



Susan Cochran
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Chair of the Assembly of the Academic Senate
Faculty Representative to the Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

May 1, 2023

**DOUGLAS HAYNES, VICE PROVOST
ACADEMIC PERSONNEL & PROGRAMS**

Re: Academic Senate Review of Presidential Policy on Anti-Discrimination

Dear Vice Provost Haynes:

As requested, I distributed for systemwide Senate review the proposed Presidential Policy on Anti-Discrimination. All ten Academic Senate divisions and six systemwide committees (UCAF, UCAADE, UCPT, UCFW, UCRJ and BOARS) submitted comments. These were discussed at Academic Council's April 26 meeting and are attached for your reference. The following summary captures several themes from the Senate review, but we encourage you to review the letters for additional details.

The Senate supports the University's goals to address incidents of discrimination affecting staff, faculty, students, and others; to comply with federal and state law regarding discrimination; and to create and maintain a healthy and inclusive working and learning environment free of discrimination, harassment, and retaliation. While this proposed policy has good intentions, the Senate is unable to support it in its current form given numerous concerns about: 1) its redundancy with other UC and campus policies; 2) the role and authority of the Local Implementation Officer; 3) its potential to harm academic freedom; and 4) the lack of sufficient recognition of the Academic Senate's role in investigating and adjudicating these matters when they include faculty.

Need for the policy, relation to other policies, and costs

Many reviewers raised questions and concerns about the relationship of the proposed policy to other existing UC policies that address discrimination and harassment, including the recently approved Policy on Abusive Conduct in the Workplace; the Policy on Discrimination, Harassment, and Affirmative Action; the Policy on Sexual Violence and Sexual Harassment; and the Faculty Code of Conduct (Academic Personnel Manual, APM, 015). These policies and the proposed policy on anti-discrimination appear to include overlapping elements. The University should clarify the relationship between these policies, the types of prohibited conduct covered by each, and why a new policy is needed to address prohibited conduct already covered under

existing policies. It is unclear whether there are meaningful differences across these policies that make it impossible to combine some of them. The University should also clarify how simultaneous allegations would be handled under multiple policies, and if individuals could be charged for misconduct under multiple policies at the same time.

Reviewers also expressed concerns that the proposed policy will create new administrative offices and positions without fully detailing or justifying the expenses needed to maintain them. Campuses are not eager to respond to new unfunded mandates from UCOP during a time of increased costs and budgetary constraints. Without data on what is lacking in present policies and procedures, it is difficult to assess whether the expenses involved in creating more bureaucracy will improve anti-discrimination efforts, particularly when limited resources could be used instead for remedy and prevention of discrimination, as well as dedicated support of faculty, students, and other community members most at risk for being targets of discrimination.

To address these concerns, we recommend creating a single workplace policy that combines the proposed Anti-Discrimination Policy with the Abusive Conduct in the Workplace Policy and the Policy on Discrimination, Harassment, and Affirmative Action. This would alleviate confusion arising from policy redundancies and streamline the reporting, investigation, hearing, and adjudication of cases. Existing offices would be empowered to address anti-discrimination issues without further burdening campus finances.

Local Implementation Officer

Many reviewers expressed concern about the authority proposed for the Local Implementation Officer (LIO) to conduct misconduct investigations, make probable cause determinations, and assess academic freedom claims. As currently written, the policy appears to provide the LIO with very broad powers and latitude but few checks and balances. The particular matters of academic freedom and faculty discipline are discussed in more detail below, but the policy should provide additional details about who LIOs will report to on the campus, their reporting lines and relationship to existing campus officials in anti-discrimination offices, clear guidelines for an LIO's decision-making, a transparent process for accountability and oversight of the LIO's decisions, an appeals and dispute resolution process to dispute and potentially reverse an LIO decision, and a process for faculty consultation for these matters. These additional details will help ensure the LIO is independent and impartial, and that their authority is monitored with appropriate checks and balances.

Academic Freedom

The Senate appreciates that the proposed policy includes a section on free speech and academic freedom. However, reviewers expressed concern that the policy could have a chilling effect on academic freedom by minimizing the role of peer evaluation in determining whether a reported behavior is consistent with academic freedom by giving administrative offices the authority to make this determination. The policy states that the LIO will consult with "the appropriate academic officer" for relevant expertise on matters of academic freedom. While the term "academic officer" is not fully defined, it would violate established Senate authority to remove this evaluation from the faculty as represented by the Academic Senate. The policy should provide for initial and ongoing consultation with relevant Senate representatives to ensure consistent and equitable application of academic freedom principles. It should clarify that the

Senate, through academic freedom committees or other means, plays the primary role in determining up front if a case presents questions of academic freedom, rather than only after that determination has been made by a non-Senate entity.

Faculty Discipline

Many reviewers expressed concern about how the policy and its disciplinary elements apply to Senate faculty. The policy states that it is not intended to replace disciplinary processes outlined in the Academic Personnel Manual and in Senate bylaws and regulations. However, as written, it effectively supplants existing policies and principles that ensure Senate involvement in investigations of complaints filed against a Senate member. Specifically, it bypasses the Senate Charges Committee determination of probable cause for investigation and the Committee on Privilege and Tenure determination of violations of the Faculty Code of Conduct. The policy provides for no explicit faculty involvement at any phase of an investigation, and it gives the LIO sole authority over initial assessment, alternative resolution, formal investigation, and outcome decisions. The policy also fails to address an appeal process for the accused or a process for continuing with a related grievance or complaint after the policy's process concludes.

Faculty require the opportunity to be judged by a committee composed of their peers. The Resolution and Corrective Action/Discipline processes in the policy must respect existing disciplinary procedures for faculty outlined in the Faculty Code of Conduct (APM 015) and the University Policy on Faculty Conduct and the Administration of Discipline (APM 016). The policy should not establish an independent path of corrective discipline, including termination, for the prohibited conduct outlined in the policy. The policy should also clarify that and how these procedures do not replace APM procedures.

Other comments

Several reviewers noted instances in which the policy uses unclear language, technical terms, and jargon, and is inconsistent in its use of key terms. Specific examples include how "Protected Category" is defined in the policy and the status of individuals within a protected category. Reviewers also recommended that the policy be more inclusive with regard to gender diversity and to address caste-based discrimination.

In addition, the policy focuses solely on individual incidents of discrimination and emphasizes issues of legal compliance, adjudication, and punishment for noncompliance. It could do more to address the root causes of discrimination and inequity within the University community and systematic practices that contribute to patterns of discrimination. Considering these larger contextual issues aligns with UC's broad diversity, equity, and inclusion goals.

To summarize, the Senate endorses the goal of fostering an inclusive campus environment through an anti-discrimination policy that is comprehensive, unified, and unambiguous. However, the present version of the policy overlaps with existing policies, disregards the role of faculty in shared governance, and includes ambiguous procedures for investigation and implementation. These weaknesses of the policy will undermine its own goals. We recommend that the policy either be merged with other related policies or significantly revised to be, among other things, more transparent and respectful of the Senate's jurisdiction over academic freedom and faculty discipline.

Finally, we encourage policy owners and administrators to be sensitive to how new internal UC policies may impose unfunded mandates on campuses and burden faculty and staff with excessive compliance and regulatory requirements. We understand that UCOP plans to add a new requirement that all policy proposals include an analysis of financial and staffing impact. We strongly encourage such a requirement and that it be applied in this matter.

We appreciate the opportunity to comment and look forward to reviewing a revised draft of the policy. Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Cochran", written in a cursive style.

Susan Cochran, Chair
Academic Council

Cc: Academic Council
Campus Senate Executive Directors
Executive Director Lin

Encl.



320 STEPHENS HALL

UNIVERSITY OF CALIFORNIA
April 19, 2023

SUSAN COCHRAN
Chair, Academic Council

Subject: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Chair Cochran:

On April 3, 2023, the Council of the Berkeley Division (DIVCO) discussed the proposed *Presidential Policy on Anti-Discrimination*, informed by written comments from the Committees on Academic Freedom (ACFR); Diversity, Equity, and Campus Climate (DECC); Faculty Welfare (FWEL); and Privilege and Tenure (P&T), which DIVCO endorsed in full.

Members of DIVCO and the other committees wondered what the impetus was for instituting an anti-discrimination policy at this time and asked for more information on what problems it is trying to address. Some felt that the proposed policy overlapped with existing policies and/or that such issues would be better handled at the individual campus level. Concerns were also raised about the intersection of discriminatory language and free speech protections.

Beyond those broad questions about intent, the most important comment on the proposed policy came from ACFR, who noted that Section V (on procedures and formal investigation) lacked any mention of existing Senate processes, or of Senate involvement in investigations when a complaint is made against a member of the Academic Senate. Please see the ACFR letter for specific suggestions of new text that should be added to Section V that would address complaint and investigative procedures concerning Senate faculty and the academic freedom protections afforded to Senate faculty.

We thank you for the opportunity to comment on the proposed policy.

Sincerely,

A handwritten signature in cursive script that reads 'Mary Ann Smart'.

Mary Ann Smart
Professor of Music
Chair, Berkeley Division of the Academic Senate

Enclosures

cc: Maximilian Auffhammer, Vice Chair, Berkeley Division of the Academic Senate
Sean Gailmard, Chair, Committee on Academic Freedom
Thomas Philip, Chair, Committee on Diversity, Equity, and Campus Climate
Thomas Leonard, Co-Chair, Committee on Faculty Welfare
Nancy Wallace, Co-Chair, Committee on Faculty Welfare
Andrew Minor, Chair, Committee on Privilege and Tenure
Jocelyn Surla Banaria, Executive Director
Linda Corley, Analyst, Committee on Diversity, Equity, and Campus Climate
Patrick Allen, Analyst, Committees on Faculty Welfare and Privilege & Tenure

To: Mary Ann Smart, Chair, Berkeley Division of the Academic Senate
From: Sean Gilmard, Chair, Committee on Academic Freedom (ACFR), Berkeley Division
Re.: Draft systemwide policy on anti-discrimination
Date: March 27, 2023

ACFR discussed the draft systemwide policy on anti-discrimination and unanimously requests the following changes.

Section V.3. Procedures, Initial Assessment of a Report (p. 10): After “The Local Implementation Officer may consult with other offices as necessary. This may include Academic Personnel Offices for complaints involving faculty and other academic appointees...” add:

For complaints in which the Respondent is a senate faculty member or other academic appointee, the Local Implementation Officer shall consult with committees of the divisional academic senate that evaluate grievances relating to faculty, such as the divisional Privilege & Tenure Committee.

ACFR’s rationale is that academic freedom entails that evaluation of grievances or potential grievances against academic appointees should involve the faculty senate from the first instance. The draft policy states that the LIO *may* consult, which leaves consultation at the LIO’s discretion, and names only the APO as a specific suggestion. ACFR holds that for academic appointees, the policy should state that the LIO *must* consult, and consultation should include the divisional academic senate, not solely administration units such as APO.

Section V.5.b: Formal investigation (p. 13): After “The Local Implementation Officer may coordinate the Formal Investigation with other offices, depending on the Complainant’s and Respondent’s affiliation with the University (that is, faculty, other academic appointees, staff, or students),” add:

For complaints in which the Respondent is a senate faculty member or other academic appointee, the Local Implementation Officer shall coordinate with the divisional academic senate or its committees that evaluate grievances relating to faculty.

ACFR’s rationale is that academic freedom requires that formal investigations of faculty with possible disciplinary consequences should involve the faculty senate from the first instance. In this case, the draft language of *may* coordinate should be replaced with *shall* coordinate, and the language should specify coordination with the divisional senate.

Section V.5.b.iv: Academic freedom (p. 15): After “When the Formal Investigation implicates academic appropriateness or academic freedom, the Local Implementation Officer will consult with the appropriate academic officer for relevant academic expertise,” add:

When the complaint pertains to the teaching or scholarship of the Respondent, the Local Implementation Officer shall consult with appropriate committees of the divisional academic senate, such as the Privilege & Tenure Committee or Academic Freedom Committee, to

determine whether the Formal Investigation implicates academic appropriateness or academic freedom.

ACFR's rationale is that teaching and scholarship inherently implicate academic freedom. In turn, academic freedom requires that the faculty, through the academic senate, determine and apply standards for evaluation of teaching and scholarship. See APM-10. In case of a discrimination complaint involving Respondent's teaching or scholarship, the draft language leaves determination of standards of evaluation to the LIO, an administrative officer. Only after administrative determination that academic appropriateness or academic freedom are at stake is an "academic officer" to be involved. Further, the identity of the "academic officer" is not specified: the draft language allows that it may be another administrator. Therefore, as written the could be construed as contrary to APM-10. To make it consistent with APM-10, the academic senate and its committees should be involved in any evaluation of teaching or scholarship.

ACFR appreciates the opportunity to contribute to improvement of this important policy.



April 3, 2023

PROFESSOR MARY ANN SMART
Chair, 2022-2023 Berkeley Division of the Academic Senate

Re: DECC's Comments on the Proposed Presidential Policy on Anti-Discrimination

The Committee on Diversity, Equity, and Campus Climate (DECC) at Berkeley reviewed and discussed the Proposed Presidential Policy on Anti-Discrimination. DECC had a number of questions about the proposed policy, which made it difficult for the committee to offer substantive feedback. DECC requests more clarity on the following questions so that the committee can evaluate the merits of the proposed policy:

1. Why is this policy needed at this time? What problem or shortcoming is it addressing? How, if at all, have existing campus-level policies been insufficient?
2. Is uniformity across UC campuses desirable for a system-wide policy on anti-discrimination? What is the rationale for instituting a system-wide policy that might make it difficult for campuses to develop policies that are potentially more conducive and responsive to each campus's particular context?
3. Would a system-wide policy represent both a floor and a ceiling? That is, could individual campuses specify policies that extend beyond the proposed system-wide policies?

DECC would appreciate a response to these questions so that the committee can better evaluate the proposed policy.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Philip', enclosed within a large, loopy circular flourish.

Thomas Philip
Chair, Committee on Diversity, Equity, and Campus Climate



March 24, 2023

CHAIR MARY ANN SMART
Academic Senate

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

Dear Chair Smart,

The Committee on Faculty Welfare (FWEL) has discussed the **Systemwide Review of Proposed Presidential Policy – Anti-Discrimination (AD Policy)** at one meeting and in subsequent discussion on email. We strongly believe that these points must be addressed to have a fair, comprehensive, and workable policy on this important challenge:

Missing in the current draft:

1. AD Policy should make clear that the UC does not condone claims of discrimination that shade into illegal activities such as slander, libel, entrapment, framing, blackmail, or extortion.
2. AD Policy should not have a light trigger that can be pulled when a member of our community receives a bad job evaluation or course grade. Indeed, since policies are already in place to ensure fairness in both of these areas, we would like to see the Policy rule out such complaints in all but special circumstances.
3. The rights of parties in the process are poorly defined. There is no discussion of whether the parties have the right to respond to evidence or witnesses before the formal report is forwarded to the administrator who makes decisions. May the parties append comment at this point? We find nothing on resources for a person's defense against allegations of discrimination.
4. The AD Policy must have a navigational aid so that anyone wishing to step forward with a complaint about discrimination can have a good idea of the channel they should choose. We note, and the draft makes clear, that there is a welter of choices.
 - If you are a victim of abusive conduct as defined in the [*Presidential Policy on Abusive Conduct in the Workplace*](#), you can submit a complaint through Employee and Labor relations. Report Abusive Conduct [here](#).
 - If you have a concern related to [Discrimination](#) or [Sexual Violence and Sexual Harassment](#), you can file a report with the [Office for the Prevention of Harassment and Discrimination \(OPHD\)](#), with this form: [Report Harassment and Discrimination](#).

- You may file a report anonymously or by name on the [UC Systemwide Intolerance Reporting Form](#)
- You may file a report with the campus police if you experience or observe a [Hate Crime](#).
- You may submit a complaint or report an issue of concern to [Disability Access and Compliance](#)
- You may contact the Complaint or Special Project Manager in your unit.

Undergraduates and graduate students have these additional channels:

- A Faculty Graduate advisor
- [Ombuds Office for students and postdoctoral appointees](#)
- [Resources & Services for Graduate Students](#)
- [ASUC Student Advocate Office \(SAO\)](#)
- [Student Legal Services](#)

The following passages below, need improvement:

1. Part II. DEFINITIONS, Section B – Other Definitions, 5. Protected Category (p. 4).

An identity protected by federal or state law, including the following: race, religion, color, citizenship, national or ethnic origin, ancestry, sex (including pregnancy, childbirth, breastfeeding or related medical conditions), gender, gender identity, gender expression, gender transition, sexual orientation, physical or mental disability (including having a history of a disability or being regarded as being disabled), medical condition (cancer-related or genetic characteristics), predisposing genetic information (including family medical history), marital status, age (over 40), or veteran or military status. This definition applies for the purposes of this Policy only.

The Location section on under *Definitions* is unhelpful for, as we see on p. 6, *Policy Coverage*, the physical location is much larger in scope.

The *Protected Category* seems to say that a person under the age of 40 does not enjoy this protection. Can it be that if, for example, a student who was remarkably young in a course of study, it would have difficulty getting attention for a claim of discrimination?

2. Part II. Definitions, Section B – Other Definitions, 7. Responsible Employee (p. 5).

If a Responsible Employee learns, in the course of employment, that any individual affiliated with the University may have experienced Prohibited Conduct, as defined in this Policy, the Responsible Employee must promptly notify the Local Implementation Officer or designee.

“Learns” appears only once in this document and it is not defined. The Policy should say more, possibly in the Definitions section, possibly in a FAQ to be added, or possibly in illustrating other steps in the new policy text itself.

FWEL does not see what *in the course of employment* adds. It should be cut as jargon, unless the UC system means to limit liability by stating that the mandate is over a typical workweek, not 24/7, and not including holidays. This could be an important distinction.

“Should promptly notify” is far better than “must promptly notify,” especially for a new policy where people will need time to determine the right channel to use. It is helpful to no one to bring complaints promptly to the wrong office of the University. Also, “should” sends the message that this is a decision to be taken thoughtfully, not by reflex.

3. Part III. POLICY TEXT, Section E – Free Speech and Academic Freedom (p.7).

We were heartened by the Free Speech and Academic Freedom section but suggest a change in the last sentence that now reads:

This right extends to curriculum and instruction within the classroom, which includes discussions, perspectives, information, and challenges to conventional beliefs.

This is the sole reference to a teaching space in the document and we worry if “classroom” could circumscribe the freedom we mean to protect. This sentence might read:

This right extends to curriculum and instruction within the classroom, lab, studio, or anywhere else that instruction takes place. Discussions, with varied perspectives and sources of information are valued here. Challenges to conventional beliefs are common and useful.

4. Part V. PROCEDURES, Section A, 5.b Formal Investigation (p. 14).

While the parties have the right to identify evidence and witnesses, the University bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.

