

Executive Board

(Second Systemwide Senate Review) Draft Presidential Policy - Abusive Conduct in the Workplace

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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

November 2, 2022

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

Re: Second Systemwide Review of Draft Presidential Policy on Abusive Conduct in the Workplace

Dear Vice Provost Haynes:

As requested, I distributed for systemwide Senate review a revised draft of a proposed new Presidential Policy on Abusive Conduct in the Workplace. All ten Academic Senate divisions and six systemwide committees (UCPT, UCAF, UCFW, UCPB, UCAP, and UCEP) submitted comments. These comments were discussed at Academic Council's October 26 meeting and are attached for your reference.

We understand that the policy provides a framework for campuses to address abusive conduct by and against members of the UC community in the workplace, details the University's responsibilities for investigating and correcting behavior that violates the policy, and addresses the issue of retaliation for reporting or participating in an investigation of prohibited conduct.

The Senate appreciates the significant improvements made to the policy in response to Senate feedback on the original version reviewed in winter 2022. In particular, we appreciate the improved discussion of academic freedom, reporting processes, and campus implementation; the clarification that abusive conduct must not be construed to restrict legitimate scholarly discourse, regardless of its tone; and the clarification that the policy does not supplant faculty disciplinary processes described in the Academic Personnel Manual (APM) and Senate regulations.

We continue to support a systemwide policy that addresses abusive behavior not covered by other policies specifically tied to sexual harassment or discrimination, provides clear guidelines for reporting, investigating, and resolving issues related to these behaviors, and helps protect faculty, students, and staff who are targets of abusive behavior.

Significant questions about the policy remain, however. Some of the main concerns include: the level of detail and clarity of key policy elements; how the policy will interact with and be implemented in relation to other UC and campus policies; how it will interact with free speech and academic freedom; the University's ability to implement the policy; and its potential effect on Senate adjudication processes. These issues would benefit from additional thought and policy

revision. I will summarize the main concerns below, but we encourage you to read the full packet of responses for more details to inform additional revisions.

Clarity of Terms

The policy and Frequently Asked Questions (FAQs) use several ambiguous terms that should be clarified. The policy would benefit from a better-articulated definition of “abusive conduct” and standards for classifying conduct as abusive, more concrete examples of “inappropriate” conduct, “false information,” and “inappropriate photos, videos or information” tied directly to a precise definition of abusive conduct, and examples of specific behaviors that do and do not qualify as abusive conduct, especially for concerns of “spreading rumors” and circulating “inappropriate” information. For example, to what standard will “inappropriate” refer? How will this be determined?

The revised policy replaces the “reasonable person” standard used in the original policy to define abusive conduct, with an “objectively offensive” standard. However, the policy does not define what “objective” means or how this standard would be implemented. We know that an individual’s experience of behavior that is perceived as abusive can be inherently subjective. Several reviewers observed that “reasonable person” is an existing legal standard, and expressed a preference for it, but both terms are indefinite. Further behavior perceived as abusive varies by individual, by communities, by culture, etc. A clearer and clearly-defined alternative should be identified to avoid an idiosyncratic application of the policy.

Academic Freedom

The policy does not sufficiently address the role of peer evaluation in determining whether a reported behavior comports with academic freedom, and seems to permit administrative offices to make this determination. The policy should explicitly convey the Senate’s authority over academic freedom and its responsibility for evaluating whether a reported alleged behavior is protected by academic freedom. All cases evaluating campus faculty conduct as a matter of academic freedom should be referred to the local Committee on Academic Freedom.

A more general concern is that the policy will be applied frivolously, that people could be targeted under the policy for expressing dissenting voices or for simply being difficult to work for or with, and that the policy could be used by the administration and others to silence faculty who say things they find objectionable. University policy should not inadvertently discourage or prohibit scholarship or creative expression that may offend some members of the University community. The policy should make clear that disruptive behavior is not the same as abusive behavior.

Scope of the Policy

The Senate has additional concerns related to the scope of the policy. First, the policy calls for applying an identical approach to instances of abusive conduct for faculty, staff, and students, but then allows each campus to develop its own overall approach. It seems illogical to allow inconsistencies across campuses while mandating a campus-specific approach that applies the same across all employee groups. Leaving many decisions up to individual campuses and “case-by-case” application will create inequitable accountability standards and insufficient systemwide tracking. If systemwide implementation standards are too impractical, there should at least be systemwide standardization for the tracking of incidents.

Previous references to “repeated and egregious” have been removed from the policy, and language has been added to infer that a determination of abusive conduct may be made on the

basis of a single act. The Supreme Court held in a 1999 case that an institution can be liable for damages in a private lawsuit for failing to adequately respond to sexual harassment under Title IX if it is aware of, and deliberately indifferent to, conduct “that is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.” Similarly, conduct that falls under this policy should meet the standard of severe and pervasive.

The policy should address implicit bias, given that complaints could, in certain cases, stem from assumptions and behaviors by a majority group that might be discriminatory or abusive in and of themselves. The FAQs should address cases in which abusive conduct appears to take place on social media, and when a member of the University might be the target of an abusive campaign or forms of cyber-bullying.

Faculty Discipline

The policy cover letter states that the policy does not intend to supplant disciplinary processes described in the APM or Senate bylaws and regulations; however, letters from UCPT and others describe how specific provisions of the policy conflict with existing faculty disciplinary processes. The policy appears to supplant existing investigation and disciplinary processes by instructing each campus to form a separate investigative structure charged with investigating abusive conduct for all employees. Disciplinary actions against faculty under this policy should only be taken pursuant to APM 016 requirements for consultation with the Senate. If, as stated in the cover letter to the policy, UCOP does not intend the policy to supplant faculty disciplinary processes, further clarifications are needed. The policy should explicitly articulate the Senate’s right to conduct an investigation even if the administration has done so. It should outline mechanisms for investigation and remediation that support the core professional right in the Faculty Code of Conduct to be “judged by one’s colleagues.”

Reporting and Accountability

The policy would generate a powerful and costly new office on campuses. It is unclear which entities would be responsible for oversight at the campus, the mechanism for reporting allegations of abusive conduct, the procedures for investigation and adjudication, jurisdiction in the event of policy overlap, and which individuals or units would have the authority to review and route complaints between investigative mechanisms and Senate processes and where these processes would sit within administrative structures. The University should establish a clear hierarchy about which policy violations should be investigated and adjudicated first, to avoid unnecessary duplication and jurisdictional confusion (i.e., such as whether a complaint should go to the campus Committee on Privilege and Tenure or a unit of Human Resources).

It is unclear how the policy will interact with Title IX regulations, policies covering sexual violence and sexual harassment (SVSH), and anti-discrimination policies. More generally, there is concern about a proliferation of increasingly complex judicial frameworks to address Title IX, SVSH, and discrimination. Rather than develop a separate entity to investigate abusive conduct, the University should consider dedicating resources to existing entities for reporting and documenting concerns about abusive conduct.

