a. Adjournment
 - i. The meeting was adjourned at 5:59pm.

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