

Per Section 4.04 part B of the GPSA Bylaws as amended in 2018, the undersigned Graduate and Professional Students of Cornell University request that the Graduate and Professional Student Assembly review and vote on the resolution below at the next Graduate and Professional Student Assembly meeting:

## **Resolution 6: On the Proposed Changes to the Student Code of Conduct**

**Abstract:** The GPSA expresses its dissatisfaction with the process of changing the Student Code of Conduct. The GPSA both lists several concerns with the new proposed Student Code of Conduct and notes several changes it supports.

**Sponsored by:** Undersigned Graduate and Professional Students of Cornell University

**Whereas,** the proposed changes to the Student Code of Conduct will affect graduate and professional students,

**Whereas,** the constituencies represented by the GPSA have voiced concerns over some of the changes in the new Student Code of Conduct,

**Whereas,** the GPSA supports some of the changes suggested by the University Counsel in the proposed Student Code of Conduct,

**Be it therefore resolved,** that the GPSA expresses the following opinions on the proposed changes to the Student Code of Conduct:

Number/Topic	Old Code Reference	New Code Reference	Comment
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<p><b>1) Students and Their Advisors Ability to Speak &amp; Ask Questions</b></p>	<p>Article III E3(b)6(c) <b>and</b> Title II Article II B</p>	<p>Procedures at 20.8.2 <b>and</b> Procedures at 11</p>	<p>The GPSA opposes the proposed changes as we firmly believe that it is imperative that both complainants and respondents (both themselves and through their advisors) be given the opportunity to question witnesses directly. Parties should be allowed to ask questions immediately and directly instead of only in writing and through the chair as this creates unnecessary and impractical delays. At hearings, the Complainant, in the overwhelming majority of cases, will also be the University, and the University will be represented by staff members who have the resources of the University available to them. It is unfair to allow full-time professionals with the authority of the University to oppose an inexperienced, student-respondent without the active involvement of their advisor during a hearing. It can be incredibly difficult and intimidating for a student-respondent to tell their story clearly and concisely using their evidence and witnesses. Students' oral presentation skills should not affect whether they are found responsible or not responsible. Likewise, students who may have a harder time with spoken or written English may be at an unfair disadvantage. In addition, forcing a</p>
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			<p>respondent to lead and speak in the hearing without the assistance of an advisor in the name of making the process an “educational experience” overlooks the anxiety, stress, and fear a student experiences during campus misconduct proceedings. Silencing advisors exacerbates that emotional toll and makes the process more intimidating and likely less educational for the student. Allowing advisors to continue to speak at hearings would not make hearings more “litigious” either. Attorneys and outside advisors may only speak during limited circumstances. RCCs also always encourage students to make statements on their own behalf during the hearing when they feel comfortable. To prevent the process from becoming unfair and needlessly daunting, advisors must continue to be allowed to speak during proceedings.</p>
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<p><b>2)</b> <b>Confidentiality</b></p>	<p>Title II Article II B</p>	<p>Procedures at 2.2</p>	<p>While understanding the importance of confidentiality and always keeping confidential information within the Office unless otherwise required by law, for years, the RCCs have been effective, in large part, because they have been able to share confidential information within their Office and therefore, collaborate and work together. They remain in essentially constant communication with each other to discuss questions as they arise. Students deserve to benefit from the institutional knowledge and wisdom that this collaborative environment helps create.</p>
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<p><b>3) Independence of Advisors</b></p>	<p>Title II Article II B</p>	<p>Procedures at 2.2.3</p>	<p>The RCC must remain independent from OSCCS. Specifically, the Office of Student Conduct and Community Standards should not play a role in the hiring or removal of the Respondents' Code Counselor, even in a consulting capacity. This new proposed Code creates a fundamentally unfair imbalance by giving the Director a newfound ability to influence the hiring and removal of the RCC, thereby threatening the independence that leads students to trust their advisors in the first place. The RCCs should only be subject to removal by action of the Board of Trustees upon the recommendation of the Student and Graduate and Professional Student Assemblies.</p>
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<p><b>4) Standard of Evidence</b></p>	<p>Title III Article III E(9)</p>	<p>Procedures at 20.2</p>	<p>The GPSA believes that the clear and convincing evidence standard—which requires that the decision-maker find it is “substantially more likely than not” or be about 75% sure that a violation has occurred in order to find a student responsible—best advances principles of fairness, ensures accurate outcomes, and creates trust. In a hearing, respondents, who are often still teenagers and frequently are first time offenders, face the University and the many resources available to it. If the University switches to a preponderance of the evidence standard, the Code would be putting its thumb on the scale of justice against a side that is already systematically disadvantaged. This may be especially harmful to students from low-income backgrounds who are unable to afford an attorney. No evidence has been presented that suggests the University has had any difficulty finding students responsible for violations under the clear and convincing evidence standard. Additionally, the clear and convincing evidence has been the longstanding standard used in <i>non</i>-sexual assault campus misconduct proceedings at Cornell. The clear and convincing evidence standard signals to the campus community that the</p>
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			<p>University is committed to avoiding finding the innocent responsible, thereby giving the community the confidence that the campus adjudicatory system is operating fairly. Finally, the entire justification for shifting to the preponderance of the evidence standard—that the new Title IX regulations were expected to require that the standard of evidence for Title IX cases be the same as the standard applied to other student conduct cases—is no longer applicable as the new Title IX regulations were released and explicitly do not require that evidentiary standards be uniform across campus codes. It makes sense to have different evidentiary standards for the Title IX process and the Campus Code of Conduct process given that Title IX cases rarely have witnesses other than the Complainant and the Respondent and it is much more difficult to obtain evidence in those cases. That is not the case in Campus Code of Conduct proceedings. The evidentiary standard should, accordingly, remain different in these two very different administrative processes.</p>
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<p><b>5) Right of Students to Be Informed of Ability to Access an Advisor</b></p>	<p>Title III Article III A(2)</p>	<p><i>None</i></p>	<p>The right of the accused to be “afforded the assistance of an advisor provided through the Offices of the Complainants’ Code Counselor and Respondents’ Code Counselor to assist and advise... at all stages under these Procedures” (Procedures at 11) can only be realistically protected if students are aware of that right in the first place. Under the current Code, students must be informed in writing of their right to be afforded the assistance of an advisor prior to the beginning of conduct proceedings, and yet still, countless students contact the RCC and report after proceedings have ended that they were not sufficiently aware of this right. If anything, the Code should implement <i>additional</i> measures to ensure awareness of this right. It is quite difficult to understand why the University would remove this provision and hide this right from students unless its desire is for them not to exercise it in the first place.</p>
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<b>6) Public Hearings</b>	Title III Article III E(3)(b)(7)	Procedures at 20.8.1	The GPSA opposes this change because allowing respondents the option of having a public hearing serves as an important check on the University administration. The way to appropriately balance the privacy interests of complainants and other members involved in the hearing process is not to eliminate this right entirely—but to give the hearing chair discretion (as the current Code does) to determine whether a public hearing is appropriate in circumstances given those competing interests.
<b>7) Addition of Advisors for Complainants</b>	<i>None</i>	Procedures at 2.2.3	The GPSA supports this change

