University Senate

Proposed: May 8, 2024

Adopted:

PROPOSED AGENDA

University Senate

Wednesday, May 8, 2024 at 3:30 p.m. via Zoom

Registration required

After registering you will receive a confirmation email with meeting details.

1. Adoption of the agenda
2. Chair's report and questions
3. New business:
   a. Report from the Rules of University Conduct Committee

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

UNIVERSITY SENATE

April 15, 2024

Via Email

Felice B. Rosan, Esq.
General Counsel
Columbia University
Low Library
535 West 116th Street
New York, New York 10027

Dear Ms. Rosan:

We write on behalf of the University Senate's Committee on Rules of University Conduct. The Rules Committee and its remit are described in Section 440-452 of the Statutes of the University.

Section 452(d) of the Statutes provides that the Rules Committee "shall, at least every four years, facilitate a public discussion, engaging faculty, students, and staff, about whether revision of the Rules is merited." The Rules Committee is now undertaking this process and may propose changes to the Rules to the University Senate for approval and then submission to the Trustees for acceptance, as per Section 452(c).

Section 445(c) establishes the University Judicial Board (UJB); Section 446 sets forth the rights of respondents in disciplinary proceedings; Section 448 specifies the UJB hearing process; Section 449 indicates the sanctions that the UJB may impose; and Section 450 provides for appeals from the UJB's decisions.

Apparently apart from the UJB procedures, the Center for Student Success and Intervention (CSSI) has recently been taking disciplinary action against students, including in connection with various recent demonstrations and protests on campus. We have a number of questions about CSSI that, as part of our Section 452(d) review, we request that you clarify:

1. What is the basis under the Statutes of the University or otherwise for the disciplinary actions that CSSI has been taking?
2. What are CSSI's rules for notice, hearings, appeals, and other due process protections?
3. What are CSSI's rules concerning the ability of students to bring counsel or other representatives or advisors to CSSI hearings, and for those persons to speak at these hearings?
4. Which disciplinary actions go to CSSI? Who makes that determination? On what basis do they make that determination?

5. What sanctions may CSSI impose? Are there interim sanctions and permanent sanctions? If they differ, what are the respective due process protections for each?
6. What are the names and positions of the individual(s) who make final decisions for CSSI?
7. We have heard that deans may opt into, or perhaps opt out of, their school's participation in the CSSI process. Is the default opt-in or opt-out? Which deans have opted in or out, as the case may be?
8. What is the volume of disciplinary cases that CSSI has been handling this academic year, and how does this compare to the volume of cases in previous academic years?

We understand that there is also something called Dean's Discipline. We have the same questions about Dean's Discipline that we have about CSSI; we ask you to answer those as well.

If there are any other forms of student discipline that are currently being employed, please answer the same questions about those, too.

What is the relationship among UJB proceedings, CSSI proceedings, Title VI investigations, Dean's Discipline, and any other student discipline currently being employed?

For our statutorily mandated review process, it is vital that we understand the full landscape of disciplinary procedures currently being used at the University. And it is our understanding from discussions with numerous deans, faculty, and administrators that the Office of the General Counsel is the entity best equipped to provide this information.

We request a response to these questions by Monday, April 22, 2024. We realize this is not a great deal of time, but given the dynamic environment on campus, we feel that these issues must be addressed promptly. As you can discern from the above questions, concerns about CSSI have been raised to us by numerous individuals. Before we share those concerns with the broader University community, along with an update of the Committee's review process, we wanted to give you an opportunity to clarify these matters.

Thanks very much for your attention.

Sincerely,

Angela D. Nelson
Co-Chair, Committee on Rules of University Conduct

Jaxon Williams-Bellamy
Co-Chair, Committee on Rules of University Conduct

Cc:
Jeanine D'Armiento
Chair, University Senate Executive Committee

Dennis A. Mitchell
Executive Vice President for University Life

Claudia Marin Andrade
Associate Vice President for Student Success and Intervention

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

The University Senate

April 30, 2024

Dear President,

We write to ask that the Office correct information about the "Disciplinary action" provided in yesterday evening's *Update For Our Community, April 29, 2024*.

