

# Cornell University University Assembly

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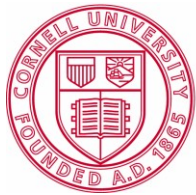
## Agenda

Codes and Judicial Committee  
University Assembly  
October 10<sup>th</sup>, 2018  
4:45pm – 6:00pm  
Day Hall Room 163

- I. Call to Order (Chair)**
  - i. Call to Order (2 minutes)
- II. Welcome New Committee Members** (5 minutes)
- III. Approval of Minutes (Chair)**
  - i. September 26, 2018 (2 minutes)
- IV. Business of the Day**
  - i. For Discussion: Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment (40 minutes)
  - ii. For Discussion: Moving Forward on the Campus Code of Conduct (20 minutes)
- V. Adjournment**
  - i. Adjournment (1 minute)

## Attachments

- 1. Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment
- 2. CJC Meeting Minutes 09.26.2018



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## Minutes

Codes and Judicial Committee  
University Assembly  
September 12th, 2018  
4:45pm – 6:00pm  
Day Hall Room 163

### I. Call to Order

- a. Call to Order
  - i. D. Barbaria called the meeting to order at 5:03pm.
- b. Roll Call
  - i. *Present*: D. Barbaria, M. Battaglia, M. Horvath, K. Kebbeh, C. Liang, R. Lieberwitz, A. Viswanathan, K. Zoner
  - ii. *Absent*: J. Anderson, L. Copman, R. Howarth, T. Onabajo, R. Parker
  - iii. *Others Present*: G. Giambattista, M. Lee

### II. Introductions and Committee Overview

- a. Members went around the room to introduce themselves.

### III. Approval of Minutes

- a. May 9, 2018
  - i. M. Battaglia motioned to table approval of the minutes until the next meeting when more members are present.
    - 1. Minutes **tabled** by unanimous consent.

### IV. Business of the Day

- a. For Discussion: Conclusions of the CJC's Working Group on Hate Speech and Harassment
  - i. R. Lieberwitz said that she informed President Pollack on the Working Group's progress, and has received a positive response that the President looks forward to a report. R. Lieberwitz said that a draft report will be prepared very soon.
  - ii. M. Horvath asked if the University Assembly (UA) will be re-chartering the Working Group, as the Group's term has ended procedurally.
    - 1. D. Barbaria said that the Group is compiling the work completed

last academic year, and thus there will not be any more formal meetings.

2. M. Battaglia said that the Group's work is complete and that members will be going through the draft report. He commended the Working Group's efforts and noted that he does not see re-chartering as a necessary procedure.

b. For Discussion: AY 2017-2018 Resolution 24

- i. M. Battaglia said that he received positive feedback from the President, and that she hopes to work collaboratively and host discussions to understand where the Committee is at.
- ii. M. Horvath said that the Committee had passed four separate resolutions last year.
- iii. M. Battaglia said that the UA Executive Committee requested for "subparts" within the resolutions, for the Assembly to be able to decipher them more easily. He said that each subpart could on their own be accepted individually, but the President did not accept the resolution as a whole.
- iv. M. Horvath noted her frustration on the progress of the resolutions. She said that the Committee had purposefully grouped resolutions to increase likelihood of passing, and that it feels disingenuous that the work of the Committee was not conveyed or advocated for. She said that there is work that needs to be done for increased safety measures around the campus.
- v. M. Battaglia said that he held long conversations with the former leadership of the University Assembly (UA). He said that some of the changes have not been implemented for many years. He said that the President could not only accept the resolutions if presented as two items, but there was no single part where she would have accepted all points. He noted that it was not his intent to circumvent the will of the Committee, and that President Pollack is willing to engage in the process much earlier.
- vi. M. Horvath said that the resolutions were presented from the Committee to the UA. She added that she hopes that precautionary measures are taken by the UA in the future when resolutions are written from this Committee and presented to the UA.
- vii. D. Barbaria said that he is in favor of working towards that in the future. He added that it would be best if more UA executive members attend CJC meetings in the future.
- viii. R. Liberwitz asked about next steps in the procedure and what becomes of items that the President did not accept.
- ix. D. Barbaria said that there will be discussions on that issue both publicly and in Executive Session where matters of where the Committee is headed will be discussed. He said that none of the amendments have passed, and that the Committee will be addressing how to respond to the President's concerns.

c. For Discussion: Conclusions of President Pollack's Task Force on Campus Climate

- i. M. Battaglia summarized a number of recommendations that he had discussed in a meeting with President Pollack.
  1. M. Battaglia said that President Pollack recommended significantly simplifying the Code, as it is written in language that is opaque. He

added that Brown University's Code includes explanatory notes providing definitions on terms.

2. M. Battaglia said that one of the recommendations was to narrow the focus of the Code and have it only apply to students.
  3. M. Battaglia said that the President recommended simplifying the process for administration of the Code.
  4. M. Battaglia said that the President suggested clarifying what the Code does regarding language concerning student's compliance with official university duties.
  5. M. Battaglia said that the President recommended expanding the Code's treatment of harassment to mirror Policy 6.4. He said this includes placing Greek organizations under the Code or completely out of university jurisdiction, and rationalizing the various systems on campus based on Policy 6.4.
- ii. D. Barbaria referred to the "Make significant changes to the Campus Code of Conduct" initiative listed under the Diversity and Inclusion Initiatives page in the Office of the President's website. He said that his immediate thought is that the Committee needs more specific ideas from the President.
  - iii. M. Battaglia said that the Executive Session will allow for the Committee to candidly discuss concerns in private.
  - iv. M. Horvath motioned to move into Executive Session.
    1. Motion **approved** by unanimous consent.

## **V. Executive Session**

### **a. Executive Session**

- i. The Committee went into Executive Session to discuss matters regarding the Code of Conduct changes. Only voting members and the Chair of the University Assembly were permitted to remain for the discussion; the JA was asked to leave.

