

Cornell University
University Assembly

109 Day Hall
Ithaca, NY 14853
p. 607.255.3175
f. 607.255.2182
e. assembly@cornell.edu
w. <http://assembly.cornell.edu>

Agenda

Codes and Judicial Committee
University Assembly
November 15th, 2017
4:30pm - 5:45pm
305 Day Hall

I. Call to Order (Chair)

- i. Call to Order (2 minutes)

II. Approval of Minutes (Chair)

- i. November 1, 2017 (1 minute) ^[1]
- ii. November 7, 2017 (1 minute) ^[2]

III. Business of the Day

- i. Annual Report Presentation by Judicial Administrator (N. Horvath) (45 minutes) ^[3]
- ii. For Discussion: University Hearing and Review Boards Recruitment Questions and Process (10 minutes) ^[4]
- iii. For Discussion: Hate Speech Working Group Update and Discussion (5 minutes)
- iv. For Discussion: Concerning the Holistic Approach to Addressing the Campus Code (5 minutes)
- v. For Discussion: Discussing recent Department of Education Policy Shifts, our Quantum of Proof, and Policy 6.4 (5 minutes)

IV. Adjournment (Chair)

- i. Adjournment (1 minute)

Attachments

1. CJC Meeting Minutes 11.1.2017
2. CJC Meeting Minutes 11.7.2017
3. Judicial Administrator Annual Report (2017)
4. UHRB 2017 Questions (Edited)

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.



Minutes

Codes and Judicial Committee
University Assembly
November 1, 2017
4:30pm-5:45pm
305 Day Hall

I. Call to Order (Chair)

- a. M. Battaglia called the meeting to order at 4:35pm.
- b. Roll Call:
 - i. *Present*: M. Battaglia, R. Bense, M. Horvath, K. Karr, G. Kaufman, J. Kruser, R. Lieberwitz, S. Park, V. Price, N. Stetson, A. Waymack, K. Zoner
 - ii. *Absent*: C. Hodges, N. Jaisinghani, D. Putnam
 - iii. *Others Present*: K. Ashford, T. Malone, E. Winarto

II. Approval of Minutes (Chair)

- a. September 6, 2017
 - i. **Tabled** to the next meeting
- b. October 18, 2017
 - i. **Approved** by a vote of 6-0-1
- c. October 25, 2017
 - i. **Approved** by a vote of 5-0-2

III. Business of the Day

- a. For Discussion/Vote: Chair of Hate Speech Working Group
 - i. M. Battaglia said that, in terms of the composition of the Hate Speech Working Group, there are only Risa Lieberwitz, Conor Hodges, and Nate Stetson. He said that there has been interest in approving Conor Hodges as the Chair.
 - ii. M. Battaglia asked for any thoughts on Conor Hodges as being the Chair of the Hate Speech Working Group.
 1. K. Zoner moved to confirm Conor Hodges as the Chair of the Hate Speech Working Group. R. Bense seconded the motion.
 - a. By a vote of 6-0-1, the motion was **adopted**. Conor Hodges was confirmed as the Chair of the Hate Speech Working Group.
- b. For Discussion: Discussion of prior and upcoming Community Forum(s)
 - i. M. Battaglia said that there will be an info list-serv for the Hate Speech Working Group.
 - ii. M. Battaglia discussed the Community Forum held on Friday, October 27, and how many community members felt as if the Hate Speech Working Group is not reflective and inclusive.

- iii. M. Battaglia said that he is glad that Conor Hodges was confirmed as the Chair of the Hate Speech Working Group. He also said that the Codes and Judicial Committee would be happy to provide any necessary support that that Hate Speech Working Group may need.
- iv. M. Battaglia said that the timeline was no longer feasible and that the Codes and Judicial Committee needed to have more flexibility. He said that he will speak with the University Assembly to ask for an amendment to the Charge that will give the Codes and Judicial Committee more time.
- v. M. Battaglia said that Tuesday, November 22, and Wednesday, November 23 are possible dates for the next forum.
- vi. G. Kaufman encouraged that voting and nonvoting members of the Codes and Judicial Committee consider the timeline, assess the Charge, and take part in the entire process.
- vii. R. Benseal said that he didn't think there were more than 40 people at the Community Forum, and no more than four faculty members present; he said that it was not a great turnout. He said that there were a lot of complaints and criticisms about the forum being short noticed and not having the employee seat of the Hate Speech Working Group filled. He said that one of the most common claims of those that were critical, was that they were hurt, and that they wanted something to be done. He said that he asked for actual incidents that are not covered by the Campus Code of Conduct to see how they [people at the forum] envision the relationship between the Campus Code of Conduct and hate speech; he said that the only cases that came up were 1) the incident in Collegetown; and 2) the incident at the Latino Living Center.
- viii. R. Benseal asked M. Horvath and K. Zoner: 1) what actually happened [in regard to those incidents]? and 2) Does the Campus Code of Conduct only apply to individuals, instead of groups, and would those incidents be covered under the Campus Code of Conduct?
 - 1. M. Horvath said that the Campus Code of Conduct covers registered organizations, not Greek organizations. She said that she was not a part of the investigation, so she does not know of all the details.
 - 2. K. Zoner said she is not prepared to talk about the case and that she does not know to details. She said that, if it were an individual, one would have to identify the individual responsible, which is a real issue because it is difficult to do so.

3. M. Horvath said that one things with the Campus Code of Conduct cases is that, even though the University is a private institution, there is a very deep commitment to First Amendment right. She said that, if we as a community wanted to create speech codes, because we are a private institution and we can do so, then we need to get rid of about 20 pages of the Campus Code of Conduct. She said that, when talking about what is not covered by the First Amendment, it is a very hard standard to meet because one has to show severity of pervasiveness or speech plus action.
- ix. M. Horvath said the way the Campus Code of Conduct is setup, it is a system of hoops that determine the action taken a case-by-case basis.
- x. R. Bensei said that [the Codes and Judicial Committee] has to be careful on how distinctions will be built into the Campus Code of Conduct.
- xi. K. Zoner said that, years ago, there was a move to have accountability move beyond the borders of the campus, being that one is a Cornell citizen wherever he or she is, but the idea was not well received, so there is now an opportunity to discuss if there is an appetite for the idea in this current time.
- xii. R. Bensei said that the tone of the people at the Community Forum was to punish, not to rehabilitate.
- xiii. M. Battaglia read the Campus Code of Conduct's provision on Harassment [which can be found in the slides in the meeting packet].
- xiv. M. Horvath said that there is another provision that directly follows the first.
- xv. R. Lieberwitz said that it is important to look at the issues of jurisdiction. She said that [the Codes and Judicial Committee] must think of addressing those issues with people feeling hurt, but there is also the point of regarding a hostile environment. She said that the Hate Speech Working Group will be looking carefully at these issues, and that it can be seen through the community's definition of the issues at hand.
- xvi. M. Horvath said that the Campus Code of Conduct does not explicitly talk about a hostile environment.
- xvii. N. Stetson said that the strength of the deliberative body is in the Codes and Judicial Committee, and that if the Codes and Judicial Committee continues the discussion, then 1) [the Codes and Judicial Committee] risks getting dragged by losing time for other issues; and 2) [the Codes and Judicial Committee] risks undermining the Hate

Speech Working Group. He requested that the Codes and Judicial Committee keep in mind that the Hate Speech Working Group will be working on the issue. He also mentioned that future Community Forums should be on adjacent days and occur at different times.

- xviii. S. Park asked if the Codes and Judicial Committee will have to approve what the Hate Speech Working Group produces?
 - 1. M. Battaglia said yes. He said that the Hate Speech Working Group will come up with 3-5 different proposals, which will then come before the Codes and Judicial Committee for approval as a resolution, which will then go before the University Assembly for approval, and then finally be conveyed to President Pollack for approval, and in the case that it deals with Title IX, it must go before the Board of Trustees for approval.
- xix. S. Park said that she thinks that it was valuable to have the discussion. She also said that it will be valuable to look at the intent of actions, because, from her understanding, in the case of the Latino Living Center incident, she said that the male accused was an inebriated member of the Latinx community, and that he yelled “build a wall” at the Latino Living Center one time on a dare, but it was never his intent to cause as much trouble as he did.
- xx. M. Horvath made a motion to have the Chair of the Hate Speech Working Group, Conor Hodges, propose a timeline and a forum structure and dates to the Codes and Judicial Committee, then close discussion on the topic.
- xxi. K. Ashford said that there were valid complaints raised, but it seemed as if Matt Battaglia was held accountable for a lot more people’s actions, like adopting the structure of the Hate Speech Working Group. She said that, whether it is Matt Battaglia, or Conor Hodges, going forward, the Codes and Judicial Committee should look at the structure of any forum to make sure that there is not only one person that is fielding questions and being held accountable. She said that she would like to see a different format going forward.
- xxii. M. Battaglia said that he got a lot of passionate feedback, which is valuable because it shows that people care. He said that part of leadership means getting caught in the crossfire. He said that he heard feedback that the process was going too slow, too fast, that it was too inclusive, or too exclusive.
- xxiii. R. Bensei praised M. Battaglia for his work on the Community Forum. He said that the forum must have some preparation, and that, in this case, it is not irrelevant to talk about the event at the Latino Living

Center because it is came up at the forum.

- xxiv. V. Price asked, do people know that they can email you [M. Battaglia], and now C. Hodges to voice their opinions? She said that this process is meant to hear as many people as possible and that it is not meant to be orderly.
- xxv. M. Battaglia said that he agrees. He said that, when more people know that they can be heard, then there will be more feedback and success for the Hate Speech Working Group.
- xxvi. S. Park said that the ILR Town Hall model was successful because everyone received notice and was encouraged to submit questions. She said that this structure will help people that cannot come, and also help to add more structure to the forum.
- xxvii. M. Battaglia said that he can also contact Institutional Research and Planning to create, publish, and summarize the results of a survey that the Codes and Judicial Committee can analyze.
- xxviii. A. Waymack-Point of Order-She said that M. Battaglia jumped in when V. Price was speaking.
 - 1. V. Price said that it was not an issue.
- xxix. K. Ashford said that it might be valuable to make sure that more members of the Codes and Judicial Committee are present, as well as have different people with varying levels of knowledge.
- xxx. N. Stetson said that he agrees that people will settle down as they have the opportunity to be heard. He said that what was heard has been the pain and hurting that was being discussed previously, and that it will be vented, and we [the Codes and Judicial Committee] will get good stuff.
- xxxi. N. Stetson said that he is uncomfortable with resolving a different timeline because the University Assembly is the governing body of the Codes and Judicial Committee. He said that it would be better to request or recommend that the University Assembly consider a new timeline.
- xxxii. R. Lieberwitz said that it seems as if N. Stetson is contrasting in terms of what he said about people expressing hurt feelings, and contrasting that with good stuff. She said, she thinks that the actual feelings that people have are real.
- xxxiii. N. Stetson said that he is not saying that those are valid or that they are not feedback, but rather that the matter in which we [the Codes and Judicial Committee] gets feedback is likely to organize as people express their feelings and begin to organize their own thoughts and begin to feel hurt. He said that he was not attempting to pass any

judgements on the feelings and expression of pain.

- xxxiv. R. Lieberwitz said that she did not think that N. Stetson meant it that way, but those feelings matter, and although they don't dictate where we [the Codes and Judicial Committee] go, it matters. She said that vocabulary that is used is important; be careful to be inclusive of what people are expressing. She said that forums require real planning and preparation. She said that people are busy with other obligations, so planning can be used to make sure that there is adequate representation of the Codes and Judicial Committee at the forums.
- xxxv. G. Kaufman recommended that there be multiple people from the Codes and Judicial Committee and the Hate Speech Working Group up front at the forums.
- xxxvi. A. Waymack said that the Codes and Judicial Committee continues to talk as if it is running the Hate Speech Working Group, and that, in some ways, that is true, but that is important to give separation and autonomy to the Hate Speech Working Group to allow the group to gain the trust of the community. She said that it is best to leave them to decide the structure of the forum.
- xxxvii. G. Kaufman said that he doesn't know how autonomous the Hate Speech Working Group can be because there are members on both the Hate Speech Working Group and the Codes and Judicial Committee, and because of the fact that the Hate Speech Working Group is an Ad-hoc subcommittee of the Codes and Judicial Committee.
- xxxviii. [Back to the motion made by M. Horvath] M. Horvath motioned to have the Chair of the Hate Speech Working Group, Conor Hodges, present a revised timeline and a forum structure and dates to the Codes and Judicial Committee, on paper or in person. R. Bensel seconded the motion.

1. By a vote of 7-0-1, the motion was adopted.

- xxxix. J. Kruser said that he foresees a request for an alternative timeline, and he suggested having a date for when the timeline will be provided.

xl. A. Waymack asked that the timeline not be referred to as "whimsical."

- c. For Discussion: Beginning the process for staffing the University Hearing and Review Boards and increasing contact with the Hearing and Review Board Chairs

- i. M. Battaglia said that the Codes and Judicial Committee has lost contact with the University Hearing and Review Board Chairs, and that he intends for the last meeting to be dedicated to viewing a presentation from the University Hearing and Review Board Chairs on where they would like to go in the future.

- ii. M. Horvath recommended that the applicant questions for the University Hearing and Review Board be standardized. She also recommended that there be recognition for students, faculty, and staff that serve on the University Hearing and Review Board.
 - iii. J. Kruser said that certificates of recognition should be sent to all Assemblies memberships.
 - iv. A. Waymack suggested that the University Assembly Executive Committee handle the matters regarding recognition of membership.
 - v. K. Karr recommended that the Codes and Judicial Committee have more contact with the University Hearing and Review Board. She said that having Codes and Judicial Committee and Judicial Codes Counselor members present would be beneficial to the process.
- d. For Discussion: Beginning the process of a holistic evaluation of the Campus Code of Conduct
 - i. Point of Information-M. Horvath-Are we [the Codes and Judicial Committee] doing a holistic evaluation of the Campus Code of Conduct, or a plain English revision?
 - 1. M. Battaglia said that the Codes and Judicial Committee is free to go where it wants.
 - 2. M. Horvath offered to provide a timeline and material from peer institutions.
 - ii. N. Stetson said that it might be helpful to look at whether people want the Codes and Judicial Committee to do a holistic evaluation of the Campus Code of Conduct, or to simply just a plain English revision.
- e. For Discussion: Discussing recent Department of Education policy shifts, our Quantum of Proof, and Policy 6.4
 - i. This topic was not discussed at the meeting.

IV. Adjournment

- a. M. Battaglia adjourned the meeting at 5:44pm

Respectfully submitted,

Terrill D. Malone
Codes and Judicial Committee Clerk



Cornell University
Codes and Judicial Committee

Minutes

Codes and Judicial Committee
University Assembly
November 7, 2017
4:30pm-5:45pm
305 Day Hall

I. Call to Order (Chair)

- a. M. Battaglia called the meeting to order at 4:35pm.
- b. Roll Call:
 - i. *Present:* M. Battaglia, R. Bense, M. Horvath, K. Karr, G. Kaufman, J. Kruser, R. Lieberwitz
 - ii. *Absent:* C. Hodges, N. Jaisinghani, J. Kruser, S. Park, V. Price, D. Putnam, N. Stetson, K. Zoner
 - iii. *Others Present:* T. Malone, E. Winarto
 - iv. There were not enough members present to reach a quorum. The members present had a discussion about the Hate Speech Working Group, additional ideas for the upcoming forum(s), appointments to the Hate Speech Working Group, thoughts on the Presidential Task Force, Codes and Judicial Committee attendance records for the members, and University Hearing and Review Board applicant questions (during which time, the Judicial Administrator, M. Horvath, excused herself from the room). The meeting audio can be found online at assembly.cornell.edu, listed under the Codes and Judicial Committee meeting date of October 7, 2017.
 - v. At the request of G. Kaufman, the Chair of the University Assembly, the minutes are to include words from him: G. Kaufman said that he is very angry at the lack of attendance at the Codes and Judicial Committee meetings.
 1. M. Battaglia also mentioned his disappointment at the lack of attendance.

II. Approval of Minutes (Chair)

- a. September 6, 2017
 - i. There was no approval of minutes at this meeting.
- b. November 1, 2017
 - i. There was no approval of minutes at this meeting.

III. Adjournment

- a. There was no adjournment.

Respectfully submitted,

Terrill D. Malone
Codes and Judicial Committee Clerk



Cornell University

Office of the Judicial Administrator
120 Day Hall
Ithaca, NY 14853

Phone: 607-255-4680
Fax: 607-254-4464
Email: judadmin@cornell.edu

Office of the Judicial Administrator: Annual Report
Academic Year 2017
Try, Theory, Track, Transition

Prepared by Michelle R. Horvath, Judicial Administrator
October 2017

Table of Contents

1. Executive Summary	Page 3
2. Personnel and Committee Membership	Page 4
3. Accomplishments and Changes of Note	Page 5
4. Projected Needs	Page 7
5. Future Considerations and Projects	Page 7
6. Appendix	
a. Analytics	
b. Public Records	
c. Campus Codes of Conduct, Code Changes, and Procedures of the University Hearing Board and the University Review Board	

Executive Summary

Without hesitation, the most relevant term to describe academic year 2017 (July 1, 2016—June 30, 2017) for the Office of the Judicial Administrator (OJA), would be “change.” Changes included: transferring the primary responsibility for receiving reports of sexual and related misconduct against students and issuing interim measures in matters involving students under Policy 6.4 to the Office of the Title IX Coordinator¹; adding standardization and structure to internal and external procedures; incorporating a stronger developmental philosophy to the work of the OJA through programs and partnerships; and, personnel changes, including the hiring of a new Judicial Administrator (JA).

Knowing that the year would be one of change, the OJA set the following theme for the year: “*Try, Theory, Track, and Transition.*” During the 2017 academic year, the OJA incorporated the theme through: a willingness to try new processes or to try to understand the historical context for established practices; a commitment to incorporating development theories into the work of the OJA; working to better track overall data, including the efficacy of OJA initiatives through informal quantitative and qualitative data collection methods; and, recognizing that not only was the OJA in a time of transition, but the University and nation were in a state of transition which would likely impact the work of the OJA. While the Campus Code of Conduct (Code) remains the governing and guiding document for the work of the OJA, this theme served the office well in this year of change, and created opportunities for collaboration with internal and external campus partners, which strengthened the process administered by the OJA.

Finally, of note, 536 referrals were made to the OJA in academic year 2017. Of those referrals, ten cases were sent to a University Hearing Board, four of which went to a University Review Board, and two of which qualified for a Presidential appeal.

¹ While the OJA has collaborated closely and co-investigated some cases with possible Campus Code of Conduct (Code) and Policy 6.4 overlap, and remains responsible for overseeing disciplinary probation and sanctions compliance for students found responsible of sexual and related misconduct, the Office of the Title IX Coordinator now has primary responsibility for responding to reports of sexual and related misconduct against students under Policy 6.4, including the investigation and hearing process. Incidents of alleged Code violations that may also meet the definition of domestic or dating violence reported to have been committed by a staff or faculty member outside of the work-place, remain under the Code and are handled by the OJA.

Personnel and Committee Membership

Michelle R. Horvath started service as the JA on June 21, 2016; prior to her appointment, Jody A. Kunk-Czaplicki served as the Interim Judicial Administrator. Jody returned to service as an Associate Judicial Administrator (AJA) upon Michelle's arrival, and while on leave from the University for the fall semester, decided to pursue other opportunities at the conclusion of her leave in January 2017. In Jody's absence, Arian E. Covington served as an Interim Associate Judicial Administrator from September 2016 until May 2017. Following a shared-governance hiring approach and a national search, Vincent J. Ciampolillo started as the permanent hire for the AJA position on June 19, 2017. Vincent continued his service as co-state chair for the state of New York for the Association of Student Conduct Administrators (ASCA).

Christina Liang continued her service as an AJA, and during the academic year, was: awarded "New Professional of the Year" by the ASCA; served as the Assistant Programming Chair for the 2017 ASCA annual conference; was selected as the programming chair for the 2018 ASCA annual conference; and, became certified in Mental Health First Aid. Additionally, Christina was awarded an ASCA Goldstone Foundation Scholarship to attend the Gehring Academy.

Janey Bosch continued her service as Case Manager, became certified in Mental Health First Aid, and saw an expansion of her job duties to include curriculum development.

Steve Morey continued his service as Administrative Assistant, became certified in Mental-Health First Aid, and saw an expansion of his job duties to include student mentorship.

Michelle continued her service as co-chair of the Fraternity and Sorority Life Community of Practice for the ASCA.

Members of the OJA staff served on the following University committees and working groups:

- Alcohol and Other Drugs Committee
- ALERT Team
- Behavioral Health Committee
- Bias Assessment and Review Team
- Codes and Judicial Committee (Ex-officio member)

- Conflict Resolution Group
- Council on Sexual Violence Prevention (Renamed SHARE Committee)
- Diversity Community Group
- Hazing Committee
- Public Safety Advisory Committee
- Small Business Group

Accomplishments and Changes of Note

As noted, academic year 2017 was a year of change for the OJA. Changes included: transferring the primary responsibility for receiving reports of sexual and related misconduct against students and issuing interim measures in matters involving students under Policy 6.4 to the Office of the Title IX Coordinator; adding standardization and structure to internal and external procedures; incorporating a stronger developmental philosophy to the work of the OJA through programs and partnerships; and, personnel changes, including the hiring of a new JA.

The transference of primary responsibility for receiving reports of sexual and related misconduct against students and issuing interim measures in matters involving students under Policy 6.4 to the Office of the Title IX Coordinator from the OJA on August 1, 2016, was the most significant change which occurred during the 2017 academic year. While the OJA has collaborated closely and co-investigated some cases with possible Code and Policy 6.4 overlap, and remains responsible for overseeing disciplinary probation and sanctions compliance for students found responsible of sexual and related misconduct, the Office of the Title IX Coordinator now has primary responsibility for responding to reports of sexual and related misconduct against students under Policy 6.4, including the investigation and hearing process. Incidents of alleged Code violations that may also meet the definition of domestic or dating violence reported to have been committed by a staff or faculty member outside of the work-place, remain under the Code and are handled by the OJA.

As expected, the transition of leadership in the OJA resulted in changes to the work of the OJA, including incorporating a stronger developmental philosophy to the work of the OJA

through program and partnership, and adding standardization and structure to internal and external procedures. Each of these modifications were made to help change certain perceptions of the OJA, specifically increasing the trust earned and afforded to the OJA through: increasing transparency; establishing standardized and consistent processes; applying a strict interpretation of the Code; grounding the work of the OJA in educational and developmental approaches when appropriate; communicating to the community about the philosophy of the OJA and changes made; and, actively engaging in the University community.

Specifically, through programs such as the OJA's probation program (grounded in Baxter Magolda's Theory of Self-Authorship), and the OJA's internship program (grounded in experiential learning theories), the 2017 academic year saw the formalized incorporation of development-theory into curricula. Through a partnership with the Scheinman Institute on Conflict Resolution in the School of Industrial and Labor Relations, the OJA worked to create a mediation and facilitated dialogue program, grounded in the following values and developmental theories: Cornell University's Statement on Diversity; Mezirow's Ten Phases of Transformational Learning; Kolb's Experiential Learning Theory; and, V.N. Redekop's Philosophical ideas as outlined in From Violence to Blessing grounding for equity, dignity, and respect. Additional changes made in the 2017 academic year to support a stronger developmental element to the work of the OJA included: advocating against the imposition of an indefinite suspension as a sanction; ending the practice of deferring sanctions, absent extenuating circumstance; sending notice letters with information including the date of the incident, the referring party, and allegations prior to a scheduled meeting with the OJA; and, ending the practice of back-dating suspensions.

To strengthen consistency and promote timeliness, much effort was focused on adding standardization and structure to internal and external OJA operations and procedures. Examples of such efforts included:

- The creation of an on-line reporting system to shorten the time between the incident date, the reporting date, and the final adjudication date;
- Establishing a case analysis procedure to promote adjudication and sanction consistency;
- Creating standard operating procedures for all office operations and functions;
- Establishing set timelines for process adjudication when not otherwise established by the Code or University Hearing Board or University Review Board procedures;

- Standardizing the reporting process and language for behavioral conduct verifications;
- Standardized Code formatting used by the OJA;
- Removing admissions statements from Summary Decision Agreements, consistent with the requirements of the Code;
- Updating OJA documents and communications to increase readability and clarity;
- Amending processes related to late or incomplete sanctions;
- Reconciling Code cases previously delegated to other university officials back to the OJA for adjudication consistency;
- The commitment to issue no-contact directives² as reciprocal, and limited to Code jurisdictional limits for physical actions, and without limit for on-line actions; and,
- Raising the level of the OJA recusal standard to appearance of impropriety from actual impropriety.

Finally, as other areas of the University experienced change, the OJA worked with multiple campus partners to triage immediate issues, to help establish more formal practices, and to help identify policy changes and gaps.

Projected Needs

At this time, there are no major projected needs for the OJA which have not already been addressed or shared with campus partners.

Future Considerations and Projects

The intersection of speech rights and community expectations will likely remain a focus in the coming year, and the OJA will continue to follow the Code and University policies regarding such topics. Additionally, the OJA would welcome any opportunity to participate in

² The OJA did not issue a no-contact directive during the 2017 AY.

any Codes and Judicial Committee or University Assembly efforts related to Code revisions, to increase campus knowledge of the Code and the expectations contained therein, and to increase transparency about the work and role of the OJA. Finally, during the 2018 academic year, the OJA will complete revisions to its website, and will pilot two programs: a suspension reintegration program, and a decision-making class.

Appendix A

Appendix A: Analytics³

Total Referrals

Total number of referrals to the OJA in 2015-2016	673
Total number of referrals to the OJA in 2016-2017 ⁴	536
Percentage decrease	20.35% ⁵

Case Turnaround

	Days⁶ from Reported Date to Adjudication Date	Days from Reported Date to Adjudication Date, excluding cases which went to a hearing or which a student was on a leave of absence
2015-2016	41	38
2016-2017	33	23
Percentage decrease	24%	39% ⁷

Findings (Responsible/Not Responsible)

	Number of charges alleged⁸	Findings of Responsible	Findings of Not Responsible
2015-2016	1006	568 (56%)	263 (26%)
2016-2017	754	429 (56%)	144 (19%)

Gender⁹ of Respondent

	Male	Female	Organization
2015-2016	411	260	0
2016-2017	338	190	6 ¹⁰

³ For reference, the OJA has included the AY 2016 as a comparison for AY 2017.

⁴ For the purpose of defining the start and end of an academic year, the dates July 1, 2016 – June 30, 2017 were used. Due to these dates, some cases which occurred in in AY 2017 may not be included in the data until AY 2018 because adjudication was not finalized by the date of the data pull. Additionally, if referral was received, but a Respondent could not be identified, the incident is reflected in the referral number, but not the findings numbers.

⁵ The transference of Policy 6.4 matters to the Office of the Title IX Coordinator can account for a portion of the decrease in total number of referrals to the OJA.

⁶ Calendar days.

⁷ The decrease in case turnaround can partially be attributed to the transference of Policy 6.4 matters to the Office of the Title IX Coordinator.

⁸ Includes charges for Good Samaritan Protocol, where students are neither found Responsible nor Not Responsible.

⁹ Data is automatically merged from PeopleSoft if available.

¹⁰ The six University-registered organizations were: Cayuga's Waiters, Hindu Council, Watermargin, Prospect of Whitby, Stewart House, Business Fraternity (Incident report received, but a Respondent was not identified).

