

Cornell University
University Assembly

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Agenda

Codes and Judicial Committee
University Assembly
March 28th, 2018
4:30pm - 5:45pm
163 Day Hall

I. Call to Order (Chair)

- i. Call to Order (2 minutes)

II. Approval of Minutes (Chair)

- i. March 14, 2018 (1 minute) ^[1]
- ii. March 21, 2018 (1 minute) ^[2]

III. Business of the Day

- i. Working Group Update (R. Lieberwitz) (10 minutes)
- ii. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code (35 minutes) ^[3] ^[4]
- iii. For Discussion: University Hearing and Review Boards Staffing Update (5 minutes)
- iv. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor (10 minutes) ^[5] ^[6]
- v. For Discussion: Semester outlook, examining the Code, and codifying prior practices (10 minutes)

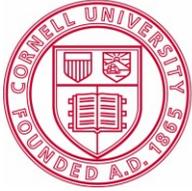
IV. Adjournment (Chair)

- i. Adjournment (1 minute)

Attachments

1. CJC Meeting Minutes 3.14.2018
2. CJC Meeting Minutes 3.21.2018
3. Language for Housekeeping Changes to the Campus Code of Conduct – President's Response Comparison with Possible Solutions (Edited 3.27.2018)
4. Interim No Contact Directive Options Chart (Edited 3.27.2018)
5. Policy 6.4 Hearing Panel Application
6. UHRB Application Questions - 2018 Cycle

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



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Minutes

Codes and Judicial Committee

University Assembly

March 14th, 2018

5:05pm - 6:20pm

163 Day Hall

I. Call to Order (Chair)

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 5:05pm.
- b. Roll Call
 - i. *Present:* K. Ashford, D. Barbaria, M. Battaglia, R. Bensel, R. Lieberwitz, V. Price, C. Riley, E. Winarto, K. Zoner, K. Karr
 - ii. *Absent:* J. Kruser, D. Putnam, M. Horvath, G. Kaufman
 - iii. *Others Present:* J. Hannan, C. Liang

II. Approval of Minutes (Chair)

- a. March 14, 2018
 - i. K. Ashford made a motion to approve the minutes – **approved**.

III. Business of the Day

- a. Update Concerning: UA Resolution #5 Bylaws Change Clarifying the Charge of the Codes & Judicial Committee
 - i. M. Battaglia said that the resolution has passed and has clarified the charge of the Committee (CJC). He added that if the Code amendment to remove non-matriculated minors from the code passes, it will be under the Committee's jurisdiction.
- b. Update Concerning: UA Resolution #7 Charter Change Supporting the Office of the Complainant's Advisor
 - i. M. Battaglia said that this resolution has also passed and can be modified again at a later time. He added that the University Assembly (UA) is awaiting on the President's response.
 - ii. V.Price asked whether the resolution would come into effect this year or next.
 1. M. Battaglia said that the Committee is not involved in the earliest stages of the JCC (Judicial Codes Counselor) process, but will take a closer role in the final stages of the application process. He noted that there have been discussions about whether the CJC should take a closer role in earlier rounds.

- iii. M. Battaglia said he was informed that Policy 6.4 will be reviewed for revamp again and will be speaking with the head of the UA about this matter. He said that the 6.4 panel is similar to the University Hearing and Review Boards (UHRB) except that there are no students on the panel, although that may change, as well as that it is essentially a mini-selection panel. He added that concerns have come to light that there is no way to formally dissent and that questions are answered in a yes/no fashion. He has drafted a new version of questions to address this issue.
- c. For Discussion: University Hearing and Review Boards Staffing Update and Discussion
 - i. M. Battaglia said that the UHRB applications went live today via email and that there appears to be a need to institutionalize the application process. He added that the Committee has asked to close the applications at midnight, but the Office of the Assemblies (Office) has responded that they go through a back-end process requiring them to be closed beforehand.
 - ii. D. Barbaria asked if the Office reflected that they possibly needed more time and stated that he did not realize there were logistical needs after the applications were submitted. He said he would prefer to move the deadline to Friday if possible.
 - 1. M. Battaglia said there were no concerns about moving it to Friday.
 - iii. D. Barbaria made a motion to allow the Office to move the closing time to 12pm.
 - 1. The motion **passed** by a vote of 6-0-1.
 - iv. C. Liang, Associate Judicial Administrator, arrived on behalf of M. Horvath who could not make it to the meeting.
 - v. M. Battaglia said that the Office plans to advertise the applications and encouraged Committee members to help advertise them.
- d. Working Group Update (R. Lieberwitz)
 - i. R. Lieberwitz said that the Group held its second session for the first forum today and is hoping to hold another meeting next week. She said that she has begun formulating some ideas and that the next public forum will be held to workshop those ideas and receive other opinions. She added that the third forum will hopefully be more specific about public comment on more concrete proposals and hopes to provide the proposals to the CJC by late April to early May.
 - ii. R. Lieberwitz said that the President's Task Force is acting independently from the Working Group, but a representative was present at today's meeting. She added that the Group will also receive input and feedback from the Task Force and that the Task Force incorporated questions suggested by the Working Group.
 - iii. K. Ashford asked for more clarification on how the two groups work together.
 - 1. R. Lieberwitz said she does not anticipate the Working Group and

Task Force to hold joint meetings or come together, but are “stay[ing] in touch” and are not acting completely separately. She said that the two groups are intersecting in ways that are helpful.

