



Proposed Revisions to Policy 6.4 Adjudication Procedures

John Siliciano

Senior Vice Provost for Academic Affairs and
Interim Senior Vice Provost for Undergraduate Education

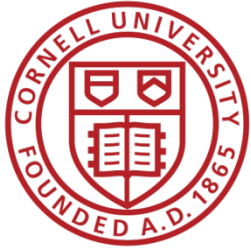
Carol Grumbach

Director, Academically Engaged Learning and
Special Assistant to the Senior Vice Provost for Academic Affairs



Current Policy 6.4

- Adopted in 2012 in response to:
 - Federal legislation and guidance
 - Multiple problems with use of Campus Code
- Key features
 - Removed cases from Campus Code
 - Adjudication through investigation instead of hearing
 - Review by panel based upon paper submissions
 - “Preponderance of the evidence” standard
 - Single appeal to SAS Vice President (revised in 2015 to provide appeal to panel)



Why Revisiting Policy 6.4 Again?

- More federal and state legislation
- Growing nationwide concern about high incidents of sexual assault on university campuses
- At the same time, rising nationwide concern about the efficacy and fairness of campus processes



New York State Legislation

- State law entitled “Enough is Enough”
- Effective October 5, 2015
- Some of the required revisions; already made
 - Affirmative consent
 - Alcohol/drug amnesty
 - Appeal by panel
 - Reasonable interim measures and right to immediate review
 - “Student Bill of Rights”
 - Transcript notation



Review of Policy 6.4 Adjudication Procedures

- Title IX Working Group leading revision process
- Consultations with many constituents
 - Review & hearing panel members and chairs
 - Involved professionals
 - Complainant & respondent advocates
 - Law School faculty
- Report of All-Assemblies Working Group
- Guidance from President Garrett
- Benchmarking: 18 colleges and universities



Two Chief Concerns from Review

- Absence of any hearing
 - For respondents: deprives accused of basic process
 - For complainants: creates potential for nullification
 - For review hearing panelists: causes uncertainty, confusion, and frustration
- Inadequate procedural specificity
 - Also leads to confusion and uncertainty
 - Creates risk of inconsistent interpretations and enforcement of procedures



Other Concerns

- Procedures hard to understand and follow
- Respondents but not complainants are afforded advisors
- Standards for temporary suspensions are unclear
- Single investigator is determining responsibility and sanctions
- Review panel members lack sufficient training and guidance



Overview of Revisions to Address Concerns

- Separate prosecutorial and investigatory functions from adjudicatory function
- Add hearing by a panel that determines responsibility and sanctions
- Add law-trained hearing chair to provide guidance and ensure compliance with procedures
- Also provide guidance through procedural specificity
- Provide trained advisors to both parties
- Add three-member appeal panel (already done)



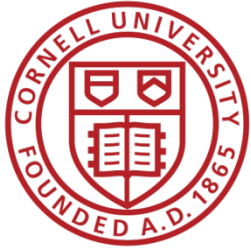
Scope of Proposed Procedures

- New procedures firstly to address most problematic and numerous cases
 - Student respondents
 - Charged with sexual assault, dating violence, domestic violence, and stalking
 - Conduct covered by New York State law
- Procedures will stand alone as a separate section in Policy 6.4
 - Make easy to find and write in plain English



Redefine Investigator's Role

- Interviews parties and witnesses, gathers evidence, and prepares investigatory record and report for hearing panel
- Provides parties with full record for review and response before investigator finalizes and writes report
- Report: investigator synthesizes facts, identifies contested and uncontested facts, sets forth issues of general credibility
- Does not render opinion as to ultimate issues of credibility or responsibility; for hearing panel
- But makes threshold finding of sufficiency; low threshold
- Provides testimony at hearing



Hearing: Balance Rights of Both Parties

- Parties entitled to testify, request witnesses, view remotely other testimony, and submit proposed questions and evidence
- Complainant and respondent in separate rooms and may participate remotely
- Panelists conduct all questioning
- Hearing Chair, after consulting with panelists and parties, approves parties' witnesses, evidence, and questions; panelists also ask their own questions
- Three-member panel: faculty and staff; trained annually as required by law
- Standard of proof remains "preponderance of the evidence"



Hearing Chair

- To be a Cornell faculty/staff member with legal training
- Ensures panelists understand procedures, standards of proof, and evidentiary issues
- Makes rulings on admissibility of witnesses, questions, and evidence
 - After consulting with panelists and parties
 - Expected to approve in substance all relevant questions that are not prohibited by procedures, cumulative, or prejudicial
- Parties' objections are on the record
- Serves as non-voting member of the panel



New Advisor Role

- Both parties afforded assistance of a trained advisor
 - Current policy provides Judicial Codes Counselors (law students) to respondents only
 - Liz Karns serving as an advisor for complainants per a one-year appointment by President Garrett
- Could be a professional staff position or a law student
 - In preliminary discussions with Law School about creating a new role as well as a law school clinic for new advisors and Judicial Codes Counselors



Alternate Resolution

- Parties would be entitled to seek alternate resolution any time after report filed
- Participation and conditions subject to consent by both parties and approval by university
- Title IX coordinator would oversee to ensure complainant not succumbing to pressure
 - Face-to-face meetings between complainant and respondent such as mediation not permitted
- Likely to provide for resolutions in cases that complainants are currently not pursuing and reduce number of hearings



Temporary Suspensions

- Temporary suspension treated as an extraordinary measure
 - Use Campus Code standard: “in extraordinary circumstances and for the purpose of ensuring public order and safety”
 - Standard calibrated to address perceived risk but tailored to minimize to extent possible impact on accused
 - Both parties have right to immediate review (NYS law)



Affirmative Consent

- Exact language required by NYS law
- “Consent can be given by words or action”
- Consent cannot be given by an incapacitated person:
someone under the influence of alcohol, drugs or other
intoxicants “**may** be incapacitated and therefore unable
to consent [emphasis added]”



Questions and Comments

- Further questions or comments?
- Contact Carol Grumbach at cg47@cornell.edu