<p><b>8) Temporary Suspensions</b></p>	<p>Title III Article III 3(B)(c)(1) <b>and</b> Title III Article III 3(B)(a)(1)</p>	<p>Procedures at 8.1 <b>and</b> Procedures at 8.2</p>	<p>The GPSA opposes the shift to having temporary suspensions reviewed by the VP SCL instead of independent hearing panels composed of members of the University community. Having an independent panel consisting of a combination of student, faculty, and staff perspectives functions as a critical check on the unilateral decision of the Director of Student Conduct and Community Standards to suspend a student and maintains campus-wide trust in the integrity of the disciplinary process. On the other hand, the GPSA supports the addition of the phrases only “where immediate action is necessary to protect the Complainant or the University community” and only “when less restrictive measures are deemed insufficient to protect the Complainant or the University Community” that were added to the standard for imposing a temporary suspension. We would, however, recommend that the phrase only “in extraordinary circumstances” from the current Campus Code of Conduct be added back in. The phrases that were added are important because they ensure that temporary suspensions are only used as an interim measure in urgent situations where less burdensome options are unavailable to address</p>
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			<p>potential threats to campus safety. Still, we believe that it's important to explicitly indicate that this serious interim measure should not be used in ordinary circumstances because temporary suspensions are imposed before a student has had an opportunity to provide any evidence or share their side of the story. It forces students to leave campus and deprives them of the opportunity to access their education (even over Zoom).</p>
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<b>9) Timeframe in Which Complaints Can be Brought</b>	Title III Article III D(4)	Procedures at 5	<p>The GPSA opposes this change. It is important that if a student respondent is found responsible for a violation of the Campus Code of Conduct that that finding is based on evidence that has not deteriorated or become less reliable due to the passage of time. We believe that one year affords a generous amount of time within which to bring a complaint and extending that time window any further threatens the fairness of the process for students respondents. The proposed Code itself seems to recognize this, in that it says: “A delay may affect the Director’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly and respond meaningfully, and may also affect the imposition of appropriate discipline upon a Respondent who has engaged in prohibited conduct.”</p>
<b>10) Alternate Dispute Resolution</b>	<i>None</i>	Procedures at 7.2.4 <b>and</b> Section 3(B)	<p>The GPSA supports these changes.</p>

11) <b>Scope of Code's Application</b>	Article III E3(b)9(a) <b>and</b> Article II C 2(b)	Section 3(A)	The GPSA is comfortable with the shift to granting the University jurisdiction over all registered student organizations and living groups, including fraternities and sororities, but does not think it is appropriate for the University to have jurisdiction over off-campus conduct except for as specified under the 'Grave Misconduct' provision in the current Code.
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**Be it finally resolved,** that in its current form, the GPSA opposes the proposed Student Code of Conduct, however, will strongly support it upon implementation of the suggestions expressed in this resolution.