- iv. K. Ashford asked how the process works if both groups have jurisdiction over the Code.
 1. R. Lieberwitz said that the Task Force is a presidential council, whereas the Group receives input based on their reports.
- v. R. Lieberwitz said that it would be helpful to receive questions from the University Assembly regarding timelines and goals.
- vi. M. Battaglia said that the Working Group is specifically focused on the Code, while the Task Force is looking at it from a wider scope and anything in regard to the Code must come through the Committee.
- vii. D. Barbaria asked if the UA provided any new instructions or marching orders.
 1. M. Battaglia said that there were mixed perceptions about whether the Group was moving too fast or slow, but it is well-received overall.
- viii. D. Barbaria asked whether it is appropriate for anyone on this Committee to reach out to personal constituents who sit on the Working Group and meet with them and discuss the work of the Group.
 1. M. Battaglia replied that it is fully appropriate since the goal is to be transparent and that anything that comes up from the Working Group will end up in the Committee anyway.
 2. R. Lieberwitz said they could invite CJC members to attend forums and meetings, since everything is open.
- e. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
 - i. M. Battaglia reviewed the first amendment on non-matriculated minors, stating that he took the language verbatim from Risk Management. He said a question arose about who inserted the saving statute, but he personally does not see an issue with leaving as is. He suggested mirroring the President’s language and leaving the saving statute with an explanation as to why it is appropriate to maintain.
 - ii. R. Bensel made a motion to vote on M. Battaglia’s suggestion.
 1. E. Winarto – point of clarification on what the Committee is voting on.
 2. M. Battaglia said that they would be mirroring the amended language for section a and b, while leaving the saving statute and providing an explanation that it meets all of the goals set out to do.
 3. The motion to adopt that language was **approved** by a vote of 7-0-1.
 - iii. M. Battaglia reviewed the UHRB language proposal requesting renewal. He said that the President was concerned about involving faculty and to ameliorate that concern, the Dean of Faculty would be consulted.
 - iv. R. Bensel moved to accept the language.

1. The language was marked as resolved by a vote of 7-0-1.
- v. M. Battaglia reviewed the language on adding discretion to no contact directives. He said that the provision makes no contact directives not mutually binding, allows the Judicial Administrator's discretion if a no contact directive is violated, and addresses concerns about an appeals process. He added that he created a flowchart to help visualize the process.
- vi. K. Ashford said that she is in favor of a shorter time period as it fits with the President's intent for expiration and approves of reviewing as a group rather than just through one Chair.
- vii. M. Battaglia said that Judicial Administrator (JA), M. Horvath, does not have an issue with a shorter time period as long as the process is streamlined enough.
- viii. R. Bensel voiced his approval of the flowchart created by M. Battaglia. He said that he believed M. Horvath noted that 35 to 40 days would be optimal. He added that he was concerned about who would approve of renewals of no contact directives. He said that the first review should be partly substantive and noted further concern about delays in process.
- ix. M. Battaglia agreed that the goal is to avoid delays.
- x. D. Barbaria said the Committee should not take action until M. Horvath or the Hearing Board speaks to them. He said that since no contact directives are meant to protect students, he does not believe it should be made more difficult for students to be kept from being active.
- xi. R. Lieberwitz – point of clarification on the Committee's main topic of discussion.
 1. M. Battaglia said that R. Bensel proposed to add a third step if necessary to essentially streamline the process instead of going back to the reviewing party.
 2. R. Bensel said that his suggestion was that a renewal of the order was needed instead of an appeals process.
- xii. R. Lieberwitz approved of the suggestion as it is simpler. She said she believes having a review group and a paper hearing makes sense. She noted that however, if they were to eliminate an appeals process, there is no person to meet with in regard to the amount of time to continue the no contact order.
- xiii. C. Liang reiterated M. Horvath's concerns that the 21-day timeline is too short to ensure all the needs are met. She said that the Office of the Judicial Administrator wants this to be an efficient process and that the interim process is interim in order to protect all parties involved.
- xiv. K. Ashford said that R. Bensel and D. Barbaria brought up valid points about the need to preserve a safe environment, but wants to balance that with rights to due process. She said that the process is meant to be interim and while the 35 to 40 days solution would be more convenient for the Committee logistically, that must be balanced with concerns of fairness and due process. She added that 21 days is not a short amount of time either.

- xv. V. Price asked what interim means in this case, and whether it covers the period between complaints filed and investigation until the hearing begins.
 - 1. M. Battaglia said that in essence, interim measures do not imply guilt or responsibility, but there is there an issue that is concerning enough to separate parties until the situation is fully addressed.
- xvi. V. Price questioned whether the Committee should allow for renewal at all if it is supposed to be an interim measure for a short period of time.
- xvii. K. Zoner said that there are circumstances beyond anyone’s control and believes it is nice to have such a renewal process whether or not they would be utilized. She noted that the interim measure only requires individuals to stay away from one another and are usually worked out more easily for shorter terms. She said that it would be beneficial to have the process continue on since one or both individuals strongly do not want to see each other in these circumstances. She said she is less concerned about the time frame and approved of a 40-day period.
- xviii. K. Karr agreed that having a time frame longer than 21 days is important, but noted that no contact orders do in fact restrict students’ movement.
- xix. K. Zoner said those only pertain to one-sided cases and both parties would have responsibility as the case is mutually binding.
- xx. K. Karr said that it does create anxiety within students and could create problems as it restricts movement.
- xxi. C. Liang – point of clarification on whether the days mentioned are business days or calendar days. She added that utilizing the renewal model limits students’ privacy.
- xxii. R. Bensel said that the renewal process is not merely procedural but also involves information and justification. He said that if they don’t renew, it appears as if there are doubts about the case.
- xxiii. K. Zoner said that sometimes it has nothing to do with the case but how the individuals deal with one another. She added that parties can come to a “cooling down” phase without the need for a no contact directive.
- xxiv. M. Battaglia asked what the Committee would like to decide on for number of days, noting that there seems to be an agreement of somewhere around 21 to 40 days.
- xxv. R. Lieberwitz – point of information on how long it usually takes to get to a hearing.
 - 1. D. Barbaria said that it is likely to be 21 calendar days.
 - 2. M. Battaglia said that the total gap was reduced and cases were being cleared quicker.
 - 3. D. Barbaria said that 21 days would require the Judicial Administrator to make immediate decisions for review.
 - 4. M. Battaglia said that mean number of days was 41 days for 2015-2016, and 33 days for 2016-2017. He added that days reported excludes between 3 to 10 days of the hearing.
 - a. C. Liang added that hearing includes anything that