It is unclear whether the University is required to consider evidence and interview witnesses brought forward by parties (or justify why not).

We appreciate the opportunity to weigh in on these matters.

Sincerely,



Thomas Leonard, Co-Chair
Committee on Faculty Welfare



Nancy Wallace, Co-Chair
Committee on Faculty Welfare

TL/NW/pgs



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

March 24, 2023

CHAIR MARY ANN SMART
Academic Senate

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

Dear Chair Smart,

On March 3, 2023, the Committee on Privilege and Tenure at Berkeley reviewed and discussed the Proposed Presidential Policy on Anti-Discrimination. P&T found the policy draft to be clear and they understood the legal aspects of it. The Committee noted that there seemed to be overlap with this and the Abusive Conduct policy implemented in January 2023. It would be helpful if there was an overall guide to when each policy should be applied (and I know that the UC P&T committee has also requested this clarification).

P&T did question how this policy will hinge on the definition of “free speech” and how this grey zone could result in more work for P&T. The Committee was particularly concerned with the absence of any social media (e.g., is voicing an opinion on Twitter that incites thousands of followers to go after a colleague considered “free speech” or harassment?). Perhaps these aspects are not in the scope or intended for this policy; however, P&T thought it worthwhile to comment of its concerns in this omission.

We appreciate the opportunity to provide our perspective.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Minor'.

Andrew Minor, Chair
Committee on Privilege and Tenure

AM/pgs



DAVIS DIVISION OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8502
(530) 752-2220
academicsenate.ucdavis.edu

April 19, 2023

Susan Cochran
Chair, Academic Council

RE: Proposed Presidential Policy on Anti-Discrimination

Dear Susan,

The proposed Presidential Policy on Anti-Discrimination was forwarded to all standing committees of the Davis Division of the Academic Senate. Two committees responded: Academic Freedom and Responsibility (CAFR) and Faculty Welfare (FWC).

Both committees expressed concern over the broad authority granted to the “Local Implementation Officer.” Information is not provided about the qualifications required of the officer. To protect against too much authority in one person, FWC argues that accused individuals “should be provided counsel, be protected from capricious determinations, be given the opportunity to be judged by a committee composed of their fellow peers and given an opportunity to file an appeal.” Similarly, CAFR thinks that the Academic Senate, through academic freedom committees or other means, should play a role in determining if a case presents questions of academic freedom, rather than playing a role only after that determination has been made (see Section V.A.5.b.iv).

Lastly, FWC notes that use of the phrasing “Individuals may engage...” in the second sentence of Section III.C. could inadvertently imply permission, and should be edited to “It is possible that individuals would engage...” or similar phrasing.

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Palazoglu".

Ahmet Palazoglu
Chair, Davis Division of the Academic Senate
Distinguished Professor of Chemical Engineering
University of California, Davis

Enclosed: Davis Division Committee Responses

c: Monica Lin, Executive Director, Systemwide Academic Senate
Michael LaBriola, Assistant Director, Systemwide Academic Senate
Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

April 11, 2023

Ahmet Palazoglu

Chair, Davis Division of the Academic Senate

RE: Request for Consultation on Proposed Presidential Policy on Anti-Discrimination

Dear Ahmet:

The Committee on Academic Freedom and Responsibility (CAFR) has reviewed the Request for Consultation (RFC) on Proposed Presidential Policy on Anti-Discrimination. In review of the new proposed policy, the committee is providing some comments and concerns below for consideration.

The committee believes that when issues of Academic Freedom arise in the course of an investigation, it is important that the Academic Senate have some significant role in the assessment and/or resolution process. This policy appears to acknowledge a Senate role after a determination has been made that the case involves Academic Freedom issues, but not to contemplate Senate involvement in determining whether there is an Academic Freedom issue at stake. This raises the risk of administrators and staff unilaterally excluding the Senate from issues the Senate may believe are within its purview and without review or Senate input. The proposed presidential policy states, "When the Formal Investigation implicates academic appropriateness or academic freedom, the Local Implementation Officer will consult with the appropriate academic officer for relevant academic expertise" (V.A.5.b.iv) Rather than allocating this decision to the Local Implementation Officer, the policy should state that the Senate, perhaps through CAFR, has a role in determining whether the case presents Academic Freedom questions.

The committee supports the policy generally and agrees that there were many things Senate members could do that would not merit protection and would result in justified consequences, including dismissal, but the committee does not believe that administration can determine or police that distinction.

The committee believes that the Proposed Presidential Policy on Anti-Discrimination is generally sound and, with a fix to guarantee Senate involvement in determining whether there is an Academic Freedom concern, would be beneficial to the university.

The Davis Division Committee on Academic Freedom and Responsibility appreciates the opportunity to comment on this proposed Presidential policy.

Sincerely,



Gregory Downs

Chair, Committee on Academic Freedom and Responsibility

April 10, 2023

Ahmet Palazoglu

Chair, Davis Division of the Academic Senate

RE: Request for Consultation – Proposed Presidential Policy on Anti-Discrimination

Dear Ahmet:

The Committee on Faculty Welfare has reviewed the RFC – Proposed Presidential Policy on Anti-Discrimination and had a few suggestions and several serious concerns. One suggestion would be to modify the language listed under Section C - “Conduct that Violates this Policy” (page 6 of 23) from “Individuals may engage...” to “It is possible that individuals would engage...” to reduce any potential confusion that the word “may” implies permission. The committee also voiced some concerns with the language used in Section E – “Free Speech and Academic Freedom” (page 7 of 23). Members felt that stating that faculty “enjoy significant free speech protections” trivializes the fact that faculty *have* these rights. Most importantly, the committee had concerns about the considerable authority of this “local officer” and believes that it would be necessary to have more information on who would be considered eligible for this position based on their qualifications, training, and the scope of their responsibilities. The committee found it unacceptable that a final outcome of a formal investigation would be done by a single individual without specified experience or training. It is the committee’s opinion that accused individuals should be provided counsel, be protected from capricious determinations, be given the opportunity to be judged by a committee composed of their fellow peers and given an opportunity to file an appeal.

Sincerely,



Janet Foley

Chair, Committee on Faculty Welfare

c: Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate

April 19, 2023

Susan Cochran, Chair
Academic Council

Re: Systemwide Review of Proposed Presidential Policy on Anti-Discrimination

Dear Chair Cochran,

The Irvine Division discussed the proposed Presidential Policy on Anti-Discrimination at its Cabinet meeting on April 18, 2023. The Committee on Privilege and Tenure (CPT), Council on Teaching, Learning, and Student Experience (CTLSE), Council on Faculty Welfare, Diversity, and Academic Freedom (CFW), and Council on Equity and Inclusion (CEI) also reviewed the proposal. Their feedback is attached for your review.

Cabinet members shared many of the same concerns. Several members were alarmed by the authority vested in the Local Implementation Officer. For example, combined with the preponderance of the evidence standard, the lack of opportunities to appeal would give the Local Implementation Officer a broad latitude with few checks and balances. Members felt strongly that additional information on how that individual would be selected at the campuses is highly desirable and that the policy should include an appeal process as a counterbalance.

Finally, some members noted that caution should be taken when applying the term "Protected Category" to individuals, rather than forms of discrimination, in order to avoid inadvertently implying that only individuals of select identity groups are protected. The policy is to prevent individuals from being discriminated on the basis of protected categories, and it was therefore suggested that the policy language be reviewed from that lens and rephrased as needed.

The Irvine Division appreciates the opportunity to comment.

Sincerely,



Georg Striedter, Chair
Academic Senate, Irvine Division

Enclosures: CPT, CTLSE, CFW, CEI memos

Cc: Arvind Rajaraman, Chair Elect-Secretary
Jisoo Kim, Executive Director
Gina Anzivino, Associate Director

April 4, 2023

**GEORG STRIEDTER, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

Re: Proposed Presidential Policy on Anti-Discrimination

The Council on Equity and Inclusion discussed the proposed presidential policy on anti-discrimination at its meeting on April 3.

Members were unanimously supportive of the proposed policy. They appreciated there was no time limit for reporting, noting that microaggressions can build up over time before an individual comes forward with a report. At the same time, they had several questions and comments.

To start, members would like to know more about the Local Implementation Officer, including how they will be selected, and how each campus will ensure they are unbiased and that individuals feel safe reporting to them. Some members expressed concern about the wide range of decision-making responsibilities vested in this one individual. Given this officer's authority at each campus, they would like to know whether individuals can elevate complaints or submit appeals to the Office for Systemwide Accountability, Fairness, and Equity (SAFE). Members also suggested that more information about how SAFE will guide the establishment of local campus offices would be helpful.

Some members reported graduate student accounts of caste discrimination and would like to understand whether the policy covers this specific form of discrimination. They understand that a protected category is an identity defined and protected by federal and/or state law and noted that California is currently considering a ban on caste discrimination; presumably this would be incorporated into the policy if the proposed legislation is passed.

Other members recommended that the University should better coordinate and streamline overlapping policies (e.g., the proposed anti-discrimination policy, new abusive conduct policy, and sexual violence/sexual harassment policy) and related trainings. They noted it is time consuming and confusing to navigate multiple policies and required trainings. Further, several members questioned the efficacy of current trainings and suggested that other educational efforts might be more effective toward changing behaviors that lead to policy violations.

The Council on Equity and Inclusion appreciates the opportunity to comment.

Sincerely,



Sora Han
Council on Equity and Inclusion*

*Substitute chair for April 3 meeting

Cc: Arvind Rajaraman, Chair Elect-Secretary
Jane Stoeve, Chair, Council on Equity and Inclusion
Jisoo Kim, Executive Director
Gina Anzivino, Associate Director and CEI Analyst
Stephanie Makhoul, Senate Analyst

March 30, 2023

**GEORG STRIEDTER, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

Re: Proposed Presidential Policy – Anti-Discrimination

Systemwide Senate Chair Susan Cochran has distributed for review a proposed presidential policy on anti-discrimination. The proposed policy affirms the University's commitment to creating and maintaining a healthy working and learning environment that is inclusive and free of discrimination, harassment, and retaliation.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on March 14, 2023, and submits the following comments:

1. Gaslighting should be added to the list of Prohibited Conduct.
2. This policy does not cover or explain more subtle forms of discrimination. "Interpersonal rejection," for example, which can be described as colleagues avoiding or ignoring one another for various reasons, can impact a department environment and have far-reaching negative effects on relationships which may result in discrimination and/or a poor social climate for those involved.
3. Members expressed concern regarding new offices that may oversee the implementation of this policy, particularly in light of recent budget issues. While UCI will not be creating a new office, other UC campuses may need to do so.
4. Some members stated that the policy seems redundant and there is no clear delineation between similar policies like the Abusive Conduct Policy and the Sexual Harassment and Sexual Violence policy. As a result, it also seems difficult to refer people who may need assistance with any of the similar policies.

Sincerely,



Lisa Naugle, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom



C: Jisoo Kim, Executive Director
Academic Senate

Gina Anzivino, Associate Director
Academic Senate

March 14, 2023

**GEORG STRIEDTER, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

RE: Proposed Presidential Policy – Anti-Discrimination

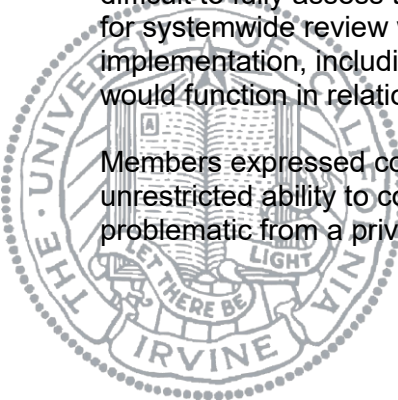
The Committee on Privilege and Tenure (CPT) reviewed and discussed the proposed Presidential Policy on Anti-Discrimination at its meeting on March 13, 2023.

Members agreed with the goals of the proposed policy, but raised several questions and concerns about it. To start, they noted overlap with the University's sexual violence/sexual harassment (SVSH) policy and the new policy on abusive conduct in the workplace. Members anticipated difficulty parsing the various policies and types of conduct they cover, as well as questions about how the University would handle simultaneous allegations under multiple policies. Some members questioned whether a separate policy was necessary, or if provisions could be subsumed within existing policy in order to alleviate confusion with respect to reporting, investigating, and adjudicating cases. As an example, harassment of individuals in protected categories could be included in the abusive conduct policy and subject to enhanced disciplinary sanctions. Members felt that an upfront and clear articulation of the motivating principles for the policy would help address these questions about redundancy. Members also thought that providing concrete examples of cases covered by the policy would help facilitate its review. Additionally, members understood that a tool would be developed to help distinguish between the various policies; they noted that this would be helpful now, during the review period.

Some members expressed concern that the policy gives the officer charged with oversight broad rights but provides limited consideration for the rights of respondents. They questioned whether the evidentiary standard of "preponderance of the evidence" was correct or should be elevated to the stricter "clear and convincing" standard. Members also recommended that the policy should include alternative appellate procedures beyond an investigation, such as a hearing and appeal process, for the benefit of both parties. Members observed there was no provision giving the parties an opportunity to comment on the final investigation report. They noted, as well, that there was no time limit for reporting according to the policy, but it was not clear whether this was consistent with state law.

The committee agreed that specificity about implementation and processes that would ensure the policy's consistent application across the campuses would be useful. Members understood that a central office would be established to oversee implementation of the policy and to develop standard procedures, guidance, and training for campus offices. However, they noted that it was difficult to fully assess the proposal without these procedures and asked that they be distributed for systemwide review when they are developed. Members also sought more clarity on local implementation, including a better description of the Local Implementation Office and how it would function in relation to other campus entities that address conduct.

Members expressed concern that according to policy, the Local Implementation Officer has unrestricted ability to consult with other offices and individuals on campus, which may be problematic from a privacy standpoint. They suggested including a minimum requirement that



the officer only share information on a need-to-know basis. The policy also stated that the Local Implementation Officer would keep records of all reports and conduct addressed through alternative resolution. It was not clear how long these records would be kept and who would have access to them.

Finally, members noted that the policy twice referred to consultation with the appropriate “academic officer” on issues related to academic freedom. However, they did not understand the term “academic officer” and recommended that a definition be added.

The Committee on Privilege and Tenure appreciates the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Bogi Andersen', with a long horizontal flourish extending to the right.

Bogi Andersen, Chair
Committee on Privilege and Tenure

Cc: Arvind Rajaraman, Chair Elect
Jisoo Kim, Executive Director
Gina Anzivino, Associate Director
Julie Kennedy, CPT Analyst
Stephanie Makhoul, Senate Analyst

March 9, 2023

**GEORGE STRIEDTER, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

Re: Systemwide Proposed Presidential Policy – Anti-Discrimination

Systemwide Senate Chair Susan Cochran has distributed for review a proposed presidential policy on anti-discrimination. The proposed policy affirms the University's commitment to creating and maintaining a healthy working and learning environment that is inclusive and free of discrimination, harassment, and retaliation.

The Council on Teaching, Learning, and Student Experience (CTLSE) discussed this issue at its meeting on March 6, 2023, and members had no objections to the proposed policy at this time.

Sincerely,

Mary McThomas

Mary McThomas, Chair
Council on Teaching, Learning, and Student Experience

C: Jisoo Kim, Executive Director
Academic Senate

Gina Anzivino, Associate Director
Academic Senate

Stephanie Makhoul, Cabinet Analyst
Academic Senate



April 19, 2023

Susan Cochran
Chair, UC Systemwide Academic Senate

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

Dear Chair Cochran,

At the April 13, 2023, meeting of the Executive Board, members reviewed the proposed Presidential Policy on Anti-Discrimination and the enclosed divisional committee and council responses. Members appreciated the opportunity to review the proposal and offered the following comments.

Executive Board (EB) members support policies that address discrimination and enhance diversity, equity, and inclusion efforts. Members applauded the intent of the proposed policy and appreciated the goal of establishing a policy that addresses discrimination across categories including staff, faculty, students, and others. Members appreciate that there is a need to harmonize the University's approach to other forms of discrimination with that to sexual violence and sexual harassment (SVSH). We of course need to comply with federal and state law regarding discrimination.

However, members expressed concerns about the lack of explicit recognition of shared governance and the role of the Academic Senate in addressing these matters. The policy places much power in the "Local Implementation Officer." The attached Committee on Privilege and Tenure (P&T) letter states:

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.

Additionally, the letter from the Committee on Diversity, Equity, and Inclusion (CODEI) highlights the limitations of this policy when it comes to preventing discrimination and promoting cultural change. Other letters include discussion of terminology and policy scope.

The Executive Board voted unanimously to not endorse the proposed policy as written based on the many pertinent statements in the enclosed letters from the divisional committees and councils, especially the Committee on Charges and the Committee on Privilege and Tenure. Members urged that the proposed policy be significantly revised and improved to address the division's concerns.

Sincerely,



Jessica Cattelino
Chair
UCLA Academic Senate

Encl.

Cc: April de Stefano, Executive Director, UCLA Academic Senate
Andrea Kasko, Vice Chair/Chair Elect, UCLA Academic Senate
Shane White, Immediate Past Chair, UCLA Academic Senate

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.

April 10, 2023

Jessica Cattelino, Chair
UCLA Academic Senate

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

Dear Chair Cattelino,

At the February 14, 2023 and April 11, 2023 meetings of the Committee on Diversity Equity and Inclusion (CODEI), committee members reviewed the Proposed Presidential Policy on Anti-Discrimination. Through its discussion, the Committee found that the current draft utilizes a great amount of boiler-plate language regarding legal compliance on non-discrimination, little reference to the human relations aspect of creating a change in climate and culture. Because of this, the policy does not address the complementary and parallel issues that go along with anti-discrimination directly, but merely addresses the legal implication of compliance, adjudication, and punishment of what occurs when these items are not addressed.

The Committee believes this policy should be minimally and legally compliant but also recommends reconsideration of the larger contextual issues, and Diversity, Equity, and Inclusion goals, to be shared in the future again for review.

Sincerely,



Reynaldo F. Macias
Chair, CODEI

cc: Steven Anderson, Member, Committee on Diversity, Equity and Inclusion
April de Stefano, Executive Director, Academic Senate
Shelleen Greene, Member, Committee on Diversity, Equity and Inclusion
Christine Grella, Member, Committee on Diversity, Equity and Inclusion
Theodore Hall, Member, Committee on Diversity, Equity and Inclusion
Smadar Naoz, Member, Committee on Diversity, Equity and Inclusion
Kyeyoung Park, Member, Committee on Diversity, Equity and Inclusion
Margot Quinlan, Member, Committee on Diversity, Equity and Inclusion
Michael A Rodriguez, Member, Committee on Diversity, Equity and Inclusion
Lilia Valdez, Senior Policy Analyst, Committee on Diversity, Equity and Inclusion

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.

