

# **Student Code of Conduct Procedures**

## **Section 1: Participants in the Process**

### **1.1 Complainant**

Any student, member of the University faculty, or other employee of the University may allege a violation of the Student Code of Conduct, of which that individual was the victim, by filing a complaint with the Office of Student Conduct and Community Standards (OSCCS). In cases in which a complaint is made by one or more individuals, and where such individuals have been directly harmed by the alleged conduct and would like to participate in the resolution of the complaint, the individuals shall be designated as the “named complainants.” In cases in which a complaint has been made but the individual has not been directly harmed or would not like to be designated as a named complainant, but an investigation is initiated by the OSCCS, Cornell University shall be designated as the complainant. Whether an individual is designated as a named complainant or not shall not hinder the OSCCS’s or Panels’ ability to impose measures, such as Interim Measures, to protect the health and safety of a complainant or witness. At any stage of these Procedures, the case shall be presented by the OSCCS in the name of the complainant regardless of whether there is an individual named complainant or Cornell University is designated as the complainant.

A named complainant shall have the right to be present at any relevant hearing. Each named complainant shall have the right to be accompanied at every stage by a personal advisor of that person’s choice, but that advisor shall not be a witness and shall not participate actively in a hearing in the capacity of counsel. The OSCCS shall provide information to a named complainant about the University’s Victim Advocate and other relevant resources, including information about how to file a police report.

### **1.2 Respondent**

A student, University-recognized organization, or University-registered organization against whom a complaint has been filed with the OSCCS will be designated the “respondent.”

At all stages under these Procedures the respondent will be afforded the assistance of an advisor provided by the University through the Office of the Judicial Codes Counselor to assist and advise. As an alternative or in addition to utilizing an advisor offered by the University, the respondent has the right to select and consult with an advisor of their own choosing. Such advisor may be any member of the University community or general public but shall not be a witness. Except for the Judicial Codes Counselor, the respondent’s advisor shall not normally participate in a hearing in the capacity of counsel. However, for a disciplinary probation,

suspension or expulsion to be imposed, such counsel or advisor must have had a reasonable opportunity to participate fully in the hearings.

The respondent also has the right to a support person of their choice. The respondent's support person shall not be a witness and shall not participate actively in the conduct process in the capacity of counsel.

### **1.3 Office of Student Conduct & Community Standards (OSCCS)**

The Office of Student Conduct & Community Standards (OSCCS) manages the student conduct system and cases arising out of the Student Code Of Conduct ("Code"). The OSCCS receives and ensures proper investigation and adjudication of alleged violations of the Code, or of any other regulation as the University Assembly, the University President, or Board of Trustees may direct. The Director shall hire and train competent individuals to undertake careful, fair, and objective investigations of complaints and to serve as chairs of hearing panels. The OSCCS is also responsible for the training and administration of the University Hearing and Review Panel, with the intention of ensuring fair and consistent adjudication, findings of responsibility and as appropriate, imposition of sanctions/remedies

The fundamental role of the OSCCS is to ensure that complaints are handled with fairness, integrity, and objectivity for all parties concerned, consistent with the educational and rehabilitative goals of the University's student conduct system. Anyone can direct questions about the student conduct system to the OSCCS.

The Director of OSCCS shall be appointed by and report to the Vice President for Student and Campus Life. The Vice President of Student and Campus Life shall consult with the University Assembly prior to appointment and shall request representatives from the University Assembly to serve on the search committee when a new Director is hired. The OSCCS shall undergo an annual review overseen by the Vice President of Student and Campus Life (or designee). The Vice President of Student and Campus Life shall request and thoughtfully consider feedback from the University Assembly as part of the Director's annual review. The Director shall provide an annual report to the Vice President of Student and Campus Life, the University Assembly, and its Codes and Judicial Committee on the operations of the office and of the student conduct system.

### **1.4 Office of the Judicial Codes Counselor (JCC)**

The Office of the Judicial Codes Counselor provides free assistance and representation within the student conduct system to respondents involved in the Student Code of Conduct process and to students charged with violations of the Code of Academic Integrity.

To the extent permitted by law, the Judicial Codes Counselor shall not reveal any information provided by the accused, unless the accused expressly requests that the information in question be confided to another person. Although the Judicial Codes Counselor should be a law school student, the services are not meant to be a substitute for professional legal advice or for the legal assistance provided by an attorney. The Judicial Codes Counselors primarily explain how the student conduct system works and assists the parties in the selection of counsel or an advisor. With the consent of the Judicial Codes Counselor, an individual may choose a Judicial Codes Counselor as their advisor.

The Judicial Codes Counselor shall be appointed for a two-year term. The President shall appoint the Judicial Codes Counselor with the concurrence of the University Assembly, following the procedures for the appointment of the Judicial Administrator. The Judicial Codes Counselor shall be solely responsible for the Office of the Judicial Codes Counselor. The Judicial Codes Counselor shall be independent, although an administrative relationship should exist with the University administration to support that office. The Judicial Codes Counselor shall be subject to removal only by action of the Board of Trustees upon recommendation of the University Assembly. No employee of the Office of the Judicial Codes Counselor shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of an Administrative, Hearing, or Appeal Panel.

### **1.5 Administrative, Hearing, and Appeal Panelists and Chairs**

The Administrative Panel conducts hearings in cases where the OSCCS is recommending sanctions less than disciplinary probation, suspension, or expulsion. Consistent with the less severe nature of the sanctions, the Administrative Panel will rely primarily on written statements from the parties and the respondent's testimony, if the respondent wishes to testify. The Administrative Panel has the discretion to call other witnesses, including those requested by the OSCCS or the respondent. The Administrative Panel may also conduct a limited "sanctions-only" hearings, where the OSCCS and the respondent disagree only on the proper level of sanctions.

The Hearing Panel conducts hearings in cases where the OSCCS is recommending sanctions of disciplinary probation, suspension, or expulsion. As these are the most severe sanctions possible, the Hearing Panel relies primarily on information presented through testimony by witnesses called by the OSCCS, the respondent, and the Hearing Panel.

When a Formal Complaint is not resolved by Administrative Resolution or Administrative Resolution by Mediation/ADR and the OSCCS recommends sanctions less than disciplinary probation, suspension or expulsion, the case will be referred to an Administrative Panel. The Administrative Panel shall be composed of a faculty Administrative Panel Chair (non-voting), two students, and one faculty member, all drawn from the Administrative, Hearing, and Appeal Panels pool.

