



# Cornell University University Assembly

## Cornell University Assembly

Minutes of the October 20, 2020 Meeting

4:30 PM – 6 PM

Zoom Meeting

- I. Call to Order
  - a. Call to Order
    - i. L. Kenney called the meeting to order at 4:31pm.
  - b. Roll Call
    - i. *Members Present:* V. Aymer, U. Chukwukere, H. Depew, C. Duell, D. Dunham, J. Feit, B. Fortenberry, T. Fox, J. Froehlich, A. Hong, R. Howarth, C. Huang, L. Kenney, C. Levine, J. Pea, B. Sherr, L. Smith, C. Van Loan, P. Thompson, J. Withers
    - ii. *Members Absent:*
    - iii. *Special Guests:* M. Pollack, M. Wessel, J. Malina,
- II. Call for Late Additions to the Agenda
  - a. There were no late additions to the agenda
- III. Business of the Day
  - a. Summary from 10/19 Executive Committee Meeting
    - i. U. Chukwukere reported that the University Hearing Review Board recommendations and unanimously approved the recommendations put forth by the Employee Assembly and the ad hoc UHRB Review and Selections Board.
    - ii. U. Chukwukere stated the executive committee discussed the vetting process for UHRB candidates as concerns regarding the potential, inherent conflict of interest members involved with both the UHRB and the Office of the Student Advocate was raised.
    - iii. U. Chukwukere reported that the Executive Committee discussed recommendations for the revision of the Campus Code of Conduct, what has or what hasn't changed, the quick turn around and timeline, and public comments.
  - b. Approval of Meeting Dates (Oct. 27th, Nov. 10th, Nov. 24th, Dec. 8th, Feb. 16th)
    - i. B. Sherr enquired if the meeting times will remain on Tuesdays 4:30-6pm.
      - 1. L. Kenney confirmed that they will be on Tuesdays from 4:30-6pm.
    - ii. P. Thompson motioned to approve said meeting dates.
      - 1. U. Chukwukere seconded the motion.



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2. The motion **passed** with 18-0-1.
- c. Potential Changes to UA Bylaws and Charter
  - i. Silence in bylaws regarding Committee Chairs
    1. L. Kenney stated that the bylaws do not specify that University Assembly members of the standing committees are to be elected as chairs to those standing committees.
    2. B. Fortenberry agreed that the UA committees should be chaired by members of the assembly as they have made an obligation to attend the UA meetings
    3. P. Thompson agreed that clarity is necessary. She stated chairs should be selected at the organizational meetings in the University Assembly therefore there should be no missing appointments
    4. J. Feit agreed with P. Thompson, and suggested that perhaps the longest-serving member could become Chairman.
    5. P. Thompson said she would recommend the wording be specific that in the event a non-University Assembly member becomes chair they must be committed to participating and joining UA meetings on a regular basis.
    6. B. Sherr stated that if they are trying to open the University Assembly up to their broader constituent groups, allowing them to potentially become committee chairs would be a good idea. Further, that it may be a good idea to require the to become a non-voting and ex-officio member of the UA.
    7. R. Howarth agreed that there should be better clarity to how seats are currently filled in the bylaws.
    8. J. Feit proposed a motion that the chair of a specific committee be a member of the University Assembly.
    9. B. Fortenberry seconded the motion, stating clarity would be beneficial.
    10. P. Thompson proposed an amendment stating that if the person elected is not a voting member of the UA, then they must participate in UA meetings on a regular basis.
    11. J. Feit accepted the amendment.
    12. R. Howarth raised a point of order stating that past practice of the UA would be to wait until the next meeting to vote on resolutions.



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13. L. Kenney said the UA would vote on the resolution at the meeting next Tuesday along with elections.
  - a. The vote to keep the resolution on the floor to be voted on in the next meeting was **tabled** with 16-0-1.
14. L. Kenney said that she would send out an email with the specific proposed changes to the bylaws and ask members to vote via email.
15. L. Kenney asked if presenting the resolution Tuesday would be a problem.
16. G. Giambattista referenced the UA charter which states bylaw changes must be proposed a week before.
17. J. Feit motioned to collaborate offline on this resolution to have draft language sent by email to the members with a request to vote by email.
  - a. P. Thompson seconded Jacob's motion
  - b. The motion **passed** with 16-0-1.
- ii. Amending pronouns in charter and bylaws
  1. L. Kenney said that they should consider non-binary language in the charter as it currently uses "him" and "him or her." L. Kenney and U. Chukwukere will go through the charter and bylaws to find these references and motion for these changes next week.
  2. R. Howarth recommended plural pronouns as they are inherently gender-neutral.
- iii. L. Kenney called for any other business from the floor.
  1. V. Aymer asked L. Kenney to give a brief overview of the major points of contention and changes between these versions of the Campus Code and proposed Student Code up for public comment.
  2. L. Kenney said the original Codes and Judicial Committee's version wanted a bifurcated system for the standard of proof, so for more serious cases there would be "clear and convincing" as the standard, and for charges that did not lead to expulsion or suspension the "preponderance of the evidence" standard would be used. L. Kenney said that the Office of the Student Advocate draft is very similar to the University Counsel's, with the main difference being the University Counsel took away the Office of the Student Advocate's role as a member of the Judicial Codes



