

Passages from the proposed Conduct Code (2/6/06 draft)

currently under review with the ASUO Exec, ASUO Student Senate, Student Conduct Committee student members, and the Office of Student Advocacy

The proposed draft distributed to the Senate in early February 2006, represents the cumulative work of many, many students, faculty and staff members over the course of twelve years. It is work that began with the revisions to the Sexual Misconduct Code in 1994 -- a revision process that led the then-members of the Student Conduct Committee (SCC) to begin envisioning a new, less "legalistic" conduct code: one that would respond both to the realities of 21st century University life, where upwards of 80% of students live *off* campus, and would better respond to the concerns of an increasingly diversified student body where the need to inculcate a culture of respect is tantamount. The mood that initiated these early discussions was of a piece with the 1999 student-led Diversity Initiative and the drafting of the "Affirmation of Community Standards." This was also the spirit that guided the hire of our current Director of Student Judicial Affairs, Chris Loschiavo. A central piece of Chris's original mandate was to revise the Code: to make it more educational, and more in conformity with national best practices.

We on the Senate ad hoc committee for the Student Conduct Code applaud the efforts of every member of the SCC. Under Chris's leadership and with advice from thoughtful campus spokespeople like Sheryl Eyster (Assoc. Director of Student Life) and Hilary Berkman (Director of the Office of Student Advocacy), students and faculty have labored exhaustively and exhaustedly over a number of years to fulfill the mandate of code revision.

Their task was not easy; there were many points of contention and compromises were often proposed. The practice throughout the discussions was typically the following: Chris Loschiavo would bring forth language representing best national practices -- often language drawn from the "model code" published by the National Association of College and University Attorneys and supported by the Association for Student Judicial Affairs -- and the SCC would discuss aspects that seemed problematic or in need of adjustment for the University of Oregon. Striving always for consensus there were nonetheless several issues that remained divisive ones. These individual issues needed to be put to a vote: e.g. the language about legal representation and the section on "jurisdiction." The Code in its entirety was never put to a vote. At the beginning of the 2004-05 academic year, then-Senate President Andrew Marcus gave the SCC the charge to finish the Code in time for Senate review. In May, the SCC had achieved much progress, but had not achieved finality. At that point, Chris presented a last version of the Code to the SCC. That version fleshed out issues the SCC had not yet finalized, with language from the model code. That version was the one delivered to the Senate. To our knowledge, no concern with that final version was raised by any ASUO or SCC members until the "unveiling" of the February 6, 2006 draft.

As soon as it came to our attention that there were significant student concerns with the February 6 draft, we made contact with student leaders. We've also been in close contact with Hilary Berkman of the OSA. We are eager to enable a truly robust conversation about the Student Conduct Code. We submit the following summary of key points of contention to that end.

Lisa Freinkel (English)
Bill Daley (Business)
Laura Lawson (student)
Chris Loschiavo (Student Life)
Liane Richardson (Law)

II.E. Definition of "Community Standards Administrator." Goal of this position is to authorize someone to adjudicate cases if there's a concern about bias with the Office for Student Conduct and Community Standards (SCCS). Language should better reflect that intention?

II.Q. Definition of "Member of the University Community." Should power to define this position be given to the Hearings Panel instead of the Director of SCCS?

II.Y. "adjacent sidewalks and streets" opens up definition of campus too broadly and vaguely?

III.A.1. Administration and Policy development for the Code. Does this accurately reflect current practice, or does it give more discretionary power to the Director of the SCCS and limit student input? Is this a departure from the current code where there is a default provision to the APA (Oregon Administrative Procedures Act)?

III.A.2.b.ii.c. Should "**eviction**" be listed in exclusions to delegation authority?

IV Jurisdiction:

Note: the ad hoc committee rewrote this section substantially, following the model of UCLA's conduct code. The goal was to achieve parity between sexual assault and physical assault (see attachment "Jurisdiction definitions").

The language that the Conduct Committee proposed is appended to this summary, along with the jurisdiction language in the current code.

The area of biggest concern for the ASUO and OSA: **IV.C.1 "conduct that threatens the health or safety of any person"** - this extends jurisdiction for violent offenses to actions committed on non-University members.

IV.G. Disciplinary complaints must be filed "within six months of..." Do we need a true statute of limitations in order to ensure fairness and prompt reporting of incidents?

V. B. 5. "impairs educational or other institutional activities" Is language here too broad?

V.C.8.a. "wherever that activity takes place, on or off campus" broadens definition of jurisdiction? Ad hoc committee's goal was to eliminate redundancy and clarify question of jurisdiction. Jurisdiction is already defined in Article IV.