Classification¹¹ of Respondent (Year in School)

	Freshmen	Sophomore	Junior	Senior	Graduate/Professional
2015-2016	420 (62%)	140 (20%)	47 (7%)	41 (6%)	12 (2%)
2016-2017 ¹²	265 (50%)	123 (23%)	76 (14%)	45 (8%)	14 (3%)

Athletics (Top 4 teams to which referred individuals belonged)¹³

2015-2016	Non-athlete	Men's Football	Men's Sprint Football	Men's Swimming and Diving	Women's Lacrosse
	570	23	10	9	6

2016-2017	Non-athlete	Men's Football	Men's Sprint Football	Men's Lacrosse	Men's Cross Country
	475	18	6	5	3

Greek (Top 4 chapters to which referred individuals belonged)¹⁴

2015-2016	Non-Greek	Sigma Chi	Alpha Phi	Delta Upsilon	Alpha Chi Omega
	476 (71%)	15 (2%)	12 (2%)	9 (1%)	6 (1%)

2016-2017	Non-Greek	Alpha Epsilon Phi	Alpha Phi	Kappa Sigma	Phi Gamma Delta
	367 (68%)	8 (1.5%)	8 (1.5%)	8 (1.5%)	8 (1.5%)

Location of Alleged Violation (Top 10 locations) 2015-2016

Location	Number of Incidents	Percentage
Off campus	66	10%
Clara Dickson Hall	33	5%
North Campus Townhouse D	31	4.6%
North Campus Townhouse G	29	4.3%
Mary Donlon Hall	28	4.1%
North Campus High Rise 5	28	4.1%
North Campus Townhouse B	28	4.1%
Balch Hall	25	3.7%
North Campus Townhouse E	23	3.4%

¹¹ Data is automatically merged from PeopleSoft, if available, based on the date of the Respondent's date of referral to the OJA.

¹² Three faculty/staff were also referred this year.

¹³ Data is automatically merged from PeopleSoft.

¹⁴ Data is automatically merged from PeopleSoft.

George Jameson Hall	21	3.1%
---------------------	----	------

Location of Alleged Violation (Top 10 locations) 2016-2017

Location	Number of Incidents	Percentage
Off campus	45	8.4%
Mary Donlon Hall	38	7%
Parking Lot on campus	27	5%
George Jameson Hall	18	3.3%
Clara Dickson hall	16	3%
Balch Hall	15	2.8%
Kay Hall	15	2.8%
Mews Hall	13	2.4%
Robert Purcell Community Center	13	2.4%

Recidivism Rates

	Number of Respondents who have been found responsible for Code violation(s) on more than one referral to the OJA	Number of Respondents who have been found responsible for Code violation(s) on more than one referral to the OJA within the same academic year
2015-2016	87	34
2016-2017	63	26
Percentage decrease	27%	23%

Sanctions¹⁵ 2015-2016

Sanction	Count	Percentage
AOD ¹⁶ 1 – BASICS	428	31.5%
Reflection Paper	236	17.4%
Oral Warning	225	16.6%
Written Reprimand	124	9.15%
Community Service	103	7.6%
AOD 2 – Assessment	56	4.1%
Disciplinary Probation	46	3.4%
Deferred Written Reprimand	30	2.2%
AOD 3 – Counseling	20	1.5%
Counseling	18	1.3%
No Contact Order	11	0.8%
Letter of Apology	11	0.8%
Restitution	8	0.6%
Copyright Cease & Desist	6	0.4%
Deferred Suspension	6	0.4%
Directed Study: Emergency Health Services	6	0.4%
Directed Study: Copyright	5	0.4%

¹⁵ Includes GSP cases where sanctions are tracked for completion only.

¹⁶ Alcohol and Other Drugs Education

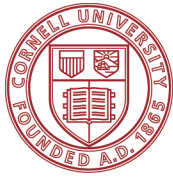
Suspension	8	0.6%
Negotiated Permanent Withdrawal	4	0.3%
Poster/Flyer	2	0.1%
Directed Study: Consent and Communication	1	0.07%
Fine	1	0.07%

Sanctions 2016-2017

Sanction	Count	Percentage
Written Reprimand	278	28%
AOD 1 – BASICS	262	27%
Reflection Paper	261	27%
AOD 2 – Assessment	30	3%
Oral Warning ¹⁷	24	2.4%
Counseling	23	2.3%
Disciplinary Probation	22	2.2%
Restitution	13	1.3%
Facilitated Dialogue	11	1.1%
Community Service	10	1%
Directed Study: Emergency Health Services	10	1%
AOD 3 – Counseling	8	0.8%
Letter of Apology	8	0.8%
Research Paper	8	0.8%
Suspension	2	0.2%
Deferred Dismissal	1	0.1%
Dismissal	1	0.1%

¹⁷ While the OJA did issue three oral warnings in AY 2017, the OJA has shifted its sanctioning philosophy to provide an oral warning in only extraordinary situations. However, during the leadership transition, the OJA determined that any case in which the conduct occurred prior to August 15, 2016 would be adjudicated under the prior sanctioning philosophy regarding the issuance of an oral warning instead of a written reprimand, which resulted in the additional 21 oral warnings.

Appendix B



Cornell University

Office of the Judicial Administrator
120 Day Hall
Ithaca, NY 14853

Phone: 607-255-4680
Fax: 607-254-4464
Email: judadmin@cornell.edu

Campus Code of Conduct – Academic Year 2017 Hearings¹

Public Record #	Petitioner	Date of Hearing	Type of Hearing	Chair
1	Complainant – Undergraduate Student	August 23, 2016	Show Cause	Professor Patsy Brannon
2	Respondent – Undergraduate Student	October 5, 2016	Hearing on the merits	Professor Timothy Devoogd
		November 9, 2016	Appeal of the decision of the UHB	Professor Andrea Mooney
		January 20, 2017 (date of decision)	Appeal of the decision of the URB	Interim President Rawlings
3	Respondent – University Registered Organization	October 12, 2016	Hearing on the merits	Professor Jane Mt. Pleasant
	Respondent and OJA	December 14, 2016	Appeal of the decision of the UHB	Professor Andrea Mooney
	Respondent – University Registered Organization	March 2, 2016 (date of decision)	Appeal of the decision of the URB	Interim President Rawlings
4	Complainant – Undergraduate Student	October 26, 2016	Show Cause	Professor Jane Mt. Pleasant
5 ²	Complainant – Undergraduate Student	December 6, 2016	Show Cause	Professor Patsy Brannon
6	Complainant – Undergraduate Student	December 14, 2016	Show Cause	Professor Rocco Scanza
7	Respondent – Undergraduate Student	February 10, 2017	Hearing on the merits	Professor Jane Mt. Pleasant
		March 31, 2017	Appeal of the decision of the URB	Professor Andrea Mooney
8	Respondent – Undergraduate Student	April 19, 2017	Hearing on the merits – public hearing ³	Professor Timothy Devoogd
9	Respondent – Undergraduate Student	April 28, 2017	Hearing on the merits – in absentia	Professor Rocco Scanza
10	Respondent – Undergraduate Student	May 26, 2017	Hearing on the merits	Professor Patsy Brannon
		August 8, 2017	Appeal of the decision of the URB	Professor Andrea Mooney
11	Respondent A– Undergraduate Student Respondent B– Undergraduate Student	September 10, 2017 ⁴	Hearing on the merits – joint hearing	Professor Rocco Scanza

¹ From reported date of July 1, 2016 – June 30, 2017

² Because the incident date for this case was before August 1, 2016, the OJA had jurisdiction to act.

³ Respondent in this matter requested a public hearing, as such the public record is not redacted.

⁴ As of October 4, 2017, the decision has not yet been provided to the OJA.

Public Record #1

UNIVERSITY HEARING BOARD

Accused
[REDACTED]

RECEIVED

Complainant
[REDACTED]

AUG 25 2016

PETITION SHOW CAUSE

JUDICIAL ADMINISTRATOR

The University Hearing Board (UHB), chaired by Patsy M. Brannon, comprised three students ([REDACTED]) and one staff member ([REDACTED]). No faculty member was available. As permitted by the Code Title Three Article III.E.3.b.(2), the hearing proceeded with four panel members. The panel met on August 22, 2016 to consider 1) the complainant's petition to show cause and two complainant exhibits submitted on July 22, 2016 and 2) the JA's response dated August 16, 2016. This hearing occurred longer than 21 calendar days after the filing of the petition (Title Three Article III.C.6) because the Chair granted on an 11 -calendar day extension at the petitioner's/complainant's request to permit time for a reply to the JA's response. The petitioner, however, did not submit a reply by the revised deadline of August 19, 2016 at 4:00 pm.

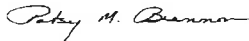
NO CAUSE

Pursuant to the Code of Conduct Title Three Article III C.6, the UHB first considered whether a timely and thorough investigation had been conducted by the JA prior to the decision of 'no cause' concerning the alleged Code violations by the accused, [REDACTED] of 1) harassment (Title Three Article II.A.1.d),, endangerment (Article II.A.1.g) and intentional invasion of privacy or misappropriation of property (Article II.A.1.k) by forcing a person to go to an area against her will (Article II.A.1.g.(1)). The UHB understood that the lengthy period from the alleged violation of the code by complainant, [REDACTED] on November 18, 2015 to the final decision by the JA on July 6, 2016 with notification to the complainant on July 12, 2016 resulted from legitimate procedural delays not disclosable due to privacy laws. The UHB also noted that the accused moved out voluntarily on November 25, 2015 so no threat of harm continued during this investigation period.

The UHB then considered whether the JA's investigation was thorough and recognized the burden of proof was on the petitioner/complainant. The UHB noted the JA met and interviewed all directly involved persons (complainant and accused/respondent) and relevant Resident Life staff; and reviewed relevant electronic communications between the complainant and accused/respondent, and a relevant police report. The JA considered the standard of proof of 'clear and convincing evidence' of these violations in her investigation and decision of 'no cause'.

Finding: The UHB found the JA had thoroughly investigated the allegations and that the petitioner/complainant had not met the burden of proof of 'clear and convincing' evidence otherwise. Despite clearly incompatible life styles as roommates resulting in annoyance to both the complainant and accused, evidence was not provided that the actions of the accused showed cause of extreme annoyance or harassment (Article II A.1.d) or invasion of privacy or misappropriation of property (Article II.A.1.k). In addition, the UHB perceived as did the JA that the electronic communications by the accused did not appear threatening or harassing. Although the UHB did perceive safety issues relative to the alleged violation of Article II.A.1.g, these did not reach the level of reckless or intentional as required for cause of a violation. Thus, UHB upheld the 'no action' decision by JA

Respectfully submitted,



Patsy M. Brannon, PhD, RD
Chair, University Hearing Board

On behalf of Hearing Board panel members:

██████████, student

██████████, student

██████████, student

██████████, employee

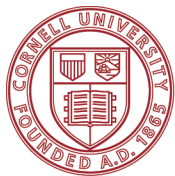
Not present was a faculty member due to lack of availability

RECEIVED

AUG 25 2016

JUDICIAL ADMINISTRATOR

Public Record #2



Cornell University

Office of the Judicial Administrator
120 Day Hall
Ithaca, NY 14853

Phone: 607-255-4680
Fax: 607-254-4464
Email: judadmin@cornell.edu

UNIVERSITY HEARING BOARD

Respondent

[REDACTED] (represented by Jacob McNamara, Esq.)

Complainant

CORNELL UNIVERSITY

(represented by Associate JAs Arian Covington and Christina Liang)

HEARING ON THE MERITS

On October 5, 2016, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Art. II, Sec. A.:

1.d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

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

2.e. To furnish false information to the University with intent to deceive.

2.g. To enter upon or make use of University or private property or facilities without authorization.

2.i. To commit a violation of Article II of Title Four. 2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

3.a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic.

3.g. To destroy evidence or otherwise obstruct the application of this Code.

PROCEDURAL HISTORY

The Office of the Judicial Administrator received a referral for an alleged Code violation early in May, 2016.

ALLEGATIONS

Specifically, it is alleged that in the early hours of May 1, 2016, in front of the Law Library, respondent kicked another student in the face, causing severe and permanent injuries, after which respondent fled the scene and furnished false information to Cornell University Police Department (CUPD) investigators. It is also alleged that respondent attempted to persuade at least one witness to furnish false information to CUPD. Additionally, the investigation by the OJA has found that after respondent determined that one of the witnesses provided truthful information to CUPD, on May 18, 2016, respondent threatened the witness.

After hearing all testimony from witnesses for the JA and for the respondent, and arguments from the Associate JA and the respondent's lawyer, the UHB found Respondent responsible for some of the charges and not responsible for others (below). The UHB based their findings on their judgement that the testimony was clear and convincing that 1) respondent had arrived when the fighting was over and the situation was deescalating, 2) respondent then initiated renewed arguing and pushing, 3) respondent kicked the other student resulting in substantial injuries, 4) respondent tried to coordinate and modify the testimony of others who were present, in order to minimize his own involvement. While some of these actions may have occurred in response to racial bias and prejudice, the UHB felt that other options were available, including calling campus police.

1.d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

RESPONSIBLE

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

RESPONSIBLE

2.e. To furnish false information to the University with intent to deceive.

RESPONSIBLE

2.g. To enter upon or make use of University or private property or facilities without authorization.

WITHDRAWN BY JA

2.i. To commit a violation of Article II of Title Four. 2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

NOT ARGUED BY THE JA, AND SO NOT RESPONSIBLE

3.a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic.

RESPONSIBLE

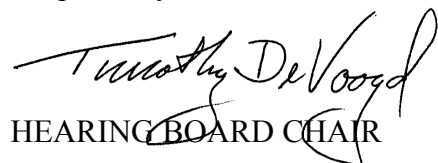
3.g. To destroy evidence or otherwise obstruct the application of this Code.

NOT RESPONSIBLE

At the penalties/sanction/remedies stage of the hearing, the UHB imposed the following:
DISMISSAL FROM CORNELL UNIVERSITY.

The UHB based this decision on its judgement that 1) The actions for which respondent was found responsible were substantial and had caused harm to the Cornell community, 2) respondent had been found responsible for violating other portions of the campus code in past hearings and was under probation for having done so, 3) the judgement of the UHB that respondent had not taken responsibility for these actions and so might become involved in further violations in the future. These considerations also led to a decision not to use the penalty of suspension for some period of time.

Respectfully submitted,



HEARING BOARD CHAIR

Timothy DeVoogd (non-voting)
Chair, University Hearing Board

On behalf of University Hearing Board panel members:

██████████ (staff), ██████████, ██████████, ██████████, (students) and
██████████ (faculty)



**Cornell University
Law School**

Lawyers in the Best Sense

ANDREA J. MOONEY

Clinical Professor of Law

319 Myron Taylor Hall
Ithaca, New York 14853-4901

☎ 607-255-2953

☎ 607-255-7103

✉ ajm33@cornell.edu

November 9, 2016

The University Hearing Board (UHB) met on October 5, 2016 and determined to dismiss the accused, who thereafter filed the present appeal.

A duly constituted panel of the University Review Board (URB) met on November 9, 2016 to consider the accused's appeal.

The Review Panel affirms, by a vote of two to one, the decision of the University Hearing Board.

The Review Panel listened to the audiotape of the sanctions portion of the University Hearing Board in its entirety and considered the three prior disciplinary actions against the accused.

The Review Panel met for three hours and grappled with the following in reaching its decision:

1) The Judicial Administrator argued that the only option remaining was dismissal. The Review Panel was not certain that the nature of the prior disciplinary incidents presented an escalation of behavior leading to the current case.

2) The Review Panel felt hampered in its consideration of whether the sanction was "unjust" by the absence of information with regard to the treatment of the three other men involved in this incident. The Panel agrees with the UHB that two of the four men involved employed abhorrent and racially-charged language and behavior.

3) The panel struggled with the precedents provided by both sides:

a) The May 22, 2013 decision of the UHB. In that case also, the student had an opportunity to de-escalate the situation but returned to the situation and continued to violate the Code of Conduct. The student in that case received a three-year suspension, which the Review Panel also considered as a potential framework for the penalty in this case, together with sanctions addressing anger management and related community service. One panel member felt that the Review Panel should provide a similar sanction to the accused in this case.

b) The May 18, 2005 UHB decision. In that case, the nature of the violence and the fact that the student had been on probation prior to the incident were similar to the present case and resulted in dismissal.

In reaching its decision, the RP considered the uncontested allegations that the accused arrived to a de-escalated situation and then re-initiated violent conflict, which placed significant culpability on him. The Review Panel also considered that the accused committed a serious act of violence. Further, the accused attempted, with the other students involved, to influence the course of the investigation.

Therefore, the decision of the University Hearing Board is affirmed.

Respectfully submitted,

Andrea J. Mooney
Chair, University Review Panel





Cornell University

Hunter R. Rawlings III
Interim President

January 20, 2017

██████████
Via email to:
██████████
██████████

Dear ██████████

I have reviewed your written petition of appeal regarding the University Hearing Board's determination of October 5, 2016, along with supporting information regarding your case, including the Office of the Judicial Administrator's response.

As you are aware, the University Hearing Board (UHB) determined unanimously that you were responsible for violating the Campus Code of Conduct by using physical force to injure another person, furnishing false information to the university with the intent to deceive, and engaging in disorderly conduct, and a majority of the panel further determined that you were responsible for violating the Campus Code by harassing another person in connection with the investigation. The UHB found (by a 3-2 vote), and the University Review Board affirmed (by a 2-1 vote), that the appropriate sanction for these violations was dismissal from the university.

Your conduct—on the night in question and during the following investigation—is deeply troubling and calls for significant sanctions, and I understand the reasoning of the Boards in favor of dismissal. However, I have determined that a lesser sanction is appropriate given the provocative and racially charged language and behavior of the injured individual and his companion, that you had not previously been found responsible under the Code for any acts of violence, and that there is a precedent in similar cases for the imposition of sanctions less severe than dismissal from the university.

Nonetheless, a great amount of personal growth and reflection is required on your part before you can rejoin the Cornell community. Therefore, I impose the following sanctions:

1. *Three-year Suspension from May 25, 2016 through May 24, 2019.* During this time period, you may not take any classes at Cornell, including on any of Cornell's campuses, in any of Cornell's study-abroad programs, as an ex-mural student, or in any other way. You will not be allowed on university premises and a *persona non grata* previously issued by the Cornell Police will continue during the period of suspension. During the suspension, you may not obtain academic credit at any institution toward completion of a Cornell degree. The community work sanction described below must be completed before you can return to campus.

2. *Disciplinary Probation Until Graduation.* Should you return to Cornell following your suspension, you will be obligated to maintain acceptable probationary status, which includes complying fully and in a timely manner with the terms of this decision, refraining from future Code violations and violations of local, state, and federal law, and meeting with the Judicial Administrator periodically at the JA's discretion. Violations of the Code during a probationary period or non-compliance with this decision, regardless of how minor, may result in further sanctions, including suspension or dismissal from the university.
3. *Community Work.* You must complete 100 hours of community work by May 24, 2019. Prior to commencing this community work, you must consult with the Judicial Administrator regarding the requirements and how to document the work.
4. *Non-Violent Conflict Resolution Counseling or Training.* You must complete at least 10 hours of counseling or training in non-violent conflict resolution by May 24, 2019. Prior to commencing this counseling or training, you must consult with the Judicial Administrator regarding the requirements and how to document the counseling.

Yours sincerely,



Hunter R. Rawlings III

cc: Jacob P. McNamara, Adviser for the Respondent (jake@ithacalaw.com)
Michelle R. Horvath, Judicial Administrator (mrh263@cornell.edu)
Judicial Administrator Account (judadmin@cornell.edu)
Arian Covington, Associate Judicial Administrator (aec278@cornell.edu)

Public Record #3

Cornell University Hearing Board
Decision
In the Matter of Cayuga's Waiters
Dates of Hearing: 12, 13, and 15 October 2016
Date of Written Decision: October 26, 2016

Cayuga's Waiters, an independent student organization, was charged with multiple violations of the Campus Code in relation to incidents that occurred in Fall 2015, Spring 2016, and Fall 2016. Charges included the following sections of the Code: Title Three, Art. II, Sec. A.

l.b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.

1.f. To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.

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

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

3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possession alcohol with the intent to consume it while under the age of 21.

ALLEGATIONS

It is alleged that Cayuga's Waiters engaged in hazing traditions in the Fall 2015, Spring 2016, and Fall 2016 academic semesters. It is alleged that new members each semester were made to respond to the name, "New Guy" beginning New Guy

Initiation Night (disguised as the final audition for each semester) and continuing throughout the semester, and often extending to subsequent semesters. Additionally, on New Guy Initiation Night, new members were forced to consume alcohol and were verbally abused. It is alleged that at the first rehearsal (in Lincoln Hall) each semester, senior members removed all of their clothing. Additionally, it is alleged that during rehearsal, a senior member sat in a chair, exposing his testicles while other members raced towards the senior member with the goal of touching the senior member's testicles.

Throughout the semesters, it is alleged all members are provided alcohol at the organization's off- campus location (Waiters' house) as well as at other organization events. It is also alleged that new members were required to clean the Waiters' house multiple times mostly on Thursdays and Sundays and after parties. New members were allegedly asked to return to the house on the same day if the residents of the Waiters' house were not satisfied with the state of the apartment after the cleaning.

It is further alleged that members were required to complete a "condition" in order to perform a solo or serve in a leadership position in the organization. These conditions were allegedly determined by members and often involved humiliating/embarrassing acts such as stripping naked, having one's legs and/or arms tied together, being blindfolded, sitting in a trash can, and remaining naked for the duration of rehearsal. Another condition that was allegedly imposed was having members spread peanut butter and jelly on a member's body and then having another member urinate on the individual. Approximately seven solos were chosen each academic semester and each soloist was required to complete a condition. It is alleged that some of these conditions were completed on campus while others were completed off-campus.

It is alleged that between January 12, 2016 to January 19, 2016, the organization took a trip to San Diego and Los Angeles, California, where additional hazing activities took place including: a) requiring new members to strip naked, and sit in a bathtub filled with ice water for at least 30 minutes; locking new members in the bathroom and requiring them to stay in the bathtub, not permitting the members to talk unless senior members came in to quiz new members, adding additional ice if incorrect answers were given; b) requiring new members to strip naked and apply Icy Hot to their genitals; and, c) requiring new members to wrestle more senior members of the Cayuga's Waiters, resulting in a new member reportedly suffering from a concussion.

In the Fall 2015 academic semester, it is alleged that new members were required to carry a totem with their person at all times. As punishment for not having their totem on their persons, it is alleged that the four new members were required to race up and down Catherine Street on a least one occasion. It is alleged the winner of that race decided what the other three New Guys had to eat, choosing between: a pound of old brie cheese, hot chili peppers, and Tabasco sauce. The individual who

consumed Tabasco sauce subsequently became sick with stomach cramps requiring emergency medical services to respond.

PROCEDURAL HISTORY

The Office of the Judicial Administrator received a report of hazing on August 31, 2016. The organization was temporarily suspended on September 2, 2016. A Charge letter for a hearing on the merits was sent to the current president of Cayuga's Waiters and the organization's Judicial Code Counselor on September 16; a charge letter for sanctions only hearing was sent to the same individuals on September 18, 2016. Raymond Schlather replaced the Judicial Codes Counselor as the organization's legal counsel on September 21, 2016. The hearing date was set for October 12 and 13, 2016. The sanction portion of the hearing was held on October 16, 2016.

On October 9, prior to the hearing, Mr. Schlather submitted several motions. He objected to: 1) the OJA introducing written records by non-testifying complainants and witnesses; 2) the OJA failing to identify the complainants in the case; 3) the OJA introducing statements of witnesses who did not have benefit of counsel; 4) the OJA granting immunity witnesses who were part of the Cayuga's Waiters; and 5) the OJA introducing incidents that occurred before September 2, 2015; 6) many of the exhibits as inflammatory or irrelevant. Further Mr. Schlather requested that every member of the Cayuga's Waiters be entitled to be present at the proceedings.

On October 9 Ms. Liang objected to seven of Mr. Schlather's witnesses because they had access to exhibits that Mr. Schlather had shared with their attorneys.

The Chair made the following decisions with regard to these objections:

1. Only the president of the Cayuga's Waiters could attend the entire hearing. Witnesses who were members of Cayuga's Waiters could attend only those portions of the proceeding where they were testifying.
2. Members of the Hearing Board could determine the extent to which the exhibits introduced by the OJA were inflammatory or irrelevant and would not be removed prior to the Hearing.
3. The witnesses were not respondents and thus could not be damaged by lack of counsel.
4. Similarly, the OJA granted immunity to witnesses and not respondents. Thus there was no violation of the Code or its procedures.
5. Documents with information regarding events that happened prior to September 2, 2015 were to be removed from the exhibits provided to the Board.
6. Mr. Schlather was permitted to call witnesses who had received exhibits from their attorneys.

Mr. Schlather and Ms. Liang filed additional motions on October 11. The Chair denied these because they arrived after the deadline for such motions.

The Hearing Board was properly constituted including three students, one employee, and one faculty member. Ms. Christina Liang, Associate Judicial Administrator, presented the case on behalf of the complainant, Cornell University. [REDACTED] represented Cayuga's Waiters with counsel provided by Mr. Raymond Schlather. Ms. Adrianna Covington recorded the hearings. The hearing on merits began at 4:30pm and adjourned at approximately 11:30pm on Wednesday October. It continued at 5:00pm on October 13, 2016 and adjourned at 12:15 am October 14 after reaching a decision.

At the beginning of the proceedings, Mr. Schlather asked the Hearing Board to review the decision by the Chair with regard to including exhibits consisting of anonymous surveys provided by the OJA because she had no witnesses who would give information about these documents. Thus, there was no opportunity for Mr. Schlather (or members of the Hearing Board) to cross-examine or question the material presented in the exhibits.

The Hearing Board voted three to two to uphold the Chair's decision with regard to the exhibits. Board members were concerned that the lack of OJA witnesses was a significant hindrance to Mr. Schlather in countering the allegations within the exhibits, as he could not question them. But the nature of the incidents, which involved multiple students who might have been embarrassed, humiliated, or in fear of retaliation to the extent that they would not appear as witnesses, overrode these concerns. A dissenting opinion on this vote by one member of the Hearing Board is provided with the decision.

Ms. Liang and Mr. Schlather each provided opening statements. Ms. Liang presented her case which included no witnesses and more than 20 exhibits. The exhibits included: 1) a timeline of the investigation; 2) explanation of the procedures used to investigate the hazing and other allegations; 3) nine witness surveys regarding various hazing events; and several emails from more senior CW members to their new members. Mr. Schlather objected repeatedly to Ms. Liang's presentation on the grounds that she was testifying. The Chair initially overruled these objections, but then asked the Board to meet in closed session to consider the matter again. The Board indicated that they wanted to hear an explanation of the methodology used by the AJO and a summary of the results, but they did not want the OJA to describe survey results individually. The UHB also removed from the OJA's Exhibits surveys completed by four witnesses because of conflict interest; the Judicial Codes Counselor represented these witnesses as individuals who faced Code violations and the organization at the same time. The Board did not consider these exhibits in judging the merits of the violations.

Information on the surveys included several incidents that took place on and off campus between September 2, 2015 and Fall 2016 that Ms. Liang characterized as lewd exposure, hazing, actions that were dangerous to individuals, actions preventing someone from leaving a space, and alcohol violations. Multiple witnesses

similarly described on their individual surveys the actions that Ms. Liang characterized as Code violations.

Mr. Schlather presented his case that included three witnesses on October 12 and three additional witnesses on October 13. He also presented nine exhibits. Mr. Schlather's witnesses provided first-hand accounts of incidents that occurred in Fall 2015, Spring 2016, Fall 2016 that supported, contradicted, or provided additional details on information in the AJO's exhibits.

After hearing all the relevant information the UHB found the Respondent not responsible by for the following alleged violations:

l.b. To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public place.

The UHB based their decision on the fact that board members did not find the actions lewd. The vote was unanimous.

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

The UHB did not find evidence to support this violation. The vote was unanimous.

The UHB found the Respondent responsible for violating the following provisions of the Code.

1.f. To haze another person, regardless of the person's consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.