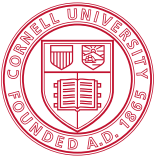
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Counselor Office (JCC). She stated that this new draft implements changes to the JCC and the relationship with the Office of the Judicial Administrator.

3. R. Lieberwitz said that areas she would recommend individuals to look at are the changes in which the JCC would be appointed and supervised, and the current JCC's independence would not be as protected under the new proposal.
4. R. Lieberwitz encouraged individuals to look at the standard of proof options as the hearing processes are different for both. She observed in the Counsel's version that witnesses are only allowed to testify if the person wanting to call the witness can explain why the witness did not speak to an investigator initially.
5. R. Lieberwitz said that as a member of the Codes and Judicial Committee, she was very concerned about the procedural aspects and how what was given to the University Assembly was not reflected in the version put forward by the Counsel's Office. She encouraged those interested to also look into the substantive provisions concerning the content of violations and the procedural aspects as they had not been discussed by the UA.
6. L. Kenney noted the CJC had pushed to keep public comments, but they were not reflected in the Counsel's present draft.
7. L. Kenney made a correction on the Executive Committee Report regarding the Office of Student Advocacy and clarified that a letter from the JCC was from both Malissa O'Gara and Barbara Krause, not solely Barbara Krause.

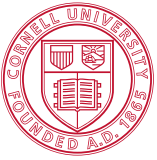
#### IV. Meeting with President Martha Pollack and University Counsel Madelyn Wessel

- a. L. Kenney introduced both President Martha Pollock and University Counsel Madelyn Wessel.
- b. M. Pollock acknowledged the importance and prevalence of revising the Code of Conduct.
  - i. M. Pollock said both the administration and the board were misled in the past which contributes to this current sense of urgency
  - ii. M. Pollock recapitulated the past few months regarding leadership and thanked L. Kenney, J. Anderson, and R. Howarth. She also acknowledged and thanked University Counsel M. Wessel for the effort and time that M. Wessel has put into this revision.
  - iii. M. Pollock said the most contentious issue is the standard of evidence to be used in student cases.



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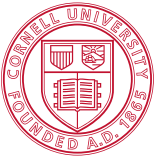
- iv. M. Pollock stated the pandemic has delayed the agenda, so it has shifted 6-8 weeks. She understands the University Assembly has asked for a public comment area, which creates a time issue as the Board of Trustees were previously told the due date was the end of November. M. Pollock expressed her thanks to the Board for their continued patience and asked to push back the due date further to allow for the public comments which are due by Nov. 17<sup>th</sup>. She said the General Counsel would have the final draft by November 24<sup>th</sup>, with final comments made no later than December 7<sup>th</sup> so the Board would be able to vote on Dec. 10<sup>th</sup>.
- v. M. Pollock also acknowledged that there are changes in the Federal code that make it important to create clearer statements on the topic of free speech.
- c. M. Wessel said they plan to incorporate additional feedback in the next few weeks from public comments and individual groups. M. Wessel said it would be helpful for the University Assembly to provide additional feedback, including identifying critical insights that are raised in these public comments. She stated the most important issue for the Assemblies is come to a decision on the standard of evidence.
- d. L. Kenney clarified the dates, and also clarified that M. Wessel will be providing a draft before Thanksgiving, with the last day to bring up any comments on the proposal would be December 7<sup>th</sup>.
- e. L. Kenney opened the floor for questions.
- f. R. Howarth thanked M. Pollock's patience with the UA given the length of time they have worked on the Code's revision. R. Howarth also wanted to thank M. Wessel for leaving open the evidentiary standard as it is a very contentious aspect and allow the community to weigh in on that is a tremendous decision.
- g. T. Fox asked for clarity on the role of the Investigator.
- h. M. Wessel clarified that Investigators could be hired independently or could come from the current JA program. M. Wessel said that compared with the Title IX program, the Investigator would put together the evidence and bring that forward to a hearing panel.
- i. R. Platt (observer) asked what would happen if demonstrators or protesters who are considered both staff and student as they would be subject to three different standards and judicial systems. R. Platt asked for the rationale of a student-only code.
- j. M. Pollack said while they want to process these questions, at this late stage they cannot change the entire framework. She stated that de facto there are many Codes of Conduct as faculty and staff are subject to the rule of employment and



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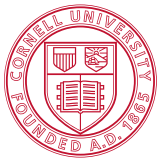
rules related to the tenure process, and the Code of Conduct has rarely applied to faculty and staff. She said that the Student Code of Conduct is clear and applies to them, which achieves the educational goals that they want to bring to the front of the Code.