The revised policy better acknowledges the multiple roles students may have at the University, but it should do more to clarify the reporting expectations and responsibilities of supervisors, who is a mandated reporter, and the term “supervisor” itself. The policy is unclear about who a report is made to if the person exhibiting purported abusive conduct is your supervisor. The list of individuals named as managers and supervisors who must report incidents of abusive conduct

should include Graduate Advisors, Equity Advisors, and campus Ombudspersons. Separate policies for staff, student employees, and faculty should be considered, or the mechanisms of implementation and compliance for staff, students, Senate faculty, and non-Senate faculty should be clearly specified. Also, as compliance officers wade further into the day-to-day management of departments and other units to identify what will be deemed abusive behavior, it is important that compliance offices receive extensive training on the functioning of the University and its academic mission, especially if the definition of abusive conduct is quite broad.

Each location's divisional Senate should have a substantive role in the development of local implementing procedures for this policy. We recommend including a flowchart outlining the main steps in the process of reporting, investigation, and adjudication. This flowchart would be of great help in devising more detailed implementation at the divisional level.

Finally, the policy should include a statute of limitations that sets the maximum time an individual has to initiate proceedings from the date of an alleged offense.

It is risky for the University to implement this policy on January 1 without resolving these issues. For the Senate to support the policy, our substantial concerns around protection of Senate disciplinary processes and clarification of the relationship of related policies will need to be addressed.

We appreciate the opportunity to comment. Please do not hesitate to contact me if you have additional questions.

Sincerely,

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

Susan Cochran, Chair
Academic Council

Cc: Academic Council
Campus Senate Executive Directors
Executive Director Lin

Encl



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

October 19, 2022

SUSAN COCHRAN
Chair, Academic Council

Subject: Second Systemwide Review of Draft Presidential Policy – Abusive Conduct in the Workplace

Dear Chair Cochran:

On October 10, 2022, the Council of the Berkeley Division (DIVCO) discussed the *Draft Presidential Policy – Abusive Conduct in the Workplace*, 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). DIVCO endorses the proposed revisions and the enclosed committee comments.

DIVCO had no objections to the draft policy. DIVCO appreciated the explicit discussion of academic freedom in this revision, and the clarification that its recommended process does not supplant disciplinary processes described in the Academic Personnel Manual. The discussion of the reporting process and implementation on the campuses is also much improved in this set of revisions. One of the committees that commented suggested that it would be desirable to include more concrete examples of “abusive conduct” in the Frequently Asked Questions (FAQ) document, especially as concerns incidences of “spreading rumors” and circulating “inappropriate” information. Please see the attached letters for more information.

Sincerely,

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

Enclosure

cc: Maximilian Auffhammer, Vice Chair, Berkeley Division of the Academic Senate
Jocelyn Surla Banaria, Executive Director, 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
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Patrick Allen, Senate Analyst, Committees on Faculty Welfare and Privilege & Tenure

To: Mary Ann Smart, Chair, Berkeley Division of the Academic Senate

From: Sean Gailmard, Chair, Committee on Academic Freedom (ACFR), Berkeley Division

Re.: 2nd draft systemwide policy on abusive conduct in the workplace

Date: 10/6/22

ACFR discussed the second draft policy on abusive conduct in the workplace. The committee believes that the revised policy contains important improvements over the original policy that are responsive to ACFR's comments from January 2022. In particular, the updated policy clarifies that abusive conduct must not be construed to restrict legitimate scholarly discourse regardless of its tone, and that disciplinary actions against faculty under this policy can only be taken pursuant to APM 016 requirements for consultation with the faculty senate. For these reasons, ACFR has no objections to the revised policy.



October 7, 2022

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

*Re: DECC's Comments on the Proposed Revised Presidential Policy
on Abusive Conduct in the Workplace*

The Committee on Diversity, Equity, and Campus Climate (DECC) has reviewed the proposed revisions to the Presidential Policy on Abusive Conduct in the Workplace. DECC endorsed the proposal without comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'TP', enclosed within a simple, hand-drawn oval.

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

TP/lc



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

September 30, 2022

CHAIR MARY ANN SMART
Academic Senate

*Re: Second Systemwide Review of Proposed UC Presidential Policy
on Abusive Conduct in the Workplace*

Dear Chair Smart,

The Committee on Faculty Welfare (FWEL) reviewed and discussed the proposed second systemwide review of the draft Presidential Policy on Abusive Conduct (formerly Abusive Conduct and Bullying) in the Workplace.

FWEL reminds drafters of this policy that a key job requirement of the faculty is to provide evaluations of performances, both in STEM and social science research and in the advancement of the humanities. This is vital in mentoring colleagues as well as in guiding students. Negative evaluations do not normally fall under the scope of abusive conduct, even if strongly worded.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas C. Leonard'.

Thomas Leonard, Co-Chair
Committee on Faculty Welfare

A handwritten signature in black ink, appearing to read 'Nancy S. Wallace'.

Nancy Wallace, Co-Chair
Committee on Faculty Welfare

TL/NW/pgs



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

September 30, 2022

CHAIR MARY ANN SMART
Academic Senate

*Re: Proposed UC Presidential Policy on Abusive Conduct in the Workplace
(Second Systemwide Review)*

Dear Chair Smart,

On September 9, 2022, the Committee on Privilege and Tenure (P&T) at Berkeley reviewed and discussed the latest revisions to the UC Presidential Policy on Abusive Conduct in the Workplace. The Committee found the revisions to the first draft to be carefully done and the updated policy to be mostly reflective of our previous concerns.

P&T Committee members did have concerns about the list of Frequently Asked Questions (FAQs) that are intended to be helpful examples of what behavior could and could not constitute Abusive Conduct.

For example, the Committee discussed the following FAQs:

Section VII.: What are examples of Abusive Conduct (p. 13).

- Spreading false information and malicious rumors
- Circulating inappropriate photos, videos, or information via email, social media, or other means

In both cases, Committee members found that the ambiguity of what constitutes 'false information', or 'inappropriate photos, videos or information' made these particular FAQs more confusing than particularly helpful for the policy. Since the main point of a list of FAQs such as this that they are useful for interpretation of the policy, the Committee felt that more specific examples directly tied to the precise definition of abusive conduct should be provided. P&T Committee members thought that providing both types of behavior- examples that do and do not qualify as abusive conduct- would be more useful in a list of FAQs. If this was not possible, then an abbreviated list of FAQs with the two bullets noted above removed would be preferred.

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



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October 18, 2022

Susan Cochran
Chair, Academic Council

RE: Second Review of Presidential Policy on Abusive Conduct in the Workplace

Dear Susan,

Davis Division leadership reviewed the second iteration of the Presidential Policy on Abusive Conduct in the Workplace. Given the extremely short turnaround time at the beginning of the committee year, we were unable to distribute the policy for appropriate committee review.

