

**Working Group on Hate Speech and Harassment
Codes and Judicial Committee
University Assembly**

For discussion at Public Forum #2

Potential amendments to the Campus Code of Conduct, based on themes and issues raised at Public Forum #1:

(1) Statement of Community Values, perhaps as a Preamble to the Code.

Existing Code provisions:

TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES (pp. 1-5)

Preamble. Conduct of the members of the Cornell community is an appropriate area of concern for the University. This statement sets forth several basic principles and important policies regarding the scope, manner, and standards of regulating that conduct.

This Title is necessarily general. Its purpose is to inform the Cornell community of the general principles and policies upon which the Cornell judicial system operates, and to give general guidance to the judicial system as it handles specific cases arising under regulations authorized by the Board of Trustees, including legislation adopted by the University Assembly (or its successor) and approved by the President as representative of the Board.

Article I. Fundamental Principles

A. The Essential Purpose

The essential purpose of the University's governing of community conduct is to protect and promote the University community's pursuit of its educational goals. The University, as an educational institution, has a special set of interests and purposes, the protection and promotion of which are essential to its effective functioning. These interests, with respect to the governing of community conduct, include the following:

1. the opportunity of all members of the University community to attain their educational objectives;
2. the generation and maintenance of an intellectual and educational atmosphere throughout the University community; and
3. the protection of the health, safety, welfare, property, and human rights of all members of the University community, and the safety, property, and reputational interests of the University itself.

These general interests, of course, are also the subject matter of the public laws of the state and nation.

B. The University's Role

The University's role in regulating community conduct is distinguishable from society's. Therefore, the powers of the University's judicial boards shall be limited to the enforcement of University conduct regulations and shall not extend to the enforcement of public laws, except to the coincidental extent that such University conduct regulations are similar to provisions of the public law.

C. The Principle of Freedom with Responsibility

1. 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.
2. The Campus Code of Conduct is the University community's code, and hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement.

ACTION ITEM (from WG meetings and April 13 public forum)

Consider whether to add language to the Preamble that sets forth principles that should be used in interpreting the rest of the Campus Code. Do the provisions in Article I. Fundamental Principles fulfill this?

(2) Scope of the Code’s jurisdiction (e.g. jurisdiction over on-campus and off-campus conduct). Community interests in ensuring public safety may not coincide in all cases with the reach of jurisdiction by the Code.

Existing Code provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

Article I. Applicability

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This Title shall apply to conduct on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area.

This Title shall also apply to conduct elsewhere if the Judicial Administrator—with the approval of the President or his or her designated representative in the person of the Dean of Students for conduct by students, the Provost for conduct by faculty, or the Vice President for Human Resources for conduct by other employees—considers the conduct to constitute a serious violation of this Title, in that the conduct poses a substantial threat to the University’s educational mission or property or to the health or safety of University community members.

ACTION ITEMS (from WG meetings and April 13 public forum)

- Consider whether the Campus Code should be renamed the “Cornell Code of Conduct.”
- Develop “Guidance” or “Guidelines” to define “serious violations” that would warrant applying the Code off-campus (e.g. identify provisions in the Code that would be presumptively “serious violations.”)
- Question raised: Should the approval of the President and others listed in this Code provision be required?

(3) Clarify harassment and related provisions in the Code.

Existing Code provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

Article II. Violations

A. Listing

1. It shall be a violation of this Title, as an offense against another person or the university:

a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.3¹

b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.

c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable².

d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

e. To assault or cause any physical injury to another person on the basis of disability, ethnicity, gender, national origin, race, religion, or sexual orientation or affectional preference.

f. 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.

g. To (1) endanger another person, including but not limited to such acts as: introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations;

¹ This Code section is subject to the provisions in Appendix A, Article I.

² This Code section is subject to the provisions in Appendix A, Article I in cases of sexual harassment.

theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.

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2. It shall be a violation of this Title, as an offense against the University:

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i. To commit a violation of Article II of Title Four.

3. It shall also be a violation of this Title:

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h. To assist another person to violate this Title.

i. To incite another person toward a likely and imminent violation of this Title.

j. To attempt to violate this Title.

ACTION ITEM:

Develop a recommendation to amend Title III, Article II, Section A.1.d.

This provision currently states:

d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

Ideas from the public forum of April 13:

Separate Section A.1.d (1) from Section A.1.d. (2) and develop each of them:

Section A.1.d (1) should be developed to clearly define what sort of “following” would constitute harassment.

Section A.1.d (2) should be more fully developed to define hostile environment harassment. One possibility would be to use definition(s) and language from Policy 6.4.