April 3, 2023

Jessica Cattelino, Chair
Academic Senate

Re: Systemwide Review: Proposed Presidential Policy on Anti-Discrimination

Dear Chair Cattelino,

At its meeting on March 20, 2023, the Council on Planning and Budget (CPB) reviewed the Proposed Presidential Policy on Anti-Discrimination. Members offered the following comments.

On page 19, section 5, the policy mentions "Protected Category". Some members noted that the definition of medical condition is very restricted and thus problematic by leaving out other conditions that ought to be protected. Members also observed that there is a mention about establishing a new office, which they consider to be excessive and unnecessary while adding to administrative expansion.

If you have any questions for us, please do not hesitate to contact me at afl@ucla.edu or via the Council's analyst, Elizabeth Feller, at efeller@senate.ucla.edu.

Best regards,



Andrew Leuchter, Chair
Council on Planning and Budget

cc: Andrea Kasko, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Associate Director, Academic Senate
Members of the Council on Planning and Budget

March 22, 2023

Jessica Cattelino, Chair
Academic Senate

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

Dear Chair Cattelino,

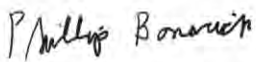
At its meeting on March 14, 2023, the Faculty Welfare Committee (FWC), reviewed and discussed the Systemwide Senate Review on the Proposed Presidential Policy-Anti- Discrimination. Members offered the following comments.

The primary objections to this new policy are that it is redundant and unnecessary and that it infringes the rights of faculty in joint governance. The document states that it covers no new conduct of the faculty not covered by the Faculty Code of Conduct, making the policy unnecessary.

On the other hand, and also noted, faculty, appear to play no precise role in the investigation of punishment of violations, even in cases in which Academic Freedom is an issue. The Committee would be happier if the decisions of a faculty body were determinative when Academic Freedom was an issue. Finally, the procedures themselves are too poorly described making it difficult for the committee to make an informed evaluation.

Thank you for the opportunity to comment. If you have questions, please do not hesitate to contact me at bonacich@soc.ucla.edu or via the Committee analyst, Renee Rouzan-Kay, at rrouzankay@senate.ucla.edu.

Sincerely,



Phillip Bonacich, Chair
Faculty Welfare Committee

cc: Andrea Kasko, Vice Chair/ Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Renee Rouzan-Kay, Senior Policy Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee

3125 Murphy Hall
410 Charles E. Young Drive East
Los Angeles, California 90095

March 8, 2023

To: Jessica Cattelino, Chair, UCLA Academic Senate

From: James Bisley, Chair, Graduate Council

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

At its meeting on March 3, 2023, the Graduate Council reviewed and discussed the *(Systemwide Senate Review) Proposed Presidential Policy – Anti-Discrimination* and offers the following observations for the Executive Board’s consideration:

- On page 4, under the definition of “Preponderance of Evidence,” some members had concerns regarding the determination for the standard of proof and recommended that the standard of proof considers malicious intent and that nonevidence issues do not have an impact.
- Some members expressed concerns that the broad definition of prohibited conduct may have unintended effects and recommended providing explanatory text on what does not fall under prohibitive conduct. The underlying concern was about the mandatory reporting by Responsible Employees (first paragraph, p 5 of 23). Given the breadth of the definition, Responsible Employees will either have to report every complaint or risk being held responsible for failing to report issues that they may reasonably consider not to be discrimination, but that others may interpret as discrimination.
- On page 3, some members had linguistic comments regarding the inconsistent use of the adverb “unreasonably” under section 2.a Unfavorable Action, and questioned the lack of the adverb before the phrase “materially interferes.”

We appreciate the opportunity to express our views on this matter. If you have any questions, please contact us via Graduate Council’s Analyst, Emily, at ele@senate.ucla.edu.

3125 Murphy Hall
410 Charles E. Young Drive East
Los Angeles, California 90095

February 24, 2023

To: Jessica Cattelino, Chair, Academic Senate

From: Kathleen Bawn, Chair, Undergraduate Council

Re: Systemwide Senate Review of Proposed Presidential Policy – Anti-Discrimination

At its meeting on February 24, 2023, the Undergraduate Council discussed the proposed policy from the UC Office of the President on discrimination, harassment, and retaliation that applies to all staff, faculty and academic appointees, and students.

Members were in agreement with the proposed policy and offered no further comments.

Thank you for the opportunity to opine. If you have any questions, please contact me via the Undergraduate Council analyst, Julia Nelsen, at jnelsen@senate.ucla.edu.

CC: April de Stefano, Executive Director, Academic Senate
Anne Warlaumont, Vice Chair, Undergraduate Council
Andrea Kasko, Vice Chair/Chair-Elect, Academic Senate
Julia Nelsen, Committee Analyst
Shane White, Immediate Past Chair, Academic Senate

UCLA MEMORANDUM

FACULTY EXECUTIVE COMMITTEE
College of Letters and Science

A265 Murphy Hall
Box 951571
Los Angeles, California 90095

To: Yvette Gullatt, Vice President for Graduate and Undergraduate Affairs and Vice Provost for Equity, Diversity, and Inclusion
Cheryl Lloyd, Vice President, Systemwide Human Resources
Douglas M. Haynes, Vice President, Academic Personnel and Programs

Fr: Erin Debenport, Chair, College Faculty Executive Committee

Date: April 5, 2023

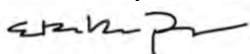
Re: **Response to Proposed Presidential Policy - Anti-Discrimination**

The College Faculty Executive Committee (FEC) at UCLA appreciates the opportunity to comment on the proposed presidential Policy on Anti-Discrimination. The policy was discussed at the College FEC meeting held on March 10, 2023. This response consolidates the main ideas that our faculty shared.

1. Members inquired about roles and/or processes that the proposal included and wondered if similar ones already exist elsewhere, including in campus EDI offices. There was concern over duplication of labor and efforts.
2. Members noted with concern that there is no reference to faculty input, provisions, or process involvement, or Senate committees such as Charges and Tenure and Privileges.
3. Members expressed concern over the creation of non-faculty, administrative/bureaucratic offices and positions, especially in this time of increased costs and budgetary constraints.
4. Without appropriate training, members felt they were at a disadvantage in judging the legal ramifications of the proposal, including for those faculty who take on administrative responsibilities such as chairing departments.

As always, our membership appreciates the consultative process and welcomes the opportunity to participate in the discussion of important matters like this. You are welcome to contact us with questions.

Erin Debenport, Chair





OFFICE OF THE ACADEMIC SENATE
PATTI LIWANG, CHAIR, ACADEMIC SENATE
senatechair@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343

April 19, 2023

To: Susan Cochran, Chair, Academic Council

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

The proposed Presidential Policy – Anti-Discrimination was distributed for comment to the Merced Division Senate Committees and the School Executive Committees. The following committees offered several comments for consideration. Their comments are appended to this memo.

- Committee on Rules and Elections (CRE)
- Committee on Research (CoR)
- Committee for Equity, Diversity, and Inclusion (EDI)
- Committee on Faculty Welfare and Academic Freedom (FWAF)
- Graduate Council (GC)
- Committee on Library & Scholarly Communications (LASC)

CRE offered comments on specific sections of the policy and recommended that the Local Implementation Officer be designated via a process that includes balanced input from Administration, Faculty, Staff and Students; a term of appointment for the Local Implementation Officer; and a procedure for performance evaluation.

- **Section II.A.2.a. Unfavorable Action**
“Unfavorable Action: Adverse or unequal treatment that unreasonably denies, unreasonably limits, or materially interferes with an individual’s ability to participate in University programs, activities, or employment, and/or receive services, benefits or aid, unless required or authorized by law.” As written, the definition of “Unfavorable Action” implies the existence of unreasonable treatment that is required or authorized by law.

Section II.A.3.b. Retaliation

“[...] Good faith actions lawfully pursued in response to a report of Discrimination and/or Harassment (such as gathering evidence) are not, without more, Retaliation.” It is not clear what “more” refers to in this sentence.

- **Section V. Procedures**
The policy document would benefit greatly from inclusion of one or more flowcharts that summarize the procedures.
- **Section V.B.1 Location Responsibilities**

“Designate and provide adequate resources and independence to a Local Implementation Officer.”

CoR believed the policy is much improved, with clearer terminology and definitions. However, the committee had remaining concerns that this policy could conflict with principles of academic freedom and free speech, which could hinder research. Section III.E. tries to alleviate these concerns by stating that “This Policy will be implemented in a manner that recognizes rights to freedom of speech and expression.” Yet, the policy does not describe a process for ensuring this. For example, if an employee alleges that a complaint interferes with their academic freedom to pursue legitimate research, how will the University ensure that the claim is evaluated by numerous individuals who have the relevant expertise? CoR recommends that the policy address these types of questions more explicitly.

EDI requested clarity regarding the “local implementation officer.” The committee believed there should be some clarification and consistency about which entity holds the power to enact the anti-discrimination policy on each campus. In addition, since this entity/officer can make decisions on policy related to discriminatory events on campus, EDI suggests there is Senate (faculty governance) input on who is hired into these positions. EDI also strongly suggests revisions to the language regarding harassment, e.g. that unwelcome conduct has to be sufficiently “severe, persistent, or pervasive” (a single act, if especially severe or egregious, can lead to unwelcome conduct) and that the language about harassment might be more inclusive. Finally, EDI suggested more clarification regarding “Protected Categories” and recommends this additional language: “membership in protected categories is defined by the person reporting.”

FWAF asserted that the language about repeat complaints against the same individual needs to be strengthened (see appended memo for suggested revised language). FWAF also offered the following specific revisions:

- Under Section III.D.2, FWAF suggests that privacy and confidentiality be more clearly defined.
- Under Section V.A.3 pertaining to Interim supportive measures and no-contact orders, FWAF suggests that Supportive Measures be determined in consultation with the Complainant, giving significant weight to the Complainant’s determination of their needs.
- Section II.B.2 defines Confidential Resources as Ombuds Offices and certain health care providers and pastoral counselors. FWAF wishes to ensure that the University provides Ombudspersons who have faculty experience and expertise (in addition to staff expertise).

GC offered the following comments: On page 9 of the policy, the U.S. Department of Education Office for Civil Rights is abbreviated with DOE-OCR; however, DOE is the official abbreviation for the Department of Energy. GC recommends using one of the following abbreviations instead:

- ED-OCR
- USED-OCR
- DOED-OCR

LASC suggested it would be helpful if the new proposed policy clarified how it differs from the Presidential Policies on Abusive Conduct in the Workplace (effective 1/1/2022) and the Presidential Policy on Sexual Violence Sexual Harassment Policy (effective 1/1/2022), both of which appear related to the new proposed policy. LASC also encourages the UC Office of the President to ensure that the local campus offices responsible for researching and resolving these difficult complaints of discrimination, abusive conduct, and sexual violence or sexual harassment are adequately resourced.

The Merced Division thanks you for the opportunity to comment on the proposed policy.

CC: Divisional Council
Monica Lin, Executive Director, Systemwide Academic Senate
Michael LaBriola, Assistant Director, Systemwide Academic Senate
Senate Office



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RULES AND ELECTIONS (CRE)

UNIVERSITY OF CALIFORNIA, MERCED

March 3, 2023

To: Patti LiWang, Chair, Divisional Council

From: Christopher Viney, Chair, Committee on Rules and Elections (CRE)

Re: Presidential Policy on Anti-Discrimination

CRE has reviewed the Presidential policy on Anti-Discrimination and offers the following comments.

Section II.A.2.a. Unfavorable Action

“Unfavorable Action: Adverse or unequal treatment that unreasonably denies, unreasonably limits, or materially interferes with an individual’s ability to participate in University programs, activities, or employment, and/or receive services, benefits or aid, unless required or authorized by law.”

As written, the definition of “Unfavorable Action” implies the existence of unreasonable treatment that is required or authorized by law.

Section II.A.3.b. Retaliation

“[...] Good faith actions lawfully pursued in response to a report of Discrimination and/or Harassment (such as gathering evidence) are not, without more, Retaliation”

It is not clear what "more" refers to in this sentence.

Section V. Procedures

The policy document would benefit greatly from inclusion of one or more flowcharts that summarize the procedures.

Section V.B.1 Location Responsibilities

“Designate and provide adequate resources and independence to a Local Implementation Officer.”

CRE recommends that the Local Implementation Officer be designated via a process that includes balanced input from Administration, Faculty, Staff and Students. We also recommend a term of appointment for a Local Implementation Officer, and a procedure for performance evaluation.

The Committee on Rules and Elections appreciates the opportunity to opine.

CC: CRE Members
Senate Office

UNIVERSITY OF CALIFORNIA, MERCED

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RESEARCH (CoR)
JASON SEXTON, CHAIR

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343

March 3, 2023

To: Patti LiWang, Senate Chair

From: Jason Sexton, Chair, Committee on Research (CoR) 

Re: CoR Comments on the Proposed Presidential Policy – Anti-Discrimination

CoR reviewed the Proposed Presidential Policy on Anti-Discrimination and offers the below comments.

The policy is much improved, with clearer terminology and definitions. However, there are remaining concerns that this policy could conflict with principles of academic freedom and free speech, which could hinder research. Section III.E. tries to alleviate these concerns by stating that “This Policy will be implemented in a manner that recognizes rights to freedom of speech and expression.” Yet, the policy does not describe a process for ensuring this. For example, if an employee alleges that a complaint interferes with their academic freedom to pursue legitimate research, how will the University ensure that the claim is evaluated by numerous individuals who have the relevant expertise? The policy needs to address these types of questions more explicitly.

We appreciate the opportunity to opine.

cc: Senate Office



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR EQUITY, DIVERSITY AND INCLUSION (EDI)

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343

March 1, 2023

To: Patti LiWang, Chair, Divisional Council

From: [Committee for Equity, Diversity and Inclusion \(EDI\)](#)

Re: [Systemwide Review of Presidential Policy – Anti-Discrimination](#)

EDI reviewed the proposed Anti-Discrimination Presidential Policy and offers its comments below.

- I. First, we request clarity regarding the “local implementation officer.” We understand that this likely is a different entity across campuses but think there should be some clarification and consistency about which entity holds the power to enact the anti-discrimination policy on each campus.

For example, there are many pathways to report harassment at UC Merced. One reporting mechanism is the Office for the Prevention of Harassment and Discrimination, but there is also the Campus, Advocacy, Resources, and Education (CARE) office, as well as the Office of Student Rights and Responsibilities. Each of these entities operate in different ways, and has varying levels of rapport and impact.

- II. The clarification of the “local implementation officer” is important for our second comment. Since this entity/officer can make decisions on policy related to discriminatory events on campus, we suggest there is Senate (faculty governance?) input on who is hired into these positions. More specifically, we believe it important that an EDI statement is crafted by each Local Implementation Officer to ensure they have a comprehensive understanding regarding discrimination, harassment, bullying, and retaliation.

- III. The committee strongly suggests revisions to the language regarding harassment. As written the policy states:

Section II.A.1 (page 2)

“Unwelcome conduct based on a Protected Category (See [Section II.B.7](#)) that is *sufficiently severe, persistent, or pervasive* that it unreasonably interferes with, denies, or adversely limits an individual’s participation in or benefit from the education, employment, or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive.”

First, we reject the notion that unwelcome conduct has to be sufficiently “severe, persistent, or pervasive.” Rather, we content that the inclusion that a single act, if especially severe or egregious, can lead to unwelcome conduct. We think this clause should be struck from the document.

Next, we believe the language about harassment might be more inclusive. Sample language¹ on harassment that we suggest is:

Offensive and prohibited conduct may include, but is not limited to, offensive jokes, slurs, epithets, name calling, physical assaults and threats, unwanted touching and persistent unwanted attention and invasion of personal space, intimidation, ridicule or mockery, and insults and put- downs. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is engaged in without clear affirmative consent.

Discriminatory and harassing actions are prohibited both when they are directed at specific individuals and groups and when they create a hostile environment.

IV. The committee suggests more clarification regarding “Protected Categories.” We know that inclusion in such protected categories is not always obvious and that there is not always consensus on inclusion. If a person perceived harassment or discrimination based on their self-identified category, we think we should honor that identification. Therefore, we suggest adding language “membership in protected categories is defined by the person reporting.”

We thank you for the opportunity to review this policy.

Cc: EDI Members
Senate Office

¹ Adopted from <https://www.humanist-sociology.org/ahs-anti-harassment-policy.html>



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON FACULTY WELFARE AND ACADEMIC FREEDOM
DAVID JENNINGS, CHAIR
djennings3@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343

March 3, 2023

To: Patti LiWang, Chair, Division Council

From: David Jennings, Chair, Committee on Faculty Welfare and Academic Freedom (FWAF)

Re: Presidential Policy – Anti-Discrimination

FWAF reviewed the proposed Presidential Policy – Anti Discrimination and offers the below comments.

The proposed policy outlines “the University’s responsibilities and procedures related to Discrimination, Harassment, and Retaliation.”

The policy makes use of a reasonable person standard for determining what sort of conduct would count as harassment, discrimination, and retaliation (See II.A), and of a preponderance of evidence standard for determining whether a respondent has engaged in this conduct. It requires a Local Implementation Officer (LIO) to receive, investigate, and respond to complaints or reports of prohibited conduct.

While any individual can report prohibited conduct (V.A.1), some members of the community like faculty, campus police, and administrators are mandatory reporters of the conduct targeted by this policy (II.B.7); students, graduate students, and staff appear not to be required to file reports. Campuses must also provide confidential resources for discussing this conduct, such as the Office of the Ombuds, and post information about whom to contact (V.B.2).

After an investigation, any corrective action taken towards a respondent must be consistent with other policies that govern these types of members of the university community, such as the APM for Faculty and Collective Bargaining agreements for Unit-18 Lecturers, TA’s, etc. (IV.F).

FWAF raises the below concerns:

Repeat complaints against same individual (high priority)

When multiple concerns are raised about the same individual over time, the University should have robust mechanisms for investigating and addressing Prohibited Conduct even if no

Complainant proceeds past the initial report or even past consulting with an Ombuds Office. Such repeat cases tend to occur if the Respondent is in a position of authority, Complainants are unaware of similar complaints by others, and/or reports are made by someone other than the Complainants. Two areas could be strengthened:

1. Sec. V.A.5.b.v states that Local Implementation Officer (LIO) “may” initiate investigation if there is “a pattern of alleged conduct toward multiple people by the same Respondent that would, in the aggregate, constitute Prohibited Conduct” (p. 15). We suggest the LIO has a responsibility to do so. Consider replacing “may” with “should” or “shall.” [or “is required to”]
2. Sec. III.F states that Confidential Resources, which include Ombuds Offices, do not report Prohibited Conduct. We suggest [explicitly] giving Ombuds Offices the ability to notify the LIO of consultations regarding Prohibited Conduct by the same potential Respondent against multiple Complainants in separate incidents. The notification could include general information about the nature of the complaints without disclosing the identity of the Complainant or other details. In such cases, the LIO will have fuller context for addressing reports regarding that Respondent and may have a strengthened basis for a University-Initiated Investigation per V.A.b.v.