The Davis Division's comments on the first policy, though largely supportive, raised questions about the policy's applicability to students, coverage of cyberbullying and online abuse, and insufficient demarcation of the boundaries between freedom of speech, academic freedom, and abusive conduct. The second iteration addresses all of these questions. We have no further comments at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Palazoglu", is written over a light gray horizontal line.

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

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

October 18, 2022

Susan Cochran, Chair
Academic Council

Re: Systemwide Review of Draft Presidential Policy on Abusive Conduct

Dear Chair Cochran,

The Irvine Division discussed the draft presidential policy on abusive conduct at its Cabinet meeting on October 18, 2022. The Committee on Privilege and Tenure (CPT), the Council on Equity and Inclusion (CEI), and the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) also reviewed the policy. The committees' feedback is attached for your review.

The Division appreciates the Office of the President's (OP) efforts to develop this important policy and to collect feedback to finesse the policy details prior to implementation. Given the significance and far-reaching implications of the policy, the Division recommends that OP take the time to consider additional systemwide feedback seriously, respond to outstanding questions adequately, and refine the policy accordingly, adjusting the implementation timeline if needed. It is critical that the Division be involved in the development of local implementing procedures, as is stated in the current draft, and we look forward to working with the administration on this in the coming months.

The Irvine Division appreciates the opportunity to comment.

Sincerely,



Georg Striedter, Chair
Academic Senate, Irvine Division

Enclosures: CPT, CEI, CFW memos

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



October 11, 2022

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

RE: Draft Presidential Policy on Abusive Conduct

The Council on Equity and Inclusion discussed the draft presidential policy on abusive conduct at its meeting on October 3.

The Council continued to have questions and concerns about the second version of the proposed policy. Several members questioned the omission of the “reasonable person” standard in the definition of abusive conduct and the adoption of the “objectively offensive” standard instead. While they understood the change was intended to recognize the circumstances of the individuals involved and the situation, they questioned whether an “objectively offensive” standard is correct because one’s experience of abusive behavior can be inherently subjective.

Some members expressed frustration that there are not yet local implementing procedures, leading to questions about how the policy would work in practice. While they recognized that the policy applies systemwide, members desired central guidance on implementation that is more robust as well as examples of how the policy would work on the campuses.

Members additionally recognized how challenging it can be for someone to file a formal report and thought that some individuals might not come forward with allegations of abusive conduct if doing so would lead to an investigation. They suggested that alternative or intermediate actions might stem abusive behavior before it escalated to the level of an investigation, and added that creation of alternative or intermediate remedies or forums should be considered.

Members appreciated the expanded section on “Confidential Resources,” and recognized the importance of providing confidential opportunities for discussion and guidance while exploring options. Some members questioned how the section on confidential resources fit with the later section, “Initial Assessment of a Report/Immediate Health and Safety,” which describes police reporting requirements upon receiving a report of physical violence or threats of violence. Members recommended the University consider adding to the policy that the complainant’s consent should be required before police reporting, for complainants who are not minors. If police reporting is a possible outcome of reporting an incident of abusive conduct in the workplace, this needs to be stated during any confidential discussion of options so complainants are aware of reporting implications.

Other members were struck by the removal of references to “civility” in the policy, which was noted but not explained. One member opined that most cases of abusive behavior are not likely to be incredibly egregious, but primarily come from not maintaining a civil work environment. Thus, it was curious to some that the University removed references to civility from the policy.



Members also noted several specific areas in the draft policy where clarification or additional information may be helpful (page numbers are from the clean version):

- Page 7 of 15: Item C.1. General. In the list of local offices and/or teams handling reports of abusive conduct, it may be helpful to include the systemwide UC Whistleblower Hotline number and website (800-403-4744 and universityofcalifornia.edu/hotline).
- Page 13 of 15: Item 1. Examples of abusive conduct. Members noted that references to inappropriate comments “not covered by the University’s policies prohibiting discrimination” and behaviors “not covered by the University’s Sexual Violence and Sexual Harassment policy” could cause confusion. How would individuals know what actions are covered by the current policy versus other existing policies?
- Page 14 of 15: Item 2. Examples of conduct that generally does not constitute abusive conduct. The last bullet includes the phrase, “...even if the content is considered insulting by the recipient.” It may be useful to provide a couple of illustrative examples of this type of content here.

Finally, members noted a few typos in the draft policy (page numbers are from the clean version):

- Page 7 of 15: Item A. The heading, “Confidential Resources” is listed twice.
- Page 14 of 15: Item 2. There are two question marks after the question, “What are examples of conduct that generally do not constitute abusive conduct as defined in Section II of this policy,” and two colons after, “Examples include but are not limited to.”

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

Sincerely,



Jane Stoever, Chair
Council on Equity and Inclusion

Cc: Arvind Rajaraman, Chair Elect-Secretary
Jisoo Kim, Executive Director
Gina Anzivino, Associate Director and CEI Analyst
Stephanie Makhoul, Senate Analyst

October 12, 2022

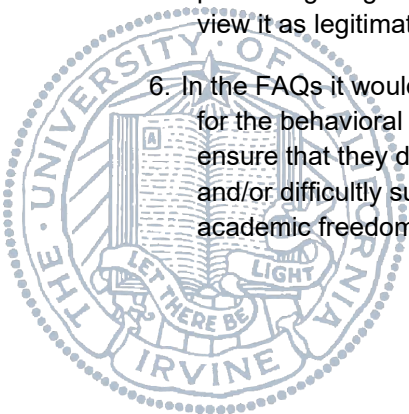
**GEORG STREIDTER, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

Re: Systemwide Draft Presidential Policy – Abusive Conduct

Systemwide Senate Chair Susan Cochran distributed for review a second draft policy on abusive conduct that covers abusive conduct and retaliation in the workplace.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on October 11, 2022. The Council would like to submit the following comments:

1. Under section C.1. the policy states: "...Individuals should report conduct believed to constitute Abusive Conduct to their manager, any supervisor, or directly to the applicable University office. Chairs and Deans, among others, are considered managers and supervisors." Many individuals may experience abusive behavior directly from their managers, supervisors, Chair, or Dean. Is there a more prescribed or "safer" way for individuals to report in that case? What exactly is an "applicable University office?"
2. Some Council members thought the removal of "bullying" behavior was troubling. To eliminate the word may give the impression that administration is ignoring or trivializing such behavior and/or giving the appearance to legitimize it. Bullying can be subtle and can result in silence, shame, and avoidance behavior. It affects faculty ability to focus and attend to their work. The Council would like to clarification on why it was removed. Unless it is addressed in another document that is already in place, the word bullying should be reinstated in the next document.
3. Some Council members thought removing the word "bullying" was a positive choice since the colloquial notion that bullying is pedantic or not to be taken seriously clouds the larger systems of abuse in play. However, the document could do a better job in explaining how conduct one, which was previously considered bullying, is included in a definition of abusive conduct.
4. In 2016, then UC President Napolitano wanted to "move us towards a systemwide definition of bullying and abusive conduct." It is shocking and frustrating that this is still not addressed in an inclusive way.
5. The Council requests removal of "taking into account the circumstances of the parties," (p.2). if there are any "circumstance" where it would be acceptable. For example, a Ph.D. candidate perceiving tough questions from a committee as abusive, while the committee members might view it as legitimate scholarly discourse with a candidate. This should be clarified.
6. In the FAQs it would be helpful to include resources for dispute resolution/conflict management for the behavioral examples in VII. 2. Having a way for parties to deal with these problems can ensure that they do not escalate to abusive conduct and does not diminish the very real stress and/or difficulty such actions can create. This is especially important when it comes to academic freedom and questions of political speech. The Council would also appreciate more



