



Cornell University University Assembly

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Minutes

Codes and Judicial Committee

University Assembly

March 21st, 2018

5:05pm - 6:05pm

316 Day Hall

I. Call to Order (Chair)

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 5:17pm.
 - ii. University Hearing and Review Board Chairs were introduced to the Committee.
- b. Roll Call
 - i. *Present*: M. Battaglia, R. Bense, M. Horvath, R. Lieberwitz, C. Riley, E. Winarto
 - ii. *Absent*: K. Ashford, D. Barbaria, K. Karr, G. Kaufman, J. Kruser, V. Price, D. Putnam, K. Zoner
 - iii. *Others Present*: J. Cisne, T. DeVoogd, M. Lee, C. Liang, A. Mooney, T. Overton, R. Parker

II. Approval of Minutes (Chair)

- a. March 14, 2018
 - i. **Tabled** to the next meeting.

III. Business of the Day

- a. Discussion with the University Hearing and Review Board Chairs (T. DeVoogd, T. Overton, R. Scanza, A. Mooney, & J. Cisne)
 - i. J. Cisne said that he is working on a “small list of possibilities” for everyone and that his goal is to work with both the Chairs and the entire pool. He said this includes revision of Hearing Board procedures, a possibility of training members to allow procedures to move faster, benchmarking what other universities do and providing opportunities for greater involvement.
 - ii. M. Battaglia asked the Chairs what the Committee could do to make their jobs more manageable such as clarifying the Code or processes.
 - iii. A. Mooney said that she finds it helpful to have an attorney that interprets the Code. She said she personally finds the Code to be pretty straightforward, but the procedures require a lot of work to be done. She added that it would help to have an expanded pool of panel members, since the Judicial Administrator’s (JA) Office finds trouble having people

participate. She noted that when people come onto the panel, they don't necessarily want to follow the Code and that the Board needs to work with panel members to ensure that they do.

- iv. R. Benseal asked whether there is a reason why procedures in the Code have drifted out.
 - 1. A. Mooney said that the procedures were not written very clearly and have not been revised in a while.
 - 2. M. Battaglia said that the Committee has examined expanding the pool in the past and was told that it was not something that was necessarily needed to be done but something that could be done.
- v. T. Overton agreed that access to Counsel for the Chairs and Board is very helpful. He said he hasn't found the procedures as confusing and found M. Horvath's email attachments to be helpful. He added that lack of information in the last hearing made the process a little difficult and said that there needs to be an emphasis on clarity.
- vi. M. Horvath said that a written reprimand is the baseline for the JA's Office, but agrees that some of the sanction needs to have an appeal. She said that the most difficult constituency to reach out to are faculty members and would be interested in providing additional training.
- vii. M. Battaglia said that the Committee is reviewing different options to expedite the process such as having unresponsive members unseated from the Board.
- viii. R. Lieberwitz said that she is concerned about having the university General Counsel's Office answering questions about the Code. She said that it seems odd that someone who has a stake be involved, since the Board would be provided with a certain point of view about what the Code means. She asked if the Chairs had any concerns about this.
 - 1. A. Mooney said that in practice, she is not concerned. She added that the panel would ask the Counsel what an aspect of the Code means if they are struggling and she does not believe it is her role to interpret the Code.
 - a. R. Lieberwitz asked whose role it would be.
 - 2. T. Overton said that the General Counsel's role is specifically to support the Hearing Board Chairs, not the university. He said that he found the individual to be extremely helpful with the interpretation of the Code as well as adhering to process.
 - 3. R. Lieberwitz noted she was surprised to hear that the Hearing Board was asking the university Counsel's office for advice. She said that one person's view in applying the Code may not necessarily be the same for another.
 - 4. A. Mooney said that in her experience, the Counsel would not be determining whether the individual in question had violated the Code, but would consider what to do if both the Counsel and the Chair agree that they did in fact violate the Code.
 - 5. T. Overton said that there are different perceptions within the Board.
 - a. R. Lieberwitz said that she understands, but she finds it to be an issue of whether the sanctions are sensitive enough to have a range of views.
 - 6. M. Battaglia said that baseline standards can change.
- ix. M. Horvath said that the attorney that advises the Board is different from who advises Office of the JA (OJA). She said that the Code is a Trustee's document, so one of the responsible offices is the Office of the General Counsel.

