Members of CJC,

As you requested, I have put together information about why the JA’s Office has suggested changes to the sections of the Code dealing with rights of complainants to appeal the JA’s dismissal of cases or agreements between the JAO and the accused.

I understand there is no disagreement from the JCC about increasing the possible responses by the board on an appeal, that they would not object to an increased time to notify the complainant as long as it was specific and finite, and that the appeal right could be limited to the individual complainant. I have nonetheless explained all the proposed changes, to allow the CJC to consider all of the proposals. I ask the CJC to consider this issue to ensure that the values of the Code are clearly articulated.

The fundamental question the CJC is called upon to answer is: ***what is the purpose of having an appeal right for the complainant in the context of the entire Code?***

As I have considered this question, ***I believe the Code is seeking to create a check on the power of the JAO for individual complainants.*** It is a check on the power of the JA’s Office to make a unilateral decision. The right of complainants to appeal at the settlement level is similar to the accused person’s right to decline entering into an agreement with the JA and to ask a board to decide the matter. In my opinion, this particular right belongs to the complainant and is not intended to provide a protection to the accused, just as other rights of accused persons have no bearing on the rights of complainants.

And, I believe the Code intends to extend this protection only to individual complainants, not to institutional complainants, because the individuals have less overall power in the disciplinary system. If an institutional complainant disagreed with the JAO on a particular case, or thought that on a systematic basis the JAO handled cases poorly, there could be discussions about whether the JA was acting appropriately and, ultimately, whether the JA should be reappointed. Allowing an institutional complainant appeal rights, though, could undermine the independence of the JAO. For example, the institutional complainant may not have the broad perspective of the JAO and the ability to compare many different types of cases across campus to achieve proportionality.

**If the CJC agrees with the JAO** about the goals of these Code sections, then these revisions make sense. They cover the following points:

1. the changes at lines 53, 55 - 57 and 61 clarify that an *individual* *complainant, not an institutional complainant*, has this protection;

2. the changes at lines 57 - 58 and 48 - 49 clarify that the *protection is for the benefit of the complainant,* not the accused;

3. the changes at lines 45 - 49 and 62 - 64 regarding *timing* provide more flexibility for the JAO with respect to the timing of providing notice, but also clarify that if there is a mistake by the JAO that the accused should not rely on that mistake as a forfeiture of the complainant’s rights, and the complainant should not lose his/her rights; and

4. the change at line 67 gives the hearing board *more flexibility* in its decision making (this is unrelated to the discussion above).

**If the CJC disagrees with the JAO** that the Code intends to provide a check on the power of the JAO for the benefit of the complainant, then the suggestions I have presented will not make sense. In that case, I recommend clarification of these Code sections to make clearer their goals as seen by the CJC.

Best,

Mary Beth Grant, Judicial Administrator