Finalizing Housekeeping Amendments to the Campus Code of Conduct

May 29, 2018

Sponsored by: Matthew Battaglia, Graduate and Professional; Chair, Codes & Judicial Committee

On Behalf Of: The University Assembly Codes and Judicial Committee: K. Ashford, D. Barbaria, R. Bensel, J. Kruser, R. Lieberwitz, V. Price, C. Riley, E. Winarto, K. Zoner

Whereas, pursuant to Article Three, § 3.1 of its Charter and Title One, Article IV, of the Campus Code of Conduct the University Assembly (the “Assembly”) may propose changes to the Campus Code of Conduct (the “Code”) subject to the University President's approval; and

Whereas, the object of the University Assembly, “…is to improve and sustain the involvement of the campus community in the governance of campus affairs affecting the broad campus community by establishing open, effective, and efficient channels of communication between and amongst the community and university administration” [University Assembly Charter, Article Two]; and

Whereas, the Assembly views its custodianship of the Code as crucial to facilitating dialogue between the University Administration and wider Campus Community; and

Whereas, the Assembly strives to execute its responsibility to the Campus Code of Conduct and Community with the utmost professionalism and care; and

Whereas, the Assembly strives to be responsive to the needs and requests of the Campus Community and the needs and requests University Administration; and

Whereas, the Assembly believes that it has been and continues to be responsive to both the needs and requests of the Campus Community and the needs and requests of the University Administration; and

Whereas, the Assembly’s Codes & Judicial Committee (the “Committee”) during this year undertook a number of initiatives to seek to improve the Conduct including convening a
Working Group on Hate Speech and Harassment, beginning the process of examining the Code holistically, and working with the Assembly’s Executive Committee and University Administration to revise the Judicial Administrator appointment process; and

**Whereas**, the Committee and Assembly are greatly pleased with the outcome and expediency with which the improvements to the Judicial Administrator appointment process were drafted, implemented, and approved; and

**Whereas**, in the Fall of 2017, the Committee proposed, and the Assembly approved a series of “Housekeeping Changes” to the Code prior to beginning a larger review; and

**Whereas**, the President returned several of the changes with comments and suggestions for improvement as well as a request for greater community notice and opportunity for comment generally; and

**Whereas**, in discussions with the University Administration it was made clear that the Assembly and Committee had full discretion in how they sought to provide additional notice and opportunity for comment; and

**Whereas**, the Committee spent the entirety of the Spring 2018 Semester discussing the suggested changes and undertaking to address the concerns raised; and

**Whereas**, the Committee has accepted several the proposed changes, partially accepted others, and undertaken to drastically increase the opportunity for public comment by:

1) Holding the Code changes on its Agenda for the vast majority of the semester,
2) Taking out advertisements in the *Cornell Daily Sun* advertising the pending Code Amendments and detailing multiple ways to provide feedback and input,
3) On several occasions holding public office hours concerning the pending Code Amendments for members of the Campus Community to attend,
4) Answering questions posed by members of the Campus Community at the public office hours, via email, and at public meetings and incorporating feedback received into the proposed changes,
5) Creating and circulating an anonymous “Comment Box” for community members to register their comments,
6) Requesting the Office of the Assemblies open its electronic Netid comment system for the pending Code amendments on multiple occasions,
7) On multiple occasions throughout the semester presenting, providing notice to, and updating some of our constituent Assemblies as to the scope of the changes as well as their exact substance,
8) Undertaking to discuss the pending changes with various additional stakeholders throughout the Spring Semester,
9) Delaying the formal passage of the Code amendments for as long as possible in the term
by the Assembly tentatively approving the language at its last meeting of the semester but
waiting to finally approve it for an additional few weeks to allow the maximum
timeframe for the community to be aware of and comment on the pending changes,
10) Numerous other initiatives designed to facilitate maximum community notice and input
concerning the changes; and

Whereas, the Committee and Assembly believe these extra steps sufficiently address the
concerns raised by the President in the Fall Semester about providing adequate community
notice and opportunity for comment; and

Whereas, Assembly notes that the Judicial Administrator appointment amendments, due to the
requirements of the adopted timeline, received a shorter period for community feedback yet were
extensively promulgated for public comment prior to a formal vote and received a level of public
notice and comment that both the Assembly and President are satisfied with; and

Whereas, the Committee and Assembly greatly appreciate the opportunity to continue to work
collaboratively with the President and University Administration to maintain and improve the
Code; therefore

Whereas, the Committee proposes the following four sub-resolutions, grouped topically, to
contain the Code amendments from the fall as well as new ones identified by our constituents
and those involved in the University’s Judicial System this semester; and

