

# Cornell University University Assembly

## Cornell University Assembly

Agenda of the May 12, 2020 Meeting

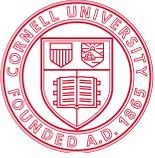
4:30 PM – 6:00 PM

Zoom Meeting Only - Id 815958591

- I. Call to order - 4:30pm
- II. Call for Late Additions to the Agenda – 4:32pm to 4:35pm
- III. Business of the Day
  - a. Approval of the minutes to meetings 4:35pm to 4:37pm
    - i. 4/28/20 – Recording [April 28, 2020](#)
    - ii. 5/5/20 – Recording [May 5, 2020](#)
  - b. Resolution 4 – Campus Circulator – 4:37pm to 4:45pm
    - i. Kris Barth
  - c. Resolution 8 – Recommendations for Revision – 4:45pm to 5:15pm
    - i. UA Executive Board
  - d. End of year wrap up – 5:15pm to adjournment
- IV. Adjournment at 6pm

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If you are in need of special accommodations, contact Office of the Assemblies at (607) 255-3715 or Student Disability Services at (607) 254-4545 prior to the meeting.



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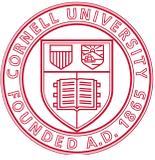
## Cornell University Assembly

Minutes of the April 28, 2020 Meeting

4:30 PM – 6:00 PM

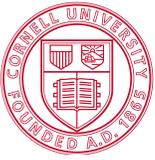
Zoom Meeting

- I. Call to Order
  - a. Call to Order
    - i. R. Howarth called the meeting to order at 4:30pm
  - b. Roll Call
    - i. *Present:* J. Anderson, A. Barrientos-Gomez, K. Barth, R. Bensel, D. Hiner, A. Hong, R. Howarth, A. Howell, L. Kenney, C. Levine, J. Pea, P. Thompson, C. Van Loan
    - ii. *Members Joined after Roll Call:* U. Chukwukere, C. Duell, G. Martin
    - iii. *Members not Present:* B. Fortenberry, Y. Li, R. Mensah
- II. Call for Late Additions to the Agenda
  - a. There were no late additions to the agenda
- III. Business of the Day
  - a. Approval of the 4/07/20 meeting minutes
    - i. C. Van Loan moved to approve the minutes. The motion was seconded by R. Bensel and approved with no dissent.
  - b. Resolution Presentation – J. Pea
    - i. Resolution 6 – JCC Approval
      1. J. Pea stated that the resolution was a formal resolution for S. Swanson to fill the position of JCC for a two year term.
      2. R. Howarth stated that S. Swanson had been selected by a search committee on which the UA had representation and had received a recommendation from President Pollack. The approval by the UA would be last step in her appointment.
      3. L. Kenney noted that the name on the resolution was improperly spelled as “Susan” and needed to be switched to “Suzanna”.
      4. The motion was moved by J. Pea and seconded by L. Kenney. The resolution was approved with no dissent.
    - ii. Resolution 7 – Postponement of Elections
      1. J. Pea stated that the purpose of the resolution was to formally ask for the postponement of the University Assembly officers (chair, vice chair, and ranking member). It would align with the fact that several other assemblies had also already postponed their elections.



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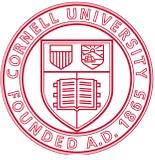
2. R. Howarth stated that it would be good to clarify since the resolution was not completely needed in accordance with the UA Bylaws.
  3. K. Barth stated that in normal circumstances, the transition would be difficult. In the current circumstances, postponing would be good for keeping all the assemblies aligned.
  4. The resolution was moved by J. Pea and seconded by K. Barth. The resolution was **approved** with no dissent.
- c. Revision of Campus Code
- i. Summary update on edits to the Code – J. Anderson
    1. J. Anderson presented on the major substantive changes on the code and warranted an update.
      - a. J. Anderson noted that the CJC was charged by the President to review the recommended changes that were a result of the Campus Climate Task Force. The recommended changes included simplifying the administrative process, expanding the treatment of harassment, reworking the code to have an educational and aspirational tone rather than a punitive one, and narrowing the focus of the code to students.
      - b. There was an organizational and structural change in the Office of the Judicial Administrator being renamed to the Office of Student Conduct and Community Standards (OSCCS). The OSCCS would be a unit under the Dean of Students in Student and Campus Life to help ensure that the understanding of what the student experience was would be considered. This understanding and integration would be important because the code had narrowed to include students: undergraduate, graduate, and professional. Another major change comes in the form of jurisdiction. The revised code would cover behavior by all Cornell students, University-recognized or University-registered student organizations and living groups (including fraternities and sororities). Additionally, the final determination as to whether off-campus conduct is subject to the Code would be made by the Dean of Student or their designees.
      - c. J. Anderson noted that the definition of harassment had been standardized with the University definition that is used in Policy 6.4. The definition of hazing has also been updated to



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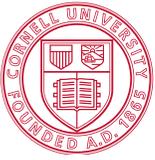
a definition that captures the totality of the violation and the totality of circumstances that hazing might occur in.

- d. J. Anderson stated that the major change in the procedure of addressing violations is that under the revisions, every violation would have the option to be remedied by an educational conference, mediation, or alternative dispute resolution if all parties agree it is appropriate.
  - e. The CJC voted 5-2 to make suspension up to 5 years because academic programs are longer than 4 years for undergraduate and graduate students. Affected students would be able to graduate within the time period if the violations were serious enough to warrant a 5 year suspension.
  - f. J. Anderson noted that the CJC was divided on the burden of proof with 6 members voting in favor of preponderance of the evidence while 4 members supported the clear and convincing standard.
- ii. Discussion by UA members on the Code
1. C. Van Loan asked what the major difference was between what the CJC ended up doing and the University Council recommendations.
  2. J. Anderson responded that there were changes pertaining to who advisors could be. There was not a uniformed Office of Judicial Codes Counselor. Rather, there was an Office of Judicial Codes Counselor for respondents and an Office of Complaint Advisors for complainants. The CJC procedure allows leeway for the OSCCS to push the cases through the process. In the University Council proposal, the OSCCS was the facilitator of a larger process. J. Anderson also noted that the CJC proposal was also simpler to read in his opinion compared to the legalistic point-of-view taken by the University Council.
  3. K. Barth asked what the scope of the Greek-life inclusions was.
  4. J. Anderson stated that the Sororities and Fraternities would still have the ability to work on membership development. The CJC was not trying to take away the autonomy of Greek-life in dictating what it meant to be a member of Greek life. Rather, the CJC was taking away the more complex cases that are related to major violations such as hazing.



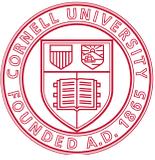
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5. R. Bensel asked if J. Anderson could add page reports to the report. Additionally, R. Bensel what the relationship was between suspension and expulsion.
6. J. Anderson conveyed that suspension was a maximum and would be used to avoid retaliation. Expulsion and suspension were different and were punitive of sanctioning. If the sanction matched the behavior that was against the Cornell community behavior, then it would be justified. J. Anderson stated that studying at Cornell was a privilege and actions done that inherently harmed a member of the community or were harmful in general would have repercussions.
7. R. Bensel stated that expulsion carries a message to other institutions about the gravity of the offense while suspension does with lesser impact. Expulsion has its uses as an information carrier. Additionally, R. Bensel conveyed his opposition to preponderance of the evidence. He noted that preponderance of evidence has been the argument of the mob, bias, and prejudice and would not vote for a code that uses preponderance of the evidence.
8. J. Anderson stated that the totality of information needs to be looked at and he would respect the wishes of the UA. The change to preponderance of the evidence would create unity across the evidentiary processes and would leave Policy 6.4 intact.
9. L. Kenney conveyed opposition to the preponderance of the evidence for the standard of proof because it would lead to wrongful convictions but would also be a move away from due process. In response to J. Anderson's previous comment, she would like to see the information calling for uniformity across the evidentiary process and its impact on Policy 6.4. L. Kenney stated that her main concern was the way by which the process was being rushed and public comment was only available for two weeks on the procedural section in order to get a timely vote. In the midst of a pandemic, if multiple other deadlines are able to be extended, the UA should ask President Pollack for an extension. Students were not being given enough time to weigh in on the process.
10. J. Anderson noted that there had been conversations with administrators, not the Board of Trustees specifically, and they still had expectations for the code to be completed by the end of the year. The code revisions were expected to have been done last year.



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11. C. Van Loan asked if the general public knew the difference between the standards of proof and if the community appreciated the difference enough.
12. J. Anderson stated that if we do not have many individuals educated on the code as a whole, how could they be educated on the standard of proof.
13. R. Bensel noted that most students would never read the code but in violations, the standard of proof would be important. An educational program that has preponderance of the evidence built in is not truly educational.
14. J. Anderson stated that the issue was being thought of in terms of criminal proceedings, but the situation is student conduct and is not a court of law. The current student conduct procedures are a form of alternate dispute resolution.
15. L. Kenney noted that she agreed with R. Bensel and understood that the standard of proof was not being applied to a criminal proceeding in these scenarios. However, when there are panelists who are students, looking for approval by the University and can be in situations with bias, the situation is moving towards wrongful convictions. Additionally, L. Kenney asked if there had been any conversations with President Pollack about the deadline extension and increasing time for public comment. In the current situation, it did not make sense for the code revisions to be the University's main concern.
16. J. Anderson stated that the conversations with President Pollack had indicated that the end of the semester was still the requirement. R. Howarth added that if it were absolutely necessary to ask for extension, it would be granted by the trustees. The UA was serving as an advisor in the code revisions and the trustees had the final say on the code. R. Howarth stated that he would like to see the UA attempt to finish the code in the time given.
17. L. Kenney responded by saying that she would not like to see students punished, by taking away transparency, for the work of previous UA chairs.
18. There was discussion by B. Krause, C. Van Loan, and G. Kanter on the burden of proof.



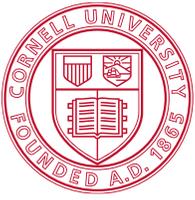
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- 19.R. Bensel asked how many cases were being adjudicated at the moment and over the summer. If there were few cases, then it would make sense to delay the code until June or July.
- 20.K. Barth stated that there would continue to be a CJC and the code would continue to be revised so even if everything is not correct on the first round, there can be revisions. The code revisions would not be able to encompass all the possibilities that they would need to on the first round and subsequent revisions would be beneficial.
- 21.L. Kenney conveyed that she disagreed with K. Barth and did not understand why the revisions could not be delayed by a month to allow students time to look at the proposed changes. Less than two weeks is not adequate time to allow students to understand the changes and voice their recommendations.
- 22.R. Howarth noted that he believed the code revisions had been under discussion for a long time and thinks it would be best to complete them by the deadline. However, he added that L. Kenney could pose a resolution to discuss with the administration and the Board of Trustees the extension of the deadline.
- 23.L. Kenney moved to have discussion with administration and the Board of Trustees to extend the code revision deadline in order to give students adequate time to review the proposed changes. The motion was seconded by K. Barth.
- 24.R. Howarth clarified by stating that the decision was not President Pollack's but rather that of the Board of Trustees. He would ask the trustees and they would give a response in May. However, if they decline the extension, the trustees could take control of the code revisions.
- 25.C. Levine asked if there could be a poll for delaying the deadline with C. Van Loan specifying, the delay would be until June 15.
- 26.The informal vote yielded 6 members in favor of delaying and 7 members opposed to delaying.

The meeting was adjourned at 6:00pm.

Respectfully Submitted,

Auriole C. R. Fassinou  
Clerk of the Assembly



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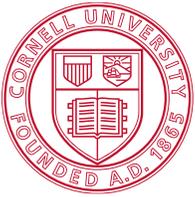
## Cornell University Assembly

Minutes of the May 5, 2020 Meeting

4:32 PM – 6:00 PM

Zoom Meeting

- I. Call to Order
  - a. Call to Order
    - i. R. Howarth called the meeting to order at 4:32pm
  - b. Roll Call
    - i. *Present:* J. Anderson, A. Barrientos-Gómez, K. Barth, R. Bense, U. Chukwukere, C. Duell, D. Hiner, R. Howarth, L. Kenney, C. Levine, G. Martin, R. Mensah, D. Nyakaru, J. Pea, P. Thompson, C. Van Loan
    - ii. *Members not Present:* B. Fortenberry, A. Hong
  
- II. Call for Late Additions to the Agenda
  - a. Discussion related to UA R4: Support of the development and implementation of a Cornell Campus Circulator System
    - i. K. Barth reminded the assembly members about the premise of the resolution which would support the idea of on campus TCAT. The resolution was created in part by both the University Assembly Campus Planning Committee and the Campus Infrastructure Committee.
    - ii. K. Barth indicated that he offered an amendment to the resolution in light of the COVID-19 pandemic and conferred with Vice President Malina who reaffirmed that this is an important time for the Assemblies to be providing feedback and that the University business is still going forward.
    - iii. K. Barth stated that the resolution has support in the other assemblies as the Student Assembly passed their version of the resolution in February, it is currently on the floor in the Graduate and Professional Student Assembly and it is scheduled to be voted on at the next Employee Assembly meeting on Wednesday, May 6, 2020.
    - iv. K. Barth indicated that he has changed the original abstract of the resolution and has amended the “Be it therefore resolved” clause to read as follows “that the Cornell Campus Circulator System should be included in the Cornell University long term strategic plan, post the COVID19 crisis and related financial issues; it is a general priority and represents what the campus wants and will need in the future,” which replaces the timeline and shows that this is important for when campus does get back to business.