discussion about "third party reporters" since that can range from a witness to abusive conduct doing the reporting to a legitimate news source uncovering systemic issues to a political organization attacking a set of academic positions to a random twitter account making up lies. Having a clearer explanation of the different types of reporters and university response to different types of third party reporters is very important.

7. On Page 8, #2: "Managers and supervisors (including, among others, Chairs and Deans) who observe conduct that may constitute Abusive Conduct have a responsibility to address such conduct immediately" What happens Chair and Dean's don't address the issue? There have certainly been situations when the Chair has been/is very aware of abusive conduct/bullying and did not do anything because they themselves were/are afraid.
8. Also on Page 8, #2, What constitutes "sufficient information" in order for the university to do something other than a conversation or a censure in a file? Who decides when and how particular behavior should be stopped?
9. Why were these options to physically separate the parties and changing the reporting line removed from the document? The Council requests that this option be reinstated.
10. The reporting system seems cumbersome. The Council suggests that any future workgroup reviewing this policy designate an appropriate office.
11. The Council requests additional language clarifying how to address power differentials.
12. The Council requests the definition of "workplace" be clarified, as university activities can be inter-related and not restricted to offices or labs.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Naugle".

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

C: Jisoo Kim, Executive Director
Academic Senate

Gina Anzivino, Associate Director
Academic Senate

Stephanie Makhoul, Cabinet Analyst
Academic Senate

October 14, 2022

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

RE: Draft Presidential Policy on Abusive Conduct

The Committee on Privilege and Tenure (CPT) discussed the draft presidential policy on abusive conduct at its meeting on October 13, 2022.

Overall, members supported the policy and appreciated that revisions were responsive to feedback from the first review conducted last year, especially by building in guardrails to protect academic freedom and freedom of expression. That being said, they had several suggestions for areas that could be clarified or improved.

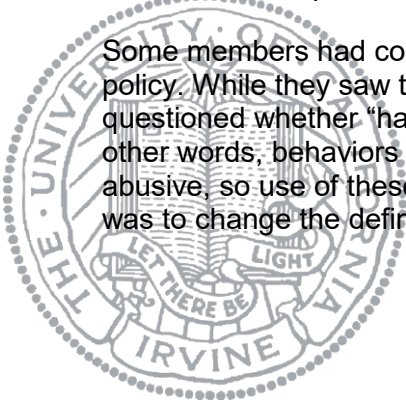
To start, members noted that the policy makes several references to implementation at the local level and deference to existing policies. This led to questions about the details of implementation. For example, who/what entities would investigate allegations of abusive conduct? They suggested that the policy could more fully articulate what local implementation might look like. In lieu of that, each Divisional Senate should be actively involved in detailing articulation of local implementation.

Several members also commented on the policy's change from the "reasonable person" standard to the "objectively offensive" standard in the definition of abusive conduct. While they recognized there are problems with the reasonable person standard and understood the change was intended to take into account the totality of the circumstances, they noted that "objective" may not be the best descriptor to capture what appears to be a holistic review. They would like to see a legal definition of "objectively offensive" referenced in the policy. Additionally, some members noted the reference to "good faith" in the policy and questioned how this would be operationalized and who would determine good faith.

Members raised other questions. For example, who is included in the "third parties" referenced in the policy? Recognizing that supervisors have reporting obligations, does that mean they are "mandated reporters?" Finally, why was the section in the previous version of the policy that entitled all parties to a copy of the report removed?

There were additionally some concerns about including public commentary as an area of academic freedom, unless it was meant to be synonymous with expressing views on matters of public importance. A member questioned whether personal comments made publicly via social media, for example, should be considered protected under the umbrella of academic freedom.

Some members had concerns about the definition of abusive conduct as spelled out in the policy. While they saw the virtue of providing some adjectives that define abusive conduct, they questioned whether "harassing" and "threatening" would cover all kinds of abusive behavior. In other words, behaviors that may not be defined as harassing or threatening might still be abusive, so use of these terms could potentially narrow the scope of the policy. One suggestion was to change the definition from "abusive conduct is harassing or threatening behavior..." to



something like “abusive conduct could include, but is not limited to, behavior that is harassing or threatening...” On the other hand, some members worried that an overly inclusive definition could become a dragnet and stifle open and vigorous debate among colleagues.

Some members pointed out that managers and supervisors, including chairs and deans, can also be abusive and felt strongly that this issue should be addressed in the policy. They noted that these individuals can use all the common methods of abusive behavior and harassment, and also have at their disposal the normal administrative tools of the university, including performance appraisals, reviews, space allocation, etc. This power differential can rise to a high level in cases of abusive conduct by an administrator against a subordinate or junior faculty member. They thought the policy should cover such cases and make clear that unreasonable use of normal administrative tools can be abusive conduct. They suggested that this scenario should be addressed under “Policy Coverage” and with clarification and example(s) in the “Frequently Asked Questions” section.

Finally, the policy states that each location’s Divisional Senate should be involved in the development of local implementing procedures for the policy. Members agreed that this was important, but thought the policy should go further and be explicit about a commitment to faculty governance being the driver of implementation.

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 stylized, flowing script.

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 Makhoulouf, Senate Analyst

October 18, 2022

Susan Cochran
Chair, UC Academic Senate

Re: **(Second Systemwide Senate Review) Draft Presidential Policy – Abusive Conduct in the Workplace**

Dear Chair Cochran,

The divisional Executive Board, councils, and committees appreciated the opportunity for a second system review of the Draft Presidential Policy on Abusive Conduct in the Workplace. The Executive Board (EB) reviewed the proposal at its meeting on September 29, 2022. Due to the unusually short review period, EB members did not have an opportunity to review divisional council and committee feedback during its meeting. Rather, we have highlighted their perspectives in this letter and enclosed their responses.

EB members expressed general support for the revised policy, more so than did some of the divisional committees. Members continued to appreciate the intent of this important community standard and noted that the revised policy addressed a series of concerns previously raised by the Board. Moreover, members affirmed there must be clear and comprehensive avenues to counsel individuals and hold them accountable for abusive conduct in the workplace, particularly when there is no protected status discrimination component. Members recognized this proposal is an important effort to address a hole in the patchwork of a complex system.

