

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

At its meeting on October 6, 2022, the Committee on Privilege and Tenure (P&T) reviewed the proposed Presidential Policy on Abusive Conduct in the Workplace. The UCLA Committee on Privilege and Tenure (Committee) appreciates the opportunity to review this proposed policy again. The Committee applauds the effort to align the policy's definition of "unallowable" conduct with the language in the California Code¹

While the Committee supports the intent to document a general definition of abusive conduct, the Committee finds that the revised version of the policy still goes beyond the law's requirement to "include prevention of abusive conduct as a component of [sexual harassment] training and education."² The Committee **strongly opposes the policy's instruction for each campus to form a separate investigative structure, or to assign the authority to a single existing investigative office.**

(1) It threatens to take resources away from protected category investigations.

Not only does the law fail to require a separate investigative office dedicated to abusive conduct, the law does not elevate abusive conduct to a protected category that would merit a centralized investigation office at the level of discrimination or Title IX investigations. The Committee is against taking resources away from those important protected category offices.

(2) One-size does not fit all.

(a) By envisioning a single one-size-fits-all investigation office, the policy loses sight of the unique definitions of abusive conduct for each constituent in an academic setting.

¹ (2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious

See Cal.Govt.Code section 12950.1 (h)(2).

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=12950.1.&lawCode=GOV

² Cal.Govt.Code section 12950.1 (a)(2)

- (b) The various constituents in the campus workplace (staff, faculty, and employee-students/trainees) already have offices with existing misconduct processes that understand the workplace rules for each category of employee.

(3) *The policy, as written, supplants disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.*

As opposed to the claim from the amended version that the policy “does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations,” we find that it actually supplants several sections of APM-015 (Faculty Code of Conduct) and of Academic Senate Bylaws by designating a separate single entity to investigate abusive conduct.

- (a) **The policy as written supplants existing bylaws about investigation and probable cause determination developed under APM 015 guidance.** “Disciplinary processes” are clearly not limited to a final, formal disciplinary hearing. Rather, due process includes the investigative and probable cause phases and the Faculty Code of Conduct emphasizes “significant faculty involvement” in these phases. (“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”). Faculty have a right to use their investigation and probable cause phases as already duly developed on each campus under these guidelines. Bylaw 336 states “Procedures regarding the establishment of probable cause are determined by APM 015/016 and Divisional policies.” UCLA, for example, has longstanding bylaws giving the authority for investigation and determination of probable cause to a Senate Committee. Removing that authority is supplanting existing bylaws.
- (b) **The policy as written supplants Academic Senate authority over academic freedom.** The policy promises evaluation of “whether the conduct may be protected as academic freedom or free speech.”³ The Academic Senate is accorded the unique right under APM-010 and APM-011 to assess academic freedom protections.

(4) *Abusive conduct as described in this policy is already a violation of the Faculty Code of Conduct (FCC).* The Committee leaves it to the Charges Committee to elaborate on this point.

To not “supplant” APM disciplinary processes and to protect faculty rights, the language in the policy which allows the “Executive Officer” on each campus to designate the personnel or management office responsible for conducting investigations must be amended to state that the “Executive Officer”

³ “The conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech.”

on each campus must work with existing units to ensure that these standards for abusive conduct in the workplace are incorporated into, rather than supplanting their existing investigative processes.

The Faculty Code of Conduct, APM-015, states: "The Assembly of the Academic Senate recommends that each Division, in cooperation with the campus administration, develop and periodically re-examine procedures dealing with the investigation of allegations of faculty misconduct and the conduct of disciplinary proceedings." The Committee would welcome an opportunity to re-examine existing investigation procedures as a collaborative process with the Administration.

Thank you for the opportunity to review.

Sandra Graham, Chair 
Chair, Committee on Privilege and Tenure

cc: Members of the Committee on Privilege and Tenure
Marian M. Olivas, Principal Project Analyst, Judicial Committees