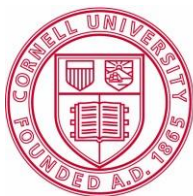
## **VI. Adjournment**

### **a. Adjournment**

- i. The meeting was adjourned at 6:05pm, following the Executive Session.

Respectfully submitted,  
Dongyeon (Margaret) Lee  
Codes and Judicial Committee Clerk





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## Minutes

Codes and Judicial Committee  
University Assembly  
September 26th, 2018  
4:45pm – 6:00pm  
Day Hall Room 163

### I. Call to Order

- a. Call to Order
  - i. D. Barbaria called the meeting to order at 4:51pm.
- b. Roll Call
  - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, M. Horvath, K. Kebbeh, R. Lieberwitz, R. Parker, A. Viswanathan, K. Zoner
  - ii. *Absent:* J. Anderson, L. Copman, R. Howarth, C. Liang, T. Onabajo,
  - iii. *Others Present:* M. Lee

### II. Approval of Minutes

- a. May 9, 2018
  - i. M. Battaglia motioned to approve the minutes.
    - 1. Minutes **approved** by unanimous consent.
- b. September 12, 2018
  - i. M. Battaglia motioned to table approval of the minutes.
    - 1. Minutes **tabled** by unanimous consent.

### III. Business of the Day

- a. Recommitted: Resolution 1 Appointment of University Hearing Board and University Review Board Members for Academic Year 2018-2019
  - i. D. Barbaria said that Resolution 1 intended to staff vacancies on the University Hearing and Review Boards (UHRB). He said that names chosen by the Committee last academic year were not presented to the University Assembly (UA) in time for staffing to be completed before the end of the last academic year. He said that after much discussion, it was decided that the UA should not be able to act on nominations provided by the Committee (CJC) because they were provided in the previous term.
  - ii. M. Battaglia said that Resolution 1 was recommitted to the CJC for further

- discussion. He said that once seats on the UHRB become vacant on June 1, the Assembly appears to have the authority for emergency appointment, based on historic measures.
- iii. M. Battaglia said that the faculty members on the UHRB are nominated by the faculty, but other candidates must be nominated to the UA no later than by the last regular meeting of the outgoing assembly. He said that nominations brought forth do not necessarily need to be confirmed, and even if a confirmation is necessary the vacancies can be filled as necessary.
  - iv. M. Battaglia said that none of the UHRB public records formally mentioned concerns over the integrity of those who were staffed on the UHRB by the Assembly, and that this would not stretch the Assembly's emergency authority. He added that the UA does not think it is necessary to create an emergency appointment for an entire year, as this would be neither emergency nor temporary.
  - v. D. Barbaria said that the Committee could vote to pass Resolution 1, have the UA Executive Committee fill the vacancies on a temporary basis for the remainder of this year, or leave the seats vacant.
  - vi. M. Battaglia – point of information – the UA Executive Committee has decided not to pursue the second option of filling vacancies temporarily.
  - vii. M. Horvath said that the decoder key was provided on May 2, but the names for new UHRB members were not passed on May 31 when the last set of resolutions were brought forth to the Assembly. She said that allowing the 2017-2018 UA to appoint as many members as it could for 2018-2019, but only allowing the 2018-2019 UA to appoint members for 2019-2020 is a check on the system. She encouraged the community to consider the checks and balances of the system, and noted that she discussed this matter with the Judicial Codes Counselors.
  - viii. M. Horvath said that she believes vacancies need to be filled by emergency appointments only if someone is to vacate or if there is an emergency. She said that there are approximately 10 to 13 student, 10 to 13 faculty, and 10 to 13 staff members whose terms did not expire, and that this is enough for a conduct proceeding to occur. She said that while this matter is for the Committee to decide, it is important to maintain transparency, follow the process, and read the Code as written instead of following past practices simply because they were done so in the past.
  - ix. R. Lieberwitz asked if all of the nominations were submitted to the UA by its last meeting of the 2017-2018 academic year.
    - 1. D. Barbaria said that they were sent, but were not confirmed by the last meeting. He said that the actual names were never brought forth to the UA.
  - x. R. Lieberwitz asked what the normal procedure would be in which the UA considers nominations.

1. D. Barbaria said that nominations would have been sent to the UA at a general meeting before the end of the semester.
- xi. K. Ashford asked if applications were already reviewed, but it is just the names that are not there.
  1. D. Barbaria said that the names were not seen because the decoder key was not provided by the Office of the Assemblies (OA) to the UA in time.
- xii. M. Horvath – point of information – based on her understanding, the decoder key was provided by May 10.
- xiii. M. Battaglia said that the applications were anonymized last year which caused a delay.
- xiv. D. Barbaria said that the UA was provided with the decoder key a little less than 3 weeks left in the term, but almost near the last meeting.
- xv. K. Zoner said that everyone appears to be technically correct but the matter in question appears to be more of a process issue. She said that the emergency appointment became necessary only because names and numbers could not be reconciled, not because procedures were not followed through.
- xvi. M. Battaglia said that the process is not perfect, and the goal is to begin early in the next round of appointments. He said that the UA will amend its bylaws to ensure that this does not happen in the future. He said that past precedent is not always indicative of what should be done, but this is a point at which it is necessary to expedite the process and move forward.
- xvii. A. Viswanathan asked when the UA term begins.
  1. D. Barbaria said that it begins on June 1.
- xviii. A. Viswanathan asked whether the UA could have an emergency meeting.
  1. D. Barbaria said that this could be possible in theory, but is unusual for the UA to meet after the term.
- xix. A. Viswanathan asked if the Assembly could theoretically vote on numbers instead of names.
  1. M. Battaglia said that technically and historically this would not be done because the Assembly seeks to publicly have names available.
- xx. R. Lieberwitz said that she understands M. Horvath's line of reasoning. She said, however, that re-nomination would be permissible but not necessary, and that it appears appropriate to pass this resolution.
- xxi. M. Horvath said that approving matters retroactively decreases the transparency of the process as it does not include, for example, seniors who have graduated. She said that the Committee should encourage faith in the system through following what is written in the language – “confirmation no later than the last meeting of the committee”.
- xxii. R. Lieberwitz asked M. Horvath if it would be permissible for the CJC to

simply re-nominate without being retroactive.