Specifically, the UHB found the organization guilty of hazing in Fall 2015 and Spring 2016, but not in Fall 2016. The vote was unanimous. The Board identified three incidents that constituted hazing: 1) requiring new members to sit naked in an ice bath in a hotel bathroom during the Los Angeles/San Diego trip in January 2016; 2) requiring new members to apply Icy Hot to their genitals during this same trip; and requiring new members to race up and down a street and then consume foods in

Fall 2015. Board members based this decision primarily on the oral testimonies of witnesses presented by Mr. Schlather. The surveys provided by Ms. Liang appeared in some instances to corroborate information provided by witnesses, but the Board found the situation much more complex than portrayed in the surveys alone. For example in Spring 2016, students who were juniors at that time attempted to ameliorate the icy bath conditions and the Icy Hot applications for the new members. When those same students became seniors in Fall 2016, they significantly reduced hazing rituals during the first few weeks of Fall 2016, before the organization was temporarily suspended. However, these junior students actively participated in the hazing activities during Spring 2016 and the Board had no way to judge whether the new conditions instituted in fall 2016 represented a significant change to CW's hazing culture, as the organization was suspended just two weeks into the semester.

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

The UHB found that the ice bath incident used psychological coercion to prevent new members from leaving the ice bath. The vote was unanimous. Similar to the hazing violation, this decision was based on oral testimony provided at the hearing and corroborated by the surveys.

3.b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possession alcohol with the intent to consume it while under the age of 21.

The UHB found that the organization distributed and or dispensed alcohol at multiple events and occasions in Fall 2015 and Spring 2016. The vote was unanimous. The Board based their decision on testimony provided during the hearing and corroborated by surveys.

SANCTIONS

Rationale. Members of the Hearing Board found the hazing incidents extremely serious. They judged these activities not only dangerous and humiliating for students, but also failing to meet the most minimum standards that we hold as a university community for relationships among students. They were appalled and stunned by the actions that students within the organization inflicted on one another. At the same time, Board members recognized that the University failed to intervene when they were made aware of the hazing activities. The Board also

recognized that senior members of CW made efforts to reduce the hazing in fall 2016.

In determining sanctions, the Board wrestled with these conflicting factors: severity of the violations; failure of the university to act; the need to protect current and future students from mistreatment; evidence of reduced hazing in Fall 2016; potential for resumption of hazing activities. The OJA called for CW's dismissal, ensuring that hazing by this organization would end. The Hearing Board however, was moved by the sincerity of CW seniors to remake the organization's culture to align with Cornell community standards, while maintaining their love of music, performance, and deep friendships that characterize the group. The Hearing Board also noted the concern and attention displayed by [REDACTED], an alum of Cornell and CW.

The Hearing Board lifted the temporary suspension in place as of September 2, 2016.

The following sanctions are imposed with the objective of demonstrating the severity of CW hazing violations as well as the Board's trust that student members can make fundamental changes within the organization. All sanctions were agreed on unanimously.

1. **Disciplinary probation.** The probationary period is effective immediately and will remain in effect from October 25, 2016 to October 25, 2019. Maintaining acceptable probationary status includes complying fully and timely with the terms of this agreement, and refraining from future Code violations. You must contact the OJA to schedule your first probation program meeting within one week of the start of classes. During your first full semester on probation, you agree to participate in the OJA probation-meeting program.
2. **Engage effective advisors.**
 - a. Find and engage a Cornell campus advisor, preferably a staff member from Student and Campus Life, who will work closely with Cayuga's Waiters. This person should not be [REDACTED]. The Board heard compelling and disturbing testimony that [REDACTED] was aware that hazing was taking place and allowed it to continue. [REDACTED] also identified, perhaps inadvertently, a student who was being hazed that resulted in additional harm to that student.
 - b. Develop an Alumni Advisory Board. This Board must consist of at least four alumni who graduated prior to 2000 and who are willing to work closely with Cayuga's Waiters. The Board heard testimony that more recent alumni actively participated in and further encouraged hazing of new members. Testimony also indicated that hazing was

not a long-established tradition within the organization, but had been instituted only within the last ten years. For this reason, the Alumni board must be composed of alumni with a much longer history with CW.

- c. Advisors (Cornell campus and Alumni Advisory Board) must agree in writing (sent to OJA) to serve as the group's advisors by November 23, 2016.
- d. The Cornell advisor and the Alumni Advisory Board must each submit reports each semester to the OJA detailing their interactions with the organization, including progress on sanctions and other actions or activities the group has undertaken. Reports must be completed before the end of finals each semester. The first reports are due December 15, 2016.

3. **Alumni Advisory board must inform all alumni that hazing is unacceptable** and that any interactions on their part that results in another hazing violation will lead to the disbandment of CW. This sanction address the concerns that alumni, particularly those who have graduated since 2005, have actively participated and encouraged hazing within CW.

4. **Revise Constitution and Bylaws.**

The organization's governance structure must be explicitly democratic (each member has one vote) with all members, including those who are new, voting on all decisions except those expressly limited to the responsibilities of specific officers as described in the constitution. The constitution must include a clear anti-hazing policy.

5. **Restrict travel to New York State until November 2018.** The organization must inform their advisors of all performances and events that will take place off campus.

6. **Plan and implement educational seminars, at least one each semester.** Beginning Spring 2017 CW must hold a seminar or other activity that increases members' awareness and understanding of topics identified below. These should be events in which CW invites individuals from agencies or organizations with expertise and programming on a specific topic, such as sexuality, alcohol and drug use, LGBT, gender/women/masculinity, and hazing. CW advisors must approve these seminars.

7. **All CW events must be dry (no alcohol) during the probation period.**

8. **No new members until Fall 2017.**

9. **Alcohol and other Drug counseling. All current members of Cayuga's Waiters must complete Levels 1 and 1.5 as described below.**

Level 1 -BASICS, Including Fee. Complete BASICS alcohol/drug education sponsored by Gannett Health Services. This includes: contacting Gannett within two days of this agreement at 607-255-4782 for an appointment with a facilitator, completing the BASICS program within four weeks of this agreement, that is on or before November 28, 2016, completing evaluations as requested by Gannett and paying the fee for BASICS at the time of the first appointment.

If you fail to contact Gannett, miss any meeting, or fail to complete your BASICS education, you may be required to pay additional fees according to Gannett's policies.

Level 1.5. Meet once with an alcohol and other drugs specialist at CAPS (Counseling and Psychological Services). Call CAPS (607-255-5208) within the first week of the spring 2017 semester and schedule the meeting with the BASICS provider with whom you completed BASICS. The meeting must take place by February 6, 2017.

Respectfully submitted,

Jane Mt.Pleasant
Chair
University Hearing Board

On behalf of Hearing Board Members

A large black rectangular redaction box covering the signature of the person on behalf of the Hearing Board Members.

Cornell University Hearing Board
Concurrence in the Judgement, but Dissenting in Part
In the Matter of Cayuga's Waiters
Dates of Hearing: 12, 13, and 15 October 2016
Date of this Opinion: October 31, 2016

██████████, UHB MEMBER, *concurring in the judgment, but dissenting in part*. To the extent that the Majority's Decision reflects the allegations, facts adduced by the Panel, and sanctions with respect to our findings of "responsible," I concur fully in the Decision of the Majority.

However, I write separately to dissent with respect to the application of a procedural requirement of Cornell University's Campus Code of Conduct (the "Code"), which was both troublingly ignored by the Judicial Administrator (the "JA"), and which I respectfully believe was misapplied by this Panel. The Code in Title Three, Article III.E.3.b(6)(c) (at page 28) requires that, "No accused personal shall be denied the opportunity to question witnesses or to confront his or her accusers." The provision further requires that, "If an individual complainant does not testify, the Hearing Panel may proceed to decision *only if* it finds that the complainant's interests in not testifying outweigh the accused's interests in confronting his or her accuser." *Id.* (emphasis added). Further, "In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement." *Id.* The applicability of these explicit procedural requirements—safeguards against overreach by the JA—to the case and facts at hand is where I respectfully but fundamentally disagree with Decision of the Panel.

The right to confront one's accuser is fundamental in any system of discipline, whether in the greater legal context, or within our own campus judicial system. The Code in Title Three, Article III.3.b.(6)(c) as quoted above clearly illustrates its respect of this principle. Where, as here, the Complainant is Cornell University itself, its proceedings brought by the JA on its behalf, I read the language of the Code to require the JA to provide a witness—whether the JA, the Associate Judicial Administrator, or an authorized officer or agent thereof—who must testify as to any evidence that the JA wishes to introduce to the Panel against the accused. I believe this to be more than a mere formality. In the proceedings on October 12th, 13th, and 15th, the JA was permitted to testify in a representative capacity. This would be analogous to a prosecutor in a criminal proceeding directly presenting evidence of police investigation to a jury without calling such an investigatory officer as a witness who would then be available to defense counsel for cross examination. Permitting the JA to testify in narrative form in his or her representative capacity creates the appearance that—and in our proceedings, I believe had the effect that—the JA may introduce evidence into the record that cannot be challenged in any meaningful way by the accused. Though the Hearing Board Procedures are silent as to the way the JA may proceed to make its case, it is abhorrent to the concepts of Due Process to allow the JA to give a narrative of its investigations and introduce all documents produced by its office without allowing the accused to challenge the testimony of the JA or the credibility of the

documents introduced. The only way in which the accused can be given the “opportunity to confront his or her accusers” as required by the Code is to require the JA to, as a procedural requirement to all cases in which it intends to proceed against an accused on behalf of the University, call a witness from its own office to testify as to its investigatory procedures and findings. To allow the JA to admit any and all unattested evidence without challenge would invite the possibility of prosecutorial misconduct and maliciousness in future cases. Though I do not believe the JA meant its form of presentation to be unfair, and I do in fact believe that they proceeded in good faith, I vehemently believe that this imbalance is contrary to the principles of fairness embodied by the Code. I would hold that the right to confront one’s accuser under the Code requires that if the JA wishes to proceed against an accused, it *must* call itself as a witness available for the accused to challenge on cross examination. In the real world, failure to satisfy this basic requirement requires dismissal of a case for failure to prosecute. In the confines of the Cornell community, we should not dismiss such basic and fundamental principles—to the contrary, as an institution of higher learning, we should embrace them.

The Code requires that “If an individual complainant does not testify the Hearing Panel may proceed to decision *only if* it finds that the complainant’s interests in not testifying outweigh the accused’s interests in confronting his or her accuser.” *Code, Title Three, Article III.E.3.b(6)(c)* (emphasis added). In this case, the Complainant being the University represented through the JA, did not provide testimony, and its interests in doing so must be balanced against the accused’s right to confront the University. The simple procedural requirement that the JA be called as a witness to testify can hardly be considered so burdensome as to constitute an “interest” on the part of the University; and as I have discussed, the right of an accused to confront the University is severely limited where the accused may not challenge the evidence proffered by the JA through cross examination.

Lastly, the Code requires that “In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, Unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement.” *Id.* In the case at hand, the vast majority, if not all of the evidence against Cayuga’s Waiters was provided in the live witness testimony of the accused’s own witnesses. Our findings of fact relied heavily on admissions made by members of the Cayuga’s Waiters during their testimony. As a threshold matter, I disagree that the Chair or Panel can find that written surveys produced by the JA’s office that are not otherwise verified are “reliable” based on non-testimony, pre-hearing claims by the JA. I would hold that the Code requires something more than the word of the JA to be sufficient for a finding that such accounts of non-testifying victims are “reliable.” Second, since the JA may have freely testified as I believe is required by the Code, there were no “compelling circumstances of need” for those accounts to be introduced. There is no rule of the Code that renders “hearsay” evidence inadmissible in the way such evidence must be excluded under the Federal Rules of Evidence, but nevertheless the Code recognizes a presumption against the admission of hearsay (“written, recorded or oral account of an earlier statement by a nontestifying [person]”). I would hold that in overcoming this presumption against the introduction of hearsay under this clause, the JA is

required to present the best evidence of that hearsay, which is live testimony of that hearsay that can be challenged by the accused on cross examination.

To the extent that the Panel decided this issue against my opinion in a vote of 3-2, I concur fully in the opinion of the majority. However, for the foregoing reasons, I believe that the complaint of the University against Cayuga's Waiters should have been dismissed for lack of prosecution, and I respectfully dissent.

Cornell University Hearing Board
Concurrence in the Judgement, but Dissenting in Part
In the Matter of Cayuga's Waiters
Dates of Hearing: 12, 13, and 15 October 2016
Date of this Opinion: October 31, 2016

██████████, UHB MEMBER, *concurring in the judgment, but dissenting in part*. To the extent that the Majority's Decision reflects the allegations, facts adduced by the Panel, and sanctions with respect to our findings of "responsible," I concur fully in the Decision of the Majority.

However, I write separately to dissent with respect to the application of a procedural requirement of Cornell University's Campus Code of Conduct (the "Code"), which was both troublingly ignored by the Judicial Administrator (the "JA"), and which I respectfully believe was misapplied by this Panel. The Code in Title Three, Article III.E.3.b(6)(c) (at page 28) requires that, "No accused personal shall be denied the opportunity to question witnesses or to confront his or her accusers." The provision further requires that, "If an individual complainant does not testify, the Hearing Panel may proceed to decision *only if* it finds that the complainant's interests in not testifying outweigh the accused's interests in confronting his or her accuser." *Id.* (emphasis added). Further, "In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement." *Id.* The applicability of these explicit procedural requirements—safeguards against overreach by the JA—to the case and facts at hand is where I respectfully but fundamentally disagree with Decision of the Panel.

The right to confront one's accuser is fundamental in any system of discipline, whether in the greater legal context, or within our own campus judicial system. The Code in Title Three, Article III.3.b.(6)(c) as quoted above clearly illustrates its respect of this principle. Where, as here, the Complainant is Cornell University itself, its proceedings brought by the JA on its behalf, I read the language of the Code to require the JA to provide a witness—whether the JA, the Associate Judicial Administrator, or an authorized officer or agent thereof—who must testify as to any evidence that the JA wishes to introduce to the Panel against the accused. I believe this to be more than a mere formality. In the proceedings on October 12th, 13th, and 15th, the JA was permitted to testify in a representative capacity. This would be analogous to a prosecutor in a criminal proceeding directly presenting evidence of police investigation to a jury without calling such an investigatory officer as a witness who would then be available to defense counsel for cross examination. Permitting the JA to testify in narrative form in his or her representative capacity creates the appearance that—and in our proceedings, I believe had the effect that—the JA may introduce evidence into the record that cannot be challenged in any meaningful way by the accused. Though the Hearing Board Procedures are silent as to the way the JA may proceed to make its case, it is abhorrent to the concepts of Due Process to allow the JA to give a narrative of its investigations and introduce all documents produced by its office without allowing the accused to challenge the testimony of the JA or the credibility of the

documents introduced. The only way in which the accused can be given the “opportunity to confront his or her accusers” as required by the Code is to require the JA to, as a procedural requirement to all cases in which it intends to proceed against an accused on behalf of the University, call a witness from its own office to testify as to its investigatory procedures and findings. To allow the JA to admit any and all unattested evidence without challenge would invite the possibility of prosecutorial misconduct and maliciousness in future cases. Though I do not believe the JA meant its form of presentation to be unfair, and I do in fact believe that they proceeded in good faith, I vehemently believe that this imbalance is contrary to the principles of fairness embodied by the Code. I would hold that the right to confront one’s accuser under the Code requires that if the JA wishes to proceed against an accused, it *must* call itself as a witness available for the accused to challenge on cross examination. In the real world, failure to satisfy this basic requirement requires dismissal of a case for failure to prosecute. In the confines of the Cornell community, we should not dismiss such basic and fundamental principles—to the contrary, as an institution of higher learning, we should embrace them.

The Code requires that “If an individual complainant does not testify the Hearing Panel may proceed to decision *only if* it finds that the complainant’s interests in not testifying outweigh the accused’s interests in confronting his or her accuser.” *Code, Title Three, Article III.E.3.b(6)(c)* (emphasis added). In this case, the Complainant being the University represented through the JA, did not provide testimony, and its interests in doing so must be balanced against the accused’s right to confront the University. The simple procedural requirement that the JA be called as a witness to testify can hardly be considered so burdensome as to constitute an “interest” on the part of the University; and as I have discussed, the right of an accused to confront the University is severely limited where the accused may not challenge the evidence proffered by the JA through cross examination.

Lastly, the Code requires that “In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, Unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement.” *Id.* In the case at hand, the vast majority, if not all of the evidence against Cayuga’s Waiters was provided in the live witness testimony of the accused’s own witnesses. Our findings of fact relied heavily on admissions made by members of the Cayuga’s Waiters during their testimony. As a threshold matter, I disagree that the Chair or Panel can find that written surveys produced by the JA’s office that are not otherwise verified are “reliable” based on non-testimony, pre-hearing claims by the JA. I would hold that the Code requires something more than the word of the JA to be sufficient for a finding that such accounts of non-testifying victims are “reliable.” Second, since the JA may have freely testified as I believe is required by the Code, there were no “compelling circumstances of need” for those accounts to be introduced. There is no rule of the Code that renders “hearsay” evidence inadmissible in the way such evidence must be excluded under the Federal Rules of Evidence, but nevertheless the Code recognizes a presumption against the admission of hearsay (“written, recorded or oral account of an earlier statement by a nontestifying [person]”). I would hold that in overcoming this presumption against the introduction of hearsay under this clause, the JA is

required to present the best evidence of that hearsay, which is live testimony of that hearsay that can be challenged by the accused on cross examination.

To the extent that the Panel decided this issue against my opinion in a vote of 3-2, I concur fully in the opinion of the majority. However, for the foregoing reasons, I believe that the complaint of the University against Cayuga's Waiters should have been dismissed for lack of prosecution, and I respectfully dissent.

Cornell University Review Board

In the Matter of CAYUGA'S WAITERS

Review Board Panel:

Student

[REDACTED] (participating remotely)

Faculty

[REDACTED]

Staff

[REDACTED]

Andrea J. Mooney, Chair

Appeal from an October 31, 2016 decision of a panel of the University
Hearing Board, Jane Mt. Pleasant, Chair.

I. Background

After receiving an incident report concerning allegations of hazing by the student group known as Cayuga's Waiters (an a cappella singing group), the Office of the Judicial Administrator (OJA) investigated. Subsequently, a University Hearing Board (UHB) was convened to conduct a hearing on the merits. The organization was represented by Raymond Schlather, Esq., and the OJA was represented by AJA Christine Liang.

The UHB met on October 12, 13, and 16, 2016. The full written decision, including a dissenting opinion, was provided to the AJA and the organization on October 31, 2016.

a) The UHB found Cayuga's Waiters responsible for violating the following Code provisions:

Title Three, Art. II Sec. A:

1.f To haze another person, regardless of the person's consent to participate....

3.b To unlawfully manufacture distribute, dispense, possess, use or sell alcohol...

b) The UHB found Cayuga's Waiters not responsible for violating the following Code provisions:

Title Three, Art. II Sec. A:

1.b To intentionally (1) expose a private or intimate part of one's body in a lewd manner or (2) commit any other lewd act in a public space.

1.g To (1) endanger another person...(2) threatened or use physical force or violence to endanger, injure, abuse, intimidate, or coerce another person.

c) There was a dispute as to the UHB's determination as to one section of the Code:

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

In the actual delivery of the decision on October 16, 2016, Chair Mt. Pleasant noted that the Board found Cayuga's Waiters not responsible for this "leaving the location" charge. In the written decision, however, the organization was found responsible for the charge. Mr. Schlather communicated with Chair Ms. Pleasant about this discrepancy. Chair Mt. Pleasant explained that if she said "no violation" at the end of the sanctions hearing, she misspoke. She pointed out that her notes reflect that the Board found Cayuga's Waiters in violation of the charge. She further noted that she distributed the draft of her report to each

member of the Board, highlighting that particular section and asking for input, and that no Board member corrected the section she had highlighted.

II. The Present Appeal

Each party appealed the UHB's decision. The OJA appealed the sanctions, arguing that the sanctions imposed by the UHB were disproportionate and not commensurate with the violations found and pointing out that some of the sanctions imposed by the UHB were not permissible under the Code.

Cayuga's Waiters appealed in two parts. The first part argued that the appeal was untimely, that the OJA raised issues beyond the scope of what is authorized by the Code, and the appeal was barred by waiver and estoppel. The University Review Board (URB) Chair, Andrea J. Mooney, found that the appeal was timely, that the citing of precedent was not beyond the scope of what is authorized by the Code and that waiver and estoppel did not apply. Thus, the Chair did not dismiss the appeal.

The second part of Cayuga's Waiters appeal asked that the URB recognize the verbal reading of the UHB's decision into the record as the actual decision of the UHB and determine that in fact the UHB found Cayuga's Waiters not in violation of the "leaving the location" charge.

The URB Chair asked for a panel to be convened to decide the matter.

A duly-constituted panel of the Hearing Board met on December 14, 2016, to determine the two appeals.

III. The Decision

The URB unanimously agrees with the Judicial Administrator that the sanctions administered by the UHB were not commensurate with the violation (Title Three, Art. II Sec. A: 1.f). The Code limits the URB to establish either a one-year suspension, which the URB did not believe was a sufficient consequence, or dismissal (rescission of permission to

operate on University property) in the case of a student organization. The evidence in this case is more than sufficient to warrant the penalty of dismissal.

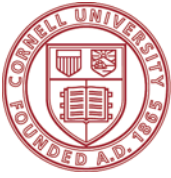
The URB considered Cayuga's Waiter's argument regarding the discrepancy between the oral report of the UHB's decision following the sanctions phase and the written report. Even assuming that the oral report was the correct finding of the UHB – that is, that the UHB found Cayuga's Waiters not in violation of the "leaving the location" charge (Title Three, Art. II Sec. A: 1.1), the URB finds that the core charge of hazing (Title Three, Art. II Sec. A: 1.f) is sufficiently met so as to warrant dismissal.

The URB also considered the mitigating factors mentioned by the UHB, and the emails in support of Cayuga's Waiters, but felt that the violation was so egregious as to warrant a more severe penalty than was administered by the UHB.

The dismissal of Cayuga's Waiters is to take effect immediately. The organization is no longer permitted to operate on University property.

Respectfully submitted,

Andrea J. Mooney
Chair, University Review Board



Cornell University

Hunter R. Rawlings III
Interim President

March 2, 2017

Cayuga's Waiters
c/o [REDACTED]

(via email: [REDACTED])

Dear [REDACTED]:

I have reviewed the written appeal from the University Review Board's determination of December 15, 2016 submitted on your organization's behalf, along with supporting information regarding the case, including the Office of the Judicial Administrator's (OJA) response.

As you are aware, the University Hearing Board (UHB) unanimously found Cayuga's Waiters responsible for three incidents of hazing in Fall 2015 and Spring 2016: requiring new members to 1) race up and down Catherine Street and then consume foods, including Tabasco sauce; 2) sit naked in an ice bath in a hotel room for at least 30 minutes; and 3) apply Icy Hot to their genitals. The organization was also unanimously found responsible for using psychological coercion to prevent an individual from leaving a location (during the ice bath hazing), and making alcohol available to individuals under 21 on multiple occasions.

The UHB found that the hazing incidents were "extremely serious" and "dangerous and humiliating for students," and that the organization was "failing to meet the most minimum standards that we hold as a university community for relationships among students." The UHB further stated that it was "appalled and stunned by the actions that students within the organization inflicted on one another." The UHB imposed a number of sanctions, including among other things a three-year disciplinary probation, requirements that the group engage an effective campus advisor and an Alumni Advisory Board, and a number of educational sanctions.

The OJA appealed to the University Review Board (URB), arguing that the sanctions were not commensurate with the violations, and that the group should be dismissed. (Cayuga's Waiters appealed as well, on grounds that are not important to this decision.) The URB unanimously held that the Code does not permit an organization to be put on disciplinary probation, and that the appropriate sanction was either a one-year suspension or dismissal. The URB unanimously found that the hazing violations were "so egregious" that a one-year suspension was insufficient, and dismissed the organization.

On appeal, Cayuga's Waiters first argues that the URB failed to explain its decision and exceeded its authority in altering the sanction. I do not agree. The Code requires the URB's decision to be "in writing, including a rationale," Title Three, Article III, Section F.7.a, and empowers the URB to "alter a penalty . . . if necessary and appropriate in the interests of justice." Title Three, Article III, Section F.7.b.ii. The URB's written decision explained that the conduct was "so egregious as to warrant a more severe penalty than was administered by the UHB." That is a sufficient rationale for the decision. Further, I do not agree that the URB exceeded its authority in exercising the power granted to it under the Code to alter the sanctions imposed on the organization.

Second, Cayuga's Waiters argues that the URB incorrectly concluded that the Code limited the sanctions that could be imposed. For University-registered organizations (such as Cayuga's Waiters), the Code provides that "The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision," and goes on to list seven sanctions, including "suspension of all privileges for a stated period not to exceed one year" and "dismissal, i.e., rescission [sic] of permission to operate on University property," but not including probation. Title Three, Article IV, Section A.1.c. (Notably, "Probation for a stated period" is listed elsewhere in the Code as a possible sanction for individual respondents. Title Three, Article IV, Section A.1.a.) The URB's interpretation of the Code—that the list of possible sanctions in organization matters is exclusive and probation is not available—is reasonable, and I defer to it.

Finally, Cayuga's Waiters argues that dismissal is not commensurate with the violations found by the UHB, and inconsistent with penalties imposed in other matters not adjudicated under the Code. I agree with the UHB that the hazing violations in this case are "extremely serious," "dangerous and humiliating," and evidence of the organization "failing to meet the most minimum standards that we hold as a university community for relationships among students." This behavior has no place at Cornell, and I agree with the URB that dismissal of the organization is appropriate.

I therefore affirm the decision of the University Review Board.

Yours sincerely,

A handwritten signature in cursive script, reading "Hunter R. Rawlings III".

Hunter R. Rawlings III

cc: Raymond M. Schlather, Adviser for the Respondent (ray@ithacalaw.com)
Michelle R. Horvath, Judicial Administrator (mrh263@cornell.edu)
Judicial Administrator Account (judadmin@cornell.edu)
Christine Liang, Associate Judicial Administrator (cl2347@cornell.edu)

Public Record #4

UNIVERSITY HEARING BOARD

Accused: [REDACTED]
Complainant: [REDACTED]

PETITION SHOW CAUSE

Date of Hearing: 26 October 2016
Date of Written Report: 2 November 2016

The University Hearing Board (UHB), chaired by Jane Mt.Pleasant, comprised three students, one staff, and one faculty. The panel met on October 26 to consider the complainant's petition to show cause, the Associate Judicial Administrator's response to that petition, and the complainant's response to the AJA. The Complainant submitted a formal complaint against the respondent on September 2, 2016 for an incident that occurred on September 13, 2015, charging Code violations of harassment, physical assault, and theft of property, (Title three, Art III. Sec. A. 1d., 1e., and 1.i.). Associate Judicial Administrator Christina Liang conducted the investigation and resolved the case, finding the Respondent responsible for harassment. They entered into a summary decision agreement on September 30, 2016. The Complainant disagreed with the outcome and filed a show cause petition. The Complainant argued that the Respondent violated the assault provisions of the Code and also wanted the Respondent removed from [REDACTED] Residence Hall.

The UHB considered whether the investigation was thorough and recognized that the burden of proof was on the Petitioner/Complainant. The AJA interviewed all directly involved persons and including the Complainant, the Respondent, and Residence Life staff. The UHB also evaluated the AJA's decision with regard to the clear and convincing standard of proof for all three alleged violations. The AJA found clear and convincing evidence that the Respondent was responsible for harassment but insufficient proof for violations of assault and theft.

Finding: The UHB found that the AJA had thoroughly investigated the allegations and that Complainant had not met the burden of proof of clear and convincing evidence otherwise. The AJA correctly evaluated that the Respondent's actions on September 13, 2015 had risen to the level of harassment as defined by the Code. The UHB found the summary decision agreement with sanctions appropriate to this violation. The JA's finding of insufficient proof for assault and theft violations of the Code was also appropriate. Having thoroughly reviewed the case facts as presented and considering that the incident occurred more than one year previous, the UHB found it reasonable that no clear and convincing evidence for these violations was found. Consequently, the UHB upholds the decision by the Office of the Judicial Administrator in whole.