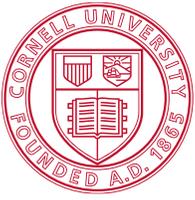
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- v. K. Barth finally stated that if this resolution does not get voted on during this term, that it will expire so he would like the assembly members to review it so they can vote on it at the May 12, 2020 University Assembly meeting.
- vi. A. Barrientos-Gómez provided an update that the Graduate and Professional Student Assembly was able to vote on this resolution electronically; however, it did not contain the amended abstract or the last resolved clause.
- vii. R. Howarth mentioned that this resolution may go to an electronic vote based on time to focus on the Campus Code discussion.

### III. Business of the Day

#### a. Revision of Campus Code

- i. R. Howarth stated that he forwarded President Pollack's message to all assembly members related to the indication that several assembly members would like an extension. The bottom line is that the University Assembly will need to take a vote on this at their next meeting on May 12, 2020 so it can get to the Board of Trustees to vote on over the spring and/or summer
- ii. J. Anderson informed the assembly and the Codes and Judicial Committee met on Friday, May 1 and they made two large changes related to key sticking points for the committee.
  - 1. The first change was to implement a bifurcation of standard of evidence dependent on which procedure a student was going through. If a student was going in front of the administrative panel, the standard of evidence would be a preponderance of evidence; however, if a student was in front of the hearing panel, clear and convincing evidence would be used as the standard of evidence. In addition, the appeals process would also be bifurcated.
  - 2. The second change allowed for exceptions to have public hearings in that if there was a large campus community discussion that could be educational in nature, the hearing could be made public only if both parties were in agreement.
- iii. J. Anderson indicated that public comments on the code revisions has been extended until Friday, May 8, 2020. He stated that most of the comments should be directed to assembly members and encouraged them to review them.
- iv. J. Anderson also informed the assembly that there will be a public forum on the code revisions to be held on Thursday, May 7, 2020 from 3:00 PM –

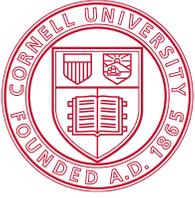


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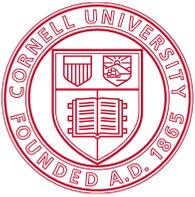
4:00 PM (EST). The forum will be to present key changes as well as get feedback from the community.

- v. J. Anderson shared with the assembly a set of procedures created by the Office of the Student Advocate. These alternative procedures have been approved by the Student Assembly and felt that the University Assembly should review these procedures and allow the Office of the Student Advocate to present their highlights.
  
- b. Presentation by the Office of the Student Advocate
  - i. R. Howarth gave the floor to Liel Sterling from the Office of the Student Advocate for a short presentation on their suggested procedures.
    - 1. R. Bensel had a question as to how other Codes and Judicial Committee members would be able to participate in the meeting if called upon.
    - 2. J. Anderson replied that he would yield to them.
    - 3. R. Howarth indicated that the Assembly use the procedure that has been used in previous meetings that they hear from those who have previously asked to speak, with giving preference to assembly members, then accommodate other speakers.
  - ii. L. Sterling provided a brief presentation on the Office of the Student Advocate Observations and Recommendations on Community Standards.
    - 1. This has been passed as a resolution within the Student Assembly.
- c. Discussion by UA member on Code revisions
  - i. Following the presentation by L. Sterling, R. Howarth opened up the floor for questions both for L. Sterling and J. Anderson.
  - ii. L. Kenney stated that the proposed new Executive Rule is a proposal and has not yet been put into effect. She then stated that she would like to yield her time to James Pinchak of the Judicial Code Counselor office as she felt that the assembly should also hear from the Judicial Code Counselors as they have already listened to the Office of the Student Advocate.
  - iii. R. Howarth affirmed that as chair of the assembly, he alone will recognize speakers and not to yield time to non-assembly members and ruled that as out of order for L. Kenney to yield her time. He further indicated that he would like to start with questions for J. Anderson and L. Sterling then will open up questions as appropriate.
  - iv. R. Bensel inquired whether this proposal went to the Codes and Judicial Committee and, if so, what was the discussion there. He also inquired about the reasoning if it didn't go to the Codes and Judicial Committee.



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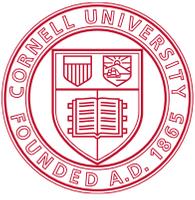
- v. L. Sterling affirmed that this proposal did not go in front of the Codes and Judicial Committee. The reasoning for this was that the intention was to bring a student perspective on a Code of Conduct that will only address students. She also noted that all of the sponsors of the resolution are all the student members of the Codes and Judicial Committee.
- vi. J. Anderson clarified that he was not a sponsor of the resolution.
- vii. K. Barth asked J. Anderson a procedural question with regard to the public comments, the upcoming forum, the Codes and Judicial Committee revisions and the Office of the Student Advocate information. He wanted to know how to work with the information in the Office of the Student Advocate procedures versus the Codes and Judicial Committee revisions.
- viii. J. Anderson affirmed that there are substantial differences and there needs to be weight upon the substantive comments that directly implicate language placed as well as giving deference to constituent groups who are currently on campus (i.e. undergraduate and graduate students, employees and faculty). He recognized that there are a fair amount of comments posted by alumni and his personal opinion is that he feels that alumni have other means of engaging with university governance. He went on to state that some of the alumni comments did play into Greek life that do deserve consideration. In the multiple roles that he holds, J. Anderson stated that he is trying to remain as neutral and impartial as possible.
- ix. C. Van Loan inquired about the standards of evidence of the schools provided in the Office of the Student Advocate presentation and whether they were the same as the proposal or different.
- x. L. Sterling replied that they didn't actually check for standards of evidence; rather they researched diversity and inclusion procedures, restorative justice measures and student involvement as advisors. The reasoning behind this was the evolving changes with the potential new rules and attempt to address the changes preemptively.
- xi. C. Van Loan followed up that just a week prior, there was not a fork in the road and he inquired if this was something new that just happened within the past week.
- xii. J. Anderson affirmed that it happened at the Codes and Judicial Committee on Friday, May 1, 2020.
- xiii. C. Van Loan asked for an explanation as to why the committee felt one standard was higher than the other.
- xiv. J. Anderson replied that hearing panels involve any sanctions that include disciplinary probation, suspension or expulsion and that due to the severity



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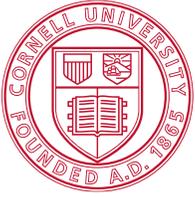
of these sanctions, the committee felt that a higher standard should be utilized in these types of instances.

- xv. C. Van Loan mentioned that having two different standards within the Code itself is confusing and could there be further explanation provided.
- xvi. J. Anderson indicated that it a new proposed change and there haven't been any comments received related to it. He then deferred to Barbara Krause, interim Judicial Administrator, for clarification.
- xvii. R. Howarth recognized B. Krause as the next speaker.
- xviii. B. Krause stated that trying to work through a Code with two different burdens of proof and two different types of setting is complex and potentially confusing than having a single burden of proof. She went on to clarify that the Office of the Judicial Administrator would not consider probation as a sanction that would justify a higher burden of proof.
- xix. L. Kenney pointed out that if the Assembly is going to call upon the Judicial Administrator to speak that they should also give the Judicial Code Counselors an opportunity to speak. She also indicated that she went through all of the public comments and that of the majority of the comments were against the change to the burden of proof. She also mentioned that on social media, there was a post by the Cornell Daily Sun and that a majority of the comments on that post were opposed to the change as well.
- xx. L. Kenney inquired about the public hearings and whether the chair of the hearing panel who has the decision or does the OJA have an opinion. She also voiced an issue about free speech concerns and whether the CJC would address those.
- xxi. J. Anderson replied that free speech was ingrained in the code revisions and edited at the beginning of the semester; however, due to priority on the substantive and procedural portions of the code, those edits weren't able to be finalized. With regard to the public hearing question, the panel chair has the final decision.
- xxii. R. Bensel stated that he does not regard the punishments that the University can inflict on undergraduates as not the severity as criminal cases.
- xxiii. R. Lieberwitz referred to R. Bensel's question regarding whether the Office of the Student Advocate's proposal came to the Codes and Judicial Committee and confirmed that it hadn't. She went on to state that she felt it was inappropriate procedurally and the Office of the Student Advocate could have come to the Codes and Judicial Committee.



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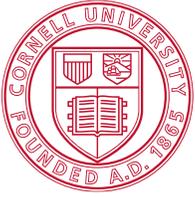
- xxiv. J. Anderson clarified the Student Assembly charter does allow for them to disagree with formalized actions of the assemblies and the Office of the Student Advocate utilized that provision within the Student Assembly charter.
- xxv. R. Howarth indicated that he was not aware of this proposal until the day before this current meeting.
- xxvi. L. Sterling responded that the process was utilized due to cases coming through the Office of the Student Advocate and students expressing their frustration at the current process. It became clear that members of the Codes and Judicial Committee were looking to provide increased student perspective. She also clarified to an earlier question by C. Van Loan that preponderance of evidence is the standard that is used by most university bodies.
- xxvii. J. Pinchak indicated that the Office of the Student Advocate proposal was not shared with the Judicial Code Counselor office either. He agreed that restorative justice measures were important; however, he stated that he didn't agree with the perspective of the Office of the Student Advocate suggestions given that it would give a student two options with completely different outcomes and results.
- xxviii. C. Van Loan deferred to another assembly member.
- xxix. G. Martin stated that he doesn't believe that the Office of the Student Advocate isn't saying that the process isn't currently educational, but rather can it be more educational and informative for a student.
- xxx. U. Chukwukere stated that it is bothersome for someone to speak for communities that they are not a part of. In addition, he stated that the support of the Office of the Student Advocate suggestions is coming from the leaders of the student organizations that are most marginalized on campus.
- xxxi. D. Nyakaru inquired about the sentiment of the new code revisions might be considered an overreach or abuse of power.
- xxxii. L. Kenney restated the charge to make a clearer document and get rid of ambiguities resulting in something fundamentally different. She stated that law students are going to through the appropriate training for these sorts of cases and they care about due process. She indicated her desire to do work on behalf of and to speak for marginalized communities and felt that lowering the standard of proof might lead to wrongful convictions.
- xxxiii. J. Anderson clarified his positions (as CJC Chair and SA President) were often in conflict but he had striven to lead both bodies in objective and



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unbiased fashion. He further explained that the proposed Code changes came about in response to a call by over 300 students of color who attended a University Assembly meeting in the fall of 2017, protesting the conditions of black students on campus, which was the impetus for the president to create the Campus Climate Task Force. J. Anderson stated that he had made the motion at that meeting to amend the Campus Code of Conduct in response to the marginalized students.

- xxxiv. R. Howarth asked for decorum and to keep the discussion from getting to personal attacks.
- xxxv. C. Levine, as a new member to the UA, re-stated the debate as two constituencies in opposition on the issue of the burden of proof. The two positions seem unresolvable. There are strong values and positions on both sides.
- xxxvi. C. Van Loan asked for insights as to whether Cornell was ‘special’ as the outlier using the “Clear and Convincing” standard, or whether it was considered a sign of leadership? He also asked for an explanation as to the impact of the need to align with the Federal mandate would/should affect the discussion.
- xxxvii. R. Bensel agreed with C. Levine’s statement in that all have best intentions but almost irreconcilable positions. He gave further examples of the differences between the standards of proof.
- xxxviii. A. Barrientos Gomez alerted the assembly that there was a conflict for the grad and professional student community with regard to the Campus Code Public Forum scheduled at the same time as an Open Forum on the Reopening of Campus.
- xxxix. J. Pinchak clarified that the Campus Code of Conduct would never apply to cases involving sexual assault as they are covered under Policy 6.4.
  - xl. R. Lieberwitz commented that she thought Cornell was a leader regarding due process with its Clear and Convincing standard. She questioned parts of the OSA proposal as being massively different than the proposal put forth by the CJC. She questioned the process by which the OSA proposal was brought forth, “at the eleventh hour”.
  - xli. B. Krause assured the assembly that the members of the OJA are not in their positions to prosecute students. That is not why they do the work of the OJA. She gave her opinion that preponderance is the best standard because it best balances the interests of the complainants, respondents and the campus communities. The standard applies across the board.