1. M. Horvath said that the timeline of the last outgoing UA meeting was May 31, and the new terms began on June 1. She said that it would be retroactive for this year's UA to re-nominate the 2018-2019 UHRB members.
- xxiii. D. Barbaria asked how the CJC and UA would act to fill a vacancy.
1. M. Horvath said that provision 2 of the Code regarding emergency appointments concerns when someone is actually a member, but is not about pools.
- xxiv. M. Battaglia said that he fully concedes that words were poorly written, but the Code gives the Committee authority over the language. He said that since there are members who are willing to serve on the UHRB, it would be a plausible interpretation that they should be allowed to serve.
- xxv. M. Horvath said she does not see why the UA could not vote on numbers instead of names.
- xxvi. R. Lieberwitz asked when there was a gap between numbers and names.
1. D. Barbaria said that it was for a fairly extensive period, after which the UA sent verbal communication to VP of University Relations Joel Malina requesting the OA to expedite the process.
- xxvii. R. Lieberwitz said that if the delay was caused by an office that the CJC had no control over, the office should not cause the entire procedure to fall part.
- xxviii. A. Viswanathan agreed with R. Lieberwitz. He said that it should be clarified in the resolution that administrative delays had caused this problem.
- xxix. M. Battaglia said that the UA and the OA was in strong disagreement over seeing the decoder key. He said that much time had lapsed since this disagreement and the UA's subsequent communication with VP Malina, which was what caused a delay in the overall process.
- xxx. A. Viswanathan said that he did not mean to condemn the OA, but noted that this necessitates a need to repair problems.
- xxxi. R. Lieberwitz asked if the Dean of Faculty nominating new members over the summer recess is a different issue.
1. D. Barbaria said that this is a different process for faculty appointments.
- xxxii. The Committee took a five-minute break.
- xxxiii. A. Viswanathan **amended** Resolution 1 to replace lines 11-13 with the following:
- Whereas**, due to procedural delays in that process, the nominees were recommended in timely fashion but were not ultimately appointed to the UHRB in the Academic Year 2017-2018; and
- Whereas**, the executive committee of the University Assembly authorized

the appointment of individuals on a temporary basis to the UHRB until such time as the full Assembly could confirm them; and

**Whereas**, due to such procedural delays, the UHRB would be left at approximately half-strength without confirmation of the individuals timely nominated in the Academic Year 2017-2018; and

xxxiv. M. Battaglia motioned to vote on A. Viswanathan's amendment to Resolution 1.

1. Motion **passed** by a vote of 5-0-1.

xxxv. M. Battaglia motioned to pass Resolution 1 with the amendment.

1. Motion **passed** by a vote of 5-0-1 to send the names of UHRB nominees to the UA for confirmation.

b. For Discussion: Final Report of the Codes and Judicial Committee's Working Group on Hate Speech and Harassment

i. R. Lieberwitz said that the Working Group gathered together to finalize what had been done. She said that the report is expected to be issued within the next week or so.

ii. D. Barbaria asked if R. Lieberwitz would be interested in presenting the report to the UA on Tuesday.

1. R. Lieberwitz said that it would be best for the CJC to review the report first.

iii. M. Horvath asked if there are any recommended timelines for this committee to act upon.

1. R. Lieberwitz said that there is nothing on the report that concerns timelines, but the hope is to expedite processes. She said that many of the recommendations overlap with those from the Presidential Task Force, and that this would be mutually reinforcing since some of the Working Group's recommendations may fit into work that is already being done.

iv. M. Battaglia said that procedurally the UA meets on September 25, and the President will be addressing the UA on October 16. He said that gathering the President's first impressions on the report would be helpful.

v. M. Horvath – point of information – a timeline would be useful with the Presidential Task Force and Committee developing recommendations. She said that she is interested in knowing if there is a plan in place since a Code revision would take ample time.

vi. D. Barbaria said that the Committee does not have an immediate plan as of now, but will present a proposed timeline at the next meeting. He expressed his hopes that the President would provide a more specific set of public recommendations. He said that the Committee hopes to have a draft language submitted by the end of the semester for the President to review

over winter break.

- vii. M. Horvath said that it is her understanding that a change in the entire language of the Code is necessary.
- viii. D. Barbaria said that the Committee will need to discuss whether it will go into a whole Code overhaul.
- ix. M. Horvath said that when benchmarking Brown University's Code of Conduct, it is important to note that it is currently being overhauled because it is too judicial and not fitting with the community.
- x. M. Battaglia said the Brown example was a mere example of how to make the language more approachable.
- xi. R. Lieberwitz said that there are some recommendations for very specific changes in the code, as will be seen in the report. She said that the Group notes areas in which there are agreements or disagreements with recommendations from the Task Force. For example, regarding regulation of speech and harassment, the Task Force recommended to remove parts of ADR to the Dean of Students' Office, but the Working group does not take a position on that.
- xii. R. Lieberwitz said that M. Horvath's idea of a timeline would be appropriate, but there are also philosophical questions that need to be addressed as a Committee. She said that one of the recommendations of the Working Group is to add guidance to provide further explanation of the Code. She said that a timeline is important, but would be more relevant after the Committee has a better sense of actually knowing what to do.
- xiii. D. Barbaria asked if the report could be given to Committee members before fall break.
  - 1. R. Lieberwitz said that the report is complete, but the logistics need to be arranged.
- xiv. M. Horvath agreed with R. Lieberwitz in asking philosophical questions regarding whether the Code of Conduct should only include students or include students, faculty, staff, and student organizations. She said that the Committee should contemplate on the issue of standard of proof.
- xv. M. Battaglia said that he has not met anyone hoping to lower the standard of proof.

