# Show University Assembly R. 10: Resolution to Modify Campus Code to Clarify the Rights of Complainants to Appeal Summary Decision Agreements (reported)

**Committee:** University Assembly

**Period:** 1 Jun 2012 - 31 May 2013

**Position:** 10

**Name:** Resolution to Modify Campus Code to Clarify the Rights of Complainants to Appeal Summary Decision Agreements (reported)

**Comments allowed until:** No comment period.

**Description:**

**Content:**

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

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

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

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

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

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

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

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

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

WHEREAS Title Two, Article III.A.1 of the Code states, “Any student, member of the University faculty, or other employee of the University can allege a violation of this Code, of which he or she was the victim, by filing a complaint with the Judicial Administrator.”

RESOLVED the following changes be made to the Code with **additions bolded** and deletions italicized:

Title Three, Article III.C

C. Summary Decision **or No Action**

1. **The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.**
2. The Judicial Administrator and the accused may agree, in writing, to a summary decision before formal charges are filed. If a Summary Decision Agreement is reached, the Judicial Administrator shall:

a. send a notice of formal accusation and of the provisions of the summary decision to the accused; and

b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the Judicial Administrator has learned that the accused has consulted the Judicial Codes Counselor.

1. In the event that this summary procedure is employed:

a. All penalties and remedies listed in Article IV may be assessed via summary decision. In the case of suspension or dismissal, however, the Judicial Administrator must obtain the approval of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the negotiations; the Judicial Administrator must do so prior to reaching agreement, but may address the Hearing Board Chair without the participation of the accused.

b. A summary decision shall not become final until two business days after reaching agreement. **The accused may withdraw approval of the summary decision by written request to the Judicial Administrator within the two business days following receipt of the notice described in item 2(a) of this section.** The Judicial Administrator shall determine, without undue delay, whether to offer a summary decision, to file formal charges, or to take no action.

1. **In the event the Judicial Administrator determines to take no action, the Judicial Administrator shall notify the accused of such decision.**
2. The Judicial Administrator shall notify the **an individual** complainant no more than two **five** business days after the **deadline for the accused to revoke the** summary decision becomes final or after he or she **the Judicial Administrator** otherwise decides not to file charges. **If the Judicial Administrator notifies the complainant at a time the summary decision may still be revoked by the accused, this information must be provided to the complainant.**
3. If the **an individual** complainant **(as opposed to an institutional complainant or an aggrieved person who is not a member of the Cornell University community)** is dissatisfied with the summary decision or with the decision of the Judicial Administrator not to file charges, he or she may petition the Judicial Administrator in writing to show cause for the decision before the University Hearing Board. This petition must be received by the Judicial Administrator within three calendar **business** days after the complainant's receipt of the Judicial Administrator's notice of the nonaction or **within three business days after the deadline for the accused to revoke the** summary action. The Judicial Administrator shall promptly forward the petition to a Hearing Board Chair. The University Hearing Board shall meet to consider the petition within 21 calendar days of receipt of the petition by the Judicial Administrator. That board can:

a. uphold the decision of the Judicial Administrator **in whole or in part**;

b. order the Judicial Administrator to reopen the investigation; or

c. order the Judicial Administrator to file charges so that the case can be adjudicated by the University Hearing Board.

RESOLVED on adoption by the Assembly this resolution be conveyed to President Skorton for his consideration and approval.

**Sponsors:**

Attachments:

No attachments.

Comments:

No comments.