The OSCCS will notify the Logistics Chair of the need to schedule an Administrative Panel and will provide the Logistics Chair with the case number. The Logistics Chair will randomly select the Panel from the pool of available panelists and set a hearing date.

Once scheduled, all other decisions pertaining to the Administrative Panel will be directed to the Administrative Panel Chair. The Administrative Panel Chair will be selected on a rotating basis from the pool of faculty members who serve as Administrative Panel and Hearing Panel Chairs. If the selected Chair cannot serve as the Chair because of good cause shown, such as scheduling issues, the Chair may recuse themselves if a different Chair is willing to and can serve as the Chair at the scheduled hearing.

A Hearing Panel shall be composed of a faculty or staff Hearing Panel Chair (non-voting), three students, one faculty member, and one staff member, all drawn from the Administrative, Hearing, and Appeal Panels pool. One alternative panelist from each constituency shall be drawn from this same pool and shall be available to sit on the panel if a panel member from that constituency cannot remain on the panel.

Selection of a Hearing Panel, whenever one is needed, shall be made randomly by the Logistics Chair of that pool.

A member of the Hearing Panel may voluntarily withdraw from participation in any case by reason of a conflict of interest or any other good cause. Knowledge of the events at issue shall not disqualify a member, unless the panel member has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the member shall be excused by vote of the Hearing Panel. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Panel Chair.

### **1.6 Witnesses and Witness Immunity**

The OSCCS and the Administrative, Hearing, or Appeal Panel may grant witnesses immunity from proceedings within the conduct system related to the subject of their testimony.

### **1.7 Confidentiality**

All who are involved in the complaint, investigation, methods of resolving a Formal Complaint or formal charges, including mediation, hearings, and appeals, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all conduct records, except those records specifically referred to in section 8.10 of these Procedures.

Copies of student conduct records shall not be released to outside sources without written consent of the subject of such record, except:

- When required by law;
- When authorized by law and necessary to protect the safety or well-being of the University community members, or to preserve the integrity of proceedings under this Code;
- With respect to the conduct records of University-registered and University-recognized organizations only, when deemed necessary to educate the University community or to provide information to the University community about the organization's conduct.

## **Section 2: The University's Response to a Complaint of Prohibited Conduct**

### **2.1 Initial Inquiry and Jurisdictional Analysis**

Upon receipt of a complaint of alleged conduct in violation of the Code by a student, a group of students, a University-recognized organization, or a University-registered organization, or upon receiving a report of information that a violation of this Code may have occurred<sup>1</sup>, the OSCCS will make an initial inquiry to assess the conduct alleged and the University's jurisdiction. In this initial inquiry, the OSCCS should determine whether:

- the behavior described falls under "Prohibited Conduct" according to Section 4 of the Student Code of Conduct;
- a student, or University-recognized or University-registered student organization or living group was alleged to have violated the Code;
- if formal charges are filed by the OSCCS against the respondent, those charges will fall within the limitations period specified below;
- the behavior falls within the jurisdictional limits in Section 3 of the Student Code of Conduct.

During the initial inquiry, the OSCCS should also work to address any immediate health or safety concerns, including imposing any appropriate interim measures.

If the OSCCS determines that an individual making the complaint of the alleged conduct in violation of the Code was directly harmed by the reported conduct and would like to participate in the pendency of the complaint as a named complainant, the OSCCS will designate the individual as the named complainant.

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<sup>1</sup> Throughout these procedures, various University officials, such as the OSCCS, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may always consult with appropriate University administrators, the Office of University Counsel, and subject-matter experts.

## **2.2 Limitations Period**

Any Formal complaint against a respondent ordinarily must be filed by the OSCCS within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:

- In cases where the individual to be charged is absent from the University because of either:
  - (1) a leave of absence or;
  - (2) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within sixty (60) business days of his or her return to the jurisdiction of the University conduct system, whichever is later.
- In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within sixty (60) business days of the final disposition of such prosecution.
- The OSCCS may request a Hearing Panel Chair to extend any limitations period by up to an additional six (6) months, with notice to the respondent upon a showing of special circumstances justifying such an extension, provided that the OSCCS delivers such written request to a Hearing Panel Chair prior to the expiration of that period.

## **2.3 Outcome of the Initial Inquiry of a Complaint or Report Received by the OSCCS**

The initial inquiry by the OSCCS of a complaint or a report received by the OSCCS may lead to:

- a determination that the allegations do not fall under the Student Code of Conduct and should be referred to another University Office for investigation and/or adjudication under a more appropriate University policy;
- a determination that the allegations do not fall under the Student Code of Conduct and should be referred to another University Office or campus partner, such as Cornell Health, the Office of the First Generation & Low-Income Support, and the Office of Sorority and Fraternity Life;
- a determination that the complaint or report made to the OSCCS should be administratively closed because, even if the behavior occurred, the behavior alleged would not violate the Code;
- a more comprehensive investigation by the OSCCS of the allegations may be appropriate.

## **2.4 Notice of a Formal Complaint and Investigation**

After an initial inquiry of a complaint or report, the OSCCS will determine whether there is reasonable cause to believe that a violation of the Code has occurred. If the OSCCS determines that there is such reasonable cause, the OSCCS will initiate an investigation of a Formal Complaint with either an individual or the University as the named complainant. The OSCCS

must notify the respondent (or on an officer of record of a respondent University-registered or University-recognized organization) of the action the OSCCS will take under these procedures to investigate and resolve the Formal Complaint. The notice must include the following information:

- the provisions of the Code the respondent is alleged to have violated;
- the approximate date of when the alleged violation(s) occurred; and,
- a summary of the following information:
  - the available methods of resolution under the Student Code of Conduct;
  - the possible sanctions and/or remedies if a violation is found;
  - a respondent's right to an advisor and support person;
  - the contact information for the Judicial Codes Counselors; and,
  - additional campus resources available to the respondent.

This notice must be provided by Cornell in writing and by email via secure Drop Box, if possible, to the respondent promptly, ordinarily within seven (7) business days, of initiating a Formal Complaint, and prior to taking steps to resolve the Formal Complaint.

## **2.5 Interim Measures**

Following the initial inquiry of a complaint of alleged conduct in violation of the Code, and pending the resolution of a Formal Complaint or referral to campus partners, the OSCCS may determine that Interim Measures are appropriate to advance the following goals: to support and protect the safety and health of the complainant, the respondent, the University's educational environment, and the University community; to deter retaliation; and to preserve the integrity of the investigation and resolution process pursuant to these procedures. Interim Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected. When an interim measure is imposed, the OSCCS must promptly inform the respondent and the individual complainant (if applicable) of the interim measures.