Regarding identification of protected groups, Policy 6.4 defines bias activity as action based on:

“...an actual or perceived aspect of diversity, including, but not limited to, age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, height, immigration or citizenship status, marital status, national origin, race, religion, religious practice, sexual orientation, socioeconomic status, or weight.”

Relevant provisions from Policy 6.4 that may be helpful in defining prohibited harassment include the following [Note: Some of the following provisions are related to “quid pro quo” harassment and other provisions relate to hostile environment harassment]:

Procedures for Resolution of Reports Against Students Under Cornell University

Policy 6.4 <http://titleix.cornell.edu/procedure/> ***

2.8 Sexual and Gender-Based Harassment

Sexual Harassment is unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in (1) or (2), below, are present.

Gender-Based Harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, 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 a person’s employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as “quid pro quo” harassment); or

2. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual’s participating in or benefitting from the University’s education or employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant’s mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

Because of protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered sexual or gender-based harassment unless this speech or 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 persons targeted by the speech.

Additional Action Item from WG meetings and the April 13 public forum:

Recommendation that CJC, working with other Cornell offices (e.g. Title IX Office; Faculty Senate, UA, SA, EA) develop a “Guidance” that is not part of the Campus Code, but that explains more fully what is prohibited (e.g. explaining the meaning of terms such as “severe” and “pervasive”), and explain what is not prohibited (e.g. discuss the scope of academic freedom and free speech).

TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER

Article I. Applicability

This Title shall apply to all persons and organizations, including visitors and other licensees and invitees, on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area * * *.

Article II. Violations

A. Listing

It shall be a violation of this Title:

1. To disrupt or obstruct or attempt to disrupt or obstruct any instructional, research, service, judicial, or other University operation or function or to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual, by any action including but not limited to the following:

a. by intentionally 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;

b. by intentionally 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;

c. 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, and employment interviews; or

d. by intentionally inciting another person toward a likely and imminent violation of this Subsection 1.

2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy 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.

3. To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances in or upon University

premises, except by law enforcement officers or except as specifically authorized by the University.

4. To engage in any action or situation that intentionally or recklessly endangers mental or physical health or involves the forced consumption of alcohol or drugs, for the purpose of initiation into or affiliation with any group or organization.

5. To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a criterion for admission or seating at public speaking events advertised as open to the University community.

6. To disrupt or obstruct or attempt to disrupt or obstruct any speaker invited to appear on the campus by the University or a University-recognized organization.

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(4) Need to clarify the connection between the Code and Policy 6.4.

Existing Code Provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

Article II. Violations

A. Listing

1. It shall be a violation of this Title, as an offense against another person or the university:

a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.3³

* * *

c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable⁴.

ACTION ITEMS (from WG meetings and April 13 public forum)

- Consider the implications for resources if Policy 6.4 were brought back into the Code.
- Will there be a need to increase the number of Hearing Board members?
- Special training of Hearing Board members hearing harassment cases?
- Should there be procedural provisions adopted that are unique to harassment cases (e.g. charging party and charged party not in hearing room at the same time; quantum of proof)?
- What would be the impact of bringing Greek organizations and Policy 6.4 under the Code?

³ This Code section is subject to the provisions in Appendix A, Article I.

⁴ This Code section is subject to the provisions in Appendix A, Article I in cases of sexual harassment.

(5) Need for increased transparency and reporting information to the community about allegations of bias-related incidents.

Existing Code Provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

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Article II. Violations

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B. Interpretation

Because the judicial system utilizes the decisions of the University Hearing and Review Boards to define or interpret violations, public records of all decisions of those boards shall be kept on file in the Office of the Judicial Administrator, including a brief summary that describes the nature of the case and its disposition but with names of individuals and other identifying information redacted.

ACTION ITEMS (from WG meetings and from public forum of April 13):

Identify all the sites and locations of where reporting is done.

Consider consolidating reporting of incidents.

Idea of creating a “clearinghouse” site with information, reports, and links to relevant websites.

Provide more information about bias, harassment, and assaults that take place, including what actions were taken after initial reporting.

(6) Need for increased safety and security

Existing Code provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

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Article III. Procedures

A. Initial Investigation

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B. Interim Measures

1. The Judicial Administrator shall work with Campus Life, in cases in which the victim and the accused live in the same residence hall and there is a substantial danger of future harm or misconduct, to determine whether Campus Life should relocate the victim or the accused to another residence hall.

2. No-Contact Directive

a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a No-Contact Directive.

b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.

