Student Advisory Memorandum #12

March 24, 1992

To: College Presidents

From: Vice Chancellor Robert E. Diaz

Re: Revised Student Disciplinary Procedures

Enclosed for review and implementation are the revised bylaws on student disciplinary procedures adopted by the Board of Trustees on February 24, 1992. These bylaws are effective immediately and may not be superseded by governance plan provisions. The revised bylaws are labeled Attachment I, so that they may be readily enclosed with any disciplinary charges sent to a student. These bylaws set forth the due process procedures that are to be afforded a student brought up on student disciplinary charges by a college for acts of misbehavior occurring at the campus and engaged in by a student enrolled at the college. Charges preferred by the Chancellor for Henderson Rule violations engaged in by a student enrolled at a City University of New York constituent college continues to be governed by the November 23, 1970 Board of Trustees resolution on this matter.

There are important revisions in the structure of the faculty-student disciplinary committee which must be implemented immediately. Except for disciplinary hearings commenced prior to February 24, 1992, all hearings should now be held under the new committee structure. The revised committee has five members, as opposed to seven, and consists of a chairperson, two faculty members, and two students.

A. Chairperson: The chairperson, pursuant to Bylaw Section 15.5(b), is selected in rotation from a group of three members of the instructional staff selected by the college president. The president makes these appointments after consulting with the head of the appropriate faculty governance body,
or where the head of the governance body is the college president, its executive committee.

B. **Faculty**: Two faculty members selected by lot from a panel of six; elected annually by the appropriate faculty body from among the persons having faculty rank or faculty status. You may continue to use the current faculty panel until the next election. (See Bylaw Section 15.5(c))

C. **Students**: Two student members selected by lot from a panel of six; elected annually in an election in which all students registered at the college shall be eligible to vote. You may continue to use the current student panel until the next election. (See Bylaw Section 15.5(c))

Pursuant to the revised Bylaw, the chairperson is given the responsibility to act as the administrative hearing officer. Chairpersons will receive training by my office on the technique of presiding at a hearing and how to rule on motions. Until group training sessions are scheduled, you should have any chairperson who is designated for a particular hearing contact this office as soon as possible to consult with a member of my staff.

Pursuant to Bylaw Section 15.3(f)(11), a college president may request that my office provide an attorney to present the case for the college in those instances where a student is represented by an attorney. Current staffing levels and our increased work load under the revised bylaws (we will not only prosecute selected cases but must train the chairpersons) requires that where local campus counsel exists, they will have to present the college's case. Rest assured that the presence of an attorney at the campus, who has immediate access to students, staff and other witnesses, will help immeasurably in the development, processing and presentation of the college's case. Requests for an Office of General Counsel attorney should be addressed to Roy Moskowitz, Deputy General Counsel, as far in advance as possible. Hearing dates should not be scheduled until the assigned attorney is contacted.

I also note changes in the procedures for the initial processing of complaints prior to referral to the faculty-student disciplinary committee. Once a complaint is filed with the dean of students by an individual, organization or department, the Chief Student Affairs Officer must conduct a preliminary investigation. The Chief Student Affairs
Office must then take one of the following actions: (i) dismiss the complaint and notify the complainant and the accused student; (ii) refer the matter to conciliation before a designated counselor or faculty member; or (iii) prefer formal disciplinary charges. The charges may be referred directly to the faculty-student disciplinary committee without first going to conciliation where the college believes the alleged violations of University rules or policies are so egregious as to warrant a full and early review.

In those cases where a college does not have a chairperson from the local campus available for assignment to a faculty/student disciplinary case, a college president may request that a chairperson be selected by lottery from the entire group of chairpersons appointed by other colleges. The Office of Student Affairs and my office will maintain a master list of designated chairpersons. Such requests should be directed to the Vice Chancellor for Student Affairs. Please complete the enclosed form as soon as possible and send a copy of the form to my office and the Office of the Vice Chancellor for Student Affairs.

Encls.

c: Acting Vice Chancellor Marcia Keizs
   Chief Student Affairs Officers
   Legal Affairs Designees

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ATTACHMENT I

STUDENT DISCIPLINARY PROCEDURE BYLAWS OF
THE CITY UNIVERSITY OF NEW YORK,
AS AMENDED BY THE BOARD OF TRUSTEES ON
FEBRUARY 24, 1992

Section 15.3 STUDENT DISCIPLINARY PROCEDURES.