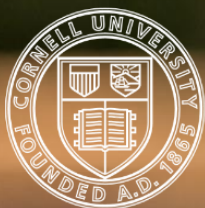
#### **IV. Adjournment**

##### **a. Adjournment**

- i. The meeting was adjourned at 5:57pm.

Respectfully submitted,  
Dongyeon (Margaret) Lee  
Codes and Judicial Committee Clerk





Cornell University  
University Assembly

# Working Group on Hate Speech and Harassment

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## Final Report

ANY PERSON  
CAN FIND  
INSTRUCTION  
ANY STUDY

# Contents

Introduction .....	3
Overview of the Proposals by the Working Group on Hate Speech and Harassment.....	5
Recommendations for Changes in the Campus Code of Conduct.....	6
Proposed Amendments to Preamble and Title One. Article I of the Campus Code (Statement of Fundamental Principles).....	6
Proposed Guidance to Clarify Title Three. Article I of the Campus Code (Application of the Code to Off-Campus Conduct) .....	9
Proposed Amendments to Title Three. Article II.A.1 (Provisions prohibiting harassment, stalking, and assault) .....	10
Proposal Concerning the Relationship of Title Three. Article II and Cornell Policy 6.4 (Sexual harassment).....	16
Proposal to Extend Coverage of University-Registered Organizations to Include Fraternities and Sororities (Title Three. Article IV. A.1.C).....	17
Proposals to Amend and Adopt Guidelines for Title Three. Article IV. A (Penalties and related provisions).....	19
Proposal to Amend Title Three. Article IV (Regarding Penalties and Related Provisions) .....	22
Proposal Concerning Title Three. Article II (Regarding Public Nature of Hearing and Review Board Decisions).....	24
Recommendations for Organizational Changes Outside the Scope of the Campus Code of Conduct.....	25
Closing .....	28



# Introduction

In response to bias incidents that occurred on-campus and in Collegetown during the 2017-2018 academic year, on September 19, 2017 the University Assembly charged the Codes and Judicial Committee (CJC) to develop proposals on the issues of hate speech and harassment and their relationship to the Campus Code of Conduct. The CJC, in turn, created a Working Group on Hate Speech and Harassment (WGSH) with the following charge:

*The Hate Speech Working Group<sup>1</sup> of the Codes & Judicial Committee is charged with engaging the Campus Community to draft specific language proposals for the Codes & Judicial Committee's consideration in regards to Hate Speech and its relationship to the Campus Code of Conduct. Such proposals may include new draft language for the Committee's consideration, draft language for the modification of an existing Code provision (such as harassment or similar), a proposal of no action, or other proposals that the Working Group reasonably believes will advance the discussion of this topic including analysis of the benefits and drawbacks of proposed language, how they have defined the scope of Hate Speech, etc.*

After considering the proposals from the WGSH, the CJC will report its recommendations to the University Assembly (UA) for its consideration and action.

Appointments to the WGSH were completed in February 2018. The members of the WGSH were drawn from the Cornell faculty, staff, and student governance bodies. The CJC appointed three members from the CJC: Risa Lieberwitz (chair of WGSH), faculty, ILR; Victoria Price, graduate student, Law; and Carlton Riley, undergraduate student, Arts & Sciences. The CJC appointed the other members of the WGSH based on nominations by other governance bodies: Travis Cabbell, undergraduate student, ILR (Student Assembly); Scott Grantz, staff, CUPD (Employee Assembly); Aaron El Sabrout, graduate student, Law (Graduate and Professional Student Assembly); Suman Seth, faculty (Faculty Senate). During the Spring semester 2018, the activities of the WGSH included a series of three public fora to engage the community at all stages of the process of the

<sup>1</sup> The Working Group was later renamed the Working Group on Hate Speech and Harassment.

WGHS. Each of the three public forum sessions were held on two dates to expand the opportunity for community engagement. (See, <https://assembly.cornell.edu/shared-governance-cornell/university-assembly/working-group-hate-speech-and-harassment-codes>). Publicity about the public fora identified the purpose of each forum:

Public Forum #1: Information Gathering Forum

Friday, March 9, 2018 3:00PM - 5:00PM (142 Goldwin Smith Hall);

Wednesday, March 14, 2018 12:00PM - 2:00PM (414 Willard Straight Hall)

Public Forum #2: “Workshopping” ideas for changes that may be needed in the Campus Code of Conduct or other Cornell policies.

Wednesday, April 11, 2018 12:00-2:00 PM (G10 Biotechnology Building);

Friday, April 13, 3:00 – 5:00 PM (165 McGraw Hall).

Public Forum #3: Public comments on draft proposals for possible changes to the Campus Code of Conduct and/or other Cornell policies. Proposals may include amendments to the Code, clarifying interpretations of the Code, or changes to enforcement measures.

Friday, April 27, 2018 3:00 – 5:00 PM (142 Goldwin Smith Hall);

Monday, April 30, 12:00 – 2:00 PM (105 Space Sciences Building).



# Overview of the Proposals by the Working Group on Hate Speech and Harassment

The WGHSB chose to approach its work without preconceived ideas of whether and how the Campus Code should be amended. Rather, the WGHSB agreed that the best ideas would emerge through a process of community engagement in public fora to gather information, “workshop” ideas, and seek public comment on proposals. The WGHSB also provided alternate channels for the public to submit information, ideas and comments. Through this community engagement process certain themes and ideas emerged for amending the Campus Code in ways that were directly or indirectly related to the bias incidents, how they were handled by the administration, the content of the Code, and the enforcement of the Code. Section III, below, presents the WGHSB’s recommendations that reflect these themes and ideas. These recommendations include proposals to amend the language of the Code. The recommendations also include proposals to the CJC to develop interpretive “Guidances” that will clarify the meaning of certain Code provisions and examples of applications of the provisions.