That said, EB members and several divisional committees, particularly judicial committees, have additional requests for clarification and continued concerns about the revised policy proposal.

Academic freedom. EB members affirmed the importance of maintaining and reinforcing academic freedom. They appreciated that the proposed policy indicates that if an incident implicates academic freedom then it goes to the Academic Senate. However, they noted that the policy is silent on who gets to decide on whether the issue involves academic freedom. It is important to make explicit that the Academic Senate has a key role in determining whether matters are related to academic freedom. Although members appreciated the intent of the community standard, they requested consideration of any DEI implications.

Assignment of authority in re classification and routing/Relationship between investigative mechanisms and Academic Senate processes. The revised proposal lacks specificity with regard to which individuals or units would have the authority to review and route complaints and where these processes would sit within administrative structures. Members suggested a need for greater clarification of who will administer these types of issues, particularly when they do not involve civil rights. For example, page 11 of 15 indicates investigations involving academic appointees will follow existing

processes; yet, following this statement is a new formal process. What is the proposed relationship between existing processes, particularly involving faculty, and the proposed one?

Concern about the policy's overall relationship to existing Academic Senate processes. Please see letters from the divisional committees on Privilege and Tenure and Charges for their strong criticisms of the proposed policy because they understand it to undermine, or at least conflict with, existing Academic Senate processes. The Faculty Welfare Committee expressed similar concerns in its letter.

As for the Executive Board, members asserted the centrality of, and deference to, existing Academic Senate processes. They suggested the proposed policy requires further clarity to affirm that Academic Senate processes remain in place including the right of the Academic Senate to conduct its own investigation even if administration has done so. Moreover, members advised that deference be shown to existing Senate processes when confronted by ambiguities that may arise during implementation of this policy.

Again, it is important to highlight the attached responses from the divisional committees on Charges and Privilege and Tenure that provided detailed feedback about existing policies and procedures that this proposal appears to overlap or duplicate. Thus, due diligence is needed to eliminate ambiguities in the proposed policy that could lead to confusion or undermine the Academic Senate's shared governance role.

Sincerely,



Jessica Cattellino
Chair
UCLA Academic Senate

Encl.

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

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

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

- 1) The policy as written is still in conflict with existing UC policy and UCLA bylaws¹ because it breaches one of the core professional rights of the Faculty Code of Conduct that faculty have “the right to be judged by one’s colleagues, in accordance with fair procedures and due process, in matters of . . . discipline” (emphasis added).” It is important to note that “fair procedures and due process” involve *more than the right to a disciplinary hearing*; they involve faculty- /University-approved procedures that “involve the faculty in participating in the investigation of allegations of misconduct.”²
- 2) The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC)³ and therefore falls under the authority of the Academic Senate. At UCLA that means that the Charges Committee is the body that should investigate and find probable cause.⁴ The policy promises not to supplant existing APM or Senate bylaws. However, the investigation piece of the policy does just that. It would supplant UCLA Bylaws Appendix XII, which

¹ UCLA Bylaw Appendix XII, originally passed in 1974, governs the campus’s procedure for investigating whether conduct meets the “probable cause” standards for violation of the Faculty Code of Conduct.

“Each Division should duly notify the University Committee on Rules and Jurisdiction and the University Committee on Privilege and Tenure of the procedures it has adopted and any subsequent changes therein. These Committees in turn are directed to report periodically to the Assembly of the Academic Senate on procedures adopted by the Divisions and to recommend to the Assembly such action as they deem appropriate for assuring compliance with the Bylaws of the Academic Senate or the promotion of uniformity among Divisions to the extent to which it appears necessary and desirable.”

² “Because it is desirable that the faculty meaningfully participate in its own self- discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.” APM-015§III.B.3 [Faculty Code of Conduct (FCC)]. See also fn. 1. UCLA’s procedures were developed using this consideration.

³ “General” (not based on protective categories) harassment is also forbidden by the Student Code of Conduct. “102.11b: Harassment” as are other forms of threatening or abusive conduct.

⁴ The Faculty Code of Conduct applies to all Senate and non-Senate faculty who are not subject to a collective bargaining unit. The contract for Unit 18 lecturers incorporates the provisions quoted here into their contract.

- the FCC forbids “discrimination, including harassment against [a student (II.A.2); University employees or individuals seeking employment (II.C.5); faculty (II.D.2 “Colleagues)] . . . for arbitrary or personal reasons.”
- The concept in the policy that “a single act shall not constitute Abusive Conduct/Bullying, unless especially severe or egregious” (Section II, p. 2) is explained in the FCC as “faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences.”

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

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

II.A. Teaching and Students

Ethical Principles

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

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

5. Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.

II.C. The University

Ethical Principles

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

4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities.

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

II.D Colleagues

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

- 3) The Faculty Code of Conduct states that “The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of probable cause.” Bylaw 336 requires that at a disciplinary hearing “the Chancellor or Chancellor’s designee has the burden of proving the allegations by clear and convincing evidence.” This policy dictates a “preponderance of the evidence standard.” The Committee sees no reason to elevate the standard for initiating a disciplinary action to preponderance of the evidence or to lower the standard for imposing discipline from a “clear and convincing standard.”
- 4) Although the word “bullying” has been removed, Committee members do not agree that allegations of “abusive conduct” by faculty should be or need to be investigated outside of the Academic Senate processes, which is what the policy describes.

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

conduct persists because of serious gaps in reporting, documenting, and correcting faculty behavior that might become serious through its repetition or its consequences. In the Committee's experience, the individuals most vulnerable to potentially abusive conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a professor or colleague, and, even if they consider filing charges, may not have access to sufficient documented information to establish violation of a policy. There is no system, especially for faculty, for documenting and correcting abusive conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy offers no outcomes unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy, especially promising a dedicated office to investigate allegations, is likely to raise expectations of better behavior, but is unlikely to address these gaps.

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

Sincerely yours,



Norweeta G. Milburn

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

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

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

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

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

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

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

(2) One-size does not fit all.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to review.

Sandra Graham, Chair 
Chair, Committee on Privilege and Tenure

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

October 14, 2022

To: Jessica Cattelino, Chair
Academic Senate

Re: **(Second Systemwide Senate Review) Draft Presidential Policy on Abusive Conduct in the Workplace**

Dear Chair Cattelino,

At its meeting on October 11, 2022, the Faculty Welfare Committee (FWC) reviewed and discussed the Second Systemwide Senate Review Draft Presidential Policy on Abusive Conduct in the Workplace. Members offered the following comments.

The committee recognizes the importance to the University of maintaining a non-abusive and civil atmosphere on campus. However, by having the code apply to all employees, faculty self-governance would be reduced by this draft policy. The Administration dominates the investigation and evaluation of potentially abusive conduct. The Faculty Code of Conduct already includes abusive behavior toward students and colleagues. With respect to students, the Code includes but is not limited to the following behaviors:

STUDENTS

Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

Sexual violence and sexual harassment, as defined by University policy, of a student.

Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.

FACULTY

Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.

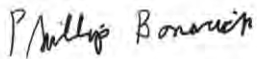
Discrimination, including harassment, against faculty on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the

uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.

The First stages of the valuation of this abusive or discriminatory behavior are entirely in the hands of the faculty. Allegations first assessed by the Charges Committee and probably valid complaints are next evaluated by the Committee on Privilege and Tenure. Valid complaints are forwarded to the Administration. By applying to all employees of the University, the new Abusive Conduct Policy does not recognize the existing special role of the faculty in their own self-governance. The power of the Administration is increased at the expense of Faculty autonomy.

Thank you in advance for your consideration and the opportunity to opine. If you have additional 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, Committee Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee



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

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

October 17, 2022

To: Susan Cochran, Chair, Academic Council

From: Patti LiWang, Chair, UCM Divisional Council (DivCo)

Re: [Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct in the Workplace](#)

The second systemwide review of the draft Presidential Policy on Abusive Conduct in the Workplace was distributed for comment to the Merced Division Senate Committees and the School Executive Committees. The following committees offered several comments for consideration. A DivCo member also provided comments for consideration. All comments are summarized and appended to this memo.

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

CoR believes the revisions are for the better, but recommends that at least two aspects clarified or amended:

- The cover letter highlights the change from a “reasonable person” to “objective” standard for evaluating whether conduct is abusive. However, there is nothing in the policy that defines what “objective” means or how the standard would be implemented. This is particularly confusing because, when it is used as a legal term, “reasonable person” is supposed to be an objective standard.
- Likewise, the revisions add that abusive conduct evaluations need to account for free speech protections. However, there is no clear definition of what speech is protected vs. unprotected. The policy notes academic personnel enjoy extensive free speech protections, including the right to use impassioned language. It then adds the caveat that these protections are not unlimited. This is, of course, correct. However, there is no description of what the limits actually are. The section on free speech (Section III D. on page 4) does reference the first amendment of the US constitution as the basis for these free speech protections. However, if protected speech is all speech protected by the US constitution, this seems to contradict several examples of abusive

conduct provided in section VII part 1 of the policy (page 13). For example, use of “insulting language” is said to be abusive under the policy, but most insulting language would be protected by the first amendment. Also, related to point 1 above, there is no clear procedure for objectively delineating harsh from insulting criticism.

FWAF believes the policy would benefit from further thought and revision. Specifically:

- The revised policy aims to distinguish abusive conduct from the protected exercise of one’s rights as a member of the University. To that end, it implicitly introduces a standard for determining whether conduct is abusive by suggesting that it involves “objectively” problematic behaviors. The earlier draft appealed instead to a reasonable-person standard. However, it is unclear what sort of test will be used for determining whether conduct is objectively abusive and who will interpret its results.
- Beyond this specific instance, FWAF thinks the policy in general gives administrators too much authority and responsibility over the faculty. It should instead outline mechanisms for investigation and remediation that better adhere to principles of shared governance.
- The policy could do more, for instance, to specify how managers and supervisors should respond to allegations of abusive conduct. Though Section C.2 requires them “to address the conduct immediately”, that seems only to mean they must report the allegations to “the applicable office”. If the abusive conduct is ongoing, managers and supervisors should be empowered and required to do more to stop it from continuing.
- The policy should further emphasize what resources ought to be in place to support those who are witnesses to or victims of abusive conduct. It should list some examples of the relevant sort of “Faculty and Staff assistance programs” that it mentions to help ensure that they in fact exist on campuses, and it should also include a section on mandatory reporters.
- At least two problems raised in the original review of the policy have not been resolved in the revision and should be addressed. First, the relation between the revised policy and the APM remains unclear. Since the APM supersedes this policy, what exactly is it supposed to add? Second, there remains a worry that the policy might be “weaponized” against women, persons of color, or others who are and have been marginalized in university settings.

EDI identified two problematic issues:

- The most significant is the inconsistency of how this Policy is intended to work with established disciplinary protocols detailed in the APM—APM-015 (The Faculty Code of Conduct), -016 (University Policy on Faculty Conduct and the Administration of Discipline), and -150 (Non-Senate Academic Appointees/Corrective Action and Dismissal). Sections III.A and IV.E explicitly states that “This policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.” However, Section V.F elevates this Policy above the APM; a grievance or complaint procedure (filed per APM policies) would be held “in abeyance.” It is unclear how APM disciplinary procedures are not supplanted by the Policy. Further clarification is needed.
- The second issue is how the last sentence of Section III.D is written. It is unclear. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates University policies when interpreted in light of free speech or academic freedom, or that violates federal law or state law. What is being interpreted? The speech or the policies?

CRE offers the following comments:

- **Section I. Policy Summary**

Please add punctuation as noted in red font below.

“However, freedom of speech and academic freedom are not limitless and do not protect

speech or expressive conduct that violates federal law, state law, or University policies.”

- **Section V. Procedures**

- A. “Confidential Resources” is duplicated.

- C. Reporting Incidents of Abusive Conduct

- It would be helpful to include specific instructions about reporting when the Respondent is a Chair, Dean, or other manager or supervisor.

- **Section V. C. 3. Anonymous, Third Party, and Aggregate Reports**

- “Anonymous reports and allegations from Reporters who are not Complainants will be reviewed and may be investigated. Such reports will be tracked, even if they are not investigated.”

- Presumably tracking in this context means that the Respondent's identity is recorded, even if the Complainant remains anonymous. Who maintains these records, and for how long?

- **Section VII. Frequently Asked Questions**

- 1. What are examples of Abusive Conduct?**

- Consider adding another bullet point:

- Deliberately revealing confidential information (even if true) to tarnish the reputation or career of an individual.

LASC believes that this policy could more actively support those experiencing abusive conduct and more energetically foster a respectful workplace culture.

- First, those who find themselves experiencing abusive conduct require more support. Confidential Resources (Section V.A.) addresses Employee Assistance Programs that provide confidential support, which is a great start. However, if a Complainant is genuinely suffering from abusive conduct, they will need more than the three meetings in six months that the program currently provides for UC Merced faculty and staff.
- Second, (Section II Definitions) the term “Complainant” should be changed to a less negative term. “Complainant” contains the root word “complain” and is inherently a negative term. Those suffering from abusive conduct want to work in a respectful work environment, not be labeled a “complainer.” Please note that those who have allegedly committed the abusive behavior are labeled “Respondent” a term that contains no intrinsic negativity. Perhaps the term “Complainant” could be changed to “Petitioner,” a word with no built-in negativity.
- Third, more training about creating a respectful workplace is needed. The policy relies a great deal on managers or supervisors, among whom are specified department chairs and deans, as the first people to whom those experiencing abusive conduct should turn (Section V.C.1 General). In academia, chairs and deans are professors who typically have research specialties in fields other than abusive workplace cultures. Thus, it may be efficacious for this policy to require university leaders at all levels to complete mandatory training on: abusive conduct; why bullies bully; bystander training; and how to support those experiencing abusive conduct.