involves the hearing such as temporary suspension.

- xxvi. K. Zoner proposed a compromise of 30 days.
 - 1. R. Bensel said that he was about to propose 35 days, but 30 calendar days would effectively be the same as 35 days.
 - 2. K. Zoner said that it would be 30 business days, not calendar days.
- xxvii. C. Liang said that she believes the date coincides with the rest of the proposal.
- xxviii. C. Riley suggested 28 days.
- xxix. K. Ashford yielded.
- xxx. M. Battaglia said that the Committee could agree upon around a month and see how they would review this.
 - 1. K. Zoner said that the Committee should name the number of days.
- xxxi. R. Bensel made a motion for 31 days.
- xxxii. K. Ashford proposed 28 days.
- xxxiii. K. Zoner proposed 30 days.
- xxxiv. D. Barbaria said that the group would need more time to arrive upon a consensus, so they should leave it at about a month for now.
- xxxv. R. Bensel spoke to his motion. He said that the Committee does not have all the information needed when the time period is too short.
- xxxvi. M. Battaglia said that the mean number of days in 2016-2017 was 33 days.
- xxxvii. R. Lieberwitz reversed her original opinion and made a motion to have the reviewing party in this process be a rotating Hearing Board Chair.
 - 1. K. Ashford dissented. She said that a single person comprises the Board Chair and is against favoring a single reviewing party instead of a full Review Board. She said that a group of at least three people would be a good compromise, but putting the decision into a single individual's hands is too much power for one person.
- xxxviii. M. Battaglia requested the Committee to vote on whether to vote on R. Lieberwitz's motion.
 - 1. The Committee moved back into discussion by a vote of 4-4-1.
- xxxix. V. Price said she would be comfortable with having a smaller reviewing group if there were a finite number of renewals.
- xl. C. Riley – point of information on the size of the Hearing Boards.
 - 1. M. Battaglia said there are four Hearing Board Chairs and one Review Chair for a total of five.
- xli. C. Riley said that he believes it does not require five people to decide on this issue.
- xlii. K. Karr asked if each renewal would require a different Board. She noted her preference to have responsive and attentive members on the Hearing Board but also her concerns about the full board. She said that the rotating option is a great compromise and the statute of limitations being

one year would be beneficial.

- xl.iii. D. Barbaria said that he is in favor of the idea of a rotating Chair if the initial period is short enough. He said that it should be mentioned in the Code as to what information the reviewing party would have access to.
- xliv. R. Lieberwitz said that a rotation process would be beneficial, like in the case of judge and jury in court.
- xlv. K. Ashford agreed with D. Barbaria and stated that it is important to consider the increased duration. She said that it would not be beneficial to have a single person making a decision for 60 or more days.
- xlvi. K. Zoner asked if the end report states what the longest duration was, as the Committee has only discussed a mean so far.
 - 1. M. Battaglia said that he does not have information from the report, but has heard that the process can extend for a long period of time.
 - 2. K. Zoner said that the necessitation of a review of a no-contact order after a short period of time adds to the length of time to get to the hearing. She said she is still in favor of bringing the time frame closer to the mean.
- xlvii. M. Battaglia said that the Committee seems to be coming upon some form of consensus.
- xlviii. E. Winarto noted that M. Horvath demonstrated that she is willing to go down to as low as seven days if she only needs to bring the issue to one Chair.
- xlix. K. Zoner said that in her experience these no contact orders go very well most of the time, but has seen parties use it to create angst against one another. She noted a concern that a no contact order would be in place for a reason because an investigation conclusion has not been reached after seven days.
 - 1. M. Battaglia said that the consensus seems to be around 20 to 35 days. He said that he could take this and rework the language for next week if the Committee has a motion.
 - li. R. Benseal asked whether affected parties would have the right to attend at renewals.
 - 1. M. Battaglia said that after 21 days, the parties could send in a paper document.
 - 2. R. Benseal said that the parties should have the right to speak and make their case if they want, since there would be no appeal if they do not have a way to participate.
 - lii. K. Ashford motioned to extend for 5 minutes and for M. Battaglia to rework the language for next week.
 - 1. The motion **passed** with unanimous consent.
 - 2. M. Battaglia said that he would be sending the UHRB Chairs a packet that contains more information. He noted the special meeting time next week.
- liii. M. Battaglia said that the language with renewal process was brought to

the Committee's attention by the JA's Office and that there are now multiple Chairs and they are looking at having the process updated. He said that he has reworked the language so that any Chair of the UHRB can start the process of removing a Board member for whatever reason and then come to the CJC with necessary information, after which the Committee would vote by two-thirds on whether to remove or keep the member. He added that a concern arose in that there are members who are in effect missing in action and there is currently no process to pull them.