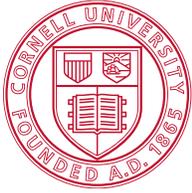


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- xlii. L. Kenney asked that no new proposals be brought to the body since the CJC had not had a chance to review.
- xliii. J. Anderson explained that his intention was not to slide something in at the end, but to work with each assembly to further their individual interests and conflicting priorities. He further stated that there was so much more discussion to take place on the substantive portions of the Code, beyond the standard of proof, and encouraged the assembly to move forward in the other discussions.
- xliv. R. Howarth stated the meeting time had come to an end. He encouraged assembly members to read through the drafts and comments on the website in advance of the meeting next week.
- xlv. L. Kenney asked for an extension of the meeting by 3 minutes to introduce her “Good Samaritan” amendment.
- xlvi. Extension was approved.
- xlvii. L. Kenney gave an overview of her amendment regarding the Good Samaritan Law. She advocated for including a Good Samaritan provision in the Code similar to what had been codified by NYS.
- xlviii. R. Howarth called for adjournment.
- xlix. Motion seconded

The meeting was adjourned at 6:03pm.

Respectfully Submitted,  
Office of the Assemblies



## Resolution 4: Support of the development and implementation of a Cornell Campus Circulator System

**Abstract:** For the past eleven years, a Cornell Campus Circulator System of transportation has been under discussion as a way to improve access to many university functions and to address the continual challenges related to transportation and parking that Cornellians face every day. We propose that a Cornell Campus Circulator System should be included in the Cornell University long term strategic plan, post the COVID19 crisis and related financial issues; it is a general priority and represents what the campus wants and will need in the future.

**Sponsored by:**

*Kristopher Barth*—Information Technology, Tech Transfer, and Research Representative

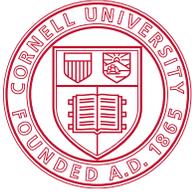
**Reviewed by:** Campus Planning Committee, 12/10/2019; Campus Infrastructure Committee, 11/20/19

**Whereas,** the need for a Campus Circulator was identified in the 2008 Campus Master Plan as essential to the efficiency and productivity of Cornell campus which depends on how well Cornell students, faculty, employees, and alumni, as well as guests and visitors can move about the campus; and

**Whereas,** the 2013 Cornell Climate Action Plan calls for the reduction of fossil-fuel consumption of the Cornell Fleet through alternative-fueled vehicle purchasing and the increased use of mass transportation, leading to the fulfillment of the Carbon Neutrality 2035 goal approved by the Board of Trustees; and

**Whereas,** the 2015 Game Farm Road Athletic Complex Facilities Master Plan requires the improvement and expansion of Cornell's current transportation system to make that complex more accessible to student athletes, coaches, and staff in a timely and safe fashion throughout the day; and

**Whereas,** the need for a Campus Circulator was identified in Cornell's 2018 Parking Optimization Study, as a way to reduce the reliance on TCAT large bus traffic through the center of campus; to provide more frequent transit to more locations across campus; to increase connectivity and reduce the confusion inherent in current transit options; to reduce the anxiety and challenges around current parking proximity to destination; to reduce the amount of car traffic on campus; and to increase the use of existing available perimeter parking options; and encourage the use of sustainable intra-campus mobility options when on campus; and



## Cornell University University Assembly

41 **Whereas**, only students in their first year at Cornell have free access to TCAT and there is an  
42 opportunity to provide and encourage the use of barrier free, sustainable, mass transportation for all  
43 students; and

44  
45 **Whereas**, pedestrian and bike safety are a priority and this is another step towards Vision Zero by  
46 reducing car traffic, parking hunting, and bus traffic on campus; and

47  
48 **Whereas**, it is important to continue to protect Cornell's natural landscapes, green spaces, and  
49 maintain our campus aesthetics (which are among the most beautiful in the world) for all future  
50 Cornellians; and

51  
52 **Whereas**, efficient mass-transit supports the One Cornell vision, including the ease of access and  
53 utilization of the Martin Y. Tang Welcome Center, and allowing students, faculty, guests, and staff to  
54 move across campus easily to cross collaborate more often between schools and disciplines and to  
55 attend meetings and campus events more frequently; and

56  
57 **Whereas**, TCAT is committed to working with Cornell to improve their service and pilot new  
58 sustainable initiatives to better meet Cornell's needs and goals; and

59  
60 **Whereas**, our 2019 Drafted Core Values statement outlines Changing Lives through Engagement  
61 by applying knowledge that we and others create for the benefit of society and engagement with our  
62 community, state, and the broader world; as well as our Respect for the Natural Environment and  
63 the need to live and work for a sustainable environment.

64  
65 **Be it therefore resolved** that a Cornell Campus Circulator System should be included in the Cornell  
66 University long term strategic plan, post the COVID19 crisis and related financial issues; it is a  
67 general priority and represents what the campus wants and will need in the future.

68  
69 **Be it finally resolved**, a copy of this resolution be presented to Martha Pollack, President; Mary  
70 Opperman, Vice President and Chief Human Resources Officer; Joel Malina, Vice President for  
71 University Relations

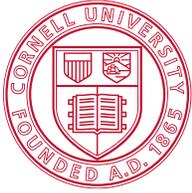
72  
73 **Adopted by Vote of the Assembly (x-x-x), MM/DD/YYYY.**

74  
75 **Respectfully Submitted,**

76  
77 Kristopher Barth, Information Technology, Tech Transfer, and Research Representative

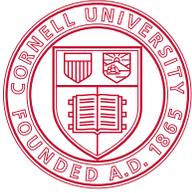
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79 References:

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81 **Section 4.30 4.31 of**  
82 [https://masterplan.cornell.edu/doc/cmp\\_part\\_1/transportation\\_circulation/transportation\\_circulation.pdf](https://masterplan.cornell.edu/doc/cmp_part_1/transportation_circulation/transportation_circulation.pdf)  
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## Cornell University University Assembly

- 85 Page 8, 11, 38 of  
86 [https://fcs.cornell.edu/sites/default/files/imce/site\\_contributor/Dept\\_University\\_Architect\\_and\\_Campus\\_Planning/documents/Campus\\_Planning/Game%20Farm%20Road%20Athletic%20Complex%20Facilities%20Master%20Plan.pdf](https://fcs.cornell.edu/sites/default/files/imce/site_contributor/Dept_University_Architect_and_Campus_Planning/documents/Campus_Planning/Game%20Farm%20Road%20Athletic%20Complex%20Facilities%20Master%20Plan.pdf)  
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90 **Cornell HR Workforce Report, Page 14**  
91 [https://apps.hr.cornell.edu/hr\\_professional\\_docs/for\\_employees/Workforcereport\\_FY2018.pdf](https://apps.hr.cornell.edu/hr_professional_docs/for_employees/Workforcereport_FY2018.pdf)  
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94 Page 58,59 [https://sustainablecampus.cornell.edu/sites/default/files/2019-01/Cornell%20University%20CAP%20Roadmap%20-%202013\\_0.pdf](https://sustainablecampus.cornell.edu/sites/default/files/2019-01/Cornell%20University%20CAP%20Roadmap%20-%202013_0.pdf)  
95  
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97 **Page 10,12 of the Transportation Parking Optimization Presentation**  
98  
99 **Core Values:** <https://president.cornell.edu/initiatives/university-core-values/>



## Resolution 8: Recommendation for Revision of the Campus Code of Conduct

**Abstract:** For multiple academic semesters, the University Assembly and Codes and Judicial Committee have been engaged in revising the Campus Code of Conduct. This resolution expresses appreciation for the many members involved in this process and encourages the University Counsel to combine aspects of both the recommendations of the current Codes and Judicial Committee draft and the Office of the Student Advocate draft as the next step towards finalizing a new Code. The University Assembly recommends that the combined version be available for public comment and review during Summer 2020 before a final vote in October 2020 by the Cornell Trustees.

**Sponsored by:**

The University Assembly Executive Committee (R. Howarth, Chair; P. Thompson, Executive Vice Chair; U. Chukwukere, Ranking Member.)

**Whereas,** the University Assembly and the Codes and Judicial Committee have been engaged in the code revision process for multiple semesters;

**Whereas,** the Codes and Judicial Committee has presented their draft version to the University Assembly for approval;

**Whereas,** the Office of the Student Advocate through approval by the Student Assembly has also presented an alternative version;

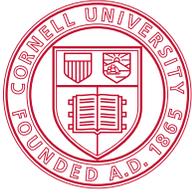
**Be it therefore resolved,** that the University Assembly encourages the University Counsel to review the two versions and find a fair and equitable approach to use the most appropriate elements from the two drafts in producing the new Code of Conduct;

**Be it further resolved,** that this process extend the period for public comment, with the University Counsel posting the proposed version for public comment for a period of at least two months during the Summer 2020 and into the Fall 2020 semester;

**Be it further resolved,** that the final version of the Code of Conduct be approved at the October 2020 meeting of the Cornell Board of Trustees;

**Be it further resolved,** that the University Assembly thanks **Logan Kenney** for her role as Chair of the Codes and Judicial Committee during the Fall 2019 Semester;

**Be it further resolved,** that the University Assembly thanks **Joe Anderson** for his role as Chair of the Code and Judicial Committee during the Spring 2020 Semester;



## Cornell University University Assembly

42 **Be it further resolved**, that the University Assembly thanks the following members for serving as  
43 members of the Codes and Judicial Committee during the 2019-2020 Academic Year:

44 **Moriah Adeghe**, Undergraduate Student Representative  
45 **Richard Bensel**, Faculty Representative  
46 **Uchenna Chukwukere**, Undergraduate Student Representative  
47 **Bryce Corrigan**, Faculty Representative  
48 **Alex (Jin-Taek) Hong**, Graduate and Professional Student Representative  
49 **Catherine Huang**, Undergraduate Student Representative  
50 **Risa Lieberwitz**, Faculty Representative  
51 **Gavin Martin**, Undergraduate Student Representative  
52 **Jenn Michael**, Employee Representative  
53 **Laura Taylor**, Employee Representative  
54 **Andrea Llinas Vahos**, Graduate and Professional Student Representative

55  
56

57 **Be it therefore resolved**, that the University Assembly thanks **Barbara Krause** for her service as  
58 Interim Judicial Administrator **Christina Liang** for her service as Associate Judicial Administrator  
59 and for serving as an ex officio member on the Codes and Judicial Committee;

60

61 **Be it therefore resolved**, that the University Assembly thanks **Gabrielle Kanter** for her service as  
62 Judicial Codes Counselor and for serving as an ex officio member on the Codes and Judicial  
63 Committee;

64

65 **Be it further resolved**, that the University Assembly thanks **Liel Sterling** and **Anuli Ononye** and  
66 the other members of the Office of the Student Advocate for their efforts in producing an  
67 alternative version of the Code;

68

69 **Be it finally resolved**, that the University Assembly thanks all others who contributed during and  
70 prior to this academic year in this process.

71

72 **Adopted by Vote of the Assembly (x-x-x), MM/DD/YYYY.**

73

74 **Respectfully Submitted,**

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76 The University Assembly Executive Committee (R. Howarth, Chair; P. Thompson, Executive Vice  
77 Chair; U. Chukwukere, Ranking Member.)

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# Cornell Student Code of Conduct

## **Section 1: Principles and Values**

This Student Code of Conduct (“Code”) establishes Cornell’s expectations applicable to all students, recognized student organizations, and recognized living groups (including fraternities and sororities) at Cornell’s Ithaca and Geneva campuses, and Cornell Tech. The standards contained in the Code are based in Cornell’s historical educational origins and mission. These standards reflect the founding vision and values of Ezra Cornell and Andrew Dickson White. Cornell’s educational legacy embodies personal growth through higher learning and Ezra Cornell’s aspiration to ‘... *found an institution where any person can find instruction in any study.*’<sup>1</sup> This Code is intended to preserve a higher education community and residential campus where ‘any person’ in the community can pursue their education in a secure and nurturing environment.

In 2019, the university adopted a set of Core Values intended to serve as the foundation for a more equitable and inclusive atmosphere for all on our campuses.

### **Purposeful Discovery**

We value the process of discovery through learning, teaching, scholarship, and innovation to advance the University’s mission, in all cases striving with integrity for excellence and purpose. The search for and the dissemination of knowledge are tightly linked: as A. D. White noted, “The power of discovering truth and the power of imparting it are almost invariably found together.”

