



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

April 11th, 2018

4:30pm – 5:45pm

163 Day Hall

I. Call to Order (Chair)

a. Call to Order

- i. M. Battaglia called the meeting to order at 4:33pm, at which point there were not enough members to reach a quorum. The Committee moved into an informal discussion on the University Hearing and Review Boards staffing update, codifying prior practices for UHRB and Search Committee appointees and reorganization of the Code until it reached quorum.

b. Roll Call

- i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bensel, M. Horvath, K. Karr, R. Lieberwitz, V. Price, E. Winarto
- ii. *Absent:* G. Kaufman, J. Kruser, D. Putnam, C. Riley, K. Zoner
- iii. *Others Present:* M. Lee

II. Business of the Day

a. For Discussion: University Hearing and Review Boards Staffing Update

- i. M. Battaglia said that there are currently 7 faculty, 7 staff, 12 student vacancies for University Hearing and Review Boards (UHRB) and that there were around 30 student applications. He noted that the turnout was lower than expected perhaps due to Student Assembly elections.
- ii. M. Battaglia said that the review process needs to be completed before next Friday and that the Committee will have a special meeting to review applications. He echoed Committee members' feedback from last meeting to have more thought process based questions in future UHRB applications.

b. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor

- i. K. Karr asked if there is currently a policy on removing a Title IX panel member.

1. M. Battaglia said that he will look into it.
- ii. V. Price asked if the Title IX Office has seen this questionnaire for Policy 6.4 Hearing Panel applications.
 1. M. Battaglia said that this is a draft and that the new Title IX Coordinator has not been selected yet but should be disclosed soon.
 2. V. Price said that it may be beneficial for the current Title IX Coordinator candidate to have a look at these questions.
 3. M. Battaglia said that the Title IX Coordinator wouldn't interact with this questionnaire at all.
- iii. M. Horvath suggested amending the language on question 4 from "accused" to "respondent".
 1. M. Battaglia agreed.
- iv. E. Winarto suggested combining some of the questions, such as 6 and 7, as well as 5 and 16, which are relatively redundant.
 1. M. Battaglia said that the questions could possibly be combined. He noted that question 16 was added based on discussions from last meeting to specifically address issues of bias.
- v. D. Barbaria asked who serves on the selection panel.
 1. M. Battaglia said that it is comprised of the Dean of Faculty or designee, a member from the Office of Student and Campus Life or designee, the Vice President of Human Resources or designee, and a student of the Codes and Judicial Committee (CJC).
- vi. D. Barbaria asked where this information is available.
 1. M. Battaglia said that it is in the procedures of Policy 6.4.
- c. For Discussion: Codifying Prior Practices for UHRB and Search Committee Appointees
 - i. M. Battaglia said that the draft UA Bylaws Appendix A attempts to lay out how the CJC should handle UHRB appointees, to ensure responsiveness and that timelines are codified. He said that the charge of the CJC includes all UHRB matters and hence this document is meant to flesh out CJC's role in the UHRB.
 - ii. V. Price questioned what "publicly accessible" from line 97 means.
 1. M. Battaglia said that it refers to when the applications go live and advertisements begin. He noted that added clarity would be beneficial.
 - iii. V. Price said that it may be beneficial to codify what the Committee expects from the Office of the Assemblies (OA) to ensure there are no technical issues. She added possible expectations may include that the application is available on the OA website or sent out through an email blast, as well as having paper applications as backups in case of technical difficulties online.
 1. M. Battaglia said that the OA currently uses a Qualtrics survey, but the link was not fully shared in this round of UHRB applications. He said that clarification will be needed in the future in terms of what the Committee

- intends for public accessibility.
- iv. D. Barbaria suggested eliminating “for the Assembly’s confirmation” in lines 14-15 to minimize confusion.
 - 1. M. Battaglia said that the University Assembly (UA) needs to be informed of the Committee’s decisions. He added that he will tweak the language for improved clarity.
 - v. K. Ashford left the meeting.
 - vi. M. Horvath said that Appendix A is a good starting point, but the language is rather wordy and robust. She said that issues may arise by forming timelines based on the CJC instead of the UA and that it would be more beneficial to have simplistic deadlines.
 - vii. M. Horvath suggested having bullet points to the procedures to make it easier to understand. She gave her notes and suggestions to M. Battaglia.
 - 1. M. Battaglia said that he will update and clarify the draft.
 - viii. R. Bensel joined the meeting.
 - ix. M. Battaglia said that the draft to Appendix A will need to be approved by next Friday in theory, but that may be difficult on a practical level. He said that this will need to be on the UA’s agenda and publicly promulgated.
- d. For Discussion: Reorganization of the Code Update
- i. M. Horvath expressed concern that some of the CJC’s resolutions have been lingering for two or more years. She suggested to perhaps have a full Code revision instead of having piecemeal changes.
 - ii. R. Bensel asked how much turnover the CJC usually has from year to year.
 - 1. M. Battaglia said that this semester was odd in that half of the Committee has been turned over.
 - 2. R. Bensel said that the Committee needs to think about how to implement measures expeditiously.
 - iii. M. Battaglia said that public office hours will be held to engage community members in the Code amendment process.
 - iv. R. Lieberwitz joined the meeting.
 - v. D. Barbaria asked if there was any discussion from the UA on improving their relationship with the President in order to pass resolutions.
 - 1. M. Battaglia said that the goal is to work together.
 - vi. D. Barbaria asked if there were any confirmed recommendations from the Presidential Task Force.
 - 1. M. Battaglia said that the Task Force is not self-executing and hence their reports are mere recommendations. He said that their interim report is currently not available publicly.