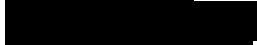
Respectfully submitted,

Jane Mt.Pleasant

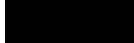
Chair, University Hearing Board

On behalf of Hearing Board panel members:

 (student)

 (student)

 (student)

 (staff)

 (faculty)

Public Record #5

UNIVERSITY HEARING BOARD

December 6, 2016

Complainant
[REDACTED]

PETITION TO SHOW CAUSE FOR NO ACTION

The University Hearing Board (UHB) panel comprised of three students [REDACTED], [REDACTED], and [REDACTED], one staff member ([REDACTED]) and one faculty member ([REDACTED]) and chaired by Patsy M. Brannon met on December 6, 2016, to consider 1) the petition (undated) filed on behalf of the complainant, [REDACTED], by and through his counsel, Mr. William Shaw, to show cause for the OJA No Action; 2) the JA's response dated November 30, 2016; 3) the complainant's reply to the JA's response submitted by his counsel on December 2, 2016. Board member, [REDACTED] was not present due to illness, but the hearing proceeded in accordance with the provision of the Code that four of the five members be present.

No Action

The UHB considered the OJA No Action on the alleged violations of Title III. Article II.A.1.g. endangerment and Article II.A.1.a.(2) sexual assault relative to the Code standard of "reasonable cause to believe that a violation has been committed, and a Summary Decision Agreement has not been reached" after an investigation as stated in Title III. Article III.D.1.a. for the OJA to file charges. Thus, not having reasonable cause to believe a violation has been committed would result in 'No Action'. The Board also discussed the confusion in this case inherent in the procedural delays resulting from the court's restraining order as well as from the dual investigative processes, jurisdictions and different standards of evidence for the OJA and the other University department.

Finding: The UHB unanimously upholds the OJA's No Action on the complaint filed by [REDACTED] alleging the Respondent violated the Code Title III. Article II.A.1.g. endangerment and Article II.A.1.a.(2) sexual assault based on the OJA's assessment of credible self-defense by Respondent. The Board unanimously concurred with the OJA that self-defense is implicit in the Code and would constitute a lack of reasonable cause to believe that the Code had been violated.

Respectfully submitted,

Patsy M. Brannon

Patsy M. Brannon, PhD, RD
Chair, University Hearing Board

On behalf of Hearing Board panel members:

[REDACTED], student

[REDACTED], faculty

[REDACTED], student

[REDACTED], staff

Not present was a student member due to illness

Public Record #6

UNIVERSITY HEARING BOARD

Accused: [REDACTED]

Complainant: [REDACTED]

PETITION SHOW CAUSE

Date of Hearing: 14 December 2016

Date of Written Report: 21 December 2016

The University Hearing Board (UHB), chaired by Rocco M. Scanza, comprised three students, one staff, and one faculty. The panel met on December 14th to consider the complainant's petition to show cause, the Associate Judicial Administrator's response to that petition, and the complainant's response to the AJA. The Complainant submitted a formal complaint against the respondent on October 17, 2016 for an incident that occurred on March [REDACTED], 2016 at La Quinta Inn in Binghamton, New York, charging violations of the harassment and endangerment provisions of the Code.

Title Three of the Code limits jurisdiction to four jurisdictional boundaries: conduct 1) on any campus of the University; 2) on any other property or facility used by it for educational purposes; or 3) on the property of a University-related residential organization in the Ithaca or Geneva area... or to conduct 4) elsewhere if the Judicial Administrator-with the approval of the President or his or her designated representative in the person of the Dean of Students for students... considered the conduct to constitute a serious violation of this Title, in that the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members (Title Three, Art.I, page 15-16). Jurisdictional requirements must be met before the OJA may take action (i.e. pursue a full investigation of a complaint).

Associate Judicial Administrator Christina Liang conducted the investigation and determined that the Accused's conduct did not meet any of the four jurisdictional boundaries. As such, the OJA does not have jurisdiction to proceed any further with Complainant's case

The UHB considered whether the investigation was thorough and recognized that the burden of proof was on the Petitioner/Complainant. The AJA interviewed and the Complainant on two separate occasions. She also interviewed a witness who observed the incident at the LaQuinta Inn in Binghamton.

Finding: The UHB found that the AJA had thoroughly investigated the allegations and correctly determined that the Accused's alleged misconduct did not rise to the level of a serious violation of Title Three. Accordingly, the UHB

agreed with the OJA's finding of "not responsible" because it did not have jurisdiction to proceed any further with Complainant's complaint.

Consequently, the UHB upholds the decision by the Office of the Judicial Administrator in whole.

Respectfully submitted,

Rocco M. Scanza
Chair, University Hearing Board
On behalf of Hearing Board panel members:

[REDACTED] (student)
[REDACTED] (student)
[REDACTED] (student)
[REDACTED] (staff)
[REDACTED] (faculty)

Public Record #7

This information, transmitted from the University Hearing Board of Cornell University, is intended only for use by the Judicial Administrator, her staff, the accused person and his or her counsel, and by the complainant. It contains legally confidential and/or privileged material. Any forwarding, copying, disclosure, distribution, or other use of this information by any person is prohibited. If you are not an intended recipient, any review or taking of any action in reliance upon this information is strictly prohibited. If you received this in error, please return it to the Office of the Judicial Administrator.

CORNELL UNIVERSITY HEARING BOARD
DECISION

In the Matter of [REDACTED]

Date of Hearing: 10 February, 2017 2009
Date of Written Decision: 19 February 2017

[REDACTED] was charged with two violations of the Campus Code of Conduct in relation to an incident that occurred on October 31, 2017. In particular, the charges included:

Title Three, Article II, Sec A.

- 2.e. To furnish false information to the university with intent to deceive.
- 3.g. To destroy evidence or otherwise obstruct the application of the code.

The Hearing Board was properly constituted, including three students, one employee and one faculty member. Arian Covington presented the case on behalf of the Office of the Judicial Administrator (OJA). Mark Carper was present as advisor to the student. Christina Lang from the OJA recorded the hearing.

Prior to the Hearing the OJA presented one objection to the Respondent's witness list and three objections to Respondent's evidence list. After considering the objections and the responses to them, the Chair ruled as follows:

1. The objection to calling Arian Covington as a witness was granted. The Chair ruled that the Hearing Board would address only violations that [REDACTED] was charged with, not those which were dropped or modified prior to the issuance of the charge letter. The Respondent suggested that because Ms. Covington made a mistake in matters of fact in earlier stages of the investigation, it was likely that she made similar mistakes in the violations that the UHB is now considering. The Chair rejected that argument.
2. The objection to the inclusion of text messages as exhibits was denied. The OJA argued that they could not be used as they were protected by FERPA regulations. The Chair ruled that FERPA regulations apply only to student records held by the University and since these were not part of a student's record, they were not subject to FERPA.

3. The objection to inclusion of two videos as evidence was granted. The Chair ruled that because the videos were re-creations of events, and not videos of actual events, their authenticity and relevance was uncertain.
4. The objection to two audiotapes was granted. The Chair ruled that because the recordings were incomplete (only two of four interviews) and were taken without Covington's knowledge, they could not be used as evidence.

Upon receiving the Chair's decisions to the objections to the witness and exhibits, the Respondent requested a postponement of the hearing, citing that ■ needed additional time to prepare ■ defense. The Chair denied this request on the basis that the objections, responses, and the Chair's decisions had all occurred within the time requirements of the Code.

After JA reviewed the charges, the Respondent assured the UHB that ■ understood his rights and stated that ■ did not believe he violated the Code.

Violation Stage. Covington and the Respondent gave opening statements. Covington presented three witnesses and seven exhibits which provided information that supported the allegations. The Respondent called himself as a witness and presented 11 exhibits that challenged the charges.

At the close of testimony, the UHB panel deliberated in closed session for one hour. The panel determined by a vote of three to two that the Respondent had furnished false information to the OJA with intent to deceive. Hearing board members who voted for the violation found the testimony of the witnesses compelling, concluding that the Respondent knew the identities of at least three students who were drinking and deliberately did not identify them in order to deceive the OJA. Board members who did not find the Respondent in violation, found insufficient evidence to support the charge of furnishing false information. A dissenting opinion is attached to this decision.

The panel unanimously determined that the Respondent had obstructed the OJA in applying the Code. By not supplying the information regarding the identities of the other student, he prevented the OJA from applying the Code.

Sanctions phase began at 5:00pm February 10. The OJA recommended a written reprimand, disciplinary probation for one semester, and a reflection paper. The Respondent asked that the Board not impose disciplinary probation. His advisor noted that the probation sanction would remain on his record for six years after graduation, possibly impeding his ability to attend law school or graduate school.

In closed session, the Hearing Board considered the sanctions. All panel members found that the violations deserved a significant consequence. They recognized that disciplinary probation might negatively affect the Respondent's applications to

professional and/or graduate schools, but noted that other students had successfully overcome this obstacle. Two panel members felt that the Probation sanction was too severe. A dissenting opinion is attached.

The panel agreed by a vote of 5-0 on the following sanctions:

1. **Written Reprimand.** This decision serves as a written reprimand from Cornell University.
2. **Reflection Paper.** Complete a five-page reflection paper on the following topic: Read the article provided, “three Ways of owning your mistakes will make you powerful” and reflect. Find two similar articles and write the reflection paper on all three, reflecting on your own experiences. The reflection paper should be double spaced, 12-pont Times New Roman font with one-inch margin all around. This paper must be submitted to the OJA by March 1, 2017.

They voted 3-2 on the following sanction:

3. **Disciplinary Probation for one semester.** The probationary period is effective immediately and will remain in effect from January 9, 2017 to May 29, 2017. Maintaining acceptable probationary status includes complying fully and timely with the terms of this decision and refraining from future Code violations. You must contact the OJA to schedule your first probation meeting within one week of this decision. You agree to participate in the OJA probation meeting program.

Respectfully submitted,

Jane Mt.Pleasant
Chair, University Hearing Board

On behalf of Hearing Board panel members:

██████████, student
██████████, student
██████████, student

██████████, employee
██████████, faculty

This information, transmitted from the University Hearing Board of Cornell University, is intended only for use by the Judicial Administrator, her staff, the accused person and his or her counsel, and by the complainant. It contains legally confidential and/or privileged material. Any forwarding, copying, disclosure, distribution, or other use of this information by any person is prohibited. If you are not an intended recipient, any review or taking of any action in reliance upon this information is strictly prohibited. If you received this in error, please return it to the Office of the Judicial Administrator.

CORNELL UNIVERSITY HEARING BOARD

Dissenting Opinion

In the Matter of [REDACTED]

Date of Hearing: 10 February, 2017

Date of Written Decision: 17 February 2017

As explained in the Hearing Board's Written Decision, the University Hearing Board panel unanimously agreed on one charge and multiple sanctions, but was split 3-2 on a second charge and the most serious of the sanctions. This dissenting opinion serves to clarify both splits.

Broadly, the panel unanimously found clear and convincing evidence for the following: 1) that the respondent knew of at least two students drinking at his party, 2) that the respondent knowingly did not disclose this information to the Office of the Judicial Administrator (OJA), and 3) that this obstructed the OJA in their investigation. Treating these as facts of the case, the panel unanimously agreed that the respondent violated Title Three, Article 2, Section A, charge 3.g. of the Campus Code of Conduct, "[t]o destroy evidence or otherwise obstruct the application of this Code."

Where the panel struggled was with Title Three, Article 2, Section A, charge 2.e., "[t]o furnish false information to the University with intent to deceive." My dissent from the panel's finding on this charge is because the charge requires evidence of explicitly providing "false information." I did not find that the Assistant Judicial Administrator (AJA) met the burden of proof in this regard. Both the respondent and AJA provided different characterizations of their first meeting, where the alleged violation took place. Moreover, when the respondent was asked which other students were drinking at [REDACTED] party, [REDACTED] could have given several plausible answers without providing "false information" (for example, if [REDACTED] had responded that [REDACTED] did not want to accuse [REDACTED] friends). Given that the AJA's only evidence of the respondent explicitly providing false information to the OJA came from the AJA's unassured testimony about specific wording at a meeting months before the hearing, I did not find that the AJA met the standard of clear and convincing evidence for this charge.

In addition, the panel disagreed over the appropriateness of probation as a sanction. The panel felt that the incident, and violation of charge 3.g alone, was significant enough to merit sanctions beyond a written warning and reflection essay. Our hesitancy about probation was not based on the amount of effort that probation entails, but that it stays on a student's record for 6 years after graduation; that lasting record is the reason for my dissent. If the respondent finds grounds to appeal any part of this case, I strongly encourage him to reflect seriously on the incident and suggest meaningful alternative sanctions that will be conducive to his personal growth.

Respectfully submitted,

, student member of the Hearing Board panel

**Decision of the University Review Board
March 31, 2017**



A duly constituted panel (one faculty, one staff, one student and a non-voting chair) of the University Review Board (URB) met on March 31, 2017 to review the appeal of Respondent [REDACTED]

Background

A University Hearing Board (UHB), held on February 10, 2017 had determined:

(1) unanimously that Respondent had obstructed the Office of the Judicial Administrator (OJA) in violation of the Campus Code of Conduct Title Three, Article II, Sec. A, 3g. ("To destroy evidence or otherwise obstruct the application of the code.");

(2) by a vote of 2-3 that Respondent had furnished false information to the OJA with intent to deceive in violation of the Campus Code of Conduct Title Three, Article II, Sec. A, 2e ("To furnish false information to the university with intent to deceive.")

One member of the UHB filed a dissent with regard to charge 2e.

The UHB agreed unanimously on the following sanctions:

- 1) written reprimand
- 2) reflection paper

The UHB voted 3-2 on disciplinary probation for one semester.

Current Appeal

The Respondent appealed the sanctions on the ground that the penalty imposed was unjust. Respondent argued that, under University Policy 4.7 and the current policy of the Office of the Judicial Administrator, a probationary sanction is accompanied by the retention of disciplinary records for a period of six years past the student's graduation date. In this Respondent's case, the OJA would retain disciplinary records for a period of approximately ten years (four years until the Respondent graduates and then another six years.)

The University Review Board agreed with the Respondent that the penalty is unjust in that a six-month probationary period is accompanied by the retention of disciplinary records for up to ten years.

The URB Chair consulted with University Counsel and the Judicial Administrator in the course of deliberations, and communicated the questions and answers to Respondent's advisor via email.

The University Counsel and the Judicial Administrator advised the URB that the URB did not have the authority to alter the period for retaining disciplinary records – that is a decision for the Judicial Administrator, who has determined six years post graduation as the period to retain records in the case of probation.

Decision

Therefore, the URB, determines, under Title Three, Article III, Section F (1)(b)((7), to alter the penalty that the UHB imposed. The URB determines that the penalty shall be as follows:

- 1) the written reprimand and reflection paper that the UHB previously imposed, shall remain;
- 2) in place of probation, the URB imposes a penalty of 80 hours of community work, to be performed in a manner acceptable to the Judicial Administrator.

The penalty of community work carries with it the requirement that the Judicial Administrator maintain disciplinary records until the student graduates. The URB has determined that retention of disciplinary records until graduation is a severely serious sanction, along with the reprimand, paper, and community work, to convey to the Respondent the severity of his actions.

Respectfully submitted,

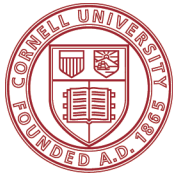
Andrea J. Mooney
Chair, University Review Board

Members of the Review Board:

██████████ faculty
██████████ student
██████████ staff



Public Record #8



Cornell University

Office of the Judicial Administrator
120 Day Hall
Ithaca, NY 14853

Phone: 607-255-4680
Fax: 607-254-4464
Email: judadmin@cornell.edu

UNIVERSITY HEARING BOARD

Respondent

Mitchell McBride (represented by Kendall Karr, JCC)

Complainant

CORNELL UNIVERSITY (represented by Associate JA Christina Liang)

HEARING ON THE MERITS

On April 19, 2017, the University Hearing Board (UHB) convened to consider allegations that the Respondent violated the Campus Code of Conduct (Code), specifically:

Title Three, Article II, Sec. A.

2.d. To (1) forge, fraudulently alter, willfully falsify, or otherwise misuse University or non-University documents (including computerized or noncomputerized records, parking permits, dining cards, identification cards, other permits or cards, reserve books, or other property) or (2) possess such forged, altered, or falsified documents, or (3) unlawfully possess the identification of another person if that identification has a date of birth that would make the person legal to consume alcohol at a time the accused is not of a legal drinking age.

2.i. To commit a violation of Article II of Title Four

Title Four, Article II, Sec. A.

2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

PROCEDURAL HISTORY

The Office of the Judicial Administrator (OJA) received a referral for an alleged Code violation on February 27, 2017.

ALLEGATIONS

Specifically, it is alleged that on February 12, 2017, Mitchell McBride gave two documents to the Cornell Daily Sun from the Admissions and Financial Aid Working Group (AFAWG) of which he was a member. One was a draft report from the AFAWG written in January, 2017, and the other was minutes of the group's January meeting. It is alleged that he had been told by the group's chair that both the deliberations of the group and the documents that it discussed were confidential.

The OJA alleged that releasing these documents constituted misuse of University documents, under Title Three, Article II, Section A. 2.d, as well as disobeying a lawful order by a clearly identifiable University official, under Title Four, Article II, Section A, 2.

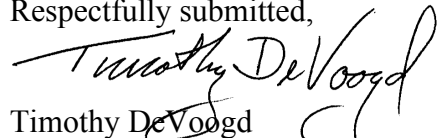
The UHB heard testimony from several individuals, including the administrator who chaired the AFAWG, students who participated on the AFAWG, and the Respondent. The testimony covered topics such as how the AFAWG was structured and whether and how often participants were told that the documents discussed and prepared by the AFAWG were confidential. The Respondent did not deny that he provided the documents to the Cornell Daily Sun, but denied that he was told that the documents were confidential.

After hearing all testimony from witnesses for the OJA and for the Respondent, and arguments from the Associate JA and the respondent's advisor, the UHB found the Respondent **NOT RESPONSIBLE** for violating Title Three of the Code by a vote of 5-0. The UHB based this finding on their judgment that the testimony was not clear and convincing that the behavior of the respondent constituted misuse within the intent of this portion of the Code. The UHB felt that "otherwise misuse" in this portion of the Code refers to behaviors similar to those expressly listed there: forgery, fraudulent alteration, or willful falsification. The Board further felt that adopting a broader meaning of "otherwise misuse" could subject too much otherwise harmless conduct to charges under this part of the Code.

The UHB also found the Respondent **NOT RESPONSIBLE** for violating Title Four of the Code by a vote of 5-0. The UHB based this finding on uncontested evidence that the rules governing the AFAWG committee were never written out, were not consistently given verbally, were not in the form of an order, and were never clear as to their reach (i.e. what was prohibited: to mention the topics of conversation in the group, or the potential recommendations, or the positions advocated by named individuals?). Furthermore, Title Four is defined as applying to "Maintenance of Public Order", and the Hearing Board felt that in this case, no threat to public order was at issue (as contrasted, for example, with violations of no-contact orders).

The UHB's decision that the OJA had not proven by clear and convincing evidence that the Respondent violated the Code is not meant to signal approval of the Respondent's decision to provide the documents to the Cornell Daily Sun. The UHB felt this action was wrong and inappropriate.

Respectfully submitted,



Timothy DeVogd
UNIVERSITY HEARING BOARD CHAIR (non-voting)

On behalf of University Hearing Board panel members:

██████████ (staff), ██████████, ██████████, ██████████, (students), and ██████████
██████████ (faculty)

Public Record #9

CORNELL UNIVERSITY HEARING BOARD

CASE # 2016 [REDACTED]

ACCUSED: [REDACTED]

HEARING PANEL:

[REDACTED]	–	Student
[REDACTED]	–	Student
[REDACTED]	-	Student
[REDACTED]		Faculty
[REDACTED]		Staff

Rocco Scanza Chair

A hearing on the merits was conducted on Friday, April 28, 2017. Arian Covington, the Associate Judicial Administrator presented the case to the panel. Christina Liang served as Recorder.

The accused, [REDACTED], failed to appear. [REDACTED] had been charged with violating the Campus Code of Conduct, specifically the following code provisions:

Title Three, Article II, Section A.

- 1. d To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.
- 1. g. (2) threaten or use physical force or violence to endanger, injure, abuse, intimidate or coerce another person.
- 3.a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic. ⁱ

During the hearing, the AJA withdrew the charge based on Article II, Section A, 3.a. Accordingly only the first two charges were considered by the Hearing Panel.

Under the Code, the failure of the Respondent to appear at the time and place designated for the Respondent's appearance before the Hearing Panel empowers the Hearing Panel to:

- (a) Impose a temporary suspension, pending the Respondent's appearance;
- (b) Find the Respondent to have violated this Code and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the Judicial Administrator shows that the Respondent received notice of the hearing, or that the procedures for notifying the Respondent were followed, and submits information sufficient to establish the allegations in the charges; or
- (c) Excuse the failure to appear for good cause shown, in which case the Respondent shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

AJA Covington requested that the Panel permit her to present the OJA's case against the Respondent. Following a brief deliberation, the Panel chose option (b) above and the case proceeded on the merits

In her opening statement, AJA Covington outlined the case against the Respondent. Specifically it was alleged that on January 28, 2017, the Respondent sent threatening emails to six other Cornell students. The emails were obtained by the OJA and they state the following: "See You soon, Dirty Motherfucking CUNTS"; "[REDACTED], Ya Already Flaming, Faggot" (NOTE: This email may have only been sent to this one student), "Imma Mae All of you Burn in Hell, Losers!", "You Good for Nothing Fat Bitches Taking Up Tons of My Space", "You Think you could Laugh at ME And get away With It??? Big Mistake Dumbasses". "Think About what you did tonight. I'm Coming to Kill You All-[REDACTED], [REDACTED], Stupid [REDACTED], Ugly [REDACTED], No Shape [REDACTED], and Ugly ass [REDACTED]." AJA Covington indicated that the Respondent had admitted to the OJA that [REDACTED] sent the emails in question. While the Respondent was not present, the AJA provided a statement from the Respondent. In this statement, the Respondent stated that these emails were provoked by derogatory comments the email recipients made while [REDACTED] tried to open a door."

One of the six students, [REDACTED], filed a formal complaint with the OJA. [REDACTED] appeared during the hearing and testified in support of the formal allegations. Also testifying was student [REDACTED]. Although [REDACTED] chose not file a formal complaint against the Respondent, [REDACTED] testimony supported that of [REDACTED].

Following the testimony of the two witnesses, AJA Covington made a closing argument and the hearing was adjourned.

After a thorough period of deliberation, the Hearing Panel determined that the Respondent, [REDACTED] was responsible for the two charges filed by the OJA. The

Hearing Panel reached these conclusions because AJA Covington relayed that the respondent had admitted to both her and campus police that ■■■ had sent the emails. Moreover, the Hearing Panel found the emails described above to have been objectively threatening to their recipients, and an inappropriate response to perceived conflict.

The Board then moved to the Sanctions Phase of the proceeding and AJA Covington described the penalty her office was suggesting. The sanctions consisted of the following:

- **Written Reprimand** – A disciplinary record to be maintained consistent with the OJA disciplinary record and record retention policies. The Respondent's record would be maintained for six years after ■■■ graduation from Cornell University.
- **Disciplinary Probation** – The period would be effective commencing on the date of the UHB's decision and remain in effect until May 25, 2018. Maintaining acceptable probationary status includes complying fully and timely with the terms of this decision, and refraining from future Code violations. The Respondent must contact the OJA to schedule ■■■ first probation program meeting with one week of the start of classes. During ■■■ first full semester on probation, ■■■ must agree to participate in the PJA probation meeting program. If the Respondent is on leave from Cornell University, or not in the local area, ■■■ may call and complete probation meetings via telephone or Skype.
- **Counseling** - Prior to beginning ■■■ counseling, the Respondent must agree to complete a release form with the OJA so that appropriate referral information will be sent to the counselor. The Respondent must agree to complete an initial psychological assessment with a licensed counselor. ■■■ must also agree to discuss the following topic during ■■■ counseling assessment: Impulse Control. The Respondent must also agree to complete at least five counseling sessions to satisfy this sanction. This sanction is due by October 2, 2017. The Respondent must also agree to sign any releases needed to allow the counselor(s) to communicate with the OJA to confirm compliance with this agreement, and to provide information about any referral. It is ■■■ responsibility to return the Referral Form to the OJA after the assessment and to ask the counselor to inform the OJA once the recommendations are complete.
- **Facilitated Dialogue.** – The Respondent must contact Trace L. Morse of Cornell's Scheinman Institute on Conflict Resolution to set up a meeting with Katrina Nobles. In this meeting, the Respondent must agree to discuss the following topic: Conflict Resolution. ■■■ must agree to complete this meeting by October 2, 2017.
- **Reflection Paper** – The Respondent must complete a five-page reflection paper on the following topic: What I gained from the Facilitated Dialogue and ways to report Bias at Cornell University. The paper must be submitted to the OJA by October 2, 2017.

Following AJA Covington's presentation on the suggested sanctions to be applied, the Board met in private to discuss the appropriate penalty to impose on the Respondent.

The Board's discussion was again thorough and a number of possible sanctions were given consideration. By unanimous vote, the Board agreed to the terms suggested by the OJA with one modification to the topic of the Reflection Paper. The Board agreed to the following topic: "What I gained from the Facilitated Dialogue and understanding the implications of threats of violence."

The Board added one more term to the sanctions:

- **Housing** – The Respondent is not permitted to live in the same campus housing buildings as any of the six recipients of [REDACTED] emails. *

*One Hearing Board member dissented from the Housing sanction.

The Hearing Panel believed that counseling, disciplinary probation, facilitated dialogue, and the reflection paper would help the Respondent cope with future conflict. The Hearing Panel also felt that it was important to take any threats of violence seriously, especially in light of the fact that the Respondent was not present at the Hearing and could not be questioned.

DECISION OF THE BOARD

[REDACTED] –	Student
[REDACTED] –	Student
[REDACTED]	Faculty
[REDACTED]	Staff
[REDACTED]	Student

DISSENTING FROM THE BOARD'S DECISION

[REDACTED] -	Student
--------------	---------

HEARING OFFICER

Rocco M. Scanza

May 18, 2017

Public Record #10

This information, transmitted from the University Hearing Board of Cornell University, is intended only for use by the Judicial Administrator, her staff, the accused person and his or her counsel, and by the complainant, Cornell University. It contains legally confidential and/or privileged material. Any forwarding, copying, disclosure, distribution, or other use of this information by any person is prohibited. If you are not an intended recipient, any review or taking of any action in reliance upon this information is strictly prohibited. If you received this in error, please return it to the Office of the Judicial Administrator.

CORNELL UNIVERSITY HEARING BOARD

DECISION

In the Matter of [REDACTED]
Case Number [REDACTED]

Dates of Hearing: May 26, 2017

Date of Written Decision: June 2, 2017

Charge

[REDACTED] was charged with violating Title Three Article II Section A3d to “unlawfully manufacture, distribute, dispense, possess, use or sell marijuana and controlled substances, as defined by state or federal law.”

The basis for this charge was [REDACTED] alleged sale of marijuana to students ongoing since May 2016, sale of marijuana to an undercover police officer and subsequent seizure from [REDACTED] Hasbrouck apartment of marijuana and proceeds from sales including scales and cash.