Complaint Procedures:

a. Any charge, accusation, or allegation which is to be presented against a student, and, which if proved, may subject a student to disciplinary action, must be submitted in writing in complete detail to the office of the dean of students promptly by the individual, organization or department making the charge.

b. The chief student affairs officer of the college or his or her designee will conduct a preliminary investigation in order to determine whether disciplinary charges should be preferred. The chief student affairs officer or his or her designee will advise the student of the charge(s) against him or her, consult with other parties who may be involved or who have information regarding the incident, and review other relevant evidence. Following this preliminary investigation, which shall be concluded within thirty (30) calendar days of the filing of the complaint, the chief student affairs officer or designee shall take one of the following actions:

(i) dismiss the matter if there is no basis for the allegation(s) or the allegation(s) does not warrant disciplinary actions. The individuals involved shall be notified that the complaint has been dismissed;

(ii) refer the matter to conciliation. If a matter is referred to conciliation the accused student shall receive a copy of the notice required pursuant to section 15.3e of this bylaw; or

(iii) prefer formal disciplinary charges.

Conciliation Conference:

c. The conciliation conference shall be conducted by the counselor in the office of the dean of students or a qualified staff or faculty member designated by the chief student affairs officer. The following procedures shall be in effect at this conference:
1. An effort will be made to resolve the matter by mutual agreement.

2. If an agreement is reached, the counselor shall report his/her recommendation to the chief student affairs officer for approval and, if approved, the complainant shall be notified.

3. If no agreement is reached, or if the student fails to appear, the counselor shall refer the matter back to the chief student affairs officer who will prefer disciplinary charges.

4. The counselor is precluded from testifying in a college hearing regarding information received during the conciliation conference.

Notice of Hearing and Charges:

d. Notice of the charge(s) and of the time and place of the hearing shall be personally delivered or sent by the chief student affairs officer of the college to the student at the address appearing on the records of the college, by registered or certified mail and by regular mail. The hearing shall be scheduled within a reasonable time following the filing of the charges or the conciliation conference. Notice of at least five business days shall be given to the student in advance of the hearing unless the student consents to an earlier hearing.

e. The notice shall contain the following:

1. A complete and itemized statement of the charge(s) being brought against the student including the rule, bylaw or regulation he/she is charged with violating, and the possible penalties for such violation.

2. A statement that the student has the following rights:

(i) to present his/her side of the story;

(ii) to present witnesses and evidence on his/her behalf;

(iii) to cross-examine witnesses presenting evidence against the student;
(iv) to remain silent without assumption of guilt; and

(v) to be represented by legal counsel or an advisor at the student's expense.

3. A warning that anything the student says may be used against him/her at a non-college hearing.

Faculty-Student Disciplinary Committee Procedures:

f. The following procedures shall apply at the hearing before the faculty-student disciplinary committee:

1. The chairperson shall preside at the hearing. The chairperson shall inform the student of the charges, the hearing procedures and his or her rights.

2. After informing the student of the charges, the hearing procedures, and his or her rights, the chairperson shall ask the student charged to plead guilty or not guilty. If the student pleads guilty, the student shall be given an opportunity to explain his/her actions before the committee. If the student pleads not guilty, the college shall present its case. At the conclusion of the college's case, the student may move to dismiss the charges. If the motion is denied by the committee the student shall be given an opportunity to present his or her defense.

3. Prior to accepting testimony at the hearing, the chairperson shall rule on any motions questioning the impartiality of any committee member or the adequacy of the notice of the charge(s). Subsequent thereto, the chairperson may only rule on the sufficiency of the evidence and may exclude irrelevant, immaterial or unduly repetitive evidence. However, if either party wishes to question the impartiality of a committee member on the basis of evidence which was not previously available at the inception of the hearing, the chairperson may rule on such a motion. The chairperson shall exclude all persons who are to appear as witnesses, except the accused student.

4. The college shall make a record of each fact-finding hearing by some means such as a stenographic transcript, a tape recording or the equivalent. A disciplined student is entitled upon request to a copy of such a transcript, tape or equivalent without cost.
5. The student is entitled to a closed hearing but has the right to request an open public hearing. However, the chairperson has the right to hold a closed hearing when an open public hearing would adversely affect and be disruptive of the committee's normal operations.

6. The college bears the burden of proving the charge(s) by a preponderance of the evidence.

7. The role of the faculty-student disciplinary committee is to listen to the testimony, ask questions of the witnesses, review the testimony and evidence presented at the hearing and the papers filed by the parties and render a determination as to guilt or innocence. In the event the student is found guilty, the committee shall then determine the penalty to be imposed.

8. At the end of the fact-finding phase of the hearing, the student may introduce additional records, such as character references. The college may introduce a copy of the student's previous disciplinary record, where applicable, provided the student was shown a copy of the record prior to the commencement of the hearing. The disciplinary record shall be submitted to the committee in a sealed envelope and shall not be opened until after the committee has made its findings of fact. In the event the student has been determined to be guilty of the charge or charges the records and documents introduced by the student and the college shall be opened and used by the committee for dispositional purposes, i.e. to determine an appropriate penalty if the charges are sustained.

