

*Copied from an email sent on Thursday, December 7, 2017 at 1:21pm.*

Dear Gabe,

Thank you for submitting University Assembly Resolution 4, “Addressing Housekeeping Changes and Laying the Groundwork for a Holistic Evaluation of the Campus Code of Conduct.”

I appreciate the efforts of the University Assembly (UA) and the Codes and Judicial Committee (CJC) to keep the Campus Code of Conduct up-to-date and to address longstanding issues of concern. I share the UA’s desire to embark on a holistic evaluation of the Code and agree with the need to address certain time-sensitive issues in advance of that process. I am committed to working with the UA on both of these efforts.

The Code, as you know, touches all parts of our community. It is therefore critical when developing proposed changes that there be full community involvement consistent with the UA Charter. I am concerned that this did not happen with Resolution 4. While I appreciate CJC Chair Matthew Battaglia’s November 28, 2017, letter describing the UA’s efforts to solicit the input of the broader campus community, I do not believe that these efforts meet the requirement for “meaningful” public notice and comment set forth in the UA Charter.

Of the seven proposed Code changes, only two (“Modifying suspension length and limitations period for university registered organizations,” and “Adding discretion to instance [sic] of non-compliance with sanctions and remedies”) involved any substantive attempt to reach members of the campus community (e.g., via a listserv distribution).

Further, in only one instance (“Clarifying the role of non-matriculated minors”) did the UA actively solicit the participation of any campus stakeholders other than past or current members of the Office of the Judicial Administrator (JA) and the Judicial Codes Counselors (JCCs). Instead, the UA relied on posting Resolution 4 to its meeting agendas and discussion at UA meetings to fulfill its meaningful public notice and comment requirements. Posting of a Resolution to the Assembly’s agenda does not, per se, establish meaningful public notice and comment. Both the UA’s Charter and Bylaws contemplate a formal notice period during which members of the campus community can submit written comments for any substantive policy change – which would certainly include proposed changes to the Code.

I would therefore ask that the UA undertake a more thorough public notice and comment process to ensure that the broader community has a chance to provide appropriate input.

In advance of that, I am happy to provide my thoughts, below, on the proposed Code changes contained in Resolution 4. There were a number of provisions in the resolution that I could have supported either unconditionally or with some modifications, had the overall resolution received sufficient public input. I describe them here in the hope that this will be of use to the UA as it considers and sends back to me a revised resolution after soliciting such community input:

**I. Modifying suspension length and limitations period for university registered organizations**

I support the UA’s proposed change.

**II. Adding discretion to instances of non-compliance with sanctions and remedies**

I support the JA having discretion over whether to issue a suspension or other penalty; however, normal university operations require certain notifications associated with a suspension. We must know whether a student is currently enrolled if we are to promote public safety, adjust financial aid if warranted, etc. I have added the revisions below (in red) to help clarify this important need:

*Be it Resolved, that Title Three, Article IV, Section C.2 (Code pg. 36) be amended to read: If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator **may suspend the offender or issue a lesser penalty. In the event the JA elects to suspend, the JA shall** notify the University Registrar, Office of the Dean of Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.*

### **III. Clarifying the role of non-matriculated minors**

I fully support the exclusion of non-matriculated minors from the definition of “student,” but do not agree that the CJC should be involved with policies that concern minors who are not part of the Cornell community but are just participating in ancillary (often summer) programs. In fact, the Code should not specify anything about non-matriculated minors. Rather, the units that directly supervise non-matriculated minors, in partnership with appropriate administration offices including Risk Management and University Counsel, must be able to develop appropriate policies that meet those unique needs.

Accordingly, I recommend the addition below to lines 211-216 (new language in red):

*Be it resolved that Title Two, Article I, Section B.2 (Code page 10) be amended to read as follows:*

*2. The term student shall be interpreted to mean also persons not officially registered, and not faculty members or other University employees, if they are:*

- a. currently enrolled in or taking classes at the University, **with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent;***
- b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities, **with the exclusion of any individual enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent;** or*
- c. currently on leave of absence or under suspension from being a student of the University.*

### **IV. Discontinuing the usage of indefinite suspension**

I support the UA’s proposed change. That said, I do not consider the footnote (lines 273-276) necessary; but, if included, it should reference the date of these revisions.

### **V. Clarifying University Hearing and Review Board appointment procedures**

I generally support the proposed change, but request that the UA make clear the process by which a currently serving member may request reappointment. Under the current process, which does not expressly allow for reappointing existing Hearing and Review Board (HB) members, a reappointment to the HB would follow the same process as any initial appointment: for faculty members, nomination by the Dean of the Faculty, and for all other appointments, nomination by the CJC following written solicitation for applicants by the Office of the Assemblies. The

proposed reappointment process removes the Dean of the Faculty and the Office of the Assemblies from exercising any oversight over HB members after their initial appointment to the HB. In order to ensure the appropriate levels of transparency and independence for reappointment of HB member, I recommend this provision be further amended to require input from the Dean of the Faculty.

**VI. Clarifying Judicial Administration reappointment procedures**

I cannot accept this proposed change. As you note in the resolution, the practice used in the JA reappointment process over many years has not aligned with what is in the Code, and what is in the Code lacks clarity. The resolution's language, however, not only fails to address the clarity issues, but it also creates new, substantive problems, including a fairness issue of changing the reappointment process at the very moment at which reappointment is due. Given the urgent need for (re)appointment of the JA and the outstanding, substantive issues with the UA's proposed changes to the reappointment process, I suggest that we reappoint the JA for a period of one year (i.e., through June 2019), to give us time to work together to develop mutually acceptable changes to the JA appointment process that can be fairly applied to the current JA.

**VII. Aligning practices with procedures regarding no-contact directives**

I support the UA's proposed change, in part. In addition to the JA and JCC, victim advocates should have the opportunity to comment on a change making all no-contact orders mutually binding. Also, I question the wisdom of creating a new right of appeal to a process that is, by its nature, intended to be interim and would suggest that lines 479 - 489 be eliminated.

I look forward to receiving a revised resolution after more robust public notice and comment, and to working with the UA to consider future holistic revisions to the Campus Code of Conduct.

Thank you again for submitting this resolution.

Sincerely,

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