

# Proposed Student Campus Code & Procedures

**Cornell Faculty Senate**  
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# Getting Here From There

- 2017 – President Pollack asks the UA to review, update, and simplify the Campus Code
- 2017 - Presidential TF makes strong recommendations re changes to the Campus Code
- 2018, 2019 CJC and UA engage in review process but no proposals made
- 2020 CJC sends a version of Code and Procedures to the UA and the Student Assembly (SA) endorses a profoundly different version of Code and Procedures
- UA adopts resolution asking University Counsel to review both versions and to prepare a version that address input from both assemblies and the community

# Getting Here From There

- CJC/UA and SA proposals both recommend applying a new Code only to students and removing jurisdiction over faculty and staff.
- Both proposals agree on moving the student conduct system to SCL.
  - Appx 96% of all cases were UG's, with a few Graduate/Professional, and just a tiny handful of employee cases.
- Counsel drafted versions of new Code & Procedures sent them to the UA at the beginning of October.
- Great comments received – intensive work with the Complainants Advisors and the Judicial Code Counselors from the Law School; very helpful feedback from CJC representing the UA. New drafts prepared and posted before Thanksgiving – up on the Senate website too.

# Drafting Goals: Code and Procedures

- Increase educational and rehabilitative goals of conduct system consistent with contemporary practices
- Address Presidential TF recommendations, in particular, to provide rights and protections in race harassment or assault cases comparable to cases involving gender harassment/assault
- De-escalate adversarial nature of hearings
- Eliminate prosecutorial role of the JA Office & move student conduct system to SCL
- Increase opportunities for mediation/alternative dispute resolution/restorative justice

# Drafting Goals: Code and Procedures

- Reduce/eliminate reporting of minor offenses on transcripts to de-escalate system stressors
- Focus Code/Procedures on students only; make Code/Procedures more readable and coherent
- Eliminate the separate conduct system for fraternities and sororities *[Major point from the Senate/faculty]*
- Address *perceived* abusive treatment of students by some JCC's and outside attorneys during hearings
- Ensure that changes & amendments to the Code/Procedures can be responsive to community input -- be nimble

# Some Key Procedural Changes

- New Office of the OSCCS is set up within SCL to steward fairness for all parties; handles investigations, does not make findings of fact - which remain with hearing boards.
- The OSCCS does not “represent the university” in cases brought against students or student organizations; role of the JA is eliminated.
- Individual complaints are brought by students and are handled by them with assistance from a Complainant's advisor.
- Cases brought by the university are handled by administrative staff from relevant units, not lawyers from the JA.
- OSCCS has broad discretion to work with parties to resolve cases through ADR, can't compel anyone.
- Many minor “offenses” are not reported - encourages accountability and education and reduces adversarial approach

# Balancing

- Informal resolutions/mediations reduce hearings.
- Access to comprehensive investigative report and records reduce surprises and confrontations at hearings.
- Trained hearing chair supports professionalism, consistency and fairness in rulings across all cases
- Procedures allow cross examination in all cases with potential for a student's suspension or expulsion (likely to be virtually all cases that go to a hearing) but inserts some civility protections for parties and witnesses.
- Equivalency of Respondents and Complainants Advisors; required training for both; *some* oversight by the OSCCS Director
- All student orgs now covered under the same Code and Procedures
- *Crucial to be able to learn from experience and make reasoned changes and improvements – therefore amendments process has been simplified and centered on student assemblies and SCL.*

# Concerns highlighted by GPSA (and the CJC)- very carefully considered in revisions

- Advisors role/cross examination at hearings
- Confidentiality responsibilities of advisors
- Independence of advisors
- Standard of evidence
- Rights of students to be informed of advisors
- Public hearings
- Temporary suspensions
- Jurisdictional time frame
- Scope of Code application



# Students and Their Advisors Ability to Speak & Ask Questions

*During hearings, Counselors/advisors and support persons may confer with the party, and submit written requests and objections to the Hearing Chair on the party's behalf, and otherwise participate in hearing at the time and in the manner prescribed by the Chair. In cases where suspension or dismissal may be imposed on an individual Respondent, Counselors/advisors have an opportunity to engage in direct questioning of parties if they chose to testify or witnesses, subject to such reasonable standards of civility and respect as the Hearing Chair may impose.*

# Confidentiality

[Excellent - proposed by the JCC's/Complainants' Advisors]

*Counselors are required to adhere to strict confidentiality responsibilities and must inform parties that they may discuss cases within their community of other Counselors for the sole purpose of soliciting advice from other Counselors about cases. A party may elect to have their Counselor not share information within their community of other Counselors.*

