U.A. Resolution # 4

Addressing Housekeeping Changes and Laying the Groundwork for a Holistic Evaluation of the Campus Code of Conduct

October 3, 2017

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


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

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

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

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

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

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

Whereas, the Assembly’s Codes & Judicial Committee (the Committee) is undertaking the process of conducting a holistic evaluation of the Code to ensure it reflects our practices and is in a form that is clear for the Campus Community to understand; and
Whereas, in beginning this process the Committee is aware of pending Code changes requested by the Administration; and

Whereas, in beginning this process the Committee is aware of pending Code changes requested by the Judicial Codes Councilor; and

Whereas, the Committee is also aware of other pending Code changes which reflect the current practices of Cornell’s Judicial System, correct omissions or errors in the code, and have been pending for some time; and

Whereas, the Committee believes handling these pending, “housekeeping” changes prior to undertaking an evaluation of the Code enables the Committee to handle long-standing requests and requests for improvement; and

Whereas, these University President has requested the Committee examine the Code to improve its readability; and

Whereas, it is the Committee’s understanding that the University Administration has requested any changes be done together prior to an evaluation of the Code; and

Whereas, the University Administration has directly and indirectly requested some of the included Code changes; and

Whereas, for many of these changes the Committee has worked “hand in glove” with the relevant stakeholders and members of the Administration to craft these changes; and

Whereas, clearing these requests best balances the current needs of custodianship and responsiveness to change with the goal of evaluating the Code; and

Whereas, some of the proposed changes are time sensitive and handling them will allow the Committee to best devote its attention to evaluating the Code; and

Whereas, these changes bring the Code to a state where the Committee is comfortable focusing its attention on a holistic Code evaluation; and

Whereas, a holistic Code evaluation is a long-term undertaking which will take considerable time, resources, and community input; and

Whereas, delaying implementing these changes potentially years until the completion of a Code evaluation and allowing known flaws, omissions, and similar issues to persist when fixes have
been identified and extensively discussed, debated, and vetted, would not be consistent with
standards of good stewardship and custodianship; and

Whereas, it would be wasteful and less than prudent to discard and discount the considerable
time and effort expended over the preceding years by the Assembly, the Committee, various
members of the Administration, and the Campus Community to identify and correct these issues
within the Code when solutions have already been crafted and presented; and

Whereas, the Committee appreciates the input and assistance of various offices on campus
including the Offices of the Judicial Administrator, Risk Management, Judicial Codes Councilor,
Assemblies, and many others in handling these “housekeeping” changes; therefore

Be it Resolved, the appended changes be incorporated to the Campus Code of Conduct and are
approved in a non-severable manner:

I: MODIFYING SUSPENSION LENGTH AND LIMITATIONS PERIOD FOR UNIVERSITY REGISTERED
ORGANIZATIONS

Whereas, the Judicial Administrator requested the Committee consider increasing the maximum
suspension length for University Registered Organizations from one year to five years; and

Whereas, the Judicial Administrator also requested the Committee consider increasing the
limitations period for University Registered Organizations from one year to three years; and

Whereas, the neither of these changes modify the policies or procedures for individuals; and

Whereas, the Judicial Administrator believes that a five-year maximum suspension length
provides the Hearing and Review Boards (the Boards) additional discretion to handle cases; and

Whereas, this lengthened suspension timeline allows the Boards to apply more granularity to a
sanction as a middle ground to dismissal; and

Whereas, the Judicial Administrator believes that a three-year limitations period enables the
better handling of long-term violations such as hazing; and

Whereas, this additional time will be viewed in-context by the Boards when deciding cases; and

Whereas, the Committee reviewed this request, gathered feedback from stakeholders, and held it
on its agenda for multiple meetings; and

Whereas, the Committee agrees with this request and received positive feedback from
stakeholders; and
Whereas, the Committee approved this request verbatim without changes; therefore

Be it Resolved, that Title Three, Article III, Section D.4 (Code pg. 24) be amended to add:

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d. In cases where the Respondent is a University-Registered Organization the period shall be no
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more than three calendar years from the alleged violation.
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[Current subsection d advanced to subsection e]
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Resolved, that Title Three, Article IV, Section A.1.c.6 (Code pg. 35) be amended to read:
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(6) Suspension of all privileges for a stated period not to exceed one year five years.
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II: ADDING DISCRETION TO INSTANCES OF NON-COMPLIANCE WITH SANCTIONS AND REMEDIES
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Whereas, the Judicial Administrator requested the Committee consider modifying the Code to
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allow the Judicial Administrator discretion in cases of offenders not complying with prescribed
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sanctions, remedies, or penalties; and
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Whereas, the Code currently mandates that non-compliance result in automatic suspension until
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compliance is achieved; and
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Whereas, the Judicial Administrator requested the Committee consider modifying the Code to
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add a violation for refusal to comply with a penalty or remedy; and
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Whereas, the Code does not currently have a violation for such an action, instead relying upon
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automatic suspension; and
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Whereas, the Judicial Administrator believes that being able to use discretion best serves the
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educational nature of a University and the interests of justice; and
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Whereas, the Committee reviewed this request, gathered feedback from stakeholders, and held it
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on its agenda for multiple meetings; and
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Whereas, the Committee agrees with this request and received positive feedback from
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stakeholders; therefore
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Be it Resolved, that Title Three, Article III, Section C.2 (Code pg. 36) be amended to read:
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2. If an offender has not complied with the prescribed penalty or remedy within the specified
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time, the Judicial Administrator shall may notify the University Registrar, Office of the Dean of
Students, and other offices on a need-to-know basis that the individual or organization is suspended, and the suspension shall have immediate effect and continue until the offender has complied. For any violation of the terms of probation committed during the probationary period, the Judicial Administrator may impose on the offender additional penalties, including suspension or dismissal. The offender may request an appearance before the Judicial Administrator in order to show the fact of compliance, to contest the violation of probation, or to argue for a lesser penalty. The offender may petition the University Hearing Board in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance or for violating probation.

Resolved, that Title Three, Article II, Section A.3 (Code pg. 18) be amended to add:

(m) To refuse to comply with any penalty or remedy given pursuant to this Code.

III: CLARIFYING THE ROLE OF NON-MATRICULATED MINORS

Whereas, the Office of Risk Management requested the Committee consider modifying the definition of student in the Code to exclude non-matriculated minors; and

Whereas, the Office of Risk Management stated that in a number of areas, minors on Cornell’s campus are subject to separate written policies and procedures for behavior; and

Whereas, the Office of Risk Management stated that non-matriculated minors raise a number of unique issues when examining discipline; and

Whereas, the Office of Risk Management worked with the Committee to examine sample behavioral policies from various programs; and

Whereas, the Committee expresses its gratitude to the Office of Risk Management for their assistance and willingness to explain the rationale behind the proposed change; and

Whereas, the Committee reviewed this request, gathered feedback from stakeholders, and held it on its agenda for multiple meetings; and

Whereas, the Committee agreed that the Code is not the proper place to address non-matriculated minors; and

Whereas, the Committee was concerned about non-matriculated minors, particularly high school students being removed from the scope of the free expression protections contained within the Code; and

Whereas, the Committee approved this request verbatim without changes; and
Whereas, the Committee discussed either including a provision in the Assembly’s Charter or Bylaws reaffirming the Committee’s ability to examine these behavioral policies or adding language directly into the code to that effect; and

Whereas, U.A. Resolution #5 incorporates such a provision; and

Whereas, such language is meant to ensure that concerns about specific policies may be brought to and examined by the Committee; and

Whereas, any authority over other policies would be pursuant to the Assembly’s role in general policy development and advisory powers; therefore

Be it Resolved, that Title Two, Article I, Section B.2 (Code pg. 18) be amended to add:

3. Individuals enrolled in or taking classes at the University while still an elementary, middle, high school student, or foreign equivalent, so long as such individuals are subject to written behavioral expectations, policies, or procedures are not students under the definition of this Code.

IV: DISCONTINUING THE USAGE OF INDEFINITE SUSPENSION

Whereas, the Office of the Judicial Codes Counselor requested the Committee consider removing indefinite suspensions from the Code in the 2014 – 2015 academic year; and

Whereas, the Office of the Judicial Codes Counselor argued that such suspensions create uncertainty for suspended students; and

Whereas, the Office of the Judicial Codes Counselor argued that the University’s educational mission and the interests of justice are better served through the usage of suspension with a definite term or in extreme cases dismissal; and

Whereas, the Committee has discussed these changes multiple times in interceding years; and

Whereas, the prior usage of indefinite suspensions was to demonstrate growth in an individual before being permitted to return; and

Whereas, the Boards have a variety of other tools that are now able to fill this goal; and

Whereas, the Judicial Administrator has stated her agreement with the rationale for not using indefinite suspension; and
Whereas, the Judicial Administrator has stated it is her practice not to seek indefinite suspension; and

Whereas, the Judicial Administrator informed the Committee that there are students who remain indefinitely suspended and requested it be made clear that for those students the petition procedures in the Code at the time of their indefinite suspension govern their return; and

Whereas, the Committee reviewed this request, gathered feedback from stakeholders, and held it on its agenda for multiple meetings; and

Whereas, those students who are currently indefinitely suspended will continue to remain suspended and would use the petition procedures in the Code at the time of their indefinite suspension; and

Be it Resolved, that Title Three, Article II, Section E.1c (Code pg. 24) be amended to strike:

c. The offender may petition in writing for readmission from indefinite suspension.