Hearing

The Hearing Board was properly constituted, including three students, one staff and one faculty member. Two Hearing Board members joined electronically by Skype. Following introduction of the University Hearing Board members, Assistant Judicial Administrator (AJA) Arian Covington, respondent [REDACTED] and [REDACTED] advisor Mr. Luke Fenchel, Esquire, and two others present at the hearing (recorder, AJA Christine Liang, and University Counsel to the Hearing Board, Jared Pittman); the respondent moved 1) for the University Hearing Board to review the prehearing ruling by the Chair that i) sustained the objection by the AJA to the relevance and, thus, admissibility for the merit phase of the hearing of the respondent’s exhibits A through Q and S and testimony by three of the four witnesses on the respondent’s witness list, and ii) overruled the AJA’s objection to the admissibility of exhibits A through S and two of the four witnesses for the sanctions phase, if held and 2) to withdraw (revoke) the Stipulation of the Facts entered into and signed by the AJA and the respondent (after consulting with [REDACTED] advisor) the day before the hearing, and that was provided to the University Hearing Board on May 25, 2017. The Chair first considered the motion to allow the respondent to withdraw (revoke) [REDACTED] Stipulation of the Facts, and after deliberating, ruled that the Code does

not provide for revocation of a mutually signed Stipulation of Facts. The respondent then moved that the Hearing Board review this ruling by the chair. After deliberating, the Hearing Board unanimously concurred with the Chair's ruling that the Code does not provide for revocation of a signed Stipulation of Facts. When asked if [REDACTED] was aware of [REDACTED] rights as detailed in the Code of Conduct and UHB Hearing Board procedures, the respondent affirmed [REDACTED] awareness of them. [REDACTED] motion for the Hearing Board to review the Chair's pre-hearing ruling regarding the admissibility of exhibits during the merit phase of the hearing was denied as moot.

Stipulation of the Facts.

AJA Covington then read for the record the Stipulation of the Facts signed by the AJA Covington and respondent, [REDACTED], in which the respondent agreed that "[REDACTED] is responsible for the Code violation as listed." The facts listed in the Stipulation include 1) that the respondent sold marijuana on-campus to undercover officers on at least two occasions, 2) that the respondent admitted to CUPD that [REDACTED] sold marijuana to different college students, and 3) that CUPD seized 5.6 ounces of marijuana, \$2,725 in cash, scales, bags, and grinders from the respondent's Hasbrouck apartment.

Thereupon, the Hearing Board moved to the Sanctions phase of the hearing.

Sanctions Phase

This phase began at approximately 1:30 pm, May 26, adjourned at 2:15 pm due to preexisting schedule conflicts for the Chair and one panel member and resumed at 6:00 pm until its conclusion at 8:30 pm. The AJA recommended the sanctions previously offered in a Summary Decision Agreement that was rejected by the respondent, including a permanent written reprimand, a two semester suspension, disciplinary probation upon return through graduation, counseling, alcohol and drug level BASICS 1, and a reflection paper. [REDACTED] and [REDACTED] advisor then presented exhibits A through S with a statement by the respondent complete with answers to questions by [REDACTED] advisor and the University Hearing Board. At her request, the AJA was permitted to ask a limited number of questions after the respondent concluded [REDACTED] statement.

In Executive Session, the Hearing Board considered the seriousness of violation, particularly the harm to the respondent, to the students with the sale on campus and in campus housing and harm to the Cornell community and struggled with balancing the seriousness of the violation with the value and importance to the respondent's already initiated and on-going counseling and drug rehabilitation. The Hearing Board also identified in the mitigating circumstances described by the respondent two critical facts important to their decision. First, this is the respondent's first violation or alleged violation of the Code of Conduct. Second, the precedents cited by the AJA from publically available Hearing Decisions in which a two semester suspension was imposed as a sanction involved the sale of marijuana and at least one other controlled or illegal substance. The Hearing Board noted that similar sanctions reached in other Summary Decision Agreements are not public and could not be cited by the AJA for precedent. The Hearing Board also evaluated in depth the risk to the respondent of being separated from the

Cornell community at this stage of ■■■ treatment versus the risk to the respondent, students and Cornell community at present given where the respondent is ■■■ drug rehabilitation treatment. The Hearing Board concluded that separation at this point in the respondent's treatment was more likely to harm the respondent than ■■■ being allowed to continue this treatment as a part of the Cornell community was to harm the community. However, the Hearing Board considered how to ensure the continued safety of the community while holding the respondent accountable for ■■■ violation of the Code and supporting ■■■ addiction rehabilitation.

Finding:

The Hearing Board unanimously finds that the following sanctions be imposed upon the respondent, ■■■■■■■■■■.

1. **Written Reprimand.** A disciplinary record will be maintained consistent with the OJA disciplinary record and record retention policies. This record will be maintained permanently.
2. **Deferred Suspension.** A deferred suspension for one semester will be in place through graduation for any violation of the Code of Conduct. A deferred suspension for two semesters will be in place through graduation for any violation of the Code of Conduct related to the sale of marijuana or any illegal substance defined by state or federal law on campus or off campus. The Hearing Board finds that any such off-campus sale would constitute a serious violation of the Code of Conduct. The respondent must inform the OJA of any such sale made by him off-campus, and failure to do so will constitute a violation of the Code that will result in implementation of the deferred suspension. If a deferred suspension occurs, the respondent will not take any classes at Cornell, on any of Cornell's campuses, or through any of Cornell's study-abroad programs during the suspension period. While on suspension, the respondent may not earn academic credit at Cornell or elsewhere toward completion of a Cornell degree. A persona non grata (PNG) will be put in place during any suspension, and the respondent will contact Cornell University Police before returning to Cornell to request the PNG be amended or lifted. Following any suspension and during the respondent's first full semester on probation, the respondent must participate in the OJA suspension-reintegration program. If any suspension occurs, then a permanent transcript notation will be placed on your transcript, which will read: "Suspended for Campus Code of Conduct violation."
3. **Counseling.** Prior to beginning counseling, the respondent must complete a release form with the OJA so that appropriate referral information will be sent to the counselor. The respondent must agree to complete an initial psychological assessment with a licensed counselor. The respondent must agree to discuss the following topics during his counseling assessment: *How events in my life affected my decision-making*. The respondent must complete at least five counseling sessions to satisfy this sanction. This

sanction is due October 1, 2017. The respondent must sign any releases needed to allow the counselor(s) to communicate with the OJA to confirm compliance with this agreement, and to provide information about any responsibility to return the Referral Form to the OJA after the assessment and to ask the counselor to inform the OJA once the recommendations are complete.

4. **Alcohol and Other Drug Level 1 - BASICS, Including Fee.** Respondent must complete BASICS alcohol/drug education sponsored by Gannett Health Services. This includes: contacting Gannett within two days of receipt of this decision at 607-255-4782 for an appointment with a facilitator, completing the BASICS program prior to the beginning of the fall 2017 semester, completing evaluations as requested by Gannett and paying the fee for BASICS at the time of the first appointment.

If respondent fails to contact Gannett, misses any meeting, or fails to complete the BASICS education, respondent may be required to pay additional fees according to Gannett's policies.

5. **Drug Addiction Treatment Program.** Respondent must complete with a successful or favorable discharge the drug addiction treatment program in which he is presently enrolled. The respondent must sign any releases needed to allow the Drug Addiction Treatment Program and its providers to communicate with the OJA to confirm compliance with this agreement including provision of documentation of successful or favorable discharge. Failure to complete the drug addiction treatment program with a successful or favorable discharge will constitute a violation of the Code that will result in implementation of the deferred suspension.
6. **Community Service.** Respondent must complete 100 hours of volunteer community service to the Cornell community that is preapproved in its focus and nature by the OJA. Respondent must sign any releases needed to allow verification of the completion of the required community service. Community service must be completed by December 15, 2017.
7. **Reflection Paper.** Respondent must complete a series of three reflection papers of three to four pages each on the topics indicated below. Each reflection paper should be double spaced, 12-point, Times New Roman font with one inch margins all around. Each paper must address the questions for that paper. Each paper must be submitted to the OJA by the indicated due date below. Each paper should be sent via email to judadmin@cornell.edu and include in respondent's email the OJA case number and date of this decision.
 - i. Reflection paper #1 is due one week after completion of Community Service, on or before December 22, 2017. This reflection paper should address the following questions. What is my responsibility as an individual community

member to the health, safety and well-being of my fellow community members, including my student peers and the broader Cornell community? What have I learned from this community service experience about the valued role I can play in enhancing the well-being of others? How will I continue to practice in both behavior and spirit this responsibility and action to protect the well-being of others going forward?

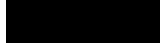
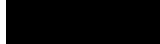
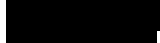
- ii. Reflection paper #2 is due one week after completion of Sanctions 3, 4, and 5 and should address the following questions: What does it mean to be a part of a community? How does addiction interfere with being a member of a community? What is respondent's plan to stay a responsible member of the Cornell community? What are at least 10 local Cornell and Ithaca resources to assist him with his plan?
- iii. Reflection paper #3 is due by January 2, 2018 and should address the following questions. How does the educational and professional path that I have chosen afford me an opportunity to continue to demonstrate concern for community and to contribute actively to the well-being of community members, organizations and the environment in the future?

Respectfully submitted,



Patsy M. Brannon, PhD, RD
Chair, University Hearing Board

On behalf of Hearing Board panel members:

 (student)
 (student, via Skype)
 (student, via Skype)
 (faculty)
 (staff)

DECISION OF THE UNIVERSITY REVIEW BOARD

In the Matter of ■

Date of hearing: July 17, 2017

Date of written decision: August 1, 2017

Procedural History

On May 9, 2017, Cornell University student ■ (“the respondent”) was charged with violating Title Three Article II Section A3d of the Campus Code of Conduct: to “unlawfully manufacture, distribute, dispense, possess, use or sell marijuana and controlled substances, as defined by state or federal law.”

The matter was not resolved by a Summary Decision Agreement, and a duly constituted University Hearing Board (UHB) was convened on May 26, 2017.

Prior to the UHB, the respondent stipulated that:

- 1) ■ admitted to Cornell University Police Department (CUPD) that ■ sold marijuana on campus to undercover officers on at least two occasions;
- 2) ■ admitted to CUPD that ■ sold marijuana to different college students;
- 3) CUPD seized 5.6 ounces of marijuana, \$2,725 in cash, sales, bags, and grinders from the respondent’s Hasbrouck apartment.

As the facts were stipulated, the respondent was found responsible for violating Title Three Article II Section A3d of the Campus Code of Conduct, and the University Hearing Board moved directly to the sanctions phase.

University Hearing Board Decision

The UHB provided a written decision on June 2, 2017, which determined the following sanctions:

- 1. Written Reprimand.** A disciplinary record will be maintained consistent with the OJA disciplinary record and record retention policies. This record will be maintained permanently.
- 2. Deferred Suspension.** A deferred suspension for one semester will be in place through graduation for any violation of the Code of Conduct. A deferred suspension for two semesters will be in place through graduation for any violation of the Code of Conduct related to the sale of marijuana or any illegal substance defined by state or federal law on campus or off campus. The Hearing Board finds that any such off-campus sale would constitute a serious violation of the Code of Conduct. The respondent must inform the OJA of any such sale made by him off-campus, and failure to do so will constitute a violation of the Code that will result in implementation of the deferred suspension. If a deferred suspension occurs, the respondent will not take any classes at Cornell, on any of Cornell's campuses, or through any of Cornell's study-abroad programs during the suspension period. While on suspension, the respondent may not earn academic credit at Cornell or elsewhere toward completion of a Cornell degree. A persona non grata (PNG) will be put in place during any suspension, and the respondent will contact Cornell University Police before returning to Cornell to request the PNG be amended or lifted. Following any suspension and during the respondent's first full semester on probation, the respondent must participate in the OJA suspension-reintegration program. If any suspension occurs, then a permanent transcript notation will be placed on your transcript, which will read: "Suspended for Campus Code of Conduct violation."

3. Counseling. Prior to beginning counseling, the respondent must complete a release form with the OJA so that appropriate referral information will be sent to the counselor. The respondent must agree to complete an initial psychological assessment with a licensed counselor. The respondent must agree to discuss the following topics during his counseling assessment: *How events in my life affected my decision-making*. The respondent must complete at least five counseling sessions to satisfy this sanction. This sanction is due October 1, 2017. The respondent must sign any releases needed to allow the counselor(s) to communicate with the OJA to confirm compliance with this agreement, and to provide information about any responsibility to return the Referral Form to the OJA after the assessment and to ask the counselor to inform the OJA once the recommendations are complete.

4. Alcohol and Other Drug Level 1 - BASICS, Including Fee. Respondent must complete BASICS alcohol/drug education sponsored by Gannett Health Services. This includes: contacting Gannett within two days of receipt of this decision at 607-255-4782 for an appointment with a facilitator, completing the BASICS program prior to the beginning of the fall 2017 semester, completing evaluations as requested by Gannett and paying the fee for BASICS at the time of the first appointment. If respondent fails to contact Gannett, misses any meeting, or fails to complete the BASICS education, respondent may be required to pay additional fees according to Gannett's policies.

5. Drug Addiction Treatment Program. Respondent must complete with a successful or favorable discharge the drug addiction treatment program in which ■ is presently enrolled. The respondent must sign any releases needed to allow the Drug Addiction Treatment Program and its providers to communicate with the OJA to confirm compliance with this agreement including provision of documentation of successful or favorable discharge. Failure to complete the drug addiction treatment program with a successful or

favorable discharge will constitute a violation of the Code that will result in implementation of the deferred suspension.

6. Community Service. Respondent must complete 100 hours of volunteer community service to the Cornell community that is preapproved in its focus and nature by the OJA. Respondent must sign any releases needed to allow verification of the completion of the required community service. Community service must be completed by December 15, 2017.

7. Reflection Paper. Respondent must complete a series of three reflection papers of three to four pages each on the topics indicated below. Each reflection paper should be double spaced, 12-point, Times New Roman font with one inch margins all around. Each paper must address the questions for that paper. Each paper must be submitted to the OJA by the indicated due date below. Each paper should be sent via email to judadmin@cornell.edu and include in respondent's email the OJA case number and date of this decision.

i. Reflection paper #1 is due one week after completion of Community Service, on or before December 22, 2017. This reflection paper should address the following questions. What is my responsibility as an individual community member to the health, safety and well-being of my fellow community members, including my student peers and the broader Cornell community? What have I learned from this community service experience about the valued role I can play in enhancing the well-being of others? How will I continue to practice in both behavior and spirit this responsibility and action to protect the well-being of others going forward?

ii. Reflection paper #2 is due one week after completion of Sanctions 3, 4, and 5 and should address the following questions: What does it mean to be a part of a community? How does addiction interfere with being a member of a community? What is respondent's plan to stay a responsible member of the Cornell community? What are at least 10 local Cornell and Ithaca

resources to assist [REDACTED] with [REDACTED] plan?

iii. Reflection paper #3 is due by January 2, 2018 and should address the following questions. How does the educational and professional path that I have chosen afford me an opportunity to continue to demonstrate concern for community and to contribute actively to the well-being of community members, organizations and the environment in the future?

Present Appeal

The Judicial Administrator appealed the decision of the UHB, arguing that:

- 1) The imposed sanctions were disproportionate and
- 2) The imposed sanctions were not commensurate with the violations for which the respondent was responsible. (see Title Three, Art.III, Sec. F.1.b.2)

The JA further pointed out some inaccuracies in the UHB decision:

- a) the penalty of “deferred suspension” is not an available penalty under the Campus Code of Conduct.
- b) the reporting length described by the UHB decision was not compliant with University Policy 4.7
- c) the UHB improperly assumed jurisdiction with regard to off-campus behavior
- d) the UHB required 100 hours of community service, but the Code only allows for 80 hours of service.

The respondent replied to the appeal, arguing that the UHB’s unanimous decision was correct and should be upheld. Respondent agreed with the JA with regard to reporting length and jurisdiction. Respondent also agreed that 100 hours community service was improper, but volunteered that [REDACTED] would complete all 100 hours nonetheless.

A University Review Board (URB) was convened on Monday, July 17, 2017 at 11:30 a.m. The Board consisted of a student, a faculty member, and a staff member. Faculty member Andrea J. Mooney chaired the URB.

Decision

The URB found the JA's argument compelling. The URB agrees with the JA that the damage that the respondent caused was so significant that the penalties fixed by the UHB were not sufficient. The URB thought that the respondent's actions put the reputation of the University as a whole, as well as the reputation of the University's ability to safeguard students, at risk.

The URB was concerned that the respondent's violations took place at Hasbrouck Apartments, a site that houses graduate and international students and young families. The URB was concerned that people were coming into the Hasbrouck environs to purchase marijuana from the respondent. Part of the URB's concern was for international students, who may come from areas where drug laws are particularly harsh, and who could have been potentially traumatized by witnessing illegal drug activity.

The URB further found that the respondent underplayed ■■■ responsibility and seemed to blame others for ■■■ predicament and minimize ■■■ violations. Examples of this are taken from the Respondent's response, dated July 9 2017 and include:

- 1) making a distinction between being a dealer and a user/dealer. The respondent seemed to focus more on ■■■ use of marijuana than of ■■■ role in selling it to the public. The URB noted that, at the time of ■■■ arrest, the respondent had more marijuana in ■■■ possession than a user would normally have.
- 2) blaming the undercover officer and the Cornell Police for ■■■ difficulties: "...the undercover officer and/or a confidential informant that sent me sms messages persistently and continuously over the course of several weeks until I sold them marijuana amounting to less that \$100.00."
- 3) characterizing the JA's appeal as "...a heartless, foolhardy, intentionally malicious misrepresentation of the UHB..."

The URB found that such arguments undermine the respondent's sense of responsibility for ■ own actions, even if the actions were the result of ■ addiction.

Absence of Mitigation

The respondent points out that ■ had begun treatment even prior to the convening of the UHB. The URB does not see that as a mitigating factor in this matter but is glad that the respondent has begun on the path to sobriety. Nor does the URB agree with the UHB that the fact that this is the respondent's first offense serve as a mitigating factor. Rather, the fact that the respondent dealt drugs overrides any significance that this "first offense" might have.

URB Determination

1) **Suspension** The URB has determined that a two-semester suspension is the appropriate response to the respondent's violations. Therefore, beginning August 23, 2017, the respondent is suspended from Cornell University for the Fall 2017 semester and the Spring 2018 semester. Given that the suspension will be on the respondent's record, the UHB sanction of a written reprimand and the deferred suspension (UHB sanctions #s 1 and 2) are moot.

2) **Probation** Should the respondent return to Cornell after the two-semester suspension, ■ will be on probation until graduation.

3) **Counseling** Given the other sanctions determined by the URB, the UHB sanction of counseling (#3) is omitted.

4) **Basics** Should the respondent not have already completed Basics during the two-semester suspension, ■ must complete the program in ■ first semester back at Cornell.

5) **Drug Addiction Treatment** Sanction #5 of the UHB remains as is.

6) **Community Service** Although the respondent volunteered to complete 100 hours of community service, the URB only requires 80 hours completion prior to return to Cornell.

7) **Reflection Paper** The respondent will complete one reflection paper and

submit to the JA prior to enrolling at Cornell. The paper will address the following: What is my responsibility as an individual community member to the health, safety and well-being of my fellow community members, including my student peers and the broader Cornell community? What have I learned from this community service experience about the valued role I can play in enhancing the well-being of others? How will I continue to practice in both behavior and spirit this responsibility and action to protect the well-being of others going forward? What does it mean to be part of a community?

This decision is the unanimous decision of the University Review Board.

Respectfully submitted,

Andrea J. Mooney, Chair of the University Review Board

For the University Review Board

Public Record #11

As of October 4, 2017, the University Hearing Board (UHB) decision has not yet been provided to the OJA.

Appendix C: Codes, Code Changes, and Procedures of the University Hearing Board and the University Review Board¹⁸

During academic year 2017, two versions of the Campus Code of Conduct governed the University community:

- Code (As of September 26, 2014); and
- Code (As of January 23, 2017).

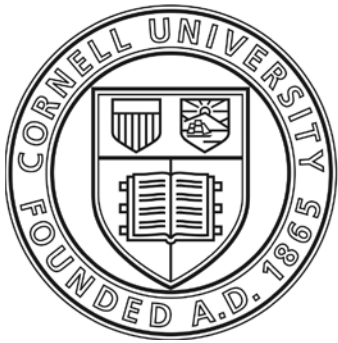
The Code was amended, in accordance with Code procedures, to add language to Title One, Article III, A. regarding holding events on Cornell-owned property, and to Title One, Article III, B. about the use of public address systems on campus. However, the January 23, 2017 Code was not published on the website of the University Policy Office until June 28, 2017.

In addition to the procedures of the University Assembly, copies of both Codes have been sent to the OJA Cornell University Archives, and will remain digitized and available in the OJA.

¹⁸ While the OJA does not retain ownership or control of these documents, they were added to this report for completeness.

Campus Code of Conduct

As of January 23, 2017



Cornell University

CAMPUS CODE OF CONDUCT

approved by the University Assembly on April 23, 2008

adopted by the Board of Trustees on May 24, 2008

amendments approved on 12 June 2009, 17 May 2011, 27 June 2011, 22 April 2012,
8 June 2012, 28 August 2014, 26 September 2014, 23 January 2017

Summary of Contents

TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES.....	1
Article I. Fundamental Principles.....	1
Article II. Supporting Policies	2
Article III. Responsible Speech and Expression.....	5
Article IV. Amendment of Code	9
TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM	10
Article I. Judicial Jurisdiction	10
Article II. Judicial Offices	11
Article III. Judicial Participants	13
Article IV. Judicial Boards.....	14
TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT	15
Article I. Applicability	15
Article II. Violations	16
Article III. Procedures	19
Article IV. Penalties and Related Provisions	33
TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER	36
Article I. Applicability	36
Article II. Violations	37
Article III. Procedures	38
Article IV. Penalties and Related Provisions	39
APPENDIX A: Additional Policies Appended To the Code.....	40
Article I. 17 May 2011 Motion Regarding Procedures for Violations Involving Sexual Violence and Sexual Assault	40

Latest version available online: www.dfa.cornell.edu/policy/policies/campus-code-conduct

Table of Contents

TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES.....	1
Article I. Fundamental Principles.....	1
A. The Essential Purpose	1
B. The University’s Role.....	1
C. The Principle of Freedom with Responsibility	2
Article II. Supporting Policies	2
A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement.....	2
B. Other Policies on the University’s Role in Public Law Enforcement	3
C. Limitations and Exceptions.....	3
Article III. Responsible Speech and Expression.....	5
A. Public Speaking Events on Campus.....	5
B. Protests and Demonstrations on Campus	6
C. Consultation Groups.....	9
Article IV. Amendment of Code	9
A. Title Four.....	9
B. Titles One, Two, and Three	9
TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM	10
Article I. Judicial Jurisdiction	10
A. Jurisdiction in General	10
B. Jurisdiction over Students	10
C. Jurisdiction over Faculty and Other Employees	10
Article II. Judicial Offices	11
A. Office of the Judicial Administrator.....	11
B. Office of the Judicial Codes Counselor.....	12
Article III. Judicial Participants	13
A. Complainant and Victim	13
B. Defense Counsel or Advisor.....	13
Article IV. Judicial Boards.....	14
A. University Hearing Board	14
B. University Review Board	14
C. Pool of Board Members	14
TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT	15
Article I. Applicability	15
Article II. Violations	16
A. Listing	16
B. Interpretation	18
Article III. Procedures.....	19
A. Initial Investigation	19
B. Interim Measures.....	19

C. Summary Decision or No Action	21
D. Formal Charges	22
E. Hearing Procedures	24
F. Appeal Procedures.....	29
G. General Procedures	32
Article IV. Penalties and Related Provisions	33
A. Penalties	33
B. Remedies	35
C. Compliance.....	36
D. Other Proceedings.....	36
TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER	36
Article I. Applicability	36
Article II. Violations	37
A. Listing	37
B. Interpretation	38
Article III. Procedures	38
A. Immediate Enforcement.....	38
B. Disciplinary Process	39
Article IV. Penalties and Related Provisions	39
APPENDIX A: Additional Policies Appended To the Code.....	40
Article I. 17 May 2011 Motion Regarding Procedures for Violations Involving Sexual Violence and Sexual Assault	40

TITLE ONE: STATEMENT OF PRINCIPLES AND POLICIES

Preamble. Conduct of the members of the Cornell community is an appropriate area of concern for the University. This statement sets forth several basic principles and important policies regarding the scope, manner, and standards of regulating that conduct.

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

Article I. Fundamental Principles

A. The Essential Purpose

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

1. the opportunity of all members of the University community to attain their educational objectives;
2. the generation and maintenance of an intellectual and educational atmosphere throughout the University community; and
3. the protection of the health, safety, welfare, property, and human rights of all members of the University community, and the safety, property, and reputational interests of the University itself. These general interests, of course, are also the subject matter of the public laws of the state and nation.

B. The University's Role

The University's role in regulating community conduct is distinguishable from society's. Therefore, the powers of the University's judicial boards shall be limited to the enforcement of University conduct regulations and shall not extend to the enforcement of public laws, except to the coincidental extent that such University conduct regulations are similar to provisions of the public law.

C. The Principle of Freedom with Responsibility

1. The principle of freedom with responsibility is central to Cornell University. Freedoms to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully are essential to academic freedom and the continuing function of the University as an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

2. The Campus Code of Conduct is the University community's code, and hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement.

Article II. Supporting Policies

A. Basic Policies on University Conduct Regulation in Relation to Public Law Enforcement

The following basic policies will apply in situations where misconduct violates both a University conduct regulation and the public law:

1. The following kinds of offenses are adjudicated in the public courts: all felonies, controlled substance offenses, motor vehicle moving violations, assaults upon a peace officer or resisting arrest, refusals by persons to identify themselves, as well as cases in which the complainant wishes to proceed in the courts and cases involving accused persons who are not members of the University community. Still, the Judicial Administrator has discretion to pursue even serious breaches of the law under the Campus Code of Conduct. Timely dealing with alleged misconduct is vital. Nevertheless, the Judicial Administrator should consider whether justice counsels withholding the exercise of University jurisdiction until public officials have disposed of the case by conviction or otherwise.

2. When the Judicial Administrator determines that misconduct does not constitute a serious breach of the law and that the interests of justice would be served by handling such misconduct within the University jurisdiction, he or she shall:

- a. attempt to exercise jurisdiction in a manner to avoid dual punishment for the same act;
- b. cooperate with public officials so that the exercise of University jurisdiction ordinarily will not be followed by public prosecution of the individual's misconduct; and
- c. withhold the exercise of University jurisdiction, when prompt public prosecution is anticipated or is under way, until public officials have disposed of the case by conviction or otherwise.

3. Policies covering conduct that violates both a University conduct regulation and the public law, where feasible, should be based on jurisdictional understandings and procedures jointly developed and periodically reviewed by University and local officials. To the maximum extent feasible, jurisdictional understandings shall be made known to the University community.

B. Other Policies on the University's Role in Public Law Enforcement

1. When public officials apprehend an individual for a violation of the public law, whether or not the misconduct is also a violation of a University conduct regulation, the University shall neither request nor agree to specially advantageous disposition of an individual's case by police, prosecutors, or judges solely because of that individual's status as a member of the University community. Nonetheless, the University stands ready to assist student defendants and to cooperate with public officials to promote equitable application of the law. Should a student charged with law violation request assistance from the University, a representative of the Office of the Dean of Students or Office of the University Ombudsman will meet with such student and may advise him or her and, if requested, may facilitate the student's retention of suitable counsel. If the law violation does not also constitute a violation of a University conduct regulation, and if the student defendant consents, the University ordinarily will cooperate with the request of appropriate law enforcement officials for programs of probation or rehabilitation. Notwithstanding the above provisions, if the prosecution, the complainant, and the accused all consent, minor breaches of the law may be handled exclusively within the University jurisdiction, except in case of repeat offenses.

2. The University's cooperation with law enforcement, at the request of public officials, shall be exercised in each particular case with a view to safeguarding the interests of the educational community, especially that community's confidence in the University.