A DivCo member shared the following:

- Eliminating the reasonable person test is unwise. The reasonable person test is necessary to avoid the overly idiosyncratic application of the policy, which can and has been abused in the past to silence particular individuals with legitimate concerns at this campus and likely on other campuses.
- Including “disruptive behavior” within the purview of a policy dealing with abusive behavior is concerning. Associating the myriad and sometimes severe punishments implicated by the abusive conduct policy with disruptive behavior again may restrict legitimate forms of dissent and protest. These punishments are more appropriate for actions directed at an individual (abuse, harassment, bullying) than toward a process or institution (disruptive behavior). Further clarification is needed on what will be classified as “disruptive” (objecting

in a faculty meeting? Handing out flyers critical of administration policy?), particularly if the policy abandons the reasonable-person test.

- The last sentence of section III.A, which states that abusive conduct may occur in situations where the respondent has more, less, or equal power to the respondent is troubling. Abusive conduct of a superior toward a subordinate – or from an individual with more “power” toward an individual with less power – is the case that deserves special mention as the consequences can be so much more severe. A Dean or Department Chair may directly deprive an individual of resources and effectively prohibit a faculty member the chance of success or even tenure. Historical cases of such abuse are well documented and infamous. An individual in a position of less power, seemingly by definition of “power,” can exact no such toll. Specifically mentioning the less-to-more power or same-to-same power cases de-emphasizes what should be the most compelling motivation for the abusive conduct policy in the first place.

Divisional Council reviewed the committees’ comments via email and supports their various points and suggestions.

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

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

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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

September 30, 2022

To: Patti LiWang, Senate Chair

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

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

CoR reviewed the draft Presidential Policy on Abusive Conduct in the Workplace and offers the below comments.

This revision makes many changes to the previous proposal. The three most important changes are:

1. The standard is now an “objective” rather than a “reasonable person” standard.
2. The policy is clarified to not supplant existing discipline procedures.
3. The policy now states that evaluations of abusive conduct must account for free speech protections.

In general, CoR believes the changes are for the better. However, there are at least two aspects that CoR recommends be clarified or amended:

1. The cover letter highlights the change from a “reasonable person” to “objective” standard for evaluating whether conduct is abusive. However, there is nothing in the policy that defines what “objective” means or how the standard would be implemented. This is particularly confusing because, when it is used as a legal term, “reasonable person” is supposed to be an objective standard.
2. Likewise, the revisions add that abusive conduct evaluations need to account for free speech protections. However, there is no clear definition of what speech is protected vs. unprotected. The policy notes academic personnel enjoy extensive free speech protections, including the right to use impassioned language. It then adds the caveat that these protections are not unlimited. This is, of course, correct. However, there is no description of what the limits actually are. The section on free speech (Section III D. on page 4) does reference the first amendment of the US constitution as the basis for these free speech protections.¹ However, if protected speech is all speech protected

¹ “The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section II of the California Constitution.” (page 4 of the revised policy).

by the US constitution, this seems to contradict several examples of abusive conduct provided in section VII part 1 of the policy (page 13). For example, use of “insulting language” is said to be abusive under the policy, but most insulting language would be protected by the first amendment. Also, related to point 1 above, there is no clear procedure for objectively delineating harsh from insulting criticism.

We appreciate the opportunity to opine.

cc: Senate Office



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

September 30, 2022

To: Patti LiWang, Chair, Division Council

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

Re: Presidential Policy – Abusive Conduct in the Workplace

This is the second systemwide review of this policy prohibiting abusive conduct and outlining the procedures for investigating it. FWAF has discussed the new draft by email and has offered the following comments. In general, while we certainly agree abusive conduct must be prohibited, we think the policy would benefit from further thought and revision.

The revised policy aims to distinguish abusive conduct from the protected exercise of one's rights as a member of the University. To that end, it implicitly introduces a standard for determining whether conduct is abusive by suggesting that it involves "objectively" problematic behaviors. The earlier draft appealed instead to a reasonable-person standard. However, it is unclear what sort of test will be used for determining whether conduct is objectively abusive and who will interpret its results. While both the objective-feature standard and the reasonable-person standards might be imperfect, the latter seems more practicable. We could, for instance, plausibly use the judgment of a high percentage of one's peers as a proxy for the reasonable-person test. This would help distribute the powers of assessing of what constitutes abusive conduct from the administration to the faculty. We worry that the objective-feature test will, in practice, give too much discretion to the administrators charged with overseeing these cases.

Beyond this specific instance, we think the policy in general gives administrators too much authority and responsibility over the faculty. It should instead outline mechanisms for investigation and remediation that better adhere to principles of shared governance. The investigation and remediation of abusive conduct by or towards faculty should involve some faculty participation and oversight.

The policy seems written from the perspective that abusive conduct simply occurs or has occurred, and at most we can respond to it after the fact. But we think this is too narrow a perspective. The policy could do more, for instance, to specify how managers and supervisors should respond to allegations of abusive conduct. Though Section C.2 requires them "to address the conduct immediately", that seems only to mean they must report the allegations to "the applicable office". If the abusive conduct

is ongoing, managers and supervisors should be empowered and required to do more to stop it from continuing. Perhaps more importantly, the policy ought to require campuses to take preventive measures, such as requiring programs on campus to help avoid abusive conduct in the first place, like the mandatory training we have for sexual harassment.

The policy should further emphasize what resources ought to be in place to support those who are witnesses to or victims of abusive conduct. It should list some examples of the relevant sort of "Faculty and Staff assistance programs" that it mentions to help ensure that they in fact exist on campuses, and it should also include a section on mandatory reporters.

At least two problems raised in the original review of the policy have not been resolved in the revision and should be addressed. First, the relation between the revised policy and the APM remains unclear. Since the APM supersedes this policy, what exactly is it supposed to add? Second, there remains a worry that the policy might be "weaponized" against women, persons of color, or others who are and have been marginalized in university settings. When members of these groups stand up for themselves or call attention to racism, sexism, or other similar sorts of wrongful beliefs and behaviors, they are often accused of being uncivil, etc. In its next iteration, the policy should more fully address this problem.

