

By-Laws to Charter by the BJA Stanford University

The By-laws to the Student Judicial Charter of 1997 are rules and/or administrative provisions of the Board on Judicial Affairs (BJA) that clarify and facilitate practice under the Charter and allow for efficient internal governance of the BJA.

The Charter does not include a definition of terms or outline all of the operational procedures by which it is to be implemented. The Judicial Officer and the Judicial Advisor inform and ask guidance from the Board on Judicial Affairs, usually with respect to questions raised by students and/or complainants about operating procedures. In response, the Board has issued the following by-laws:

FUNDAMENTAL RIGHTS / RIGHTS OF THE ACCUSED AND THE COMPLAINANT / ROLE OF THE PERSONAL ADVISER

The Judicial Charter, Sec. II.A.10, provides that the accused has the right:

To have a person of their choice accompany them throughout the investigative and adjudicative process. This individual may assist the accused student during judicial procedures. The Board on Judicial Affairs shall have the power to enact By-laws establishing policies and guidelines specifying the nature of the adviser's role.

The Judicial Charter, Sec. II.B.8, also provides that the complainant has the right:

To have a person of their choice accompany them throughout the investigative and adjudicative process. The individual may provide advice and counsel, but may not speak on behalf of, or otherwise represent the complainant during judicial procedures.

The Board has adopted the following By-law to clarify the roles of advisers to the accused and to the complaining witness.

The accused and the complainant are expected to speak for themselves at hearings. Both the accused and the complainant are entitled to personal advisers, who may assist them throughout all proceedings and who may accompany them at all

hearings. During any hearing, the personal advisers of both complainant and accused must limit their participation to private advice to the person they accompany.

[Adopted Spring 1998]

RIGHTS OF THE ACCUSED / EVIDENCE THAT CAN BE CONSIDERED EVEN WHEN CROSS-EXAMINATION IS NOT POSSIBLE

Under Sec II.A.11 of the Charter, the Rights of the Accused include the following:

To call witness on their behalf at Judicial Panel hearings and to cross-examine witnesses against them. The Board on Judicial Affairs shall have the power to specify in its By-laws limited types of evidence that shall be considered admissible without cross-examination. In all other cases, evidence provided by a witness who is unwilling or unable to be cross-examined will be disregarded.

The Board has adopted a By-law clarifying the types of evidence that can be considered without cross-examination:

Types of evidence that shall be considered admissible without cross-examination include, for example: official records, reports, or data compilations by Stanford University offices, other educational institutions, or public agencies; final factual or legal rulings in any civil or criminal court; medical or related records in official clinic, hospital, or office files; or regularly compiled business or financial records.

[Adopted Spring 1998]

JUDICIAL PROCEDURES / POWERS OF THE JUDICIAL BOARD / STUDENT CONDUCT PENALTY CODE

The Judicial Charter, Sec.IIIA.2(d), provides:

The Board has the authority to adopt and/or modify the Student Conduct Penalty Code.

After a thorough study of the Penalty Code and after considering the recommendations of the Judicial Panel, the Board determined that its first penalty-related priority was to modify the Penalty Code to reflect current practice and to provide Judicial Panels with some flexibility with respect to probationary penalties. Next year the Board will develop some guidelines for applying penalties in particular cases and for publicizing to the community the kind of penalty applied to different cases involving different kinds of misconduct. This document attempts neither of those tasks. It is merely a list and definition of penalties available to Judicial Boards.

[Adopted Spring 1998]

JUDICIAL PROCEDURES / BOARD OF JUDICIAL AFFAIRS / PROCEDURES OF THE BOARD

The Judicial Charter, Sec III.A.3, provides the following Procedures for the Board:

(b) Actions by the Board shall require a majority vote of those present and voting.

(c) The Board shall have the power to adopt rules of procedure to govern its own actions, provided that a two-thirds majority of those present and voting agree.

By consensus, the Board adopted the following By-Law to govern its internal decision making:

The Board will form subcommittees as needed to make recommendations to the Board. Subcommittees will attempt to reach a consensus, but may offer as many "minority reports" as necessary to reflect the view of their members. The Board will promulgate by-laws by consensus where possible, and by voting where not. The Charter requires that the Board have a quorum for votes, a majority for substantive decisions, and a thirds majority for decisions on procedures governing the Board's own actions.

[Adopted Spring 1998]

JUDICIAL PROCEDURES / PROCEDURAL OVERVIEW / COURTESY, NONHARASSMENT, AND RELEVANCE

The Judicial Charter, Section III.I.9, provides the following:

Presentation of evidence and testimony, as well as, questioning of the accused and of witnesses at Judicial Panel hearings shall be conducted in a manner that is courteous to all participants, that is devoid of intimidation and harassment, and that limits discussion to information relevant to the facts and issues of the case.

The Board has adopted a by-law to facilitate enforcement of this provision:

The Chair of the Judicial Panel has the duty to ensure that participants in the hearing act with courtesy and civility and avoid any intimidation or harassment.

