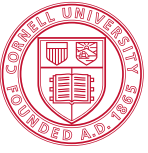


Codes and Judicial Committee Meeting Minutes

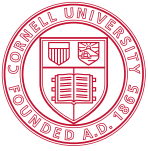
Cornell University Assembly
September 30, 2016 1:00pm – 2:30pm
B12 Day Hall

- Call to Order
 - The meeting was called to order by M. McBride at 1:31pm.
 - Present at the meeting was: G. Kaufman (Chair of the UA), T. Shapiro (CJC Voting Member, By the EA), N. Chovanec (CJC Voting Member, by the SA), H. MacDiarmid (Member of the SA), M. McBride (Chair of the CJC), M. Horvath (Judicial Administrator), and B. Murphy (Office of the Assemblies Staff)
- Review of 2015-2016 UA Resolution 9
 - The complete record of this resolution can be found at:
<http://assembly.cornell.edu/dash/actions.html#resolutions2/resolution-detail/5707c231a93003c215ad0781/>
 - G. Kaufman said that this resolution called for three sections of changes to the Code of Conduct:
 - The first part was a change taken verbatim from the Outdoor Space Working Group's report. It mainly concerns amplified sound: in order to use amplified sound outside of the hours of 12:00pm to 1:00pm, organizations or organizers would need prior approval.
 - The second part was to increase the size of the University and Hearing Review Board pool. G. Kaufman said upon further reflection it may not be a change that should be pursued. In addition, the second part also made changes to the application process. The current text of the Code does not provide a significant amount of clarity on the application process.
 - The third part of the process clarified interim measures with regard to no-contact directives. In addition, this section added a requirement for temporary suspensions to automatically be reviewed by the Hearing Board after a certain period of time.
 - These changes were returned by the Office of the President and thus not implemented. The primary reason for not accepting them, according to a letter from Interim President Rawling, was a lack of community stakeholder input.
 - G. Kaufman also reported that the University Hearing and Review Board had four vacancies over the summer there were filled by the University Assembly Executive Committee. This was done via the ranking scores compiled during the previous semester application process.
- Bill of Rights Task Force
 - M. McBride reported that Conor Hodges, member of the CJC and chair of the Bill of Rights Task Force, was unable to attend the meeting today.
 - The Task Force is currently working on a preamble, in which particular attention is being paid to the difficulties of working on an ideological document with all constituencies.



Cornell University University Assembly

- In addition, there is a particular difficulty with Graduate students given the recent National Labor Relations Board decision. The Task Force is working to clarify how the bill of rights might be affected by the decision.
 - M. McBride and B. Murphy will clarify who the members of the Task Force are.
- Update from Michelle Horvath, Judicial Administrator
 - M. Horvath said that there are some areas of the Code that do not properly reflect current practice of the Judicial Administrator. One area in particular that M. Horvath considers rather urgent is Transcript Notations.
 - Under New York State law, if a student is found responsible for certain violations, then there must be a notation placed on that student's transcript. The Judicial Administrator follows this practice in order to be in compliance with the law. However, there is no provision in the Code that allows for transcript notations. As a result, only violations specifically mentioned in NYS law (murder, robbery, aggravated assaults, etc.) are allowed to be notated on a student's transcript.
 - However, there is a provision in the code for the notation of pending disciplinary charges, according to Title Three, §IV.C.1: "An official transcript issued during the pendency of charges shall indicate that charges are pending, accompanied by a complete recitation of the pending charges."
 - This would require that the Judicial Administrator notate every transcript of every student with pending disciplinary charges. However, M. Horvath said that there is an internal conflict within the Code surrounding student privacy, and she believes that notating every transcript would be a violation of that clause.
 - M. Horvath said that she recommends amending the Code to allow for transcript notations of all suspensions and expulsions, not just the ones related to NYS law violations.
 - In addition, M. Horvath recommended resolving the requirement that every transcript for every student with pending disciplinary charges be notated. Details on this proposal are on the fourth page of the document attached to these minutes.
 - H. MacDonald said that placing Code violations on the transcript will have a negative impact on students, especially with regard to post-graduation employment or further education. H. MacDonald also said that this negatively affects minority groups, especially communities of color. M. Horvath said that only Clery/VOWA violations, suspensions, and expulsions would be notated on transcripts. This is a relatively small group of students.
 - M. Horvath said that responsibilities of being a Cornellian are different than being a citizen. The reason the Code exists is to maintain Cornell's reputation. With that, including transcript notations for certain violations increase the equity of the Cornell transcript: for students that did not commit any violations that resulted in a suspension or expulsion, their transcript will look the same as those that did.
 - N. Chovanec said that data on how many people get suspended would be helpful to better understand the implications of this policy change.
 - T. Sharpiro said that the argument that notating transcripts would negatively impact student job applications is not convincing.

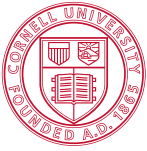


Cornell University University Assembly

- N. Chovanec and T. Shapiro asked about what the transcript notation policies of other institutions. M. Horvath said that she has not come across another institution that does not annotate transcripts in a way similar to this proposal.
- H. MacDolald asked about court cases being overturned and how that affects notations on transcripts. M. Horvath said that the institutional judicial administrative system is separate than civilian or criminal proceedings. There is a different standard of proof. As a result, overturned court cases would not affect University judicial system findings.
- T. Shapiro noted that information about the University judicial system and the responsibilities of being a Cornell student are not well conveyed to students. H. MacDolald agreed with this statement and made particular note of the international student experience – for example, many countries have a different drinking age than the United States.
- *Attached:* Handout from M. Horvath regarding transcript notations.

