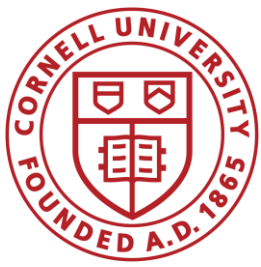


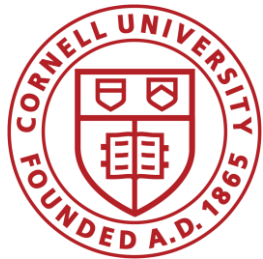
# UNIVERSITY FACULTY SENATE MEETING

NOVEMBER 11, 2015



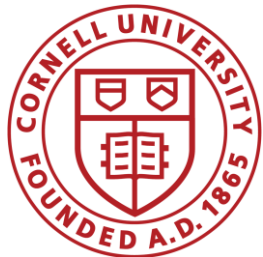
# Agenda

- Call To Order – Speaker Bruce Lewenstein (2 min)
  - \*Approval of the October 14, 2015 Minutes as Distributed – Speaker Bruce Lewenstein (1 min)
  - Faculty Matters & Nominations & Elections Report – Mike Fontaine, Associate Dean of University Faculty (2 min)
  - Sexual Assault: Proposed Revisions to Policy 6.4 – Adjudication Procedures –John Siliciano, Senior Vice Provost for Academic Affairs and Interim Senior Vice Provost for Undergraduate Education & Carol Grumbach, Director, Academically Engaged Learning and Special Assistant to the Senior Vice Provost for Academic Affairs (30 min)
  - Resolution on Romantic & Sexual Relations with Students – Elizabeth Regan, Chair of Committee on Academic Freedom and Professional Status of the Faculty (AFPS) (45 min)
  - General Good and Welfare (10 min)
- \*Consent Items



# Consent Vote By Senators

- APPROVAL OF THE OCTOBER 14, 2015 MINUTES



# Faculty Matters & Nominations & Elections Update

- Proposal for College of Architecture, Art & Planning, Professor of Practice – Approved by CAPP – Posted pending 60 day review  
<http://www.theuniversityfaculty.cornell.edu/On-Going%20Legislation/POP-AAP.pdf>
- Proposal for Johnson Graduate School of Management Dual Degree Program – Johnson EMBA and Weill MS – Approved by CAPP – Posted pending 60 day review <http://www.theuniversityfaculty.cornell.edu/On-Going%20Legislation/JGSMDUALDEGREEPROGRAM10272015.pdf>
- **ELECTION** will be held in the Spring of 2016 (Feb or March) for these positions:
  - Dean of Faculty
  - Associate Dean of Faculty
  - Faculty Trustee

Please send your nominations for these positions to:

[deanoffaculty@cornell.edu](mailto:deanoffaculty@cornell.edu) no later than **January 29, 2015.** Thank you!



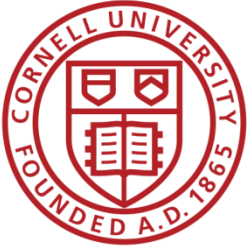
# Proposed Revisions to Policy 6.4 Adjudication Procedures

John Siliciano

Senior Vice Provost for Academic Affairs and  
Interim Senior Vice Provost for Undergraduate Education

Carol Grumbach

Director, Academically Engaged Learning and  
Special Assistant to the Senior Vice Provost for Academic Affairs



# Background

- Current policy adopted in 2012 in response to federal guidance and multiple problems with use of Campus Code
- Key features
  - Removed cases from Campus Code
  - Adjudication through investigation instead of hearing
  - Review by panel based upon paper submissions
  - “Preponderance of the evidence” standard
  - Single appeal to SAS Vice President



# Why Revisiting Policy 6.4 Again?

- More federal and state legislation
- Growing nationwide and Cornell concern about high incidents of sexual assault
- At the same time, rising nationwide concern about the efficacy and fairness of campus processes



# Review of Policy 6.4 Adjudication Procedures

- Working Group leading revision process
- Consultations with many constituents
  - Review & hearing panel members and chairs
  - Involved professionals
  - Complainant & respondent advocates
  - Law School faculty
  - Campus governance groups
- Guidance from President Garrett
- Benchmarking: 18 colleges and universities





# Major Concerns from Review

- Absence of any hearing
- Single investigator is determining responsibility and sanctions
- Inadequate procedural guidance
- Review panel members lack sufficient training and guidance
- Respondents but not complainants are afforded advisors
- Standards for temporary suspensions are unclear