- k. M. Wessel said that the Campus Code of Conduct has been beset with constrictive detail and process overload that made it impossible for individuals to read and understand the procedures. M. Wessel also said that freedom of speech is proposed to be articulated as a university-wide policy statement.
- l. R. Platt asked for clarity on the definition of “harassment.”
- m. M. Wessel referred to the definitions of harassment in the proposed draft, as there had been a significant effort to listen to community feedback. M. Wessel stated there may still be tweaks and they are open to reviewing them, however, an enormous effort has gone into this harassment definition that is strong and still protective of this freedom of speech.
- n. C. Huang. addressed R. Platt’s question of a need for a student-only code. C. Huang said 765 cases in the last year had to do with students as opposed to 4 for the faculty and staff, so there was a clear need to create a code that applies to students specifically.
- o. M. Wessel said three different documents the community should be reviewing: The Cornell Student Code of Conduct 10.03.20 Counsel draft, the code that defines expectations; The Cornell Statement on Responsible Speech and Expression; and the Procedures for Resolution of Complaints Under Cornell University Student Code of Conduct. M. Wessel said the freedom of speech and substantive code was informed by the versions that were never formally acted on but came to the University Assembly by the JCC.
- p. L. Kenney asked M. Wessel to get a list of changes between the two documents.
- q. R. Lieberwitz shared appreciation for Counsel’s efforts to making the free speech provisions more robust. She further expressed concerns with the heavy emphasis on the investigator model and its potential conflict with Title IX regulations in live hearings.
- r. M. Wessel disagreed and clarified that the investigator model was consistent with the current Title IX regulations. M. Wessel stated this model attempts to assure an objective and neutral investigator who is not involved is putting together an objective case. She further stated that either party may request an in-person investigation which would be a compromise between a trial-type hearing and those who believe this is an unhealthy model.
- s. R. Lieberwitz restated that there must be a live hearing according to Title IX regulations.



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- t. M. Wessel said that they believe that the hearing process is a live hearing as there is a live panel, live parties and advisors, and parties who may request a witness to be present and questioned.
- u. L. Kenney asked the rationale for taking away cross-examinations and the advocate's ability to speak during hearings and in their office.
- v. M. Wessel said that she does not agree with the premise of the question and to not focus on theoretical but rather the text. M. Wessel stated the comments are to protect privacy and confidentiality. M. Wessel said advisors are facing a situation where there are cross interests and there is no attempt to prohibit sharing and guidance, however, there are concerns about the way information can be used within those offices. M. Wessel asked for suggestions to the text and specific proposals rather than theoretical debates.
- w. L. Kenney said the individual advocating on the behalf of a student would be only allowed to speak when suspension and expulsion are on the table rather than regular meetings or hearings. L. Kenney asked what type of conversation is prohibited within the JCC's or Office of Student Advocacy's office.
- x. M. Wessel said no conversation is prohibited inside of these offices besides sharing harmful information to interested parties. M. Wessel affirmed the compromise would be to work the questions through the hearing chair, but not to have direct confrontation unless one has suspension or dismissal on the table.
- y. L. Kenney thanked M. Wessel for clarifying.
- z. M. Wessel offered the perspective that the old model was very adversarial and worked against restorative justice and the proposed changes have been made to help place students in a position where they can amicably resolve issues.
- aa. L. Kenney asked for clarity on how cross-examination works under the current proposal.
- bb. M. Wessel explained that the chair would receive the question, and the panel members would decide whether to ask those questions.
- cc. M. Wessel concluded by encouraging all parties let her know if there were elements in the new Student Code missing or to be changed, and draft alternate language for her office to review.
- dd. L. Kennedy thanked M. Pollack, M. Wessel, and J. Malina for coming
- ee. L. Kenney recognized J. Malina's comment in the minutes: "We also sent an email to all students yesterday about the opportunity to provide comment."
- V. L. Kenney noted the time and called for a motion to adjourn.
  - a. C. Duell motioned to adjourn. B. Sherr seconded the motion. The motion passes without any opposition.
  - b. The meeting was adjourned at 6:02pm.



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Respectfully Submitted,  
Kassandra Jordan  
Clerk of the Assembly