

October 8, 2014

Note: this is a revised explanatory memo, modified to take into account changes made by the UO Board of Trustees in September 2014 and also to provide an alternative proposal for funding of legal representation. -- JB

To: ASUO Senate, University Senate, University community
Fr: John E. Bonine, Caroline Forell, Professors of Law
Re: Revised recommendations for Student Conduct Code changes

We have created a new version of our proposed changes. It is labeled “Oct. 8 2014 version 2.0.

This new version was the result of a lengthy, paragraph-by-paragraph discussion with Sandy Weintraub, Director of Student Conduct and Community Standards. In most instances he agreed with our proposed changes. In a few instances, we jointly created simpler or clearer changes. Sandy’s comments are highlighted in green in a new version of our proposals. In many instances, he said that our proposals were already the current practice. We nonetheless concluded that embedding those practices in the Code can help provide assurance and guidance.

In the case of Hearings Panels, 571-021-~~0210~~(3)(e)(E) and 571-021-~~0210~~(13)(b)(A), on pages 22 and 24, we removed completely the possibility of oral cross-examination of an alleged victim by the accused or advisors, as recommended by the U.S. Office of Civil Rights.

In section 571-021-0120(3)(h), on page 10 of our revised, annotated Code, regarding what constitutes sexual misconduct, we have now deleted all references to conditions and restrictions that currently are in the Code.

[[JB Note: The above deletions are necessitated by the UO Board of Trustees’ September 2014 complete repeal of section 571-021-0210 of the Code, which had provided for hearing panels.]

In 571-021-0200(2), new subsection (e), we continue to believe that as long as an accused person has the right to free legal representation, a complainant must have that right. Sandy Weintraub observes that no funding mechanism is currently in place, so he cannot endorse this at this time, but urges collaborative discussions.

[[JB Note: In addition, we have included a new, alternative proposal that would obligate the University to provide free legal counsel to both accused and accuser. This is provided in part to stimulate robust discussion on fairness and ways of dealing with unfairness.]

In 571-021-0200(3)(c), on page 20, we changed our proposal from giving a complainant a mandatory right to demand a Hearings Panel to giving her or him the

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~~right to make a recommendation to the Chair of the Hearings Panel. We did this because there is some risk of a person reflexively choosing a Hearings Panel without sufficient thought, when such a choice might lead to an unexpected and harmful experience for a person, particularly in the case of sexual assault.~~

[JB Note: The above deletion was necessitated by the UO Board of Trustees' September 2014 repeal of section 571-021-0200(c) of the Code, which had provided for hearing panels.]

For Administrative Conferences, 571-021-0205, on page 21, we decided that more collaborative discussions would be useful before changes are proposed.

~~In section 571-021-0210(14)(c)(E), on page 25, relating to allowing information about a person's prior "sexual behavior" we have toughened up restrictions considerably, confining this to information regarding a prior consensual sexual relationship between the two persons. There remain various restrictions on when even that information may be admissible.~~

[JB Note: The above deletion was necessitated by the UO Board of Trustees' September 2014 repeal of section 571-021-0200(c) of the Code, which had provided for hearing panels.]