

To: Jessica Cattelino, Chair, Academic Senate

From: Sandra Graham, Chair, Committee on Privilege and Tenure

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 Committee on Privilege and Tenure

Date: April 5, 2023

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

At its meeting on March 16, 2023, the Committee on Privilege and Tenure (P&T) reviewed and discussed the proposed Presidential Policy on Anti-Discrimination. After the discussion, a smaller workgroup took up a review of the committee's comments. According to the communications, this new policy is proposed as a systemwide unifying policy to "respond to a need for a policy to address discrimination and harassment that was consistent across staff, faculty and students."

The committee expressed concerns that the policy appears void of references to shared governance, vesting a considerable amount of authority in a "Local Implementation Officer." The policy does not specify who holds that role or whether it would be one individual for the whole campus, but the role is mentioned over 80 times in the policy. The raises concerns regarding shared governance rights, especially since investigation and "probable cause" determination rests with the Charges Committee and a determination that the Faculty Code of Conduct has been violated rests solely with the Committee on Privilege and Tenure.

In all other University policies, it is recognized that the Academic Senate is the sole arbiter of academic freedom. The policy states, rather, that the "Local Implementation Officer" will consult with "the appropriate academic officer for relevant expertise (p. 2 and p. 15 of proposed policy). This violates established Senate authority for review of academic freedom rights. For example, see APM-011, which for that reason assigned the review of any grievance of academic freedom to the divisional P&T committees.¹

¹ Academic Freedom Committees on most campuses are general policy review committees and are not set up for judicial confidentiality and review.

The P&T Committee also has concerns that the policy insufficiently addresses remedying the impact of discrimination and/or harassment on individuals experiencing disparate impact. Specifically, the proposed policy states:

Disparate Impact occurs when there is sufficient evidence that a University policy or practice, although neutral on its face, results in an adverse and material disproportionate impact on individuals within a particular Protected Category, unless the policy or practice has a substantial legitimate justification.

From P&T's perspective, in a shared governance system, faculty experience disparate impact not from the actions of single individuals, but from general practice, accumulation of actions, and/or policy implementation. The proposed policy explicitly is "inapplicable" to Disparate Impact concerns ("The investigative process in this Policy is inapplicable to Disparate Impact concerns."). That means a faculty member experiencing discrimination or harassment typically must prove that one individual is responsible to get a remedy. The policy otherwise puts this assessment entirely on the Local Implementation Officer: "Allegations of Disparate Impact raised by individuals allegedly adversely impacted by the policy or practice will be reviewed and addressed, as appropriate, by the Local Implementation Officer."

Instead, the policy should recognize the authority of the Academic Senate grievance review process to assess whether individuals may have experienced Disparate Impact and to work with administration to implement remedies. See: [Preliminary Procedures in Grievance Cases](#). In the same vein, the policy makes several references to prevention and remedy without any specifics. It assigns the "University" as responsible to take "appropriate action to stop, prevent, and remedy the Prohibited Conduct" (p. 5) and the Local Implementation Officer with the authority to determine remedy (p. 16).

As a lesser note, this sentence on p. 3 of the proposed policy seems to be missing something: "Good faith actions lawfully pursued in response to a report of Discrimination and/or Harassment (such as gathering evidence) are **not, without more, Retaliation.**"

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