Privacy and confidentiality

Sec. III.D.2 states that the University will balance privacy interests vs. the need for fair process and other imperatives (7). We agree with this general approach and suggest that privacy and confidentiality be more clearly defined. For example, section V.A.5.a states that the Alternative Resolution process is “private but not confidential” (13). We suggest clearly stating, either here or in definitions or another area, what “private” and “confidential” each mean. We also suggest clarifying who has responsibility for maintaining each. For example, are Complainants and Respondents ever expected to maintain confidentiality, and if so, what are the parameters? Our concerns are to ensure that Complainants are neither discouraged from reporting due to privacy/confidentiality concerns nor unduly silenced regarding their past experiences.

Interim supportive measures and no-contact orders

Section V.A.3 states that the LIO will “determine and oversee Supportive Measures that are immediately necessary” (p. 11). Supportive measures are defined in section II.B.8. and examples are listed in Appendix II (e.g., change of workstation/office, no-contact orders). We wish to ensure interim measures adequately address a Complainant’s need for security. Regarding no-contact orders, Appendix II states the LIO may issue one “only where less restrictive measures would be insufficient to protect the safety of the Complainant or the University’s environment” (p. 22). We suggest that Supportive Measures be determined in consultation with the Complainant, giving significant weight to the Complainant’s determination of their needs. For example, if a Complainant requests a no-contact order as an interim measure, such a measure should not be denied without adequate reason. If a change of workspace is offered, the LIO should seek to minimize disruption to the Complainant or consider moving the Respondent; interim changes of workspace can be experienced by the Complainant as unfair and stigmatizing, and therefore as causing further harm, when the Respondent is not asked to move.

Confidential resources

Section II.B.2 defines Confidential Resources as Ombuds Offices and certain health care providers and pastoral counselors. We wish to ensure that the University provides

Ombudspersons who have faculty experience and expertise (in addition to staff expertise). This is to ensure Ombudspersons understand power dynamics in an academic department, to prevent minimizing of complaints by adjunct or junior faculty against tenured faculty who don't "supervise" them but nevertheless have power over their careers.

FWAF appreciates the opportunity to opine.

cc: Senate Office



ACADEMIC SENATE, MERCED DIVISION
GRADUATE COUNCIL (GC)

UNIVERSITY OF CALIFORNIA, MERCED

March 3, 2023

To: Patti LiWang, Chair, Academic Senate

From: Michael Scheibner, Chair, Graduate Council (GC)

Re: [Proposed Presidential Policy – Anti-Discrimination](#)

GC reviewed the Proposed Presidential Policy – Anti-Discrimination and offers one minor comment:

On page 9 of the policy, the **U.S. Department of Education Office for Civil Rights** is abbreviated with DOE-OCR; however, DOE is the official abbreviation for the **Department of Energy**. GC recommends using one of the following abbreviations instead:

- ED-OCR
- USED-OCR
- DOED-OCR

GC thanks you for the opportunity to review the Proposed Presidential Policy – Anti-Discrimination.

Cc: Graduate Council
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON LIBRARY AND SCHOLARLY COMMUNICATIONS
MARIA DEPRANO, CHAIR
mdeprano@ucmerced.edu

UNIVERSITY OF CALIFORNIA, MERCED
5200 NORTH LAKE ROAD
MERCED, CA 95343

March 3, 2023

To: Patti LiWang, Chair, Academic Senate

From: Maria DePrano, Chair, Committee on Library & Scholarly Communications (LASC)
& LASC Committee Membership

Re: New Presidential Policy on Anti-Discrimination

LASC writes in response to the proposed systemwide Anti-Discrimination Presidential Policy.

First, it would be helpful if the new proposed policy clarified how it differs from the Presidential Policies on Abusive Conduct in the Workplace (effective 1/1/2022) and the Presidential Policy on Sexual Violence Sexual Harassment Policy (effective 1/1/2022), both of which appear related to the new proposed policy.

Second and most important, LASC encourages the UC Office of the President to ensure that the local campus offices responsible for researching and resolving these difficult complaints of discrimination, abusive conduct, and sexual violence or sexual harassment are adequately resourced. Often, these types of complaints are highly emotional, difficult, and complex. If there is inadequate staffing or financial support for the local campus office, then these complaints can drag on without resolution for years to the detriment of all involved.

Thank you for the opportunity to opine.

Cc: Senate Office



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

SANG-HEE LEE
PROFESSOR OF ANTHROPOLOGY
RIVERSIDE, CA 92521-0217
TEL: (951) 827-4390
EMAIL: SANG-HEE.LEE@UCR.EDU

April 10, 2023

Susan Cochran, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Systemwide Senate Review of Proposed Presidential Policy – Anti-Discrimination

Dear Susan,

The Riverside Executive Council discussed the proposed Presidential Policy on Anti-Discrimination during their April 10, 2023 meeting and had no additional comments to forward along with those attached from local committees that responded to the call to opine.

Sincerely yours,

A handwritten signature in cursive script, reading "Sang-Hee Lee".

Sang-Hee Lee
Professor of Anthropology and Chair of the Riverside Division

CC: Monica Lin, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office

FACULTY WELFARE

March 31, 2023

To: Sang-Hee Lee, Chair
Riverside Division

From: Robert Clare, Chair 
Committee on Faculty Welfare

RE: [Systemwide Review] *Proposed Presidential Policy – Anti-Discrimination*

At our March 14, 2023 meeting, the Committee on Faculty Welfare (FW) discussed the *Proposed Presidential Policy on Anti-Discrimination*. FW appreciates the opportunity to evaluate this systemwide review item and commends the University of California's commitment to create and maintain a healthy working and learning environment free of discrimination, harassment, and retaliation.

The following captures our questions and concerns with respect to the proposed policy:

- In V.A.3 (“Initial Assessment of a Report / Immediate Health and Safety”) and V.A.4 (“Closure after Initial Assessment”), there is no mention of outreach to the Respondent. There are, however, steps spelled out to address outreach to and consultation with the Complainant. In general, these portions of the proposed policy seem to portray a Respondent as guilty until proven innocent. Furthermore, throughout the reporting/response/investigative phases, confidentiality is often weaponized in favor of the Complainant and at the detriment of the Respondent. There appears to be a multitude of inequitable trends catering to the Complainant with these kinds of policies, to include the *UC Policy on Discrimination, Harassment, and Affirmative Action in the Workplace* and *UC Abusive Conduct Policy*.
- Although we understand this proposed policy is intended to differ from the *UC Abusive Conduct Policy* (by addressing Prohibited Conduct related to state and federally defined Protected Categories) and will likely replace the *UC Policy on Discrimination, Harassment, and Affirmative Action in the Workplace*, what remains unclear is the full extent of similarities and differences between this proposed policy and the other UC policies that aim to combat discrimination, harassment, and retaliation. How do all these policies overlap? How do they differ?

If UC has already indicated that yet another policy will be created to fill the gap in coverage related to Affirmative Action and pay transparency not addressed in this proposed policy, one wonders whether the proliferation (instead of consolidation) of policies in this regard is optimal.

- In IV.F (“Noncompliance with the Policy”), it states that this proposed policy “does not supplant disciplinary processes described in the APM or in the Academic Senate’s Bylaws or regulations.” As this policy also pertains to faculty: if it does not supplant Academic Personnel Manual (APM)-015 (*The Faculty Code of Conduct*), nor supersede the Academic Senate’s formal charges and/or privilege and tenure adjudication processes, it should be made clear whether or not faculty are protected from a form of double jeopardy, i.e. are faculty protected in the Academic Senate realm from facing investigation and/or punishment for the same alleged offense, after it has been determined by the Local Implementation Officer that there was no discrimination/misconduct?



Academic Senate

COMMITTEE ON DIVERSITY, EQUITY, & INCLUSION

March 29, 2023

To: Sang-Hee Lee
Riverside Division Academic Senate

From: Katherine Stavropoulos, Chair
Committee on Diversity, Equity, & Inclusion

Re: [Systemwide Review] Proposed Presidential Policy – Anti-Discrimination

The Committee on Diversity, Equity and Inclusion (CoDEI) discussed the proposed Presidential Policy on Anti-Discrimination. CoDEI appreciates the overall intent of the proposal, but provides some comments for clarification and additional consideration:

Committee members suggested clarification may be needed regarding the proposed language of harassment as it relates to being “based on a protected category”. Members felt it could be difficult to prove, and an undue burden to those experiencing the harassment, if it is based on being in a protected category. It was suggested that the language be changed to redefine harassment to include the *possibility* of being related to a protected category or *not related* to a protected category.

Members strongly recommend the addition of caste discrimination (or other forms of socioeconomic classicism) be added as a protected category.



Academic Senate

COMMITTEE ON ACADEMIC FREEDOM

March 6, 2023

To: Sang-Hee Lee, Chair
Riverside Division Academic Senate

From: Ivy Zhang, Chair
Committee on Academic Freedom

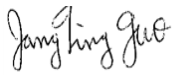
Re: Proposed Presidential Policy for Anti-Discrimination

The Committee on Academic Freedom reviewed the proposed Presidential policy for anti-discrimination and found that academic freedom is given significant consideration in the proposed policy. The Committee noted concern regarding Section V. Procedures as while academic freedom is specifically considered in the process of formal investigation, it was not explicitly discussed for the initial assessment. Given the significance of academic freedom in potential cases related to faculty members, the Committee recommends that relevant academic experts be consulted in the process of initial assessment to evaluate whether protection of academic freedom should be involved.

COMMITTEE ON ACADEMIC PERSONNEL

March 14, 2023

To: Sang-Hee Lee, Chair
Riverside Division Academic Senate

From: Jang-Ting Guo, Chair 
Committee on Academic Personnel

Re: [Systemwide Review] Proposed Policy: Proposed Presidential Policy –
Anti-Discrimination

In its March 6, 2023 meeting, CAP discussed the proposed Presidential Policy on Anti-Discrimination. The committee commends the effort toward more effectively promoting an inclusive campus atmosphere through a unified, comprehensive and clear central policy on anti-discrimination. Below are our comments and suggestions.

- CAP is pleased to note recognition of the difficulty in disambiguating perceived discrimination from potentially legitimate academic freedom expression, and the associated efforts to balance the two. However, it is not clear when the implication of academic freedom will be assessed during the resolution process, and whether there could be temporary repercussions to a faculty member for cases that are eventually assessed to implicate academic freedom since this assessment appears to be undertaken after a formal investigation is opened. As a result, we are concerned that the proposed policy may still exert a chilling effect on academic freedom.
- In cases of harassment, discrimination by unfavorable action, or retaliation, there is an inappropriate action taken by the respondent. Conversely, in the case of discrimination through “failure to accommodate”, it is not clear who has the responsibility for the accommodation. In particular, it should be clarified whether the University is always the respondent in these cases since the proposed policy states “... Failure of the University to provide reasonable accommodations to individuals when required by law” (page 3); if not, then how the responsibility is assessed in the case of a complaint needs to be clearly laid out. Moreover, we believe it is worthwhile to emphasize/clarify whether accommodations for other protected categories not required by law (e.g., not accommodating religious holidays) also constitute discrimination.



March 17, 2023

TO: Sang-Hee Lee, Chair
Riverside Division of the Academic Senate

FROM: John Kim, Chair 
CHASS Executive Committee

RE: Proposed Presidential Policy on Anti-Discrimination

CHASS Executive Committee has reviewed the draft of the proposed UC Anti-Discrimination Policy. We note with some satisfaction that this is a system-wide policy. While different campuses have had largely congruent anti-discrimination statements, they do not all seem to have had the standing of an actual policy and lacked uniform procedures for overseeing and ensuring compliance with them. We are glad to see this effort to create a uniform policy and procedures that will be pursued on all campuses and units of the UC system. We also note that it does not seek to replace or displace the distinct policies on Sexual Violence and Sexual Harassment, which remain in force. The Anti-Discrimination Policy (which also includes policy on Harassment and Retaliation) importantly recognizes other forms of discrimination based on protected categories and also the fact that discrimination can take place through an aggregation of discrete acts by more than one actor and not only as a single egregious act or sequence of acts performed by a single individual.

We have a number of comments, both local and general, and of varying degrees of importance.

General points:

1. In light of the fact that discrimination can take the form of an accumulation of discrete acts or “microaggressions”, it would be important to include explicitly in the policy the opportunity for a Complainant to file a claim of discrimination or harassment (and potentially retaliation) against a unit or department, and not only against named individuals. Often discrimination is endemic to a group, giving rise to a hostile climate that can be even more deleterious to full participation in the life of an academic workplace than individual harassment. In this connection, it should be noted that often retaliation is not a matter of retaliating against a Complainant after the fact, but of harassing individuals who raise questions in public—at meetings or otherwise—about the

intellectual or collegial patterns of discrimination that may be habitual in a department or unit, thus leading to antagonism or resentment on the part of colleagues. The current draft policy does not explicitly allow for this fact.

2. We recommend replacement of the term “community” throughout with the more accurate “workplace”. Recent retaliation by the university against UAW members and against faculty who supported them, as well as retaliation within units on our campuses, has only confirmed the fact that the UC is a corporation and our campuses are workplaces with hierarchies and opposed interests. They are not communities in any meaningful sense, which would entail shared values, interests, and commitments. The policy should be designed to protect campus workers from discrimination that most often results from power differentials, of which Protected Categories are one historically based manifestation.

3. While we welcome the respect offered to academic freedom and constitutionally-protected rights of freedom of expression, there may be cases in which research, teaching, writings and oral presentations are discriminatory in their findings and expression, sometimes with intent, sometimes in effect. Does such academic work enjoy the protections of academic freedom despite its discriminatory impact? In such cases, those who suffer discrimination may not be identifiable individuals, but groups. Should the policy not make explicit pathways open to group claims of discrimination? Its current form seems to imagine the Complainant only as a single aggrieved individual, or, in the case of repeated discrimination by an individual, a series of such aggrieved individuals.

4. Also with regard to Academic Freedom, who is authorized to stand as the “appropriate academic officer” at UCR or any campus? What qualifies them to pronounce on academic freedom issues? Will the appropriate body be the Senate standing committee on Academic Freedom? If not, why not?

5. What safeguards does the draft policy offer against abuse of Anti-Discrimination procedures? It is common knowledge that in recent years spurious charges of discrimination have been brought, both by individuals and by organizations, as a politicized means to challenge colleagues or students who seek to realize the goals of social justice on campus. Such charges are in fact designed to harass and to waste the time of the accused under the cover of claims to have been discriminated against. They abuse the language of diversity, equity and inclusion, while inclusivity is no protection against such abuse, since it does not acknowledge the need to transform the university rather than merely “include” the previously excluded within the structures that historically ensured their exclusion. While it is always possible, but by no means certain, that any Local Implementation Officer may recognize and dismiss such abuse, that can only take place under current policies after an investigation, which ensures that the goal of harassment and time-wasting is achieved, no matter the outcome. The policy at the very least needs strong language and preferably severe sanctions against the abuse of anti-discrimination procedures.

6. Does the term “staff” include administrators, senior or mid-level? This is nowhere made clear, so some ambiguity remains as to whether administrators are subject to the Anti-Discrimination policy. This should be made explicit. If administrators are not subject to the policy, why not?

7. The list of protected categories should be expanded throughout to include discrimination on the basis of caste. Such discrimination is quite widespread and damaging in its effects on colleagues, students and staff members alike. To cite a recent petition circulated by colleagues, with which we are in accord:

Caste-oppressed students and faculty are subjected to [discrimination, bullying, and humiliation](#). According to the preliminary findings of the 2022 Caste in Higher Education Survey administered by the National Academic Coalition for Caste Equity (NACCE) and Equality Labs, 4 in 5 caste-oppressed students, staff, and faculty reported experiencing caste-discrimination at the hands of their dominant caste peers. Further, 75% of them did not report caste-based discrimination in their universities or colleges because caste was not added as a protected category and/or their Diversity, Equity, and Inclusion departments lacked caste competency due to a lack of provisions and training.

Specific points:

8. p. 4, II.B.5: The Protected Categories listing for age discrimination, i.e. “age (over 40),” must be amended in order to conform to Federal law. Federal law stipulates that its age discrimination applies to affected parties “who are at least 40 years of age” (see, <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>). The current wording only applies to persons who are at least 41 years of age.

9. p. 6, III.C.: There is a significant linguistic ambiguity in the following two uses of the modal verb “may”:

"Individuals *may* engage in Prohibited Conduct in person or through other means"
and

"In addition, Prohibited Conduct *may* occur between individuals with the same Protected Category or different Protected Categories"

The ambiguity is that "may" can mean "is possible" or "is permissible." Clearly, the policy means "is possible" in using the word "may," given the larger context of the passages in which this verb is cited. Nevertheless it is still ambiguous. We suggest that the verb "may" in these two instances should be changed to "can" in order to disambiguate the two distinct senses of “may.”

10. p. 3: Definitions, 2.a: what is the meaning of “unless required or authorized by law”?

11. p. 3: 2.b (note): why does the policy not address “disparate impact”, which often goes to our query in #3 above?

12. At several points, including Introductory text, p. 2, Policy, bottom of page 5, p. 6, IV A, B, D: the policy uses the auxiliary “will” where it might be proper to use “shall”, where the latter signifies an obligation or commitment rather than a procedure that is followed over time.

13. p. 13, 5a: last bullet point: what are the limits to confidentiality in the case of an Alternative Resolution? Who may the information be shared with and within what limits? Is this based on a determination of a “need to know”? Is confidential information to be shared only with designated

appointees? This needs clarification to protect both the Complainant[s] and the Respondent[s] who may be found not to have acted in a discriminatory fashion.

14. p. 18: 5B.d: Should the LIO not also be responsible for following up to ensure no retaliation has taken place and that appropriate responsible parties are informed of the outcome of the investigation and advised to protect the complainant against retaliation by Respondent or others?

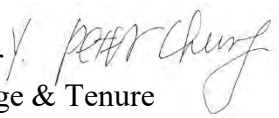


Academic Senate

COMMITTEE ON PRIVILEGE & TENURE

March 6, 2023

To: Sang-Hee Lee, Chair
Riverside Division

Fr: Y. Peter Chung, Chair 
Committee on Privilege & Tenure

Re: [Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination

The UCR Academic Senate Committee on Privilege and Tenure reviewed the Proposed Presidential Policy on Anti-Discrimination. Some member felt that the policy was well written, others put forth the following questions and critiques for consideration:

- Will the described policy be duplicated on campuses?
- When the complainant is a student, why isn't alternative resolution an option?
- Member questions: Member questions: Is the described policy office going to be duplicated on campuses?
- Why is there no time limit for reporting violations of this policy? This leaves an eternal window for a claim to be made after many years.