The message stated:

> *The range of encampment violations is such that two separate units hold jurisdiction depending on the violation: the University Senate and the Office of University Life/Student Conduct. Decisions made by the Senate can be appealed to a panel of deans.*

The University Senate is not the "unit" that "holds jurisdiction" over the Rules of University Conduct. Rather, as described in § 445 of the Rules of University Conduct contained in Chapter XLIV of the University Statutes, the Rules Administrator, appointed by the President of the University, is responsible for initiating disciplinary action under the Rules of University Conduct and the University Judicial Board is responsible for adjudicating charges of alleged Rules violations.

Therefore, in your next Message to the Community, we ask you to include something like this statement:

> *We also want to clarify the description of the University's disciplinary process that was contained in our Update For Our Community of April 29. The range of encampment violations is such that two separate units hold jurisdiction depending on the violation: the University Judicial Board (not the University Senate) and the Office of University Life/Student Conduct.*
>
> *Decisions made by the University Judicial Board may be appealed to the Appeals Board, a three-member panel of Deans of School, and a final appeal may be made to the President of the University who has discretion to grant clemency on review.*

Best regards,

Jeanine D'Armiento
Chair, University Senate Executive Committee

Angela Nelson and Jaxon Williams-Bellamy
Co-chairs, Committee on the Rules of University Conduct

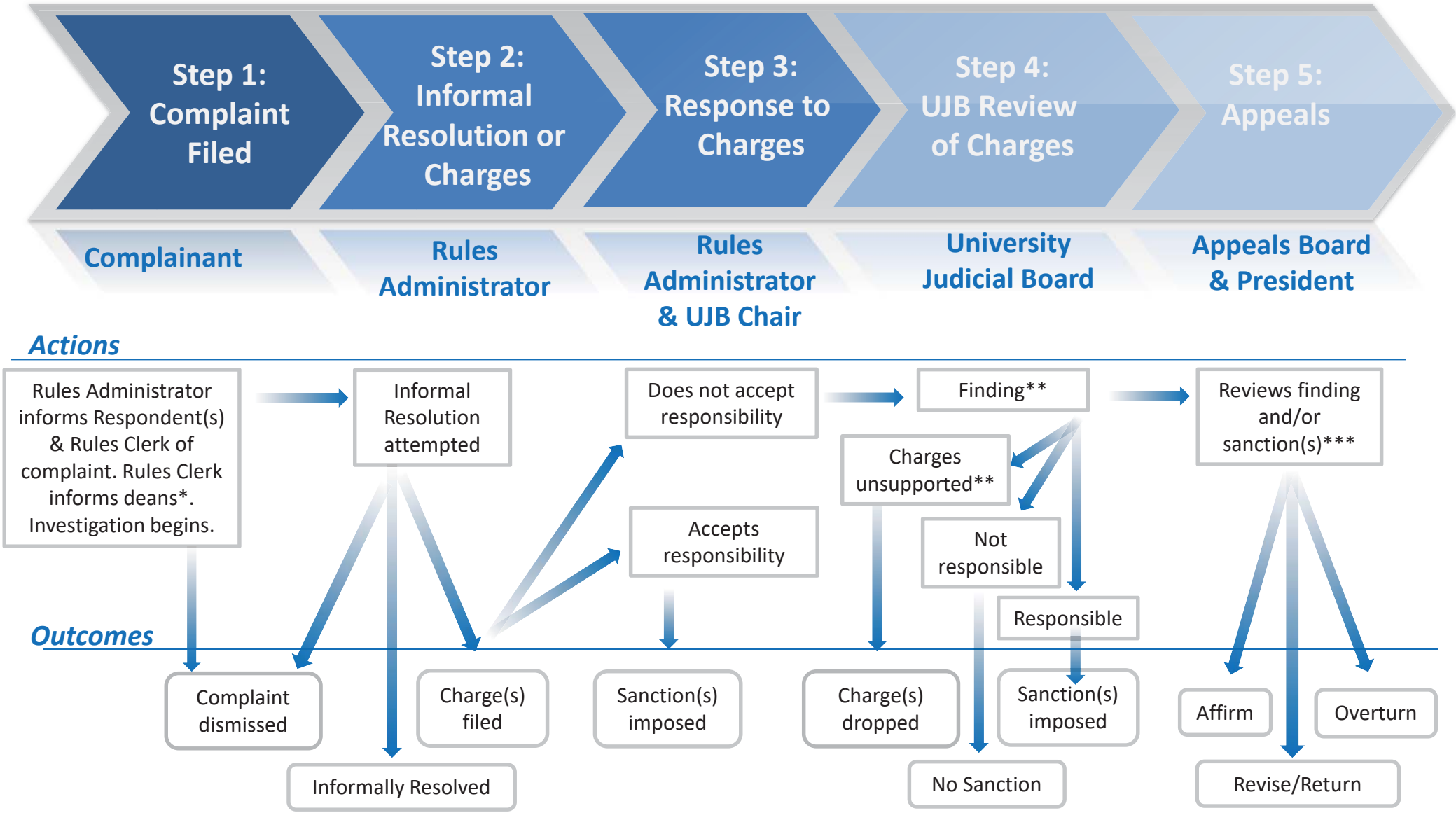
cc: Ben Chang, Vice President for Communications.