- x. C. Riley asked what action happens afterward in cases where the Board is hesitant to apply the penalty seen in the Code.
 - 1. A. Mooney said that they would drop down the penalty. She said that the issues brought up to the Chairs are serious. She noted that there is an ambiguity on what “the record” means and that there is hesitance in applying it.
 - 2. T. Overton said that it may partly be due to lack of clarity in terms of where “the record” would show up.
 - 3. J. Cisne said that they could have yearly trainings on what “the record” means.
- xi. C. Riley questioned whether the safety of the campus or of the individual is being evaluated. He said that in consideration of the safety of the campus, it is important to maintain a distinction and make people aware of what would happen when they violate the Code.
 - 1. A. Mooney said that is exactly the question, and that she does not have an answer.
 - 2. T. DeVoogd said that in most cases, the JA suggests a penalty and that it is possible to go more or less severe than what the JA recommends, which gives the Hearing Board the possibility of deciding how egregious the circumstances were.
 - 3. M. Battaglia stated that Hearing Board decisions are all public record and that the system exists to allow for the Board’s discretion.
- xii. R. Bensel said that discussions in Committee meetings have come up about the length of time it takes to adjudicate a case and what the sources of delay would be, as well as how to address those issues. He asked what the major source of delay in the hearings are.
 - 1. T. DeVoogd said that if it is a serious case, the individual would accompany a lawyer, who is often busy.
 - 2. A. Mooney said that the respondent is the one who would supposedly be harmed by the delay.
 - 3. T. Overton said that it can take varying amounts of time to ensure they come up with something that works even if it does extend for a greater period of time.
 - 4. M. Horvath said that the issue tends to lie in the academic schedule, such as the first two weeks of school, mid-October and February. She noted that in the past two years, timelines have been expedited and added that on average the timelines are within 39 days of adjudication, which is decent and only 18 days longer than what the Code has initially.
 - 5. T. Mooney asked if 39 days is unacceptable.
 - a. R. Bensel replied no.
- xiii. R. Bensel said that Committee discussions supplied the possibility of having different ways of processing renewal for interim measures. He directed the Committee and Board to the meeting packet. He asked which option the Chairs think would work best.
 - 1. A. Mooney said that she does not recommend the Hearing Board Chairs come together collectively, as it would merely be difficult to match everyone’s schedules.
 - 2. M. Battaglia said that the Committee discussed having a set duration of interim contact procedures. He said that the hope is to ensure interim measures do not last too long and are also not too onerous.
 - a. T. Devoogd said that is parallel to the current system.

- xiv. M. Battaglia thanked the Chairs for attending the meeting and asked if there was anything else the Committee could do to help to ensure transparency and that the Code is working.
- xv. T. Devoogd said it would be helpful to have someone in the Committee look into little details in procedures of the Code.
- xvi. T. Overton said that he thinks it is a great change to move public hearing time forward, but a longer timeline and plan would be needed to ensure it takes place.
- xvii. A. Mooney said that the Code says that the audience should not be in a separate location.
 - 1. M. Battaglia said that his understanding is that the Code seems to in tone say that if possible, they should be in the same location.
 - 2. A. Mooney recommended that the Committee look at the issue of placing individuals in a different location, because she personally finds it silly.
 - 3. T. Overton said that the motion and charge in the student body was that individuals were unsure of whether they could be in the same room.
 - 4. T. DeVoogd said that it would have worked in a large room.
 - 5. M. Horvath said that cutting out that part of the procedures would be the solution.
 - 6. J. Cisne said that it would have been more convenient to have a big room.
- xviii. T. Overton commented on the Board removal process. He said that the current language seems to give the Chair a fair amount of latitude, whereas the proposed language is much more procedural. He said he was unsure in what situation the proposed language would apply.
 - 1. M. Battaglia said that the original language was written when there was only one Chair and that there is ambiguity now with multiple Chairs.
- xix. J. Cisne asked whether it would be appropriate to have the JA make the request since her office is responsible for staffing Board members, or be required to ultimately be run through with the Chair.
 - 1. M. Horvath said that the OJA does not want that authority and such actions should involve the Chairs.
- xx. M. Battaglia said that the key is to ensure there is full communication between the Committee and Board.
- b. Working Group Update (R. Lieberwitz)
 - i. R. Lieberwitz said that the Group will be meeting tomorrow in 163 Day Hall at 2pm and that the meeting next Wednesday will be publicly broadcast.
- c. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
 - i. M. Battaglia said that he drafted a proposal based on a rough consensus reached last meeting. He noted that the Committee is always free to change or modify the proposal.
 - ii. M. Horvath advised the Committee to use the word “hearing” with caution, as the Code is very specific about what it means to have a hearing, invoking procedural rights. She also requested the Committee to be careful with the language, “the Chair shall have access to all investigative materials” because much of the information is not intended to be presented to the Chair.
 - 1. R. BenseI asked what the alternative would be.
 - 2. M. Horvath said that the Chairs do not usually typically have access to materials, but have fact patterns or a summation of facts. She said that 21 days may also be a

