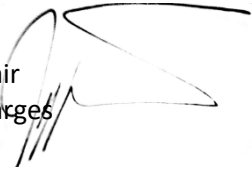


December 15, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Jeff Bronstein, Chair
Committee on Charges



Re: (Systemwide Senate Review) Proposed Systemwide Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

The Committee on Charges appreciates the opportunity to review the proposed new systemwide Policy on Abusive Conduct/Bullying in the Workplace. The Committee agrees that abusive conduct and bullying is a problem that needs to be better addressed. Our concerns are three-fold: (1) the role of the Academic Senate in formally investigating abusive conduct/bullying in the workplace; (2) the definition of abusive conduct/bullying, in particular the list of unallowed behaviors; and (3) questions about whether the proposed policy would adequately address the underlying causes of why abusive conduct/bullying persists.

First, the policy takes conduct that is normally subject to faculty review and investigation and seems to mandate a formal investigation process outside of the Academic Senate with procedural steps that mirror those of an SVSH investigation. **The policy as written therefore is in conflict with existing UC policy and UCLA bylaws¹** and breaches one of the core professional rights of the Faculty Code of Conduct that faculty have “the right to be judged by one’s colleagues, in accordance with fair procedures and due process, in matters of . . . discipline” (emphasis added). It is important to note that “fair procedures and due process” involve *more than the right to a disciplinary hearing*; they involve faculty- /University-approved procedures that “involve the faculty in participating in the investigation of allegations of misconduct.”² The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC) and therefore falls under the authority of the Academic Senate, which at UCLA means that the Charges Committee is the body that should investigate and find probable cause.³ Committee members do not agree that allegations of “abusive conduct” or “bullying” by faculty should be investigated outside of the Academic Senate processes, which is what the policy describes.

Second, the Committee nonetheless endorses the need for a policy that provides more specific language regarding bullying that is not necessarily tied to sexual harassment or discrimination as it is commonly understood. This policy makes an adequate start at creating such language, but the Committee finds that there are significant problems with the list of unallowed behaviors. For example, “teasing” is highly subjective and can be affectionate or comradely. Interpretation of acceptable personal space also varies widely, often among those from different cultural backgrounds.

Third, members believe abusive or bullying conduct persists because of serious gaps in reporting, documenting, and correcting faculty behavior that might *become* serious through its repetition or its consequences. In the Committees’ experience, the individuals most vulnerable to potentially abusive or bullying

conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a colleague, and, even if they consider filing charges, may not have access to sufficient documented information to establish violation of a policy. There is no system, especially for faculty, for documenting and correcting abusive or bullying conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy is also not applicable unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy is likely to raise expectations of better behavior, but is unlikely to address these gaps.

The Committee therefore strongly suggests that efforts to prevent abusive conduct and bullying might be more effective by (1) further refining a workable definition of abusive conduct / bullying; (2) developing a system for reporting and documenting concerns about “abusive conduct” or “bullying” behavior that includes warning and administrative correction for potential offenders (and will better document those who exhibit repeated patterns of abusive/bullying behavior); and (3) providing an avenue for redress and protections for those who report potentially “abusive conduct” or “bullying” behavior.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Committee on Charges
Marian M. Olivas, Principal Policy Analyst, Judicial Committees

¹ UCLA Bylaw Appendix XII, originally passed in 1974, governs the campus’s procedure for investigating whether conduct meets the “probable cause” standards for violation of the Faculty Code of Conduct.

“Each Division should duly notify the University Committee on Rules and Jurisdiction and the University Committee on Privilege and Tenure of the procedures it has adopted and any subsequent changes therein. These Committees in turn are directed to report periodically to the Assembly of the Academic Senate on procedures adopted by the Divisions and to recommend to the Assembly such action as they deem appropriate for assuring compliance with the Bylaws of the Academic Senate or the promotion of uniformity among Divisions to the extent to which it appears necessary and desirable.”

² “Because it is desirable that the faculty meaningfully participate in its own self-discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.” APM-015§III.B.3 [Faculty Code of Conduct (FCC)]. See also fn. 1. UCLA’s procedures were developed using this consideration.

³ The Faculty Code of Conduct applies to all Senate and non-Senate faculty who are not subject to a collective bargaining unit. The contract for Unit 18 lecturers incorporates the provisions quoted here into their contract.

- the FCC forbids “discrimination, including harassment against [a student (II.A.2); University employees or individuals seeking employment (II.C.5); faculty (II.D.2 “Colleagues)] . . . for arbitrary or personal reasons.”
- The concept in the policy that “a single act shall not constitute Abusive Conduct/Bullying, unless especially severe or egregious” (Section II, p. 2) is explained in the FCC as “faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences.”

Several other examples of the “Prohibited Conduct” (Section III.C, pp. 3-4) align with the “Types of Unacceptable Conduct” in the FCC, including these provisions:

- “Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons” (FCC§A.5).
- “Participating in or deliberately abetting disruption, interference, or intimidation in the classroom” (FCC§A.6).
- “Intentional disruption of functions or activities sponsored or authorized by the University” (FCC§C.1).
- “Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities” (FCC§C.4).

In addition, conduct in the proposed policy that is not specifically described by one of the FCC “types of conduct” could nonetheless still be considered a violation under the FCC since it also includes this general provision: “[o]ther types of serious misconduct, not specifically enumerated herein, may nonetheless be the basis for disciplinary action if they also meet the preceding standards.”