Attachment: Overview slide of the Rules Disciplinary Process

406 Low Library MC 4334, New York, NY 10027 212-854-2023; Fax 212-854-9123
universitysenate@columbia.edu www.columbia.edu/cu/senate

Rules of University Conduct: Disciplinary Process

Prepared by the Rules Committee: Last reviewed Feb. 21, 2020



*Rules Clerk disseminates information to/from the Rules Administrator & panels.

** The UJB may dismiss (and RA may withdraw) a charge it determines is not supported by the record.

*** All Appeals Board decisions may be appealed to the President.

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Sent electronically to

Dear

Student Conduct received a report dated Wednesday, May 1, 2024, alleging that you engaged in egregious misconduct involving the occupation of University facilities, including Hamilton Hall.

This occupation and disruption on Columbia University's campus not only created an intimidating and threatening environment for members of our community, but also caused destruction of campus property. The occupation has resulted in many students continuing to feel unsafe on campus in ways that impede their access to academic programs and University spaces.

It is specifically alleged that you participated in the occupation of University facilities and therefore violated multiple University policies. The preliminary charges are as follows:

- Disruptive Behavior (Standards and Discipline, pp. 4-9)
- Law, Violation (Standards and Discipline, pp. 4-9)
- University Policy, Violation (Standards and Discipline, pp. 4-9)
- Failure to Comply (Standards and Discipline, pp. 4-9)
- Vandalism/Damage to Property (Standards and Discipline, pp. 4-9)
- Access/Egress, Unauthorized (Standards and Discipline, pp. 4-9)

If the University receives information suggesting that you may have contributed to the harassing environment, the Hearing Officers reserve the right to add or modify the charge(s) based on information gathered throughout the investigation, including, but not limited to, possible charges of Harassment and/or violation of the Columbia University Non-Discrimination Statement (Standards and Discipline, pp. 4-9), to more appropriately reflect the nature of the incident.

Interim Actions

As an interim measure, you have been immediately suspended and banned from Columbia University with the expectation that you will be permanently expelled after an expedited hearing. This means that you are fully restricted from: (1) all access to all of Columbia's campuses and buildings, including but not limited to residence halls; and (2) participation in any class, event, organization, or any other activity connected in any way to Columbia University. In addition, a

hold is being placed on your transcript, registration, grades, and/or diploma. ***You are not permitted to enter campus or any University property at all and there are no exceptions.***

You may request a prompt and reasonable review of the need for and terms of any interim measure or accommodation that directly affects you and you may submit evidence in support of this request. All requests for review must be submitted online via the following form and addressed to the Center for Student Success and Intervention.

Hearing Information

Our office will be in touch with you to coordinate scheduling an expedited hearing. Please be sure to check your email and email studentconduct@columbia.edu if you have questions or concerns. Please note you are required to attend this hearing. The hearing is an opportunity for you to learn about and respond to information, which supports the above accusation(s), and for you to present information on your behalf.

How to prepare for your meeting

To best prepare for your Conduct Hearing, we encourage you to complete the following steps. Please visit the following links for details on each step in the process, including their suggested timeframe(s):

- Step 1: Review your file (at least one business day before the hearing)
- Step 2: Submit your written statement (at least 24 hours before the hearing)
- Step 3: Prepare for your hearing

Resources to assist you

We recognize that this decision may bring forward a number of questions, concerns, or reactions including stress, anxiety, and other emotions and you may need to process this information in a confidential setting. Members of our office are happy to answer questions you have related to your upcoming meeting, but please note that we are not a confidential resource. Please visit our website to find more information including Columbia community resources as you navigate your time here. Additionally, we strongly encourage you to connect with your academic advisor or equivalent for support.