Themes also arose from the public fora that were concerned with issues not directly related to the content of the Code, but that were related to underlying issues of diversity, inclusion, and campus climate. Section IV, below, includes recommendations that reflect these issues and propose that the CJC work with other university governance bodies and the administration to develop organizational changes that do not require Code amendments, but that will respond to community needs and concerns.

As noted in the discussion, below, some of the WGHSB’s proposals are consistent with those made by the Presidential Task Force subcommittee recommendations. Also noted are areas where the WGHSB recommendations diverge from the subcommittee recommendations.

# Recommendations for Changes in the Campus Code of Conduct

The presentation of the recommendations in this section of the WGSHS report is structured as follows: identification of the Campus Code title and article; a summary of the WGSHS recommendation for amending the Code provision and/or creating interpretive Guidances; the text of the relevant Campus Code provision to be amended or supplemented with Guidances. Where the WGSHS proposes specific amended language, the proposed amendments are highlighted in red.

## Proposed Amendments to Preamble and Title One. Article I of the Campus Code (Statement of Fundamental Principles)

The discussions at the public fora supported adoption of a Statement of Community Values that could be added to the Preamble and Article I of the Code. Such a statement would set forth the values and goals of an educational institution committed to enabling all members of the community to thrive. We note that this proposed amendment is consistent with the recommendation by the Presidential Task Force Subcommittee on the Regulation of Speech and Harassment to amend Title One, Article I to incorporate a clear statement of Cornell University's defining values.

The proposed amendments to Title One, Article I amend the Preamble to clarify the purpose of the Statement of Principles and Policies to describe core values and goals to which Cornell adheres and which set standards to be considered in regulating conduct of Cornell community members through the Cornell judicial system.

### *TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES*

*Preamble. This statement sets forth several fundamental principles that define core values and goals of the University. This statement recognizes, as*



*well, that conduct of the members of the Cornell community is an appropriate area of concern for the University. This statement sets forth important principles and policies regarding rights of members of the Cornell community and the scope, manner, and standards of regulating community members' conduct.*

*This Title is necessarily general. Its purpose is to inform the Cornell community of the general principles and policies to which Cornell adheres and upon which the Cornell judicial system operates, and to give general guidance to the judicial system as it handles specific cases arising under regulations authorized by the Board of Trustees, including legislation adopted by the University Assembly (or its successor) and approved by the President as representative of the Board.*

## ***Article I. Fundamental Principles***

### ***A. The Essential Purpose***

*The essential purpose of the University's governing of community conduct is to protect and promote the University community's pursuit of its educational, research, and public service goals. The University, as an educational institution, has a special set of interests and purposes, the protection and promotion of which are essential to its effective functioning. These interests, with respect to the governing of community conduct, include the following:*

- 1. the opportunity of all members of the University community to attain their educational objectives;*
- 2. the generation and maintenance of an intellectual and educational atmosphere throughout the University community; and*
- 3. the protection of the health, safety, welfare, property, and human rights of all members of the*

*University community, and the safety, property, and reputational interests of the University itself. These general interests, of course, are also the subject matter of the public laws of the state and nation.*

\*\*\*

### ***C. The Principle of Freedom with Responsibility***

1. *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. As Cornell's motto—"I would found an institution where any person can find instruction in any study"—proclaims, we are a community that affirms and defends inclusion and diversity. 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.*
  
2. *The Campus Code of Conduct is the University community's code, and hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement.*



## Proposed Guidance to Clarify Title Three. Article I of the Campus Code (Application of the Code to Off-Campus Conduct)

The WGHSH makes the following recommendations pertaining to Title III, Article I:

- 1) The CJC should develop a written Guidance document explaining what constitutes a “serious violation” worthy of extending jurisdiction of Title III beyond campus. This guidance should recognize the seriousness of incidents against a person under Title Three, Article I, especially those involving bias, violence, and other acts which create a hostile environment as defined by the Campus Code. The CJC should consider if this Guidance should be a separate document or part of the Code itself.
- 2) The CJC should consider whether it is appropriate or necessary for the President or her representative to be involved in extending jurisdiction to “serious violations” off-campus, especially after a Guidance document is created, which should mitigate chances of jurisdictional overreach by the Judicial Administrator.
- 3) The CJC should clarify the scope of jurisdiction of the Campus Code concerning electronic communications sent from or received on campus or using Cornell’s servers. The use of electronic communications may be of particular relevance in cases of alleged harassment or hostile environment under the Campus Code. The CJC should consider whether any expansion of Code jurisdiction over electronic communications is permissible under the provisions of New York Education Law.
- 4) The CJC should consider renaming the “Campus Code of Conduct” the “Cornell Code of Conduct” to emphasize that some acts which occur off-campus may nonetheless be covered by the Code.

### ***TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT***

#### *Article I. Applicability*

*\* \* \**

*This Title shall apply to conduct on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the Ithaca or Geneva area.*

*This Title shall also apply to conduct elsewhere if the Judicial Administrator—with the approval of the President or his or her designated representative in the person of the Dean of Students for conduct by students, the Provost for conduct by faculty, or the Vice President for Human Resources for conduct by other employees—considers the conduct to constitute a serious violation of this Title, in that the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members.*

### **Proposed Amendments to Title Three. Article II.A.1 (Provisions prohibiting harassment, stalking, and assault)**

The WGHSH makes the following recommendations pertaining to Title III, Article II. A.1:

- 1) The CJC should amend Title Three Article II. A.1, as set forth below. These amendments more fully define the violations of: harassment (Art. II. A.1.c); discriminatory hostile environment harassment (Art. II. A.1.d); stalking (Art. II. A.1.f); and assault/physical injury based on certain individual characteristics or group status (Art. II. A.1.i). Inclusion of these more complete definitions puts the community on notice of the elements of these violations, including the prohibitions on engaging in bias-related hostile environment or assault. Further, the inclusion of both Art. II. A.1.c (defining prohibited "harassment") clarifies that the scope of violations extends to harassment that is not discriminatory on the bases listed in Art. II. A.1.d. As explained, below, in the proposal to amend Title Three. Article IV. A, the WGHSH also



recommendations that violations of Art. II. A.1.d may result in more severe sanctions due to the discriminatory nature of the prohibited conduct.