Language of current code and 2005 proposal are identical here in stating that sexual misconduct occurs when sexual activity

- i. i. materially interferes with another person's academic performance or participation in University-sponsored or supervised activities, or performance of University employment; or
- ii. ii. is committed on University-owned or controlled property, or at University sponsored or supervised activities; or
- iii. iii. demonstrates reasonable threat to the health or safety of the campus community or the alleged student survivor.

V.C.12 Gambling. Should the University include this kind of offense in the Code?

VII.E.2. Request for an informal hearing. Is this misleading language? Cases can only be heard informally when the potential sanction is less severe than expulsion or suspension -- and that is a matter decided by the Director of SCCS.

Article VIII in general: in their public, informational meeting earlier this week, representatives of the ASUO raised concerns about the revisions to the hearings process that reflect a move away from the criminal model of prosecution and defense (see Article VIII in proposed draft and 571-21-050/055 in current code). These revisions passed a vote in the SCC last year.

VIII.B. Email notification. Starting in Fall 2005 the University instituted a new email policy. "Unless otherwise prohibited by law, the University may send official communications to employees and students by e-mail to an account assigned by the University with the full expectation that such e-mails will be read by the recipient in a timely fashion." This Code provision reflects the new policy. Given that upwards of 5000 students pass through the conduct system each year, each requiring notification, this provision seeks to save time and resources. But should the weightiness of a conduct notification preclude the use of electronic mail?

note: there's a numbering discrepancy in section VIII: two sections are labelled VIII.B.

VIII.B[should be C].2. "disposition of the case within 10 days" At stake here is a standardization issue for ease of use because there were discrepancies between "work days" and "calendar days." "10 days" referred to work days . . .the equivalent of 14 calendar days. Should this passage also specifically state that Director can impose sanctions not including expulsion, suspension and negative notation on transcript?

VIII.C[should be D]1.a. "written notice at least 3 class days" The concern is that this period is too brief to give students enough time to prepare for an informal hearing and is out of synch with the 10-day provision above. To clarify: the 10-day provision refers to time between initial notification and initial meeting with the SCCS to discuss disposition of the case. This 3-day notice refers to the subsequent time period between that meeting and the informal hearing.

VIII.C[should be D]1.b. "reasonable access" Is this a departure from current practice where students are able to receive actual copies of their case files?

VIII.C[should be D]9.e. Same issue of timeline as with VIII.B.2 and VIII.C.1.a ; **"Reasonable access"** issue as in VIII.C.1.b.

VIII.C.9.m. "witnesses shall be asked to affirm that their statement is truthful...." Is the language here prejudicial against students? There are consequences for students who provide false information, but no consequences for faculty, staff, etc.

VIII.C.9.o. Standard of "clear and convincing information" should apply in *suspension* cases as well as expulsion?

VIII.C.9.t. Decision regarding whether accused students are charged together or separately is at the discretion of the Director of SCCS. Should accused students have a say in this decision?

XIII.A.1. Files retained for four years.... Current practice is to retain files for six months after graduation, unless students are suspended or expelled. This provision was suggested to address situations in which students never graduate. Is the timeline too long, however?

XIII.E.2. "Code interpretation" Does this provision depart from current practice by giving more discretionary power to the Director of SCCS?

XIII.E.4. "best practices" Who determines best practices?

**JURISDICTION DEFINITIONS:
CURRENT CONDUCT CODE; 2005 DRAFT**

From the Current UO Student Conduct Code:

*in our view jurisdiction is potentially very broad in section 571-21-005(3)...
but there's no systematic explanation of when/why the university might
want to extend that jurisdiction*

Purpose of the Student Conduct Code

571-21-005

(3) In general, the off-campus activities of students are viewed as their personal business. However, when a student violates local, state, or federal laws and, at the same time, violates the Student Conduct Code, either on or off campus, the University reserves the option of initiating disciplinary action on its own.

Jurisdiction 571-21-015

(1) For the purpose of enforcing the Student Conduct Code, student is defined as any person who:

- (a) (a) Has submitted an application for admission, housing, financial aid, or any other service provided by the University which requires student status;
- (b) (b) Is registered for one or more credit hours; or
- (c) (c) Is enrolled in a special non-credit program approved by the University.

(2) Student organization is defined as any group of University of Oregon students applying for and meeting the criteria for group registration or recognition established by the ASUO or its designee.

(3) Jurisdiction is maintained between periods of enrollment unless the accused individual's official record in the Office of the Registrar shows a complete withdrawal prior to the expiration of the published deadline for registration for the succeeding period of enrollment. For students enrolled in the spring term, jurisdiction is maintained until the expiration of the published deadline for registration for the succeeding fall term.

(4) The University's disciplinary jurisdiction over students and student organizations extends six months beyond the last date of enrollment, registration, or recognition. This jurisdiction applies to all cases except plagiarism or fraudulently obtaining a degree, which have no termination date.