### **Free and Open Inquiry and Expression**

We are a community whose very purpose is the pursuit of knowledge. We value free and open inquiry and expression—tenets that underlie academic freedom—even of ideas some may consider wrong or offensive. Inherent in this commitment is the corollary freedom to engage in reasoned opposition to messages to which one objects.

### **A Community of Belonging**

As a university founded to be a place where “...any person can find instruction...,” we value diversity and inclusion, and we strive to be a welcoming, caring, and equitable community where students, faculty, and staff with different backgrounds, perspectives, abilities, and experiences can learn, innovate, and work in an environment of respect, and feel empowered to engage in any community conversation.

### **Exploration across Boundaries**

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<sup>1</sup> Ezra Cornell, First Inaugural Address, Oct 7, 1868; *Motto* magazine, Top Motto Among All American Colleges and Universities, “*Top 10 Motto List*”, 2007.

Ezra Cornell embraced a vision that we would be a place to “...find instruction in any study.” To that end, we value the importance of all academic disciplines and celebrate the power of connections among them.

### **Changing Lives through Public Engagement**

As the land-grant institution of New York, with our main campus within the ancestral homelands of the Cayuga Nation and a long history of national and international connections, we value engagement in our community, our state, and the broader world, learning about their needs and strengths, and applying the knowledge we create for the benefit of society.

### **Respect for the Natural Environment**

We value our role in advancing solutions for a sustainable future and we recognize the close relationship between people and the Earth, acting in ways to live and work sustainably.

The expectations and standards in this Code of Conduct should be applied consistent with non-punitive educational objectives including opportunities to demonstrate growth from mistakes, and to implement restorative justice, and sanctions imposed should, to the greatest extent possible, advance Cornell’s educational goals.

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. The Code protects individual rights based in law and University policies, and is dedicated to fair treatment of all members of the university community. At the same time, the Code prohibits misconduct that unduly imposes upon the rights of others or compromises the effective operation of the University in the fulfillment of its educational mission.

Authority over and administration of the Code and associated Procedures are vested with the Vice President for Student and Campus Life (VP SCL), in consultation with the elected Assemblies of the University. Student conduct matters are delegated to the Office of Student Conduct and Community Standards, overseen by the Dean of Students. The conduct of University faculty and staff are separately addressed under policies and procedures applicable to employees of the University.

## **Section 2: Definitions**

The following definitions apply to the Code.

1. The term "campus" includes property and space owned, leased, used, or controlled by Cornell associated with its Ithaca, Geneva and Cornell Tech campuses; it can also include streets, sidewalks, and pathways adjacent to or in the immediate vicinity of Cornell campus or property.
2. The term "University" means Cornell University, as well as any affiliated programs or virtual programs, computing, and spaces including, but not limited to, University programs in remote locations within or outside of New York or the United States.
3. The term "student" includes: Undergraduate, graduate, medical, veterinary, and professional students upon their commencement of attendance, defined as the earliest of: the first day of the term for which they were admitted; their first day residing in a university residence hall; the first day of a university-sponsored pre-orientation trip, activity, or academic program in which they are participating; or on the first day of a graduate assistantship for the first semester/term for which they were admitted – whichever is earliest. A student's status ends – with some exceptions noted in related Conduct Procedures – when a student withdraws or is withdrawn from the University, is dismissed (expelled) from the university, or their enrollment is terminated.
4. Individuals participating in non-credit bearing programs or who attend class(es) on a non-credit basis, and individuals who attend class(es) at the University on a for-credit basis while still an elementary, middle, or high school student, or foreign equivalent, are not students for the purposes of the Code.

### **Section 3: Scope and General Provisions**

#### **3.1. Jurisdiction:**

The Code covers behaviors by all Cornell students, University-recognized or University-registered student organizations and living groups (including fraternities and sororities). The Code generally applies to conduct on any campus of the University, on any other property used by it for educational purposes, or on the property of a University-related residential organization.

The Code applies to conduct that involves the use of University computing and network resources from a remote location, and to online behavior.

The Code will apply regardless of the location of the conduct when: (1) the behavior occurs in the context of a University program or activity; or (2) poses a substantial threat to the

University's educational mission, the health or safety of individuals (whether affiliated with the University or not), or the University community.

"Substantial threat" includes the following: (a) the selling of drugs; (b) physical contact exceeding a shove; (c) hazing; (d) property damage or theft valued over \$500; and, (e) unique violations which shall be left to discretion of the Dean of Students as requested.

The Code applies to Cornell students between terms regardless of whether the University is in session.

The final determination as to whether off-campus conduct is subject to this Code will be made by the Dean of Students, or their designee.

Students are further required to inform their guests as to Cornell's behavioral standards and expectations. Students can be held responsible for their guests' misconduct in which the student is complicit.

### **3.2. Transcript Notations:**

Transcript notations related to Code proceedings, including during the pendency of a conduct matter or when a student withdraws with a conduct charge pending, will be made in accordance with the University Registrar's transcript notation policy (<https://registrar.cornell.edu/grades-transcripts>).

Disciplinary Record Reporting by the Office of Student Conduct and Community Standards is based on the seriousness of the underlying violation, with recognition of the educational and rehabilitative purpose of this Code. Towards that end, the following guidelines shall generally apply to such reporting (on academic transcripts):

- (1) minor offenses are not reported;
- (2) probationary status may be reported until the student graduates; if the student departs the university prior to graduation, then at the point of departure if the student has incurred no further Code violations;
- (3) suspension is reported until it has been fully served, the student has demonstrated one-year of good conduct without subsequent Code violations, and a request has been reviewed and approved by the Dean of Students;
- (4) expulsion is reported permanently.

### **3.3. Interaction with Criminal Proceedings:**

The Code does not govern criminal conduct, though criminal conduct can violate both the Cornell Student Code as well as criminal statutes. Accordingly, Code processes and criminal or civil processes may run concurrently where the alleged conduct implicates both the Code and local, state or federal criminal or civil statute(s) and ordinances. The determination of whether

to continue or defer Code processes or proceedings rests with the Dean of Students or their designee.

#### **Section 4: Prohibited Conduct**

The Code, together with Procedures for the enforcement of the prohibited conduct comply with New York Consolidated Laws, Education Law – EDN §6430 for the maintenance of public order on Cornell's campus.

The conduct defined and set forth herein is prohibited and subject to applicable procedures adopted under this Code. It is also a violation for any person subject to the Code to attempt to commit any of the following violations:

- 4.1 Affiliation with Unrecognized Student Organizations or Groups (Previously known as Misconduct Related to Student Organizations or Groups)
- 4.2 Alcohol-Related Behavior
- 4.3 Attempt to Violate the Code
- 4.4 Assault and Endangerment
- 4.5 Bribery
- 4.6 Collusion
- 4.7 Disorderly Conduct
- 4.8 Disruption of University Activities
- 4.9 Drug-Related Behavior
- 4.10 Failure to Comply
- 4.11 Fire Safety
- 4.12 Harassment
- 4.13 Hazing
- 4.14 Invasion of Privacy and Appropriation of Identity
- 4.15 Misrepresentation
- 4.16 Obstruction with Code of Conduct Investigation and Adjudication Process
- 4.17 Property Damage
- 4.18 Public Exposure/Lewdness
- 4.19 Public urination or defecation
- 4.20 Social Host Liability
- 4.21 Theft and Intellectual Property Infringement
- 4.22 Unauthorized Entry or Use of Space
- 4.23 Violations of Public Law(s)
- 4.24 Weapons

#### **4.1 Affiliation with Unrecognized Student Organizations or Groups**

- To knowingly affiliate with groups, teams, or organizations that have had their University recognition or registration withdrawn, suspended or permanently

revoked by the University for disciplinary reasons. The definition of affiliation includes joining, rushing, pledging or being involved in any activity that would normally be associated with being a member of such an organization. This applies to organizations that were created by members of a de-recognized organization in an attempt to continue its presence on campus. This prohibited conduct does not apply to unrecognized student groups who have never had University recognition or who are currently not recognized by the University because of non-disciplinary disbandment. However, known members of unrecognized student groups may be held accountable for prohibited conduct by these groups.

- To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a basis for exclusion from university or group activities on campus.

#### **4.2 Alcohol-Related Behavior**

To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol, including, but not limited to:

- Providing alcohol to an individual who is under the legal drinking age;
- Selling alcohol without a license;
- Consumption or possession of alcohol while under the legal drinking age;
- Knowingly possessing alcohol in unauthorized University spaces regardless of age;
- Operating a motor vehicle under the influence of alcohol;
- Public Intoxication.

#### **4.3. Attempt to Violate the Code**

- To attempt to violate any provision(s) of the Code.

#### **4.4 Assault and Endangerment**

To engage or threaten to engage in conduct that does or can reasonably be expected to result in physical harm, or significant emotional or psychological harm to another person, including, but not limited to:

- Any unwelcome physical contact (e.g. spitting, striking, slapping, hitting, biting, punching, shoving, kicking)
- Any physical action that is objectively abusive, threatening, intimidating, or endangers the health or safety of another person.
- Throwing or use of dangerous projectiles
- Preventing a person from leaving a location (including part of the location, such as one part of the room) or to force a person to go to a location against their will. This is a violation whether accomplished through physical or psychological means.

#### **4.5 Bribery**

Bribing a University employee or student for personal gain.

#### **4.6 Collusion or Complicity**

To participate, aid or assist another person to commit a violation of the Code.

#### **4.7 Disorderly Conduct**

To intentionally cause or recklessly create a risk of disruption to the University community or local community, including, but not limited to:

- Violent or threatening behavior;
- Unreasonably loud or belligerent behavior;
- Obstruction of vehicular or pedestrian traffic.

#### **4.8 Disruption of University Activities**

To disrupt or materially interfere with any instructional, research, service, judicial, or other University operation or function, including, but not limited to:

- Substantially obstructing or interfering with the lawful exercise of freedom of speech or freedom of peaceable assembly of any person or persons;
- Substantially obstructing 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;
- Intentionally obstructing or restraining the lawful participation of another person in an authorized activity or event, such as regular and special curricular activities, extracurricular activities, employment interviews, and recruiting activities.

#### **4.9 Drug-Related Behavior**

To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances, including prescription medication not prescribed to the user, as prohibited by state or federal law, including, but not limited to:

- Possessing drug paraphernalia, with intent to use unlawful drugs;
- Operating a motor vehicle under the influence of marijuana or any controlled substance, including prescription medication not prescribed to the user.

#### **4.10 Failure to Comply**

To refuse to comply with:

- A lawful directive of a University official within the scope of that person's official duties;
- A policy or operational rule 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, including life safety regulations and technology regulations;

#### **4.11 Fire Safety**

- Intentionally or recklessly causing a fire that damages University or personal property or which causes injury;
- Failure to comply with the requirement that all persons must leave a University building after a fire alarm has sounded or other notice of evacuation has been given, whether or not a drill;
- Tampering with or improper activation of a fire alarm, fire hydrants, covering or otherwise compromising the proper functioning of a smoke detector or fire sprinkler, theft or improper use of a fire extinguisher;
- Possessing or using firecrackers or flare for any purpose other than vehicular safety

#### **4.12 Harassment**

Subjecting another person or group to uninvited or unwelcome behaviors that are abusive, threatening, intimidating, or humiliating, 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 an individual's participation in any of the University programs or activities or is used as the basis for a University decision affecting the individual; or
2. The conduct creates a hostile environment – A hostile environment exists when the conduct unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's programs or activities. Conduct must cause unreasonable interference from both a subjective and an objective perspective. The fact that the conduct targets a group that has historically experienced discrimination may be relevant to a determination of whether the conduct creates a hostile environment.

Because of protections afforded by principles of free speech and academic freedom, expression will not be considered harassment unless the 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 person targeted by the speech.

Offensive conduct that does not by itself amount to harassment as defined above may be the basis for educational or other non-punitive interventions to prevent such conduct from becoming harassment if it were repeated or intensified. Mere disagreement with the political viewpoint or content of another's speech or expression shall not be the basis for any intervention, even a non-punitive one.

Actions that constitute stalking or sexual harassment as defined by Policy 6.4 ("Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct") shall be handled pursuant to that Policy and its associated Procedures.

#### **4.13 Hazing**

Hazing is an act that: regardless of a person's willingness to participate, whether on or off campus, as an explicit or implicit condition of recruitment, admission, or initiation into, or membership status\* within a recognized or unrecognized group, team, organization, or academic cohort, could be seen by a reasonable person, as not relevant to the group's purpose, and as likely to risk or cause, whether mild or severe:

- mental distress or harm (e.g. humiliation, intimidation, fear)
- physical distress or harm (e.g. pain, exhaustion, injury, illness)
- sexual distress or harm (e.g. embarrassment, shame, trauma),
- and/or involves any of the following:
  - acts of servitude or menial tasks
  - damaging or stealing property,
  - the consumption of alcohol or other drugs,
  - the consumption of unpalatable substances, or palatable substances to excess,
  - undue financial expenditures,
- or involves activities that are relevant to the purpose of the group, but that a reasonable person would find appear excessive in their application.
- Regardless of whether the individual who experiences the act identifies it as hazing.