The proposed amendments of the provisions prohibiting “stalking” are intended to make the Code consistent with definitions of stalking under New York law. The language in the proposed amendments of provisions on harassment and discriminatory hostile environment is largely drawn from Cornell Policy 6.4, Title VI and Title VII of the federal Civil Rights Act of 1964, and Title IX of the federal Education Amendments of 1972. Inclusion of these amended provisions in the Code makes the Code more consistent with the definitions of hostile environment harassment under Policy 6.4. The amendments also clarify that prohibitions of harassment and discriminatory hostile environment are part of the Code, and not simply relegated to Policy 6.4. It should be noted that these proposed amendments are consistent with, although not identical to, the recommendations of the Presidential Taskforce Subcommittee on the Regulation of Speech and Harassment.

- 2) The CJC, in conjunction with other Cornell offices, should create Guidance documents concerning the new provisions in Title Three. Article II. A.1, as amended. The Guidance documents should be included in an Appendix to the Code to ensure that the Guidance is easily accessible to the public and that the Guidance is considered by the Judicial Administrator, Hearing Boards, and Hearing Review Boards in their application of the Code. The Guidance documents should include explanations, clarifications and examples of:
  - a. What is prohibited, including:
    - (1) The meaning of the terms “severe” and “pervasive”;
    - (2) That the definitions of harassment and a discriminatory hostile environment are based on conduct that is deemed severe, persistent, or pervasive from both a subjective and an objective perspective.
    - (3) In evaluating whether harassment or a discriminatory hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
  - Whether the conduct was physically threatening;
  - The effect of the conduct on the complainant's mental or emotional state;
  - Whether the conduct was directed at more than one person;
  - Whether the conduct arose in the context of other discriminatory conduct;
  - Whether there is a power differential between the parties; and
  - Whether the conduct implicates concerns related to academic freedom or protected speech.
- b. What is not prohibited, including:
- Matters pertaining to academic freedom, and freedoms of speech and protest
  - Scope of academic freedom in instructional, research, and public speech contexts.
  - Interpretation of harassment and hostile environment Code provisions in relation to Code provisions protecting academic freedom, freedom of speech and protests (Title One, Article I. C.1; Title One, Article III. A. B.).

### ***TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT***

#### ***Article II. Violations***

##### ***A. Listing***

*1. It shall be a violation of this Title, as an offense against another person or the university:*

- a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.4.<sup>2</sup>*
- b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.*

<sup>2</sup> This Code section is subject to the provisions in Appendix A, Article I.

*c. To harass another person by acting toward that person in a manner that is unwelcome and sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual or group of individuals from participating in or benefiting from the University's education, research, and/or employment programs or activities.<sup>3</sup>*

*d. To engage in discriminatory hostile environment harassment directed against any person or group of persons because of their actual or perceived age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, height, immigration or citizenship status, marital status, national origin, race, religion, religious practice, sexual orientation, or socioeconomic status, veteran status, or weight. A hostile environment is created by conduct (oral, written, graphic or physical) that is unwelcome and sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual or group of individuals from participating in or benefitting from the University's education, research, and/or employment programs or activities.<sup>4</sup>*

*e. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable.*

*f. To stalk another person by (1) intentionally engaging in a course of conduct directed at a specific person and (2) that would cause a reasonable person to feel threatened or frightened. Course of conduct is defined as a pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.*

*g. To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued*

<sup>3</sup> This Code section should be interpreted consistently with the provisions in the Guidance on Harassment and Hostile Environment in Appendix B.

<sup>4</sup> This Code section should be interpreted consistently with the provisions in the Guidance on Harassment and Hostile Environment in Appendix B.

*membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.*

*h. To (1) endanger another person, including but not limited to such acts as: introducing a weapon into a fight, whether or not the weapon was used; using one's body parts as a weapon; violation of Life Safety regulations; theft or use of fire extinguishers; use of firecrackers or flares; or any other acts, whether reckless or intentional, that create a dangerous situation for the safety of another individual (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.*

*i. To assault or cause any physical injury to another person on the basis of actual or perceived age, ancestry or ethnicity, color, creed, disability, gender, gender identity or expression, height, immigration or citizenship status, marital status, national origin, race, religion, religious practice, sexual orientation, or socioeconomic status, veteran status, or weight.*

*j. To endanger or to cause damage to or loss of property of another person.*

*k. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.*

*l. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.*

*m. To intentionally invade privacy or misappropriate property rights, by means of videotaping, photographing, audiotaping, or otherwise making any picture or sound recording.*



*n. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.*



## Proposal Concerning the Relationship of Title Three. Article II and Cornell Policy 6.4 (Sexual harassment)

During the public fora held by the WGHS, one of the themes that emerged was the lack of clarity about the relationship between the Code and Policy 6.4. Given the overlap between violations covered under the Code and Policy 6.4, WGHS recommends that the CJC consider whether Policy 6.4 should be brought back into the Code or closer to the Code (e.g. shared provisions/policies). This recommendation is consistent with the proposal, above, to amend the Code provisions of Title Three. Art. II. A.1.d to define discriminatory hostile environment harassment in terms that are drawn from Policy 6.4.

It should be noted that the specific proposed amendment highlighted below is a correction of the Code's reference to Policy 6.3. The proposal to consider bringing Policy 6.4 back into the Code is, of course, much broader and complex and will entail considerable deliberation by the CJC. Such deliberation should consider this question in conjunction with the proposal, above, to amend Title III, Article II. A.1.