Interim Measures might be in the form of support or accommodations for or restrictions upon the respondent and the individual complainant (if applicable). More restrictive Interim Measures will be calibrated to address a perceived risk but tailored to minimize to the extent possible the impact on the respondent whose underlying case of prohibited conduct has not yet been investigated and adjudicated.

Examples of Interim Measures include but are not limited to: referrals to appropriate offices to obtain: access to counseling, advocacy, or medical services; access to academic support; academic accommodations changes in class schedules ,changes in work schedules, job assignments, or other work accommodations; changes in campus housing; safety escorts; "no-contact" orders (curtailing or prohibiting contact or communications between or among individuals); and Temporary Suspensions.

### **2.5.1 Review of Decisions Regarding Interim Measures (Excluding the Imposition of Temporary Suspensions)**

The complainant or respondent may at any time request that the OSCCS issue, modify, or remove Interim Measures based upon a change in circumstance or new information that would affect the necessity of any Interim Measures.

The complainant or respondent may petition the Vice President of Student and Campus Life (VPSCL) in writing to review the OSCCS's decision whether to issue, modify, or remove Interim Measures. A party may seek such review only if the Interim Measure directly impacts that party. The petition should include the reasons and any supporting information for their request for review.. The materials should be submitted to the OSCCS, who will forward all materials to the VPSCL. The OSCCS will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the VPSCL is considering issuing, modifying, or removing an Interim Measure, the VPSCL will invite the non-petitioning party and the OSCCS to submit responses. The VPSCL will establish a reasonable timeline for handling the matter.

If the VPSCL determines that the OSCCS's decision should be set aside, the VPSCL will instruct the OSCCS to vacate the prior decision on Interim Measures immediately. At that time, the OSCCS may impose alternate reasonable and appropriate Interim Measures. The VPSCL may provide the OSCCS with guidance regarding appropriate alternate Interim Measures.

The VPSCL will provide a written decision to the parties and the OSCCS. The decision of the VPSCL is final; there is no right to appeal.

### **2.5.2 Temporary Suspension**

In consultation with appropriate University officials, the OSCCS has discretionary power to temporarily suspend a respondent pending resolution of the underlying case where immediate action is necessary to protect the complainant or the University community. A temporary suspension may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, utilization of University premises and facilities, and in the case of University-recognized organizations or University-registered organizations, recognition by the University.

A Temporary Suspension may be imposed only when less restrictive measures are deemed insufficient to protect the complainant or the University community. In determining whether a Temporary Suspension is appropriate, the following factors, among others, should be considered:

- whether the respondent has a history of violent behavior or is a repeat offender;
- whether the alleged violation of the Code is escalation of prior unlawful conduct;

- whether there are facts indicating a risk that the respondent will commit acts of interpersonal misconduct or violence; and
- whether there is reasonable basis for concern that the respondent will commit retaliatory acts;
- whether there exists reasonable basis for concern over possible harm to the safety of others involved or the campus community generally.

### **2.5.3 Review of Temporary Suspension**

The respondent may file a request in writing to lift the Temporary Suspension with the Appeal Panel. The OSCCS may file a response. The Appeal Panel will meet to consider the request to lift the temporary suspension within five (5) business days of receiving the respondent's request, with exceptions only for extraordinary cause. If the Appeal Panel determines that good cause for the Temporary Suspension is inadequate or absent, that other less restrictive alternatives are available, or that circumstances have changed so that the suspension is no longer necessary, the Temporary Suspension will be immediately lifted. The Appeal Panel may simultaneously provide the OSCCS with guidance regarding appropriate alternate Interim Measures, and such alternatives are within the OSCCS's continuing authority. The Appeal Panel's decision is final; there is no further right of appeal.

### **Section 3: Investigation**

If the OSCCS finds, after its initial inquiry, that a more comprehensive investigation of the allegations may be appropriate, the OSCCS may begin its investigation of the Formal Complaint. The OSCCS must notify the respondent according to the provisions of Section 2.4 of these Procedures prior to beginning its investigation.

The OSCCS will gather information relevant to the alleged violation of this Code, including, but not limited to, interviewing witnesses, reviewing relevant documents, photographs, and other information, and offering the respondent an opportunity to meet with the OSCCS. If the respondent meets with the OSCCS, the respondent will have an opportunity to present information to the OSCCS. A respondent may present information about their personal circumstances and/or wellbeing if the respondent believes that such information is relevant to a determination of responsibility. If the respondent presents such information to the OSCCS investigator, the investigator should consider the respondent's information when making a determination of how to best resolve the Formal Complaint under Section 4 of these Procedures. The investigation should balance the interests of all parties involved, efficiency, and thoroughness.

If the respondent meets with the OSCCS, the OSCCS shall again advise the respondent of access to the Office of the Judicial Codes Counselor or another advisor, and shall refer the

respondent to the Student Code of Conduct and Procedures and available supplementary information so that the respondent can learn of:

- The procedures of the Code and the possible resolution methods available;
- The respondent's right to be accompanied by counsel or an advisor of the respondent's choice; and
- Other rights and options that may be available to the respondent.

## **Section 4: Resolution of a Formal Complaint Following an Investigation**

### **4.1 Methods of Resolving a Formal Complaint**

Once the OSCCS believes that it has completed a thorough and fair investigation, the OSCCS may resolve the Formal Complaint in the following ways:

- Educational Conference;
- Administrative Resolution;
- Administrative Resolution by Mediation or other Alternative Dispute Resolution; and/or
- Administratively close the report or Formal Complaint.

During an Educational Conference, a representative of the OSCCS will meet with a respondent to learn about the respondent's experience and thoughts regarding the alleged violation of the Student Code of Conduct. During the meeting, the OSCCS should review the Code and these Procedures, the student's rights, and provide a detailed summary of the reported conduct. The OSCCS should discuss whether additional investigation is necessary and whether it believes that the burden of proof has been met to find a violation of the Code.

When the OSCCS believes that it cannot meet the burden of proof that the respondent violated the Code, the OSCCS shall administratively close the Formal Complaint.

If the OSCCS believes that the evidence meets the standard of proof of a violation of the Code, the OSCCS may recommend that the respondent be found responsible and may recommend the appropriate sanctions and/or remedies. The respondent may propose modifications to the recommended sanctions and/or remedies. If the OSCCS and the respondent reach an agreement about the respondent's responsibility and the appropriate sanctions and/or remedies, both the OSCCS and the respondent must sign an Administrative Resolution agreement. The respondent may withdraw from the approval of the agreement within two (2) business days after the OSCCS and the respondent sign the agreement.