Be it Resolved, the appended changes in sub-resolutions A – D be incorporated to the Campus
Code of Conduct and are approved such that each sub-resolution is internally non-severable:

U.A. Resolution # 24 – Subpart A

Amendments Addressing Suspension within the Campus
Code of Conduct

May 8, 2018

Whereas, during the Fall Semester, the Assembly passed three amendments relating to the
Code’s usage of suspension in various forms; and

Whereas, those changes include 1) Language to address to the suspension length, definition, and
reporting date for organizations, 2) Language to address the immediate suspension for non-
compliance of sanctions, and 3) Language regarding removal of indefinite suspension; and
Whereas, the President provided comments, feedback, and minor proposed modifications concerning some of the approved amendments; and

Whereas, the Committee considered and accepted the proposed modifications and appreciates the valuable feedback provided by the President; therefore

Be it Resolved, the changes appended in Appendix A (Amendments Addressing Suspension within the Campus Code of Conduct) be incorporated to the Campus Code of Conduct and are approved in a non-severable manner.

U.A. Resolution # 24 – Subpart B

Amendment Addressing the Role of Non-Matriculated Minors within the Campus Code of Conduct

May 8, 2018

Whereas, during the Spring of 2017, the Committee was approached by the Office of Risk Management (“Risk Management”) and asked to address the manner in which non-matriculated minors are treated within the Code; and

Whereas, during the Spring and Fall of 2017, the Committee and Assembly considered and passed the amendment proposed by the Office of Risk Management, to address non-matriculated minors, verbatim; and

Whereas, the President provided comments, feedback, and a proposed modification concerning the approved amendment requesting the provision’s scope be expanded and that a “saving” clause, stating that if a non-matriculated minor was not subject to other written behavioral guidelines the Code would continue to apply, be removed; and

Whereas, the Committee considered and accepted the expansion of scope and appreciates the valuable feedback provided by the President; and

Whereas, in discussions with the Administration members of the Committee learned that while the Office of Risk Management had proposed the amendment the current President had not formally approved it prior to it being presented to the Committee; and

Whereas, when the amendment was proposed to the Committee, the Office of Risk Management described the “saving” clause as a “safety valve” that virtually certainly would never be utilized as Risk Management would not approve any program for non-matriculated minors without written behavioral guidelines; and
Whereas, while the Assembly and Committee also hope and believe the “saving” clause likely will never be required to be utilized, we believe creating a situation where any individual could end up in a state of procedural “limbo” with no written behavioral guidelines is not good practice and is not supported by the Campus Community; and

Whereas, the Assembly and Committee are confident the Office of Risk Management and University Counsel will ensure the “saving” clause need never be utilized as the Administration has within its power the ability to ensure that no program for non-matriculated minors exists without written behavioral guidelines of some sort; and

Whereas, in her response the President emphasized a need for “the units that directly supervise non-matriculated minors, in partnership with appropriate administration offices including Risk Management and University Counsel, [to] be able to develop appropriate policies that meet those unique needs” and the Assembly and Committee do not believe that retaining the “saving” clause interferes in any way with the ability of Risk Management, University Counsel, and the various units to devise “appropriate policies that meet those unique needs” as the clause only requires that such policies or procedures be written and grants the enables the Administration full freedom in all other aspects of these policies; and

Whereas, the Assembly and Committee took the President’s recommendation exceedingly seriously prior to coming to a conclusion and appreciate the time and input provided by various members of the Administration in their discussion of this topic; and

Whereas, based upon, but not limited to, the preceding factors, the Committee and Assembly respectfully decline to accept the President’s request that a “saving” clause be omitted from the removal; therefore

Be it Resolved, the changes appended in Appendix B (Amendment Addressing the Role of Non-Matriculated Minors within the Campus Code of Conduct) be incorporated to the Campus Code of Conduct.

U.A. Resolution # 24 – Subpart C

Amendments Addressing the Operations of the University Hearing and Review Boards and Hearing Mechanics

May 8, 2018

Whereas, during the Fall Semester, the Assembly passed an amendment relating to the Code’s
provisions for appointment and re-appointment of members to serve on the University Hearing
and Review Boards (the “UHRB”); and

Whereas, the President provided comments and feedback on the proposed amendment; and

Whereas, the Committee considered and accepted changes to address the President’s
recommendation to require input from the Dean of the Faculty when handling Faculty member
reappointments to the judicial boards¹; and

Whereas, the Committee also drafted, proposed, and the Assembly adopted a new Bylaws
appendix outlining in considerable detail how the Assembly will conduct UHRB appointments
and reappointments moving forward; and