(5) In all cases except plagiarism or fraudulently obtaining a degree, which have no termination date, service upon, or attempted service upon, the student (notification of charges) must be made within six months from the discovery of the alleged violations.

*

Language proposed in 2005 by the Student Conduct Committee:

In our view, A.iii actually seems to preclude the provision in the sexual misconduct code that the victim might be a non University member (see the language of "another person" in 8.b.i.a) and 8.b.ii)

- A. The Student Conduct Code pertains to actions of students that materially interfere with:
1. An educational opportunity of a University community member;
 2. Health and safety of a University community member or campus visitor;
 3. The maintenance or protection of University property or personal property located on campus;
 4. University record keeping;
 5. University living accommodations and other services; and
 6. University sponsorship or supervision of non-classroom activities such as lectures, concerts, athletic events and social functions.
 - a. On-Campus. Jurisdiction of the Student Conduct Code routinely applies to actions which occur on property owned or controlled by the University or at a University-sponsored or supervised function.
 - b. Off-Campus. The University shall have discretion to extend jurisdiction over conduct that occurs off campus, when:
 - i. conduct adversely and significantly affects the environment conducive to learning.
 - ii. would violate the Student Conduct Code if the conduct had occurred on campus.
Specifically, the misconduct must meet the following criteria:
 - iii. the alleged misconduct must have involved violence or produced a reasonable fear of physical harm **and the alleged victim is a member of the campus community**; or
 - iv. the alleged misconduct involves academic work or any records, documents, or identifications of the University.
- In determining whether or not to exercise off-campus jurisdiction, the ability of the University to gather information, including testimony of witnesses, will be taken into consideration.
7. An individual's status as a "student" is established by:
 - a. the application for admission, housing, financial aid, or any other service provided by the University which requires student status;
or
 - b. the registration for one or more credit hours; or
 - c. the enrollment in a special non-credit program approved by the University.
 8. Jurisdiction is maintained between periods of enrollment unless the accused individual's official record in the Office of the registrar shows a complete withdrawal prior to the expiration on the published deadline for registration for the succeeding period of enrollment. For students enrolled in the spring term, jurisdiction is maintained until the expiration on the published deadline for registration for the succeeding fall term.
 9. Complaints of academic dishonesty or fraudulently obtaining a degree may be filed at any time, whether or not the student is currently enrolled or registered.
 10. In all cases except academic dishonesty or fraudulently obtaining a degree, the University must file disciplinary complaints under this Code within six months of:

- (a) the University's discovery of the student's or student organization's involvement in the alleged violation; and
 - (b) the student's last date of enrollment or registration, or an organization's recognition.
11. Students may be accountable to both civil authorities and to the University for behavior which constitute violations of the law and the Student Conduct Code.
- Since the action of civil authorities is independent from University action, the University may or may not initiate a conduct complaint when criminal complaints are pending.

From the current UO Student Conduct Code:

Formal Hearing by Hearings Panel 571-21-055

(1) Membership: Selection; Hearing Board Chair; Presiding Officer; Recusal; Removal.

(a) Student Conduct Code formal hearings are heard by a panel on which faculty and students are represented, drawn from a pool known as the "Hearings Board".

(b) The Hearings Board shall consist of eighteen members, all of whom must be appointed by the University President:(A) Ten students, of whom four must be second-year or third-year law students. The student members shall be registered students at the University of Oregon and shall have been recommended to the President by the ASUO. Each student member is appointed for a one year term and may be reappointed for additional terms. Two of the law students shall be recommended by May 1 and two by Sept. 15.(B) Four University officers of instruction, all of whom the Committee on Committees shall recommend to the President. Two officers of instruction will serve a one-year term and the other two will serve a two year term.(C) Four University officers of administration, all of whom the Committee on Committees shall recommend to the President. Two of the officers of administration will serve a one year term and the other two will serve a two year term.

(c) A "Hearings Panel" shall consist of three students, one whom shall be a second-year or third-year law student, and two faculty members (one officer of instruction, and one officer of administration) selected from the Hearings Board. A hearing cannot proceed with fewer than four (4) members present.

(d) Presiding Officer at Formal Hearings. Each Hearings Panel shall select from among them a presiding officer who shall:(A) Administer the process of the formal hearing; and (B) Issue final rulings on behalf of the panel.

(e) A Hearings Panel member shall be excused from hearing a case if:(A) The member is from the department or school in which the incident allegedly took place; or(B) A majority of the Hearings Panel members vote that there would be substantial bias to the accused student if the panel member were to hear the case.

(f) Hearings Board Chair. The appointed Hearings Board members shall select a Hearings Board chair from among their members. The Chair must be a faculty member or a Hearings Board member with at least one year of experience. The chair shall:(A) Assist the Coordinator of Student Conduct in administering the formal hearings process;(B) Coordinate selection and assignment of panel members who shall hear a case; and(C) Have authorization to sign, and thereby ratify, negotiated settlements presented and signed by the Coordinator of Student Conduct and charged student.