Retaliation Notice

Retaliation against any person involved in this matter, including witnesses, is strictly prohibited and may result in conduct action, including additional interim or permanent measures. The University defines retaliation as any adverse action taken against an individual who filed a report or participated in an investigation, proceeding, or hearing in any manner.

If you have any questions, concerns or need to reschedule, please contact Student Conduct at 212-854-6872 or email studentconduct@columbia.edu.

Sincerely,

Center for Student Success and Intervention

CC: Moira Curtain, Associate Dean for Student Affairs & Dean of Students

May 6, 2024

ATTN: University Senators

CC: Jeanine D'Armiento, President
Columbia University Senate
630 West 168th Street
P&S 12 402, Department: Anesthesiology
New York, NY
jmd12@cumc.columbia.edu

Dear University Senators,

We are a collective of law students writing on behalf of the dozens of Columbia and Barnard students who on Friday, May 3rd received notice that they are to attend mandatory disciplinary meetings this Monday (today), Tuesday, Wednesday, and Thursday to address allegations related to the April 30th occupation of Hamilton Hall. For the reasons outlined in this letter, the process by which CSSI scheduled these mandatory hearings—which will impact the students' academic future, professional career, emotional health, financial wellbeing, and more—is rife with procedural defects. As laid out in this letter, we object to CSSI as the disciplinary body handling this case and request removal to University Rules processes. Furthermore, if Columbia is to approximate norms of justice and due process, the hearings must be rescheduled until they have had adequate time to consult with counsel regarding their case. At a minimum, we demand students be given at least one additional week before being subjected to these incredibly high stakes hearings.

A. CSSI is not the appropriate body for the proposed disciplinary proceedings, which fall under the purview of the University Rules—the body specifically designed to address protest-related accusations.

As a preliminary matter, we object to this disciplinary matter being handled by Columbia's Center for Student Success and Innovation ("CSSI"). CSSI was created two years ago as a new prosecutorial arm of the University to handle allegations related to academic conduct. It was made to function in tandem with the well-established Rules of University Conduct ("Rules") process, under which students have been disciplined since 1968.

A short history: The Rules of University Conduct (the Rules) date back to the Columbia University protests of 1968. Following those protests, the Columbia University Senate passed a referendum adopting the Rules and creating the Committee on Rules of University Conduct (the

Committee). *Any amendments to the Rules need the approval of not only the University Senate, but also the Trustees*. (emphasis added).[1]

It is no coincidence that the Rules process was created in 1968, shortly following dramatic anti-war protests the University now heralds as a bastion of student activism. As Columbia's own website recognizes, the 1968 protests made obvious the need for a "representative body for all University constituents" to create and enforce rules of conduct on campus.[2] This representative body took form in the University Senate and the Rules of University Conduct Committee.[3] Now, 56 years down the line, Columbia once again faces pressure from students engaged in anti-war protests, including the re-occupation of Hamilton Hall. Instead of preserving the freedom of speech and expression of ideas University administrators may disagree with, in accordance with University rules made to both withstand and protect protest, the school has instead chosen to suppress speech. As the circumstances surrounding these hearings demonstrate, CSSI now attempts to put dozens of students through predetermined, pro forma expulsion proceedings despite historical precedent favoring Rules jurisdiction.

In keeping with the democratic, equitable ethos of the University Senate, students subject to disciplinary proceedings under Rules of University Conduct proceedings maintain a host of procedural rights.[4] Critically, the Rules provide students with the right to adequate time for preparation and the right to not make self-incriminating statements in addition to the right to have an attorney as an advisor. University Statutes, §446. The rules also are protective of the right to freedom of speech and protest. By contrast, students subject to CSSI proceedings have very few procedural rights and little protection for their speech. They are not permitted opening or closing statements, nor may their advisors speak on the record.