[Subsequent subsections d and e relabeled appropriately]

Resolved, that Title Three, Article IV, Section A.1.a.8 (Code pg. 34) be amended to read:

(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. Such petition shall be submitted no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester. If the Judicial Administrator agrees with the petition of the accused, he or she may permit the readmission without the petition being considered by the University Hearing Board, after consulting with appropriate professional colleagues and receiving approval of a Hearing Board Chair. If the University Hearing Board denies the petition, the accused may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the University Hearing Board. While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree. [Add footnote reading “The Code previously allowed for indefinite suspension. While indefinite suspensions are no longer given, any student indefinitely suspended at the time of indefinite suspensions being removed shall continue to be indefinitely suspended and subject to the petition provisions in-place in the Code at the time of the indefinite suspension”]

Resolved, that Title Three, Article IV, Section A.2.b (Code pg. 34) be amended to read:
b. Ordinarily, the penalty for a third violation by a student within a twelve-month period should be probation or suspension from the University for a stated or indefinite period and denial of academic credit for the term in which the suspension occurs. The penalty may be reduced if a lesser penalty would more appropriately serve the interests of justice and if, in addition, the offender expressly agrees not to engage in misconduct of specified kinds in the next twelve months. In such a case of indefinite suspension, the offender may petition the University Hearing Board in writing for readmission, but no application for readmission for the academic term following the academic term in which the suspension occurred will be permitted.

V: CLARIFYING UNIVERSITY HEARING AND REVIEW BOARD APPOINTMENT PROCEDURES

Whereas, the Assembly, Committee, and Dean of the Faculty are responsible for selecting and confirming members of the University Hearing Review Boards (the Boards); and

Whereas, the Assembly and Committee take this obligation seriously and exercise their utmost care in the selection process; and

Whereas, the President in the Spring of 2017 noted that the Code did not fully describe the practices that the Committee and Assembly had been utilizing; and

Whereas, the President in her message raised important concerns about transparency; and

Whereas, the Assembly and Committee take these concerns seriously and agree with the importance of transparency; and

Whereas, the Committee reviewed the concerns raised, gathered feedback from stakeholders, and held the topic on its agenda for multiple meetings; and

Whereas, the changes, while minor, align the practices currently utilized in UHRB selection with the Code; therefore

Be it Resolved, that Title Two, Article IV, Section C.3 (Code pg. 14-15) be amended to read:

3. Members of the University Hearing Board and University Review Board pool shall serve terms of office as follows:

   a. All members shall be appointed for two-year staggered terms, except for students entering their final year of study, who shall be appointed for one-year terms.

   b. Terms of office shall begin June 1 of the year appointed. Any appointment to fill a vacancy or to address an emergency shall become effective immediately.

   c. Currently serving members may be appointed for additional terms if reconfirmed by the University Assembly after review by the Codes and Judicial Committee.
The Chair of the Hearing Board or Review Board shall have the authority to remove a member of the pool if the member is not honoring his/her commitment to the university to communicate promptly with the Chair or the Judicial Administrator's office, to participate in hearings, to arrive punctually, and otherwise to participate responsibly in this process.

VI: CLARIFYING JUDICIAL ADMINISTRATOR REAPPOINTMENT PROCEDURES

Whereas, the Committee was made aware of an incongruity between the Code and historical practice for reappointment of a sitting Judicial Administrator; and

Whereas, the Code as currently written requires that the Chair of the Assembly convene a search committee for a new Judicial Administrator in the October preceding the Judicial Administrator’s term expiring; and

Whereas, conducting a full search when the sitting Judicial Administrator would like to continue serving is not a prudent use of limited resources; and

Whereas, the Committee agrees with concerns raised by the University Administration that the Code should reflect current practices; and

Whereas, the Committee believes this provision was originally put in place to provide feedback to the Judicial Administrator prior to reappointment; and

Whereas, prior Judicial Administrator’s in their reports to the Assembly, informal conversation, and formal written reports have identified a request for a more formal feedback structure; and

Whereas, the in the 2014 Judicial Administrator’s report the previous Judicial Administrator, Mary Beth Grant, requested a more formal structure so that office “has more opportunities for more accountability, mentorship and professional development, better efficiency and a better design philosophically.”; and

Whereas, Mary Beth Grant served as Judicial Administrator for sixteen years and the Assembly and Committee greatly appreciate her recommendations and prior service; and

Whereas, the Committee believes this area is one that is important to the long-term health of the Office of the Judicial Administrator and their role in application of the Code; and

Whereas, the Committee believes there is value in having a formalized feedback process and dialogue for the Judicial Administrator prior to reappointment; and
Whereas, the Committee believes adding a feedback provision to the reappointment process is beneficial to both the Community and Judicial Administrator; and