(g) Removal for Nonperformance of Duties. A member of the Hearings Board may be dismissed if the member consistently does not perform his or her duties. The Board Chair may consult with the member in question, explain concerns and develop work plans to improve performance of duties, or with the majority vote of the Hearings Board authorize the member's dismissal pursuant to final approval of the University President.

(2). Powers

(a) Upon commencement of a formal hearing the Hearing Panel shall have the power to:(A) Make findings of fact;(B) Determine whether or not the student has violated the Code;(C) Impose any sanction listed in 571-21-038 of the Student Conduct Code.

(b) Any decision of the Hearing Panel shall be made by a simple majority of the tribunal.

(c) The standard of proof required to find a student responsible for violation of the Student Conduct Code is a preponderance of the evidence except that no student shall be expelled from the University unless the hearings panel finds that there is clear and convincing evidence that the student is guilty of the alleged violation.

(d) Decisions made by the panel may be appealed to the University Appeals Board as provided in 571-21-072.(3) Policy on Open and Closed Hearings. All hearings conducted under the authority of the Code are to be open if the student has waived in a signed, written and dated document any restrictions on disclosure of documents, exhibits, written statements, interview notes, photographs, or other preserved materials in the Student Conduct file or in other educational records which could be offered, admitted, identified, described, referred to, or generated in the course of the specified hearing. Such a waiver shall apply to the entire hearing, unless otherwise agreed to by the prosecution and defense. In the event such a waiver is not made, the presiding officer shall close the hearing to all persons other than the prosecutor and supporting staff, the student(s) charged, defense counsel and supporting staff, and witnesses while they are testifying and other persons as agreed to by the prosecution and defense. To the extent necessary to preserve order, the presiding officer may limit the attendance of persons present at the hearing.

(4) Procedures for the hearing shall conform to all requirements set forth in ORS Chapter 183. An appeal of sanctions may be made to the University Appeals Board within ten working days.

(5) Conduct of Hearings:

(a) Prosecutor Services:(A) Upon recommendation of a committee comprised of the Coordinator of Student Conduct or designee, the ASUO president or designee, the dean of the School of Law or designee, and the president of the Student Bar Association or designee, the President of the University shall appoint one or more persons to serve as investigators and prosecutors of alleged violations of the Student Conduct Code;(B) In hearings before hearings officers, the University shall be represented by a member of the Oregon Bar or by law students acting under the supervision of an attorney in accordance with Oregon Supreme Court rule;

(b) Defense Services:(A) A student may conduct his or her defense personally or with the assistance of a representative;(B) At the conference with the Coordinator of Student Conduct and at a hearing before a referee, the student may be represented by the Office of Student Advocacy, or a member of the Oregon State Bar, or by law students acting under the supervision of a member of the Oregon State Bar in accordance with Oregon Supreme Court rule, or any member of the faculty or administration of the University, or by any person subject to the provisions of the Student Conduct Code. In the event of a hearing before

hearings officer or by the University Appeals Board, representation of a student may be only by a member of the Oregon State Bar or by law students acting under the supervision of such member in accordance with Oregon Supreme Court rule;(C) The student may consult the ASUO Office of Student Advocacy or the Office of Student Conduct regarding the availability of defense services.

(c) Separation of Functions. The office and functions of the prosecutors and defenders shall be physically independent and separate. Evidence pertaining to the case, however, shall be made available to both parties.

Ef. 11-1-97 Evidence in Sexual Misconduct Cases 571.21.056

(1) In hearings for the determination of responsibility for complaints made pursuant to 571-21-030(20), or for the attempt to commit such an offense, evidence of the sexual behavior of a alleged survivor prior to or subsequent to the alleged offense is not admissible, except that specific instances may be admissible provided that such evidence:

- (a) Is necessary to rebut or explain scientific or medical evidence offered by the university; or
- (b) Is otherwise constitutionally required to be admitted.

(2) The accused student shall make a written motion and offer of proof to the Office of Student Conduct and the hearings officer or hearing board chair not later than five (5) days prior to the hearing, or when deemed essential by the hearings officer or hearing board chair to prevent substantial and unfair prejudice, for any specific instances of sexual behavior of the alleged survivor sought to be admitted under sections (a) and (b)of paragraph (1).

(3) The University shall have the opportunity to file a rebuttal motion with the hearings officer or hearing board chair and accused student.

(4) All motions and supporting memoranda submitted pursuant to this provision shall be in camera.

(5) If the hearings officer or hearing board chair finds that the probative value of the evidence sought to be admitted under section (1)(a) of this provision is outweighed by unfair prejudice to the alleged survivor, such evidence shall not be admissible.