With regard to speech, in particular, the Rules of University Conduct offers robust protections for acts of protest like the ones these students are accused of—something the CSSI rules sorely lack. In the Affirmative Statement, the Rules state "[t]o be true to these principles, the University cannot and will not rule any subject or form of expression out of order on the ground that it is objectionable, offensive, immoral, or untrue. Viewpoints will inevitably conflict, and members of the University community will disagree with and may even take offense at both the opinions expressed by others and the manner in which they are expressed. But the role of the

[1] Guidelines for the Rules of University Conduct, prepared by the Rules Committee, last reviewed and updated Nov. 6, 2020.
[2] Columbia University Libraries, *1968: Columbia in Crisis*, available at https://exhibitions.library.columbia.edu/exhibits/show/1968/consequences/senate (last accessed May 6, 2024).
[3] *Id. See also* Columbia University Life, *Guide to the Rules of University Conduct*, available at https://universitylife.columbia.edu/guide-rules-university-conduct (last accessed May 5, 2024).
[4] *See* Guide to the Rules of University Conduct, available at https://universitylife.columbia.edu/sites/default/files/content/docs/Guide%20to%20Rules%20of%20University%20Conduct%20-%20Corrected%20links_0.pdf (last accessed May 5, 2024).

University is not to shield individuals from positions that they find unwelcome." University Statutes, §444. We further highlight that the Rules anticipate adjudicating violations such as the occupation of Hamilton Hall: "In the event of an ongoing alleged violation of the Rules (e.g., *protestors occupying University facilities or other sustained disruptions*), the Rules Administrator may initiate the investigations process concurrently with the alleged ongoing violation …" (emphasis added).[5]

Here, affected students are being subjected to biased treatment because of the content of their speech. Rather than going through the well-established disciplinary channel of 56 years for protests, Columbia arbitrarily and capriciously subjects students to the CSSI process with no justification. The University is only permitted to issue time, place or manner restrictions on free speech that are both "reasonable" and "viewpoint neutral"[6]. However, in these cases, the University has impermissibly narrowed the definition of "speech" to include almost no forms of peaceful protest, and has instead broadly alleged that students engaged in "behavioral conduct." To preserve the rights students are owed under §444 of the University Statutes to Freedom of Speech, the charges against them must be taken out of the jurisdiction of CSSI and returned to the Rules of University Conduct. The Rules were designed to handle acts of protest and feature protections appropriate for speech that would, on another college's campus, be constitutionally preserved. CSSI, on the other hand, has never been used to discipline matters of mass protest. It was designed to handle conduct issues, such as academic dishonesty—not alleged protest-based expressions directly mirroring the misconduct that led to the University Rules' very creation. CSSI is not the appropriate disciplinary body for these matters, and we strongly request they be transferred to the Rules process.

Finally, we highlight that the Rules of University Conduct were designed to "*apply University-wide*, provide for one system that governs the disciplinary process and are designed to provide procedural due process protections for those accused of violating these Rules."[7] The University Senate further writes, "[i]n accepting membership in Columbia University's community, *we agree to be bound by, and to honor, the Rules*." We ask that Columbia honor its promise to its students and transfer the discipline process, at a minimum, to the Rules.

B. <u>CSSI is demonstrably non-neutral and cannot justly act as prosecutor, judge, and jury.</u>

[5] Guidelines for the Rules of University Conduct, prepared by the Rules Committee, last reviewed and updated Nov. 6, 2020.
[6] *See* NYCLU, *Know your rights: Students in higher education & the first amendment* (2024), available at https://www.nyclu.org/resources/know-your-rights/know-your-rights-students-higher-education-first-amendment (last accessed May 5, 2024).
[7] Guidelines for the Rules of University Conduct, prepared by the Rules Committee, last reviewed and updated Nov. 6, 2020.

CSSI is incapable of the neutral functioning it promises to afford students, marking a second distinct reason why these cases must be removed to the Rules process. CSSI claims to focus on students' "holistic well-being and promot[ing] a sense of belonging within the Columbia community [. . .] encourag[ing] reflection through empathetic and trauma-informed practices."[8] In reality, the office collapses the roles of prosecutor, judge, and jury into one godlike entity incapable of genuine neutrality. Even beyond the baseline partiality baked into CSSI's structure, the office has demonstrated its ineptitude for neutrality in student respondents' cases.