In addition to, or instead of, an Educational Conference, the OSCCS may recommend that the respondent resolve the alleged violations of the Code by Administrative Resolution by Mediation or another form of Alternative Dispute Resolution (ADR). The respondent may withdraw from the

approval of an Administrative Resolution by ADR agreement within two (2) business days after the OSCCS, the respondent, and the mediator sign the agreement.

#### **4.2 Sanctions/Remedies**

In recommending sanctions and remedies, the OSCCS will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the complainant and/or University community;
- the impact of the prohibited conduct and sanctions and remedies on the respondent;
- prior misconduct by the respondent, including the respondent's previous disciplinary record at Cornell University, and any criminal convictions;
- whether the behavior has been demonstrated to have been motivated by a person's or group's age, race, ethnicity, creed, color, national origin, sexual orientation, military status, sex, gender identity or expression, disability, predisposing genetic characteristics, familial status, or marital status;
- the goals of the Code and these Procedures; and/or
- any other mitigating, aggravating, or compelling factors.

The OSCCS may recommend one or more of the following student sanctions and remedies:

- Measures similar in kind to the Interim Measures specified under these procedures;
- Appropriate educational steps (such as alcohol or drug education, reflection papers or other reflection exercises, counseling, or directed study);
- Community work, which shall not be more than 80 hours per violation;
- Restitution in part or full;
- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer;
- Oral warnings;
- Written reprimands (imposed or deferred);
- Disciplinary probation for a stated period (imposed or deferred);
- Suspension from the University for a stated period not to exceed five (5) years (imposed or deferred); and/or
- Expulsion from the University.

The OSCCS may recommend one or more of the following sanctions and remedies on University-registered or University-recognized organizations:

- Measures similar in kind to the Interim Measures specified under these procedures;
- Appropriate educational steps for members (such as alcohol or drug education, reflective exercises or other reflection exercises, counseling, or directed study);
- Community work performed by members, which shall not be more than 80 hours per violation;
- Restitution in part or full;

- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer;
- Oral warnings;
- Written reprimands (imposed or deferred);
- Restrictions or loss of specific or all privileges at the University for a specified period of time;
- Disciplinary probation (imposed or deferred);
- Suspension from the University for a state period not to exceed five (5) years (imposed or deferred); and/or
- Rescission of permission to operate on University property and/or termination of the organization's agreement and relationship with the university.

#### **4.3 Recordkeeping During the Resolution of a Formal Complaint**

The OSCCS may not notate a student's transcript during the pendency of a formal complaint, including the fulfillment of sanctions imposed, unless:

1. the student withdraws; or
2. the student may graduate before the pendency of a formal complaint. In those circumstances, the OSCCS may only place a hold on the respondent's degree or notate the respondent's transcript if the respondent does not enter into an agreement with the University allowing the University to maintain jurisdiction over the respondent until the resolution of the formal complaint, including the completion of any sanction, if imposed.

### **Section 5: Administrative Panel Procedures**

#### **5.1 Goals of the Hearing Process**

The procedures under this Code provide two types of hearings: (1) by an Administrative Panel hearing and (2) by a Hearing Panel.

The Administrative Panel conducts hearings in cases where the OSCCS is recommending sanctions less than disciplinary probation, suspension, or expulsion. Consistent with the less severe nature of the sanctions, the Administrative Panel will rely primarily on written statements from the parties and the respondent's testimony, if the respondent wishes to testify. The Administrative Panel has the discretion to call other witnesses, including those requested by the OSCCS or the respondent. The Administrative Panel may also conduct a limited "sanctions-only" hearings, where the OSCCS and the respondent disagree only on the proper level of sanctions.

The Hearing Panel conducts hearings in cases where the OSCCS is recommending sanctions of disciplinary probation, suspension, or expulsion. As these are the most severe sanctions

possible, the Hearing Panel relies primarily on information presented through testimony by witnesses called by the OSCCS, the respondent, and the Hearing Panel.

In all hearings, strict rules of evidence are not applied. Panel members will consider all information that is reliable and relevant to the case at hand.

## **5.2 Administrative Panel Process Overview: Cases with possible sanctions less than Disciplinary Probation, Suspension or Expulsion**

When a Formal Complaint is not resolved by Administrative Resolution or Administrative Resolution by Mediation/ADR and the OSCCS recommends sanctions less than disciplinary probation, suspension or expulsion, the case will be referred to an Administrative Panel. The Administrative Panel shall be composed of a faculty Administrative Panel Chair (non-voting), two students, and one faculty member, all drawn from the Administrative, Hearing, and Appeal Panels pool.

The OSCCS will notify the Logistics Chair of the need to schedule an Administrative Panel and will provide the Logistics Chair with the case number. The Logistics Chair will randomly select the Panel from the pool of available panelists and set a hearing date<sup>2</sup>

Once scheduled, all other decisions pertaining to the Administrative Panel will be directed to the Administrative Panel Chair. The Administrative Panel Chair will be selected on a rotating basis from the pool of faculty members who serve as Administrative Panel and Hearing Panel Chairs. If the selected Chair cannot serve as the Chair because of good cause shown, such as scheduling issues, the Chair may recuse themselves if a different Chair is willing to and can serve as the Chair at the scheduled hearing.

The Administrative Panel shall hold a hearing within twenty (20) business days from the date the Administrative Panel receives notice of the case by the OSCCS, unless postponed by agreement of the OSCCS and respondent, or postponed by the Administrative Panel Chair for good cause shown.

In any case referred to the Administrative Panel for a hearing:

- The OSCCS shall make a good faith effort to give notice of the hearing at least ten (10) business days prior to the hearing
- The notice of the hearing shall contain:
  - the time and place of the hearing;
  - specification of the charges against the respondent;

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<sup>2</sup> It is recommended that the Logistics Chair set a standing meeting time with a rotating group of Administrative Panel members. That way, the Administrative Panel Process will not be delayed by scheduling complications. If a hearing does not occur on the date scheduled, the Logistics Chair should inform the Administrative Panel members as soon as possible that their service on the previously set hearing date is no longer necessary.

- statement of the respondent's rights to be accompanied by counsel or an advisor of the respondent's choice, to hear the evidence against the respondent, to question witnesses, and to give evidence in the respondent's own behalf; and
- the name of the Administrative Panel Chair; and, if determined, the Administrative Panel members. If the notice does not include the name of the Administrative Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing.