- liv. R. Bensel made a motion to adopt the language.
 - 1. D. Barbaria asked what adopt would mean in this context.
 - 2. M. Battaglia said that the language would get resolved, and when the overall document is marked resolved, it would be voted and sent.
 - 3. The language was marked **resolved** by a vote of 8-0-1.
- lv. M. Battaglia moved on to the language concerning Hearing Board oversight, which allows the Committee to have more input on how hearing procedures are maintained
- lvi. V. Price asked when in the process the issue would come up. She said that the Committee may be in favor of changing how this language is written.
 - 1. M. Battaglia said that his understanding of the process is that it has not been updated in a number of years.
- lvii. R. Bensel moved to remove "seated" from sections b and c and to go by majority vote.
 - 1. K. Ashford dissented.
 - 2. The motion **failed** as it was not seconded.
- lviii. R. Lieberwitz made a motion to adopt the language proposed.
 - 1. The language was **adopted** by a vote of 8-0-1.
- lix. M. Battaglia said that it was logistically difficult to arrange for a public hearing two days prior, as is currently stipulated by the Code. He said that the new language would require arrangements for a public hearing to be made within three days after scheduling.
- lx. R. Lieberwitz asked what the timeline is between scheduling and hearing.
 - 1. K. Karr said that the maximum is 21 days, but an appeal can be made to lengthen this time frame if necessary.
 - 2. C. Liang said that it must happen within 21 days, and that they would try to find an agreeable date within two to three business days.
 - 3. R. Lieberwitz asked what dates would generally be chosen.
 - 4. C. Liang said that it would vary based on availability.
 - 5. R. Lieberwitz expressed her concern that three days may not be enough time.
 - 6. C. Liang said that she believes a hearing would be on an individual's mind as soon as they know about it.
 - 7. D. Barbaria – point of clarification on whether this would mean

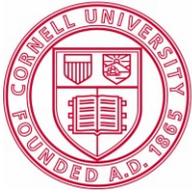
that it could never be less than three days.

- a. C. Liang said that an exchange needs to be made at least three days prior to the hearing.
- lxi. R. Bensel asked if the Committee would be interested in moving to adopt.
- lxii. R. Lieberwitz moved to amend to four business days as it seems more reasonable.
 1. K. Karr expressed her belief that the Code reflects a sufficient amount of time to make decisions.
 2. R. Lieberwitz **withdrew** her motion.
- lxiii. K. Ashford made a motion to vote as written.
 1. The language was marked **resolved** by a vote of 7-0-2.
- lxiv. M. Battaglia said that the Committee would be able to vote on the housekeeping amendments as a whole once the discussion is complete.
- f. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, Policy 6.4, Selection Questions, and the Complainants Advisor
 - i. **Tabled** to the next meeting.

IV. Adjournment (Chair)

- a. The meeting was adjourned at 6:39pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Clerk of the Assembly



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Minutes

Codes and Judicial Committee

University Assembly

March 21st, 2018

5:05pm - 6:05pm

316 Day Hall

I. Call to Order (Chair)

- a. Call to Order
 - i. M. Battaglia called the meeting to order at 5:17pm.
 - ii. University Hearing and Review Board Chairs were introduced to the Committee.
- b. Roll Call
 - i. *Present:* M. Battaglia, R. Bensel, R. Lieberwitz, C. Riley, E. Winarto
 - ii. *Absent:* K. Ashford, D. Barbaria, M. Horvath, K. Karr, G. Kaufman, J. Kruser, V. Price, D. Putnam, K. Zoner
 - iii. *Others Present:* J. Cisne, T. DeVoogd, M. Lee, C. Liang, A. Mooney, T. Overton, R. Parker

II. Approval of Minutes (Chair)

- a. March 14, 2018
 - i. **Tabled** to the next meeting.

III. Business of the Day

- a. Discussion with the University Hearing and Review Board Chairs (T. DeVoogd, T. Overton, R. Scanza, A. Mooney, & J. Cisne)
 - i. J. Cisne said that he is working on a “small list of possibilities” for everyone and that his goal is to work with both the Chairs and the entire pool. He said this includes revision of Hearing Board procedures, a possibility of training members to allow procedures to move faster, benchmarking what other universities do and providing opportunities for greater involvement.
 - ii. M. Battaglia asked the Chairs what the Committee could do make their jobs more manageable such as clarifying the Code or processes.
 - iii. A. Mooney said that she finds it helpful to have an attorney that interprets the Code. She said she personally finds the Code to be pretty straightforward, but the procedures require a lot of work to be done. She added that it would help to have an expanded pool of panel members, since the Judicial Administrator’s (JA) Office finds trouble having people participate. She noted that when people come onto the panel, they don’t necessarily want to follow the Code and that the Board needs to work with panel members to ensure that they do.
 - iv. R. Bensel asked whether there is a reason why procedures in the Code have drifted out.
 1. A. Mooney said that the procedures were not written very clearly and have not

been revised in a while.

