

APPROVED BY THE CODES AND JUDICIAL COMMITTEE 3/24/08
TO BE TRANSMITTED TO THE UNIVERSITY ASSEMBLY

All modifications to the Code refer to the draft code passed by this committee on October 30, 2007, and accepted without changes by University Assembly Resolution 8.

Right to Remain Silent / Duty to Cooperate:

Action Title three, Article III, paragraph E.3.(b)(6)(e) is amended to read:

*No accused person shall be compelled to testify against himself or herself. **The hearing can proceed if he or she chooses to remain silent.***

Further Action Title one, Article I, paragraph C is amended to read:

1. The principle of freedom with responsibility is central to Cornell University. Freedoms to teach and to learn, to express oneself and to be heard, and to assemble and to protest peacefully and lawfully are essential to academic freedom and the continuing function of the University as an educational institution. Responsible enjoyment and exercise of these rights mean respect for the rights of all. Infringement upon the rights of others or interference with the peaceful and lawful use and enjoyment of University premises, facilities, and programs violates this principle.

*2. **The Campus Code of Conduct is the University community's code, and hence is the responsibility of all community members. All members have a duty to cooperate with University officials in this Code's operation and enforcement.***

Notes:

The president asked that the CJC clarify the code to indicate that the process may proceed even if the accused invokes the right to remain silent. The unanimous Committee agrees that this would not be a material change in the existing code, but rather a clarification of the current interpretation.

The president also asked that we include language from the Krause Report imposing an "obligation to cooperate" with the JA. The CJC concludes that an enforceable duty to cooperate would be difficult to define. Furthermore, the community is not likely to accept a "duty to snitch" enforceable by JA sanctions against those who do not cooperate. Therefore, the CJC resolves to add an aspirational duty to cooperate with the JA, but no sanction for failing to do so.

Authority to Suspend or Dismiss if Student Agrees

Action: No changes

Notes:

The CJC draft of 10/30/2007 added a provision allowing the JA and accused to agree on a sanction of suspension or dismissal without the need for a hearing, subject to a requirement that all such agreements be reviewed by a hearing board chair. The President felt that oversight was unnecessary, and asked that the oversight clause be stricken.

The unanimous committee agrees that there must be some check on the JA's ability to seek a consensual separation, because the power is subject to abuse. For example, a JA who did not

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have enough evidence to prevail at a hearing might still threaten the accused with expulsion and then offer to settle for a consensual suspension. Judicial Administrator Grant agrees that some oversight is important. The previous draft would not require that a full hearing board consider consensual sanctions, and the requirement of review by a hearing board chair is minimally burdensome on the university.

Interim Suspension for Serious Disruptions of the Educational Environment:

Action: Title three, Article III, paragraph (B)(3)(a)(1), is amended to read as follows:

In extraordinary circumstances and for the purpose of ensuring public order and safety, or avoiding a serious disruption to the educational environment, the President or a designated representative shall have discretionary power to suspend the accused pending resolution of the underlying case. Suspension in the case of a student may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or his or designee.

Further Action, Title three, Article III, paragraph B(3)(b)(1) is amended to read as follows:

In extraordinary circumstances and for the purpose of ensuring public order and safety, or avoiding a serious disruption to the educational environment, the President or a designated representative, after consulting with the Office of the Dean of Students and/or other offices as deemed appropriate, shall have discretionary power to suspend the activities of a University-registered organization pending resolution of the underlying case.

Notes:

The Committee's previous draft had provided for interim suspension only "for the purpose of ensuring public order and safety." The President proposed that the power also be available to prevent a serious disruption to the educational environment. An accused may require the president or designee to show cause for the suspension before a hearing board within five days. The committee agrees to the change by a 7-2 vote. The majority feels that the change is necessary to protect the University, but GPSA delegates Cowan and Evensen believe that the language is unduly vague and overbroad.

Proceeding While Criminal Charges are Pending

Action: Title I, Article II, paragraph A(1), is amended to read as follows:

*The following kinds of offenses are adjudicated in the public courts: all felonies, controlled substance offenses, motor vehicle moving violations, assaults upon a peace officer or resisting arrest, refusals by persons to identify themselves, as well as cases in which the complainant wishes to proceed in the courts and cases involving accused persons who are not members of the University community. Nonetheless, the Judicial Administrator has discretion to pursue even serious breaches of the law under the Campus Code of Conduct. **Timely dealing with alleged misconduct is vital. The University cannot cede or defer to external proceedings when its own principles are at stake. Nevertheless, the Judicial Administrator ~~although he or she~~ should consider whether justice counsels withholding the exercise of University jurisdiction until public officials have disposed of the case by conviction or otherwise.***

Notes:

The CJC does not interpret its previous draft to be in conflict with the President's statement of principle. The unanimous committee therefore incorporated the president's statement into the code, while retaining authority in the Judicial Administrator to decide what procedure is most appropriate in each case.

Off-Campus Misconduct:

Action: Title Three, Article I, paragraph 3 is amended to read:

*This Title shall also apply to conduct elsewhere if the Judicial Administrator, with the approval of the President or his or her designated representative, **in the person of the Dean of Students for conduct by students, the Provost for conduct by faculty, or the Vice President for Human Resources for conduct by other employees**—~~other than the Judicial Administrator~~, considers the conduct to constitute a serious violation of this Title, in that the conduct poses a substantial threat to the University's educational mission or property or to the health or safety of University community members.*

Notes:

The President requested that the code designate specific administrators to perform the prior-approval function rather than assigning that function to the president or his unspecified designee.

Confidentiality of Hearings and Records

Action: Title Three, Article III, paragraph G(4)(b) is amended to read:

*The University will take reasonable measures to ensure the confidentiality of the proceedings and records; however, the University cannot and does not guarantee that confidentiality can or will always be maintained. The University may disclose otherwise confidential information when ~~required~~ **authorized** by law, when necessary to protect the safety or well-being of the University community, or to preserve the integrity of proceedings under this Code.*

Notes:

We amend the provision so the University may disclose where it *may* under the law, not just where it *must*. This is a small but real (and logical) change.