C. Limitations and Exceptions

1. Overriding Laws

a. It is understood that the Board of Trustees, under sections 5708 and 5709 of the New York Education Law, is responsible for the protection of the grounds, buildings, and property of Cornell University, including state property under its supervision and control, and for the prevention of crime and the enforcement of law and order. These and other statutory provisions regarding law enforcement led to the creation of the Cornell Police, staffed by peace officers who are deputy sheriffs of the county. Under section 6430 of the New York Education Law, adopted in 1969, the Board must also adopt regulations for the maintenance of public order and provide penalties in addition to those for the same misconduct under the New York Penal Law. State law makes the trustees responsible for the enforcement of such rules and regulations as the Board makes from time to time. These state laws cannot be superseded by actions of the Board, nor may the Board evade its legal responsibilities by delegation.

b. Under state law, public servants who knowingly refrain from performing a duty imposed upon them by law, or a duty clearly inherent in the nature of their office, may be guilty of a criminal offense. Accordingly, any inflexible internal rule that precludes a peace officer from making an arrest when a crime has occurred would be contrary to law. It is understood, however, that as to minor offenses, law enforcement authorities are permitted a degree of discretion in determining whether to prosecute an offender or to pursue some other appropriate remedy when an alternative disposition would further the interests of justice. Accordingly, the policies enumerated above are understood to constitute policy guidelines to be applied in good faith, and not prohibitions upon the exercise of the law enforcement responsibilities vested in the Board of Trustees and exercised by its authorized peace officers. That is, such peace officers must retain the sole discretion to determine the circumstances in which the public laws must be enforced.

2. Presidential Overrides

a. Public Disorder

The President may alter or suspend the implementation of the policies enumerated above when the President finds that the Regulations for Maintenance of Public Order, constituting Title Four hereof, are insufficient to maintain public order and when there is an imminent and sufficient threat to the University community's pursuit of its educational goals to warrant such action. Any such action of the President shall be subject to and consistent with the applicable laws of the state and nation.

(1) Should the President exercise such authority, such action shall be made known to the University community immediately, together with a statement explaining the basis of such action. Such deviation from the implementation of said policies should last no longer than necessary to alleviate any pending threat.

(2) It is not intended that the President will seek to suspend the general application of said policies except in cases in which the President finds a threatened imminent and general breakdown in the University's capacity to enforce law and order. It is not intended, therefore, that the President will exercise such authority in cases involving individual misconduct.

b. Grave Misconduct

An individual's exceptionally grave misconduct, particularly misconduct that threatens or attempts to cause physical or mental harassment, may demonstrate such flagrant disrespect for the basic integrity and rights of others as to call into question continuance of the individual's membership in the University community, because (1) his or her presence would adversely affect the ability of others to pursue their educational goals or (2) his or her misconduct grossly violated standards of behavior requisite to the maintenance of an educational community. In the event of such conduct, if the conduct is not covered by any specific provision of a University regulation or statement regulating conduct or if the relevant regulation does not provide a sanction adequate to protect the safety of the University community, nothing in this Code shall preclude the President or his or her

designee, under the authority of the Board of Trustees as expressed in the University Bylaws, from taking appropriate and lawful action. But such authorization constitutes a procedure parallel to this Code, not an authority to review or revise a decision made under this Code.

Article III. Responsible Speech and Expression

A. Public Speaking Events on Campus

1. Arrangements for Invited Speakers

Any recognized campus organization is free to invite a speaker to address its own membership in a private, closed meeting under ground rules set by the inviting organization. A closed meeting can serve many legitimate purposes, including creation of a more informal atmosphere, maximizing the opportunity of organization members to ask questions, allowing the speaker to talk “off the record,” and ensuring a particular kind of discussion because of advance preparation by the organization’s membership. If a speaker is likely to attract widespread interest among nonmembers, however, the group would often be wise to open the meeting to nonmembers, including those with views contrary to those of the speaker. Nevertheless, the University does not insist that the group do so.

If the group chooses to open the event to the University community, it should seek to arrange adequate space to accommodate the reasonably expected audience. In such a public event, the inviting group may also decide whether there is to be a question-and-answer period and, if so, its length and general format. The speaker or moderator should also be allowed reasonable discretion in requiring questioners to be concise, not to abuse the speaker, and not to monopolize the proceedings or otherwise interfere with their purpose. If a question-and-answer period is held, however, neither the speaker nor the moderator should be allowed in recognizing speakers to discriminate on such grounds as ethnicity, gender, national origin, political persuasion, race, religion, sexual orientation or affectional preference, or other suspect or invidious categories. By the same token, at a public event, the sponsoring organization should not be allowed to bar attendance or give preferred seating on the basis of such suspect or invidious categories.

Only members of the Cornell community may hold or host events on Cornell-owned property. External groups must be sponsored by a member of the Cornell community and the sponsor must have a representative present during the actual event. For these purposes, appropriate Cornell sponsors are: registered student organizations, departments and units of the university, and university-sponsored organizations and offices (e.g., Dean of Faculty, Faculty Senate, University Assembly, etc.).

2. Disruption of Invited Speakers

Freedom of speech, within commonly accepted limits of safety and civility, is a paramount value in a university community. In a university community, as in society as a whole, freedom of speech cannot be absolute. Speech that is libelous, or that incites a crowd to riot, deserves no protection. Perhaps no one, in real life, has ever falsely shouted “Fire!” in a crowded theater, but surely no one has a right to do so. Within such commonly accepted limits, however, freedom of speech should be the paramount value in a university community. Because it is a special kind of community, whose purpose is the discovery of truth through the practice of free inquiry, a university has an essential dependence on a commitment to the values of unintimidated speech. To curb speech on the grounds that an invited speaker is noxious, that a cause is evil, or that such ideas will offend some listeners is therefore inconsistent with a

university's purpose. One may argue against inviting a speaker on the grounds that the speaker has nothing of importance to say. But once members of the university community extend an invitation, others may not disrupt the speech on the grounds that they find it stupid, immoral, or dangerous.

Those who dislike what an invited speaker is saying also have rights. The rights include distributing leaflets outside the meeting room, picketing peacefully, boycotting the speech, walking out, asking pointed questions, and, within limits set by the moderator, expressing displeasure with evasive answers. Those who oppose a speaker may thus make their views known, so long as they do not thereby interfere with the speaker's ability to be heard or the right of others to listen. Name-calling and the shouting of obscenities, even when they are not carried so far as to abridge freedom of speech, are nevertheless deplorable in a community devoted to rational persuasion and articulate controversy. Civility is a fragile virtue, but one upon which a university ultimately depends.

The American conception of academic freedom includes the principle that professors may participate in political demonstrations and speak out on controversial issues without jeopardizing their employment. In a campus setting, however, academic freedom carries with it certain responsibilities. Scholars not only should respect the professional demands of their discipline and the pedagogical requirements of the teacher-student relationship, but also should not encourage efforts to abridge the free expression of controversial viewpoints. As citizens, professors may or may not be especially solicitous about freedom of speech; as scholars, they are morally bound to defend it. Professors traduce their calling by any deliberate action demonstrating contempt for freedom of speech.

Civil disobedience is not a ground for exonerating one from penalties for violating conduct regulations regarding free expression, nor should it be a circumstance mitigating the penalty. Although nonviolent civil disobedience can be an honorable way of expressing moral outrage, in a university community where the free flow of ideas is paramount, it is contradictory and misguided to employ it to deny that very right of expression to another.

B. Protests and Demonstrations on Campus

1. Protected Expressive Conduct in General

The University will treat as within the basic protection of a right to free expression such lawful conduct as satisfies the following tests, where lawful means not in violation of state or federal law. The conduct should (a) be intended for expressive purposes, (b) be reasonably understood as such by the University community, and (c) comply with such reasonable time, place, and manner restrictions as are consistent with the other provisions of this Article and as may be authorized from time to time by the President.

Even in regard to conduct that is intentionally expressive and perceived as such, the University may impose reasonable time, place, and manner restrictions on such conduct to preserve other important values and interests of the University community. An accused charged with such conduct may assert as a defense that he or she has complied with such time, place, and manner restrictions.

All protection and regulation of expressive conduct should be content-neutral. A group's persuasion or point of view should have no bearing on the grant of permission or the conditions regulating that group's expressive conduct.

2. Symbolic Structures

Symbolic structures will be allowed in accordance with an express permit issued by the Vice President for Student and Academic Services or other presidential designee. Such structures must be temporary and must conform to the conditions contained in the permit. In regulating by permit the duration, size, location, and other features of symbolic structures, the administration will be guided by attention to the following, or similar, kinds of University community interests that such structures could infringe upon:

- (a) protecting health and safety;
- (b) preventing damage and risk of damage to University grounds and property;
- (c) preserving unimpeded mobility on pathways and streets, entrance to and departure from buildings, and unimpeded mobility within buildings;
- (d) providing for competing uses of campus grounds and property;
- (e) avoiding interference with other University activities;
- (f) reasonably limiting costs to the University of increased campus police protection, potential University liability, insurance coverage, and cleanup and repair after an event; and
- (g) preserving campus aesthetic values.

In addition to such limits, other restrictions on symbolic structures may also be imposed. For example, depending on experience and context, the President may impose any of the following restrictions: requiring portability so that structures do not remain overnight; prohibiting overnight sleeping in structures; and requiring continual daytime physical presence of persons responsible for the expressive activity.

3. Demonstrations Not Involving Structures

Outdoor picketing, marches, rallies, and other demonstrations are traditional and legitimate forms of self-expression and dissent on campus. Such activities are allowed so long as demonstrators do not disrupt other functions, including, without limitation, regular and special curricular activities, extracurricular activities, academic processions and events, conduct of University business, and employment interviews. The right to free expression here, as in other contexts, requires respect for the rights of others. Outdoor picketing, marches, rallies, and other demonstrations generally pose no threat of long-lasting exclusive use of University grounds or property. No university permit is required for such outdoor activities. The presence of a counter-protest does not itself constitute a disruption to a University function or

authorized event. Moreover, those who oppose a speaker may thus make their views known. Everyone has the right to be heard and to listen to others.

Use of public address systems and amplified sound will be permitted without prior approval during the hours of 12:00 p.m. and 1:00 p.m., at Ho Plaza and in front of Day Hall. Public address systems and amplified sound will be permitted in other outdoor locations only with prior approval. Approval may be obtained using the Event Registration Form located at: <https://activities.cornell.edu/EventReg/>.

As to indoor demonstrations such as sit-ins, owners of private property, and even the administrators of public property, are not required to permit the occupation of buildings by those who are not present to transact the business or pursue the other purposes that the offices in the building are intended to serve. Classrooms, libraries, laboratories, living units, and faculty and administrative offices are dedicated to specific purposes, which the University must be free to pursue without disruption. The law of trespass and the right of free speech are not mutually exclusive and, indeed, have always coexisted in our legal system.

Accordingly, the President may authorize regulations permitting the use of specific portions of University buildings, provided that such regulations shall not permit the disruption of classrooms, libraries, laboratories, living units, or offices and shall ensure the continuing conduct of University business. No such use shall be permitted beyond 5:00 p.m. or the close of normal business hours, whichever is earlier. Nevertheless, as pointed out elsewhere in this Article, University rooms set aside for the purpose of gatherings involving speech and expression should not be licensed in a manner to deny access to groups sponsoring an unpopular point of view.

Deans, directors, or other heads of each college, school, or other academic unit described in Article I, section 7, of the University Bylaws may submit proposals to the President on the promulgation of such regulations for the use of University buildings assigned to the use of such college, school, or unit. No such regulation shall take effect or continue in effect without the approval of the President.

The President may promulgate regulations governing the use of Day Hall or any other University building not otherwise governed by such regulations. As a practical matter, although demonstrations inside virtually any University building would be disruptive, the working space within Day Hall is especially compact. Almost any assemblage of demonstrators inside the building could be disruptive to Day Hall staff and to others, especially students, seeking access to a Day Hall office for normal business purposes.

4. Disruption of Recruiters

As long as a recruiter is on campus in accordance with ordinary University processes, a demonstration or protest that intentionally disrupts recruitment activity should be and is a violation of University conduct regulations and should not be tolerated.

The right to express one's views should not extend so far as to infringe upon another University community member's right to participate in a recruitment interview or information session with a recruiter who is on campus in accordance with ordinary University processes.

C. Consultation Groups

The President is authorized and encouraged to appoint a standing committee to study and report to the President on significant policy issues concerning the protection of freedom of expression on campus. The committee should study any issue presented to it by the President. It should also receive petitions or inquiries from members of the University community, but should limit its attention to issues that involve important matters of a policy nature. Thus, the committee could study an individual's charge that University officials are not adequately enforcing the policy against disrupting public speakers or that they are imposing unreasonable constraints upon the right to protest or demonstrate peacefully and lawfully on campus. The committee should not function as an adjudicatory body, or receive any complaint about or continue considering any issue arising from a campus incident after a disciplinary proceeding growing out of that incident and involving the same or similar issues has been initiated, until any such disciplinary proceeding has been completed. Any report issued by the committee should go to the President and should be available thereafter to the University community. The report would be advisory only.

The President may consult with the Executive Committee of the University Assembly, or appoint an ad hoc committee to advise the President, concerning appropriate administrative policy in the face of protest and demonstrations.

Article IV. Amendment of Code

A. Title Four

The Regulations for Maintenance of Public Order were adopted by the Board of Trustees and may be amended only by action of the Board of Trustees, upon the recommendation of or after consultation with the University Assembly.

B. Titles One, Two, and Three

All other Titles of this Code may be amended by the University Assembly, subject to the approval of the President.

TITLE TWO: CONSTITUTIVE PROVISIONS ON JUDICIAL SYSTEM

Article I. Judicial Jurisdiction

A. Jurisdiction in General

All violations of the Campus Code of Conduct by a student, member of the University faculty, other employee of the University, or University-registered organization shall be processed through the campus judicial system, consistent with the principles stated in Article II of Title One, except as otherwise provided in Section C below.

B. Jurisdiction over Students

1. The term student shall be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as:

- a. a degree candidate in any of Cornell's undergraduate or graduate divisions;
- b. a special student in the undergraduate divisions; or
- c. a non-degree-candidate in the graduate school.

2. The term student shall be interpreted to mean also persons not officially registered, and not faculty members or other University employees, if they are:

- a. currently enrolled in or taking classes at the University;
- b. currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities; or
- c. currently on leave of absence or under suspension from being a student of the University.

C. Jurisdiction over Faculty and Other Employees

1. Faculty members and other University employees include those who are incidentally taking classes at the University.

2. The procedures of this Code shall not apply to faculty members or other University employees who are accused of employment-related misconduct. Instead, the applicable administrative process shall apply, such as that described in Cornell University Policy 6.11.3.

a. Should any accusation or complaint of a Code violation be made to or by a department head, dean, supervisor, or the Judicial Administrator and involve conduct by a faculty member or other University employee clearly arising in the course of employment, then the department head, dean, or appropriate University administrative authority shall determine whether there was a Code violation and shall also assess penalties and/or remedies where appropriate.

(1) The accused may make a jurisdictional appeal to the Judicial Administrator, i.e., raise a question whether the alleged conduct arose in the course of employment and so call for rechanneling into the judicial system.

(2) The accused may make an appeal on the merits of the administrative disposition through appropriate faculty channels or the employee grievance procedure, but not through the judicial system.

b. If an accusation or complaint of a Code violation comes before a department head, dean, or supervisor about conduct by a faculty member or other University employee not arising in the course of employment, or there is uncertainty whether it does, the accusation or complaint shall be referred to the Judicial Administrator for channeling into the administrative process or the judicial system.

c. The criterion on which the Judicial Administrator shall channel between the administrative process and the judicial system is whether the conduct is employment-related. In reaching such a decision, the Judicial Administrator shall consult with the Dean of the Faculty if the case involves a faculty member or the Vice President for Human Resources if the case involves a nonfaculty employee. The Judicial Administrator shall make his or her own decision after such consultation.

d. Upon imposition of a penalty of suspension or dismissal upon a faculty member by the University Hearing Board, the faculty member may choose to appeal to an arbitration committee (as described in Cornell University Policy 6.2.10) in lieu of appeal to the University Review Board. Any penalty imposed on a nonfaculty employee is subject to review either pursuant to the applicable grievance process (such as that described in Cornell University Policy 6.11.4) or by appeal to the University Review Board, as the employee may choose.

Article II. Judicial Offices

A. Office of the Judicial Administrator

1. The Office of the Judicial Administrator receives, investigates, and pursues accusations of violations of the Campus Code of Conduct, or of any other regulation as the University Assembly or Board of Trustees may direct. Anyone can direct such accusations, or any questions about the judicial system, to that office.

2. No employee of the Office of the Judicial Administrator shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a judicial board. The Judicial Administrator may hire students who have had some legal training to act for the Judicial Administrator.

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 preceding the expiration of the term of the Judicial Administrator, or 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 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.

4. The Judicial Administrator shall be solely responsible for the Office of the Judicial Administrator. The Judicial Administrator shall be independent, although an administrative relationship should exist with the University administration that will support that office. He or she shall be subject to removal during the term of office only by action of the Board of Trustees upon recommendation of the University Assembly.

5. The Judicial Administrator shall annually report to the President, the University Assembly, and its Codes and Judicial Committee on the operation of the office and the judicial system as a whole.

B. Office of the Judicial Codes Counselor

1. The Office of the Judicial Codes Counselor provides free assistance and representation within the judicial system to those charged with violations of the Campus Code of Conduct and to students charged with violations of the Code of Academic Integrity.

2. To the extent permitted by law, the Judicial Codes Counselor shall not reveal any information provided by the accused, unless the accused expressly requests that the information in question be confided to another person. Although the Judicial Codes Counselor traditionally has had some legal training and is frequently a law school student, the services are not meant to be a substitute for professional legal advice or for the legal assistance provided by an attorney. The Judicial Codes Counselor primarily explains how the judicial system works, and assists the accused in the selection of counsel or an advisor. With the consent of the Judicial Codes Counselor, an accused may choose the Judicial Codes Counselor as the accused's advisor, in which case the Judicial Codes Counselor may participate fully on behalf of the accused in any hearing.

3. No employee of the Office of the Judicial Codes Counselor shall be a member of the University, Student, Graduate and Professional, or Employee Assembly, or any of their committees or boards, or of a judicial board.

4. The Judicial Codes Counselor shall be appointed for a two-year term. A Judicial Codes Counselor can be reappointed for additional terms. The President shall appoint the Judicial Codes Counselor with the concurrence of the University Assembly, following the procedures for the appointment of the Judicial Administrator.

5. The Judicial Codes Counselor shall be solely responsible for the Office of the Judicial Codes Counselor. The Judicial Codes Counselor shall be independent, although an administrative relationship should exist with the University administration that will support that office. He or she shall be subject to removal during the term of office only by action of the Board of Trustees upon recommendation of the University Assembly.

Article III. Judicial Participants

A. Complainant and Victim

1. Any student, member of the University faculty, or other employee of the University can allege a violation of this Code, of which he or she was the victim, by filing a complaint with the Judicial Administrator.

2. In cases in which such formal complaint is made by one or more individuals, such individuals shall be designated as the complainants. In cases in which no such formal complaint has been made or pursued, and an investigation is initiated by the Judicial Administrator, the University community shall be designated as the complainant. However, in cases concerning violations against the interests of the University, "Cornell University" (the corporation) may be named as complainant.

3. The complainant and the victim, whether or not he or she is a member of the University community, each shall have the right to be present at any relevant hearing. Each shall have the right to be accompanied at every stage by a personal advisor of that person's choice, but that advisor shall not be a witness and shall not participate in a hearing in the capacity of counsel. The Judicial Administrator shall provide to the complainant and the victim information about the University's Victim Advocate and other relevant resources, including information about how to file a police complaint.

B. Defense Counsel or Advisor

1. When an accused appears before the Judicial Administrator, the University Hearing Board, the University Review Board, or other University officials acting in a judicial capacity, the accused has the right to be advised and accompanied at every stage by an individual of the accused's choice. Such counsel or advisor for the accused may be any member of the University community or general public, but shall not be a witness and, except for the Judicial Codes Counselor, shall not normally participate in a hearing in the capacity of counsel. However, for suspension or dismissal to be imposed, such counsel or advisor must have had a reasonable opportunity to participate fully in the hearings.

2. The accused shall have the right to act as his or her own counsel.

3. The accused person shall also have the right to be accompanied at every stage by a personal supporter of that person's choice, but that supporter shall not be a witness and shall not participate in a hearing in the capacity of counsel.

Article IV. Judicial Boards

A. University Hearing Board

A five-person panel of the University Hearing Board shall adjudicate cases under the Campus Code of Conduct. The President shall name at least one person, who is a member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be a Hearing Board Chair presiding over five-person Hearing Panels' proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

B. University Review Board

A three-person panel of the University Review Board shall hear appeals under the Campus Code of Conduct. The President shall name one person, who is a member of the faculty recommended by the Dean of the Faculty and not a member of the University administration, to be the Review Board Chair presiding over three-person Review Panel's proceedings but having no vote; that chair shall be appointed for a two-year term, but can be reappointed for additional terms.

C. Pool of Board Members

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.

2. No person shall serve on the University Hearing Board and University Review Board pool who is at the same time a member of the University Assembly or its Codes and Judicial Committee or is an employee of the Office of the Assemblies.

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.

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. 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.

4. All the members of the University Hearing Board and University Review Board pool shall annually elect one Administrative Chair from among those members.

5. Although the judicial boards decide cases and appeals when sitting in panels, the pool as a group, convened by the Administrative Chair, shall perform the following functions:

a. The judicial boards shall be responsible for establishing their own internal rules and procedures not specified elsewhere, and making them available through the Offices of the Judicial Administrator and the Judicial Codes Counselor.

(1) Such rules and procedures must be published in the Cornell Chronicle before going into effect.

(2) Any changes in rules and procedures must be published in the Cornell Chronicle at least 30 calendar days before taking effect.

b. Upon request, the judicial boards shall report on their operations to the Codes and Judicial Committee of the University Assembly.

6. Training of the members of the University Hearing Board and University Review Board pool will include special training in handling complaints of sexual harassment, abuse, assault, or rape.

TITLE THREE: REGULATIONS FOR MAINTENANCE OF EDUCATIONAL ENVIRONMENT

Article I. Applicability

This Title shall apply to all students, members of the University faculty, other employees of the University, and University-registered organizations, except that those of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

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

This Title shall also apply to conduct elsewhere if the Judicial Administrator—with the approval of the President or his or her designated representative in the person of the Dean of

Students for conduct by students, the Provost for conduct by faculty, or the Vice President for Human Resources for conduct by other employees—considers the conduct to constitute a serious violation of this Title, in that the conduct poses a substantial threat to the University’s educational mission or property or to the health or safety of University community members.

Article II. Violations

A. Listing

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

a. To (1) rape, (2) sexually assault, or (3) sexually abuse another person, as those terms are defined in Cornell University Policy 6.3¹.

b. To intentionally (1) expose a private or intimate part of one’s body in a lewd manner or (2) commit any other lewd act in a public place.

c. To harass another person in a manner that would violate Cornell University Policy 6.4 if it were applicable².

d. To harass another person (1) by following that person or (2) by acting toward that person in a manner that is by objective measure threatening, abusive, or severely annoying and that is beyond the scope of free speech.

e. To assault or cause any physical injury to another person on the basis of disability, ethnicity, gender, national origin, race, religion, or sexual orientation or affectional preference.

f. To haze another person, regardless of the person’s consent to participate. Hazing means an act that, as an explicit or implicit condition for initiation to, admission into, affiliation with, or continued membership in a group or organization, (1) could be seen by a reasonable person as endangering the physical health of an individual or as causing mental distress to an individual through, for example, humiliating, intimidating, or demeaning treatment, (2) destroys or removes public or private property, (3) involves the consumption of alcohol or drugs, or the consumption of other substances to excess, or (4) violates any University policy.

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

¹ This Code section is subject to the provisions in Appendix A, Article I.

² This Code section is subject to the provisions in Appendix A, Article I in cases of sexual harassment.

- h. To endanger or to cause damage to or loss of property of another person.
 - i. To steal or knowingly possess stolen property, including by such acts as misappropriation of data or of copyrighted material or software.
 - j. To recklessly or maliciously damage, access, or interfere with, in a manner violating University technology regulations, computer or network resources, data, files, or other information.
 - k. To intentionally invade privacy or misappropriate property rights, by means of videotaping, photographing, audiotaping, or otherwise making any picture or sound recording.
 - l. To prevent a person from leaving a location (including part of the location, such as one part of a room) or to force a person to go to a location against his or her will. This is a violation whether accomplished through physical or psychological means.
2. It shall be a violation of this Title, as an offense against the University:
- a. To endanger or to cause damage to or loss of property of the University.
 - b. To misappropriate University funds.
 - c. To bribe a University official.
 - d. To (1) forge, fraudulently alter, willfully falsify, or otherwise misuse University or non-University documents (including computerized or noncomputerized records, parking permits, dining cards, identification cards, other permits or cards, reserve books, or other property), or (2) possess such forged, altered, or falsified documents, or (3) unlawfully possess the identification of another person if that identification has a date of birth that would make the person legal to consume alcohol at a time the accused is not of a legal drinking age.
 - e. To furnish false information to the University with intent to deceive.
 - f. To claim falsely to represent the University or a University-registered organization.
 - g. To enter upon or make use of University or private property or facilities without authorization.
 - h. To fail to leave a University building after a fire alarm has sounded or other notice of fire has been given, whether or not a drill.
 - i. To commit a violation of Article II of Title Four.

3. It shall also be a violation of this Title:

a. To engage in disorderly conduct. Disorderly conduct means intentionally causing, or recklessly creating a risk of, disruption to the University community or local community, including by such acts as (1) violent, tumultuous, or threatening behavior, (2) unreasonably loud or belligerent behavior, or (3) obstruction of vehicular or pedestrian traffic.

b. To unlawfully manufacture, distribute, dispense, possess, use, or sell alcohol. This includes, for example, providing alcohol to an individual who is under the age of 21, selling alcohol without a license, consuming alcohol while under the age of 21 or possessing alcohol with the intent to consume it while under the age of 21.

c. To traffic, for profit or otherwise, in goods or services in a manner incompatible with the interests of the University community or local community.

d. To unlawfully manufacture, distribute, dispense, possess, use, or sell marijuana or any controlled substances as defined by state or federal law.

e. To defraud, including by such acts as failure to redeem a bad check.

f. To publicly urinate or defecate.

g. To destroy evidence or otherwise obstruct the application of this Code.

h. To assist another person to violate this Title.

i. To incite another person toward a likely and imminent violation of this Title.

j. To attempt to violate this Title.

k. To refuse to participate, without a substantial reason, as a witness in the campus judicial system, as outlined in Title Three, Article III.E.3.b(6)(c).

l. To enter any waters of Fall Creek, Cascadilla Creek, or Beebe Lake that are on or traverse the campus (within the City of Ithaca) for the purpose of swimming or bathing, except in those waters officially designated as swimming or bathing waters.

B. Interpretation

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

Article III. Procedures

A. Initial Investigation

1. The Judicial Administrator shall promptly cause an investigation to be made:
 - a. upon receiving a complaint alleging a violation of this Code by a student or University-registered organization or a non-employment-related violation by a faculty member or other University employee;
 - b. upon determining that a complaint referred to him or her by a department head, dean, or supervisor, or by means of a jurisdictional appeal, is non-employment-related; or
 - c. upon receiving information that a violation of this Code may have occurred when no formal complaint has been made or pursued.
2. During the course of an investigation, the Judicial Administrator, before filing formal charges, may interview the persons involved. Prior to any such interview the Judicial Administrator shall, in writing, inform the person of:
 - a. the matter to be discussed and the person's alleged relationship to it; and
 - b. the services of and contact information for the Office of the Judicial Codes Counselor.