9. The committee shall deliberate in closed session. The committee's decision shall be based solely on the testimony and evidence presented at the hearing and the papers filed by the parties.

10. The student shall be sent a copy of the faculty-student disciplinary committee's decision within five days of the conclusion of the hearing. The decision shall be final subject to the student's right of appeal.

11. Where a student is represented by legal counsel the President of the College may request that a lawyer from the general counsel's office appear at the hearing to present the college's case.
Section 15.4 APPEALS.

An appeal from the decision of the faculty-student disciplinary committee may be made to the president who may confirm or decrease the penalty but not increase it. His/her decision shall be final except in the case of dismissals or suspension for more than one term. An appeal from a decision of dismissal or suspension for more than one term may be made to the appropriate committee of the board. Any appeal under this section shall be made in writing within fifteen days after the delivery of the decision appealed from. This requirement may be waived in a particular case for good cause by the president or board committee as the case may be. If the president is a party to the dispute, his/her functions with respect to an appeal shall be discharged by an official of the university to be appointed by the chancellor.

Section 15.5 COMMITTEE STRUCTURE.

a. Each faculty-student disciplinary committee shall consist of two faculty members and two student members and a chairperson. A quorum shall consist of the chair and any two members. Hearings shall be scheduled at a convenient time and efforts shall be made to insure full student and faculty representation.

b. The president shall select in consultation with the head of the appropriate campus governance body or where the president is the head of the governance body, its executive committee, three (3) members of the instructional staff of that college to receive training and to serve in rotation as chair of the disciplinary committees. If none of the chairpersons appointed from the campus can serve, the president, at his/her discretion, may request that a chairperson be selected by lottery from the entire group of chairpersons appointed by other colleges. The chairperson shall preside at all meetings of the faculty/student disciplinary committee and decide and make all rulings for the committee. He/she shall not be a voting member of the committee but shall vote in the event of a tie.

c. The faculty members shall be selected by lot from a panel of six elected annually by the appropriate faculty body from among the persons having faculty rank or faculty status. The student members shall be selected by lot from a panel of six elected annually in an election in which all students registered at the college shall be eligible to vote. In the event that the student or faculty panel or both are not elected, or if more panel members are needed,
the president shall have the duty to select the panel or panels which have not been elected. No individuals on the panel shall serve on the panel for more than two consecutive years.

d. In the event that the chairperson cannot continue, the president shall appoint another chairperson. In the event that a student or faculty seat becomes vacant and it is necessary to fill the seat to continue the hearing, the seat shall be filled from the faculty or student panel by lottery.

e. Persons who are to be participants in the hearings as witnesses or have been involved in preferring the charges or who may participate in the appeals procedures or any other person having a direct interest in the outcome of the hearing shall be disqualified from serving on the committee.

Section 15.6 Suspension or Dismissal.

The board reserves full power to dismiss or suspend a student, or suspend a student organization for conduct which impedes, obstructs, or interferes with the orderly and continuous administration and operation of any college, school, or unit of the university in the use of its facilities or in the achievement of its purposes as an educational institution.

The Chancellor or Chancellor's designee, a president or any dean may in emergency or extraordinary circumstances, temporarily suspend a student, or temporarily suspend the privileges of a student organization or group for cause, pending an early hearing as provided in bylaw section 15.3 to take place within not more than seven (7) school days. Prior to the commencement of a temporary suspension of a student, the college shall give such student oral or written notice of the charges against him/her and, if he/she denies them, the college shall forthwith give such student an informal oral explanation of the evidence supporting the charges and the student may present informally his/her explanation or theory of the matter. When a student's presence poses a continuing danger to person or property or an ongoing threat of disrupting the academic process, notice and opportunity for denial and explanation may follow suspension, but shall be given as soon as feasible thereafter.
Section 15.8 COLLEGE GOVERNANCE PLANS.

The provisions in a duly adopted college governance plan shall not be inconsistent with the provisions contained in this article.
DESIGNATION OF FACULTY-STUDENT
DISCIPLINARY COMMITTEE CHAIRPERSONS

COLLEGE: ________________________

The following three instructional staff members
have been selected pursuant to Board Bylaw Section
15.5b to serve as chairpersons (after consultation
with the head of the appropriate campus governance
body, or its executive committee, as required).

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<th>NAME:</th>
<th>INSTRUCTIONAL</th>
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<td></td>
<td>STAFF TITLE:</td>
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1. ________________________________________________________________

2. ________________________________________________________________

3. ________________________________________________________________

Dated ________________________  College President ________________________

Return a copy of this form to the Office of the General
Counsel and Vice Chancellor for Legal Affairs and to the
Office of the Vice Chancellor for Student Affairs.