Thank you for the opportunity to comment on this proposal.



March 19, 2023

To: Sang-Hee Lee, Division Chair of the UCR Division of the Academic Senate &
Cherysa Cortez, Executive Director of the UCR Academic Senate

From: Raquel M. Rall, Ph.D., Faculty Chair of the School of Education Executive Committee

Subject: [Systemwide Review] Proposed Policy: Proposed Presidential Policy –
Anti-Discrimination

The members of the SOE Executive Committee reviewed the [Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination. Comments were provided at our monthly meeting and via email. Our feedback is below.

The definitions at the beginning of the policy are helpful. We especially appreciate the part of the policy that makes it clear there's no time limit for reporting. The time frame aspect of the policy is also useful so that any victims will have a sense of when they will hear back regarding their complaints. What is not clear from this policy is if (depending on the severity and proximity of those involved) there is any guidance regarding whether the victim and the accused will be permitted to work during the investigation or whether a leave of absence is possible during the leave of absence. We know these facets may be on a case-by-case basis but it would be helpful to have some general sense of possible approaches written in the policy. If not, various scenarios might be open to interpretation and could perpetuate additional forms of discrimination.

Maybe in the appendices or the frequently asked questions, there can be mention of support resources for individuals who have been victims of discrimination, harassment, or retaliation. While not an explicit part of the policy, it might be useful to have links to resources that can offer physical, mental, or emotional support in tandem with the formal process. We do not want to lose sight of the people in these situations because we are centering the processes.

Thank you for the opportunity to provide feedback.

Sincerely,

A handwritten signature in cursive script that reads 'Raquel M. Rall'.

Raquel M. Rall, Ph.D.
Faculty Executive Committee Chair 2022-2025
School of Education
University of California, Riverside

March 13, 2023

TO: Sang-Hee Lee, Ph.D., Chair, Academic Senate, UCR Division

FROM: Marcus Kaul, Ph.D., Chair, Faculty Executive Committee, UCR School of Medicine

SUBJECT: Response to [Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination

Dear Sang-Hee,

The SOM Faculty Executive Committee has reviewed the proposed Presidential Policy – Anti-Discrimination.

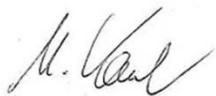
The Committee noted that the proposed policy is similar to the misconduct and harassment policy. Dr. Kaul explained that this policy includes students, faculty, staff, contractors, and casts a wider net.

The Committee noted that the proposed policy covers academic freedom and states that it is not regulating freedom of speech, but freedom of speech is not unlimited.

This proposed policy is trying to setup clear standards of consequences for noncompliance and how consequences will be carried out.

Overall the Committee is in agreement with the proposed policy and has no major points to bring forward or no suggestions for major changes. and we have no comments other than agreeing with the purpose of this policy.

Yours sincerely,



Marcus Kaul, Ph.D.
Chair, Faculty Executive Committee School of Medicine

TO: Sang-Hee Lee, Chair
Riverside Division

FR: Richard M. Carpiano, Chair
Executive Committee, School of Public Policy

RE: [Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination

Date: March 27, 2023

The Executive Committee of the School of Public Policy reviewed the documentation for “[Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination.”

We have no edits to suggest nor concerns to raise with the document.

Sincerely,



Richard M. Carpiano, Ph.D., M.P.H.
Professor of Public Policy



OFFICE OF THE ACADEMIC SENATE

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0002
TELEPHONE: (858) 534-3640

April 18, 2023

Professor Susan Cochran
Chair, Academic Senate
University of California
VIA EMAIL

Re: Divisional Review of Presidential Policy on Anti-Discrimination

Dear Chair Cochran,

The proposed Presidential Policy on Anti-Discrimination was distributed to San Diego Divisional Senate standing committees and discussed at the April 10, 2023 Divisional Senate Council meeting. Senate Council endorsed the proposal but had serious concerns regarding the implementation of the policy. The following comments were offered for consideration.

Even with the additional information provided by the Systemwide Senate, reviewers expressed confusion with how this proposed policy will interact with other related policies (such as the Abusive Conduct in the Workplace Policy and Policy on Discrimination, Harassment, and Affirmative Action) and found it hard to know the jurisdiction of each policy, and therefore, how to file a complaint. Council also noted that the local implementation officer's (LIO) role is not clearly delineated, so it appears as if one person has a lot of power and responsibility in this process, including the ability to institute corrective action without following existing disciplinary procedures. Reviewers noted the lack of information regarding an appeal process for an accused person and a process for continuing with a related grievance or complaint after the conclusion of this policy's process. The policy states that the grievance or complaint "may be reactivated...", but information is not provided on the conditions that would trigger reactivation. Reviewers suggested that if a grievance originated with the Committee on Privilege and Tenure, then it should always be sent back to the committee to allow completion of their review process. Council recognizes that it is important to protect people from discriminatory behavior, but voiced concern that this policy could be used as an instrument for infringing on academic freedom, and as a result, have a chilling effect. It was noted that since the LIO is a staff member, faculty should be consulted prior to decisions being made on whether or not something is considered an academic freedom violation. Given these concerns, Council strongly suggests that the Senate be consulted on the development of the implementation procedures and that a flow chart be created that clearly outlines which policy governs which type of complaint and how reports can be made under each policy.

The responses from the Divisional Committee on Academic Freedom, Committee on Privilege and Tenure, Committee on Diversity and Equity, and Committee on Faculty Welfare are attached.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Grey Postero".

Nancy Postero
Chair
San Diego Divisional Academic Senate

Attachment

cc: John Hildebrand, Vice Chair, San Diego Divisional Academic Senate
Lori Hullings, Executive Director, San Diego Divisional Academic Senate
Monica Lin, Executive Director, UC Systemwide Academic Senate

March 8, 2023

NANCY POSTERO, CHAIR
Academic Senate, San Diego Division

SUBJECT: Review of the Presidential Policy on Anti-Discrimination

The Committee on Academic Freedom (CAF) reviewed the Presidential Policy on Anti-Discrimination at its February 24, 2023 meeting. Overall, the committee agreed that the proposal seemed reasonable and appropriate as it relates to academic freedom. CAF acknowledges that sections of the policy may be purposely vague since detailed information will be provided during local implementation, but the committee offered the following comments and questions for consideration.

The Local Implementation Officer's (LIO) role and authority is not clearly delineated so even though they may consult with other offices throughout the process, it appears as if one person has a lot of responsibility and power. The policy does not define how others may be involved in the LIO's investigations process or how they will consider precedent cases (from UCSD or even other institutions) while adjudicating cases. It was unclear how the LIO will be hired/appointed for the position, but the committee noted that it is important for faculty to be part of the selection process.

The policy does not define an appeals process for an accused person subject to discipline because of this policy. If the LIO decides that a faculty member has engaged in discrimination outside of the bounds of academic freedom, is there an appeal process to a Senate body (such as the Committee on Privilege and Tenure)? Essentially, the LIO is a staff member who is making decisions on whether or not something is considered academic freedom, but it may be better for someone in the department to make that determination or at least be consulted, since that would allow for decisions/discussions that consider whether or not the speech was consistent with academic freedom within the discipline.

The policy notes in Section III.E. Free Speech and Academic Freedom that it "will be implemented in a manner that recognizes rights to freedom of speech and expression" but does not address a situation where there is a conflict between free speech and harassment or discrimination. Since harassment, discrimination, and academic freedom are covered by different policies, it is not clear which policy would take precedence. It may be clearer for the policy to state that "academic freedom should be respected to the limits of applicability."

Given that there is no time limit for reporting, the committee agreed that reports should be made sooner rather than later to help all parties involved to have a more productive and thorough investigation process.

Sincerely,

Daniel Arovas, Chair
Committee on Academic Freedom

CC: John Hildebrand
Lori Hullings

April 3, 2023

NANCY POSTERO, CHAIR
Academic Senate, San Diego Division

SUBJECT: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

The Committee on Diversity and Equity (CDE) discussed the proposed Presidential Policy – Anti-Discrimination at its March meeting. This proposal is an update of a policy that already existed. The revisions are representative of recommendations made by a systemwide working group charged to examine and update the policy. The CDE believes the proposed policy revisions have merit and endorses them.

Sincerely,

Shantanu Sinha, Chair
Committee on Diversity & Equity

cc: J. Hildebrand

March 28, 2023

NANCY POSTERO, CHAIR
Academic Senate, San Diego Division

SUBJECT: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

The Committee on Faculty Welfare (CFW) discussed the proposal for a systemwide Anti-Discrimination Policy. We enthusiastically support the concern of UCOP in creating a discrimination-free environment on our campuses. This is a pressing issue for all campus constituencies.

The CFW nevertheless considered that the Anti-Discrimination policy lacked clarity both in its design and implementation, particularly in relation to how it relates to existing systemwide policies. The Anti-Discrimination policy, for example, seems to duplicate some of the work of APM-015, which sets out rules and procedures for dealing with unacceptable behaviors that include discrimination and harassment. It is unclear how these two policies interact. The proposed new policy is framed as additional to, and not overlapping with, academic procedures, but there is a real risk that it may infringe on some of the processes that are encoded in the Academic Personnel Manual.

This issue is clear in the proposed implementation of the Anti-Discrimination policy. Investigatory work for cases involving faculty is entirely delegated to bodies on campus that are not under the purview of the Academic Senate. The policy lacks specificity in terms of how cases are then referred to Senate bodies for additional deliberation. While this might be a source of independence, it might also become an instrument for infringing on academic freedom and shared governance. Should faculty be regulated by two different codes which are not harmonized? The CFW believes that the answer to this is: no.

Sincerely,

Juan Pablo Pardo-Guerra, Chair
Committee on Faculty Welfare

cc: J. Hildebrand

February 16, 2023

NANCY POSTERO

Chair, San Diego Divisional Academic Senate

SUBJECT: Review of the Presidential Policy on Anti-Discrimination

Dear Chair Postero,

The Committee on Privilege and Tenure (CPT) reviewed the proposed Presidential Policy on Anti-Discrimination at its February 2, 2023 meeting. Overall, the committee found the policy to be sensible and important, but found it unclear whether this policy supersedes, conflicts with, or works in conjunction with already existing policies¹ on discrimination and harassment. While the committee noted some differences between the policies, without a close textual comparison, it was hard to fully grasp the variations between them².

Since discrimination complaints often include other claims, such as bullying, retaliation, and harassment, the committee noted that it would be confusing for complainants to know which policy governs which issues and therefore, know where to report a complaint. In addition, considering how important these policies are to the University, it is surprisingly difficult to find them (unless one already knows the title of a policy). The University should remind all in the UC community about these policies by posting them prominently. Due to the confusion of having multiple policies, CPT strongly recommends that guidance, such as a flowchart, be created that clearly outlines: which policy applies to which type of issue (abusive conduct, harassment, discrimination), where someone would go to report an issue (if they are faculty, other academic appointees, staff, or students), and what the resulting investigation process would be. Another option would be for UCOP to appoint a work group to consolidate all five policies into one exhaustive policy instead.

Specific to this proposed policy, CPT found it odd that employees serving as a “confidential resource” do not need to report information they receive while acting in their confidential capacity without clear guidelines. How is the decision made as to when information is reported and when it is not? In addition, this may be addressed in local implementation guidelines, but it was not clear how reporting could be done anonymously or how the report will be kept anonymous during investigations. Appendix II states that “the Local Implementation Officer may take other actions to stop reported conduct...” but it is not clear what would be considered “other actions” and by using this extremely general language, the Local Implementation Officer appears to have permission to implement whatever procedures they want, such as disciplinary measures without going through the normal process. To clarify this, “other actions” should be defined or a stipulation should be added that they may take “other actions in accordance with existing policies and procedures.” It was also noted that there is no mention of a secondary person who could serve as a Local Implementation Officer, in cases where the Officer would need to recuse themselves or if the Officer is personally involved in a case.

Sincerely,

Stefan Llewellyn Smith, Chair
Committee on Privilege and Tenure

cc: J. Hildebrand; L. Hullings

¹ Existing Policies: 2016. Guidance on Abusive Conduct and Bullying in the Workplace; 2018. Policy on Discrimination, Harassment, and Affirmative Action; 2022. Policy on Sexual Violence and Sexual Harassment; 2023 Abusive Conduct in the Workplace.

² Subsequent to CPT’s discussion, more information was received from UCOP regarding the intersection of the Abusive Conduct Policy and this proposed policy. However, the committee chose not to revise its response since this is an important point that still needs to be addressed.

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Steven W. Cheung, MD, Chair
Steve Hetts, MD, Vice Chair
Thomas Chi, MD, Secretary
Kathy Yang, PharmD, Parliamentarian

April 19, 2023

Susan Cochran
Chair, Academic Council
Systemwide Academic Senate
University of California Office of the President
1111 Franklin St., 12th Floor
Oakland, CA 94607-5200

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

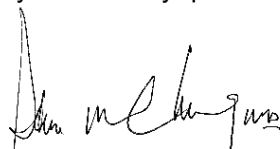
Dear Susan:

The UCSF Division appreciates the opportunity to opine on the Systemwide Review of Proposed Presidential Policy – Anti-Discrimination. This proposed policy standardizes procedures and guidance on harassment and discrimination across the University of California. The UCSF Academic Senate Committee on Faculty Welfare (CFW), Committee on Rules & Jurisdiction (R&J), Clinical Affairs Committee (CAC), School of Medicine Faculty Council (SOMFC), and Committee on Equal Opportunity (EQOP) commented on this review.

CFW, CAC, and SOMFC commend the University for developing this systemwide policy and support the concept that UC employees and students can work in an atmosphere free of discrimination, harassment, and retaliation. CAC specifically supports the creation of a central office to implement and oversee the policy as well as its aims to protect academic freedom and freedom of speech.

Three specific recommendations are proffered. R&J recommends UCOP consider adding language that would make it explicit that conduct need not be physically threatening to be Harassment. R&J is concerned that including “whether the conduct was physically threatening” in the definition of Harassment diminishes the severity and importance of non-physical threats. SOMFC recommends that the policy include a reference to the Presidential Policy on Abusive Conduct in the Workplace in the Related Information section because SOMFC believes that the two policies should cross-reference one another. EQOP recommends including additional safeguards and resources to protect complainants from retaliation, especially for historically excluded and early career faculty. EQOP also suggests including caste discrimination in this policy because it is one of the oldest forms of oppression and impacts individuals and communities who experience socioeconomic inequities, violence, and poorer health outcomes.

If you have any questions, please let me know.



Steven W. Cheung, MD, 2021-23 Chair
UCSF Academic Senate

Enclosures (5)

Cc: Spencer Behr, Chair, Committee on Rules and Jurisdiction
Matt Tierney, Chair, Clinical Affairs Committee
Mia Williams, Chair, School of Medicine Faculty Council
Jenny Liu, Chair, Committee on Faculty Welfare
Ifeyinwa Asiodu, Chair, Committee on Equal Opportunity

Clinical Affairs Committee
Matt Tierney, MS, NP, FAAN, Chair

April 12, 2023

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Anti-Discrimination Systemwide Review

Dear Chair Cheung:

The Committee on Clinical Affairs (CAC) writes to comment on the *Proposed Presidential Policy on Anti-Discrimination* that is out for a systemwide review.

CAC supports the proposed policy and strongly agrees that "all people who participate in University programs and activities can work and learn together in an atmosphere free of discrimination, harassment and retaliation." CAC believes the policy will help create this atmosphere and should be adopted.

CAC specifically appreciates that a central office will be created to implement the policy and to oversee standardization of campus procedures and ensure consistency. CAC believes this will both simplify and strengthen the implementation of the policy.

CAC also specifically supports how the proposed policy aims to maintain protection of academic freedom and freedom of speech while still preventing and stopping discriminatory behavior. As the proposed policy summary points out, "freedom of speech and academic freedom are not limitless and, for example, do not protect speech or expressive conduct that violates federal and state anti-discrimination laws." CAC believes the proposed policy strikes the right balance between academic freedom and anti-discrimination.

Thank you for the opportunity to comment on the *Proposed Presidential Policy on Anti-Discrimination*. Please contact me or Senate analyst Kristie Tappan if you have questions about CAC's comments.

Sincerely,



Matt Tierney, MS, NP, FAAN
Clinical Affairs Committee Chair

CC: Todd Giedt, Senate Executive Director
Sophia Root, Senate Analyst

Committee on Equal Opportunity

Ifeyinwa Asiodu, RN, PhD, Chair

April 18, 2023

Steven Cheung, MD
UCSF Academic Senate Division Chair

RE: Proposed Presidential Policy – Anti-Discrimination

Dear Chair Cheung:

The Committee on Equal Opportunity (EQOP) is writing to provide comments related to Proposed Presidential Policy – Anti-Discrimination. EQOP commends the Office of the President for being responsive to ongoing discrimination and harassment challenges experienced systemwide by students, postdoctoral scholars, staff, and faculty. The proposed policy reaffirms the need for and importance of creating an inclusive, safe, and equitable environment. However, EQOP has identified two areas of concern.

Confidentiality and Retaliation

EQOP appreciates and acknowledges the importance of maintaining confidentiality of complainants and the prevention of retaliation. However, additional safeguards and resources are needed to support and reassure complainants. As the threat of retaliation is a real deterrent for many, especially for historically excluded and early career faculty.

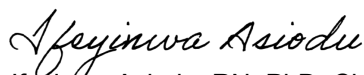
Caste Discrimination

EQOP also supports the inclusion of caste discrimination in the proposed anti-discrimination policy. The caste system is one of the oldest forms of oppression and impacts over one billion people around the world. Caste oppressed individuals and communities experience socioeconomic inequities, violence, and poorer health outcomes. In order to create an environment where all individuals and groups systemwide can thrive, caste discrimination should be included in this policy.

Conclusion

EQOP appreciates the opportunity to provide comments and suggestions on the Proposed Presidential Policy – Anti-Discrimination. We understand the difficulties and challenges related to finalizing such a policy. EQOP believes that Proposed Presidential Policy – Anti-Discrimination is a major step in the right direction and critical opportunity to address harms caused by discrimination and harassment. Thank you for your time and consideration.

Sincerely,



Ifeyinwa Asiodu, RN, PhD, Chair
Committee on Equal Opportunity



<https://senate.ucsf.edu>

Committee on Faculty Welfare

Jenny Liu, PhD, MPP, MA, Chair

April 14, 2023

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Presidential Policy – Anti-Discrimination Systemwide Review

Dear Chair Cheung:

The Committee on Faculty Welfare (CFW) writes to endorse the [Presidential Policy – Anti-Discrimination](#) that is out for systemwide review.