### **5.3 Pre-Hearing Procedure**

Both the OSCCS and the respondent will have an opportunity to provide written pre-hearing submissions to the Administrative Panel.

The OSCCS will provide a written summary of the investigation, including the initial complaint or Formal Complaint made to the OSCCS, the list of witnesses interviewed, any information gathered, and the proposed Administrative Resolution, to the Administrative Panel and to the respondent at least ten (10) business days prior to the hearing.

The respondent may submit a written response to the Administrative Panel. Any written response must be submitted within five (5) business days of receipt of the OSCCS's summary of the investigation. This submission may function as the respondent's opening statement and may not exceed 2500 words. If the respondent wants the Administrative Panel to hear directly from witnesses other than the respondent, the respondent must submit a written request to the Administrative Panel within five (5) business days after receipt of the OSCCS's investigation summary. This request should include the names of proposed witnesses and an explanation of why the individual's presence is relevant and helpful to the Administrative Panel's determination. The respondent is encouraged to include proposed questions for or general topics to be addressed by each witness.

The Administrative Panel Chair and the Administrative Panel will review the respondent's witness requests and determine whether those witnesses will be called at the hearing. At least three (3) business days prior to the hearing, the OSCCS and the respondent will be provided with a witness list.

### **5.4 Hearing Procedure**

The Administrative Panel Chair manages the hearing procedure and logistics. The Administrative Panel shall endeavor to evaluate all relevant information given at the hearing.

The Administrative Panel may proceed in the absence of a respondent and the decision rendered by the Administrative Panel can be based on the information that has already been presented.

All hearings shall be private unless: (a) the respondent notifies the OSCCS, no later than two (2) business days before the hearing, that the respondent wishes a public hearing and (b) the Administrative Panel Chair determines that a public hearing would not result in undue intimidation of the named complainant or the witnesses.

In the event of a public hearing, the Administrative Panel Chair shall convene it in quarters that accommodate a reasonable number of the public, but may limit the number in the interest of preserving the decorum and dignity of the proceedings.

If the Administrative Panel requested the presence of any witnesses, the OSCCS, the respondent, and the panelists will have the opportunity to question the witnesses. Except for the Judicial Codes Counselor, the respondent's advisor shall not normally participate in the hearing in the capacity of counsel. The respondent will have the opportunity to provide testimony at the hearing, but no respondent shall be compelled to testify. Witnesses shall be excluded from all hearings, except for the period of their questioning. Witnesses shall not see or hear other evidence presented at the hearing, such as any police report, except as the Administrative Panel Chair determines to be appropriate.

For cases involving interpersonal misconduct, such as harassment, hazing, and assault and endangerment, and when the Administrative Panel Chair believes that direct questioning of a witness would result in undue intimidation, the Chair and the Panelists will ask questions instead of the respondent. In such circumstances, the respondent shall have the opportunity to submit proposed questions to the Administrative Panel Chair and Administrative Panel.

After all questioning concludes, the OSCCS and the respondent shall have the opportunity to present a closing statement, typically no longer than five minutes.

### **5.5 Deliberations and Sanctions**

After the closing statements conclude, the Administrative Panel may begin its deliberations. Deliberations will be completed as expeditiously as possible. The Panel Chair may participate in deliberations but may not vote. The Panel will make a decision on responsibility based upon a majority vote.

All decisions by the Administrative Panel shall be in writing, including a rationale and any dissenting opinions. The burden of proof on violation shall rest on the OSCCS, and the standard of proof on violation shall be preponderance of the evidence. Under a preponderance of the evidence standard, the Hearing Panel must be persuaded that it is more likely than not that the respondent violated the Code.

An Administrative Panel that finds the respondent responsible will continue its deliberations to consider sanctions and remedies. The Administrative Panel may impose any of the sanctions and/or remedies, excluding disciplinary probation, suspension or expulsion, listed in section 4.2 of these Procedures.

Prior to deliberating on sanctions and remedies, the Panel Chair will distribute to the Administrative Panel any prior disciplinary record information regarding the respondent or any written or recorded Impact/Mitigation Statements previously submitted by the OSCCS and respondent.

#### **5.6 Sanctions Arguments: Impact/Mitigation Statement**

The respondent is permitted, but not required, to prepare a written or recorded Impact/Mitigation Statement relevant to any sanctions. The respondent may submit the statement up until the end of a hearing but is advised to begin to compose such statements in advance. The respondent may include an Appendix with additional information, including witness statements, to serve as character evidence.

The OSCCS may supplement the sanctions recommendation made in the Administrative Resolution and included in the pre-hearing submissions with its rationale for proposing those sanctions. This information may include impact statements by individuals who were affected by the Respondent's conduct. The OSCCS shall also submit any records of prior misconduct by the respondent, including the respondent's previous disciplinary record at Cornell University , and any criminal convictions.

#### **5.7 Sanctions Arguments: Sanctions-Only Hearings**

When the respondent accepts responsibility but the OSCCS and the respondent are unable to resolve a Formal Complaint by Administrative Resolution or Administrative Resolution by Mediation/ADR because of a disagreement about the appropriate sanctions, the respondent may elect to have a sanctions-only hearing. The OSCCS and the respondent shall submit to the Administrative Panel a joint statement of facts and responsibility and the impact/mitigation statements described in section 5.6 of these procedures. Within five (5) business days prior to the hearing, the respondent may submit a written request that the Administrative Panel hear directly from witnesses, including the respondent, concerning sanctions. This request should include the names of proposed witnesses and an explanation of why the individual's presence is relevant and helpful to the Administrative Panel's determination on sanctions. The Administrative Panel Chair and the Administrative Panel will review the respondent's witness requests and determine whether those witnesses will be called at the hearing.

### **Section 6: Hearing Panel Procedures**

## **6.1. Hearing Panel Procedures: Cases with Possible Sanctions of Disciplinary Probation, Suspension or Expulsion**

If, as a result of an investigation, the OSCCS determines that it has met the burden of proof that a violation of the Code has been committed in a case where the OSCCS recommends sanctions of disciplinary probation, suspension or expulsion and an Administrative Resolution or Administrative Resolution by Mediation/ADR has not been reached, then the OSCCS shall promptly refer the case to the Hearing Panel by filing charges with a Hearing Panel Chair and by notifying the Logistics Chair that a Hearing Panel should be scheduled in the case. The hearing procedures in sections 6.3, 6.4, 6.5, 6.6, and 6.7 apply to both merits and sanctions-only hearings.