B. Interim Measures

1. The Judicial Administrator shall work with Campus Life, in cases in which the victim and the accused live in the same residence hall and there is a substantial danger of future harm or misconduct, to determine whether Campus Life should relocate the victim or the accused to another residence hall.
2. No-Contact Directive
 - 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.
 - 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 suspend the accused temporarily, pending resolution of the underlying case.

d. In the case of such suspension, 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 five 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 not violated or the suspension was improper or is no longer necessary, it shall lift the suspension immediately.

e. The Judicial Administrator may, in his or her discretion, rescind a No-Contact Directive or lift such a suspension if he or she determines that the circumstances no longer require such action.

3. Temporary Suspension Pending Resolution

a. Suspension of an Individual

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or her designee.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion.

b. Suspension of a University-Registered Organization

(1) In extraordinary circumstances and for the purpose of ensuring public order and safety, the President or a designated representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

(2) The Judicial Administrator may accept from the President this power to suspend temporarily, but only if the Judicial Administrator can exercise the power at his or her own discretion after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate.

c. When the President or his or her designee exercises this power to suspend temporarily, these procedures shall be followed:

(1) In the case of such suspension, the accused may petition the University Hearing Board in writing for a review of the suspension. That board shall meet to consider the petition as soon as possible, but no later than five 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.

(2) If the University Hearing Board determines that (1) good cause has not been shown for the exercise of the President's suspension power or (2) that circumstances have changed so that suspension is no longer necessary, the suspension shall be lifted immediately.

(3) If the suspension remains in effect after the University Hearing Board's initial meeting, that board may decide to reconvene, upon motion by any member or the chair of the panel or upon the request of the suspended person or University-registered organization, to determine whether circumstances no longer require suspension.

C. Summary Decision or No Action

1. The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.

2. The Judicial Administrator and the accused may agree, in writing, to a summary decision at any time, but typically prior to a matter going to a hearing before the University Hearing Board. If a Summary Decision Agreement is reached, the Judicial Administrator shall:

a. send a notice of formal accusation and of the provisions of the summary decision to the accused; and

b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

3. In the event that this summary procedure is employed:

a. All penalties and remedies listed in Article IV may be assessed via summary decision. In the case of suspension or dismissal, however, the Judicial Administrator must obtain the approval of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the negotiations; the Judicial Administrator must do so prior to reaching agreement, but may address the Hearing Board Chair without the participation of the accused.

b. The accused may withdraw approval of the summary decision by written request to the Judicial Administrator within the two business days following receipt of the notice described in item 2(a) of this section.

4. In the event the Judicial Administrator determines to take no action, the Judicial Administrator shall notify the accused of such decision.

5. Except as noted below, the Judicial Administrator shall notify the complainant no more than five business days after the deadline for the accused to revoke the summary decision or after the Judicial Administrator otherwise decides not to file charges. If the Judicial

Administrator notified the complainant at a time the summary decision may still be revoked by the accused, this information must be provided to the complainant. For University complainants, the Judicial Administrator need notify the complainant only:

- i. in a case where the University complainant submitted a written request for notification at the time the complaint is lodged; and
- ii. in specific cases, limited to cases involving any violence or threatened violence against another person, violations of the Financial Irregularities Policy, and fraud or theft against the University in an amount exceeding \$100.

6. If the complainant is dissatisfied with the summary decision or with the decision of the Judicial Administrator not to file charges, he, she, or it may petition the Judicial Administrator in writing to show cause for the decision before the University Hearing Board. This petition must be received by the Judicial Administrator within eight business days after the complainant's receipt of the Judicial Administrator's notice of the nonaction or within three business days after the deadline for the accused to revoke the summary action. The Judicial Administrator shall promptly forward the petition to a Hearing Board Chair. The University Hearing Board shall meet to consider the petition within 21 calendar days of receipt of the petition by the Judicial Administrator. That board can:

- a. uphold the decision of the Judicial Administrator in whole or in part;
- b. order the Judicial Administrator to reopen the investigation; or
- c. order the Judicial Administrator to file charges so that the case can be adjudicated by the University Hearing Board.

D. Formal Charges

1. Notification of Charges

a. If, as a result of an investigation, the Judicial Administrator determines that there is reasonable cause to believe that a violation has been committed, and a Summary Decision Agreement has not been reached, then the Judicial Administrator shall promptly refer the case to the University Hearing Board by filing charges with a Hearing Board Chair.

(1) The Judicial Administrator shall make a good faith effort to serve notice of the charges on the accused (or on an officer of record of an accused University-registered organization) within seven calendar days of the filing of charges:

- (a) by personal service; or, if personal service is impossible to effect after diligent effort,
- (b) by certified mail, return receipt requested, to the accused's last known local or permanent address; or, if such mailed notice is impossible to effect,

(c) by a means reasonably calculated to result in actual notice.

(2) Notice of the charges shall contain:

(a) the charges in the form of a formal accusation;

(b) instructions to contact the Judicial Administrator within four business days of the accused's receipt of notice, so that a time for appearance of the accused before the Judicial Administrator may be agreed upon;

(c) notice of the nature of the evidence to be used against the accused; and

(d) a brief summary of the services of and contact information for the Office of the Judicial Codes Counselor.

b. The Judicial Administrator shall provide a copy of charges made against the accused on request of University officials, the Judicial Codes Counselor, or any other officer or board of the judicial system.

2. If the accused does appear, the Judicial Administrator shall again advise the accused of access to the Office of the Judicial Codes Counselor, and shall refer the accused to this Code and available supplementary information so that the accused can learn of:

a. the procedures of the Office of the Judicial Administrator and the judicial boards;

b. the accused's right to be accompanied by counsel or an advisor of the accused's choice;

c. the alternative administrative process provided for employment-related cases; and

d. other rights and options that may be available to the accused.

3. If the accused fails to respond within the four-day period or to agree to appear within a reasonable time, the Judicial Administrator may, in his or her discretion, forward the case to the University Hearing Board. In the alternative, deeming the accused to have waived the right to a hearing, the Judicial Administrator may proceed to find the accused to have violated this Code and directly impose a penalty in the form of oral warning, educational steps, community work, or fine as listed in Article IV. Unless the Judicial Administrator, in his or her discretion, decides to set aside such default for good cause shown, such direct penalty will stand as the equivalent of a decision of the University Hearing Board, subject only to appeal to the University Review Board.

4. Limitations Period

Any charge of a violation of this Code must be initiated by the filing of charges by the Judicial Administrator within one calendar year of the date of the alleged violation. Exceptions to this policy that extend the period beyond one year are:

a. In cases where the charge involves fraud, the period shall be one calendar year from

the alleged fraud or 60 calendar days from the filing of a complaint alleging fraud, whichever is longer, but in any event no more than three calendar years from the alleged fraud.

b. In cases where the individual to be charged is absent from the University because of either (1) a leave of absence, (2) a termination of employment, or (3) a withdrawal as a student, a charge may be brought within one calendar year of the alleged violation or within 60 calendar days of his or her return to the jurisdiction of the University judicial system, whichever is later.

c. In cases where the individual to be charged is facing public prosecution involving the same matters, a charge may be brought within 60 calendar days of the final disposition of such prosecution. Should it appear that the individual will leave the University before such time, the President or his or her designee may cause the individual's degree to be withheld for the period in which the Judicial Administrator may file charges.

d. The Judicial Administrator may request a Hearing Board Chair to extend any limitations period by up to an additional six calendar months, without required notice to any other person but upon a showing of special circumstances justifying such an extension, provided that the Judicial Administrator delivers such written request to a Hearing Board Chair prior to the expiration of that period.

E. Hearing Procedures

1. Circumstances Requiring Hearing

a. The complainant may petition in writing for a review of the nonaction or summary action by the Judicial Administrator on the complaint.

b. The accused may petition in writing for a review of his, her, or its temporary suspension imposed by the Judicial Administrator or by the President or his or her designee.

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

d. The Judicial Administrator may request a hearing by filing charges.

e. The offender may petition in writing for a review of the penalty imposed by the Judicial Administrator for noncompliance with a prescribed penalty or remedy, or for violation of probation.

2. Preparations for Hearing

a. The University Hearing Board shall hold a hearing within 21 calendar days of receipt of charges or petition by the Hearing Board Chair, unless otherwise provided by the Code, postponed by agreement of the parties, or postponed by the Hearing Board Chair for good cause shown.

b. In any case referred to the University Hearing Board for a hearing:

(1) The Judicial Administrator shall make a good faith effort to give notice of the hearing no later than seven business days in advance of the hearing, unless the accused agrees to a shorter time:

(a) to the accused in the manner for notification of charges;

(b) to the complainant by regular United States mail or by e-mail; and

(c) to the Judicial Codes Counselor by campus mail, e-mail, or telephone, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

(2) This notice shall contain:

(a) the time and place of the hearing;

(b) specification of the charges against the accused; and

(c) statement of the accused's rights to be accompanied by counsel or an advisor of the accused's choice, to hear the evidence against the accused, to question witnesses, and to give evidence in the accused's own behalf.

c. Names and written statements of any witnesses to be called at the hearing by the Judicial Administrator or by the accused, if known at the time, shall be exchanged no later than three business days prior to the hearing. The University Hearing Board, in its discretion, may exclude a witness's testimony if it determines that the Judicial Administrator or the accused has failed to comply with this provision as to that witness.

d. Copies of exhibits to be used at the hearing by the Judicial Administrator or by the accused, if known at the time, shall be exchanged no later than three business days prior to the hearing. Any objections to exhibits shall be made to the Chair for his/her ruling in advance of the hearing. Copies of the exhibits shall be made available to board members prior to the commencement of the hearing. The University Hearing Board, in its discretion, may exclude an exhibit if it determines that the Judicial Administrator or the accused has failed to comply with this provision.

3. University Hearing Board

a. Composition

(1) In cases involving complaints against students or University-registered organizations, a Hearing Panel shall be composed of three students, one faculty member, and one nonfaculty employee, all drawn from the University Hearing Board and University Review Board pool, except that in cases of sexual harassment, abuse, assault,

or rape the complainant, victim or the accused may opt for a Hearing Panel composed of three faculty members and two nonfaculty employees drawn from that pool.

(2) In cases involving complaints against faculty members, a Hearing Panel shall be composed of three faculty members, one student, and one nonfaculty employee, all from that pool.

(3) In cases involving complaints against nonfaculty employees, a Hearing Panel shall be composed of three nonfaculty employees, one student, and one faculty member, all from that pool.

(4) Selection of a Hearing Panel, whenever one is needed, shall be made randomly by the Administrative Chair of that pool.

(5) A member of the Hearing Panel may voluntarily withdraw from participation in any case by reason of a conflict of interest or any other good cause. Knowledge of the events at issue shall not disqualify a member, unless he or she has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome, in which circumstance the member shall be excused by vote of the Hearing Panel. Any person aware of such circumstance concerning a member shall call it to the attention of the Hearing Board Chair. In the event that a member withdraws or is excused, an alternate member shall be randomly selected by the Administrative Chair.

b. Panel Procedures

(1) The Hearing Board Chair shall have the right to convene the Hearing Panel. The Hearing Board Chair shall conduct the proceedings and maintain order in the hearing room.

(a) He or she shall make procedural rulings before or at the hearing, applying these procedures and the procedures developed by the University Hearing Board, so as to assure fairness and to avoid undue delay.

(b) However, all procedural rulings of the Hearing Board Chair, other than a decision to postpone the initial convening of a hearing, shall be subject to the approval and concurrence of the Hearing Panel as a whole. The Hearing Panel may overrule the procedural rulings of the Hearing Board Chair by ordinary majority vote.

(2) At least four members of a five-person Hearing Panel must sit for a given case, in addition to the nonvoting Hearing Board Chair, and at least three votes shall be required for any decision.

(3) Cases that present common questions of law or fact and that would come before a panel of like composition may be joined for hearing.

(a) For joint hearing, the Judicial Administrator must affirm in writing that each accused performed acts sufficiently similar that the facts presented in evidence would not differ materially from one accused to another. In such case, the Hearing Board Chair may order joinder of such cases for hearing.

(b) Any accused, whose case is joined, may request in writing to be excluded from the joint hearing on the ground that (i) the accused is not charged with the same offense, at the same time and place, or (ii) that the facts relevant to the accused would differ materially from the facts relevant to the others. Such case, with the consent of the Judicial Administrator or at the direction of the Hearing Board Chair, may be severed from the joint hearing.

(c) The Hearing Panel may permit any accused tried jointly and found to have violated this Code to submit either a written or oral statement regarding mitigating circumstances, and must permit such a statement before imposing a penalty of dismissal or of suspension for the balance of a term or longer. The Hearing Panel shall consider differences among the conduct and circumstances of each accused before imposing any penalty.

(4) At the hearing, the case shall be presented by the Judicial Administrator in the name of the complainant. But failure of an individual complainant to appear at the hearing, unless excused by the Hearing Panel for good cause shown, shall result in a loss of his or her right to the assessment in his or her favor of a remedy (which means restitution to the complainant or order to the offender, as opposed to a penalty) by the Hearing Panel.

(5) The failure of the accused to appear at the time and place designated for the accused's appearance before the Hearing Panel empowers the Hearing Panel to:

(a) impose a temporary suspension, pending the accused's appearance;

(b) find the accused to have violated this Code and impose appropriate penalties and/or remedies, but the Hearing Panel may do so only if the Judicial Administrator shows that the accused received notice of the hearing, or that the procedures for notifying the accused were followed, and submits information sufficient to establish the allegations in the charges; or

(c) excuse the failure to appear for good cause shown, in which case the accused shall have the option of having the case heard in absentia, with the privilege of submitting written evidence, or of having a new date set for a hearing.

(6) The Hearing Panel shall endeavor to evaluate all relevant facts of a given case at the hearing. It shall receive relevant information that is reasonably reliable, but need not accept as evidence accounts of the accused's statements by the Judicial Administrator. Strict rules of evidence shall not apply, and the Hearing Panel shall have the power to establish its own rules of evidence, subject to the following exceptions:

(a) Confidential relationships currently protected under state or federal law shall be protected.

(b) Evidence of a victim's sexual conduct shall not be admissible unless fairness to the accused requires consideration of such evidence, consistent with practice under section 60.42 of the New York Penal Law.

(c) Members of the Hearing Panel may question witnesses and adduce evidence, but this shall not preclude parties to the hearing from questioning witnesses or introducing evidence. No accused person shall be denied the opportunity to question witnesses or to confront his or her accusers. However, the Hearing Board Chair shall control the hearing. For example, to avoid the risk of intimidation, the Hearing Board Chair may require certain questioning to be conducted by written questions read aloud to the witness by the Hearing Board Chair. In particular, to avoid the risk of intimidation in cases of sexual harassment, abuse, assault, or rape, the Hearing Board Chair shall require cross-examination of the complainant or victim to be conducted by written questions submitted in advance or in real time, including follow-up questions, and read aloud to the witness by the Hearing Board Chair, if the witness so requests. If an individual complainant does not testify, the Hearing Panel may proceed to decision only if it finds that the complainant's interests in not testifying outweigh the accused's interests in confronting his or her accuser. In any case, the accused can prevent the introduction of any written, recorded, or oral account of an earlier statement by a nontestifying complainant or victim, unless the Hearing Board Chair finds compelling circumstances of need for and reliability of such statement. If a witness critical to the proof of the charges or to the defense against those charges indicates to the Judicial Administrator or the accused that he or she refuses to testify, the Judicial Administrator or accused may ask the Hearing Board Chair to order the witness to testify. The Hearing Board Chair shall, in his or her sole discretion, grant or deny the request based on the balance of equities for the witness, the complainant, the accused, the victim, and the University. If a witness does not appear for a scheduled hearing, the Hearing Board Chair may decide whether to delay the hearing pending the witness's testimony.

(d) No accused person shall be denied the right to present evidence and witnesses in his or her own behalf.

(e) No accused person shall be compelled to testify against himself or herself. The hearing can proceed even if he or she chooses to remain silent.

(7) All hearings shall be private unless (a) the accused notifies the Judicial Administrator, no later than two business days before the hearing, that he or she wishes a public hearing and (b) the Hearing Board Chair determines that a public hearing would not result in undue intimidation of the complainant, the victim, or the witnesses. In cases of sexual harassment, abuse, assault, or rape, all hearings shall be private, with the accused having no option of requesting a public hearing; and in such cases, if either the accused, the complainant, the victim, or the Judicial Administrator requests that the proceedings be conducted in a fashion such that the accused and the complainant or victim

be separated or such that the intimidation of the complainant or victim be otherwise reduced, the Hearing Board Chair, after determining appropriateness, shall make suitable arrangements to accomplish this. In the event of a public hearing, the Hearing Board Chair shall convene it in quarters that accommodate a reasonable number of the public, but may limit the number in the interest of preserving the decorum and dignity of the proceedings. Witnesses shall be excluded from all hearings, except for the period of their questioning. Witnesses shall not see or hear other evidence presented at the hearing, such as any police report, except as the Hearing Board Chair determines to be appropriate. All deliberations by the Hearing Panel and Hearing Board Chair shall be private.

(8) A verbatim record shall be kept of all hearings, but not of deliberations, and made available to the complainant within the allotted time for filing an appeal, and to the accused at any time.

(9) The Hearing Panel shall proceed to a decision as expeditiously as possible, and then shall notify the Judicial Administrator of its decision without delay. All decisions by the Hearing Panel shall be in writing, including a rationale and any dissenting opinions. The burden of proof on violation shall rest on the complainant, and the standard of proof on violation shall be clear and convincing evidence³, which is a higher standard than the civil law's more-likely-than-not standard but a lower standard than the criminal law's beyond-a-reasonable-doubt standard. After hearing, the Hearing Panel can:

(a) sustain a defense of lack of jurisdiction or other inapplicability of this Code, including that off-campus conduct did not meet the requirement of being a serious violation of this Title, and dismiss the case, although any such defense shall be deemed waived if not raised by the conclusion of the hearing;

(b) find the accused did not violate this Code and dismiss the case; or

(c) find the accused violated this Code and impose a penalty and/or remedy.

(10) The Judicial Administrator shall serve written notice of the decision of the Hearing Panel on the accused and the complainant within five business days of the Judicial Administrator's receipt of the written decision. The accused shall be provided with a full copy of the decision. The complainant shall be provided a copy of the decision with names of individuals and other identifying information redacted.

F. Appeal Procedures

1. University Review Board

a. Composition

³ For some violations, a different standard of evidence is required. See Appendix A, Article I.

(1) A Review Panel shall consist of three voting members: one student, one faculty member, and one nonfaculty employee.

(2) The members of the Review Panel, for any one appeal, shall be selected in the same manner as the members of a Hearing Panel from the University Hearing Board and University Review Board pool. But no person who served on the Hearing Panel shall sit on the Review Panel in the same case.

b. Panel Procedures

(1) Right to Appeal

(a) An accused against whom a penalty has been imposed or a remedy assessed by a Hearing Panel shall have the right to appeal the decision to the Review Panel.

(b) Any complainant, other than the University community as defined in Article III.A.2 of Title Two, shall have the right to appeal a Hearing Panel decision to the Review Panel if remedies were sought or if other laws or regulations require allowing such appeal⁴.

(c) The Judicial Administrator shall have the right to appeal the penalty imposed by a Hearing Panel.

(2) Appeals may be grounded only upon the complainant's belief that the remedy awarded the complainant is not commensurate with the injury⁵, upon the Judicial Administrator's belief that the penalty is not commensurate with the violation, or upon the accused's belief that:

(a) the Hearing Panel violated the fair application of the procedures established by the Board of Trustees, the University Assembly, or the University Hearing Board, and such violation may have had a prejudicial effect upon the outcome of the hearing;

(b) the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence;

(c) new evidence was discovered after the hearing and could not have readily been discovered before the hearing, and such evidence might have had an effect upon the outcome of the hearing; or

(d) the penalty and/or remedy imposed upon the accused is unjust.

(3) Notification of Appeal

⁴ For some violations, the complainant must have the same rights of appeal as the accused. See Appendix A, Article I.

⁵ For some violations, the complainant must have the same rights of appeal as the accused. See Appendix A, Article I.

(a) The appellant shall file written notice of appeal with the Judicial Administrator within ten business days of the appellant's receipt of the notice of the decision. The Judicial Administrator shall refer the notice of appeal to the Review Board Chair without delay.

(b) The appellant and the respondent (if there is one other than the Judicial Administrator) shall be notified by the Judicial Administrator of the time of the appeal's hearing no later than seven business days after the notice of appeal is filed, and no fewer than seven business days in advance of the appeal's hearing.

(4) The Review Board Chair shall have the right to convene the Review Panel and shall conduct the appeal in a manner similar to a Hearing Panel proceeding. The Review Panel shall meet to hear an appeal within 21 calendar days after the notice of appeal is filed, unless a postponement is granted by the Review Board Chair for good cause shown.

(5) Decision of the Review Panel shall be rendered by a majority vote of the members present, and the majority of the members, in addition to the nonvoting Review Board Chair, shall constitute a quorum for any hearing of the appeal.

(6) The Review Panel shall determine whether its hearings shall be conducted in public or in private. However, all deliberations of the Review Panel and Review Board Chair shall be private.

(7) Disposition of Appeal

(a) Any decision of the Review Panel shall be based solely on the record and, in appropriate cases, upon a showing of new evidence relevant to the grounds for appeal. All decisions shall be in writing, including a rationale and dissenting opinions. Findings of fact shall not be set aside unless clearly erroneous, and harmless errors shall be ignored.

(b) The decision shall be affirmance unless the Review Panel sustains one of the above-specified grounds for appeal, in which case the Review Panel can:

(i) reverse a finding of violation;

(ii) alter a penalty or modify a remedy, if necessary and appropriate in the interests of justice;

(iii) remand a case to the Hearing Panel from which it originated for a new hearing; or

(iv) remand a case to a newly composed Hearing Panel if there were procedural violations.

(c) If the Review Panel calls for new evidence, it shall remand the case to the Hearing Panel from which it originated for a new hearing.

2. No final decision of this judicial system shall be reviewed by any other authority within the University, except that either the Judicial Administrator or the accused may appeal the penalty imposed by the Review Panel for violations involving acts or threats of violence, including sexual assault. Such appeal shall be to the President within fifteen business days of the appellant's receipt of the Review Panel's decision. The appeal shall be a written petition with the opportunity for the other party to respond; no oral argument shall be heard. The President may alter the penalty only by a written and reasoned opinion.

G. General Procedures

1. Deadlines

a. In computing any time period specified in this Code, the day of the event, act, or default that initiates the period shall be excluded.

b. The Judicial Administrator and other parties to the hearings must make good faith efforts to meet the deadlines for conducting hearings outlined by this Code. If the deadlines cannot be met, however, the hearings must be held as soon as practicable.

2. Legal Advisor

The Hearing Panel or the Review Panel may appoint an independent legal advisor who shall advise that board on all legal matters relating to the performance of its responsibilities, and who may be present during any hearings and, upon the invitation of that board, during deliberations.

3. Witness Immunity

The Judicial Administrator, the Hearing Panel, or the Review Panel may grant to witnesses transactional immunity from proceedings within the judicial system.

4. Confidentiality

a. All who are involved in the complaint, investigation, hearing, appeal, and reporting processes are obliged to maintain confidentiality of the proceedings, except as otherwise specifically provided in this Code. They shall protect the confidentiality of all judicial records, except those records specifically referred to in Article II.B. Copies of judicial records shall not be released to outside sources without written consent of the subject of such record, except as provided in subsection (b) below.

b. The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. Additionally, the University may disclose judicial records or otherwise confidential information:

i. when required by law; or,

ii. when authorized by law and necessary to protect the safety or well-being of the University community members, or to preserve the integrity of proceedings under this Code; or,

iii. with respect to the judicial records of University registered organizations only, when deemed necessary to educate the University community or to provide information to the University community about the organization's conduct.

c. Notification of the offender's violations, penalties, and remedies shall be sent as directed by the Hearing Panel or Review Panel to the University officials necessary to make the penalties and remedies effective, and to other persons who might provide counseling assistance to the offender.

5. Record Keeping

a. The Office of the Judicial Administrator shall retain records of all complaints, orders, charges, proceedings, and decisions in accordance with that office's internal records management practices and Cornell University Policy 4.7.

b. Violations, penalties, and remedies shall be recorded in the Office of the Judicial Administrator and/or Director of Cornell Police in all cases arising under this judicial system. However, only a penalty of written reprimand, probation, suspension, or dismissal creates a disciplinary record.

Article IV. Penalties and Related Provisions

A. Penalties

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

a. Students

(1) Oral warning.

(2) Appropriate educational steps (such as referrals for alcohol or drug education, reflection papers, counseling, letters of apology, or directed study).

(3) Community work, which shall not be more than 80 hours per violation, and must be performed in a manner acceptable to the Judicial Administrator.

(4) Fine of not less than \$20 nor more than \$500 payable to the University Treasurer.

(5) Restriction or loss of specified privileges for a stated period not to exceed one year, including for example:

(a) in cases of misconduct in connection with University services or facilities, the student being prohibited from further use of those services or facilities other than in the course of his or her work or study; or

(b) in cases of misconduct in connection with University-owned or University-operated housing, the student being ordered to vacate such housing.

(6) Written reprimand.

(7) Probation for a stated period.

(8) Suspension from the University for a stated period not to exceed five years, or indefinitely with the right to petition the University Hearing Board in writing at any time for readmission after the academic term following the academic term in which the suspension occurred. 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.

(9) Dismissal, i.e., expulsion from the University.

b. Faculty and Other Employees

(1) Oral warning, educational steps, community work, and fine, as provided for student offenders.

(2) Written reprimand.

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

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

c. University-Registered Organizations

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

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

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

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

(5) Written reprimand.

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

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

2. An offender's prior record of violations under this Code should be considered in the imposition of a penalty.

a. Ordinarily, the penalty for a second violation, whenever such violation occurs, should be more severe than for a first violation.

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.

3. Without intending to limit the assessor's ultimate discretion, certain types of violations are so fundamentally inconsistent with the University's educational mission that, absent unusual mitigating factors, a sanction of substantial suspension or dismissal ordinarily should be imposed. Such violations include acts of violence, including sexual violence; violations that are motivated by bias based on disability, ethnicity, gender, national origin, race, religion, sexual orientation or affectional preference, or any other suspect or invidious category; or any other violation that substantially threatens the University's educational mission or property or the health or safety of University community members.

B. Remedies

The following remedies may be imposed:

1. Restitution to the University or to the victim of the violation.

2. Order to the offender to perform, or to cease and desist from, stated actions.

C. Compliance

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. 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.

2. If an offender has not complied with the prescribed penalty or remedy within the specified time, the Judicial Administrator shall 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.

3. No official transcript or degree will be granted to any person who has been found in violation of this Code and who has not fulfilled any condition or requirement fixed as a penalty or remedy, but such official transcript or degree shall be granted upon fulfillment of all such outstanding obligations.

D. Other Proceedings

1. Any Title of this Code and the penalties and remedies imposed thereunder shall not be deemed exclusive of and shall not preclude resort to any applicable state, federal, or local law or ordinance or other University regulations and procedures. They shall not be deemed to limit the right of the University or of any person to take such additional action as may seem appropriate or necessary to maintain public order and safety and to protect legal rights.

2. Imposition of any penalty or remedy under any Title shall not preclude the imposition of any other penalty or remedy under this Code.

TITLE FOUR: REGULATIONS FOR MAINTENANCE OF PUBLIC ORDER

Article I. Applicability

This Title shall apply to all persons and organizations, including visitors and other licensees and invitees, on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization in the

Ithaca or Geneva area, except that students, members of the University faculty, other employees of the University, and University-registered organizations of the Medical College and the Graduate School of Medical Sciences shall be governed by separate regulations with respect to property and facilities of the Medical College and the Graduate School of Medical Sciences.

