

December 13, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Carson T. Schutze, Chair
Faculty Welfare Committee

Re: Systemwide Senate Review – Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meeting on November 15, 2021, the Faculty Welfare Committee (FWC) reviewed and discussed the Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. Members resumed the discussion electronically and offered the following comments.

I. General Remarks

The FWC believes that such a policy is necessary and useful, so we support the initiative in principle. We are eager to see details fleshed out, particularly when it comes to implementation (reporting and enforcement), though perhaps these will have to be specific to each campus. We also have some suggestions and questions concerning details in the current draft, as specified below.

II. Suggestions Concerning Definitions

1. We suggest that the relevant portion of the definition of Abusive Conduct/Bullying in §II be reworded as follows:

Abusive Conduct/Bullying is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University, ~~and~~ **or** creates an environment that a reasonable person would find to be intimidating or offensive ~~and unrelated to the University's legitimate educational and business interests.~~

That is, we think interfering with a person's participation **OR** creating an intimidating/offensive environment would each on their own be sufficient to constitute bullying; bullying need not have both consequences in all cases. As to the final phrase, "unrelated to...", it was unclear what this was intended to modify (*conduct, environment, ...?*), but in any case, we do not see how somehow being related to the University's interests would exempt undesirable behavior from counting as bullying.

2. We suggest that the wording of the **Reasonable Person Test** in §II should match the wording in the definition quoted in the previous point. Currently the former refers to “hostile or offensive” conduct while the latter refers to “intimidating or offensive” environment.
3. §III.A, first paragraph, states “Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are peer-to-peer interactions.” It is unclear whether this is intended as an exhaustive list of bullying situations. We think it should not be, since it would exclude ones we consider a priori plausible, e.g., faculty bullying staff. We therefore suggest re-wording as “includes but is not limited to.”
4. Some of the examples listed in §III.C to illustrate what can constitute bullying seem excessively broad on their face, e.g. “Spreading misinformation and malicious rumors”—if the information/rumors are about a member of the University community, perhaps this would constitute bullying, but if they are the sort of thing one might find in a tabloid story, we suspect not. Perhaps specific examples would help to clarify the intent of some of these bullet points—what kind of misinformation would rise to the level of bullying?

In fact, spreading misinformation would generally be protected as free speech, and §III.E indicates the policy’s implementation will recognize freedom of speech and expression. But we suggest that a commitment that it will not impinge on intellectual debate is also needed, and that consideration be given to how the proposed implementation steps can ensure these commitments.

5. Because we suspect that some of the example behaviors listed in §III.C might not be construed as bullying within certain subgroups of campus employees, we suggest rewording the sentence introducing the list of bullet points as
“The following types of behavior could constitute Abusive Conduct/Bullying, defined in Section II of this policy, depending on the situation:”
6. In the penultimate paragraph of §III.C, we suggest deleting the word “necessarily”:

“...are an inevitable part of working life and do not necessarily constitute Abusive Conduct/Bullying”

Otherwise, the paragraph implies that these inevitable parts of working life COULD constitute bullying, which we do not think was the intent.

III. Questions About Groups Likely to be Impacted

1. It should be made clearer how this policy applies to students, if it does: only when they are acting in a UC employee capacity (e.g., TA, RA, food service, library worker)? And otherwise their behavior would fall under the Student Conduct Code? Does that Code define bullying the same way as this draft policy?
2. There is an apparent contradiction between the statement of “Scope” on the first page, which is limited to employees, versus §III.B., which refers to “members of the University community in the Workplace,” where Workplace is defined very broadly in §.II to include “any space where University business occurs...in the context of a University program or activity”—the latter would seem to include, e.g., student club or intramural athletic activities where no University employees are present.

IV. Concerns About Reporting and Enforcement

1. It will be vital for each campus to spell out clearly and comprehensively who bullying is to be reported to and who is responsible for dealing with it, and to make this information easy to find. (Perhaps at least the reporting ought to be coordinated through a single central office on each campus?)
2. §V lays out procedures for reporting, investigation, and resolution in considerable detail, but we suspect that some of these details are not consistent with the statements in §IV.E that discipline is covered by APM 015/016/150 (for academic personnel) and policies 62/63/64 (for relevant staff). For example, for regular faculty the APM specifies that the Committee on Privilege & Tenure is the body that holds hearings and recommends disciplinary action, not the “supervisor” (who would typically be the department chair), who “should address such behavior immediately” according to §V.A.3.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Assistant Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Faculty Welfare Committee