In any case referred to the Hearing Panel for a hearing:

- The OSCCS shall make a good faith effort to give notice of the hearing within ten (10) business days prior to the hearing
- The notice of the hearing shall contain:
  - the time and place of the hearing;
  - specification of the charges against the respondent; and
  - statement of the respondent's rights to be accompanied by counsel or an advisor of the respondent's choice, to hear the evidence against the respondent, to question witnesses, and to give evidence in the respondent's own behalf; and
  - the name of the Hearing Panel Chair; and, if determined, the Hearing Panel members. If the notice does not include the name of the Hearing Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing.

## **6.2 Hearing Panel Composition**

A Hearing Panel shall be composed of a faculty or staff Hearing Panel Chair (non-voting), three students, one faculty member, and one staff member, all drawn from the Administrative, Hearing, and Appeal Panels pool. One alternative panelist from each constituency shall be drawn from this same pool and shall be available to sit on the panel if a panel member from that constituency cannot remain on the panel.

Selection of a Hearing Panel, whenever one is needed, shall be made randomly by the Logistics Chair of that pool.

A member of the Hearing Panel may voluntarily withdraw from participation in any case by reason of a conflict of interest or any other good cause. Knowledge of the events at issue shall not disqualify a member, unless the panel member has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the member shall be excused by vote of the Hearing Panel.

Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Panel Chair.

### **6.3 Preparations for a Hearing**

The Hearing Panel shall hold a hearing within twenty (20) business days of receipt of the Formal Complaint by the Hearing Panel Chair, unless otherwise provided by the Code, postponed by agreement of the parties, or postponed by the Hearing Panel Chair for good cause shown. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing.

Names and written statements of any witnesses to be called at the hearing by the OSCCS or by the respondent, shall be exchanged no later than five (5) business days prior to the hearing. The Hearing Panel, in its discretion, may exclude a witness's testimony if it determines that the OSCCS or the respondent has failed to comply with this provision as to that witness.

Copies of exhibits to be used at the hearing by the OSCCS or by the respondent, if known at the time, shall be exchanged no later than five (5) business days prior to the hearing. Any objections to exhibits shall be made to the Chair of the Hearing Panel for the Chair's ruling in advance of the hearing. Copies of the exhibits shall be made available to panelists prior to the commencement of the hearing. The Hearing Panel, in its discretion, may exclude an exhibit if it determines that the OSCCS or the respondent has failed to comply with this provision.

### **6.4 Panel Procedures**

The Hearing Panel Chair shall convene the Hearing Panel. The Hearing Panel Chair shall conduct the proceedings and maintain order in the hearing room. The Hearing Panel Chair shall make procedural rulings before or at the hearing, applying these procedures and the procedures developed by the Hearing Panel, so as to assure fairness and to avoid undue delay. However, all procedural rulings of the Hearing Panel Chair, other than a decision to postpone the initial convening of a hearing, shall be subject to the approval and concurrence of the Hearing Panel as a whole. The Hearing Panel may overrule the procedural rulings of the Hearing Panel Chair by ordinary majority vote.

At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Hearing Panel Chair, and at least three votes shall be required for any decision.

### **6.5 Overview of the Hearing Process**

At the hearing, the case shall be presented by the OSCCS in the name of the University or, when applicable, in the name of a designated named complainant. Whether a named complainant participates or not, the OSCCS will present the case.

The failure of the respondent to appear at the time and place designated for the respondent's appearance before the Hearing Panel empowers the Hearing Panel to:

- impose a temporary suspension, pending the respondent's appearance;
- find the respondent to have violated the Student Code of Conduct and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the OSCCS shows that the respondent received notice of the hearing, or that the procedures for notifying the respondent were followed, and submits information sufficient to establish the allegations in the charges; or
- excuse the failure to appear for good cause shown, in which case the respondent shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

Typically, the format of the hearing will be as follows:

- Introduction by the Hearing Chair; the Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Oral opening statements by the OSCCS and the Respondent. The Respondent may reserve an opening statement until after the OSCCS presents its case.
- Testimony by witnesses called by the OSCCS, followed by cross-examination.
- Testimony by the Respondent and other witnesses called by the Respondent, followed by cross-examination.
- Testimony by any other witnesses.
- Closing statements by the OSCCS and the Respondent.

All hearings shall be private unless: (a) the respondent notifies the OSCCS, no later than two (2) business days before the hearing, that the respondent wishes a public hearing and (b) the Hearing Panel Chair determines that a public hearing would not result in undue intimidation of the named complainant or the witnesses.

In the event of a public hearing, the Hearing Panel Chair shall convene it in quarters that accommodate a reasonable number of the public, but may limit the number in the interest of preserving the decorum and dignity of the proceedings.

## **6.6 Witnesses and Evidence**

The Hearing Panel shall review all relevant information in a given case at the hearing.

The OSCCS and the respondent shall have the right to present evidence and witnesses. Members of the Hearing Panel may question witnesses and seek further information, but this shall not preclude OSCCS or the respondent from questioning witnesses or presenting information pertaining to the case. The respondent's counsel or advisor must have a reasonable opportunity to participate fully in the hearings. However, the Hearing Panel Chair shall control the hearing. For cases involving interpersonal misconduct, such as harassment, hazing, and assault and endangerment, and when the Hearing Panel Chair believes that direct questioning

of a witness would result in undue intimidation, the Chair and the Panelists will ask questions instead of the respondent, in which case the respondent may submit proposed questions to the Chair.

Respondents shall not be compelled to testify against themselves. The hearing can proceed even if the respondent chooses to remain silent.

If an individual complainant does not testify, the Hearing Panel may proceed to decision only if it finds that the complainant's interests in not testifying outweigh the respondent's interests in questioning the complainant as a witness at the hearing..

If a witness with information of importance to the case refuses to testify, the OSCCS or the respondent may ask the Hearing Panel Chair to order the witness to testify. The Hearing Panel Chair shall, in the Chair's sole discretion, grant or deny the request based on the balance of equities for the witness, the complainant or victim, the respondent, and the University. If a witness does not appear for a scheduled hearing, the Hearing Panel Chair may decide whether to delay the hearing pending the witness's testimony.