Article II. Violations

A. Listing

It shall be a violation of this Title:

1. To disrupt or obstruct or attempt to disrupt or obstruct any instructional, research, service, judicial, or other University operation or function or to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual, by any action including but not limited to the following:

a. by intentionally using or threatening physical force or violence to harass, endanger, injure, abuse, intimidate, or coerce another person, or to cause damage to or loss of property;

b. by intentionally obstructing or causing to be obstructed the lawful use of, access to, or egress from University premises or portions thereof, or by making unauthorized entry upon or use of a University property or facility or by unlawfully remaining in or on the same;

c. by intentionally obstructing or restraining the lawful movement of another person or obstructing or restraining his or her lawful participation in an authorized activity or event, such as regular and special curricular activities, extracurricular activities, and employment interviews; or

d. by intentionally inciting another person toward a likely and imminent violation of this Subsection 1.

2. To refuse to comply with any lawful order of a clearly identifiable University official acting in the performance of his or her duties, or with a policy that has been duly promulgated by the University or any college, department, or unit thereof, whether or not the policy has been issued in the standardized University format.

3. To possess, carry, or use firearms (including rifles or shotguns), ammunition, explosives, or other dangerous weapons, instruments, or substances in or upon University premises, except by law enforcement officers or except as specifically authorized by the University.

4. To engage in any action or situation that intentionally or recklessly endangers mental or physical health or involves the forced consumption of alcohol or drugs, for the purpose of initiation into or affiliation with any group or organization.

5. To use ethnicity, gender, national origin, political persuasion, race, religion, or sexual orientation or affectional preference as a criterion for admission or seating at public speaking events advertised as open to the University community.

6. To disrupt or obstruct or attempt to disrupt or obstruct any speaker invited to appear on the campus by the University or a University-recognized organization.

7. To build a structure on the campus without a permit or in violation of the conditions of a permit, and to refuse to dismantle it or discontinue the nonconforming feature upon the lawful direction of an authorized University official.

8. To disrupt or attempt to disrupt intentionally any recruitment activity of a recruiter who is on campus in accordance with ordinary University processes.

9. To fail to comply with any time, place, and manner regulation authorized by Article III of Title One.

B. Interpretation

Consistent with these regulations making it an offense “to interfere with or attempt to interfere with the lawful exercise of freedom of speech, freedom of movement, freedom of peaceable assembly, or other right of an individual,” this Title shall not be interpreted to permit the unlawful interference with such rights, as protected by the constitutions and laws of the United States and the State of New York. Nothing in this Title or any other University regulation, however, shall be interpreted to limit or prevent the University from seeking, without unlawfully interfering with any of the rights described, (1) to enforce the laws respecting trespass or (2) to regulate lawfully the use of University property. Nothing shall be deemed to impair the right of the University to take such action as may be necessary or appropriate for the purposes of construction and repair of facilities, of regulating vehicular and pedestrian traffic, and of maintaining public order and safety. And nothing shall be deemed to impair the right of the University to take such nondisciplinary administrative action as may be necessary or appropriate to maintain public order and safety.

Article III. Procedures

A. Immediate Enforcement

The President or a designated representative shall be responsible for initiating and ensuring the prompt enforcement of this Title. For conduct that violates this Title, individuals and organizations may be ejected from the University campus, property, or facility, or any part thereof by the President or his or designee acting in the following manner:

1. When the continued presence of an individual poses a clear and present danger to the public order or to the security of any property or the safety of any person, the individual may be ejected, but only until a hearing before the University Hearing Board.

2. In the case of an organization that authorizes conduct posing such a clear and present

danger, the President or his or designee may rescind permission for that organization to operate on University property and rescind the registration of the organization, but only until a hearing before the University Hearing Board.

3. The University Hearing Board shall meet to review such action within five business days after the day on which the alleged offense occurred.

B. Disciplinary Process

For procedures, this Title adopts the provisions of Titles Two and Three prevailing at the time of the violation, except in the following particulars:

1. The President or his or designee shall perform the functions of the Judicial Administrator. In the case of service upon the President of any notice, including a notice of appeal, delivery to the office of the President or his or her designee shall constitute sufficient service.

2. In the event that a violation of this Title should also constitute a violation of other University regulations, including Title Three, the President or his or designee may, in his or her discretion, determine to handle the hearing and appeal of all such violations in one proceeding pursuant to the procedures of this Title.

3. Additionally, the President or his or her designee shall have the right to appeal a Hearing Panel final decision to the Review Panel on the grounds that the Hearing Panel committed a prejudicial error in interpreting this Code or rendered a decision clearly against the evidence, by filing written notice of appeal with the Review Board Chair within five business days of receipt of the notice of decision.

Article IV. Penalties and Related Provisions

For penalties and related provisions, this Title adopts the provisions of Article IV of Title Three prevailing at the time of the violation.

APPENDIX A: Additional Policies Appended To the Code

Article I. Procedures for Violations Involving Sexual Violence and Sexual Assault

Offenses involving sexual violence and sexual harassment, while still violations of the Campus Code of Conduct, will be investigated and adjudicated under Cornell University Policy 6.4 until such time as the Code is amended to fulfill requirements of Title IX.

To assist readers in interpreting the Campus Code of Conduct (the Code), references to this language have been made by footnotes throughout the Code; however, the text may apply to other sections of the Code even if no explicit footnote reference is provided.

**Procedures of the University Hearing Board
Adopted by the University and Hearing Boards on
October 22, 2013**

I. Overriding Principles.

II. Procedures That Apply to All Hearings.

III. Types of Hearings and Unique Procedures for Each.

IV. Dates of Acceptance of Procedures, Publication in the *Chronicle* and When Procedures Effective.

V. Miscellaneous.

I. Overriding Principles.

A. Every person involved in Cornell University's disciplinary system is expected to follow the procedures and policies of the Cornell University Campus Code of Conduct (Code) and the procedures articulated in this document (UHB Procedures).

B. The UHB Procedures explain and interpret the Code. To the extent the UHB Procedures, or any individual procedure, is determined to be inconsistent with the Code, it is null and void.

II. Procedures That Apply to All Hearings.

A. Selection of the Five-person Panel.

1. Random selection of panel members. The Administrative Chair¹ shall, in the presence of the Judicial Administrator or his/her designated representative, randomly select the members and alternates for a hearing panel from the pool of qualified University Hearing and Review Board members. The Judicial Administrator or his/her designated representative and the Administrative Chair shall certify in writing the random selection of hearing panels and alternates.

2. Unavailable panel members. Should a panel member be unable to attend a hearing, he/she shall notify the Judicial Administrator of the reason for his/her inability to attend as far in advance of the hearing as possible so that another panel member may be selected. The UHB Chair may remove from the pool any UHB member 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. *Code*, Title

¹ The Code provides, "All the members of the University Hearing Board and University Review Board pool shall annually elect one Administrative Chair from among those members." *Code*, Title Two, Article IV, Section C.4.

3. Removal of panel members.

a. Name recognition; certification of being fair and impartial.

Each panel member will contact the JA prior to the hearing to learn the names of the parties and the general nature of the hearing. The panel member must certify to the JA that she or he will be able to be fair and impartial at the hearing, even if she or he knows one of the parties or has some indirect knowledge of the underlying incident.

b. Removal of panel member by himself or herself. If a panel member knows she or he has a conflict of interest, cannot be fair and impartial, or has any other good cause, she or he may voluntarily remove herself or himself from the panel. While it is preferable that this would be determined prior to the commencement of the hearing and communicated to the JA, if the panel member determines this during the hearing, she or he should ask for a break in the proceedings, speak to the UHB Chair about the situation and remove herself or himself at that time. The Chair, in his or her sole discretion, will determine whether to proceed with the remaining panel members or to recommence the hearing with a new panel at a later date.

c. Removal of a panel member at the request of a party. As noted in the Code, “Knowledge of the events at issue shall not disqualify a member, unless he or she has first-hand knowledge of the events at issue, has been directly involved in those events, or is personally interested with regard to the outcome. . .” (*Code*, Title Three, Article III., E.3.a.(5)) If the JA, the complainant, or the accused person believes one or more of the panel members would be unable to serve based on this criteria, he or she will bring a pre-hearing motion to the Chair (via electronic mail) and copied to the other party stating the basis for the concern and requesting the Chair to interview the panel member regarding his/her ability to serve. The opposing party must respond promptly to allow the Chair to take the next steps.

The Chair may recommend to the panel member that she or he voluntarily withdraw from the panel. If the panel member continues to wish to serve, the Chair will contact the remaining panel members, inform them of the information gathered by the Chair, and ask the remaining panel members to vote on the pre-hearing motion. A majority or a tie vote will result in disqualification of the panel member.

The JA will endeavor to provide notice to the parties of the names and

constituency of panel members 48 hours in advance and the moving party will bring its pre-hearing motion to the Chair 24 hours in advance, unless good cause is shown why the motion was brought less than 24 hours in advance. Additionally, it is acknowledged that panels are sometimes not established until right before a hearing, in which case the JA and parties will operate in good faith to accomplish these things as soon as practicable to avoid the necessity of a continuance.

d. Replacement of removed panel member. If a panel member is removed, the next eligible and available UHB member of that constituency group chosen by the Administrative Chair will serve on the panel instead.

B. Pre-hearing motions. If the JA or a party has a pre-hearing motion, it must be submitted to the Chair (via electronic mail) and copied to the opposing party no later than 48 hours before the hearing, unless good cause is shown why the motion was brought less than 48 hours in advance. The opposing party must respond promptly to allow the Chair the opportunity to rule on the motion prior to the hearing.

C. Appropriate decorum. All hearings shall be conducted in an orderly manner. No smoking, photography, or tape recording is permitted during the hearing. All persons involved in the process must be treated with dignity and respect and are expected to treat others in the process with dignity and respect. The Chair may request that anyone disrupting the decorum refrain from further disruption or leave. If that person shall continue to be disruptive, he/she may be excluded from the hearing. If the Chair excludes a person from the hearing, any rights attendant to his/her presence at the hearing will be deemed to have been waived.

D. Decisions of the UHB Panel. Decisions of a panel shall be based solely on the information gathered at the hearing, not information learned through media, gossip or other sources prior to the hearing. The Chair does not have a vote and shall remain neutral, but may lead the discussion of the panel members, including but not limited to: ensuring that all panel members have a chance to be heard; offering information about the Code, precedent and procedures; and reminding the panel of the availability of counsel. Three panel members must agree on any particular decision; the Chair may not break a tie.

E. Confidentiality. Members of the panel of the hearing board and all participants in the hearing shall consider all information at the hearing to be of a confidential nature and shall in no way divulge the information. In public hearings, only members of the panel shall consider all information at the hearing to be of a confidential nature and shall in no way divulge the information. All deliberations of the panel shall be held in a closed session and shall at all times be strictly confidential. The confidentiality described in this paragraph must be maintained even from other members of the hearing and review boards who were not on the panel at the hearing.

F. Written Decision. The UHB Chair will write the decision with input from the panel, and sign it on behalf of the panel. All decisions shall include:

1. the Code sections charged and the final disposition of each charge;
2. the panel's bases for each decision;
3. the penalty and/or remedy (if any) imposed with respect to each charge;
4. names and constituencies of panel members; and
5. any panelist who intends to file a separate opinion (dissenting or concurring), must notify the Chair within (48) hours of the conclusion of the hearing;
6. the dissenting or concurring opinion must be filed within (72) hours of the circulation of the majority opinion.

III. Types of Hearings and Unique Procedures for Each.

A. Hearings based on written petitions. The Code references several types of hearings that are based on the written petition of one of the parties, including request by the complainant for a review of the nonaction or summary action by the Judicial Administrator (JA), appeals of temporary suspensions, request to return from an indefinite suspension, and review of penalty imposed by JA for noncompliance or violation of probation. (*See, Code*, Title Three, Article III, E.1.).

1. The format for these hearings will be: motion, reply, response. Typically, this means the accused person or the complainant writes to the UHB to explain what it wants to happen.² The JA has forms available that the party may fill out to guide its request.³ The JA replies in writing. Then the party responds to the issues the JA raised that he/she did not anticipate in his/her motion.

2. The UHB Chair will determine due dates for the various written documents described above.

3. While it is anticipated that these hearings will be exclusively in writing, the panel of the UHB may request live argument if needed to reach a decision. At its initial meeting, the panel would consider whether it needs oral argument and, if so, would pick a date and time (typically a few days later) to hear from the parties. Or, the panel may simply have some questions and ask the parties these questions via telephone conference call on the same day. Any oral arguments or questioning of parties must be recorded.

4. The UHB Chair will then issue a written decision on behalf of the panel.

B. Hearings on the Merits of a Case. The most common type of hearing is a hearing on the merits of a case. (*See, Code*, Title Three, Article III, E.1.d.).

² Drop this off at the JA's Office or send it via electronic mail to judadmin@cornell.edu. The JA's Office will deliver it to the UHB members.

³ These forms are available from the JA's Office or on line at judicialadministrator.cornell.edu.

1. Bifurcated hearing. The panel of the UHB must first determine whether there is clear and convincing evidence that the accused violated the Code. The panel will typically hear testimony, receive exhibits and hear arguments before reaching this conclusion; other times the parties may have stipulated to facts or to the fact of a violation. If, at the conclusion of the “violation stage” the panel determines there is not clear and convincing evidence, the hearing ends. If it determines that there is clear and convincing evidence of a violation, the hearing will resume to the “sanction stage” and the panel will consider what the appropriate sanction should be. Information about the prior misconduct of the accused will be reserved for the sanction stage of the hearing, except if the accused or other witness testifies at the violation stage, and if the prior misconduct is relevant with respect to credibility (for example, if the prior offense dealt with dishonesty or if the accused person asserts he/she has no prior disciplinary record, etc.), then the opposing party may have the option to examine the witness on this testimony or present rebuttal evidence. In such circumstance, only directly relevant prior misconduct may be addressed, and the examination or rebuttal should be specific and relevant. Whenever a party intends to use such evidence, the issue of relevancy should be addressed in the pre-hearing motions, to the extent practicable, in an attempt to determine the issue before the hearing.

2. Order of the hearing. The UHB Chair runs the hearing as would a Chair of a meeting. The order of the hearing, like an agenda, typically follows this format, subject to changes by the Chair as needed:

1. Call to order.
2. State constituency of panel members for record.
3. State names of accused, complainant, counsel and others present for the record.
4. Cite case and accused's name.
5. Be assured that accused is aware of the protections afforded to him or her by the Code, Title Three, Article III (for example, the ability to be represented by the Judicial Codes Counselor, to refuse to comment on the matter, to confront accusers and to produce his or her own witnesses and evidence).
6. Ask Judicial Administrator to read charge against the accused.
7. Ask the accused if he or she understands the charge. Ask whether the accused believes he or she violated the Code.
8. Request Judicial Administrator to present opening statement.
9. Request accused to present opening statement.
10. Request Judicial Administrator to present case and witnesses, allowing questions from accused (or his/her advisor) and board.
11. Request accused to present case and witnesses, allowing questions from the Judicial Administrator and board.
12. Any final questions?
13. Judicial Administrator presents summation.
14. Accused presents summation.
15. Final and concluding questions?
16. Panel deliberation in closed session.
17. Read decision into minutes.

18. If accused is found in violation, request the Judicial Administrator to present arguments and/or witnesses regarding sanction.
19. Accused may present arguments and/or witnesses regarding sanction.
20. Any response from the Judicial Administrator?
21. Any response from the accused?
22. Any final questions?
23. Closed session -- panel deliberation on sanction.
24. Read decision into minutes.
25. Inform accused of the right to appeal.
26. Close case if there are no further comments.

3. Common procedural issues. Following are a list of procedural issues that are common in hearings on the merits of cases. These particular procedures are documented here to provide comparable treatment of issues regardless of composition of the panel or who is the Chair.

a. Panel overruling the Chair. As noted in the Code, the Chair makes initial rulings on procedural issues that are subject to being overruled by the UHB panel. *Code*, Title Three, Article III. E.3.b.(1). For matters determined by the Chair prior to the hearing, the Chair will state the pre-hearing motion and his/her ruling on the record at the outset of the hearing. Other rulings will be made during the course of the hearing. Any party has the right to ask the panel to overrule the Chair's procedural rulings. Any panel member has the right at any time to request a closed session to discuss a procedural or substantive point material to the hearing. For purposes of this provision, a procedural point shall include all action taken by the Chair.

b. Panel asking questions. Panel members may direct questions to the complainant, witnesses, and accused at any time, subject only to the Chair's responsibility of maintaining an orderly hearing.

c. Exhibits. Exhibits are exchanged by the parties three days before a hearing and objections are heard by the Chair the day before the hearing, pursuant to *Code*, Title Three, Article III.E.2.d. If there are no objections to an exhibit, it is admitted into evidence prior to the hearing and provided to the board at the outset of the hearing. If there is an objection to an exhibit and the Chair overrules the objection, the party who wishes to keep the exhibit out of evidence may request that the exhibit be withheld from the panel to allow the party to ask the panel to overrule the Chair. If there is an objection to an exhibit and the Chair sustains the objection, the party who wishes to submit the exhibit may propose its admission into evidence at the appropriate time in the hearing, allowing the Chair to reconsider his/her prior ruling or the panel to overrule the Chair. The parties must provide at least 10 hard copies of each documentary exhibit to the JA's Office.

d. Affirmative defenses. The JA has the burden of proof and persuasion to prove a violation of the Code. The accused, however, shall have the burden of proof and persuasion for any affirmative defenses asserted. An affirmative defense is a new matter that constitutes a defense to the complaint; for example, an accused charged with theft could raise a prior payment as an affirmative defense.

e. Evidence. While the strict rules of evidence do not apply, the panel may admit all of the relevant evidence of a given case that is not unduly prejudicial or unfair. A hearing panel shall, in every case, admit evidence it considers necessary to make a fair decision. The Chair should make the initial determination of whether a particular piece of evidence (particularly hearsay) is relevant and not unduly prejudicial. For example, while the notes taken by a party or the JA of a conversation are not automatically admissible (and JA notes should not be used during the presentation of the JA's case), they may be used on cross examination to demonstrate a prior inconsistent statement of a witness; a statement of a non-testifying witness may serve as corroborating evidence; or business records may be used to establish details witnesses cannot remember.

g. Use of screens. When measures are taken to separate the parties (most commonly a screen that prevents them from seeing each other) (*see, Code, Title Three, Article III, E.*), efforts will be made to allow the accused person's advisor and the JA to see all witnesses. The advisor and the JA will maintain a respectful distance from opposing parties and witnesses.

h. Use of cross-examination through UHB Chair. When cross-examination is conducted through the UHB Chair (*see, Code, Title Three, Article III, E.*), efforts will be made to ensure a full and speedy cross-examination. For example, technology such as "Instant Messaging" might allow more flexibility and speed.

i. Limitations on testimony. The Chair may fix a limit to the length of a witness' testimony should it appear to belabor the point or become too repetitious.

j. Need for additional or clarifying information. In the event the panel feels the need for additional or clarifying information, whether prior to or after entering a closed session, the Chair may:

- order a continuance of the hearing and re-opening the investigation for good cause shown;
- recall a witness immediately for the purpose of clarifying

specified points of that witness' testimony, if s/he is still available and the information is desired;

- order a continuance until a witness may be recalled if the witness has departed and the clarifying information is necessary. This privilege shall not impair the right of the accused, complainant, or Judicial Administrator to question the witness; or

- allow the panel to interrupt its closed session prior to reaching a decision, for the purpose of clarifying specific aspects of testimony heard or other matters on which the panel feels the need for further information, from any parties to the hearing who might be present. The specific reasons for interrupting the closed session shall be stated for the record. The panel shall not ask questions or receive responses, which, in the opinion of the Chair, are not germane to the stated reason for interrupting the closed session. All parties must be present for these discussions and the discussions shall be held on the record.

k. Continuance, including based on the late hour. The Chair may adjourn the hearing until another day for good cause shown, including lateness of the hour. Typically, hearings should not go past midnight on any given night to allow parties sufficient rest for their work and classes the following day. The Chair shall consult all interested parties before fixing the rescheduled date. The JA and the accused shall be notified of the new date.

l. Joinder of cases. When cases are joined pursuant to *Code*, Title Three, Article III. E.3.b.(3), it is contemplated that the joinder will be for the violation stage of the hearing, not the sanction phase of the hearing. The parties, the JA, the Chair or a member of the panel may request joinder of the sanction phase, however, if it serves the interests of justice. Once all parties have opined on the issue, the decision is left to the Chair, subject to being overruled by the panel.

m. No jurisdiction. In cases in which the panel of the UHB finds there is no jurisdiction, the Chair shall notify the Codes and Judicial Committee of the rationale of the panel.

4. Procedural Issues Unique to Public Hearings. The procedures for a public hearing shall be the same as for a regular hearing, except that:

- a. The accused and the JA shall submit to the Chair and opposing party (i.) a list of witnesses who will be called at the hearing and (ii.) a designation of advisor. The list and designation shall be presented no later than 48 hours prior to the commencement of the hearing. The JA will provide both lists to the panel 24 hours in advance of the hearing.

- b. A reasonable effort shall be made to accommodate an expected

audience.

c. Those directly involved in the hearing (parties, counsel, etc.) shall be located separately from the public.

d. The Chair must exclude witnesses from the hearing so that witnesses may not listen to the testimony of other witnesses who testify prior to them.

e. Either the JA, the complainant, the accused student or a witness may request that some testimony remain private. The panel, in its sole discretion, may grant this request, removing the public during such testimony. Such private testimony will be summarized for the benefit of the public at its conclusion, deleting the witness' name.

IV. Dates of Acceptance of Procedures, Publication in the *Cornell Chronicle* and When Procedures Effective.

These procedures were approved by a majority of the University Hearing and Review Board pool on October 22, 2013. They were published in the *Cornell Chronicle* on _____, and became effective thirty days later, that is on _____.

V. Miscellaneous

A. The University Hearing Board should meet at least once each academic year for the purpose of reviewing and updating these procedures of the University Hearing Board. Amendments shall be made by majority vote of the membership of the Board.

B. The term of office of the Administrative Chair shall be one (1) academic year. Elections shall be held as early in the academic year as possible.

C. These Procedures have been developed in accordance with the Cornell Campus Code of Conduct and augment the procedures outlined therein. Any current or future Code provisions that contradict these Procedures shall supersede these Procedures or sections thereof.

D. A copy of these Procedures of the University Hearing Board shall be made available as follows:

1. to all parties - at the time the Office of the Judicial Administrator notifies the parties of the charge and date of hearing, or upon request;
2. to other interested parties - in the offices of the Judicial Administrator and Judicial Codes Counselor upon request.

Procedures of the University Review Board
adopted by unanimous vote of the URB

I. General Rules and Guidelines

- A. Members of the URB shall consider all information and material coming before the Review Board to be of a confidential nature and shall in no way divulge the proceedings of a hearing—public hearings excepted. All deliberations of the Review Board shall be held in Executive session and shall at all times be strictly confidential.
- B. No new evidence may be introduced into the record on appeal. New evidence discovered after the hearing below shall be considered by the URB only to the extent necessary to decide whether to remand the case to the University Hearing Board (UHB) for a new hearing.
- C. A case heard privately by the UHB shall be heard privately by the URB, unless no party to the case objects to a public hearing and the URB approves of it. A case heard publicly by the UHB may be heard privately by the URB, if no party to the case objects and the URB approves.
- D. All Grounds upon which an appeal is based must be introduced through the Appeal Request Form which must be filled out and submitted to the Office of the Judicial Administrator. The decision shall be based solely upon such grounds.
- E. The URB may arrive at any of the following decisions regarding any appeal before if:
 - 1. uphold the Hearing Board decision;
 - 2. reverse or modify the Hearing Board decision, however, the URB may not increase a penalty;
 - 3. remand the case to the Hearing Board—either to the same panel that heard the case below or to new panel.
- F. URB members may request that legal counsel be retained to advise the URB. Should a URB member request legal counsel, such request shall not necessarily halt the hearing of the case, unless the Board so moves. However, in no case shall the panel proceed to consideration of a decision until counsel has been consulted or a Board member withdraws his/her request.

II. University Review Board Hearings

- A. The URB chairperson shall preside at all hearings of the Board. The chair shall cause the written record of the UHB panel's hearing and other pertinent documents to be circulated before the hearing.
- B. All hearings shall be conducted in an orderly manner. The chair of the Review Board may request that anyone disrupting the decorum either refrain from further disruption

or leave. If any person shall continue to be disruptive, s/he may be excluded from the hearing. Any rights attendant on her/his presence at the hearing will be deemed to have been waived.

- C. The appellant (person who filed the appeal) will present his/her case first, followed by the appellee. The parties may present the cases themselves, or by and through their advisor. Normally, the cases presented to the URB will be in the form of appellate argument based upon the record of the proceedings before the UHB.
- D. Those cases where new evidence is presented to the URB in the form of witnesses, the URB chair may at his/her discretion, fix a limit to the length of the witness' testimony, should it appear to belabor the point or become too repetitious.
- E. The URB chair may adjourn the hearing until another day under exceptional circumstances. The Board shall consult all interested parties before fixing the date for reconvening the Board.
- F. Prior to entering executive session, the URB shall reserve privilege of recalling witnesses who are still present for the purpose of clarifying points of those witnesses' testimony. This privilege shall not impair the right of the parties to the appeal to question the witnesses.
- G. The URB may interrupt the executive session for the purpose of clarifying specific testimony or specific arguments.
- H. The appellant shall be informed without delay of the decision of the Board. Such decision shall be read into the verbatim record of the hearing by a member of the URB.

III. Public URB Hearings

- A. The procedures for a public hearing shall be the same as for a private hearing, except that:
 - 1. the appellant and the appellee shall submit a list of witnesses, if any, who will be called at the hearing. The list shall be presented to the Review Board chair prior to the commencement of the hearing. The chair may, at his/her discretion, allow witnesses to testify whose names are not on the list;
 - 2. those directly involved in the hearing (witnesses, counsel, etc.) shall be located separately from the public.
- B. All deliberations of the Board shall be held in executive session.

IV. Appellant's Failure to Appear

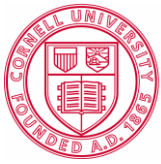
It is to the appellant's advantage to appear in person. However, the hearing may proceed in his/her absence, or with his/her designated advisor, unless the appellant applies in writing to the chairperson of the URB for a postponement. The Review Board may either grant or deny the petition for postponement.

V. Records of Decisions

- A. Pursuant to the University Assembly legislation, a verbatim record shall be kept of all hearings of the URB.
 1. The record shall indicate the names of the members of the URB who are hearing the appeal.
 2. The record shall include the names of the appellant and all others appearing before the Board, including their status in relation to the hearing.
 3. Any member of the URB may append a separate opinion (dissenting or concurring) to the record within two weeks of the conclusion of the hearing.
 4. The record shall be signed by the URB chair to certify the record as an accurate report of the proceedings.
- B. A written record of the decision of the URB, including rationale and dissenting opinions, shall be filed with the chairperson as well as with the Judicial Administrator. This report, with the exclusion of the names of individuals involved, shall be made available to the public upon request.

VI. Miscellaneous

- A. The URB shall review and update its procedures as needed. Amendment shall be by a majority vote of the membership of the Board.
- B. These Procedures have been developed in accordance with the Campus Code of Conduct. To the extent that these Procedures are inconsistent with the Code, or any amendments thereto, they are null and void.
- C. A copy of these Procedures of the University Review Board shall be made available to all appellants and appellees, as well as to other interested parties, in the offices of the Judicial Administrator and Judicial Advisor.



Cornell University University Assembly

UHRB Application Questions - 2017 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. 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?
4. Please describe in your own words what the University Hearing and Review Boards are and the role they play in Cornell's judicial system.
5. 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?
6. How often do you check email and how long does it take you to respond on average?
7. 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.

8. 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?

9. 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.
10. 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.
11. How do you believe the Campus Code of Conduct should be applied when an ambiguity arises? (Discussion around turning this into a hypothetical instead of an abstract question)
12. 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?
13. If there is anything else you wish to discuss, please do so below (250 word limit).