Proposed Revisions to Policy 6.4
Adjudication Procedures

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Current Policy 6.4

- Adopted in 2012 in response to:
  - Federal legislation and guidance
  - 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 (revised in 2015 to provide appeal to panel)
Why Revisiting Policy 6.4 Again?

- More federal and state legislation
- Growing nationwide concern about high incidents of sexual assault on university campuses
- At the same time, rising nationwide concern about the efficacy and fairness of campus processes
New York State Legislation

- State law entitled “Enough is Enough”
- Effective October 5, 2015
- Some of the required revisions; already made
  - Affirmative consent
  - Alcohol/drug amnesty
  - Appeal by panel
  - Reasonable interim measures and right to immediate review
  - “Student Bill of Rights”
  - Transcript notation
Review of Policy 6.4
Adjudication Procedures

- Title IX Working Group leading revision process
- Consultations with many constituents
  - Review & hearing panel members and chairs
  - Involved professionals
  - Complainant & respondent advocates
  - Law School faculty
- Report of All-Assemblies Working Group
- Guidance from President Garrett
- Benchmarking: 18 colleges and universities
Two Chief Concerns from Review

- Absence of any hearing
  - For respondents: deprives accused of basic process
  - For complainants: creates potential for nullification
  - For review hearing panelists: causes uncertainty, confusion, and frustration

- Inadequate procedural specificity
  - Also leads to confusion and uncertainty
  - Creates risk of inconsistent interpretations and enforcement of procedures
Other Concerns

- Procedures hard to understand and follow
- Respondents but not complainants are afforded advisors
- Standards for temporary suspensions are unclear
- Single investigator is determining responsibility and sanctions
- Review panel members lack sufficient training and guidance
Overview of 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 (already done)
Scope of Proposed Procedures

- New procedures firstly to address most problematic and numerous cases
  - Student respondents
  - Charged with sexual assault, dating violence, domestic violence, and stalking
    - Conduct covered by New York State law
- Procedures will stand alone as a separate section in Policy 6.4
  - Make easy to find and write in plain English
Redefine 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
  - After consulting with panelists and parties
  - Expected to approve in substance all relevant questions that are not prohibited by procedures, cumulative, or prejudicial
- Parties’ objections are on the record
- Serves as non-voting member of the panel
Both parties afforded assistance of a trained advisor

- Current policy provides Judicial Codes Counselors (law students) to respondents only
- Liz Karns serving as an advisor for complainants per a one-year appointment by President Garrett

Could be a professional staff position or a law student

- In preliminary discussions with Law School about creating a new role as well as a law school clinic for new advisors and Judicial Codes Counselors
Alternate Resolution

- Parties would be entitled to seek alternate resolution any time after report filed
- Participation and conditions subject to consent by both parties and approval by university
- Title IX coordinator would oversee to ensure complainant not succumbing to pressure
  - Face-to-face meetings between complainant and respondent such as mediation not permitted
- Likely to provide for resolutions in cases that complainants are currently not pursuing and reduce number of hearings
Temporary Suspensions

- Temporary suspension treated as an extraordinary measure
  - Use Campus Code standard: “in extraordinary circumstances and for the purpose of ensuring public order and safety”
  - Standard calibrated to address perceived risk but tailored to minimize to extent possible impact on accused
  - Both parties have right to immediate review (NYS law)
Affirmative Consent

- Exact language required by NYS law

- “Consent can be given by words or action”

- Consent cannot be given by an incapacitated person: someone under the influence of alcohol, drugs or other intoxicants “may be incapacitated and therefore unable to consent [emphasis added]”
Further questions or comments?

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