### ***TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT***

#### *Article II. Violations*

##### *A. Listing*

*1. It shall be a violation of this Title, as an offense against another person or the university:*

*a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.4<sup>5</sup>*

*\* \* \**

*c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable.<sup>6</sup>*

<sup>5</sup> This Code section is subject to the provisions in Appendix A, Article I.

<sup>6</sup> This Code section is subject to the provisions in Appendix A, Article I in cases of sexual harassment.

## Proposal to Extend Coverage of University-Registered Organizations to Include Fraternities and Sororities (Title Three. Article IV. A.1.C)

The WGHSH recommends that Greek organizations/fraternities and sororities should be classified as University-Registered Organizations that are covered by the Campus Code of Conduct. This change would hold fraternities and sororities to the same standards and subject them to the same potential penalties under the Code as are applied to other student organizations. This would not prevent fraternities and sororities from adopting internal organizational regulations that hold the organizations and its members to higher standards than those provided under the Code. It should be noted that this proposal is consistent with the recommendation by Presidential Task Force Subcommittee on the Regulation of Speech and Harassment to extend jurisdiction of the Code to cover fraternities and sororities.

### *TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT*

\* \* \*

#### *Article IV. Penalties and Related Provisions<sup>7</sup>*

##### *A. Penalties*

*1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision, provided that no person shall endure cruel and unusual punishment. \* \* \**

##### *c. University-Registered Organizations*

*(1) Appropriate educational steps for members of the organization (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).*

*(2) Community work performed by members in a manner acceptable to the Judicial Administrator.*

<sup>7</sup> This Code section is subject to the provisions in Appendix C.



*(3) Fine of not less than \$25 nor more than \$500 payable to the University Treasurer.*

*(4) Restriction or loss of specified privileges for a stated period not to exceed one year.*

*(5) Written reprimand.*

*(6) Suspension of all privileges for a stated period not to exceed one year.*

*(7) Dismissal, i.e., rescission of permission to operate on University property.*

\* \* \*





## Proposals to Amend and Adopt Guidelines for Title Three. Article IV. A (Penalties and related provisions)

The WGHSH proposes that the CJC create publicly available Guidelines to provide standards for University Hearing Boards to consider in setting penalties cases of Code violations. The Guidelines should be included as an Appendix to the Code. Such Guidelines would promote evenhandedness in setting appropriate sanctions, without constraining Hearing Boards from considering individualized circumstances in each case. These Guidelines would also provide the public with useful information about standards to be used by Hearing Boards in deciding penalties.

The WGHSH further recommends that these Guidelines provide for enhanced penalties for Code violations in which there is (1) an offense against a person, (2) bias, or (3) violence. Included in these violations is the offense of discriminatory hostile environment (educational, residential, or work). It should be noted that this proposal is similar to the recommendation by the Presidential Task Force Subcommittee on the Regulation of Speech Harassment to amend the Code to provide for enhancement of penalties in cases where the violation was motivated by bias. The Subcommittee explains that this Code amendment would promote the core university value of nondiscrimination.

### ***TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT***

***\* \* \****

#### ***Article IV. Penalties and Related Provisions<sup>8</sup>***

##### *A. Penalties*

*1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision, provided that no person shall endure cruel and unusual punishment. In situations where an individual is both taking classes and on the University payroll, appropriate penalties may come from either or both Subsections a and b.*

<sup>8</sup> This Code section is subject to the provisions in Appendix C.

*a. Students*

- (1) Oral warning.*
- (2) Appropriate educational steps (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).*
- (3) Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Judicial Administrator.*
- (4) Fine of not less than \$20 nor more than \$500 payable to the University Treasurer.*
- (5) Restriction or loss of specified privileges for a stated period not to exceed one year, including for example:*
  - (a) in cases of misconduct in connection with University services or facilities, the student being prohibited from further use of those services or facilities other than in the course of his or her work or study; or*
  - (b) in cases of misconduct in connection with University-owned or University-operated housing, the student being ordered to vacate such housing.*
- (6) Written reprimand.*
- (7) Probation for a stated period.*
- (8) Suspension from the University for a stated period not to exceed five years, or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission after the academic term following the academic term in which the suspension occurred.*
- \* \* \**
- (9) Dismissal, i.e., expulsion from the University.*

*b. Faculty and Other Employees*

- (1) Oral warning, educational steps, community work, and fine, as provided for student offenders.*
- (2) Written reprimand.*

*(3) Suspension from University duties for a stated period not to exceed one month, with loss of salary but without loss of other rights or privileges.*

*(4) Dismissal from University employ, with termination of any contract or tenure.*





## Proposal to Amend Title Three. Article IV (Regarding Penalties and Related Provisions)

One of the themes that emerged during the public fora was the need for effective ways to resolve Code violations, as well as conduct that does not “rise to the level” of a Code violation but that falls in the “gray area” between violations of the Code and violations of “community values.” The WGSHS recommends amending the Code to provide options for expanded use of Alternative Dispute Resolution (ADR) and Restorative Justice Programs to resolve Code violations and conflict falling in the “gray area.” The use of ADR and Restorative Justice could help move the Code toward being genuinely educational rather than only punitive. This proposal is similar to the recommendation by the Presidential Task Force Subcommittee on the Regulation of Speech and Harassment to expand the use of ADR.

It should be noted that the Presidential Task Force Subcommittee links its proposal for expanded use of ADR to broader recommended changes in the Code, stating: “In keeping with our recommendation above to limit the operation of the campus code and the JA [Judicial Administrator] to the most serious sanctions, we believe that responsibility for the administration of the university’s student-focused ADR efforts should be consolidated within the Office of the Dean of Students. This would not necessarily mean eliminating other ADR programs where they exist, but such programs would need to be coordinated within a single administrative structure to ensure consistency of practices.” The WGSHS has not considered and thus does not recommend limiting the operation of the Code to the most serious sanctions. Nor has the WGSHS considered consolidating the administration of ADR programs under the auspices of the Dean of Students. These and other recommendations by the Presidential Task Force will need to be fully considered by the CJC.