CFW commends the University for developing a systemwide policy on this important subject. CFW believes the policy will help the University be a place filled with challenging ideas, intellectual discourse, and the pursuit of knowledge without the millstone of discrimination limiting our potential.

Thank you for the opportunity to comment on this review. Please contact me or our Senate analyst Kristie Tappan if you have questions about CFW's comments.

Sincerely,

A handwritten signature in black ink, appearing to be "Jenny Liu", with a long horizontal line extending to the right.

Jenny Liu, PhD, MPP, MA
Committee on Faculty Welfare Chair

Committee on Rules and Jurisdiction**Spencer Behr, MD, Chair**

April 10, 2023

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Presidential Policy on Anti-Discrimination Systemwide Review

Dear Chair Cheung:

The Committee on Rules and Jurisdiction (R&J) writes to comment on the [Proposed Presidential Policy on Anti-Discrimination](#). R&J recommends that UCOP consider adding language that would explicitly state that physical threats are not required for a finding of Harassment.

The proposed policy includes the following in the definition of Harassment, which is part of the definition of Prohibited Conduct.

In evaluating whether conduct is harassment, the Local Implementation Officer will consider the totality of the circumstances, including but not limited to:

- *The frequency, nature, and severity of the conduct;*
- *Whether the conduct was physically threatening;*
- *Whether the conduct arose in the context of other discriminatory conduct or other misconduct;*
- *The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person; and*
- *Whether the conduct may be protected as academic freedom or protected speech. When the investigation implicates academic freedom, the Local Implementation Officer will, based on locally developed procedures, consult with the appropriate academic officer for relevant academic expertise.*

R&J appreciates why “whether the conduct was physically threatening” was included as a factor in determining whether conduct was Harassment, but R&J is concerned that its inclusion suggests that conduct that is not physically threatening is less likely to be Harassment. R&J is concerned that it diminishes allegations of Harassment that do not involve a physical component.

R&J recommends UCOP consider adding language that would make it explicit that conduct need not be physically threatening to be Harassment. Thank you for the opportunity to comment

on this review. Please contact me or Senate Analyst Kristie Tappan (kristie.tappan@ucsf.edu) with any questions.

Sincerely,

A handwritten signature in purple ink, appearing to be 'SB', with a long horizontal flourish extending to the right.

Spencer Behr, MD
Committee on Rules and Jurisdiction Chair

Cc: Todd Giedt, UCSF Academic Senate Executive Director
Sophia Bahar Root, UCSF Academic Senate Analyst



<https://senate.ucsf.edu>

School of Medicine Faculty Council
Mia Williams, MD, MS, Chair

April 14, 2023

Steven Cheung, M.D.
Division Chair
UCSF Academic Senate

Re: Proposed Presidential Policy – Anti Discrimination – Systemwide Review

Dear Chair Cheung:

The School of Medicine Faculty Council (SOMFC) writes to express its support for the proposed *Presidential Policy – Anti-Discrimination* that is out for systemwide review.

The SOMFC believes this is an important topic and appreciates the University's work consolidating anti-discrimination policies and procedures into a single policy. To that end, the SOMFC recommends that the policy include a reference to the *Presidential Policy on Abusive Conduct in the Workplace* in the Related Information section. The SOMFC reviewed and commented on the *Abusive Conduct Policy* in a systemwide review earlier this year and believes that the two policies should cross-reference one another.

Thank you for the opportunity to comment on this systemwide review. Please contact me or our Senate Analyst Kristie Tappan if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Mia Williams".

Mia Williams, MD, MS
Chair of the School of Medicine Faculty Council

cc: Sophia Bahar Root, UCSF Academic Senate Analyst
Todd Giedt, UCSF Academic Senate Executive Director



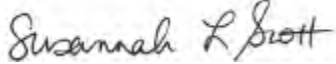
UC SANTA BARBARA

Academic Senate
Susannah Scott, Chair
Shasta Delp, Executive Director

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April 18, 2023

To: Susan Cochran, Chair
Academic Senate

From: Susannah Scott, Chair
Santa Barbara Division 

Re: Systemwide Review of the Proposed Presidential Policy on Anti-Discrimination

The Santa Barbara Division distributed the Proposed Presidential Policy on Anti-Discrimination to the Undergraduate Council (UgC), the Graduate Council (GC), the Council on Faculty Welfare, Academic Freedom, and Awards (CFW), the Council on Planning and Budget (CPB), Committee on Diversity and Equity (CDE), the Committee on Academic Personnel (CAP), the Committee on Privilege and Tenure (P&T), Committee on International Education (CIE), the Committee on Research Policy and Procedures (CRPP), the Committee on Library, Information, and Instructional Resources (CLIIR), and the Faculty Executive Committees (FECs) of the College of Letters and Science (L&S), College of Engineering (ENGR), College of Creative Studies (CCS), Bren School of Environmental Science and Management (BREN), and the Gevirtz Graduate School of Education (GGSE). CRPP, CIE, and the BREN and CCS FECs opted not to opine.

While the intent of the policy is admirable, a number of areas are in dire need of clarification before the Santa Barbara Division can offer its endorsement of this well-meaning but vague policy. Among the key issues raised are: the interaction and overlap of this policy with various other UC and campus policies (e.g., the Faculty Code of Conduct, the Abusive Conduct Policy, SVSH policy), the lack of detail regarding the Local Implementation Officer (LIO) position particularly the role of shared governance in LIO selection and oversight as well as the need to ensure the LIO's independence and accountability, and the appeal process. As with many recent policy proposals, the Division is concerned about the resource implications (especially the burden on staff) of implementing another new policy which appears to be an unfunded mandate. The individual reviewing group responses are attached for your review.

We thank you for the opportunity to comment.

April 11, 2023

To: Susannah Scott, Chair
Academic Senate

From: Julie Bianchini, Chair
Undergraduate Council *Julie A. Bianchini*

Re: Proposed Presidential Policy on Anti-Discrimination

The Undergraduate Council (UgC) reviewed and considered the proposed conforming amendments at its meetings of March 9th and April 6th, 2023. Though UgC is in general support of the policy's goals, a few questions remain which prevent the Council from offering its full support.

UgC members asked: Where does the funding and resources for implementation of this policy on each campus come from? What is the rationale regarding separating the affirmative action piece from this policy on anti-discrimination?

Thank you for giving UgC the opportunity to comment on this policy.

CC: Shasta Delp, Executive Director, Academic Senate

**Academic Senate
Santa Barbara Division**

March 15, 2023

To: Susannah Scott, Divisional Chair
Academic Senate

From: Michelle O'Malley, Chair
Graduate Council



Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

At its meeting on March 13, 2023, Graduate Council reviewed the proposed Presidential Policy on Anti-Discrimination. While the Council is generally in favor of the policy, it felt Section II.2.b: Failure to Accommodate needs further clarification.

Currently, the Disabled Students Program (DSP) notifies faculty when an enrolled student requires a Reasonable Accommodation. But, no such program exists for faculty and staff. Therefore, it is possible that organizers of events and meetings for faculty and staff will be unaware of persons in need of Reasonable Accommodations and this could be viewed as discrimination and be subject to disciplinary action outlined in Section IV.F: Noncompliance with the Policy.

Members of the Council would like to see a notification program similar to DSP for faculty and staff so that all members of the UCSB community are able to receive Reasonable Accommodations when needed.

CC: Shasta Delp, Executive Director, Academic Senate

**Academic Senate
Santa Barbara Division**

March 30, 2023

To: Susannah Scott, Divisional Chair
Academic Senate

From: Subhash Suri, Chair 
Council on Faculty Welfare, Academic Freedom and Awards

Re: Systemwide Review of Proposed Presidential Policy - Anti-Discrimination

At its meeting of March 1, 2023, the Council on Faculty Welfare, Academic Freedom and Awards (CFW) discussed the proposed Presidential Policy on Anti-Discrimination. The Council is concerned that the University of California is creating multiple similar policies but not providing the resources needed to implement them. This particular policy is quite confusing, and appears to be adding to administrative bloat. Could this policy, along with the recently reviewed Abusive Conduct policy, be combined to make one workplace policy? The Council was also concerned that the preponderance of evidence standard is the loosest of possible standards by which to judge a case. This is unreasonable to use for issues around academic freedom.

CC: Shasta Delp, Executive Director, Academic Senate

UNIVERSITY OF CALIFORNIA
ACADEMIC SENATE
SANTA BARBARA DIVISION
Council on Planning & Budget

March 2, 2023

To: Susannah Scott, Divisional Chair
UCSB Academic Senate

From: James Rawlings, Chair
Council on Planning & Budget



Re: Anti-Discrimination Policy

The Council on Planning & Budget has reviewed the proposed Presidential Anti-Discrimination Policy. The purpose of the proposed Anti-Discrimination Policy is to expand, harmonize, and coordinate existing UC policies to insure a safe, equitable and respectful working environment across the University of California community and to better meet the University's responsibilities to conform to federal and state anti-discrimination law. The stated goal of the policy is to improve system-wide response to prohibited conduct: discrimination, harassment, or retaliation based on the protected categories of identity or affecting academic employees, staff, and students. The Council affirms the commitment of our faculty to this shared goal and welcomes the opportunity to help refine the clarity and effectiveness of this important policy.

The proposed Policy builds upon existing legal definitions and historic UC policies regarding protected categories, prohibited conduct, confidential resources and responsible reporting duties, and the protection of academic freedom. Therefore, it is the limited mandate of the Council to review the new procedures and coverage introduced by the proposed policy from the standpoint of faculty governance and budgetary resources.

The major change introduced by the Anti-Discrimination Policy is a new central coordinating mechanism for each campus: the creation of a Local Implementation Officer (LIO) who is designated by the Executive Officer at each location. However, the policy does not specify how this Local Officer is designated, whether there is any faculty consultation, who this new officer reports to, and the relationship between this new officer and existing officials in campus Anti-Discrimination offices--such as the campus Director of the EEOC office. Two critical features to ensure an effective LIO are independence and accountability. The Council urges that these be explicitly enshrined in the Policy. The present proposal is too vague about assuring the autonomy of the LIO from line administrators such as Deans (as in the Ombuds model) and should, moreover, expand on how the LIO is appropriately empowered to handle complaints against top-level administrators (Vice Chancellor level or higher). The proposed system-wide office could be used to provide a secondary independent reporting line that is immune to local interference or pressure.

The proposal is also too vague about accountability of the LIO, beyond stating that this new office will be “periodically audited” by the Senior Vice-President Chief of Compliance at each location. Clearer statements about the timetable, transparency, and reporting to faculty co-governance bodies of this oversight process are necessary in order to meet the policy’s goals of cross-UC harmonization, effectiveness, and accountability. In particular, the LIO must be accountable to complete investigations in a timely manner, for instance through mechanisms that mandate periodic reporting (to the systemwide Director?) on the status of all ongoing investigations.

The Council also urges the Policy to clarify the role and responsibilities of the central Office for SAFE. While the proposal provides many details about the responsibilities of the LIOs, it barely mentions SAFE except in the context of creating guidelines. Spelling out the oversight and accountability processes for the systemwide Office and its Director is essential to strengthening the enforcement and effectiveness of the Policy and assuring that SAFE serves a clear purpose rather than solely increases opaqueness and administrative overhead.

On the matter of budgetary resources, the proposed Policy states that each campus must “designate and provide adequate resources” to the LIO. The Council is concerned that this might create yet another unfunded mandate (unless the intent is to re-allocate resources from existing Anti-Discrimination offices), and also urges establishing some transparency regarding the funding mechanism and staffing levels of the central SAFE Office.

The new coordinated structures and processes remain separate from Sexual Violence and Sexual Harassment (SVSH) policies. The Council recommends clarifying the rationale for this (are there legal procedures that require it?) and providing a detailed comparison between the standards and processes for the Anti-Discrimination and SVSH policies. These differences may be critical for faculty determining how or when to report, file (or safeguard their rights responding to) a complaint, and in that proportion of cases of prohibited conduct that span both Discrimination and Sexual Harassment. It is also critical for all university members to be aware which policy applies to which situation, as there are plenty of potentially gray areas (e.g., complaints related to consensual relationships between non-students). More broadly, additional information is needed to detail the overlapping relationships between the multiple University Policies covering different forms of Prohibited Conduct.

The Council also recommends clarification regarding the treatment of time limits. On p.10, the Policy states that there is no time limit to file reports of potential prohibited conduct, as distinct from governmental and university grievance procedures. One issue this raises is whether and how this new investigation and resolution mechanism would apply to former members of the university community such as alumni, retired staff, and emeritus faculty—as well as former situations. Which contexts are covered by the Policy? Would persons no longer employed by or educated by the university have standing to file complaints? Would the university have standing to investigate such persons as respondents? And how would the university enforce remediation if former members of the community were credibly accused of prohibited conduct? We believe it is essential to clarify the implications of establishing a complaint process with no time limit,

and to inform potential complainants of the inherent limitations for reports of conduct in the past, and alternative channels to pursue historic concerns when the university lacks standing.

We further note with concern one element of the Policy that has the potential to affect faculty due process rights. On p. 22, the policy details an expanded menu of supportive and remediation tools available “at the sole discretion” of the LIO to provide more flexible and effective support to complainants across the university. The majority of these measures are directed to reporters or complainants to mitigate the impact of prohibited conduct on their well-being. However, Section C stipulates that the LIO may require “education or training of the Respondent,” without designating any process or substantiating the alleged Prohibited Conduct or the relationship between the implementation of this measure and any of the various investigatory and alternative resolution mechanisms listed above—which each contain different standards for due process and thresholds for remediation. This introduces the possibility of ad hoc treatment, and may create stigma against training that is seen as remedial if not punitive.

We welcome the advance of this important policy and hope our recommendations help to improve its clarity, consistency, and effectiveness.

cc: Shasta Delp, Academic Senate Executive Director

**Academic Senate
Santa Barbara Division**

March 21, 2023

To: Susannah Scott, Divisional Chair
Academic Senate

From: Peng Oh, Chair 
Committee on Diversity and Equity

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

At its meeting of March 13, 2023, the Committee on Diversity and Equity (CDE) reviewed the Proposed Presidential Policy on Anti-Discrimination. The Committee is supportive of the policy and has the following comments.

The Committee is concerned about the possible effect this policy would have on the workload of the Office of Equal Opportunity & Discrimination Prevention. This office has a small staff and is already overburdened. The Committee would like to see a commitment of additional funding from the Office of the President for additional staff for investigations and overall enforcement of the policy.

Additionally, the Committee worries that many members of the UCSB community are unaware of the differences between confidential resources and responsible officers. The Committee recommends that regular reminders about these roles be sent out to the campus community to address this awareness gap.

CC: Shasta Delp, Executive Director, Academic Senate

ACADEMIC SENATE
SANTA BARBARA DIVISION

April 12, 2023

TO: Susannah Scott, Divisional Chair
Academic Senate

FROM: Janet Walker, Chair
Committee on Academic Personnel

RE: CAP Response to the Systemwide Review of Proposed Presidential Policy –
Anti-Discrimination

CAP acknowledges the potential value of a systemwide policy on Anti-Discrimination and appreciates the leadership of the Office of the President in its development and implementation. CAP also appreciates the draft policy's good intentions in affirming that free speech and academic freedom are essential and upheld by this proposed policy, while observing that these mechanisms too must be regularly scrutinized and applied with care. When it comes to protecting against discrimination, harassment, and retaliation, some redundancy of policies can be favorable.

In terms of the Draft Presidential Policy on Anti-Discrimination itself, CAP finds that aspects of the draft policy remain unclear in this draft: notably, the processes through which the Local Implementation Officers are appointed and trained; and how, specifically, the policy proposes to go hand in hand with provisions of the Academic Policy Manual (namely, APM 015 - The Faculty Code of Conduct among other sections mentioned in the draft).

While CAP does not at this time see any specific links between this Draft Presidential Policy and its own work, we would like to reaffirm the key importance to policy-making of draft review by Senate committees and faculty overall, and the value of faculty shared governance, in the best sense of the term, in systemic and local aspects of the university's work.

For the Committee,

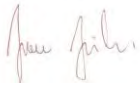
A handwritten signature in black ink, appearing to read 'Janet Walker', with a long horizontal flourish extending to the right.

Janet Walker, Chair

**Academic Senate
Santa Barbara Division**

April 11, 2023

To: Susannah Scott, Divisional Chair
Academic Senate

From: Sven Spieker, Chair 
Committee on Library, Information and Instructional Resources

Re: Systemwide Review of Proposed Presidential Policy - Anti-Discrimination

At its meeting of March 3, 2023, the Committee on Library, Information and Instructional Resources (CLIIR) discussed the proposed Presidential Policy on Anti-Discrimination. There have been multiple related new proposed policies recently, such as the Abusive Conduct Policy, with little information about what makes these policies necessary, and how they interact with each other. As far as the Presidential Policy on Anti-Discrimination goes, some of the examples of prohibited conduct overlap and infringe on freedom of expression and academic freedom. Some of the examples are vague, and do not rise to the level of a well-defined threshold of conduct. Overall, the Committee believes that these new policies could have chilling effects in the classroom, and represent an instance of administrative overreach.

CC: Shasta Delp, Executive Director, Academic Senate

February 28, 2023

To: Susannah Scott
Chair, Divisional Academic Senate

From: Jeffrey Stopple
Chair, L&S Faculty Executive Committee



Re: Systemwide Review of Proposed Presidential Policy on Anti-Discrimination

At its meeting on February 16, 2023, the Faculty Executive Committee of the College of Letters and Science (FEC) reviewed the proposed Presidential Policy on Anti-Discrimination. This is a new policy addressing discrimination and harassment toward protected categories and would cover all faculty, academic appointees, staff, and students.

The committee generally did not object to the proposed policy. However, it was observed that little is said regarding an appeals process to dispute and potentially reverse a Local Implementation Officer's decision on a case. Reference to the potential for appeals is made under Definitions II.8.a, but is not clarified further:

Interim Measures may:

** remain in place until the final outcome of a Resolution Process (see Section V.A.5) or a subsequent disciplinary or **appeal process**;*

It would be helpful to see a greater clarification on the process for appeals before the policy is implemented.

Thank you for the opportunity to comment.

cc: Pierre Wiltzius, Executive Dean of the College and Dean of Science
Michael Miller, Interim AVC and Interim Dean of Undergraduate Education
Charlie Hale, Dean of Social Sciences
Daina Ramey Berry, Dean of Humanities and Fine Arts

February 22, 2023

TO: Susannah Scott
Divisional Chair, Academic Senate

FROM: Steven DenBaars, Chair
College of Engineering, Faculty Executive Committee

RE: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

DocuSigned by:

Steve DenBaars

274099D035704001

The College of Engineering FEC met on Wednesday, February 22nd to review and discuss the proposal. The committee endorses the proposal. However, they noted that more guidance is needed for responsible employees and their supervisors. In particular, guidance is needed for department chairs directing faculty members in their role as responsible employees.