Whereas, the Committee believes by providing advance feedback and making a recommendation far ahead of a formal confirmation vote this procedure lessens the risk of unexpected confirmation decisions by the Assembly and enables the Judicial Administrator to better arrange their affairs; and

Whereas, the Committee and Assembly do not intend or wish to interfere with the President’s sole prerogative to nominate or decline to nominate the Judicial Administrator for an additional term; and

Whereas, the Committee believes that a modified procedure, based upon the existing search committee procedure strikes the correct balance between managing resources and providing feedback; and

Whereas, the Committee is aware of the time-sensitive nature of this request; therefore

Be it Resolved, that Title Two, Article II, Section A.3 (Code pg. 12) be amended to read:

3. The Judicial Administrator shall be appointed for a two-year term. A Judicial Administrator can be reappointed for additional terms. In October of the year

a. Six months preceding the expiration of the term of the Judicial Administrator, the chair of the University Assembly shall convene a six-member committee, including two members appointed by the President, two members appointed by the University Assembly, the chair of the Codes and Judicial Committee, and the Judicial Codes Counselor to provide feedback to the Judicial Administrator and evaluate their term. The committee will internally elect a chair and shall make a recommendation to the President either in favor or against the Judicial Administrator being nominated for an additional term. Such recommendation must be made at least four months prior to the expiration of the current terms. of

b. Upon the University Assembly chair’s receipt of notice of the Judicial Administrator’s resignation or removal, the chair shall convene a six-member search committee, including two members appointed by the President and four members appointed by the University Assembly, to propose two or more nominees to the President. The President shall appoint or reappoint a candidate with the concurrence of the University Assembly. In the event of an unexpected vacancy, the Associate Judicial Administrator shall be appointed by the President, with the concurrence of the University Assembly, to serve until a permanent Judicial Administrator is appointed.

VII: ALIGNING PRACTICES WITH PROCEDURES REGARDING NO-CONTACT DIRECTIVES
Whereas, the Office of the Judicial Codes Counselor requested the Committee consider clarifying language around no-contact directives in the Code during the 2014–2015 academic year; and

Whereas, the Office of the Judicial Codes Counselor argued that the current language resulted in scenarios where an individual bound by a no-contact directive was antagonized by another individual not bound by a directive; and

Whereas, the Office of the Judicial Codes Counselor argued that the current language only allowed the Judicial Administrator to suspend an individual who was found to violate a no-contact directive as an additional interim remedy; and

Whereas, the Office of the Judicial Code Counselor argued that the University’s educational mission and the interests of justice are better served through the usage of mutual no-contact directives in interim situations; and

Whereas, the Office of the Judicial Codes Counselor stated that interim no-contact directives are designed to be used as a short-term stopgap prior to a hearing on the merits but in the past, had been used for an extended period; and

Whereas, because of their interim nature the Code currently does not contain provisions by which an interim no-contact order may be appealed; and

Whereas, the Office of the Judicial Codes Counselor argued that adding a durational limit to an interim directive is less than ideal as it may prevent flexibility and adaptability where such a directive is necessary; and

Whereas, the Office of the Judicial Codes Counselor argued an appeals provision modelled off existing language enables oversight should interim no-contact directives be utilized for an extended period; and

Whereas, the Committee has discussed these changes multiple times in interceding years; and

Whereas, these provisions are utilized as interim measures prior to any determination of responsibility; and

Whereas, their interim nature necessitates extra care as no finding of responsibility has been made and all facts may not be known; and

Whereas, the grave nature of the offenses that result in no-contact directives being implemented also necessitate extra care; and
Whereas, the Judicial Administrator has stated her agreement with the rationale for only utilizing mutually binding no-contact directives; and

Whereas, the Judicial Administrator has stated it is her current practice to only utilize mutually binding no-contact directives; and

Whereas, the Committee reviewed this request, gathered feedback from stakeholders, and held it on its agenda for multiple meetings; and

Whereas, the Committee believes allowing discretion should a no-contact directive be violated best serves the interest of justice; and

Whereas, the Committee believes allowing for appeals of an interim no-contact directive balances the need for interim measures with the fact that interim measures by their nature are utilized prior to any determination of responsibility and best serves the interest of justice; and

Whereas, the Committee agrees with this request and received positive feedback from stakeholders; therefore

Be it Resolved, that Title Three, Article III, Section B.2 (Code pg. 19) be amended to strike:

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.

b. The Judicial Administrator shall make available to the accused the exact terms of the No-Contact Directive, as soon as it is issued.

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.

Resolved, that Title Three, Article III, Section B.2 (Code pg. 19) be amended to add:

c. In the case of such directive, the accused may petition the University Heard 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 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.
No signature block is present until the resolution has been disposed of by the Assembly (Passed, Failed, Withdrawn, etc.) Then a block with the certifying member (customarily Chair/Vice-Chair) verifying the authenticity and vote tally of the resolution.