

Cornell University Assembly

UA Resolution # 12

Updated Resolution to Modify Campus Code to Clarify the Rights of Complainants to Appeal Summary Decision Agreements

1 **Sponsored by: Gregory Mezey, Employee; Chair, Codes and Judicial**
2 **Committee**

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4 WHEREAS pursuant to Article 3, Section 3.1 of its charter the University Assembly (the
5 Assembly) may propose changes to the Campus Code of Conduct (the Code) subject to the
6 University President's approval.

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8 WHEREAS the Code provides for negotiation between the accused person and the Office of the
9 Judicial Administrator (OJA) of a resolution to disputes arising therein through a summary
10 decision agreement (SDA).

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12 WHEREAS such agreements become “final”, binding on the accused person and the OJA, after
13 completion of steps and waiting periods specified.

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15 WHEREAS the Code provides for the complainant who is dissatisfied with the terms of the SDA
16 to appeal such an agreement to the University Hearing Board for a period of time after it
17 becomes “final”.

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19 WHEREAS the purpose of the complainant's appeal right is to check and balance the discretion
20 of the OJA and institutional interests represented therein to enter such an agreement against the
21 important and distinct interest of an individual complainant who was also the victim of the
22 alleged violation.

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24 WHEREAS under the present procedure as interpreted by the University Hearing Board the
25 complainant's appeal rights may be abridged through no fault of the complainant.

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27 WHEREAS vesting the appeal right of the complainant in the hands of the maker of the decision
28 the complainant is seeking to appeal undermines the due process rights of the complainant.

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30 WHEREAS the procedures for summary decision and no action determinations should be
31 described in the clearest possible terms.

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33 WHEREAS the term “final” should be used to describe only determinations that are truly final in
34 the commonly understood meaning of the term.

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36 WHEREAS Title Two, Article III.A.1 of the Code states, “Any student, member of the
37 University faculty, or other employee of the University can allege a violation of this Code, of
38 which he or she was the victim, by filing a complaint with the Judicial Administrator.”
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40 BE IT THEREFORE RESOLVED THAT the following changes be made to the Code with
41 **additions bolded** and *deletions italicized*:

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43 Title Three, Article III.C

44 45 C. Summary Decision or No Action

- 46 1. **The Judicial Administrator shall determine, without undue delay, whether to offer a**
47 **summary decision, to file formal charges, or to take no action.**
- 48 2. The Judicial Administrator and the accused may agree, in writing, to a summary decision
49 *before formal charges are filed at any time, but typically prior to a matter going to a*
50 **hearing before the University Hearing Board.** If a Summary Decision Agreement is
51 reached, the Judicial Administrator shall:
 - 52 a. send a notice of formal accusation and of the provisions of the summary decision to the
53 accused; and
 - 54 b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if
55 the Judicial Administrator has learned that the accused has consulted the Judicial Codes
56 Counselor.
- 57 3. In the event that this summary procedure is employed:
 - 58 a. All penalties and remedies listed in Article IV may be assessed via summary decision.
59 In the case of suspension or dismissal, however, the Judicial Administrator must obtain
60 the approval of a Hearing Board Chair, to insure against the possibility of intimidation or
61 coercion in the negotiations; the Judicial Administrator must do so prior to reaching
62 agreement, but may address the Hearing Board Chair without the participation of the
63 accused.
 - 64 b. *A summary decision shall not become final until two business days after reaching*
65 *agreement. The accused may withdraw approval of the summary decision by written*
66 **request to the Judicial Administrator within the two business days following receipt**
67 **of the notice described in item 2(a) of this section.** *The Judicial Administrator shall*
68 *determine, without undue delay, whether to offer a summary decision, to file formal*
69 *charges, or to take no action.*
- 70 4. **In the event the Judicial Administrator determines to take no action, the Judicial**
71 **Administrator shall notify the accused of such decision.**
- 72 5. **Except as noted below, the** *The* Judicial Administrator shall notify the complainant no
73 more than *two five* business days after the **deadline for the accused to revoke the**
74 summary decision *becomes final* or after *he or she* the **Judicial Administrator** otherwise
75 decides not to file charges. **If the Judicial Administrator notifies the complainant at a**
76 **time the summary decision may still be revoked by the accused, this information**
77 **must be provided to the complainant. For University complainants, the Judicial**
78 **Administrator need notify the complainant only: (1) a case where the University**
79 **complainant submitted a written request for notification at the time the complaint is**
80 **lodged; and (2) in specific cases, limited to cases involving any violence or**
81 **threatened violence against another person, violations of the Financial Irregularities**
82 **Policy, and fraud or theft against the University in an amount exceeding \$100.**

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- 85 6. If the complainant is dissatisfied with the summary decision or with the decision of the
86 Judicial Administrator not to file charges, he *or* she, **or it** may petition the Judicial
87 Administrator in writing to show cause for the decision before the University Hearing
88 Board. This petition must be received by the Judicial Administrator within three *calendar*
89 **business** days after the complainant's receipt of the Judicial Administrator's notice of the
90 nonaction or **within three business days after the deadline for the accused to revoke**
91 **the** summary action. The Judicial Administrator shall promptly forward the petition to a
92 Hearing Board Chair. The University Hearing Board shall meet to consider the petition
93 within 21 calendar days of receipt of the petition by the Judicial Administrator. That
94 board can:
95 a. uphold the decision of the Judicial Administrator **in whole or in part**;
96 b. order the Judicial Administrator to reopen the investigation; or
97 c. order the Judicial Administrator to file charges so that the case can be adjudicated by
98 the University Hearing Board.

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100 **Respectfully Submitted,**

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102 James N. Blair

103 Chair, University Assembly