Examples of hazing that involve "membership status" can include but are not limited to:

- "Reverse hazing" in which new members are required to select and haze one or more full members
- Subjecting a cohort of full members, such as sophomores, to hazing
- Hazing an individual or group of individuals who have recently attained an elevated status or position (e.g., new captain of a team, newly elected leaders of band sections)

#### **4.14 Invasion of Privacy and Appropriation of Identity**

To intentionally invade privacy or misappropriate property rights, by means of videotaping, photographing, audiotaping, or otherwise making any video, picture, or sound recording, or to appropriate, distribute, share, or use someone's likeness, identifying personal data, or documents.

#### **4.15 Misrepresentation**

- To furnish false information to the University with intent to deceive;
- To use, create, sell, or possess forged, fraudulently altered, or falsified documents, electronic records, or permits;
- To claim falsely to represent the University or a University-registered organization;
- To access the documents or records of the University or person without authorization, whether physical or electronic (i.e., "hacking");
- To possess and use identification by a person who is under the legal drinking age if the date of birth on the identification would appear to make it legal for the user to consume alcohol.

#### **4.16 Obstruction with Code of Conduct Investigation and Adjudication Process**

Obstruction or interference with, or failure to comply in, Code of Conduct processes, including, but not limited to:

- Falsification, distortion, or misrepresentation of information;
- Failure to provide, destroying or concealing information during an investigation of an alleged Code violation;
- Attempting to discourage an individual's proper participation in, or use of, the campus conduct system;
- Harassment (verbal or physical) and/or intimidation of a member of a campus conduct body prior to, during, and/or following a campus conduct proceeding;
- Influencing, or attempting to influence, another person to commit an abuse of the campus conduct system.
- Refusing to participate, without a substantial reason, as a witness in an investigation of or proceeding brought to enforce potential violations of this Code;
- Failure to comply with the sanction(s) imposed by the Code or other conduct policy, including Policy 6.4.

#### **4.17 Property Damage**

Actions that result in or can be reasonably expected to result in damage to property, including electronic data, files, or other information. This includes, but is not limited to, property owned by

the University, property owned by individuals affiliated with the University, and property owned by individuals or entities not affiliated with the University.

#### **4.18 Public urination or defecation**

To urinate or defecate in public.

#### **4.19 Public Exposure/Lewdness**

To expose a private or intimate part of one's body in a lewd manner or commit any other lewd act in a public place which is not covered by Policy 6.4.

#### **4.20 Social Host Liability**

Students may be held responsible for their guests' misconduct that violates the Code and in which the student is complicit.

#### **4.21 Theft and Intellectual Property Infringement**

To steal or knowingly possess stolen property or information, including by such acts as misappropriation of data or University funds, or to infringe upon another person's trademark, copyright, patent, or other intellectual property rights.

#### **4.22 Unauthorized Entry or Use of Space**

To enter upon or make use of University or private property or facilities without authorization, including:

- To enter any waters of Fall Creek, Cascadilla Creek, or Beebe Lake that are on or traverse the campus to swim or bathe, except in those waters officially designated as swimming or bathing waters;
- Building a structure on the campus without a permit or in violation of the conditions of a permit.

#### **4.23 Violations of Public Law(s)**

Violation of any federal, state, or local law, regulation, or ordinance.

#### **4.24 Weapons**

To possess, carry, or use any weapon or other object that can be used to cause physical harm, that can be used to threaten physical harm, or that, by its appearance, could reasonably be perceived as a weapon or object that could be used to cause physical harm (e.g., replica

firearms). This includes firearms (defined as any projectile-firing device including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances

### **Section 5: Other Applicable Procedures & Policies**

For information about the procedures for investigating and resolving alleged violations of the Code, please review, Student Conduct Procedures.

Separate policies and procedures govern: Academic Integrity, <http://theuniversityfaculty.cornell.edu/academic-integrity/>; and

Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct: Cornell Policy 6.4.

In addition, individual colleges or programs may have students conduct expectations and policies supplemental to this Code; those policies may be enforced through procedures established by the respective college or program.

# **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**

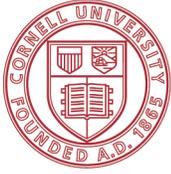
Either the OSCCS or the respondent may request that a hearing be rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason.

### **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.



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**STATEMENT OF THE OFFICE OF THE JUDICIAL ADMINISTRATOR  
TO THE CODES AND JUDICIAL COMMITTEE  
REGARDING CJC'S PROPOSED REVISION TO THE CAMPUS CODE OF CONDUCT  
May 4, 2020**

Dear Members of the Codes and Judicial Committee,

I deeply regret that important business in our office precludes me from attending CJC's specially called meeting on May 4, 2020. With the Chair's permission, the Office of the Judicial Administrator (OJA) submits this brief statement in advance of the CJC's vote.

I respect the hard work that I have seen CJC members engage in since I began serving as Interim JA on March 23, 2020. CJC's draft procedures document does make a couple of changes that the OJA believes are significant and positive. The positive changes include moving the student conduct function to the Student and Campus Life division and bringing sororities and fraternities under the Code's jurisdiction.

Unfortunately, for reasons stated over the course of CJC meetings beginning on March 27<sup>th</sup>, the OJA cannot support CJC's proposed revision to the Code procedures. Our key concerns, stated very briefly, include the following:

- Fundamentally, the Office of the Judicial Administrator does not believe that the proposed revision reflects current best practices in the field of student conduct, results in a truly student-focused educational model, or succeeds in making the Code less legalistic.
- The proposed CJC revision will adopt two different evidentiary standards. Our office believes that the "preponderance of evidence" standard best balances the interests of complainants, respondents, and the campus community as a whole. In any case, adopting two different evidentiary standards adds to the Code's complexity instead of reducing it.
- The proposed CJC revision adds another type of hearing option (Administrative Panels). The OJA's concerns about Administrative Panels have been expressed in comments on drafts and at prior meetings. On this point, also, CJC's approach adds complexity instead of reducing it.

For these reasons and others stated during previous CJC discussions, the Office of the Judicial Administrator respectfully declines to support CJC's proposed revision to the code of conduct procedures.

Sincerely,

Barbara L. Krause /s/

Barbara L. Krause  
Interim Judicial Administrator

## **Code Procedures**

### **1 INTRODUCTION**

These procedures apply when a student is alleged to have violated the Cornell Student Code of Conduct (“Code”). Although these procedures incorporate certain principles associated with the legal system (such as fair process protections), the Code is at its foundation a set of behavioral standards embracing teaching and learning opportunities, whenever possible, to foster personal development and accountability. Cornell’s goal is to provide a safe environment for all members of the University community, to teach and educate students regarding appropriate conduct, and to address misconduct when it occurs.

These procedures establish a process for University administrative review, and do not seek to replicate substantive or procedural legal rules. Neither the Rules of Civil Procedure nor Rules of Evidence apply to these procedures, though principles of fairness and predictability inherent in such rules inform and provide guidance. These procedures are to be implemented in conjunction with the Code, where key definitions and authority (including jurisdiction) are described. The administrative bodies that manage and perform under these procedures are described in Section 2.

### **2 ADMINISTRATION OF THE CODE AND PROCEDURES**

#### **2.1 The Office of Student Conduct and Community Standards**

The Director (“Director”) of the Office of Student Conduct and Community Standards (“OSCCS”) manages the student conduct system and cases arising out of the Student Code of Conduct (“Code”). The Director receives and ensures proper investigation and adjudication of alleged violations of the Code, or of any other regulation as the University President or Board of Trustees may direct.

The fundamental role of the Director 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. The Director does not prosecute cases against students. 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 Director 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 based on the circumstances of individual cases. Anyone can direct questions about the student conduct system to the OSCCS.

The Director shall be appointed by and reports to the Vice President for Student and Campus Life. The Vice President shall consult with the Student Assembly (“SA”) and Graduate and Professional Student Assembly (“GPSA”) prior to the Director’s appointment and shall request representatives from the SA and GPSA to serve on the search committee when a new Director is hired. The Director shall provide an annual report to the Vice President, the SA and the GPSA on the operations of the office and of the student conduct system. The Director shall undergo an annual review overseen by the Vice President (or designee). The Vice President shall request and thoughtfully consider feedback from the SA and GPSA as part of that annual review.

#### **2.2 Office of the Student Code Counselors**

The Office of the Student Code Counselors is part of the SA's Office of the Student Advocate. Student Code Counselors ("Counselors") provide free assistance and representation to both Complainants and Respondents within the Student Code of Conduct process.

Counselors are not attorneys and do not provide formal legal advice. Within the rules in these procedures governing the participation of non-parties, Complainants and Respondents may utilize Counselors exclusively, in addition to their own legal counsel, or may rely entirely on legal counsel of their choosing. Counselors explain how the student conduct system works and assist and support Complainants and Respondents at every stage of proceedings. The Lead Student Code Counselor ("Lead Counselor"), who manages the Office of Counselors, assigns individual Counselors to serve on individual matters. However, Complainants and Respondents may request specific Counselors, which request shall be honored to the extent practically possible. Complainants and Respondents may also request assignment of a new Counselor for good reason, which request shall be honored if practical and feasible in the discretion of the Lead Counselor. Counselors are required to adhere to strict confidentiality responsibilities and may not discuss a case within the community of other Counselors except as appropriate within the context of applicable procedures.

Each spring, the SA and GPSA, in consultation with the Director, shall select a Lead Counselor to manage the Office of Student Code Counselors for the following academic year from a group of no more than three individuals nominated by the Counselors. The Lead Counselor must be an undergraduate, graduate or professional student, and have previously served for at least two years as a Counselor. The normal term of appointment is one year; however, this individual may be reappointed for a second term. (In the first two years of operation of this new office, the SA and GPSA in consultation with the Director, may appoint any duly qualified person to serve as the Lead Counselor.) The Office of the Student Code Counselors shall create the procedures used in nominating candidates for Lead Counselor.

The SA and the GPSA, in consultation with the Director, shall set relevant qualifications for the Counselors, along with an application, selection and training process to be implemented by the Director. Counselors may be undergraduate, graduate, or professional students and will be appointed by the Lead Counselor from nominations supplied by the SA and the GPSA. To support an empathetic and knowledgeable approach to all conduct proceedings, Counselors will be trained and assigned to assist both Complainants and Respondents. Counselors will recognize that the goals of the Code are focused on education, rehabilitation and accountability, and shall treat parties, witnesses and each other with respect and consideration. Counselors may be reappointed by the Lead Counselor for continued one-year terms so long as their service is deemed exemplary, and they remain students at the University.

### **2.3 The Hearing and Review Board**

The Hearing and Review Board is a group of at least 55 members appointed from nominations submitted by the Student Assembly ("SA"), the Graduate and Professional Student Assembly ("GPSA"), the Faculty Senate and the Employee Assembly. The Board shall include at least 25 students, 15 faculty members, and 15 nonfaculty employees. The Assemblies and Senate shall solicit applications from interested faculty, students and staff on an annual basis and submit them to the Director no later than May 1 of each year. All applications shall be confidentially shared with the Executive Committees of the SA and GPSA for review and evaluation. Together with those committees, the Director shall make appointments. The Director may also make emergency appointments on a temporary basis. No person shall serve on the Hearing Panel and Review Board who is at the same time a member of the SA or GPSA, or is an employee of the Office of the Assemblies.

Members of the Hearing and Review Board are typically appointed for two-year staggered terms beginning in June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency

shall become effective immediately. The Director shall have the authority, in consultation with the SA and GPSA Executive Committees, to remove a member of the Board if the member is reasonably deemed to not be honoring their commitment to communicate promptly regarding hearings, to serve on panels, to participate ethically in hearings, and otherwise to participate responsibly in this process.

#### **2.4 The Panel Chair**

The Director shall hire a professional Panel Chair to guide Hearing Panel proceedings with appropriate training and expertise to manage technical questions and rulings. The Panel Chair does not vote on individual cases. Instead, the Panel Chair addresses the many procedural and evidentiary matters that arise under these procedures in a fair and consistent manner, across many individual cases and proceedings. The intent of appointing a trained Panel Chair is to afford consistency, fairness and professionalism in all cases proceeding to hearings under the Code.

#### **2.5 University Hearing Panels**

A five-person panel of the Hearing and Review Board shall adjudicate cases under the Code. Panels are chosen through a random process but shall be appointed to include three students, one faculty, and one nonfaculty member.