### *TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT*

\* \* \*

## *Article IV. Penalties and Related Provisions*<sup>9</sup>

### *A. Penalties*

\* \* \*

### *B. Remedies*

*The following remedies may be imposed:*

- 1. Restitution to the University or to the victim of the violation.*
- 2. Order to the offender to perform, or to cease and desist from, stated actions*

<sup>9</sup> This Code section is subject to the provisions in Appendix C.



## Proposal Concerning Title Three. Article II (Regarding Public Nature of Hearing and Review Board Decisions)

One of the themes that emerged during the public fora was the need for transparency and information provided to the public concerning bias and harassment incidents. One aspect of public reporting includes the decisions of the University Hearing and Review Boards. Title Three. Article II. B. requires that Office of the JA maintain “public records of all decisions of those boards.” The WGHSH recommends that the CJC consider effective ways that the JA and other relevant administrative offices can enhance public access to these decisions, including online access to the decisions and ease in searching public databases containing these decisions.

### *TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT*

\* \* \*

#### *Article II. Violations*

\* \* \*

##### *B. Interpretation*

*Because the judicial system utilizes the decisions of the University Hearing and Review Boards to define or interpret violations, public records of all decisions of those boards shall be kept on file in the Office of the Judicial Administrator, including a brief summary that describes the nature of the case and its disposition but with names of individuals and other identifying information redacted.*

# Recommendations for Organizational Changes Outside the Scope of the Campus Code of Conduct

Themes and ideas also arose from the public fora concerning issues that were not directly related to the content of the Code, but that were related to underlying issues of diversity, inclusion, and campus climate. The WGSH concludes that it is appropriate and important to include in this report recommendations reflecting these issues, which would support the goals of the proposed amendments to the Code. In particular, inclusion of recommendations for changes outside of the Code recognizes that bias incidents are both regulatory and cultural problems. The following recommendations will entail having the CJC work with other university governance bodies and the administration to develop organizational changes that do not require Code amendments, but that will respond to community needs and concerns. In this regard, we note that these proposals are consistent with recommendations made by the Presidential Task Force subcommittees.

- 1) The WGSH recognizes the need for ongoing transparency and reporting of information to the community about incidents which affect campus climate, from groups including the CJC, adjudicatory bodies, and Cornell police. We recognize the University's obligations under FERPA, and recommend that all steps taken toward transparency comply with those requirements. As a measure toward greater transparency, we recommend a public forum each semester around campus climate. At this forum, the public could also be asked for ideas about what can be done to improve campus climate, transparency, etc. This would be helpful to make the process of information gathering, ideas, and improvements ongoing, rather than having the process carried out only by an *ad hoc* working group.
- 2) The WGSH recommends that there be substantial efforts for comprehensive and ongoing education and training of faculty, teaching assistants, resident advisors, and students concerning issues of power, bias,



and inequalities, including those based on race, gender, and disability. Such education and training should include ways to address such issues in the classroom, residence halls, and interpersonal interactions. Classroom discussions that deal directly with these issues can have positive impacts in creating an inclusive class setting and encouraging meaningful dialog that can bring deeper understanding to the complexities and consequences of unequal power and inequalities in social, political, and economic structures and relations. Residence Hall discussions and meetings can be an effective means to address bias-related incidents at the moment that they occur and to continue the dialog about specific incidents and related issues.

- 3) During the WGSHS public fora, students described the impact of bias-related incidents that have taken place in campus residential halls, including racist graffiti on residence hall white boards. In this setting, students of color feel personally targeted and vulnerable, particularly where few students of color live in the residence hall. While bias-related incidents create fear and anxiety in any context, such incidents create a particular fear and insecurity in students' living space. The WGSHS recommends that additional resources be appropriated for programs in residence halls to address issues of bias and inequality, including those based on race, gender, and disability. Such programs include education and training, as recommended above, and should go beyond crisis management to institute regularly scheduled and ongoing programs that lead to improved relationships, personal safety and security, and institutional change.
- 4) The WGSHS recommends having the Cornell Bias Assessment Response Team (BART) provide more information to the public on bias-related incidents (including follow ups on how many bias-related incidents have been resolved). We further recommend greater links between BART and the Code. (<https://hr.cornell.edu/our-culture-diversity/diversity-inclusion/harassment-discrimination-and-bias-reporting>) In general, we recommend clarification on how and where to report bias incidents, as well as other code violations.



- 5) The WGHSH recommends making governance bodies more meaningfully representative by increasing the presence of people of diverse backgrounds in positions on these governance bodies. We recognize that “representation” must extend beyond numerical inclusion to a sustained commitment to improving retention rates of diverse individuals in governance.
- 6) The WGHSH recommends that Cornell provide adequate financing and other resources to academic programs that address systemic inequalities, including but not limited to Latino Studies; Asian American Studies; the Center for Inequality Studies; Africana Studies & Research Center; American Indian Program; and Feminism, Gender, and Sexuality Studies. Providing adequate financial and institutional support for these programs will be part of Cornell going beyond public relations measures to address issues of bias and systemic inequalities.



# Closing

Through the entirety of this process, the WGHSB engaged with numerous individuals from throughout the Cornell Community in order to arrive at the above recommendations. We greatly appreciate their engagement and willingness to provide information and robust feedback to the WGHSB.

The WGHSB is pleased to submit this report to the Codes and Judicial Committee of the University Assembly. As the members of the WGHSB, we are glad to answer any questions the Committee or Assembly may have and hope the above recommendations prove useful. We also thank the Committee and Assembly's members and leadership for their support throughout this process.

Respectfully submitted this 8th day of October 2018.

Risa Lieberwitz, Chair

Travis Cabbell

Aaron El Sabrout

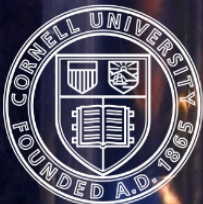
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