III. Approval of Minutes (Chair)

- a. M. Battaglia noted that the Committee now has a quorum.
- b. March 14, 2018

- i. D. Barbaria made a motion to approve the amended minutes – approved.
- c. March 21, 2018
- d. March 28, 2018
 - i. R. Bensel moved to approve the amended version of the March 21 minutes and the March 28 minutes – approved.

IV. Business of the Day (cont.)

- a. Working Group Update (R. Lieberwitz)
 - i. R. Lieberwitz said that the Group is continuing to move forward with what has been outlined. She said that the Group is now at a point where it can pull from themes, based on information gathering sessions, to move forward and put proposals into place. She noted that the Group hopes for as much community engagement as possible.
 - ii. M. Battaglia requested members of the Committee to attend the forum on Friday if possible and send out information to respective constituent groups.
- b. For Discussion: Proposed Changes to the Judicial Administrator Re- Appointment Process
 - i. M. Battaglia said that the biggest proposed change is to change the Judicial Administrator(JA)'s position from a two-year renewable term to an indefinite term. He said that Cornell's location in Ithaca makes it difficult to staff the position considering the uncertainty of the term. He noted that, however, the two-year appointment keeps the JA in close contact with the UA and ensures a healthy working relationship.
 - ii. M. Battaglia said that there will be an opportunity for the public to provide feedback or engage in discussion about the Code, and that this would be a UA-run process.
 - iii. M. Battaglia said another proposed change included giving UA the authority to remove the JA by majority vote at any time, subject to the condition that the Board could formally vote to keep the JA.
 - iv. R. Bensel asked how many more meetings the Committee has left in the semester.
 - 1. M. Battaglia said that there are four meetings left total. He said that a subcommittee may be created for the purpose of conducting business in a separate meeting outside of regularly scheduled meeting times left.
 - v. M. Battaglia corrected his initial statement that the last meeting will be held on May 2. He said that the UA's last meeting will be held on May 8 and the CJC's last meeting is on May 9.
 - 1. R. Lieberwitz said that she anticipates having proposals from the Working Group to present to the Committee.
 - vi. R. Bensel expressed his concerns about getting things done expeditiously in the last four meetings left.

1. M. Battaglia said that some of what has been discussed in the Committee so far could be advanced at the UA's agenda. He anticipated next week's meeting to be a longer one than usual.
 - vii. M. Horvath said that the JA's office is structured in a way such that it does not have an advocate for it when unpopular decisions are made publicly. She noted her concern about the proposed JA removal process, in that there is currently no other process to remove a staff member by majority vote.
 - viii. R. Lieberwitz echoed M. Horvath's concern. She said that an indefinite, non-contractual term of a position would provide very little protection for the JA. She expressed her concern for fairness and due process in employment contracting.
- c. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
- i. M. Battaglia said that the "Language Comparison from Returned Changes" document consists of everything that has been generally approved by the Committee throughout the course of the semester. He noted a small change on page seven, which states, "Appointments made to fill a vacancy arising mid-term shall be granted the balance remaining of that term."
 - ii. R. Bensel made a motion to call the question.
 1. M. Horvath dissented. She suggested sending separate resolutions to the UA instead of the proposed language changes in its entirety.
 - iii. D. Barbaria asked if the President can accept and reject changes within the same resolution.
 1. M. Battaglia said that the President has exercised vetoes historically.
 - iv. M. Horvath expressed concerns that some resolutions may be rejected by the President. She noted that there are many resolutions that need to be passed and that the Committee needs to move expeditiously.
 1. M. Battaglia said that another option would be to pass as one resolution with 12 parts, while the President may choose to accept certain parts.
 - v. R. Bensel expressed that if there are 12 resolutions, there would be too much discussion and the resolutions would not pass in a timely manner. He suggested combining the resolutions, while allowing for them to be separable.
 - vi. D. Barbaria suggested separating the proposed language changes into two resolutions: one that the Committee expects to be accepted by the president, and another that the Committee is more uncertain about.
 1. R. Bensel said that he does not see what would be gained by tying the proposed languages together.
 2. M. Battaglia said that the Committee can do as it sees fit.