2. M. Battaglia said that the Committee has examined expanding the pool in the past and was told that it was not something that was necessarily needed to be done but something that could be done.
- v. T. Overton agreed that access to Counsel for the Chairs and Board is very helpful. He said he hasn't found the procedures as confusing and found M. Horvath's email attachments to be helpful. He added that lack of information in the last hearing made the process a little difficult and said that there needs to be an emphasis on clarity.
- vi. M. Horvath said that a written reprimand is the baseline for the JA's Office, but agrees that some of the sanction needs to have an appeal. She said that the most difficult constituency to reach out to are faculty members and would be interested in providing additional training.
- vii. M. Battaglia said that the Committee is reviewing different options to expedite the process such as having unresponsive members unseated from the Board.
- viii. R. Lieberwitz said that she is concerned about having the university General Counsel's Office answering questions about the Code. She said that it seems odd that someone who has a stake be involved, since the Board would be provided with a certain point of view about what the Code means. She asked if the Chairs had any concerns about this.
 1. A. Mooney said that in practice, she is not concerned. She added that the panel would ask the Counsel what an aspect of the Code means if they are struggling and she does not believe it is her role to interpret the Code.
 - a. R. Lieberwitz asked whose role it would be.
 2. T. Overton said that the General Counsel's role is specifically to support the Hearing Board Chairs, not the university. He said that he found the individual to be extremely helpful with the interpretation of the Code as well as adhering to process.
 3. R. Lieberwitz noted she was surprised to hear that the Hearing Board was asking the university Counsel's office for advice. She said that one person's view in applying the Code may not necessarily be the same for another.
 4. A. Mooney said that in her experience, the Counsel would not be determining whether the individual in question had violated the Code, but would consider what to do if both the Counsel and the Chair agree that they did in fact violate the Code.
 5. T. Overton said that there are different perceptions within the Board.
 - a. R. Lieberwitz said that she understands, but she finds it to be an issue of whether the sanctions are sensitive enough to have a range of views.
 6. M. Battaglia said that baseline standards can change.
- ix. M. Horvath said that the attorney that advises the Board is different from who advises Office of the JA (OJA). She said that the Code is a Trustee's document, so one of the responsible offices is the Office of the General Counsel.
- x. C. Riley asked what action happens afterward in cases where the Board is hesitant to apply the penalty seen in the Code.
 1. A. Mooney said that they would drop down the penalty. She said that the issues brought up to the Chairs are serious. She noted that there is an ambiguity on what "the record" means and that there is hesitance in applying it.
 2. T. Overton said that it may partly be due to lack of clarity in terms of where "the record" would show up.
 3. J. Cisne said that they could have yearly trainings on what "the record" means.

- xi. C. Riley questioned whether the safety of the campus or of the individual is being evaluated. He said that in consideration of the safety of the campus, it is important to maintain a distinction and make people aware of what would happen when they violate the Code.
 - 1. A. Mooney said that is exactly the question, and that she does not have an answer.
 - 2. T. DeVoogd said that in most cases, the JA suggests a penalty and that it is possible to go more or less severe than what the JA recommends, which gives the Hearing Board the possibility of deciding how egregious the circumstances were.
 - 3. M. Battaglia stated that Hearing Board decisions are all public record and that the system exists to allow for the Board's discretion.
- xii. R. Bensel said that discussions in Committee meetings have come up about the length of time it takes to adjudicate a case and what the sources of delay would be, as well as how to address those issues. He asked what the major source of delay in the hearings are.
 - 1. T. DeVoogd said that if it is a serious case, the individual would accompany a lawyer, who is often busy.
 - 2. A. Mooney said that the respondent is the one who would supposedly be harmed by the delay.
 - 3. T. Overton said that it can take varying amounts of time to ensure they come up with something that works even if it does extend for a greater period of time.
 - 4. M. Horvath said that the issue tends to lie in the academic schedule, such as the first two weeks of school, mid-October and February. She noted that in the past two years, timelines have been expedited and added that on average the timelines are within 39 days of adjudication, which is decent and only 18 days longer than what the Code has initially.
 - 5. T. Mooney asked if 39 days is unacceptable.
 - a. R. Bensel replied no.
- xiii. R. Bensel said that Committee discussions supplied the possibility of having different ways of processing renewal for interim measures. He directed the Committee and Board to the meeting packet. He asked which option the Chairs think would work best.
 - 1. A. Mooney said that she does not recommend the Hearing Board Chairs come together collectively, as it would merely be difficult to match everyone's schedules.
 - 2. M. Battaglia said that the Committee discussed having a set duration of interim contact procedures. He said that the hope is to ensure interim measures do not last too long and are also not too onerous.
 - a. T. Devoogd said that is parallel to the current system.
- xiv. M. Battaglia thanked the Chairs for attending the meeting and asked if there was anything else the Committee could do to help to ensure transparency and that the Code is working.
- xv. T. Devoogd said it would be helpful to have someone in the Committee look into little details in procedures of the Code.
- xvi. T. Overton said that he thinks it is a great change to move public hearing time forward, but a longer timeline and plan would be needed to ensure it takes place.
- xvii. A. Mooney said that the Code says that the audience should be in a separate location.
 - 1. M. Battaglia said that his understanding is that the Code seems to intone that if possible, they should be in the same location.
 - 2. A. Mooney recommended that the Committee look at the issue of placing individuals in a different location, because she personally finds it silly.
 - 3. T. Overton said that the motion and charge in the student body was that