#### **2.6 University Review Panels**

A three-person panel of the Hearing and Review Board shall hear appeals under the Code. Panels are chosen through a random process but shall be appointed to include one student, one faculty, and one nonfaculty member. The appointed faculty member serves as the Review Panel Chair.

#### **2.7 Training**

Every person serving in an official capacity or role under these procedures shall receive training from the Director or other appropriate university experts appropriate to their position. In addition, training focused on diversity, equity and inclusion that is approved by the Presidential Advisers on Diversity and Equity (“PADE”) shall be required on an annual basis. PADE shall solicit the involvement of leaders of diverse and representative groups from the student community to assist in the development and vetting of this training.

### **3 DESIGNATION AS COMPLAINANT AND RESPONDENT**

These procedures distinguish between Reports and Formal Complaints. A Report of alleged prohibited conduct is often the first contact with the OSCCS. A Formal Complaint is filed with the Director in writing, and is required for certain processes (commencing with required notifications and investigation) to be initiated under these procedures. Any person providing an initial Report or filing a Formal Complaint under these procedures will be designated the “Complainant.” A person providing an initial Report or filing a Formal Complaint of interpersonal misconduct committed against that individual, such as assault and endangerment, harassment and hazing, is an “Individual Complainant.” These procedures afford certain additional rights to Individual Complainants.

University units are expected to designate a specific individual or individuals to serve in the role of institutional Complainant for cases brought under the Code, and to represent institutional concerns regarding potential misconduct. Further, such institutional representatives (for example, from Residence Life or Fraternity and Sorority Life), may provide additional support to Individual Complainants in cases where violations of the Code have potentially affected both individual(s) as well as University concerns.

A student or University-registered organization against whom a Report or Complaint has been made will be designated the “Respondent.”

Both the Complainant and the Respondent are referred to as “party” or “parties” throughout these procedures.

#### **4 EFFECTIVE DATE OF THESE PROCEDURES**

The effective date of these procedures is [TBD].

These procedures will apply in all cases where a Report or Formal Complaint of alleged prohibited conduct is made on or after [TBD].

Where the date of the alleged prohibited conduct precedes the effective date of these procedures or a subsequent update to these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used.

These procedures, however, will be used to investigate and resolve all Complaints made on or after the effective date of these procedures or subsequent updates to these procedures, regardless of when the conduct occurred.

#### **5 TIME LIMIT TO FILE COMPLAINTS**

To promote timely and effective review, the University strongly encourages persons with knowledge of possible violations of the Code to make Reports or file Formal Complaints as soon as possible, preferably within one year of the alleged prohibited conduct. A delay may affect the Director’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly and respond meaningfully, and may also affect the imposition of appropriate discipline upon a Respondent who has engaged in prohibited conduct.

While prompt reporting is strongly encouraged, the Director will accept and review any Report or Formal Complaint that is filed under these procedures as long as the Respondent was a “student,” at the time of the subject conduct and remains a “student” as defined by the Code, (e.g., has not graduated or permanently left the University).<sup>1</sup> If the Respondent is no longer a student at the time of the Formal Complaint, and the Director is unable to pursue resolution, that office will assess whether any remedial steps can be taken to address any prohibited conduct or its effects on the Complainant or others. Special circumstances and the University’s continued assertion of jurisdiction may apply where a student leaves the University to avoid a student conduct charge or its disposition.

#### **6 COMPUTATION OF DEADLINES**

In computing any time period specified in these procedures, the day of the event, act, or default that initiates the period will be excluded.

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<sup>1</sup> Complaints against a student organization are addressed so long as the organization remains registered with the University or is deemed to be operating even without approval or recognition.

## **7 THE RESPONSE TO A REPORT OF PROHIBITED CONDUCT**

### **7.1 Initial Assessment**

Upon receipt of a Report (or Formal Complaint) alleging that a student or University-registered organization has violated the Code, the Director<sup>2</sup> will make an initial assessment of the information and work to address any immediate health or safety concerns. Where the identity of an Individual Complainant is known, the Director will ensure that the Individual Complainant receives a written explanation of available resources and options and is offered the opportunity to meet promptly to discuss those resources and options. Where the identity of an Individual Complainant is unknown, the Director will assess the nature and circumstances of the Report (or Formal Complaint), including whether it provides information that identifies the potential Individual Complainant, the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and the Director will take reasonable and appropriate steps to respond to the complaint.

### **7.2 Actions Following Initial Assessment**

#### ***7.2.1 Where the Complainant Seeks Resolution Under These Procedures***

In any case where the Complainant reports prohibited conduct and requests resolution under these procedures, the Director will move forward. Initiation of this process requires the Complainant to submit a signed, written Formal Complaint, if one has not already been filed.

#### ***7.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures***

The University will generally honor an Individual Complainant's choice not to file or withdraw a Formal Complaint. Where an Individual Complainant declines to participate in an investigation, the Director's ability to meaningfully investigate and respond to a report may be limited. However, the University may elect, particularly in cases involving threats to personal safety or inherent public safety considerations such as interpersonal violence, harassment, assault or hazing, to evaluate whether doing so will adequately mitigate the risk of harm to the Individual Complainant or other members of the University community. The Director will consider the following factors, among others, when determining whether to honor the request that no formal resolution be pursued under these procedures:

1. Whether the Respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in prohibited conduct;
3. The increased risk that the Respondent will commit additional acts of interpersonal misconduct;
4. Whether the Respondent used a weapon or force;
5. Whether the Complainant is a minor;
6. Whether the University possesses other means to obtain evidence such as security footage or other tangible evidence; and

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<sup>2</sup> Throughout these procedures, various University officials, such as the Director, 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.

7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Regardless of whether an Individual Complainant chooses to file or participate in an investigation of a Formal Complaint, the Director will assist an Individual Complainant with reasonable and available accommodations or interim measures in appropriate cases, with fairness towards and notice to the Respondent. Interim measures such as housing or academic/scheduling accommodations, referrals to counseling, or other supportive or protective measures are designed to advance and balance a number of goals:

- to support and protect the safety and health of the Individual 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.

The Director may also take proactive steps, such as training or awareness efforts, to address misconduct in a general way that does not identify the Individual Complainant.

### ***7.2.3 Director's Determination that the Complainant's Request(s) Cannot Be Honored***

Where the Director determines that the office cannot honor the Individual Complainant's request that no complaint be pursued under these procedures, the Director will promptly initiate the investigation process by filing a Formal Complaint on behalf of the University community. The Director will notify the Individual Complainant that the office intends to proceed and that it will take actions to protect and assist the Individual Complainant, including reasonable efforts to protect the privacy of the Individual Complainant. The Individual Complainant is not required to participate in any proceedings that follow.

### ***7.2.4. Alternative Dispute Resolution and Summary Disposition***

It is the intention of the Code to foster a system of that prioritizes accountability, education and the growth of students as responsible community members. For this reason, these procedures enable the Director to handle many reports (or Formal Complaints) in a flexible way to address the alleged misconduct promptly and, in a manner emphasizing education, restorative justice, and rehabilitation where these are appropriate. Towards this end, the Director may also *recommend* that the parties explore restorative justice opportunities, alternative dispute resolution and/or for any Respondent to undertake voluntary AOD screening, education and prevention programming, at any time, rather than continuing under these Procedures. A Respondent need not accept responsibility for the prohibited conduct in order for such referrals to be made. Similarly, either the Complainant or the Respondent may request to engage in alternative dispute resolution or restorative justice processes at any point in the process. Such a request will be carefully considered by the Director, with opportunity for input from both parties if only one has requested diversion, and granted or denied at the Director's discretion.

The Director also has discretionary authority to resolve charges that do not involve interpersonal misconduct (such as assault and endangerment, harassment and hazing), upon completion of an initial assessment when the Respondent agrees. In such cases, the Director and the Respondent may agree, in writing, to any resolution such as restitution, community service, alcohol or other drugs ("AOD") screening, education and prevention programming, or other remedy for the alleged offense(s). Matters involving interpersonal misconduct involve the full involvement of the Individual Complainant under Alternate Resolution, Section 14, unless the Individual Complainant has chosen not to participate in the proceedings.

## **8 TEMPORARY SUSPENSIONS**

### **8.1 Temporary Suspensions Pending Resolution**

In consultation with appropriate University officials, the Director or other Presidential delegate<sup>3</sup> has discretionary power temporarily to suspend a Respondent pending resolution of the underlying case where immediate action is necessary to protect the Complainant or the University community. 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-registered organizations, recognition by the University, as determined by the Director or designee.

Since the underlying allegation of prohibited conduct has not yet been adjudicated on the merits, 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 incident represents escalation in unlawful conduct;
- whether there are facts indicating a risk that the Respondent will commit additional acts of interpersonal misconduct or violence; and
- whether there represents reasonable basis of concern for retaliatory acts;
- whether there exists reasonable basis for concern over possible harm to the safety of others involved or the campus community generally;
- whether the Respondent used a weapon or force.

### **8.2 Review of Temporary Suspensions of Students and Temporary Suspensions of University-Registered Organizations**

The Respondent may file a written request to lift the Temporary Suspension with the University Hearing and Review Board. The Director may file a response. Three members of the Board (one student, one faculty, and one nonfaculty member) shall serve as a Review Panel. The Review Panel will meet to consider the request to lift the temporary suspension within five (5) business days of receiving the Complainant's request, with exceptions only for extraordinary cause. If the Review 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 Review Panel may simultaneously provide the Director with guidance regarding appropriate alternate interim measures, and such alternatives are within the Director's continuing authority. The Review Panel's decision is final; there is no further right of appeal.

## **9 NOTICE TO COMPLAINANT AND RESPONDENT OF DIRECTOR'S ACTIONS**

The Director will inform the Complainant and the Respondent of any actions undertaken that will directly affect either party, including the filing of a Formal Complaint.

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<sup>3</sup> For example, the Vice President for Student and Campus Life, or the Dean of Students.

## **10 NOTICE TO PARTIES OF A FORMAL COMPLAINT**

Upon receipt of a Formal Complaint, the Director will notify the Complainant and the Respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Complaint, the Code, and these procedures. Such notice will:

- identify the Complainant and the Respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the factual allegations pertaining to the prohibited conduct;
- specify any sanctions that may be imposed, including the University's transcript notation policy;
- identify the investigator;
- include information about the parties' respective rights and obligations under the Code of Conduct and these procedures;
- inform the parties of the availability of alternative dispute resolution and restorative justice processes for resolving complaints;
- inform the parties of their right to seek the assistance of a Counselor/advisor or attorney and a support person for emotional support, all of whom may accompany the respective parties to meetings and proceedings;
- inform the parties of the range of available resources, including mental health and academic support resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

## **11 COUNSELORS/ADVISORS AND SUPPORT PERSONS**

At all stages under these procedures, both the Complainant and Respondent will be afforded the assistance of an advisor provided through the Office of the Student Code Counselors to assist and advise. Alternatively, each party has the right to select and consult with an advisor and/or legal counsel of their own choosing. Both the Complainant and Respondent also have the right to a support person of their choice.

Counselors/advisers and support persons may be any person, including an attorney, who is not a party or witness or otherwise involved in the case. A Counselor/advisor and a support person may accompany the party to all meetings, such as investigative interviews, and proceedings, but it is expected that the parties will speak on their own behalf, and that Counselors/advisers and support persons will not interfere with meetings or proceedings. During hearings, Counselors/advisers and support persons may confer with the party, and submit written requests and objections to the Hearing Chair on the party's behalf, at the time and in the manner prescribed by the Chair. Throughout the proceedings, Counselors/advisers and support persons may also help the party prepare written submissions.

By accepting the role of Counselor/advisor or support person, such persons agree to comply with the rules and processes set forth in these procedures, including rules regarding both process and party privacy requirements. In unusual cases where either the Director or Panel Chair determines that a Counselor/advisor or support person's conduct undermines the integrity of these procedures, is abusive towards the other party, or has a serious conflict of interest, the Counselor/advisor or support person will be prohibited from continuing to serve in that case. The affected party will be permitted a reasonable amount of time to obtain a substitute Counselor/advisor or support person and acquaint that person with the case.

## **12 WRITTEN SUBMISSIONS**

For all written submissions permitted by these procedures, other than the written objections and requests specifically permitted during hearings, the documents must be submitted by the individual parties. Written submissions from a Counselor/advisor, support person, or other individual made on behalf of a party, other than the written objections and requests specifically permitted during hearings, will not be included in the investigative or hearing records. Where a form has been developed by the Director for a written submission, the party must use the form for the submission. Where required by these procedures, a party must sign their written submission.

### **13 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION**

At all stages of the process, all Cornell University community members are required to provide truthful information. “Furnishing false information to the University with intent to deceive” is prohibited and independently subject to disciplinary sanctions under the Code. This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

### **14 DUTY TO COOPERATE**

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of Reports and Formal Complaints under these procedures. However, Individual Complainants and other alleged victims of interpersonal misconduct such as assault and endangerment, harassment and hazing, are not required to participate and may not be charged with violating the duty of cooperation.

