

Online Faculty Senate

December 2, 2020

Stay muted unless you are called upon to speak.

Use 'Raise Your Hand' to request permission to speak. Stay muted until recognized. Once unmuted, **you have 2 minutes** to pose a question or make a statement.

You can submit online questions or comments via the Chat or Comments function. Be brief. Time permitting, questions/comments will be read to all participants.

'Gallery View' within Zoom allows you to see this slide and the participants.

Audio and Chat will be posted on the meeting webpage

Announcements

C. Van Loan

Announcements

Last Senate Meeting on Dec 16

Some Voting.

Reports from the three Working Groups that are part of the antiracism initiative

The Weiss Award Process will restart soon after one-year pause.

The McClintock naming proposal has been submitted. Should know results early S21.

Threatening Communications that Target Faculty

C. Van Loan

A recent incident brought to my attention prompted an examination of how we handle these situations.

It exposed gaps in our “defense”.

Let’s discuss this topic and walk out of the meeting with enough feedback to craft some effective follow-up action items.

Some Working Assumptions

1. By “threatening communication” we mean hate mail and all forms of online harassment and intimidation.
2. The gaps we need to close have to do with response protocols, education, and philosophy.
3. A threatening communication that is designed to affect an individual faculty member’s research or teaching or stance on campus issues must be viewed as an attack on the profession and the university.

An Increasingly Urgent Problem?

We do not have hard data that points to increased frequency.

We do know that expectations for having an online presence is increasing. “Do great research and teaching and have an impact by spreading the word.” Nowadays that includes spreading the word online.

Two Recommendations

1. We need more data to track trends, especially as they might correlate with race, ethnicity, and gender.
2. Faculty, especially new faculty, need guidance regarding their online presence. BTW, how do we assess “online presence”?

In terms of how to spread the word, it@cornell, CTI, and eCornell provide excellent support as does University Relations should you be interested in hosting a podcast.

Incident Response: Who Should Be Involved and Why?

1. The **Department Chair** (or equivalent) because they need to understand your teaching/research environment.
2. The **Office of Faculty Development and Diversity** because it can help direct faculty to the right resources to navigate the situation and follow up with support as appropriate.
3. The **College Communication Officer** because they will have experience in dealing with such matters.
4. The **Information Security Group** within CIT because they can provide advice about technical steps that can be taken as part of a response.
5. The **CUPD** because they can help assess the potential for physical harm, determine if the threat is a crime, connect victims with additional resources, and because they can spot connections with other incidents.
6. The **Department of Inclusion and Workforce Diversity** via the bias-reporting system because they can point to support services and because it's the existing way we centrally collect data on these sorts of incidents.

Recommendation: Develop an Annotated Protocol

We need to develop a low-overhead method for these communications to occur.

Faculty will be reluctant to trigger a protocol that lacks nuance and is perceived to be ineffective.

A one-pager is needed where the roles of the players are spelled out.

Issues: Expectations - Free Speech - Legal

Cornell cannot **guarantee** that all its constituents are “safe” in every internet environment, nor does the university have much control over the online activities that its faculty, staff and students engage in. A reminder that some speech can be hateful and repulsive but constitutionally protected.

Faculty, staff and students would most certainly (and rightly) object if the university tried to censor or curtail their private online behavior or personal commentary in web/social media environments

Is the community fully aware of what the proposed [student code of conduct](#) and [Policy 6.4](#) say about online harassment?

Issue: The Keep-Your-Head-Down Side Effect

Standard advice given to the faculty target is “never engage with the perpetrator.”

While that makes sense, it becomes worrisome when follow-up steps lead to a taking down of a website or the closing of a social media account even if temporary.

Must avoid creating a climate where the principal advice is to keep your head-down and quietly go about your business.

University-Level Messaging Recommendations

1. Acknowledge that online harassment is a real and significant problem, and that it cannot be solved by simply “staying off the internet.” (A helpful analogy: if a student were being stalked, would you suggest they never go outside?)
2. Recognize the psychological harm that can result from online harassment and make emergency counseling services available, should harassment occur.

Taken from [Best Practices for Conducting Risky Research and Protecting Yourself from Online Harassment.](#)

Discussion

Learn more through references listed [here](#).

Email deanoffaculty@cornell.edu if you would like to work with the DoF, the ADof, Steve Jackson (IS Chair) and others on this project over the break or if you would like to share in confidence your thoughts and experiences.

The goal is to implement all recommendations before the start of S21.

Check out this doc from University Relations: [Protecting Yourself from Online Harassment](#)

Matters that Concern Freshman Admissions

(Follow-up to VP Jon Burdick's 11/11 [Presentation](#))

Proposed Sense-of-Senate Resolution The Role of Standardized Tests

Whereas the pandemic greatly complicates the use of SAT/ACT in the next round of admissions;

Whereas the role of standardized testing is being called into question across the country;

Be it resolved that the Senate recommends continuation of the 2020 test optional policies for the coming year;

Be it further resolved that the Senate recommends the formation of an admissions advisory committee chaired by VP for Enrollments that includes faculty.

