

To: Jessica Cattelino, Chair, Academic Senate

From: Norweeta Milburn, Chair, Charges Committee

CC: Andrea M. Kasko, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Marian M. Olivas, Principal Policy Analyst, Academic Senate
Members of the Charges Committee

Date: April 6, 2023

Re: (Systemwide Senate Review) Proposed Presidential Policy: Anti-Discrimination

The Charges Committee had an opportunity to review and discuss this proposed policy at their meeting on March 9, 2023 and in follow up discussions. The Committee had comments and concerns as follows.

Definitions.

The Committee understands the impetus to create a unifying policy and supports the effort at common definitions of discrimination and harassment that would be in violation of federal or state law. **The Faculty Code of Conduct** (FCC; APM-015) already forbids “Discrimination, including harassment” based on protected categories against students, faculty, and any University community member, but it **has a broader definition of discrimination**. A 2010 “Legislative Ruling” by the systemwide Academic Senate involved allegations of discrimination.¹ “The legislative acceptance by the Academic Senate of The Academic Code of Conduct (APM 015.Preamble and APM 015.II) endorsed the evolution of consensus-driven professional standards, not a precisely charted academic “criminal code”, to govern the actions of the faculty (both members of the Academic Senate and non-represented academic appointees. . .)” The ruling states: “UCR&J notes that APM 035-0.a lists unlawful bases of discrimination and harassment, while APM 015.II.C.5 and APM 015.II.D.2 include two further unethical bases for discrimination and harassment (“other arbitrary or personal reasons”). . . both unlawful and unethical bases of discrimination and harassment as potential bases for academic misconduct charges.”

Faculty Involvement/Shared Governance

The Committee members had serious concerns that the policy does not just consolidate definitions or describe general procedural standards. It assumes complete authority for review and investigative procedures. **The policy** asserts that it “does not supplant disciplinary processes described in the APM or

¹ See Legislative Ruling 2.10 “Regarding Faculty Misconduct Charges”

in the Academic Senate's Bylaws or regulations" (p. 9); however, it **does, in fact, supplant many elements of existing approved Academic Senate bylaws and Faculty Code of Conduct principles.**

The FCC is clear that "disciplinary procedures" do not only include the "disciplinary *proceedings*" (hearings), but all the steps for "investigating allegations of violations of faculty misconduct" (Part III, Enforcement and Sanctions, p. 8). The policy gives the Local Implementation Officer sole authority over "Initial Assessment," "Alternative Resolution," and instigation and conduct of "Formal Investigations" and "Outcome" decisions. **The authority vested in the Local Implementation Officer violates at least three FCC principles:**

1. The enforcement "process must meet basic standards of fairness and must reflect significant faculty involvement" (p. 2, emphasis added). The FCC strongly recommends that "appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct" (p. 10). **This policy provides for no faculty involvement at any phase.**
2. On the several campuses like UCLA that have incorporated faculty involvement in the investigation process through a Charges Committee² or other faculty involvement in the probable cause phase, **the proposed policy supplants existing bylaws and procedures.** The UCLA Charges Committee, in fact, revised their bylaws to accommodate the establishment of the UCLA Discrimination Prevention Office.³ The FCC requires that "procedures dealing with the investigation of allegations of faculty misconduct and the conduct of disciplinary proceedings. . . shall be consistent with the Bylaws of the Academic Senate" (p. 8).
3. Investigative and judicial functions should be separate (p. 10). As written, **the Local Implementation Office makes the decisions at every phase of review, in violation of this due process principle.**

Need

The cover letter describes the need for "ensuring equal and equitable access to University employment, programs, and activities" across all categories of individuals in the University, but **does not fully justify the expenses involved or explain to what extent existing policies are falling short.** The policy aims to create an entirely new office at the Office of the President as well as, apparently, a new centralized office on campuses. If there are no data on what is failing in present policies and procedures, it will be difficult to assess if the expenses involved in creating more bureaucracy do actually improve "equal and equitable access," especially **in comparison to instead using limited resources for remedy, prevention, and targeted support of underrepresented faculty, students, and other community members.**

Academic Freedom

According to Academic Personnel policy, "Based upon the By-Laws and Standing Orders of the Regents, the **Academic Senate** is responsible for interpreting and applying the professional standards that define

² The "Divisional Charges Committee. . . is the principal investigative instrument for the faculty determination of academic misconduct. In essence, the Divisional Charges Committee acts as an investigative grand jury with a standard of proof based on evidence of probable cause. . . ." (Systemwide Legislative Ruling 2.10)

³ See: <https://senate.ucla.edu/BylawsandRegulations/volume-1#Appendix12>

academic freedom of teaching, research, scholarship, and the public dissemination of knowledge” (emphasis added).⁴ The provision in **the proposed policy** that states “Local Implementation Officer will, based on locally developed procedures, consult with the appropriate academic officer for relevant academic expertise” (p. 2) **is, therefore, in conflict with established policy on academic freedom**. A consultation with an “appropriate academic officer” is not the same as shared governance determination by the appropriate Academic Senate processes for a determination regarding academic freedom.

Conclusion

While there is a role for oversight of what might constitute a legal breach of discrimination laws, the proposal does not adequately defend why current policies are falling short. In addition, any oversight should not completely sidestep shared governance, negate the authority of a duly-authorized campus Charges Committee to investigate claims of “discrimination, including harassment,” to impose a broader definition of discrimination that includes “consensus-driven professional standards,” and for a properly authorized Academic Senate committee to make determinations regarding academic freedom.

Thank you for the opportunity to review and comment. If you have any questions, please do not hesitate to contact me at nmilburn@mednet.ucla.edu or via the Committee’s analyst, Marian Olivas, at molivas@senate.ucla.edu.

⁴ See APM-011.