# Overview of Major Revisions to Address Concerns

- Separate prosecutorial and investigatory functions from adjudicatory function
- Add hearing by a panel that determines responsibility and sanctions
- Add law-trained hearing chair to provide guidance and ensure compliance with procedures
- Also provide guidance through procedural specificity
- Provide trained advisors to both parties
- Add three-member appeal panel



# Redefine and Limit Investigator's Role

- Interviews parties and witnesses, gathers evidence, and prepares investigatory record and report for hearing panel
- Provides parties with full record for review and response before investigator finalizes and writes report
- Report: investigator synthesizes facts, identifies contested and uncontested facts, sets forth issues of general credibility
- Does not render opinion as to ultimate issues of credibility or responsibility; for hearing panel
- But makes threshold finding of sufficiency; low threshold
- Provides testimony at hearing



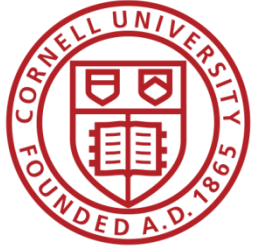
# Hearing: Balance Rights of Both Parties

- Parties entitled to testify, request witnesses, view remotely other testimony, and submit proposed questions and evidence
- Complainant and respondent in separate rooms and may participate remotely
- Panelists conduct all questioning
- Hearing Chair, after consulting with panelists and parties, approves parties' witnesses, evidence, and questions; panelists also ask their own questions
- Three-member panel: faculty and staff; trained annually as required by law
- Standard of proof remains "preponderance of the evidence"



# Hearing Chair

- To be a Cornell faculty/staff member with legal training
- Ensures panelists understand procedures, standards of proof, and evidentiary issues
- Makes rulings on admissibility of witnesses, questions, and evidence
- Parties' objections are on the record
- Serves as non-voting member of the panel



# Questions and Comments

- Further questions or comments?
  - Carol Grumbach at [cg47@cornell.edu](mailto:cg47@cornell.edu)
  - John Siliciano at [jas83@cornell.edu](mailto:jas83@cornell.edu)

# Romantic and Sexual Relationships with Students

Structure of presentation:

Summary of process to date

Highlights of the four paragraphs of the resolution

What is new compared to the existing (1996) policy?

What are the pros and cons of the major changes?

Discussion

Four votes, one for each paragraph, on the underlying spirit (principle, essence), not the specific language

## Summary of process to date

Joe Burns, working with Kent Hubbell, brought a proposed draft faculty resolution to CAFPS. Research and drafting support was provided by Alan Mittman (Director, Workforce Policy & Workforce Relations and Title IX Coordinator for Investigations) and Pam Strausser (Senior Consultant, Academic Human Resources).

CAFPS and several other bodies were asked to review it and provide feedback.

Some revisions were made by the drafting group.

After further discussion, CAFPS determined that the draft should be presented to the Faculty Senate for discussion and “sense of the body” voting.



## Paragraph 1: Relationships with undergraduate students

### Highlight

Faculty may not engage in romantic or sexual relationships with undergraduate students.

### What is new

The existing (1996) policy only prohibits these relationships if the faculty member has some kind of academic authority over the student.  
The revised policy broadens the prohibition.

### Pro

The gross power imbalance is incompatible with the notion of consent.  
Such relationships create a poor learning environment for all students.

### Con

Cornell should not be judging and regulating the personal choices of consenting adults. For FERPA etc. students are considered adults.

## Paragraph 2: Relationships with graduate students

### Highlight

The prohibition applies when the “faculty member might reasonably be expected to have academic authority over a graduate student in the future.”

Faculty cannot exercise academic authority over a graduate student from a former relationship.

### What is new

The revised policy broadens the existing prohibition in those two ways.

### Pro

Graduate programs are small. Broadening of the prohibition is needed because of the high probability of a future conflict of interest. Such relationships create a poor learning environment.

### Con

There are too many cases where there is a small age difference and no conflict of interest to justify a broader prohibition.

### Paragraph 3: Obligation to disclose relationships

#### Highlight

Disclosure of prohibited relationships is required.

#### What is new

There was no required disclosure under the existing policy.

#### Pro

Requiring disclosure will help prevent such relationships from forming or continuing.

Without required disclosure, the relationships will simply continue and the conflict of interest or poor learning environment cannot be addressed.