Proposed Student Campus Code & Procedures

Cornell Faculty Senate
December 2, 2020
Madelyn Wessel, General Counsel

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.

New Statement About Academic Freedom

Risa Lieberwitz

New Statement About Academic Freedom

The [new statement](#) builds on the current statement by connecting it to the University's [Core Value Statement](#) and by providing more detail on these topics:

1. Broad scope of academic freedom: teaching, research, “private citizen” speech, campus governance.
2. Remaining vigilant about University’s commitment to academic freedom and free speech and ongoing consultation between the President and the assemblies.
3. How to handle situations when imminent threat to public safety is involved.
4. How to handle situations when bias, harassment, and sexual misconduct are involved.
5. Freedom to assemble outdoors without permits.

The Committee on Academic Freedom and Professional Status of the Faculty will review and possibly edit the proposed statement and send it to the Senate in the form of a resolution.

Policy 6.4 and Procedures related to Faculty

Risa Lieberwitz

Professor of Labor and Employment Law

ILR School

Faculty Senate member

Policy 6.4: Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct

Policy 6.4

Procedures to enforce Policy 6.4

- Title IX cases
- Non-Title IX cases

Policy 6.4: Prohibited Bias, Discrimination, Harassment, and Sexual and Related Misconduct

“preponderance of evidence standard”

[“more likely than not”]

- Consistent with standard of evidence in prior version of Policy 6.4
- May encourage complainants to come forward.
- Standard used in civil lawsuits

“clear and convincing standard”

[i.e. “highly probable”]

- Consistent with the level of certainty needed for potentially severe sanctions.
- Consistent with AFPS hearings.
- Consistent with AAUP principles.
- Hearings are private; civil suits are carried out in public hearings.

Procedures for Title IX cases

(alleged sexual misconduct/sexual harassment)

STUDENT RESPONDENT

- **Investigator** decides whether enough evidence to send case to Hearing Panel.
- **Full hearing before Hearing Panel (“Hearing A”) prior to conclusions on the allegations.**

FACULTY RESPONDENT

- **Investigator** decides whether enough evidence to send case to Hearing Panel.
- **Full hearing by Hearing Panel prior to conclusions on the allegations.**

Procedures for Non-Title IX cases (alleged sexual misconduct/sexual harassment/other harassment or discrimination)

STUDENT RESPONDENT:

- **Investigator** decides whether enough evidence to send case to Hearing Panel
- **Full hearing** by Hearing Panel **PRIOR TO conclusions on the allegations.**
 - “Hearing A” where potential sanction of suspension/dismissal.
 - “Hearing B” where lesser sanction.

FACULTY RESPONDENT:

- **Investigator concludes whether misconduct occurred/recommends sanctions.**
- **Investigator sends report to Dean to make final decision.**
- **Full Hearing only** where there is a subordinate-supervisory relationship or academic freedom issue:
 - **Hearing by Senate Committee on Academic Freedom AFTER the decision reached by investigator and the Dean.**
- **All other non-Title IX cases: NO hearing on misconduct/sanctions**
 - **Dean** reviews investigative report and makes final decision.
 - Faculty respondent may file grievance in **college-level grievance procedure.**

Non-Title IX cases (alleged sexual misconduct/sexual harassment/other harassment or discrimination)

Current Procedures

FACULTY RESPONDENT:

- **Investigator concludes whether misconduct occurred/recommends sanctions.**
- Investigator sends report to **Dean to make final decision.**
- **Full Hearing only** where there is a subordinate-supervisory relationship or academic freedom issue:
 - **Hearing by Senate Committee on Academic Freedom AFTER the decision reached by investigator and the Dean.**
- **All other non-Title IX cases: NO hearing** on misconduct/sanctions
 - **Dean** reviews investigative report and makes final decision.
 - Faculty respondent may file grievance in **college-level grievance procedure.**

**Non-Title IX Procedures could be amended with:
Full hearings for faculty prior to decisions in **ALL** non-Title IX cases
[note: amendments in **red**]**

- **Investigator** decides **whether enough evidence to send case to a hearing.**
- **Full Hearing by Senate Committee on Academic Freedom and Professional Status (AFPS) **in all non-Title cases.****
- **Dean must accept the AFPS's findings of fact and conclusions. However, Dean may modify the AFPS recommended sanctions.**

CONSIDERING THE AMENDMENTS TO NON-TITLE IX PROCEDURES FOR FACULTY

IN FAVOR OF AMENDMENTS

Due Process/Fairness:

- Full hearings by peers (AFPS) in all non-Title IX cases.
- Separates role of investigator and decision-maker
- Timing of hearings prior to decisions.
- Faculty and students have same levels of due process.

AGAINST AMENDMENTS

- This level of due process is not required by law (including Title IX)
[Note: This is also true for student respondents.]
- Students hesitant to bring complaints or appear as witnesses against faculty.
[Note: This applies to any hearings.]