### **15 ALTERNATE RESOLUTION OF A FORMAL COMPLAINT**

The parties or the Director may seek to resolve a Formal Complaint of prohibited conduct through Alternate Resolution at any time. Participation in Alternate Resolution is entirely voluntary; the Director will neither pressure nor compel either party to participate in the process or to agree to any specific terms. Both the Complainant and the Respondent must agree to explore Alternate Resolution as a potential means of resolution. The parties are strongly encouraged to consult with their Counselor/advisor and any support persons during the Alternate Resolution process. Even if both parties request Alternate Resolution, the Director has discretion to determine whether the matter is appropriate for that process.

The Director will manage the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation. The Director may personally conduct Alternative Resolution or utilize mediators or others with appropriate expertise to support the process through consultations with both parties. The Director ultimately documents the proposed terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Panel after a hearing under these proceedings.

The investigation will be paused during the Alternate Resolution process. At any time before a written agreement is effective (see below), the Complainant or the Respondent may withdraw from the Alternate Resolution process, and the Director may also, at their discretion, terminate the process. If the Alternate Resolution process is terminated for any reason, the matter continues under these procedures. For this reason, the investigator will not participate in an Alternate Resolution process.

If both parties are satisfied with the Director’s recommendation, the matter will be resolved with a written agreement to be executed by both parties. The Director will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return. Once a party has returned the signed agreement to the Director, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Director in person or in writing. If either party withdraws from the agreement,

the Formal Complaint will be resolved according to these procedures. Once an agreement is effective, the parties may not appeal the agreement.

If the Respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the University, there will be a transcript notation consistent with University policy. The parties are expected to honor and comply with the terms of the Alternate Resolution. Later noncompliance may be subject to proceedings under the Code.

To protect both parties' confidential disclosures within the Alternate Resolution process, if the matter moves back to the Formal Complaint resolution process, neither the Director nor the parties will disclose to the investigator, Panel Chair, University Hearing Panel, or University Review Panel either the fact that the parties had participated in Alternate Resolution or any information learned during the process.

## **16 THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING PROCESSES**

Both the Complainant and the Respondent may decline to participate in the investigation and/or hearing. However, the Director may continue without a party's participation, completing the investigation, and the Hearing Panel may meet, reach findings, and issue sanctions based on the record available.

### **16.1 Declining to Participate in the Investigation**

Parties are expected to cooperate in the process, including the investigative stage and interviews. If a party declines to participate in investigative interviews or other aspects of the investigative process, the party will generally forfeit the opportunity at the hearing to give a written opening statement, testify, and give oral and written closing statements, absent demonstration of compelling circumstances that reasonably prevented the party from cooperating in the process. The potential for or pendency of a related civil or criminal court proceeding shall not constitute compelling circumstances. A party who later seeks to participate may file a written request with the Panel Chair. No request for participation under this Section will be granted to a party who failed to request a postponement or otherwise timely explain to the investigator why they were unable to engage with the investigation process prior to filing the request. If the Panel Chair agrees that non-participation was justified by compelling circumstances, they will assess whether the investigation should be reopened or whether the party should instead be permitted to file a written statement for consideration by the Hearing Panel. In determining what level of participation (and resultant delays) are appropriate, the Panel Chair shall consider fairness to the opposing party and the University's legitimate interest in resolving the matter. The Panel Chair's decisions on such requests to reopen are final and are not subject to further review.

### **16.2 Declining to Attend or Participate in the Hearing**

Parties are expected to participate in the hearing. If, despite being notified of the date, time, and location of the hearing (at their last known contact information), either party is not in attendance, the hearing may proceed, findings may be reached and applicable sanctions may be imposed. In addition, the parties are not required to testify at a hearing and the Hearing Panel will not draw a negative inference from a party's election to remain silent. Where a party declines to testify, the Hearing Panel's ability to hear information necessary to make an informed decision in that party's favor may be limited and the Hearing Panel will render a decision on the record and the evidence before it.

## **17 CONSOLIDATION OF INVESTIGATIONS AND HEARINGS UNDER THESE PROCEDURES**

At the discretion of the Director, multiple reports or Formal Complaints under these procedures that are factually related will be joined in one investigation whether they involve single or multiple Complainants or Respondents.

At the discretion of the Panel Chair, in consultation with the investigator, multiple Formal Complaints, whether or not joined in one investigation, and multiple investigations under these procedures may be joined in one hearing if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders. In determining whether to consolidate, the Panel Chair will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings. In all hearings involving multiple Respondents, the Hearing Panel will consider individually the sanctions and remedies appropriate for each Respondent.

## **18 INVESTIGATION OF A FORMAL COMPLAINT**

### **18.1 Overview of Investigations of a Formal Complaint**

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Complainant, the Respondent, and any witnesses, will be treated with fairness and respect. The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator. The investigative report explains the scope of the investigation and summarizes the information gathered. The investigator does not make any determination or recommendations as to responsibility, other than to make an assessment, in consultation with the Director, as to whether there is sufficient evidence for the case to proceed. The absence of an element necessary to determine responsibility for a subject charge is sufficient cause to decline to proceed on that charge. In the event of a hearing, the final investigative record and report become part of the hearing record.

The Complainant and the Respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator;
- propose questions to be asked of witnesses and the other party; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

At the hearing, the Hearing Panel will rely upon the final investigative record and report as well as any additional statements and information provided to the Hearing Panel pursuant to the procedures set forth below.

### **18.2 Time Frame of the Investigation**

The investigation will be completed as expeditiously as possible, commensurate with its complexity. The investigator will establish reasonable time limits for the various stages of the investigation, including

meetings and deadlines for any submissions or responses, and the parties shall comply with these time limits. The parties may request extensions that may be granted, if reasonable, at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will generally result in forfeiture of a party's ability to participate in that aspect of the investigation. Subject to a demonstration of compelling circumstances as described in section 16.1 above, a party who declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, waives their right to do so upon the issuance of the final investigative record and report.

### **18.3 Investigative Interview Process**

The parties have the opportunity to request in writing witnesses they would like the investigator to interview and offer questions and topics they would like the investigator to ask of witnesses, themselves, and/or the other party. The investigator has the discretion to determine the relevance of any proffered witnesses or questions, and, accordingly, the investigator will determine which witnesses to interview and questions to be asked. In general, the investigator will not consider as relevant witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses may be audio recorded at the discretion of the investigator. At the start of a recorded interview session, the investigator will inform an interviewee that the session is being audio recorded. Parties and witnesses will receive copies of any audio recordings of their own interviews. The parties will be provided with access to listen to any audio recordings of other witnesses and/or other party interviews upon request during business hours at a secure and private campus location, with access facilitated by the Director. All persons being interviewed, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems appropriate. The reconstructed interview statement will become part of the investigative record. A recording failure will not constitute grounds for appeal.

### **18.4 Evidentiary Materials**

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate. The parties may request in writing the evidentiary materials they would like the investigator to obtain. The investigator has the discretion to determine the relevance of any requested materials, and, accordingly the investigator will determine what materials to seek to obtain.

### **18.5 Expert Testimony and Materials**

If the investigator determines that expertise on a topic will assist the Hearing Panel in making its determinations, upon the investigator's own initiative or at the request of a party, the investigator may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator deems relevant and reliable. The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigative record. Requested expert testimony or materials not included in the investigative record will not be considered by the Hearing Panel. The results of polygraph tests and other "lie-detection" techniques are inadmissible in proceedings under these procedures.

## **18.6 Evidence to be Excluded or Redacted from the Record**

At the request of a party or witness, the investigator during the investigation or the Panel Chair during the hearing process, may exclude and, as necessary, redact the following content:

1. Past Findings: During both the investigation and any hearing to determine responsibility, participants in this process may request exclusion of evidence of their own past school disciplinary findings. Such past findings may be probative and thus admissible, however, to demonstrate a pattern of misconduct, at the discretion of the Panel Chair. Such findings are regularly admissible at the stage of the hearing for determining sanctions.
2. Mental Health Treatment and/or Diagnosis: Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own mental health diagnosis and/or treatment. However, any party who wishes to have the Hearing Panel consider mental health information that the party considers favorable and relevant to their case, must voluntarily share such information with the investigator for inclusion in the investigative record.
3. Sensitive Personal Identifying Information and Medical Records: Throughout these proceedings, sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded.

Exclusions and redactions will be noted and thereby become part of the investigative record. Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel. The parties should make all requests for exclusions and redactions to the investigator during the investigation prior to the issuance of the final investigative record and report.

## **18.7 Draft Investigative Record and the Parties' Review**

Upon completion of the investigation, the investigator will prepare and provide to the parties an electronic or hard copy of a draft investigative record. The investigative record is a compilation of the investigative interviews, evidentiary materials, and expert testimony and materials, if any, and includes:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses, if applicable; and
- copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation and not excluded from the investigative record under these procedures.

The parties will have five (5) business days to review the draft investigative record and submit in writing:

- comments about content, including requests for redaction;
- requests for additional meetings with the investigator; and
- requests for the investigator to conduct further investigation or questioning.

The parties may request extensions in the review period that will be granted, if reasonable, at the discretion of the investigator. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted and failure to make submissions within five (5) business days or any approved extensions will result in a forfeiture of the right to do so later.

The parties' written comments and requests will become part of the final investigative record.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning.

### **18.8 Final Investigative Record and Report**

The investigator will issue a final investigative record and an investigative report. In the report, the investigator will explain the scope of the investigation and summarize the information gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, credibility issues and observations and address relevancy of evidence. The investigator will not render an opinion on responsibility, other than to make the determination as to whether there is sufficient evidence to proceed to a hearing (see below).

## **19 DISMISSAL OF A FORMAL COMPLAINT**

The Director may dismiss a Formal Complaint and close a case at any stage of proceedings where the Director determines:

- the subject matter of the complaint or the individual against whom the complaint has been filed are not subject to the University's jurisdiction under these procedures; or,
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under the Code; or,
- the Complainant fails or refuses to cooperate with the investigation such that the investigator is materially hindered in their ability to investigate, including where the Complainant cannot be located, the Complainant fails or refuses to be available for interviews or meetings, or the Complainant fails to provide necessary information; or,
- the investigator concludes, after appropriate investigation, that a Hearing Panel would not have a reasonable factual basis on which to find that the Respondent committed the prohibited conduct alleged.

If the Director determines that a Formal Complaint should be dismissed, the Director will provide the Complainant with a written decision explaining the reasons for the dismissal and notify the Complainant of the dismissal. The Complainant may ask the Hearing Panel to review the Director's decision to dismiss. Such review must be requested within ten (10) business days in the form of a letter explaining why the dismissal is erroneous, and shall include any written evidence in support of the Complainant's position. The materials are to be submitted to the Director, who will forward them to the Hearing Panel and the Panel Chair.

The Director will also notify the Respondent that a request for review has been filed and provide a copy of the Complainant's letter and any supporting materials to the Respondent. The Respondent may respond in writing to the Complainant's request for review of the dismissal in a letter to the Hearing panel no later than ten (10) business days from the date of such notification.

The Panel Chair, in consultation with the Hearing Panel, will establish a reasonable process and timeline for handling the matter. The Hearing Panel may review the matter absent a hearing and based solely upon the written materials prepared, including the Director's reasons underlying the decision to dismiss. The Panel Chair may request a hearing on the respective oral positions of the parties only where the Panel Chair feels it is necessary in advance of a Board decision. The Hearing Panel shall not disturb the Director's decision by substituting its own judgment for the judgment of the Director unless the Hearing Panel determines that the dismissal was clearly in error. If the Hearing Panel determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures without further appeal of the decision to reinstate. If the Hearing Panel determines that the

dismissal was not clearly erroneous, it will affirm the dismissal, which action is final and not subject to further review.

## **20 HEARINGS**

### **20.1 Overview of Hearing Process**

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by the five (5) member Hearing Panel and a non-voting Panel Chair. At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Panel Chair, and at least three votes shall be required for any decision. The hearing is intended to provide the parties with a fair opportunity to present relevant information and to enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies.

A member of the Hearing Panel may be asked to withdraw from participation for good cause (including a valid conflict of interest), which shall be determined by the Panel Chair. Mere knowledge of the events at issue shall not disqualify a member. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Panel Chair.

### **20.2 Presumption of Non-Responsibility and Standard of Proof**

The Respondent is presumed “not responsible” unless and until a Hearing Panel finds the Respondent responsible for prohibited conduct under the Code by a majority vote using a preponderance of the evidence (i.e. more probable than not) standard of proof.