- individuals were unsure of whether they could be in the same room.
4. T. DeVoogd said that it would have worked in a large room.
 5. M. Horvath said that cutting out that part of the procedures would not necessarily be the solution.
 6. J. Cisne said that it would have been more convenient to have a big room.
- xviii. T. Overton commented on the Board removal process. He said that the current language seems to give the Chair a fair amount of latitude, whereas the proposed language is much more procedural. He said he was unsure in what situation the proposed language would apply.
1. M. Battaglia said that the original language was written when there was only one Chair and that there is ambiguity now with multiple Chairs.
- xix. J. Cisne asked whether it would be appropriate to have the JA make the request since her office is responsible for staffing Board members, or be required to ultimately be run through with the Chair.
1. M. Horvath said that the matter would involve the Chair.
- xx. M. Battaglia said that the key is to ensure there is full communication between the Committee and Board.
- b. Working Group Update (R. Lieberwitz)
- i. R. Lieberwitz said that the Group will be meeting tomorrow in 163 Day Hall at 2pm and that the meeting next Wednesday will be publicly broadcast.
- c. For Discussion: Concerning the Previously Passed Housekeeping Amendments to the Campus Code
- i. M. Battaglia said that he drafted a proposal based on a rough consensus reached last meeting. He noted that the Committee is always free to change or modify the proposal.
 - ii. M. Horvath advised the Committee to use the word “hearing” with caution, as the Code is very specific about what it means to have a hearing, invoking procedural rights. She also requested the Committee to be careful with the language, “the Chair shall have access to all investigative materials” because much of the information is not intended to be presented to the Chair.
 1. R. Bensele asked what the alternative would be.
 2. M. Horvath said that the Chairs do not usually typically have access to materials, but have fact patterns or a summation of facts. She said that 21 days may also be a financial burden on the respondent as they would equate to billable hours.
 - iii. M. Battaglia said there was concern that the Hearing Board Chairs should have access to enough information to make a reasonable determination, and it would be essential to find language that satisfies that concern.
 - iv. R. Bensele asked whether the 21-day renewal process is automatic.
 1. M. Battaglia said that the OJA could decline to ask for renewal, in which case it would lapse.
 2. R. Bensele asked whether either party needs to request renewal.
 - a. M. Battaglia replied no.
 3. R. Bensele asked whether the OJA could eliminate the need to go back to the respondent.
 - v. M. Horvath suggested eliminating “If the Chair determines [...] may submit written statements” and keeping just the first two and last two sentences from the proposed language.
 - vi. M. Battaglia said that a concern was brought forward in making sure that the Hearing Board chairs know they have the ability to modify. He said that he will re-tweak the

- language to make it more workable.
- vii. R. Parker suggested keeping the part about parties being able to submit written statements out of what M. Horvath suggested to be stricken.
 - 1. R. Lieberwitz asked what R. Parker is agreeing with.
 - 2. R. Parker said that he agrees with the concern about having to give everything to the Hearing Board Chair, but would want the Chair to be able to modify and for parties to be able to submit anything they find relevant.
 - viii. R. Lieberwitz said that she believes the proposed language is good as written, but understands the issue of access to investigative materials. She asked whether the Chair and parties receive a summary from the OJA's office.
 - 1. M. Horvath said that there is currently nothing in place. She said that the best practice is to usually keep no contact directives in place until circumstances change.
 - ix. M. Battaglia said that his understanding of the discussions so far is to remove the vast majority of the proposed language and retain the part that Chairs may choose to modify the directive as well as that the parties may submit written statements. He said that the goal is to be responsive and make sure that the suggestions are posted for comment in the Office of the Assemblies once finalized.
 - x. R. Benseal said that he believes all of the bolded language in the last page of the meeting package is fine.
 - xi. M. Battaglia said that the Committee could briefly address the proposed language before moving into it next week.
 - xii. M. Horvath **withdrew** her motion.
 - xiii. R. Lieberwitz said that she believes it is unclear what the Chair may consider.
 - 1. M. Battaglia said that it comprises of what they receive in order to make an informed decision.
 - 2. M. Horvath said she could send out a triage matrix of interim measures via email.
 - xiv. M. Horvath suggested crossing off "the Chair shall have access [...] may submit written statements" from the proposed language.
 - xv. M. Battaglia said that he will rework the proposed language based on discussions from the meeting and will be contacting the Office of the Assemblies regarding Hearing Board applications.
 - xvi. M. Horvath said that she felt that one of the Hearing Board questions were a little prejudicial.

IV. Adjournment (Chair)

a. Adjournment

- i. The meeting was adjourned at 6:24pm.

Respectfully submitted,
Dongyeon (Margaret) Lee
Clerk of the Assembly

Language Comparison from Returned Changes to the Campus Code of Conduct

Proposed language adding discretion to No Contact Directive procedures

President's Language/Concern.	Proposed Language (Title Three, Art. III, Sec. B.2 (pg. 19, 2017)).	Possible Compromise Language/Solution
<p>I support the UA's proposed change, in part. In addition to the JA and JCC, victim advocates should have the opportunity to comment on a change making all no-contact orders mutually binding. Also, I question the wisdom of creating a new right of appeal to a process that is, by its nature, intended to be interim and would suggest that lines 479 - 489 be eliminated.</p>	<p>a. In cases involving allegations of harassment, abuse, assault, rape, or other menacing activity, the Judicial Administrator, after making a reasonable effort to meet with the accused if appropriate to do so, may issue a No-Contact Directive, binding upon all involved parties.</p> <p>b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.</p> <p>c. In the event the Judicial Administrator is notified of a violation of the terms of the No-Contact Directive, the accused shall be provided with an opportunity to review the matter with the Judicial Administrator within two business days. If the Judicial Administrator determines, based upon the information available, that the No-Contact Directive has been violated, he or she may impose additional interim measures or suspend the accused temporarily, pending resolution of the underlying case.</p>	<p>Provide additional time for comment and clarity as to how the Code applies in varying cases and the interaction with Policy 6.4 Provide context as to past issues with interim directives being utilized in long-term manners.</p>
	<p>c. In the case of such directive, the accused may petition the University Hearing Board in writing for a review of the decision. That board shall meet to consider the petition as soon as possible, but no later than seven business days after it receives the petition. However, that board may grant a postponement upon the</p>	

Commented [MB1]: Per the Committee's discussion, these provisions will be included in the packet to UHRB Chairs prior to their attendance at a CJC meeting.

