

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

The Charges Committee had an opportunity to discuss the second round of revisions to this proposed policy at its meeting on October 6, 2022. The Committee appreciates that many revisions were made after the first round of systemwide review of this policy, but remains concerned that the revisions fail to consider several of the key comments previously made by this Committee.

- 1) The policy as written is still in conflict with existing UC policy and UCLA bylaws¹ because it 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
- 2) The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC)³ and therefore falls under the authority of the Academic Senate. At UCLA that means that the Charges Committee is the body that should investigate and find probable cause.⁴ The policy promises not to supplant existing APM or Senate bylaws. However, the investigation piece of the policy does just that. It would supplant UCLA Bylaws Appendix XII, which

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 “General” (not based on protective categories) harassment is also forbidden by the Student Code of Conduct. “102.11b: Harassment” as are other forms of threatening or abusive conduct.

⁴ 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.”

was created alongside the original Faculty Code of Conduct and has been duly updated as University policies have changed. The following sections of the Faculty Code of Conduct address abusive conduct not only in the workplace, but in all University settings:

“ . . . University discipline, as distinguished from other forms of reproof or administrative actions, should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences, . . .”

II.A. Teaching and Students

Ethical Principles

As teachers . . . They avoid any exploitation, harassment, or discriminatory treatment of students. . . . The integrity of the faculty-student relationship is the foundation of the University’s educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator. The unequal institutional power inherent in this relationship heightens the vulnerability of the student and the potential for coercion.

2. Discrimination, including harassment, against a student . . . or for other arbitrary or personal reasons.

5. 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.

II.C. The University

Ethical Principles

Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision.

4. 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.

5. Discrimination, including harassment, against University employees or individuals seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment . . . or for other arbitrary or personal reasons.

II.D Colleagues

2. Discrimination, including harassment, against faculty . . . or for other arbitrary or personal reasons.

3) The Faculty Code of Conduct states that “The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of probable cause.” Bylaw 336 requires that at a disciplinary hearing “the Chancellor or Chancellor’s designee has the burden of proving the allegations by clear and convincing evidence.” This policy dictates a “preponderance of the evidence standard.” The Committee sees no reason to elevate the standard for initiating a disciplinary action to preponderance of the evidence or to lower the standard for imposing discipline from a “clear and convincing standard.”

4) Although the word “bullying” has been removed, Committee members do not agree that allegations of “abusive conduct” by faculty should be or need to be investigated outside of the Academic Senate processes, which is what the policy describes.

In their letter responding to the first version of this proposed policy, the Charges Committee lamented that the policy fails to address what they see as a more pressing issue. Members believe abusive

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 Committee's experience, the individuals most vulnerable to potentially abusive conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a professor or 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 conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy offers no outcomes unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy, especially promising a dedicated office to investigate allegations, is likely to raise expectations of better behavior, but is unlikely to address these gaps.

The Committee agrees that the policy takes a good first step in preventing abusive conduct by refining a workable definition of abusive conduct. However, rather than develop a separate entity to investigate abusive conduct, resources should be dedicated to helping existing entities develop a system for reporting and documenting concerns about "abusive conduct" in order to warn and provide administrative correction for potential offenders. Such a system will also better document those who exhibit repeated patterns of abusive behavior. Lastly, as with many policies, there is no focus on the recipient of potentially "abusive conduct." Rather than put resources into an unnecessary investigation office, resources should be provided that would provide an avenue for redress and protections for those who report potentially abusive behavior, especially when the situations involve a power imbalance.

Sincerely yours,



Norweeta G. Milburn

*On behalf of the members of the Charges Committee: Cesar J Ayala; Rita M Cantor;
Antoinette S Gomes; Jody E Kreiman; Vinay Lal; Kriss Ravetto-Biagioli; Brett Michael Trueman*

cc: April de Stefano, Academic Senate Executive Director
Marian M. Olivas, Charges Committee Analyst