CSSI provided students with notice of their hearings on Friday, May 3rd—a mere two, three, or four business days before hearings capable of dramatically altering the course of their lives. What's more, CSSI has failed to provide any evidence against some students despite their hearings occurring this week. In the simplest of terms, students have a right to know what evidence is being lodged against them. One, two, or three business days is not a sufficient, just, or otherwise respectable amount of time to review evidence that may be used to expel a student, rendering them homeless, and seriously compromising their ability to join the professional workforce. By refusing to timely provide students with any evidence in advance of their hearings, CSSI has demonstrated its inability to function neutrally.

The method by which CSSI informed students of their hearings also reveals the office's non-neutral hand. On page 2 of the Discipline Notice that students received, they were informed that they "have been immediately suspended and banned from Columbia University *with the expectation that [they] will be permanently expelled after an expedited hearing*." This language implies that the outcome of the hearing is predetermined; that, according to CSSI, itself, the hearing is merely pro forma.

This characterization by CSSI stands in stark contrast to the office's usual tone. The CSSI website describes hearings as educational occasions for "neutral fact finding," specifying that "each hearing officer is a neutral fact finder/investigator," and that "all materials submitted and discussed are reviewed through an unbiased lens."[9] Moreover, CSSI's "Standards and Discipline" handbook affirms that students are "*presumed not responsible*" (p. 21) for any misconduct. Hearing Officers must prove that students *did* engage in misconduct, rather than students being required to "prove that they *did not* engage in misconduct." By proclaiming in advance that students should expect to be expelled, CSSI pulled back the curtain on its inability to neutrally determine these students' responsibility for alleged violations. With zero due process, CSSI decided in advance that student respondents are responsible for whatever charges the office has

[8] Center for Student Success and Intervention, *Our Mission*, available at https://cssi.columbia.edu/content/our-mission-and-values (last accessed May 5, 2024).
[9] Center for Student Success and Intervention, *Step 3: Preparing for Your Hearing*, available at https://cssi.columbia.edu/content/step-3-prepare-your-hearing (last accessed May 5, 2024).

chosen to lodge at them. This is not neutrality. This is the authoritarian abandonment of all procedural justice.

Nor is the expedited nature of these hearings neutral. CSSI has chosen to rush hearings for the most serious of cases, denying students the ability to meaningfully consult with loved ones or counsel, review evidence, deeply absorb the nature of the charges against them, or otherwise prepare a meaningful defense. For all these reasons, CSSI has demonstrated its inability to neutrally investigate and/or punish these students. Any disciplinary proceedings related to their May 1st arrest cannot justly be handled through CSSI processes. If the University is to pursue these charges, it must do so through processes respectful of the most fundamental due process principles.

C. Irrespective of the prosecuting body, the seriousness of these charges require that students be given sufficient time to prepare.

It goes without saying that the accusations CSSI has lodged against student respondents are serious. For these alleged conduct violations, students face expulsion, eviction, loss of food, and grave professional consequences. These are the most serious punishments available in school disciplinary proceedings. If found responsible, each student will be permanently cast out from the University they have devoted years of their life and tens of thousands, if not hundreds of thousands, of dollars to. These are consequences that will mark these young people for the rest of their lives.

When the arsenal of consequences is as serious as it is here, consulting an attorney is crucial to any effective defense. Yet students were only notified of these charges this past Friday, May 3rd. Students only began formally retaining counsel the evening of Sunday, May 5th. And now, students are expected to appear this coming Monday/Tuesday/Wednesday/Thursday at hearings CSSI has indicated it intends to expel them at. These students have barely had enough time to initiate contact with lawyers, let alone determine the best course of action for a potential expulsion hearing. Given that CSSI has already signaled its intention to expel students, and given that the outcome of this hearing will affect the rest of their lives, they need more than a business day or two to prepare an effective strategy. Any refusal to permit student respondents reasonable preparation time will be seen as the University's intentional destruction of basic due process.