April 11, 2023

To: Susannah Scott, Chair
Academic Senate

From: Ty Vernon, Chair
Faculty Executive Committee, GGSE

Re: Proposal for a Systemwide Review of Proposed Presidential Policy
– Anti-Discrimination

The GGSE FEC reviewed the Systemwide Review of Proposed Presidential Policy – Anti-Discrimination and is in support of the proposal.



Ty Vernon, Ph.D.

Faculty Executive Committee Chair

Gevirtz Graduate School of Education

UC SANTA BARBARA



1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

April 14, 2023

SUSAN D. COCHRAN, Chair
Academic Council

RE: Proposed Presidential Policy on Anti-Discrimination

Dear Susan,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed Presidential Policy on Anti-Discrimination with the Committees on Affirmative Action and diversity (CAAD), Academic Freedom (CAF), Faculty Welfare (CFW), Privilege and Tenure (CPT), and Rules, Jurisdiction, and Elections (CRJE) providing comments. Five themes emerged amongst the committees' comments, which I will summarize here. All committee responses are included as an enclosure.

Need for A New Policy

All committees questioned the need for this new policy, especially in light of the recent review of the new Abusive Conduct policy. Moreover, they were left to guess as to how this new policy will interact with existing policies, specifically the aforementioned Abusive Conduct policy, the ever-evolving Sexual Violence and Sexual Harassment Policy (SVSH), and the sections of the Academic Personnel Manual (APM) bearing on faculty conduct and discipline (APM 15, APM 16). CAAD recommended that the links to existing and related policies be better articulated, noting that the current iteration is inconsistent in this respect. P&T questioned the need for a new anti-discrimination policy asking, "If the draft policy covers a subset of the activities covered by the policy on abusive conduct, are there meaningful differences between the two that make it impossible to combine them?" This sentiment is shared by CFW, which added, "Overall, it is not clear why a new conduct policy that affects faculty is needed at all when the current APM already covers that conduct." This general observation was also made by CRJE. The last comment on this theme comes from CAF that suggested future reviews would be greatly improved if a statement of intent and need were provided with the policy.

Process and Procedure

An issue related to the perceived redundancy of the proposed policy is how it will be implemented and operate procedurally. Three of the committees had questions regarding the operation, process, and scope of the Local Implementation Officer (LIO) and how any office created to support this position might be administratively structured. CAAD offered that the LIO and their office's organizational structure should be clearly articulated. The committee suggests, as well, that having at least two LIOs on campus would provide a system of checks and balances. CAAD sees this as necessary given the language of Section IIA1 - Harassment, which provides, "... the Local Implementation Officer will consider ... The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person...." The committee suggests that this system of checks and balances would prevent any individual from making unilateral decisions.

CRJE noted a lack of due process during the Initial Assessment phase. As the committee wrote in its response, "The Local Implementation Officer is granted powers to assess the harm and to investigate, providing a black-box environment for decision-making. The Committee invites the consideration of an alternative in which both Respondent and Complainant are heard in this phase (and not only the Complainant), as currently written, the policy provides little incentive for a Respondent to enter an Alternative Resolution in which their voice has not been heard, and might more often than necessary inflate conflicts to Formal Investigations. Committee felt strongly that the proposed policy should include the possibility for an appeal process, both by the Respondent and by the Complainant."

CPT suggested that the LIO officer responsible for dealing with violations under this policy be the same as the corresponding officers provided for in the Abusive Conduct policy, and perhaps those responsible for SVSH cases. The committee reasoned that in many instances, the facts of these cases often implicate two or more of these policies. CPT offered that it would be more efficient if there is a single investigating office that complainants know they can go to.

Finally, CAF found issues with the alternative resolution provisions bearing on student complainants and employee respondents. The committee interpreted this provision to be intended to prevent a more powerful person from pressuring a less powerful person into engaging in one of the alternative resolution methods. They suggested that this intent could be foiled, "if a graduate student was alleging discrimination against another graduate student in their lab, whether they could seek mediation would be dependent on if the latter graduate student happens to have a Teaching Assistantship or Graduate Student Researcher that quarter or not." They suggested that using the language from the policy on Conflict of Interest Related to Consensual Relationships¹ regarding "individual in authority" could prove to be a useful alternative to using *employee* and *student* as the classification for denying access to alternative resolution options.

Ambiguous Language

CAAD thought that the language used in the policy lacked clarity due to the overuse of jargon and technical language and provided the following example: "supportive and remedial measures" (page 5, II-B-8) is undefined." Similarly, CAF observed that the document was inconsistent in its use of key terms. CRJE offered a specific example of the problems with clarity noting, "In several places, modal verbs are used in an ambiguous manner (as in "Individuals may engage in prohibited conduct in several ways", bottom of page 6, where "may" means "might for example" and not "are permitted to"). the

¹ Individual in Authority: the individual who has the direct responsibility to supervise, direct, oversee, evaluate, advise, and/or the ability to influence the employment or educational status or opportunities of the other(s); Conflict of Interest Related to Consensual Relationships at <https://policy.ucsc.edu/policies/cep/cep-0001.pdf>

ambiguity would be solved by substituting the verb “may” with expressions such as: “This policy bars prohibited conduct as stated in Section 2A, whether it takes place in person or through other means.”)

Protected Category

There were a number of comments related to how “Protected Category” is defined in the policy, its perceived limitations, and potential for increased inclusivity. CRJE observed that it is not individuals who are protected but rather identity attributes. As such, the committee was leery of the potential for abuse. To illustrate, they proffered the hypothetical, “that a white-supremacist cis-gendered white male who considered themselves to be discriminated against because of his identity, could, under this policy, file a complaint.” They noted as well, that the examples of protected categories provided includes “medical condition” and a parenthetical list. CRJE was left unsure whether the parentheticals are a limiting factor on the definition, or not. If they are a limiting factor, they questioned their purpose, and if just examples, they questioned why list anything at all?

CPT proposed that if the definition of “protected category” is not constrained by legal requirements, it could be expanded with regard to sexual diversity. Specifically, CPT suggested the following alternate language: “... gender, gender identity, gender expression, gender transition, sexual orientation, sexual identity, sexual minority status, expression of sexual identity diversity, physical or mental disability...” where the language on gender is, “broader than the official state wording.”

Similarly, CAAD noted an active campaign led by South Asian scholars to include “caste” as a protected category. CAAD recognized that they do not “have sufficient information to respond to the unresolved legal question of whether caste is implicitly understood within existing language prohibiting discrimination based on race and ethnicity . . .” They would like to see it addressed explicitly in future iterations of the policy.

Notable Policy Lacunae

CAF and CFW raised concerns about the absence of explicit protections for academic freedom. CAF offered that, “ there could be stronger language protecting academic freedom, including bona fide occupational qualification (BFOQ) exceptions.” CFW similarly recommended that, “ academic freedom be clearly addressed in this policy.” The committee was left unconvinced of the efficacy of the proposed policy in protecting the academic freedom of UC faculty.

Finally, CAF and CFW would like to see language that addresses behavior outside of the campus proper. As CFW observed, “Power dynamics may occur in outside meetings/conferences that are linked to university work.” CFW suggested that conferences should be specifically t in the policy.

On behalf of the Santa Cruz Division, I thank you for the opportunity to provide comments on this significant policy, and I hope that they prove useful in its continued development.

Sincerely,



Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

encl: Senate Committee Responses (Bundled)

cc: Sylvanna Falcón, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Andy Fisher, Chair, Graduate Council (GC)
Matthew Mednick, Director, Academic Senate

March 27, 2023

Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Proposed Presidential Policy - Anti-Discrimination

Dear Patty,

The Committee on Affirmative Action and Diversity (CAAD) has reviewed and discussed the new Systemwide Proposed Presidential Policy - Anti-Discrimination. The committee first notes that they have previously responded to policies that use some of the same language as this proposed presidential policy, and as such, offers the same critiques. We are particularly concerned with the use of “reasonable person,”¹ as well as “severe” and “preponderance of the evidence” (see IIA1; IIB4, and elsewhere). (Please see the enclosed CAAD response to the Abusive Conduct/Bullying in the Workplace policy [12/03/2021]). Furthermore, it is not clear to the committee how this proposed policy will interact with the previously revised Sexual Violence and Sexual Harassment and Abusive Conduct in the Workplace Presidential policies. The proposed policy should be reviewed in conjunction with existing workplace conduct policies to ensure they work together to create a comprehensive and cohesive framework.

The proposed policy is related to students, staff, faculty and other academic appointees. However, the committee found that the policy language is not clear and straightforward for everyone to understand due to jargon and technical language. (For example: “supportive and remedial measures” (page 5, II-B-8) is undefined.) We would like to recommend making the language more accessible and providing a simple flow chart that shows the overall procedure, including lines of reporting and responding. Additionally, the committee recommends that articulations with other existing policies should be explained in a more consistent way. In some cases, existing policy is linked with little explanation; in others, new policy is articulated; and in some cases, there is both. For example, in Section IIA2b, “failure to accommodate” is not given sufficient elaboration. The document provides hyperlinks to other policies rather than articulating policy definitions, as the other sections of IIA do.

The committee notes that “the Local Implementation Officer” and its office’s organizational structure should be clearly defined. Having multiple Local Implementation Officers, or a team of such officers, might better facilitate implementation and accountability. Specifically, under Section IIA1 Harassment section, it is stated “... *the Local Implementation Officer will consider ... The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person....*” We think that having a minimum of two officers working together would provide a system of checks and balances to ensure that decisions are not made unilaterally by one individual. Ultimately, such a system can help ensure that the policy is implemented fairly and effectively. Lacking details about how this implementation structure will be funded, CAAD

¹ As noted in our response to the Abusive Conduct/Bullying in the Workplace policy: “[T]he use of the ‘reasonable person test’ is problematic. Is “the reasonable person in the same or similar circumstances” (Section II) a person who has the same background as the Complainant? Is it a white person? While the ‘reasonable person test’ has some background in judge and jury trials, it is problematic here, as it seems left to an undefined entity (or only the university) to define ‘reasonableness.’”

suggests that the question of the number of officers be considered through later Senate committee review.

Finally, CAAD notes that there is an active campaign, spearheaded by South Asian scholars, to include caste as a protected category in the Anti-Discrimination Policy. While the committee does not have sufficient information to respond to the unresolved legal question of whether caste is implicitly understood within existing language prohibiting discrimination based on race and ethnicity, CAAD recognizes the potential for discrimination at UC and would like to see it addressed explicitly in future versions of the policy.

We appreciate the opportunity to respond and hope for further revision to this policy.

Sincerely,



Kirsten Silva Gruesz, Chair
Committee on Affirmative Action and Diversity

Encl. CAAD to ASC Brundage re Systemwide Review of Draft Presidential Policy Abusive Conduct in the Workplace, 12-03-2021

cc: Sylvanna Falcón, incoming Chair, Committee on Affirmative Action and Diversity
Roger Schoenman, Chair, Committee on Academic Freedom
Alexander Sher, Chair, Committee on Faculty Welfare
Onuttom Narayan, Chair, Committee on Privilege and Tenure
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction and Elections
Senate Executive Committee

December 3, 2021

David Brundage, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Review of Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Dear David,

The Committee on Affirmative Action and Diversity (CAAD) has reviewed the Systemwide Review of Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace proposed policy. The committee supports the policy while having several significant concerns.

The committee is unclear on how this new procedure interacts with other systems and what happens when bullying involves multiple forms of discrimination (see Section VA.4). Further clarification regarding how these systems overlap, and whether a complaint might move through multiple channels simultaneously or serially, is needed.

The bar for abusive conduct/bullying is set high in the policy, as prohibited behavior must repeat or be rather severe. For instance, the first bullet in defining “prohibited behavior” is “[p]ersistent or egregious use of abusive and/or insulting language (written, electronic or verbal)” (Section IIIC). Similarly, on the same page, another bullet defines prohibited conduct as “[m]aking repeated or egregious inappropriate comments about a person’s appearance, lifestyle, family, or culture.” Why must it be “repeated” and/or “egregious?” That it is abusive and occurs once seems enough. Are there escalation steps for disciplinary action if abuse occurs one time versus multiple times? Additionally, is there a system in place to track abusive behavior by repeat offenders (whether individuals or units)? Further, the committee is concerned that the responsibility to recognize and report abusive conduct/bullying falls primarily (and perhaps only) to Complainants, rather than institutions.

The policy invokes civility, and the committee suggests this policy instead focus on safety. For instance, some of the options for resolution (e.g., “facilitated discussion to obtain agreement between parties”) do not clearly guarantee the safety of the Complainant and may in fact exacerbate already-existing problems and dangerous power dynamics. Similarly, the policy often uses the term “inappropriate” (Section IIIC), but it’s not clear what this term means. Both civility and appropriateness are non-neutral terms. Further, the use of the “reasonable person test” is problematic. Is “the reasonable person in the same or similar circumstances” (Section II) a person who has the same background as the Complainant? Is it a white person? While the “reasonable person test” has some background in judge and jury trials, it is problematic here, as it seems left to an undefined entity (or only the university) to define “reasonableness.”

The policy seeks to define what is not abusive conduct/bullying, but in so doing, includes various sites and interactions where the kinds of activities the policy seeks to cover can, and often do, occur. The “[e]xamples of reasonable actions that do not constitute Abusive Conduct/Bullying” include “performance appraisals,” “ambitious performance goals,” and being “assertive” (among others, see Section IIIC). These are common sites where abusive and bullying behavior occur, meaning that these can then be excused as simply “how the institution

works.” For that reason, we believe that this policy should also address the ways bullying and abuse in the workplace can be *institutional*, and not just problems caused by individual bad actors. The policy also needs more clarity on boundaries between academic freedom/freedom of expression/speech and harassment (Section III E). We would like to see a policy that actively encourages members of the UC community to examine the unspoken norms and behaviors that often create structural conditions for these kinds of abuses to take place.

The committee is glad to see that there is “no time limit” on reporting instances of abusive conduct/bullying (Section VB). At the same time, the reporting line for registering abusive conduct/bullying is unclear. The policy indicates, “Individuals should report conduct believed to constitute Abusive Conduct/Bullying to their manager, any supervisor, or applicable University office” (Section VA.1). While multiple reporting options are desirable, there are so many options as to be confusing, with no clear line of reporting or responsibility. The committee believes that multiple reporting options can be maintained while making the office that is primarily responsible for fielding and resolving these complaints clear. This would also help identify repeat offenses and offenders.

The committee wishes to emphasize that it supports the development of an effective abusive conduct/bullying policy and would very much like to see one implemented. The committee also feels that the current document still has some distance to go.

Sincerely,



Kirsten Silva Gruesz, Chair
Committee on Affirmative Action and Diversity

cc: Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Catherine Jones, Chair, Committee on Teaching

February 24, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Review: Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

After the Committee on Academic Freedom (CAF) carefully reviewed the new proposed Presidential Policy on Anti-Discrimination, a number of questions emerged. Who will the local implementation officer be at various campuses? Will this be a new admin position or will this responsibility be added to an existing title? How does this policy interact with other existing policies like Title VII and Title IX as well as blanket coverage for those currently not recognized by Federal law as belonging to a "protected class"?

CAF members were in broad agreement that the review process could be greatly improved by providing a brief and broad statement about the intent around or need for certain policies to be considered and implemented. While we have received some subsequent clarification about different groups covered by Anti-Discrimination Policy and the Abusive Conduct Policy, such clarifications could better focus discussions among committee members by providing vital institutional background for policy changes.

Discussants noted that the document is sometimes internally inconsistent in its use of policy links and key terms. There's some ambiguity about what isn't covered by the new policies, perhaps conferences not sponsored by the university, etc. Discussion participants also noted that there could be stronger language protecting academic freedom, including *bona fide* occupational qualification (BFOQ) exceptions.

Additionally, the barring of alternative resolution options in the policy when the complainant is a student and the respondent is an employee appears to be geared towards preventing a more powerful person from pressuring a less powerful person into these alternative resolution methods. This is an admirable goal. However, by grounding that goal of avoiding undue pressure on the basis of employee/student status, rather than on whether the respondent has a position of power over the complainant leads to unintended and arbitrary consequences. For example, if a graduate student was alleging discrimination against another graduate student in their lab, whether they could seek mediation would be dependent on if the latter graduate student happens to have a Teaching Assistantship or Graduate Student Researchship that quarter or not. That seems arbitrary and misaligned with the intentions of the policy. Similarly, a senior faculty member alleging discrimination against a junior faculty member would not be allowed to seek mediation in the event that the senior faculty member happened to be auditing a foreign language course or

computer programming course that quarter (i.e., making them a student). Instead of using employee and student as the classification for denying access to alternative resolution options, we recommend using the language taken from the existing policy on consensual relationships regarding an “individual in authority” (i.e., “Individual in Authority: the individual who has the direct responsibility to supervise, direct, oversee, evaluate, advise, and/or the ability to influence the employment or educational status or opportunities of the other(s))

Sincerely

/s/

Roger Schoenman, Chair

Committee on Academic Freedom

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Senate Executive Committee

April 10, 2023

Patty Gallagher, Chair
Academic Senate

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

During its meeting of February 9, 2023, the Committee on Faculty Welfare (CFW) considered the proposed Presidential Policy on Anti-Discrimination. Members questioned how this new policy would interact with existing policies, noted ambiguity in terms of where an event has to occur to be covered, and raised concerns about the lack of mention of academic freedom in the draft text.

There is no reference to the just-adopted Abusive Conduct policy. Faculty Code of Conduct (APM 015) is mentioned, and it is stated that the proposed policy does not seek to supplant any of the existing ones. APM 015 already covers discriminatory conduct covered in the proposed new policy. As such, it is not at all clear how this new policy would work tangentially, and/or supersede existing policies or current processes such as faculty misconduct investigations. Members questioned what the difference is between this proposed policy and the Abusive Conduct policy (some cases might be covered by both), and how to determine what process should be followed. Overall, it is not clear why a new conduct policy that affects faculty is needed at all when the current APM already covers that conduct.

In terms of where incidents may occur, members noted that anti-discrimination is not limited to campus situations. Power dynamics may occur in outside meetings/conferences that are linked to university work. Conferences in particular are a grey area, and should be called out specifically in this policy. Conferences are required of faculty for research, but are not structured the same as remote research sites. The same may be said for editorial boards. CFW contends that a UC policy on anti-discrimination should cover any professional activities connected with work that the individual is doing for the University. The policy should speak to more situations where anti-discrimination “in the workplace” may occur, particularly for those that may be unique to faculty.

Additionally, and in the current political climate, CFW recommends that academic freedom be clearly addressed in this policy. Members were not convinced that what is currently stated in the policy draft is enough to protect the academic freedom of UC faculty.