If the Hearing Panel does not find the Respondent responsible for any prohibited conduct under the Code, it will dismiss the case. If the Hearing Panel finds that the Respondent is responsible under the Code, it will consider appropriate sanctions and remedies.

### **20.3 Responsibilities of the Panel Chair and Hearing Panel**

The Panel Chair provides procedural oversight and guidance to the process and the Hearing Panel. However, the Hearing Panel makes all findings and issues any sanctions or remedies. The Panel Chair will draft the Hearing Panel’s decision, including findings of fact and rationales for their determinations regarding both responsibility and sanctions or remedies. The Panel Chair will obtain the Hearing Panel’s review and approval before issuing a written decision.

### **20.4 Notice of Hearing**

Hearings are scheduled as timely as possible after completion of an investigation. A timely Notice of Hearing is sent to the parties which includes the charges at issue; a brief summary of the alleged prohibited conduct; the date, time, and place of the hearing; the name of the 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. All efforts will be made to provide the Notice of Hearing no later than ten (10) business days prior to the hearing.

### **20.5 Request to Reschedule Hearing**

Either party 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 for the delay. Given the number of individuals

involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Panel Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

## **20.6 Newly Discovered Evidence**

If after the issuance of the final investigative record and investigative report and prior to the hearing, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Panel Chair may grant admission of a witness or evidence only upon a sufficient showing that the witness or evidence is highly relevant, material, and could not have been discovered during the investigation with reasonable due diligence.

Where a Panel Chair permits a party to introduce a newly discovered witness or evidence, to prevent surprise to the other party, the Panel Chair will reschedule or adjourn the hearing for the investigator to review the newly discovered witness or evidence. The Panel Chair may also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

## **20.7 Pre-Hearing Submissions by the Parties**

Prior to a hearing, the parties will be asked in writing by the Director to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

There are two stages at which the parties will be asked to make Pre-Hearing Submissions.

- First, the parties will be asked to submit in writing an opening statement (describing their views on the allegations in the Complaint) and names of any requested witnesses.
- Second, once witnesses are approved and finalized, the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, including themselves, as explained below.

All Pre-Hearing Submissions are optional and are waived if not completed by the stated deadlines. Prior to the hearing, the Director will distribute each party's Pre-Hearing Submissions to the other party for their review.

### ***20.7.1 First Pre-Hearing Submission – Written Opening Statements and Witness Requests***

Upon providing the parties with copies of the final investigative record and report to be transmitted to the Hearing Panel, the Director will instruct the parties, in writing, that they have the opportunity to submit a written opening statement (not to exceed 2500 words) and a written list of proposed witnesses. The parties may not add or address information in the opening statement not contained in the investigative record, as the Hearing Panel will not consider new information. The parties should include specific page citations to the final investigative record. All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Panel. If a party wants the Hearing Panel to hear directly from a witness, the party must submit a written witness request with their opening statement. Such a request should include:

1. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify.
2. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining responsibility. For example, the party should explain why a

witness's interview statement contained in the final investigative report is not sufficient for the Hearing Panel to make its finding.

3. The parties are encouraged to include proposed questions for or general topics to be addressed by each witness. The parties will have an opportunity to supplement and revise their requests for questions and topics once they learn who will testify at the hearing. However, by indicating proposed questions and topics at this juncture, the parties will help the Panel Chair and Hearing Panel understand why the parties would like to hear from specific individuals. The parties may request only witnesses who were interviewed by the investigator during the investigative process.

The Panel Chair will establish a reasonable deadline for these submissions, typically no longer than five (5) business days. The Panel Chair, in consultation with the Hearing Panel, will review the parties' opening statements (for relevance and admissibility) and requests for witnesses, and the parties will be provided with those decisions in writing. This triggers the opportunity to file a second pre-hearing submission:

### ***20.7.2 Second Pre-Hearing Submission – Questions and Topics***

The second pre-hearing submission affords both parties the opportunity to submit a succinct proposal with:

1. Questions and topics for the witnesses.
2. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture, but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.

The Panel Chair will establish a reasonable deadline for these final submissions, typically no later than five (5) business days prior to the hearing. The Panel Chair, in consultation with the Hearing Panel, will review and rule on the parties requested questions and topics to be permitted at the hearing, approving those deemed relevant and that are not prohibited by these procedures or applicable laws, prejudicial, or duplicative of other evidence.

## **20.8 Hearing Process and Format**

### ***20.8.1 Overview of Hearing Process and Format***

All hearings will be private. The only persons present will be the parties, their Counselor/advisor and support person, witnesses (when testifying), the Hearing Panel and Panel Chair, (and, at the Board's discretion, its counsel), the investigator, and any staff necessary for the conduct of the hearing. Witnesses may be present only for their own testimony.

In cases of interpersonal misconduct such as assault, harassment or hazing, either party may request that the parties with their advisor(s) and support person, if applicable, will be in separate rooms. If separated, the parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies and gives their oral closing statement, generally, they should do so in the presence of the Hearing Panel and Panel Chair; they may be accompanied by their Counselor/advisor and support persons.

The Panel Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format. The Panel Chair may adjourn the hearing, once commenced, and later reconvene the hearing in consideration of factors including, but not limited to, the unavailability of a witness, party, Panel Chair,

Hearing Panel member, or needed personnel; inclement weather; late hour; or in order to make an evidentiary or procedural ruling.

Formal rules of evidence do not apply, the Panel Chair shall make all determinations regarding the admissibility, probative value, prejudicial effect, repetitiveness, redundancy, relevancy, etc., of evidence presented. Evidence that was excluded or redacted from the investigative record as impermissible will not be admissible at the hearing. Typically, the format of the hearing will be as follows:

- Introduction by the Panel Chair. The Panel Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony by the Complainant.
- Testimony by the Respondent.
- Testimony by any witnesses.
- Closing statements by the Complainant followed by the Respondent.

### ***20.8.2 Testimony***

Testimony is conducted through a question-and-answer format. Questioning will primarily be conducted by the Hearing Panel, but the Panel Chair may supplement the Hearing Panel's questioning. The Panel Chair will ask persons being questioned to affirm that they will testify truthfully. Both the Complainant and the Respondent may testify or decline to testify and may make their election when their turn to testify arises. If a party testifies, they are expected to answer all questions asked. A party who testifies may propose supplemental questions that they wish to answer. Counselors/advisors participate in this process as set forth in Section 11 of these procedures.

The Panel Chair, in consultation with the Hearing Panel, may call a witness not on the witness list but previously interviewed by the investigator, and ask any question. In such cases, the parties will be given time to propose questions for the witness.

### ***20.8.3 Closing Statements***

The parties may provide both oral and written closing statements. This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions. The parties 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 parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Panel Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes. The Panel Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Panel Chair may provide the parties with limited additional time to submit their statements.

Each party's signed closing statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Panel Chair, and Hearing Panel for their review.

### ***20.8.4 Impact/Mitigation Statement***

The parties are permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the end of a hearing, but are advised to begin to compose such statements in advance. The statements are distributed to the Hearing Panel only upon a finding of responsibility and are included with the Hearing Panel's written decision to the parties.

### **20.9 Deliberations on Findings of Responsibility**

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.

### **20.10 Sanctions and Remedies**

A Hearing Panel that finds the Respondent responsible will continue its deliberations to consider sanctions and remedies. It will issue its findings on responsibility and sanctions/remedies simultaneously. Prior to deliberating on sanctions and remedies, the Panel Chair will distribute to the Hearing Panel any written or recorded Impact/Mitigation Statements previously submitted by the parties.

If the Respondent has a Cornell disciplinary record, a known disciplinary record from another institution, or a known criminal conviction, the Panel Chair may distribute to the Hearing Panel a copy of such disciplinary and/or criminal records prior to deliberating on sanctions and remedies. (Where an educational record, including a Cornell disciplinary record, is being considered solely for sanctions, it will not be shared with the Complainant.)

The Panel Chair may support the deliberations but may not express views on the merits and may not vote. The Hearing Panel will determine sanctions and remedies by a majority vote. In determining sanctions and remedies, the Hearing Panel 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;
- the impact of the prohibited conduct and sanctions and remedies on the 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 if known, other disciplinary records or criminal convictions;
- the goals of the Code and these procedures; and
- any other mitigating, aggravating, or compelling factors.

The Hearing Panel may impose 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 exercises, counseling, or directed study).
- Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Director.
- Restitution to the Complainant.
- Fines of not less than \$20 nor more than \$500 payable to the University Treasurer.
- Restrictions or loss of specific or all privileges at the University for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.

- Suspension from the University for a stated period not to exceed three (3) years.
- Dismissal (i.e., expulsion) from the University.

The Hearing Panel may impose one or more of the following sanctions and remedies on University-registered organizations:

- Measures similar in kind to the interim measures specified under these procedures.
- Appropriate educational steps for organization members (such as alcohol or drug education, reflection exercises, counseling, or directed study).
- Community work performed by organization members, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Director.
- Restitution.
- Fines of any reasonable and appropriate amount payable to the University Treasurer.
- Restrictions or loss of specific or all privileges for the organization at the University for a specified period of time.
- Written reprimands.
- Dismissal, i.e., rescission of permission to operate on University property and/or termination of the organization's agreement and relationship with the University.

Ordinarily, the penalties for subsequent or repeated violations, whenever such violation(s) occur, should be more severe than for a first violation. Further, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily will ordinarily be imposed. Such violations include acts of violence or other violations that substantially threaten the University's educational mission or property, or the health or safety of University community members. The Hearing Panel may also recommend to the Director that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct. Sanctions and remedies will be effective immediately unless otherwise specified by the Hearing Panel.

### **20.11 Decision of the Hearing Panel**

The Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The Director will provide the written decision to the parties simultaneously and as soon as practicable. The decision will include:

- The specific prohibited conduct for which the Respondent was found responsible and not responsible; and
- the findings of fact and the rationale for the Hearing Panel's determinations regarding both responsibility and sanctions.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the Hearing Panel deems appropriate. The decision will include instructions and time limits for appeals. Both the Complainant and the Respondent will be informed simultaneously of the decision and any sanctions and remedies, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

### **20.12 Hearing Record**

The hearing record will include: the audio recording of the hearing, the Hearing Panel's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness lists, written

opening and closing statements, written submissions permitted by these procedures made to the Panel Chair or during the hearing, and the parties' Impact/Mitigation Statements (if considered by the Hearing Panel). The hearing record may also include a transcript of the hearing.

## **21 APPEAL OF A HEARING PANEL DECISION**

Both the Complainant and the Respondent may appeal a decision of the Hearing Panel to a three (3) member Review Panel. The faculty member appointed to the Review Panel serves as its Chair. No person who served on the Hearing Panel will sit on the Review Panel in the same case. A member of the Review Panel may be asked to withdraw for good cause upon request of either party, which determination shall be made in the Review Panel Chair's sole discretion. If the Review Panel Chair is reasonably challenged by a party, the Director shall appoint another member. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Review Panel Chair.

Appeals will be based solely upon the hearing record except that when relevant to a stated ground for appeal, the Review Panel may supplement the record on appeal with evidentiary materials excluded or redacted from the investigative record or newly discovered evidence. If the Review Panel reverses a finding of not responsible, the record on appeal will be supplemented with the parties' Impact/Mitigation Statements. Findings of fact will not be set aside unless clearly erroneous. Harmless error will be ignored.

Appeals may be brought only upon one or more of the following grounds:

1. A University official or officials, including the Hearing Panel, assigned responsibility for performing specific functions by these procedures, committed an error in interpreting or applying the Code of Conduct or these procedures, and such error had a prejudicial effect upon the outcome.
2. The Hearing Panel rendered a decision that is clearly erroneous.
3. 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.
4. The sanctions or remedies are substantially disproportionate to the severity of the injury/violation or are otherwise manifestly unjust.

The appealing party commences an appeal by submitting a written statement to the Director within ten (10) business days of service of the Hearing Panel's decision.

The appeal statement will be limited to 3500 words and must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

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.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Director. 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 2500 words.

The Review Panel will issue a timely written decision, typically no later than thirty (30) business days 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 Hearing Panel or sustain any of the above-specified grounds for appeal, in which case the Review Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original 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 Hearing Panel or a newly composed Hearing Panel; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original investigator or to a new investigator.

## **22 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 demonstrates the need for a stay by a clear showing. An application for a stay must be submitted to the Director. The Director will provide a copy of the stay application to the Review Panel and the other party, who is entitled to respond to the stay application by submitting to the Director a written response. 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.

## **23 CONSISTENCY OF INTERPRETATION**

Because the student conduct system utilizes the decision of the University Hearing and Review Panels to define or interpret violations, summaries of all decisions of those boards shall be kept on file in the Director, including a brief description of the nature of the case and its disposition, but with names of individuals and other identifying information redacted.