

**M E M O R A N D U M**

**TO:** Codes and Judicial Committee  
**CC:** Ashley Garry and Evan McGruder, Office of the Judicial Codes Counselor  
**FR:** Mary Beth Grant and Scott Grantz, Office of the Judicial Administrator  
**RE:** Recommended Changes to the Campus Code of Conduct  
**Date:** October 22, 2010

Please find below discussions for five issues that this office has identified as problematic in the campus disciplinary system. For the first four issues, there are proposed changes to the Cornell Campus Code of Conduct. The JA's Office and the JCC's Office have met about these proposals and are in agreement that these changes would benefit accused students and the community.

For the fifth issue, the JA's Office and the JCC's Office agree about the problem, but have not been able to articulate solutions. We ask the CJC to brainstorm solutions.

**1. Provide time limits for appeals to the president.**

**Issue:** Recently, a student appealed to the president regarding the sanction in a serious case seven months after the Review Board Decision. The President requested that the CJC add a time limit for bringing these appeals. Additionally, some procedures have evolved from the cases that have been appealed to the president, which I have included. Finally, there was some indication in a different case that sexual assaults might not be covered by this section. I have added that to be clearer.

**Proposed Change to Title Three, Article III, F. 2, page 32:**

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 violence. Such appeal shall be to the President within fifteen business days of 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 ~~who~~ may alter the penalty only by a written and reasoned opinion.

## 2. Issues related to indefinite suspensions.

**Issues:** There were a number of indefinite suspensions imposed in the last few years, which have helped us identify ways we can improve their use.

- a. **Allow the JA the authority to re-admit students from indefinite suspension and limit the number of petitions for re-admission to one per semester.** Currently, only the Hearing Board has the authority to grant a petition for readmission. When the JA and the accused disagree, it makes sense for the board to make the decision, but this seems like an unnecessary administrative burden when the parties are in agreement. Additionally, it can be an administrative burden when a student submits multiple petitions for readmission in one semester or multiple petitions to return at a given time.

### **Proposed change to Title Three, Article IV, A.1.a.(8), p. 34:**

(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. 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. 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.

- b. **Provide time deadlines for petitions for re-admission, for both the accused and the JAO.** The Code is not currently clear about when petitions for readmission must be scheduled. The following suggestions balance the needs of the disciplinary system and the accused.

### **Proposed change to Title Three, Article III, E.1.c, p. 25:**

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

### **Proposed change to Title Three, Article III, E. 2, p. 25:**

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 the same be postponed by the Hearing Board Chair for good cause shown.

### 3. Clarify use of deferred sanctions.

**Issue:** Deferred sanctions have long been used by the campus disciplinary system, delaying the starting date or due date of a sanction. The concept is that a particular sanction would be appropriate for the current violation, but based on some mitigating circumstances and/or the wish to give the accused person a break or an extra incentive to make better choices, the sanction won't be required unless there is a future Code violation. It is an issue of the timing of the sanction, not an issue of whether the sanction is appropriate.

For example, community work hours might be fairly assessed at 20 hours, but the board or JA (by agreement) may defer 5 hours that would only be due if there is a future violation; the remaining 15 would be due according to the routine procedures. Similarly, a student may be subject to suspension, but the JA and/or the board may wish to give the student one more chance, and the suspension could be deferred until there is a future Code violation. A deferred sanction would be triggered according to the terms of the board's decision or of the summary judgment agreement. For example, there may be some situations where any Code violation would trigger the sanction, but for other situations, only certain types of violations would trigger the deferred sanction. All procedural requirements would need to be satisfied for the current case (for example, the UHB chair must be consulted about whether suspension is appropriate in the current case).

This practice provides benefits to the accused person in getting another chance, sometimes having less of a disciplinary record, and having incentive for future appropriate conduct. It also provides transparency so the accused student understands what is expected of him/her in the future and what he/she can expect if those expectations are not met. It benefits the board and the JA in the ability to provide some flexibility in sanctioning, particularly when mitigating circumstances warrant it.

Last year, the JCC and the CJC did not agree with this recommendation. The JCC now supports this, and together with the JA recommends the following clarifying language.

#### **Proposed change to Title Three, Article IV, A.1, page 33:**

*A. Penalties. 1. The following penalties may be imposed, or imposed and deferred as specified in the summary decision or board decision . . .*

### 4. Expanding pool of potential chairs for the Hearing and Review Boards.

**Issue:** It has been difficult to staff the position of Hearing Board Chair. We have been lucky that Professor Brian Chabot has filled one opening for several years, but we cannot expect him to do so indefinitely. We are also grateful that Professor Emeritus Charles Walcott agreed to fill the second chair position this year. But, we need to address this issue for the long-term.

The work of the Hearing Board chair has expanded in the past few years, both because significantly more cases are going to hearings and because the chairs are being consulted on sanctions for agreements in serious cases. The work is difficult because currently, the pool of qualified faculty members to serve as

chair is limited to “senior” members, which has been interpreted to mean a tenured professor. If the word “senior” were removed from this Code section, it would provide a larger pool of people to do this important, difficult and often thankless work.

This proposed change was presented on an emergency basis to the UA executive committee over the summer, and they rejected it. It would be valuable to have a broader discussion to understand the challenges.

### **Proposed Change to Title Two, Article IV, A and B, page 14 :**

#### **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 ~~senior~~ 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 ~~senior~~ 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.

**5. Challenges of summertime hearings.** The CJC, UA and president approved a change last year that changed the starting date of a board member’s appointment to June 1 (rather than the start of the academic year) to increase the chances that board members would be available during the summer. This was a good first step, but was not effective this year in creating a larger pool of summertime board members.

Additionally, there are other logistical issues for summertime hearings. For example, there are vacations and other responsibilities of chairs and for members of the JA’s Office, summer employment out of town for JCCs, and lack of availability of parties and witnesses. There needs to be a recognition that the disciplinary system cannot always function at 100% capacity during the summer months.

The following issues are the most pressing for the CJC to consider in addressing the effectiveness of the disciplinary system during the summer:

- a. JCC coverage during the summer months.
- b. Sufficient numbers of trained board members.
- c. Need to have hearings that are emergencies or for matters when the parties are only available during the summer
- d. Need to delay hearings past the normal time frame when the matter is not an emergency or when parties are not available.