Respectfully Submitted,

Name	NetID	Department
Joanna Schacter	jrs649	Law
Kaitlyn Marasi	Kpm77	Law
Anna Kaufman	ack264	Law
Quanece Williams	Qaw2	Law
Brie Michaelson	Bmm256	Law
Matthew Sunday	mjs729	Law
Lanay Mitchell	Lm799	Law
Logan R. Kenney	Lrk74	Law
Marisa O'Gara	mao229	Law
Yam Schaal	Ys2235	Law
Benedict C. Bussmann	bc98	Law
Divij Singh Kadan	dsk268	Law
Nathan Harp	ndh38	Law
Mary Victoria Martin	mvm59	Law

Alyssa Ertel	abe33	Law School
Audrey Burnim	aab293	Chemistry
Nikola Danev	nd398	Genetics, Genomics and Development
Virginia McGhee	Vem26	Chemistry and Chemical Biology
Kathleen Quain	keq5	Johnson
Piyush Jain	pj248	Chemical and Biomolecular Engineering
Anna Russell	amr458	Law
Itamar Haritan	ih255	Anthropology
Hayden Rutledge	Hsr52	Law
Prachee Sawant	pss238	Law
Zachary Sizemore	zrs8	Law
Grant Shillington	ges242	Law
Kayleigh Yerdon	Kay28	Law
Evelyn Hudson	Emh263	Law
Kianna Early	Kme68	Law
Julia Gebhardt	jag579	Law
Evelyn Hudson	Emh263	Law
Robert Ward	rww98	Law
Julian Xu	jjx7	Law
Jason Steuerwald	jls722	Law
Emery Staton	ebs235	Law
Natalie Grieco	nag82	Law
Siunik Moradian	sm2783	Law
Conor Bednarski	Cb827	Law
Omkar Mahajan	Om94	Law
Danielle Dominguez	dtd54	Law
Adnan Hussain	ah2275	Law
Serene Kabir	ssk292	Law
Robert Reese Oñate	rro22	Law

Jennifer Yu	jjy28	Law
Danielle Dominguez	dtd54	Law
Alicia Denutte	ad2295	Law
Danielle Dominguez	dtd54	Law
Mary Catherine Holt	mh2397	Law
Julia Gebhardt	jag579	Law
David Nelkin	Drn47	Law and Johnson
Serene Kabir	ssk292	Law
Frederick Horowitz	fmh45	Hotel School
Weston Boose	wsb78	Johnson
Ethan Everett	eae75	Johnson
Athena Ebinger	are64	Johnson
Marisa Werner	maw393	Law and Johnson
Richard Hoff	rh659	Biomedical Engineering
Patrick Fitzgerald	pgf45	Johnson
Victoria Quilty	vjq3	Law
Tim O'Connor	Tjo73	Johnson
Lauren Gergel	lg563	Johnson
Eric Espinel	ee297	Johnson
Robert Carney	rmc335	Johnson
Charles Day	cd636@cornell.edu	Johnson
James Bogdanowicz	jpb387	Law
Isaac Branaum	ijb38	Johnson
Victor Flores	Vmf6	Law
Eirene Kim	Ehk67	Law
Melissa J. Lin	MJL246	Law
amanda miner	awm78	Law
Suzanna Swanson	sms725	Law
Hannah Jung	hj446	Law
Olivia Rosen	owr5	Law
Destiny Reyes	dir33	Law

Martin Sasson	ms3532	Law
John Mucciolo	jrm585	Law
Zachary Jagielski	zjj6	Law
Anthony Bautista	Ajb498	Law
Zora Franicevic	zff2	Law
Stephen Brown	stb84	Law
Heather Donato	hmd63	Law
Kayla Anderson	kja72	Law
Alice Yao	Jy845	Law
David Relihan	Dar337	Law
Melissa Muse	mrm393	Law
Federico wynter	Fjw44	Law
Nicholas Pulakos	ncp45	Law
Ryan Zehner	Rhz7	Law
Anthony Bautista	Ajb498	Law
josh Howard	Jjh376	Law
Sam Steiger	Sjs473	Law
Thomas Turgeon	Tpt32	Law
Zachary Jagielski	zjj6	Law
Thomas Turgeon	Tpt32	Law
Eirene Kim	Ehk67	Law
Freddie Xu	fmX2	MBG
Stephanie Tanis	slt97	Genetics, Genomics and Development
Alexx Shumway	as3999	Genetics, Genomics and Development
Ari Broad	amb647	Genetics, Genomics and Development
Hallie Sussman	hrs86	Genetics, Genomics and Development