



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

*Sponsor: Greg Mezey on behalf of Mary Beth Grant*

- 1 WHEREAS pursuant to Article 3, Section 3.1 of its charter the University Assembly (the  
2 Assembly) may propose changes to the Campus Code of Conduct (the Code) subject to the  
3 University President's approval.  
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- 5 WHEREAS the Code provides for negotiation between the accused person and the Office of  
6 the Judicial Administrator (OJA) of a resolution to disputes arising therein through a summary  
7 decision agreement (SDA).  
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- 9 WHEREAS such agreements become "final", binding on the accused person and the OJA,  
10 after completion of steps and waiting periods specified.  
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- 12 WHEREAS the Code provides for the complainant who is dissatisfied with the terms of the  
13 SDA to appeal such an agreement to the University Hearing Board for a period of time after it  
14 becomes "final".  
15
- 16 WHEREAS the purpose of the complainant's appeal right is to check and balance the  
17 discretion of the OJA and institutional interests represented therein to enter such an agreement  
18 against the important and distinct interest of an individual complainant who was also the victim  
19 of the alleged violation.  
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- 21 WHEREAS under the present procedure as interpreted by the University Hearing Board the  
22 complainant's appeal rights may be abridged through no fault of the complainant.  
23
- 24 WHEREAS vesting the appeal right of the complainant in the hands of the maker of the  
25 decision the complainant is seeking to appeal undermines the due process rights of the  
26 complainant.  
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- 28 WHEREAS the procedures for summary decision and no action determinations should be  
29 described in the clearest possible terms.  
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- 31 WHEREAS the term "final" should be used to describe only determinations that are truly final  
32 in the commonly understood meaning of the term.  
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- 34 WHEREAS Title Two, Article III.A.1 of the Code states, "Any student, member of the University  
35 faculty, or other employee of the University can allege a violation of this Code, of which he or  
36 she was the victim, by filing a complaint with the Judicial Administrator."  
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- 38 RESOLVED the following changes be made to the Code with **additions bolded** and *deletions*  
39 *italicized*:

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2 Title Three, Article III.C  
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4 C. Summary Decision **or No Action**  
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6 **1.The Judicial Administrator shall determine, without undue delay, whether to offer a**  
7 **summary decision, to file formal charges, or to take no action.**

8 2. The Judicial Administrator and the accused may agree, in writing, to a summary decision  
9 before formal charges are filed. If a Summary Decision Agreement is reached, the Judicial  
10 Administrator shall:

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12 a. send a notice of formal accusation and of the provisions of the summary decision to the  
13 accused; and  
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15 b. notify the Judicial Codes Counselor of each summary decision as soon as possible, if the  
16 Judicial Administrator has learned that the accused has consulted the Judicial Codes  
17 Counselor.

18 3. In the event that this summary procedure is employed:

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20 a. All penalties and remedies listed in Article IV may be assessed via summary decision. In the  
21 case of suspension or dismissal, however, the Judicial Administrator must obtain the approval  
22 of a Hearing Board Chair, to insure against the possibility of intimidation or coercion in the  
23 negotiations; the Judicial Administrator must do so prior to reaching agreement, but may  
24 address the Hearing Board Chair without the participation of the accused.  
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26 *b.A summary decision shall not become final until two business days after reaching agreement.*  
27 **The accused may withdraw approval of the summary decision by written request to the**  
28 **Judicial Administrator within the two business days following receipt of the notice**  
29 **described in item 2(a) of this section.**

30 *The Judicial Administrator shall determine, without undue delay, whether to offer a summary*  
31 *decision, to file formal charges, or to take no action.*

32 **4.In the event the Judicial Administrator determines to take no action, the Judicial**  
33 **Administrator shall notify the accused of such decision.**

34 5. The Judicial Administrator shall notify *the* **an individual** complainant no more than *two five*  
35 *business days* after the **deadline for the accused to revoke the** summary decision *becomes*  
36 *final* or after *he or she* the **Judicial Administrator** otherwise decides not to file charges. **If the**  
37 **Judicial Administrator notifies the complainant at a time the summary decision may still**  
38 **be revoked by the accused, this information must be provided to the complainant.**

39 6. If *the* **an individual** complainant **(as opposed to an institutional complainant or an**  
40 **aggrieved person who is not a member of the Cornell University community)** is  
41 dissatisfied with the summary decision or with the decision of the Judicial Administrator not to  
42 file charges, he or she may petition the Judicial Administrator in writing to show cause for the  
43 decision before the University Hearing Board. This petition must be received by the Judicial  
44 Administrator within three *calendar business* days after the complainant's receipt of the  
45 Judicial Administrator's notice of the nonaction or **within three business days after the**  
46 **deadline for the accused to revoke the** summary action. The Judicial Administrator shall  
47 promptly forward the petition to a Hearing Board Chair. The University Hearing Board shall  
48 meet to consider the petition within 21 calendar days of receipt of the petition by the Judicial  
49 Administrator. That board can:  
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51 a. uphold the decision of the Judicial Administrator **in whole or in part;**  
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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.