- financial burden on the respondent as they would equate to billable hours.
- iii. M. Battaglia said there was concern that the Hearing Board Chairs should have access to enough information to make a reasonable determination, and it would be essential to find language that satisfies that concern.
 - iv. R. Benseal asked whether the 21-day renewal process is automatic.
 1. M. Battaglia said that the OJA could decline to ask for renewal, in which case it would lapse.
 2. R. Benseal asked whether either party needs to request renewal.
 - a. M. Battaglia replied no.
 3. R. Benseal asked whether the OJA could eliminate the need to go back to the respondent.
 - v. M. Horvath suggested eliminating “If the Chair determines [...] may submit written statements” and keeping just the first two and last two sentences from the proposed language.
 - vi. M. Battaglia said that a concern was brought forward in making sure that the Hearing Board chairs know they have the ability to modify. He said that he will re-tweak the language to make it more workable.
 - vii. R. Parker suggested keeping the part about parties being able to submit written statements out of what M. Horvath suggested to be stricken.
 1. R. Lieberwitz asked what R. Parker is agreeing with.
 2. R. Parker said that he agrees with the concern about having to give everything to the Hearing Board Chair, but would want the Chair to be able to modify and for parties to be able to submit anything they find relevant.
 - viii. R. Lieberwitz said that she believes the proposed language is good as written, but understands the issue of access to investigative materials. She asked whether the Chair and parties receive a summary from the OJA’s office.
 1. M. Horvath said that there is currently nothing in place. She said that the best practice is to usually keep no contact directives in place until circumstances change or the case is adjudicated.
 - ix. M. Battaglia said that his understanding of the discussions so far is to remove the vast majority of the proposed language and retain the part that Chairs may choose to modify the directive as well as that the parties may submit written statements. He said that the goal is to be responsive and make sure that the suggestions are posted for comment in the Office of the Assemblies once finalized.
 - x. R. Benseal said that he believes all of the bolded language in the last page of the meeting package is fine.
 - xi. M. Battaglia said that the Committee could briefly address the proposed language before moving into it next week.
 - xii. M. Horvath **withdrew** her motion.
 - xiii. R. Lieberwitz said that she believes it is unclear what the Chair may consider.
 1. M. Battaglia said that it comprises of what they receive in order to make an informed decision.
 2. M. Horvath said she could send out a triage matrix of interim measures via email.
 - xiv. M. Battaglia said that he will rework the proposed language based on discussions from

the meeting and will be contacting the Office of the Assemblies regarding Hearing Board applications.

- xv. M. Horvath expressed her belief that one of the Hearing Board application questions were a little prejudicial to the Judicial Administrator's Office and that it seemed from prior conversation that the wording of the questions were still eligible for revision.

IV. Adjournment (Chair)

- a. Adjournment

- i. The meeting was adjourned at 6:24pm.

Respectfully submitted,

Dongyeon (Margaret) Lee
Codes and Judicial Committee Clerk