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3. Temporary Suspension Pending Resolution

a. Suspension of an Individual

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or her designee.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion.

b. Suspension of a University-Registered Organization

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated

representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate.

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TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER

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Article III. Procedures

A. Immediate Enforcement

The President or a designated representative shall be responsible for initiating and ensuring the prompt enforcement of this Title. For conduct that violates this Title, individuals and organizations may be ejected from the University campus, property, or facility, or any part thereof by the President or his or designee acting in the following manner:

1. When the continued presence of an individual poses a clear and present danger to the public order or to the security of any property or the safety of any person, the individual may be ejected, but only until a hearing before the University Hearing Board.
2. In the case of an organization that authorizes conduct posing such a clear and present danger, the President or his or designee may rescind permission for that organization to operate on University property and rescind the registration of the organization, but only until a hearing before the University Hearing Board.
3. The University Hearing Board shall meet to review such action within five business days after the day on which the alleged offense occurred.

(7) Need more clearly defined sanctions for violating the Code. [Note: The University Hearing Boards have a written Guide about Code sanctions.]

Existing Code provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

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Article IV. Penalties and Related Provisions

A. Penalties

1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision, provided that no person shall endure cruel and unusual punishment. In situations where an individual is both taking classes and on the University payroll, appropriate penalties may come from either or both Subsections a and b.

a. Students

(1) Oral warning.

(2) Appropriate educational steps (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(3) Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Judicial Administrator.

(4) Fine of not less than \$20 nor more than \$500 payable to the University Treasurer.

(5) Restriction or loss of specified privileges for a stated period not to exceed one year, including for example:

(a) in cases of misconduct in connection with University services or facilities, the student being prohibited from further use of those services or facilities other than in the course of his or her work or study; or

(b) in cases of misconduct in connection with University-owned or University-operated housing, the student being ordered to vacate such housing.

(6) Written reprimand.

(7) Probation for a stated period.

(8) Suspension from the University for a stated period not to exceed five 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.

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(9) Dismissal, i.e., expulsion from the University.

b. Faculty and Other Employees

(1) Oral warning, educational steps, community work, and fine, as provided for student offenders.

- (2) Written reprimand.
- (3) Suspension from University duties for a stated period not to exceed one month, with loss of salary but without loss of other rights or privileges.
- (4) Dismissal from University employ, with termination of any contract or tenure.

TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER

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Article IV. Penalties and Related Provisions

For penalties and related provisions, this Title adopts the provisions of Article IV of Title Three prevailing at the time of the violation.

ACTION ITEM (based on WG meetings and ideas from public for a):

Review the guidelines about Code sanctions, which have been provided to Hearing Boards.

(8) Bring fraternities/sororities under the Code.

Existing Code provisions:

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

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Article IV. Penalties and Related Provisions

A. Penalties

1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision, provided that no person shall endure cruel and unusual punishment. * * *

c. University-Registered Organizations

(1) Appropriate educational steps for members of the organization (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(2) Community work performed by members in a manner acceptable to the Judicial Administrator.

(3) Fine of not less than \$25 nor more than \$500 payable to the University Treasurer.

(4) Restriction or loss of specified privileges for a stated period not to exceed one year.

(5) Written reprimand.

(6) Suspension of all privileges for a stated period not to exceed one year.

(7) Dismissal, i.e., rescission of permission to operate on University property.

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ACTION ITEMS (based on WG meetings and April 13 public forum):

- Consider bringing fraternities and sororities under the Code's jurisdiction as University-registered organizations.
- This action would be justified by the idea that fraternities and sororities should be covered by the Code as members of the Cornell community.
- The clear and convincing evidence would apply under the Code of Conduct, but coverage under the Code would likely lead to applying the Code more seriously to Greek organizations, with greater predictability of the approach to bringing charges and imposing sanctions.
- Fraternities and sororities could still have their own internal regulations (e.g. for lower level misconduct). This would be analogous to House Rules in Residence Halls.

(9) Adopt and expand Alternative Dispute Resolution (ADR) and Restorative Justice processes to utilize in certain types of Code violation cases.

Existing Code provisions

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

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Article IV. Penalties and Related Provisions

A. Penalties

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B. Remedies

The following remedies may be imposed:

1. Restitution to the University or to the victim of the violation.
2. Order to the offender to perform, or to cease and desist from, stated actions.

ACTION ITEMS (from WG meetings and public fora):

- Support expansion of using ADR and Restorative Justice.
- WG can endorse CJC taking actions to include in the Code ways to provide for greater use of ADR and Restorative Justice.