Furthermore, CSSI's own policies lay out a series of steps that students should take to prepare for a hearing, most of which are simply incompatible with the extremely short time these students have been given. For example, CSSI notes:

> "In preparation for the hearing, the student is encouraged to schedule a file review, and prepare a written statement describing their perspective regarding the allegation(s). Students are also encouraged to meet with an Advisor and to speak with staff members from Counseling and Psychological Services (CPS) or other

healthcare and student support resources should they need additional support while going through the process."[10]

Student respondents were arrested and incarcerated in the evening of April 30th, 2024, and many were not released for another 40 hours. Since spending days in a cell, they have had to process the experience of their own University unleashing police violence against them; track down their lost property from the police precinct and the University; and check in with their friends, some of whom were hospitalized as a result of police brutality. Several of them *were* the ones hospitalized after the NYPD shoved students down flights of stairs and exercised excessive force.

Under the weight of all of these obligations, many of which compound the trauma broadly associated with carceral interactions,[11] students nonetheless requested their evidentiary files—only to receive copies of their files as late as 24 hours before their scheduled hearings. Some *still* have not received their file as of this letter's writing, despite having hearings tomorrow. That gives students less than one business day to consider a written statement, meet with an Advisor, or speak with staff members from CPS—let alone strategize with counsel for a hearing that will impact the rest of their lives. The paper-thin window CSSI has given students to prepare for a life-altering hearing renders it impossible for them to effectively prepare. Given the context of students' arrests and CSSI's proclaimed intentions, students must be given more than a few hours to prepare for their hearings.

D. Basic rules of the legal profession make clear that students have the right to counsel in disciplinary proceedings.

Further, we have been made aware of the University's recent pattern and practice of hiring outside counsel from corporate law firms to serve as hearing officers. As counsel retained by the University, the University is outside counsel's client in this matter. The University and its General Counsel should not have to be reminded of their ethical obligations *not* to breach the rules of professional conduct. While the CSSI Handbook bars counsel from hearing rooms, the basic rules of the legal profession supersede those rules. Accordingly, students have the right to counsel at any hearing guided by University counsel.

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[10] *See* Center for Student Success and Intervention, Standards & Discipline pg. 18, available at https://cssi.columbia.edu/sites/default/files/content/StandardsandDiscipline_0.pdf (last accessed May 5, 2024).

[11] *See* Center for Student Success and Intervention, *Our Mission*, available at https://cssi.columbia.edu/content/our-mission-and-values (last accessed May 5, 2024) (noting that CSSI focuses on trauma-informed approaches to discipline. Requiring students to attend a hearing less than one week after being released from jail, with approximately one to three business days to procure counsel and review the evidence against them, cannot reasonably be considered in line with trauma-informed principles).

Students represented by counsel have a right to their counsel's presence at hearings. New York Rules of Professional Conduct 4.2(a) forbids lawyers from communicating with a represented party about the subject of representation, unless the lawyer has the prior consent of the other lawyer or is authorized to do so by law. The comment to Rule 4.2(a) clarifies that it applies to "communications with any party who is represented by counsel concerning the matter to which the communication relates," and that "[a] lawyer must immediately terminate communication with a party if after commencing communication, the lawyer learns that the party is one with whom communication is not permitted by this Rule." (emphasis added). Thus, if the University is unwilling to continue this disciplinary hearing without counsel, student hearings should be indefinitely postponed *without prejudice to the student respondents*.

Rule 4.2 restates former DR 7-104(A)(1), which was enacted to "prevent situations in which a represented party may be taken advantage of by adverse counsel; the presence of the party's attorney theoretically neutralizes the contact." *Niesig v. Team I*, 558 N.E.2d 1030, 1032–33 (1990). In the context of a corporation seeking to interview unionized employees, the New York Court of Appeals adopted a test that would prohibit direct communication by adversary counsel "with those officials, but only those, who have the legal power to bind the corporation in the matter or who are responsible for implementing the advice of the corporation's lawyer, or any member of the organization whose own interests are directly at stake in a representation." *Id.* at 374. It is also not required that any legal proceedings be initiated before the prohibition applies. *Schmidt v. State*, 695 N.Y.S.2d 225, 229 (Ct. Cl. 1999), *aff'd,* 722 N.Y.S.2d 623 (2000) (interpreting former DR 7-104). The prohibition begins to apply when the "subject matter of the representation [crystalizes] between the client and lawyer." *Meachum v. Outdoor World Corp.*, 654 N.Y.S.2d 240, 248 (Queens Co. Sup. Ct. 1996) (same) (citing ABA Formal Op. 95-396). A "represented nonclient" is defined also with reference to employees or agents of organizations represented by lawyers, when the employee or other agent "supervises, directs, or regularly consults with the lawyer concerning the matter or if the agent has power to compromise or settle the matter." *Restatement (Third) of the Law Governing Lawyers,* § 100(2)(a). By analogy, a student facing disciplinary proceedings who is represented cannot be communicated with by counsel for the University when the University's counsel has power to compromise or settle the disciplinary matters. This rule is essential to the functioning of the legal profession because it ensures that the relationship between the represented person and their lawyer is protected. *Restatement (Third) of the Law Governing Lawyers,* §99, Comment (b).