Whereas, during the Spring Semester the Committee met with the Chairs of the University
Hearing and Review Boards (the “Chairs”) to discuss this proposed amendment, other proposed
amendments concerning the judicial boards, as well as other matters concerning the operation of
the Hearing and Review Boards; and

Whereas, the Chairs supported the proposed amendments and provided valuable feedback to the
Committee which was incorporated into the amendments also resulting in the drafting of
additional amendments; and

Whereas, the final set of approved amendments include 1) Language clarifying UHRB
appointment procedures (previously passed in the fall), 2) Language increasing the judicial
boards pool size (new), 3) Language clarifying Hearing Board removal process (new), 4)
Language concerning Hearing and Review Board Procedures (new), and 5) Language addressing
public hearing notice timeframe (new); and

Whereas, the language increasing the judicial boards size was passed after the direct and explicit
request of the Chairs for a larger board pool and was supported by both the Judicial
Administrator nor Judicial Codes Counselor; and

Whereas, the language concerning the removal process for currently sitting members of the
judicial boards was drafted in consultation with the Chairs who expressed their support for it

¹ N.B. The President’s response outside of its formal recommendation concerning the Dean of the Faculty (which
has been accepted) also discussed in passing that the proposed amendment would “remove the … Office of the
Assemblies from exercising any oversight over HB members after their initial appointment.” The Office of the
Assemblies as an entity of the University Administration presently does not and has never exercised oversight over
UHRB members and does not nor has it ever appointed members to the boards. The Assembly strongly opposes any
expansion of the Office of the Assemblies’ role to include oversight over UHRB members and believes that such an
expansion would be entirely improper.
after the Judicial Administrator noted an ambiguity concerning the language presently inside the Code; and

Whereas, the new removal language is designed to ensure community input through the Committee prior to the removal of a judicial board member noting that board members are appointed by a community body and therefore a community body should also play a role in the removal process; and

Whereas, with a larger pool size, a more detailed removal process is not likely to impede the sound operation of the boards; and

Whereas, the language concerning Hearing and Review Board Procedures (the “Procedures”) was drafted in consultation with the Chairs who expressed their support for it after the Chairs and the Committee separately identified the Procedures as an area needing additional community involvement and examination and the Chairs explicitly asked the Committee to assist them in improving the Procedures; and

Whereas, the language concerning Hearing and Review Board Procedures seeks to ensure that the Procedures do not conflict with the Code, as they might have in the past, that the Committee is more aware of and involved when edits are made to the Procedures, and that the Committee is able to assist and work with the judicial boards to draft functional procedures that do not inadvertently go against the spirit or function of the Code; and

Whereas, the language concerning the public hearing notice timeframe was drafted in consultation with Judicial Administrator and Judicial Codes Counselors who expressed their support for it after a recent public hearing brought to light the need for additional notice prior to a public hearing taking place; therefore

Be it Resolved, the changes appended in Appendix C (Amendments Addressing the Operations of the University Hearing and Review Boards and Hearing Mechanics) be incorporated to the Campus Code of Conduct and are approved in a non-severable manner.

U.A. Resolution # 24 – Subpart D

Amendment Adding Discretion to Interim No Contact Directive Procedures

May 8, 2018

Whereas, during the Fall Semester, the Assembly proposed and passed a Code amendment relating to the Code’s procedures for Interim No-Contact Directives; and
Whereas, that proposal was based upon information furnished to the Committee over preceding years and discussions with various campus entities; and

Whereas, the information furnished outlined concerns about interim measures being utilized over a considerable length of time, in some circumstances for many months, such that in many ways they were no longer “interim”; and

Whereas, the President provided comments, feedback, and proposed modifications concerning parts of the approved amendment; and

Whereas, the Committee appreciates the feedback provided by the President; and

Whereas, the Committee engaged in discussions with individuals involved in victim advocacy concerning language making Interim No-Contact Directive’s mutually binding; and

Whereas, in discussions with individuals involved in victim advocacy, minimal, if any, concerns about making Interim No-Contact Directive’s mutually binding were raised; and

Whereas, the Committee notes that the Judicial Administrator has stated it is her present policy to only issue mutually binding no-contact directives even though the Code does not formally require it; and

Whereas, the Committee believes it is prudent to codify this best practice to provide stability and notice to members of the Campus Community; and

Whereas, from these discussions with individuals involved in victim advocacy and discussions with other stakeholders, the Committee removed the appeal process, as suggested by the President, and formulated a different procedure to strive the ensure that interim measures are both flexible and robust when necessary but also mindful that no hearing on the merits has been held and cognizant of the significant impact on an individual’s lives interim measures can have; therefore

Be it Resolved, the changes appended in Appendix D (Amendment Adding Discretion to Interim No Contact Directive Procedures) be incorporated to the Campus Code of Conduct.