Strict rules of evidence shall not apply, and the Hearing Panel shall have the power to establish its own rules of evidence, subject to the following exceptions:

- The following should be considered regarding the investigative record and investigator testimony:
  - If the investigative record is admitted, the investigator must testify;
  - The investigator may also testify without the investigative record, if it is not admitted; however any witness named in that testimony may be called to testify;
  - If a witness is named in the investigative record, any party may call that witness to testify.
- Confidential relationships currently protected under state or federal law shall be protected.
- Where a complainant or victim is not a witness at the hearing, and where the respondent objects to the introduction of any written, recorded, or oral account of an earlier statement by that complainant or victim, the earlier statement will be excluded unless the Hearing Panel Chair finds compelling circumstances of need for and reliability of such statement.
- Witnesses shall be excluded from all hearings, except for the period of their questioning. Witnesses shall not see or hear other evidence presented at the hearing, such as any police report, except as the Hearing Panel Chair determines to be appropriate. All deliberations by the Hearing Panel and Hearing Panel Chair shall be private.

An audio recording shall be kept of all hearings, but not of deliberations, and made available to any party and their advisors who seek to file an appeal.

## **6.7 Closing Statements**

The OSCCS and the respondent may provide both oral and written closing statements. Such statements may not add or address information not contained in the hearing record, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The OSCCS and the respondent may raise such issues in the sanctions/remedies phase of the hearing.

The Hearing Panel Chair will establish a time limit for brief oral closing statements, typically around ten (10) minutes for each party. The Hearing Panel Chair will also set the schedule for submission of written closing statements, usually shortly after the oral closing statements. Each party's signed closing statement will be limited to 3,000 words and to the evidence from the hearing. The written statements will be distributed to the other party, Hearing Panel Chair, and Hearing Panel for their review.

## **6.8 Deliberations on Finding of Responsibility and Sanctions Arguments**

After closing arguments, the Hearing Panel may begin its deliberations. Deliberations will be completed as expeditiously as possible. Deliberations are conducted in private and they are not audio-recorded.

The Hearing Panel Chair will call the parties back to the hearing room and will state the findings of the Panel on each of the alleged violations of the Student Code of Conduct.

Soon thereafter, the OSCCS and respondent shall present sanctions arguments following the same format under sections 6.3, 6.4, 6.5, 6.6, and 6.7 of these procedures. The OSCCS and the respondent will receive the Hearing Panel's determination regarding sanctions when the respondent receives the Panel's formal written decision.

## **6.9 Decisions Rendered by the Hearing Panel**

All decisions by the Hearing Panel shall be in writing, including a rationale and any dissenting opinions. The burden of proof on violation shall rest on the OSCCS, and the standard of proof on violation shall be clear and convincing evidence, which is a higher standard than the civil law's more-likely-than-not standard but a lower standard than the criminal law's beyond-a-reasonable-doubt standard. Under a clear and convincing evidence standard, the Hearing Panel must be persuaded that it is highly probable that the respondent violated the Code.

The Hearing Panel can decide to:

- Sustain a defense of lack of jurisdiction or other inapplicability of the Student Code of Conduct, including that off-campus conduct did not meet the requirement of being a serious violation of this Code, and dismiss the case, although any such defense shall be deemed waived if not raised by the conclusion of the hearing;
- Find the respondent did not violate the Code and dismiss the case; or
- Find the respondent violated the Code and move to the sanctions phase to consider the parties' sanctions arguments.

### **6.10 Sanctions and Remedies**

The Hearing Panel may impose any of the sanctions and/or remedies listed in section 4.2 of these procedures.

## **Section 7: Appeal Panel Procedures**

### **7.1 Panel Composition**

All appeals will be heard by a three-member Panel that includes one student, one faculty member, and one staff member. The members of the Appeal Panel shall be randomly selected by the Logistics Chair in the same manner as the members of the Administrative and Hearing Panels. However, no person who served on the Administrative or Hearing Panel shall sit on the Appeal Panel in the same case.

### **7.2 Evidence and the Standard of Review**

All appeals will be based solely on the hearing record, which consists of the audio recording of the hearing, the Administrative or Hearing Panel's decision, pre-hearing submissions, written submissions made during the hearing, and the Impact/Mitigation statements (if considered by the Administrative or Hearing Panel). However, when relevant to the stated ground for appeal, the Appeal Panel may supplement the record on appeal with newly discovered evidence.

Findings of fact will not be set aside unless clearly erroneous. Harmless error will be ignored.

### **7.3 Grounds for Appeals from the Decision of a Hearing Panel**

A respondent may appeal only upon one or more of the following grounds:

- (1) A University official or officials, including the Administrative or Hearing Panel, assigned responsibility for performing specific functions by these procedures, violated the fair application of relevant University procedures, and such violation may have had a prejudicial effect upon the outcome.
- (2) A University official or officials, including the Administrative or Hearing Panel, assigned responsibility for performing specific functions by these procedures,

committed an error in interpreting the Code of Conduct, these procedures, and such error may have had a prejudicial effect upon the outcome.

- (3) The Hearing Panel rendered a decision that is clearly erroneous.
- (4) New evidence was discovered after the decision that could not have reasonably been discovered before the decision and that would with high probability, have changed the outcome.
- (5) The sanctions or remedies are not commensurate with the injury/violation or are otherwise manifestly unjust.

A named complainant, other than the University, may appeal the decision to the Appeal Panel only based upon the complainant's belief that the remedy awarded the complainant is not commensurate with the injury.

The OSCCS may appeal the decision to the Appeal Panel only based upon the belief that the sanction is not commensurate with the violation.

#### **7.4 Grounds for Appeal from the Decision of an Administrative Panel**

Only the respondent has the right to appeal the decision of the Administrative Panel. A respondent may appeal only upon one or more of the following grounds:

- (1) The Administrative Panel rendered a decision that is clearly erroneous.
- (2) New evidence was discovered after the decision that could not have reasonably been discovered before the decision and that would with high probability, have changed the outcome.
- (3) The sanctions or remedies are not commensurate with the injury/violation or are otherwise manifestly unjust.

#### **7.5 Appeal Procedures**

The appealing party commences an appeal by submitting a written notice of appeal to the OSCCS within five (5) business days of service of the Administrative or Hearing Panel's decision. The OSCCS shall refer the notice of appeal to the Review Panel Chair as expeditiously as possible.

The appealing party must submit an appeal to the Review Panel Chair within ten (10) business days after submitting a written notice of appeal to the OSCCS. Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal. The Review Panel has discretion to grant any such request upon a finding of good cause for the delay.

The appeal statement will be limited to 2000 words for appeals from an Administrative Panel decision and 4000 words for appeals from a Hearing Panel decision. The appeal statement must set forth the determination(s) being appealed, the specific ground(s) for the appeal, and the facts supporting the grounds.