Thank you for the opportunity to provide feedback.

Sincerely,



Alexander Sher, Chair
Committee on Faculty Welfare

cc: Roger Schoenman, Chair, Committee on Academic Freedom
Onuttom Narayan, Chair, Committee on Privilege and Tenure
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Senate Executive Committee

February 16, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

The Committee on Privilege and Tenure (P&T) has the following comments on this draft policy:

Beyond its specific wording, we are concerned about the overlap with the existing policy on abusive conduct. As we understand it, the draft policy is intended to align with laws that cover protected classes, but the abusive conduct policy casts a broader net. If the draft policy covers a subset of the activities covered by the policy on abusive conduct, are there meaningful differences between the two that make it impossible to combine them? There are differences that may be deliberate, e.g. only managers and supervisors have to report abusive conduct, whereas all Responsible Employees (including all faculty) have to report potential violations of the anti-discrimination policy. There are other differences which must be unintended, such as the “objectively viewed as intimidating or offensive” criterion that is only in the draft policy. And then there are differences that are just confusing, such as the fact that confidential resources are listed in the definitions in the draft policy but come later in the text in the abusive conduct policy.

At a minimum, the two policies should be reviewed together and aligned as much as possible. The next version of the anti-discrimination policy should be accompanied by a letter explaining why two separate policies are needed. For example, are the penalties more severe for violations of the anti-discrimination policy, are students included as respondents in one policy and not in the other, or does the University offer more resources to people who have suffered injury under the anti-discrimination policy? Why are these differences necessary? If it is possible to merge the two policies into one (acknowledging that the protections for protected classes are legally required but the general policy is voluntary) that would be even better.

P&T also wondered about the context of the creation of the draft policy. Have the existing policies been found inadequate, or is there a desire to unify different policies aimed at different groups, or is the purpose to create the Local Implementation Officer (LIO) office? Understanding the motivation would help us understand the policy better.

Turning to the wording of the draft policy:

- We recommend that the LIO dealing with possible violations of this policy be the same as the corresponding officers for the recently enacted presidential policy on abusive conduct, and perhaps also the policy on sexual violence and sexual harassment. Violations of these policies can be overlapping, and it will be both economical and efficient if there is a single investigating office that complainants know they should go to.

- If the definition of “protected category” is not constrained by legal requirements, we recommend that broader forms of sexual diversity be included: “... gender, gender identity, gender expression, gender transition, sexual orientation, sexual identity, sexual minority status, expression of sexual identity diversity, physical or mental disability...”. (Underlined text added.) The wording about gender is broader than the official state wording, and we encourage a similar breadth when it comes to sexual diversity.
- We were unsure whether the notification requirement for Responsible Employees would be satisfied by, for example, an email to the LIO with the name of the University affiliate who had potentially experienced prohibited conduct. We believe that this should be sufficient, and the policy should confirm this.

Sincerely

/s/

Onuttom Narayan, Chair

Committee on Privilege and Tenure

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Senate Executive Committee

March 20, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Review: Proposed Presidential Policy on Anti-Discrimination

Dear Patty,

During its meeting of February 21, 2023, the Committee on Rules, Jurisdiction, and Elections (CRJE) reviewed the proposed Presidential Policy on Anti-Discrimination; it wishes to raise a few questions.

The Committee is concerned by the lack of due process with regard to both Respondent and Complainant in the Initial Assessment. The Local Implementation Officer is granted powers to assess the harm and to investigate, providing a black-box environment for decision-making. The Committee invites the consideration of an alternative in which both Respondent and Complainant are heard in this phase (and not only the Complainant). This more inclusive approach might aid in clarifying the context of the harm and better assess its impact. The Committee finds that as currently written, the policy provides little incentive for a Respondent to enter an Alternative Resolution in which their voice has not been heard, and might more often than necessary inflate conflicts to Formal Investigations.

In the same spirit of increasing due process for the Respondent, the Committee recommends reference to Senate Bylaws 335 and 336. Staff lacks such spaces for representation, and therefore are even more impacted by the current lack of transparency and concentration of both investigative and adjudicating powers in the Local Implementation Officer. Further, the Committee felt strongly that proposed policy should include the possibility for an appeal process, both by the Respondent and by the Complainant.

The Committee would like to raise a question with regard to the definition of Protected Category (p.4). It is not individuals who are protected but rather identity attributes. This raises the possibility that a white-supremacist cis-gendered white male who considered themselves to be discriminated against because of his identity, could, under this policy, file a complaint. Without any reference to historical injustices and marginalization, the policy can be misused.

Further, the definition of Protected Category lists what seem to be examples for some but not all attributes. For instance, the policy lists “medical condition” as a protected identity category and then provides “cancer” in parentheses. Does this mean that cancer has special protections? Or is it representative of the kind of medical conditions that are protected? If so, what is that category of protected medical conditions? In short, it is unclear whether the items in parenthesis limit the definition (in which case, why?) or are simply examples (in which case, why include them?).

In several places, modal verbs are used in an ambiguous manner (as in “Individuals *may* engage in prohibited conduct in several ways”, bottom of page 6, where “may” means “might for example” and not “are permitted to”). The Committee asks for more clarity in such instances (for example, in the instance mentioned above, the ambiguity would be solved by substituting the verb “may” with

expressions such as: “This policy bars prohibited conduct as stated in Section 2A, whether it takes place in person or through other means.”)

Thank you for the opportunity to comment on this proposed policy.

Sincerely

/s/

Eleonora Pasotti, Chair

Committee on Rules, Jurisdiction, and Elections

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
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April 19, 2023

**SUSAN COCHRAN, CHAIR
ACADEMIC SENATE**

RE: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Susan,

UCAF appreciates the opportunity to comment on the Proposed Presidential Policy - Anti-Discrimination. As we have previously stated during the management consultation review, UCAF agrees that there is no room for discrimination at the University of California and recognizes the value of a policy to address how to encourage people to speak up, and how to properly handle complaints. However, there are some concerns about the proposed mechanism of investigation and procedures for implementation.

UCAF appreciates that the proposed policy includes a section about free speech and academic freedom, and states “*Freedom of speech, freedom of expression, and academic freedom are essential to the mission of the University; the free exchange of ideas is necessary for the discovery and dissemination of knowledge*” and “*This Policy will be implemented in a manner that recognizes rights to freedom of speech and expression.*” However, proposed procedures minimize the role of peer evaluation for determining whether the reported behavior comports with Academic Freedom, while permitting administrative offices to make this determination. It is clearly stated in [APM10 - Academic Freedom](#) that “*Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to appropriate review by the Administration, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care.*” The proposed policy in its current form gives the primary responsibility to an administrative office. UCAF recommends a process insuring consistent and constant consultation with academic offices, which does not rely on administrative intuitions about what are and what are not violations of Academic Freedom.

The statement of “*When the investigation implicates academic appropriateness or academic freedom, the Local Implementation Officer will consult with the appropriate academic officer for relevant academic expertise.*” relies on the ability of the Local Implementation Office, an administrative office, to determine whether the reported behavior is related to Academic Freedom, presupposing that such an office has the knowledge and expertise to evaluate this. Such an evaluation can only be done by the faculty as represented by the Senate. The statement in section V.A.3 related to Initial Assessment of a Report, “*The Local Implementation Officer **may** consult with other offices as necessary. This may include Academic Personnel Offices for complaints involving faculty and other academic appointees, ...*” provides an even weaker indication that such consultation will occur. We understand the time constraints, especially in the initial

assessment of a report / immediate health and safety, and appreciate the policy acknowledging the need for a quick review of all complaints, both at this initial assessment and during formal investigation. However, UCAF suggests that for all complaints involving academic personnel, which are not closed after initial assessment, the relevant academic offices are involved from the beginning of the process, not on referral from an administrative office based on the discretion of the Local Implementation Office.

UCAF recognizes that the proposed policy appropriately states that “*For academic personnel, formal corrective action/discipline is governed by [APM15 - The Faculty Code of Conduct](#), [APM16 - University Policy on Faculty Conduct and the Administration of Discipline](#), and [APM150 – Non-senate academic appointees/Corrective Action and Dismissal](#) and, as applicable, other policies and procedures.*” However, UCAF believes that there needs to be initial and constant consultation with relevant academic representatives, rather than the late enforcement stage, to insure consistent and equitable application of Academic Freedom principles.

Again, UCAF appreciates that the proposed policy includes a section about free speech and academic freedom. This section specifies what the policy means in reference to Academic Freedom: “*Consistent with these principles, no provision of this Policy will be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or the public commentary of an individual faculty member, other academic appointee, or the educational, political, artistic, or literary expression of students in classrooms and public forums*” and “*Academic freedom includes the right to express views, even in passionate terms, on matters of public importance. This right extends to curriculum and instruction within the classroom, which includes discussions, perspectives, information, and challenges to conventional beliefs.*” While these statements capture some of the Academic Freedom values, they are not all inclusive. UCAF hopes that at least an acknowledgment such as “*including but not limited to*” can be included to prevent the use/abuse of this well-intended list as a ground for dismissal in cases with legitimate Academic Freedom implications.

UCAF appreciates the opportunity to comment on this matter. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melike Pekmezci', with a stylized flourish at the end.

Melike Pekmezci, Chair



UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION,
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April 19, 2023

**SUSAN COCHRAN, CHAIR,
ACADEMIC COUNCIL**

RE: SYSTEMWIDE REVIEW OF PROPOSED PRESIDENTIAL POLICY – ANTI-DISCRIMINATION

Dear Susan,

The University Committee on Affirmative Action, Equity and Diversity (UCAADE) welcomes the opportunity to provide feedback on the proposed Presidential Policy on Anti-Discrimination. The committee understands that this policy covers non-sexual harassment and sexual violence, and the anti-discrimination policy covers all forms of discrimination and harassment based on protected categories. This policy provides a comprehensive statement to bring the UC into compliance with federal laws, and UCAADE appreciates the utility of such a clear statement. Some members hoped that caste would be included in protected categories.

Members expressed concern that the new policy would create a layer of administrative burden which might be shifted to campuses, although hopes were that existing offices would be enabled to address anti-discrimination issues without further burdening campus' finances. In addition, the committee hoped for greater clarity about the decision-making process for choosing the appropriate policy to respond to different behaviors.

Some members hoped that as this policy is reactive, the University would work to create a community of increased equity and inclusion which would reduce the incidents that this policy covers. UCAADE approves the proposed policy.

Sincerely,

A handwritten signature in blue ink, appearing to read "LDS", is written over a light blue horizontal line.

Louis DeSipio, Chair
UCAADE



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

Julia Simon, Chair
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April 19, 2023

ACADEMIC SENATE CHAIR SUSAN COCHRAN

Dear Susan,

UCPT has reviewed the proposed Presidential Policy—Anti-Discrimination. We greatly appreciate the effort to address the lack of a coherent and comprehensive non-discrimination policy systemwide. We reiterate our concerns expressed in our response to the draft language circulated in November 2022 that there is significant overlap and even redundancy between this policy, SVSH policy, and the recently rolled out abusive conduct policy.

As we read the anti-discrimination policy, we note that it has been written from the perspective of those charging various types of misconduct. From the perspective of UCPT, informed by extensive experience adjudicating specific cases of misconduct, we are deeply concerned with areas of overlap with other policies. We anticipate difficulty in parsing the various policies, the conduct they cover and, therefore, determining when violations have occurred. For example, we would like to understand if the overlap in policies will enable the charging of individuals for misconduct under multiple policies simultaneously. For example, could individuals be charged under both the anti-discrimination policy and abusive conduct policy? In the specific case of harassment, our understanding is that the Presidential Policy on Anti-Discrimination aligns with Title VI, which bans discrimination and harassment of protected classes, and that abusive conduct may also cover harassment, although not necessarily of individuals in protected classes.

We understand the administration's desire to align the policy with federal regulations, and specifically Title VI, but we believe that separating harassment from discrimination would enable a less complicated process for both charging and adjudication. Harassment of members of protected classes could be included in the abusive conduct policy and subject to enhanced disciplinary sanctions. This could alleviate confusion arising from redundancies in policy with respect to reporting, investigating, holding hearings, and adjudicating cases.

We are equally concerned about the implementation process of this policy. Where is control over implementation located? Will there be guidelines or procedures for the individual campuses? Without some guidance for implementation, there is a significant risk for incoherent implementation of policy. Indeed, there is a risk of duplicating the current state of variety in terms of implementation of non-discrimination policy across campuses.

Specific Questions:

Page 15 **c. Grievance/Complaint Procedures for Employees**

In addition to reporting to the Local Implementation Officer or other Responsible Employee, a University employee may file a grievance or complaint.

→What is the meaning of “in addition to” here? Does this mean rather than or simultaneous with?

Page 16 **d. Other Inquiry**

When a report is not closed after initial assessment, yet is not appropriate for Alternative Resolution nor Formal Investigation because there is no individual identifiable Respondent over whom the Local Implementation Officer has jurisdiction, the Local Implementation Officer may:

- conduct an inquiry to try to determine what occurred and
- take prompt steps reasonably calculated to stop any substantiated conduct, prevent its recurrence, and, as appropriate, remedy its effects.

→This section allows very broad latitude for addressing conduct with remedial efforts. What might these measures be and are there any restrictions on them?

Page 22 **Appendix II Supportive and Remedial Measures**

In addition to Supportive and Remedial measures, the Local Implementation Officer may take other actions to stop reported conduct, prevent its escalation or recurrence, and address its effects.

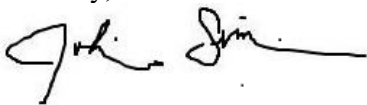
→This language is also vague concerning what actions may be taken to prevent escalation or recurrence. What types of actions are imagined? Are there restrictions imposed on these actions?

Page 23 *F. Other Measures Devised by the Local Implementation Officer or Other Administrator.*

→This language is open-ended and should be limited to specific measures with defined limits.

UCPT appreciates this opportunity to opine on the proposed Presidential Policy—Anti-Discrimination. Please let me know if I can answer any questions for you or if you need any additional information.

Sincerely,



Julia Simon
UCPT Chair

c: James Steintrager, Academic Senate Vice Chair
Monica Lin, Academic Senate Executive Director
Michael LaBriola, Academic Senate Assistant Director
UCPT Members



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April 12, 2023

SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL

Re: Proposed Presidential Policy – Anti-Discrimination

Dear Susan:

The University Committee on Rules and Jurisdiction (UCRJ) discussed the proposed Presidential Policy on Anti-Discrimination. UCRJ appreciates efforts to address the University's responsibilities related to harassment, discrimination, and retaliation in ways that ensure an equitable and inclusive education and employment environment. However, we have a couple of concerns about the policy, one substantial and one minor.

First and foremost, the proposed policy's prohibited conduct and disciplinary processes are ambiguous in the context of the Faculty Code of Conduct (APM 015) and the University Policy on Faculty Conduct and the Administration of Discipline (APM 016). Sections V.A.5 and V.A.8, which outline "Resolution Processes" and "Corrective Action/Discipline," must acknowledge and respect existing disciplinary procedures for faculty described in the APM. The policy should not establish an independent path of corrective discipline ("up to and including termination") for the newly prohibited conduct outlined in the policy. The policy should clarify that these procedures do not replace APM procedures. Such conduct must be considered and incorporated into the APM and other procedural documents.

Secondly, we noticed a minor issue with the phrasing of the last sentence of section II.A.3. We suggest that the phrase "without more" be clarified to indicate its relevance to actions, intent, good faith, or some other meaning.

Please do not hesitate to contact me if you have questions.

Sincerely,

Mijung Park, Chair
University Committee on Rules and Jurisdiction

Cc: UCRJ
Monica Lin, Academic Senate Executive Director



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
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April 19, 2023

**SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Presidential Policy – Anti-Discrimination

Dear Susan,

The University Committee on Faculty Welfare (UCFW) has discussed the Proposed Presidential Policy – Anti-Discrimination, and we cannot support it at this time. We identified several significant deficiencies in the proposal, and we note an unfortunate pattern.

First, given the existence of APM 010, 015, and 016, and given the proposal's statement that it will not contradict other procedures, we are unsure why the proposal is being made at all. The persistence of separate policies and procedures for staff and students further confuses us. If the intent is stream-line implementation, this proposal will not accomplish that goal.

Nevertheless, the proposal arrogates to the administration significant increases in leeway and authority at the expense of faculty participation and Shared Governance. In addition to lacking definition in who they are and respond to, the *single* Local Implementation Officer would be given too much power absent meaningful oversight. The proposal also suggests action, such as suspension, before the conclusion of an investigation, thus inverting the principle of "innocent until proven guilty" and contradicting other procedures pertinent to faculty. Given the personal and reputational damages and expenses incurred by exonerated respondents, this reversal is especially disconcerting. That "may" is used throughout, rather than "must", is a further cause of concern as it may allow the sole Local Implementation Officer to take short cuts or exercise unwarranted judgment.

The risk of the policy becoming a discretionary and punitive mechanism is not matched by its potential efficacy. In its current form, the policy continues to compartmentalize incidents into individual investigations, making it impossible to identify systematic practices of discrimination. Indeed, patterns of wrong-doing do not seem to be considered by the proposal. Even if no single egregious event has occurred, consistent, low-level discrimination can be equally corrosive.

We note that the treatment of academic freedom is also inverted: the limits of academic freedom would be determined by the Local Implementation Officer, based on unspecified "locally developed procedures". This change places faculty in an entirely consultative position working in response to the queries of the LIO. We view this as concerning. The faculty should make determinations about academic freedom, not the administration.

Finally, we note that this erosion of faculty rights does not stand in isolation. The effect of this proposal is but the latest in a series of simplifications to policy that curtail Shared Governance and dilute faculty authority.

Thank you for your attention to this important matter.

Sincerely,

Terry Dalton, UCFW Chair

Copy: UCFW
Monica Lin, Executive Director, Academic Senate
James Steintrager, Academic Council Vice Chair



BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS (BOARS)

Barbara Knowlton, Chair

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April 24, 2023

**SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Presidential Policy – Anti-Discrimination

Dear Susan,

The Board of Admission and Relations with Schools (BOARS) has discussed the Proposed Presidential Policy – Anti-Discrimination, and we have just a few comments. First, we appreciate the effort to consolidate the location of related policies, and we further appreciate the call to establish dedicated offices on the campuses and at systemwide to lead these efforts.

More germane to BOARS issues, though, we are concerned that admissions offices could be asked to explain how they assess certain mental/cognitive disabilities, or if they even do so. Regardless of the answer, allegations of negative discrimination or of preferential treatment could be leveled. Careful guidance may be required.

Thank you for your support,

Sincerely,

Barbara Knowlton
BOARS Chair

cc: Members of the Board of Admissions and Relations with Schools (BOARS)
Executive Director Lin