#### Con

Faculty should not be required to share their romantic and sexual relationships with Deans.

Enforcement may be difficult to ensure.

## Paragraph 4: Remedies

### Highlight

Specifies the person (Dean) who should resolve the situation to end the conflict of interest.

Spells out the range of disciplinary measures.

### What is new

The existing policy did not address remediation.

### Pro

A main point of disclosure is to enable remediation to occur.

The upper end of the range of disciplinary measures may help prevent violations of the policy.

### Con

Do Deans have the expertise to manage such situations?

Risks creating a worrisome “black book” of all disclosed relationships in the Dean’s office.

Third party complaints are allowed (but are subject to Policy 4.6).

Discussion

Voting: not on specific language of the policy but simply the spirit of the policy

## **Prohibited Romantic or Sexual Relationships with Students**

### **1. Relationships with undergraduate students:**

*No faculty member shall engage in romantic or sexual relationships with undergraduate students. Unusual situations, such as but not limited to, the recruitment of a faculty member with an undergraduate partner or spouse, enrollment by a faculty partner or spouse as an undergraduate, or a relationship between a member of the faculty and an undergraduate student of non-traditional age, must be disclosed and remedies sought to avoid real or apparent conflict of interest.*

**2. Relationships with graduate students and professional school students, (including clinical residents and clinical fellows (collectively “graduate students”)):**

*No faculty member should simultaneously engage in a romantic or sexual relationship with any graduate student over whom he or she exercises any academic authority. Further, whenever a faculty member might reasonably be expected to have academic authority over a graduate student in the future, romantic or sexual relationships are prohibited. Conversely, no faculty member shall exercise academic authority over a graduate student with whom he or she has previously pursued or had a sexual or romantic relationship.*

# Proposed Friendly Amendment

Ken Birman, CS

(ii) For the purposes of this policy, “Faculty member” includes tenured and tenure-track faculty as well as academic professionals consisting of the following titles in all ranks: professor-of-the-practice, research professor, clinical professor, professor-at-large, university professor, senior scholar, senior scientist, instruction lecturer, teaching associate, research scientist, extension associate, librarian, archivist, visiting fellow, visiting critic, visiting scientist and visiting scholar, **as well as post-doctoral fellows or research associates who are assigned to unsupervised teaching or laboratory roles**. Additionally, “Faculty member” shall include all academic titles modified with adjunct, acting, courtesy or visiting. “Faculty member” does not include graduate students or undergraduate students who may serve as teaching assistants or graders.



### **Obligation to disclose relationships addressed in this resolution**

*If a relationship covered in this policy exists or develops, it must be disclosed and a remedy must be pursued. It is the faculty member who bears the obligation of reporting relationships covered in this policy to the Supervising Dean. Failure to disclose the relationship in a timely fashion will itself be considered a violation of policy. If there is any doubt whether a relationship falls within this policy, individuals should disclose the facts and seek guidance rather than fail to disclose.*

## **Remedies**

*In case of failure to reach agreement concerning the remediation or in the event no such disclosure has been made but the Supervising Dean has determined a relationship prohibited by this policy exists, that Dean shall resolve the situation to end the conflict of interest. In any event, disciplinary measures up to and including termination and revocation of all university rights and privileges may be taken, if appropriate to the circumstances, by the relevant Supervising Dean. See Policy 4.6, Standards of Ethical Conduct, Enforcement, p. 11. In unusual circumstances the Supervising Dean may grant an exemption from this policy when full severance of the university relationship would create undue academic or financial hardship for the student and oversight to protect the student can be ensured.*

## Committee on Academic Freedom and Professional Status of the Faculty

Elizabeth Adkins Regan (Chair, A&S)

Kimberly O'Brien (CHE)

Ritchie Patterson (A&S)

David Ruppert (ENG)

Charles Seyler (ENG)

Paul Soloway (CALs)

Tracy Stokol (VET)

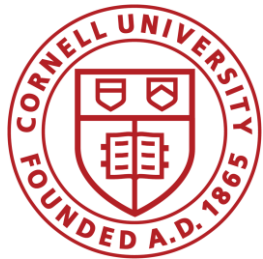
Gillian Turgeon (CALs)

Bruce Van Dover (ENG)

Diana Li (undergraduate, ILR)

Joseph Burns (ex officio, ENG)

Michael Fontaine (ex officio, A&S)



# General Good and Welfare