The Review Panel Chair will provide a copy of the appeal statement to the other party, who, within seven (7) business days may submit a written response to the Review Panel Chair. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 1500 words for appeals from an Administrative Panel decision and 3000 words for appeals from a Hearing Panel decision.

The Review Panel will issue a timely written decision, typically no later than ten (10) business days for appeals from an Administrative Panel decision and fifteen (15) business days for appeals from a Hearing Panel decision after receipt of the non-appealing party's submission or the time for submission has expired. The decision is final and binding on all parties. The decision must be by a majority vote of the Review Panel and will include the rationale for the Review Panel's decision and any dissenting opinion.

The Review Panel may affirm the decision of the Administrative or Hearing Panel or sustain any of the above-specified grounds for appeal in Sections 7.3 and 7.4, in which case the Review Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Administrative or Hearing Panel for clarification or reconsideration consistent with the Review Panel's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case;
- remand a case for a new hearing to either the original Administrative or Hearing Panel or a newly composed Administrative or Hearing Panel; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures.

If the Review Panel finds that newly discovered evidence should be considered, it must remand the case to the original Administrative or Hearing Panel or a new Administrative or Hearing Panel to render new findings based on the consideration of additional evidence.

### **7.6 Request for a Stay Pending Appeal**

The Review Panel has discretion to stay (i.e. postpone implementation of) any sanctions pending a final decision on the appeal. It may, but is not required to, stay a sanction where the appealing party clearly demonstrates the need for a stay. An application for a stay must be submitted to the OSCCS. The OSCCS will provide a copy of the stay application to the Review

Panel and to the other party who is entitled to respond to the stay application by submitting a written response to the Review Panel Chair. The Review Panel will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application. The Review Panel has discretion to reconsider its decision on a stay at any time during the appeal. The stay expires at the conclusion of the appeal.

## **Section 8: General Panel Procedures Applicable to All Types of Hearings Under These Procedures**

### **8.1 Written Decisions Made by Administrative or Hearing Panels**

The Administrative Panel or Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The OSCCS will provide the written decision to the respondent as soon as practicable. The decision will include:

- The specific prohibited conduct for which the respondent was found responsible or not responsible, including the number of Panelists finding the respondent responsible for each specific prohibited conduct; and
- the findings of fact and the rationale for the determinations regarding both responsibility and sanctions; and
- any dissenting opinion should one be authored by a Panel member.

The decision may incorporate and reference any portions of the proceedings, including the pre-hearing submissions. The decision will include instructions and time limits for appeals. Any sanctions and remedies imposed should state the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

### **8.2 Written Decisions Made by Appeal Panels**

The Appeal Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The OSCCS will provide the written decision to the respondent as soon as practicable. The decision will include:

- The specific grounds for appeal that have been sustained or an affirmation of the Panel's decision, including the number of Panelists supporting the majority's decision and the rationale for each determination; and
- any dissenting opinion should one be authored by a Panel member.

### **8.3 Objections**

Strict rules of evidence shall not apply under these procedures. However, during written, oral, pre-hearing, and hearing statements, the OSCCS or the respondent may make objections on

the following grounds, unless otherwise provided by the Code, to evidence presented during a hearing:

- Relevance.
- Unduly prejudicial.
- Past findings. However, such findings are admissible at the stage of the hearing for determining sanctions.
- Mental health or medical information. However, a named complainant or respondent who wishes to have the Hearing Panel consider mental health or medical information that the named complainant or respondent considers favorable and relevant to the case, may voluntarily share such information.

The Administrative, Hearing, or Appeal Chair will make a determination on objections and instruct the panelists accordingly.

#### **8.4 Burden of Proof**

The burden of proof on violation shall rest on the OSCCS, and the standard of proof on violation shall be preponderance of the evidence for cases appealed from the Administrative Panel and clear and convincing for cases appealed from the Hearing Panel.

#### **8.5 Conflicts of Interest**

Upon receipt of written notice of the identity of the Hearing or Administrative Chair and/or the members of the Administrative or Hearing Panel, if any party (respondent, complainant, OSCCS, or panel member) believes that they have a potential conflict of interest with either a Panel member or Chair, the party should notify the Vice President of Student and Campus Life, who will forward the notification to the Chair. The notification must be in writing, made within five (5) business days of the notice, and include facts substantiating the claim of conflict. The Panel has discretion whether to remove a member of the Panel or to recuse themselves.

Upon receipt of written notice of the identity of the members of the Appeal Panel, if a party (respondent, complainant, OSCCS, or panel member) believes that they have a potential conflict of interest with an Appeal Panel member, the party should notify the Vice President of Student and Campus Life, who will forward the notification to the relevant Appeal Panel Chair. The notification must be in writing, made within five (5) business days of the notice, and include facts substantiating the claim of conflict. Appeal Panel members have discretion whether to recuse themselves.

#### **8.6 Consolidation of Hearings**

At the discretion of the Panel Chair, in consultation with the OSCCS, multiple Formal Complaints under these procedures may be joined in one hearing if doing so is likely to result in

reliable and more efficient outcomes. In determining whether to consolidate, the Panel Chair will provide the respondent with an opportunity to explain their preferences for consolidated or severed hearings. Any respondent may request in writing to be severed from a consolidated hearing on any of the following grounds:

- the respondent is not charged with the same violation of the Code;
- the respondent is charged with the same violation of the Code as other respondents but because of circumstances occurring at a different time and place;
- the facts relevant to the respondent would differ materially from the facts relevant to other respondents;
- consolidation is likely to cause prejudice or confusion for the fact finders.

In all consolidated hearings involving multiple respondents, the Hearing or Administrative Panel will consider individually the sanctions and remedies appropriate for each respondent.

For Formal Complaints where the possible sanctions for any respondent may be suspension or expulsion but not for other respondents, the Formal Complaints cannot be joined in one hearing.

### **8.7 Requests to Reschedule a Hearing**

Either the OSCCS or the respondent may request that a hearing be rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason.

### **8.8 The Hearing Record**

An audio recording will be made of all hearings, but not of deliberations. The OSCCS, respondent, and, if applicable, the named complainant may listen to the audio recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Vice President of Student and Campus Life. The audio recording is the property of Cornell University and the OSCCS.

### **8.9 Public Record of Hearing Decisions**

Because the student conduct system utilizes the decision of the Administrative, Hearing, and Appeal Panels to define or interpret violations, all decisions of those Panels shall be kept on file in the OSCCS, but with names of individuals and other identifying information redacted.