# Independence of Advisors

- *The Lead Counselor for each office assigns individual Counselors to serve on individual matters.*
- *The Lead Respondents' Codes Counselor shall be responsible for managing the Office but with administrative support from the University.*
- *The **SA, GPSA, and Office of the Student Advocate ("OSA")**, in consultation with the Director, shall select the Lead Respondents' Codes Counselor for the following academic year from a group of no more than three individuals nominated by the members of the existing Office of the Respondents' Code Counselors.*
- *The Lead Respondents' Codes Counselor shall be subject to removal by a vote of the SA, GPSA, and concurrence of the Director for good cause, such as significant dereliction of duty or gross misconduct.*

# Standard of Evidence

*In cases where the **Respondent is an individual**, the Respondent is presumed “not responsible” unless and until a Hearing Panel finds the Respondent responsible for prohibited conduct under the Code by a majority vote using the **clear and convincing standard of proof**. Clear and convincing evidence is a higher standard than the civil law’s more-likely-than-not (“preponderance”) standard, but a lower standard than the criminal law’s beyond-a-reasonable-doubt standard.*

*In cases where the **Respondent is a student organization**, the Respondent is presumed “not responsible” unless and until a hearing panel finds the respondent responsible for prohibited conduct under the Code by a majority vote using the **preponderance of the evidence** standard. Preponderance means that it is more likely than not that the Respondent committed all of the elements of the alleged prohibited conduct.*

# Right of Students to Be Informed of Ability to Access an Advisor

*At the time a party is given notice, that party must also be informed in writing that they are entitled to representation by a advisor/counsel of their choosing including a Codes Counselor (with contact information for the relevant Counselor's office provided), and may be accompanied by such counsel/advisor or Counselor to any meeting or interview.*

# Public Hearings

*Hearings in cases brought by a university Complainant shall also be private unless (a) the Respondent notifies the Director of OSCCS no later than two (2) business days before the hearing that they wish to have a public hearing, in which case such request shall be granted.*

# Public Hearings, cont'd

*Hearings brought by Individual Complainants will be private. The only persons present will be the parties, their Counselor/advisor and support person, witnesses (when testifying), the Hearing Panel and Panel Chair, (and, at the Panel's discretion, its counsel), the investigator, and any staff necessary for the conduct of the hearing. Witnesses may be present only for their own testimony.*

*Notwithstanding the Respondent's request for a public hearing, any student witness in any hearing process shall have a right to request and to privately provide their testimony, and the Hearing Chair shall ensure that such individual's testimony and personal identifying information are not presented or discussed in any public component of the hearing.*

# Temporary suspensions

*... a Temporary Suspension may be imposed only when available **less restrictive measures are reasonably deemed insufficient** to protect the Complainant or the University community. Further, **the form of Temporary Suspension imposed shall be the least restrictive option** that reasonably affords the necessary protections.*



# Temporary suspensions, cont'd

*The Respondent may file a written request to lift the Temporary Suspension with the VP SCL. ...If the VP SCL determines that **good cause for the Temporary Suspension is inadequate or absent, that other less restrictive alternatives are available, or that circumstances have changed so that the suspension is no longer necessary, the Temporary Suspension will be immediately lifted.** ...The VP SCL's decision is final for all Temporary Suspension actions that continue to enable the Respondent to **maintain core instructional activities** and there is no further right of appeal.*

*A complete suspension from all university activities such that the Respondent will lose the ability to continue academically **may be appealed to the Provost**, whose decision in such cases will be final.*

# Timeframe in Which Complaints Can be Brought

*To promote timely and effective review, the University strongly encourages ,... reports... **within one year of the alleged prohibited conduct.***

*While prompt reporting is strongly encouraged, the Director will **accept and review any** Report or Formal Complaint that is filed under these Procedures as long as the Respondent was a “student” at the time of the subject conduct and remains a “student” as defined by the Code (e.g., has not graduated or permanently left the University).*

*Complaints against **a student organization are addressed so long as the organization remains registered with or recognized by the University** or is deemed to be operating, even without approval or recognition.*

## Scope of Code's Application

*The Code covers behaviors by all Cornell students, University-recognized and registered student organizations (including fraternities and sororities). The Code generally applies to conduct on any campus of the University, on any other property used by it for educational purposes, or on the property of a University-recognized or registered residential organization such as a fraternity or sorority.*

*The Code applies to conduct that involves the use of University computing and network resources from a remote location, and to online behavior.*

*The Code will apply regardless of the location of the conduct when: (1) the behavior occurs in the context of a University program or activity; or (2) poses a threat to the University's educational mission or to the health or safety of individuals (whether affiliated with the University or not), or the University community.*