Commented [MB2]: Interim measures and concerns over them being unreviewable are discussed at some length in the Minikus Report (issued on June 11, 2015).

Commented [MB3]: The Committee in the past has provided the President with multiple options, all of which are approved by the CJC in cases where the Committee believes multiple options equally achieve the goals of the Committee. In this case, alternative language that does not directly create a right of review but accomplishes a similar goal could read:

****See flowchart handout****

	<p>request of the accused, to a date not later than 21 calendar days after the petition is received. If that board determines that the No-Contact Directive was improper or is no longer necessary, it shall lift the directive immediately. The board's decision may not supersede an active court order.</p>	
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Proposed language increasing the judicial boards pool size and clarifying the application process:

Existing Language (Title Two, Art. IV, Sec. C.1 (pg. 14-15 2017)).	Proposed Language (Title Two, Art. IV, Sec. C.1 (pg. 14-15 2017)).
<p>C. Pool of Board Members</p> <p>1. The University Hearing Board and University Review Board pool shall comprise 55 members confirmed by the University Assembly: 25 students, 15 faculty members, and 15 nonfaculty employees. Faculty members are nominated by the Dean of the Faculty. For other candidates, the Office of the Assemblies will solicit written applications, and the Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.</p>	<p>C. Pool of Board Members</p> <p>1. The University Hearing Board and University Review Board pool shall comprise 75 members confirmed by the University Assembly: 35 students, 20 faculty members, and 20 nonfaculty employees.</p> <p>a. Faculty members are nominated by the Dean of the Faculty for consideration by the Codes and Judicial Committee.</p> <p>b. For students and nonfaculty employees, the Codes and Judicial Committee shall solicit written applications in consultation with the Office of the Assemblies which shall provide logistical support.</p> <p>The Codes and Judicial Committee shall nominate candidates to the University Assembly for its confirmation no later than the last regular meeting of the outgoing University Assembly. The University Assembly Executive Committee may make emergency appointments on a temporary basis.</p>

Commented [MB4]: This provision never stated to where the members are nominated. Further, the UA bylaws delegate authority regarding recruitment to the boards to the CJC. Even if the DoF may nominate directly to the UA, the Code is silent on how the UA will handle that nomination and the bylaws would thus delegate that to the CJC.

Commented [MB5]: Add clarity around the role of the Office of the Assemblies in this process as the CJC writes the questions and handles the entire process aside from some publicity and logistics.

Such directives may be initially issued for a duration of up to 21 calendar days. Should the Judicial Administrator believe a No-Contact Directive remains necessary after that time, he or she may petition a University Hearing Board Chair to renew the directive for up to an additional 21 calendar days. Should the Chair choose to extend the directive, he or she may modify the directive's terms but may not supersede an active court order. **Prior to a directive being renewed**, the parties to the directive may submit written statements **to the Chair for consideration**. If additional renewals are requested by the Judicial Administrator, a different Hearing Board Chair shall review each additional request. Chairs may evaluate multiple renewal requests on the same case only if all other currently serving Chairs have already reviewed an equal number of requests on that case.

Commented [MB1]: Nb. The Committee discussed limiting the length of the written statements. This may be accomplished through the procedures or alternatively through potential language along the lines of:

"... submit written statements **to the Chair for consideration**, **statements may not exceed two typewritten pages.**"

Initial Duration

- **21 days**
- 40 days
- 60 days
- Other time

Reviewing Party

- Full Hearing Board
- Hearing Board Chair
- **Rotating Hearing Board Chair**
- "Review Group" E.g. 1 faculty, 1 staff, 1 employee from the judicial boards or other group

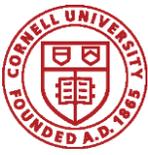
Reviewing Process

- In-person hearing
- **Paper hearing**
- Virtual/remote
- Other review

Extended Duration

- **21 days**
- 40 days
- 60 days
- Other time

Updated 3/27/2018



Policy 6.4 - Resolution of Reports Against Students: Hearing Panel - Questionnaire for Pool Applicants

Name of Individual Completing Form:

Date Submitted:

*The Policy 6.4 procedures for student respondents, which became effective August 1, 2016, include a hearing with a three-member hearing panel of faculty and staff members as well as a non-voting hearing chair. Individuals who are willing to serve on hearing panels are asked to complete a brief application, which is set forth below. We appreciate your candor and time in completing the application, and your willingness to consider this appointment. If you have any questions or need additional information about either the application process or hearing panel responsibilities, please contact Sarah Affel, Cornell University Title IX Coordinator, at sba49@cornell.edu or 607-255-2242. **Please return your completed questionnaire to the Office of the Title IX Coordinator at titleix@cornell.edu.***

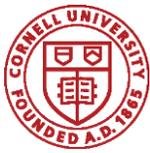
With respect to the nature of the commitment, panel members are asked to serve two-year terms, with a possibility of renewal; there is no term limit. Typically, panel members are asked to serve on two or three cases a year, and will not be asked to serve on more than four cases. However, we understand that hearings involve a substantial commitment of time and often involve difficult content and, thus, panel members may limit their involvement to just one case per year. Panel members may also decline panel requests on a case-by-case basis based upon their schedule or the facts of a given case, with the expectation that panel members will seek to accept panel assignments where feasible and within the number of assignments to which they have committed.