M. McBride adjourned the meeting at 2:30pm.

Respectfully submitted,
Brian Murphy
Office of the Assemblies



Transcription Notations Draft for the CJC

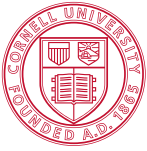
1. 129-B Obligations¹

- a. Finding of Responsible for certain Clery/VOWA Violation + Suspension or Expulsion = Transcript Notation (“Suspended after the finding of Responsibility for a Code of Conduct violation” or “Expelled after a finding of Responsibility for a Code of Conduct violation”)
 - Murder (including non-negligent and negligent manslaughter)
 - Sex offenses (forcible/non-forcible, domestic violence, dating violence, and stalking)
 - Robbery
 - Aggravated assault
 - Burglary
 - Motor vehicle theft
 - Arson
- b. Charged with a certain Clery/VOWA Violation + Withdraw pending charges = Transcript Notation (“Withdrew with conduct charges pending”)
 - Murder (including non-negligent and negligent manslaughter)
 - Sex offenses (forcible/non-forcible, domestic violence, dating violence, and stalking)
 - Robbery
 - Aggravated assault
 - Burglary
 - Motor vehicle theft
 - Arson

2. Code of Conduct Obligations

- a. Charged with a Code violation + Pending charges + Official Transcript Request = Transcript Notation (“Code of Conduct charges pending”)
 - i. An official transcript issued during the pendency of the charges shall indicate the charges are pending, accompanied by a complete recitation of the pending charge. The University, upon request of the person seeking the transcript, shall notify that person of the final judgment in the case. The University may withhold awarding a degree otherwise earned until the completion of proceedings, including compliance with a prescribed penalty or remedy. Code. Title Three, Art. IV, Sec. C.1 (Page 36, 2014).

¹ Does not include arrest and referral for liquor, drug, or weapon law violations otherwise Clery reportable.



Transcription Notation Concerns and Suggested Solutions

1. 129-B: N/A

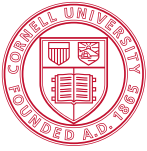
2. Code of Conduct Obligations

a. Concerns

- i. To comply with the requirements of the Code section above, for non-129-B alleged violations,² it would appear that a hold would have to be placed on every student's account until the completion of the adjudication process. The concerns which arise with this include: student privacy prior to adjudication and logistical, technological, reputational, and personal concerns. However, this Code provision is prescribed.
- ii. Given that Code section Title Three, Art. IV, Sec. C.1 (Page 36, 2014) is the only area in which the Code addresses transcript notations for cases of suspension or expulsion, it does not appear that the OJA practice (and typical conduct practice) of notating transcripts in cases of suspension or expulsions has any Code groundings. The strongest grounding to support this practice is continuing notations as part of compliance with 129-B for the 129-B violations. The second grounding of this practice has been as a contractual agreement between the accused and the OJA in the form of a Summary Decision Agreement. As part of the SDA agreement, language about transcript notation following a suspension, expulsion, or voluntary withdraw included transcript notation language; however, there are concerns with the consistency of this practice. An additional concern is that, if at the Hearing Board level, a sanction or expulsion is imposed (versus contractually agreed to by the SDA) for a non-129-B violation, the Board would be exceeding its authority to impose a transcript notation since the Code only referred to the transcript notation in the one section.³
- iii. Even under 129-B regulations, there are certain suspend-able or expellable situations not covered. These include violations of: liquor, drug, or weapons use; hazing; hacking or electronic breeches; the use of false identification; breaking and entering; harassment; endangerment; invasion or privacy; prevention of egress; property damage; bribery; fraud; and, multiple other violations in the Code.

² In order to comply with 129-B, it appears that anytime one of the violations is charged, a hold must automatically be placed on the student's account to prevent a transcript request without notice.

³ An underlying argument for this premise is that since the Code is specific about transcript notations in one section, but does not include it elsewhere, the rules of drafting construction would imply that other notations were considered and not included since some category was specifically included. Additionally, the argument that the transcript notation could be viewed as an "Educational Sanction" seems not to be a genuine argument.



b. Suggested Solutions⁴

- i. To address the logistical, technical, reputational, and personal concerns related to the specified transcript section in the Code, the following suggestions are offered:
 1. Continue to work with the Office of the University Registrar to see if any alternative solutions could be reached;
 2. Propose an amendment to the Codes and Judicial Committee of the University Assembly removing this provision less 129-B requirements or at the discretion of the OJA;
 3. Continue as current practice, and likely past practice, to recognize that Title Three, Art. IV, Sec. C.1 (Page 36, 2014) contradicts Title Three, Art. III, Sec. G.4 (Page 32, 2014), and in deference to privacy, yield Title Three, Art. IV, Sec. C.1 (Page 36, 2014) enforcement to Title Three, Art. III, Sec. G.4 (Page 32, 2014) rights.
- ii. To address a situation when a suspension or expulsion is not related to 129-B requirements, the following suggestions are offered:
 1. Propose an amendment to the Codes and Judicial Committee of the University Assembly;
 2. Take no action and place the onus on future employers and universities to inquire about a gap in the academic record;
 3. Rely on the prior course of OJA practice and the notice provided on the website and continue to notate transcripts in all suspension or expulsion cases without a Code provision to ground the practice in;
 4. Wait for a Code revision to amend this defect.
- iii. See above.
- iv. As a practice, any incident date of August 15th has been the bright-line rule for policy changes and processes. Additionally, guidance has suggested that 129-B is not retroactive.

⁴ A novel idea suggested by a member of the OJA team is the creation of a disciplinary transcript. However, for this to an accurate document, coordination with colleges for academic misconduct would be required.