Persons who have chosen to be represented by lawyers must have their right to be represented respected. Thus, communicating with a student subject to disciplinary proceedings outside the presence of their lawyer is unacceptable interference with the student's rights.[12]

[12] *See* Comment to ABA Model Rule 4.2(1), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_2_communication_with_person_represented_by_counsel/comment_on_rule_4_2/ (last accessed May 5, 2024).

Accordingly, these hearings should be adjourned until the issue of counsel's appearance can be resolved. Hearings should not go forward outside the presence of counsel and the University should refrain from communicating with student respondents.

E. Subjecting students to hearings at this time violates their Fifth Amendment rights.

We echo the concerns of the criminal defense attorneys and assert that student respondents have a Fifth Amendment right against self-incrimination. Student respondents thus cannot be questioned outside the presence of an attorney to protect their rights in their related criminal matters. Given that the DANY's office has filed criminal charges against student respondents stemming from the same behavior CSSI here accuses, we are highly concerned that CSSI proceedings and hearing results will be subpoenaed by prosecutors and used against student respondents. While the disciplinary notice lists "violation of law" as one charge, an arrest is not proof of a criminal offense. Only in New York City Criminal Court, upon a plea of guilty or a finding by a jury of proof *beyond a reasonable doubt*, can it be found that student respondents violated the law. The language used by CSSI—that student respondents should expect to be expelled—further proves that this hearing will be an attempt by CSSI to incriminate student respondents without regard to what the evidence against each student respondent may show.

By contrast, under CSSI rules, students may be found "guilty" of a disciplinary offense only upon a preponderance of the evidence standard, which is significantly lower than the standard used by our criminal legal system. This is particularly egregious considering that CSSI is presuming students guilty, and forcing them to choose either expulsion or going through a hearing that is unlikely to give them a meaningful opportunity to challenge their expulsion, and is intended to further incriminate them and impair their criminal case defense. Columbia University called the NYPD to campus, which arrested students indiscriminately—regardless of whether there was probable cause to believe a crime had been committed—and Columbia continues to undermine the presumption of innocence by subjecting them to biased hearings. In fact, many students were subjected to illegal conduct by the NYPD, including excessive force, yet it is student respondents who are seen as presumptively criminal. Meanwhile, the University President thanked and characterized the NYPD's widespread police brutality and abuse[13] as "incredible professionalism." This characterization of the NYPD's behavior is not only inaccurate, but also an unabashed insult to all who witnessed and were traumatized by the NYPD's recent actions on campus.

To preserve student respondents' Fifth Amendment rights, their disciplinary hearings must be rescheduled in accordance with their criminal case timeline. Students should not be

[13] Students were beaten and kicked in the face; one was thrown down a staircase and knocked unconscious. At least one cop fired his gun inside Hind's Hall. Legal observers were barred from campus and violently shoved by cops.

forced to incriminate themselves via a rights-barren student conduct hearing being held by a non-neutral three-in-one prosecutor, judge, and jury.

CONCLUSION

The procedural defects outlined in this letter severely undermine the fairness, legitimacy and legality of the CSSI process, under which Columbia University is attempting to discipline dozens of students accused of entering Hamilton Hall. As the mandatory CSSI disciplinary hearing scheduled for these students may permanently impact their academic future, financial well being, career prospects and emotional health, these defects must be corrected immediately—and prior to the continuation of any disciplinary proceedings. We therefore urge Columbia University to remove these students' hearings to the University Rules Process, and delay the instant disciplinary proceedings by no less than one week, so students have adequate time to prepare for this strenuous process that may alter the course of their lives.

Sincerely,

The Columbia Legal Support and Solidarity Working Group for Palestine