- vii. M. Horvath agreed with D. Barbaria’s solution. She said that a detachable clause gives the President more power than she currently has, which contradicts the idea of shared governance.
- viii. D. Barbaria suggested that the Committee go through the document and vote clause by clause.
- ix. D. Barbaria made a motion to extend the meeting to 6pm – motion **passed** by unanimous consent.
- x. D. Barbaria moved to place the proposed language on the suspension length, definition, and reporting date for organizations in the “noncontroversial” category.
 - 1. R. Liberwitz noted that it may be more beneficial to categorize the resolutions by exigency more so than degree of controversy.
 - a. D. Barbaria said that non-urgent matters would be included in the same category as what the Committee anticipates that the President would accept.
 - 2. Motion **approved** by unanimous consent.
- xi. D. Barbaria moved to place the proposed language on immediate suspension for non-compliance of sanctions in the “noncontroversial” category of resolutions.
 - 1. Motion **approved** by unanimous consent.
- xii. D. Barbaria moved to mark the proposed language on role of non-matriculated minors as “controversial”.
 - 1. Motion **approved** by unanimous consent.
- xiii. M. Horvath made a motion to add the proposed language regarding removal of indefinite suspension to “Resolution A” in the “non-controversial” category.
 - 1. Motion **approved** by unanimous consent.
- xiv. M. Battaglia noted the concerns raised by the President’s Office in the proposed language clarifying UHRB appointment procedures.
 - 1. D. Barbaria asked if the Chair believes that the President will accept the proposed language.
 - a. M. Battaglia said that he expects she would.
 - 2. M. Horvath proposed to add the proposed language to “Resolution C” in the “new” category. She noted that the Committee has not received any feedback from the President on the new portion of amendments.
 - a. Motion **approved** by unanimous consent.
- xv. D. Barbaria made a motion to extend the meeting to 6:10pm – motion **passed** by unanimous consent.
- xvi. M. Horvath moved to place the proposed language adding discretion to No

Contact Directive procedures to “Resolution C” in the “new” category.

1. Motion **approved** by unanimous consent.
- xvii. M. Battaglia said that the proposed language increasing the judicial boards pool size and clarifying the application process was formulated based on requests from UHRB Chairs. He said that it clarifies the appointment procedures and allows the Dean of Faculty to appoint faculty members directly to the Committee for review.
1. D. Barbaria moved to add the proposed language to “Resolution C” and mark as “new”.
 - a. R. Bensel asked how many applications have been received so far.
 - i. M. Battaglia said that he does not know, but the packet is 101 pages.
 - b. Motion **approved** by unanimous consent.
- xviii. M. Horvath made a motion to mark the new proposed language clarifying Hearing Board removal process as “new” to “Resolution C”.
1. Motion **approved** by unanimous consent.
- xix. M. Horvath made a motion to mark the new proposed language concerning Hearing Board oversight as “new” and add to “Resolution C”.
- xx. M. Horvath moved to add the new proposed language addressing public hearing notice timeframe to the “noncontroversial” category of “Resolution A”.
1. R. Bensel suggested moving the proposed language to “new” out of concern for the UA’s deliberation over the language.
 2. Motion **failed** without a second.
 3. D. Barbaria agreed with R. Bensel on including the proposed language in “Resolution C”. He added that it would also be beneficial to group the resolutions by topic and have the language on no contact directives under “Resolution C” so that “Resolution C” has a common topic of hearings.
 4. D. Barbaria moved to include the language on public hearing notice timeframe in “Resolution C” and move the language on no contact directives to a separate “Resolution D”.
 - a. Motion **approved** by unanimous consent.
- xxi. D. Barbaria made motion to approve and send the resolutions to the UA – **approved** by a vote of 5-0-1.
- xxii. R. Bensel suggested ordering the resolutions in terms of priority, as the UA may not be able to get through all of the resolutions. He further suggested labeling Resolution A as “urgent” or “priority” instead of “noncontroversial”.

1. M. Horvath suggested ordering the resolutions by A, B, C, D, noting that issues with non-matriculated minors and no contact directives haven't particularly been raised in the past.
- d. For Discussion: University Hearing and Review Boards Staffing Update
 - i. M. Battaglia updated R. Bensel on R. Lieberwitz on what they had missed.
- e. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor
 - i. M. Battaglia said that there was a discussion to combine questions 5 and 16, 6 and 17 on the Policy 6.4 hearing panel questionnaire.
- f. For Discussion: Codifying Prior Practices for UHRB and Search Committee Appointees
 - i. R. Bensel asked if the Committee intended to have Appendix A publicly posted.
 1. D. Barbaria said that it could be included under contents of the CJC meeting.

V. Adjournment (Chair)

- a. The meeting was adjourned at 6:17pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Clerk of the Assembly