For any given case, panel members may be required to spend ten to fifteen hours preparing for the hearing by reading written materials, such as investigative interview statements, and meeting with the other hearing panel members and the hearing chair to determine witnesses for the hearing and draft examination questions for those witnesses and the parties. Hearing panel members needn't have any expertise; the chair provides guidance. The hearings themselves might take four to six hours, and the deliberations might take several hours. Some hearings will be conducted during business hours and some in early evening hours.

Under the new procedures, there is a three-member appeal panel that includes two ex officio members and a hearing panel member. Thus, hearing panel members will also be asked to sit on appeal panels, excluding cases for which they sat on the hearing panel. Appeal panel assignments are counted in the maximum of four panel assignments per year.

Hearing Panel - Questionnaire for Pool Applicants

Last Updated: 07/25/2017



With respect to the educational expectations, panel members are required to attend approximately six hours of introductory educational sessions before serving on a panel. Ongoing education will be offered throughout the year.

Before answering the below questions, please take time to review:

- *“Procedures for Resolution of Reports Against Students Under Cornell University Policy 6.4,” available at <http://titleix.cornell.edu/procedure/>.*
- *Cornell University Policy 6.4, “Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct,” available at https://www.dfa.cornell.edu/sites/default/files/vol6_4.pdf.*

1. What is your job title and departmental affiliation?

[Insert Text]

2. Why are you interested in serving?

[Insert Text]

3. Do you have any reservations about your ability to follow the policy and procedures, especially if you do not agree with them?

[Insert Text]

4. Do you have any reservations about your ability to remain impartial and make decisions in any given case based solely upon the evidence presented in the case, rather than upon preconceived notions, prior experience, or any other factors external to the record of the case?

[Insert Text]

5. Cases may involve students using drugs and alcohol, having multiple sexual partners, and engaging in a range of sexual activities. Do you have personal



opinions about student use of drugs and alcohol, gender roles, gender identity, sexual orientation, or sexual mores that could interfere with your ability to be impartial, dispassionate, and make decisions based solely upon the evidence presented in a case?

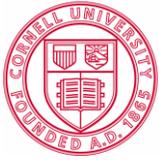
[Insert Text]

6. Do you think that explicit testimony about sex acts or use of drugs or alcohol might bother you to the point where you are unable to serve as an effective panel member?

[Insert Text]

If you wish to explain any of your answers further, please do so in the below space.

[Insert Text]



Cornell University
University Assembly

UHRB Application Questions - 2018 Cycle:

1. For Students, please provide the expected semester and year of your graduation.
2. There are only a few hearings each year, but when they occur they often happen at night and can go late or span across multiple dates. Are you able to commit to complete a hearing once you start?
3. Hearings often, but do not always, occur after 5:30 PM on Tuesdays and after 3:00 PM on Fridays. What is your general availability on those days/times?
4. If selected to be a member of the University Hearing and Review Boards, you would be expected to undergo a couple of hours of training at the start of the academic year. Can you commit to undergo that training?
5. Please describe in your own words what the University Hearing and Review Boards are and the role they play in Cornell's judicial system.
6. Hearing panels must occasionally convene in the summer months. Although you are not expected to be available in the summer it is helpful for us to know. Do you anticipate being available in the summer months?
7. How often do you check email and how long does it take you to respond on average?
8. If you were subject to discipline either at Cornell or elsewhere, please explain how this experience will serve to make you a more conscientious board member. We expect you to

share all instances of discipline, but having been disciplined does not automatically exclude you from service on the boards. Such disclosures will be treated confidentially.

9. For this question, assume the Code requires the Judicial Administrator's office (JAO) to provide notice of a hearing to the accused individual at least one week before a hearing. Further, at least three days before a hearing, the JAO must provide a list of witnesses and exhibits that will be presented at the hearing.

Suppose you are on a panel hearing a case in which you believe the accused individual violated the Code. However, the JAO provided notice to the accused five days prior to the hearing, and the list of witnesses one day in advance. The advisor representing the accused individual has not raised these procedural flaws as problematic. What would you do?

10. Assume that you are asked to serve on a hearing panel concerning a provision of the Code with which you personally disagree. How would you respond? Would you recuse yourself from the hearing panel, potentially penalize an individual for a violation of the Code with which you disagree, or take a different course of action? Please explain your reasoning.
11. Discuss which violations of the Campus Code of Conduct, if any, you believe to potentially warrant suspension, expulsion, and/or transcript annotation as penalties. Please explain your reasoning.
12. How do you believe the Campus Code of Conduct should be applied when an ambiguity arises?
13. As a member of the University Hearing and Review Boards, you would be expected to recuse yourself from a particular panel if you doubt your ability to assess the case fairly. If asked to serve on a hearing panel, under which potential cases, if any, would you recuse yourself and why?
 - a. a case involving an alleged Code infraction that you had witnessed?
 - b. a case involving an acquaintance of yours?
 - c. a case which you had read or heard a fair amount?

14. If there is anything else you wish to discuss, please do so below (250-word limit).