[Adopted Spring 1998]

FINAL APPEALS / COMPELLING NEW EVIDENCE

Pursuant to the Judicial Charter, Section III.H.1.b:

NEW EVIDENCE means evidence that the Final Appeals Panel determines was not available to the student or not known or reasonably discoverable by the student at the time of the Judicial Panel hearing. (That is, evidence does not become new at the appeals level if the student could have but did not – for whatever reason – present it to the Judicial Panel.)

COMPELLING NEW EVIDENCE means evidence that the Final Appeals Panel determines is not only NEW but also evidence that likely would have changed the Judicial Panel's decision(s).

[Adopted Fall 2002]

FUNDAMENTAL RIGHTS / RIGHTS OF ACCUSED / CALLING WITNESSES

The Judicial Charter, Sec. II.A.11, provides:

To call witnesses on their behalf at Judicial Panel hearings and to cross-examine witnesses against them. The Board on Judicial Affairs shall have the power to specify in its By-laws limited types of evidence that shall be considered admissible without cross-examination. In all other cases, evidence provided by a witness who is unwilling or unable to be cross-examined will be disregarded.

As explained in Section I.9 of the Procedural Overview, the hearing must be limited to "information relevant to the facts and issues of the case." To ensure that hearings operate in this manner, the Board has adopted the following provision:

Witnesses must be able to provide information that is relevant to the case. All witnesses must submit statements to the Office of Judicial Affairs in a timely fashion, as determined by the Judicial Officer, prior to the start of the hearing. The hearing panel shall be the arbiter as to whether a witness meets these criteria, and if approved, shall have the power to limit witness testimony if it strays beyond, or does not add substantially to, the facts and issues of the case.

[Adopted Spring 2003]

FUNDAMENTAL RIGHTS / COOPERATION OF ALL PARTIES

The Judicial Charter, Section II.D., provides:

Both the complainant and the accused student are expected to cooperate fully with an investigation of the facts of a case and with the adjudicative process. Similarly, in

keeping with the principles set forth in the Honor Code and Fundamental Standard, all parties with knowledge of facts pertaining to a case of alleged student misconduct are expected to cooperate fully with the investigation of the facts of the case and must appear, if requested, at Judicial Panel hearings. In addition, all parties are expected to be respectful of the confidential nature of any knowledge or information they may have about a judicial case or the other parties involved. No person shall be required to engage in self-incrimination as part of any judicial proceeding.

The Board on Judicial Affairs is aware of cases in which accused students or other student witnesses have refused to participate in the judicial process, or even acknowledge or respond to notices and communications from the Office of Judicial Affairs, or to timely observe deadlines. Therefore, the Board adopts the following By-law to amplify the meaning of the Charter provision regarding cooperation of all parties:

Students who fail to cooperate in the adjudicative process may be subject to a Fundamental Standard charge and/or, in appropriate cases, non-cooperation may be considered an aggravating factor, except in respect of the exercise of their fundamental right to refuse to engage in self-incrimination. Non-student witnesses who fail to cooperate may be referred to authorities with appropriate jurisdiction.

[Adopted Spring 2003]

FUNDAMENTAL RIGHTS / RIGHTS OF THE ACCUSED / CONFIDENTIALITY

The Judicial Charter, Section II.A.15, provides:

As provided by Section II.A of the Student Judicial Charter of 1997, the Office of Judicial Affairs is committed to protecting the rights of individual students and confidentiality within the judicial process. At the same time, the Office of Judicial Affairs retains the following rights:

1. To communicate with relevant Stanford University offices to confirm or refute information supplied by a student.
2. To notify University offices that are responsible for the implementation of any sanctions determined by a Judicial Panel.

In all judicial cases, any communication with University offices shall explicitly emphasize the importance of confidentiality and involve as few individuals as possible.

Rationale: Once a complaint has been filed, the Judicial Officer needs to verify information presented by the student and those interviewed as potential witnesses. Once a formal charge has been filed, the Judicial Advisor also needs to verify information, such as the documentation the student plans to present to a Judicial Panel related to the possible impact of particular sanctions. Both avenues of verification may involve contacting relevant other

University departments or offices, and, while information often can be and is gathered without revealing a student's identity, that is not always possible. Inquiries also come to the Judicial Office -- for instance, if there is a judicial hold on a student's registration, the Registrar's Office may contact Judicial Affairs to determine that student's actual status. Also, if a Judicial Panel imposes sanctions, the Judicial Advisor has the responsibility to notify those University departments or offices having a legitimate role in ensuring sanction enforcement. Departments or offices that might need to be so notified, depending on the sanctions and circumstances in any given case, include (but are not limited to) the Registrar's Office, the Office of the Vice Provost for Student Affairs, Residential Education, Housing Assignment Services, Graduate Life, a graduate student's department/School, Student Financial Services, the Athletic Department/DAPER, and the Office of the President & Provost.

[Adopted Winter 2005]