FWAF appreciates the opportunity to opine.

cc: Senate Office



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

UNIVERSITY OF CALIFORNIA, MERCED

September 29, 2022

To: Patti LiWang, Chair, Divisional Council

From: Carrie Menke, Chair, Committee for Equity, Diversity and Inclusion (EDI)

Re: [Proposed Presidential Policy on Abusive Conduct in the Workplace](#) (2nd draft)

The Committee for Equity, Diversity, and Inclusion (EDI) reviewed the revised Proposed Presidential Policy on Abusive Conduct in the Workplace and offers its comments below. This second draft has incorporated many of this committee's recommendations from the previous review. In summary,

- This draft clarifies that each location will be responsible for developing their own procedures.
- The Ombudsman's role is being a neutral and independent resource (V.A.) and not a facilitator for resolution (V.F.1).
- Consideration of power imbalances is included in the Policy (II and III.A). The use of civility, often used against marginalized individuals, has been removed from the policy.
- The inclusion that a single act, if especially severe or egregious, may constitute Abusive Conduct (II).
- Removing the Reasonable Person Test (II) and references to "reasonable" communications, conflicts, etc. throughout the Policy.
- Section III.C regarding exceptions to the Abusive Conduct has been removed entirely.
- Training on Abusive Conduct is listed as a responsibility for each location in developing and implementing procedures (V).

The previous EDI members recommended¹ examples of freedom of speech and expressive conduct that violate law. The current committee views examples being more appropriate within locally developed procedures.

There are still two problematic issues. The most significant is the inconsistency of how this Policy is intended to work with established disciplinary protocols detailed in the APM—APM-015 (The Faculty Code of Conduct), -016 (University Policy on Faculty Conduct and the Administration of Discipline), and -150 (Non-Senate Academic Appointees/Corrective Action and Dismissal). Sections III.A and IV.E explicitly states that "This policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations." However, Section V.F elevates this Policy above the APM; a grievance or complaint procedure (filed per APM policies) would be held "in abeyance." It is unclear how APM disciplinary procedures are not supplanted by the Policy. Further clarification is needed.

¹ Please refer to pages 33 and 34 <https://senate.universityofcalifornia.edu/files/reports/rh-sc-abusive-conduct-bullying-policy.pdf>

The second issue is how the last sentence of Section III.D is written. It is unclear.

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates University policies when interpreted in light of free speech or academic freedom, or that violates federal law or state law.

What is being interpreted? The speech or the policies?

The Committee for Equity, Diversity and Inclusion appreciates the opportunity to opine.

CC: EDI Members
Senate Office



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

UNIVERSITY OF CALIFORNIA, MERCED

September 26, 2022

To: Patti LiWang, Chair, Divisional Council

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

Re: [Proposed Revised Presidential Policy on Abusive Conduct](#)

CRE has reviewed the Proposed Revised Presidential Policy on Abusive Conduct and offers the following comments:

Section I. Policy Summary

Please add punctuation as noted in red font below

“However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal law, state law, or University policies.”

Section V. Procedures

A. “Confidential Resources” is duplicated.

C. Reporting Incidents of Abusive Conduct

It would be helpful to include specific instructions about reporting when the Respondent is a Chair, Dean, or other manager or supervisor.

Section V. C. 3. Anonymous, Third Party, and Aggregate Reports

“Anonymous reports and allegations from Reporters who are not Complainants will be reviewed and may be investigated. Such reports will be tracked, even if they are not investigated.”

Presumably tracking in this context means that the Respondent's identity is recorded, even if the Complainant remains anonymous. Who maintains these records, and for how long?

Section VII. Frequently Asked Questions

1. What are examples of Abusive Conduct?

Consider adding another bullet point:

- Deliberately revealing confidential information (even if true) to tarnish the reputation or career of an individual.

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

CC: CRE Members
Senate Office



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

September 30, 2022

To: Patti LiWang, Chair, Academic Senate

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

Re: Second Draft of the Presidential Policy on Abusive Conduct in the Workplace

The *Abusive Conduct in the Workplace* systemwide policy is an important step in the creation of a respectful work place which will in turn lead to an equitable and inclusive work place. However, this systemwide policy could more actively support those experiencing abusive conduct and more energetically foster a respectful work place culture.

First, those who find themselves experiencing abusive conduct require more support. Confidential Resources (Section V.A.) addresses Employee Assistance Programs that provide confidential support, which is a great start. However, if a Complainant is genuinely suffering from abusive conduct, they will need more than the three meetings in six months that the program currently provides for UC Merced faculty and staff (<https://hr.ucmerced.edu/hr-units/benefits/other-benefits/insight-eap>) (It is unclear how much support faculty and staff receive at other campuses. Their websites were less forthcoming.) Perhaps more support could be approved on an individual basis for those who report abusive conduct.

Second, (Section II Definitions) the term “Complainant” should be changed to a less negative term. “Complainant” contains the root word “complain” and is inherently a negative term. Those suffering from abusive conduct want to work in a respectful work environment, not be labeled a “complainer.” Please note that those who have allegedly committed the abusive behavior are labeled “Respondent” a term that contains no intrinsic negativity. Perhaps the term “Complainant” could be changed to “Petitioner,” a word with no built-in negativity.

Third, more training about creating a respectful workplace is needed. The policy relies a great deal on managers or supervisors, among whom are specified department chairs and deans, as the first people to whom those experiencing abusive conduct should turn (Section V.C.1 General). In academia, chairs and deans are professors who typically have research specialties in fields other than abusive work place cultures. Thus, it may be efficacious for this policy to require university leaders at all levels to complete mandatory training on: abusive conduct; why bullies bully; bystander training; and how to support those experiencing abusive conduct. Voluntary and free bystander training for all employees, faculty, and staff should be offered annually in order to create an environment in which employees feel safe to speak up for themselves and their colleagues.

Darla J. Twale's book *Understanding and Preventing Faculty-on-Faculty Bullying* (New York: Routledge, 2018) may be of assistance to those implementing this Abusive Conduct policy.

LASC appreciates the opportunity to comment on the proposed policy.

Cc: Senate Office

DivCo Member's comments:

Dear Fatima and Patti,

I have a few comments on the draft revision to the abusive conduct policy:

1) Eliminating the reasonable person test is unwise. The reasonable person test is necessary to avoid the overly idiosyncratic application of the policy, which can and has been abused in the past to silence particular individuals with legitimate concerns at this campus and likely on other campuses.

2) Including "disruptive behavior" within the purview of a policy dealing with abusive behavior is concerning. Associating the myriad and sometimes severe punishments implicated by the abusive conduct policy with disruptive behavior again may restrict legitimate forms of dissent and protest. These punishments are more appropriate for actions directed at an individual (abuse, harassment, bullying) than toward a process or institution (disruptive behavior). Further clarification is needed on what will be classified as "disruptive" (objecting in a faculty meeting? Handing out flyers critical of administration policy?), particularly if the policy abandons the reasonable-person test.

3) The last sentence of section III.A, which states that abusive conduct may occur in situations where the respondent has more, less, or equal power to the respondent is troubling. Abusive conduct of a superior toward a subordinate – or from an individual with more "power" toward an individual with less power – is the case that deserves special mention as the consequences can be so much more severe. A Dean or Department Chair may directly deprive an individual of resources and effectively prohibit a faculty member the chance of success or even tenure. Historical cases of such abuse are well documented and infamous. An individual in a position of less power, seemingly by definition of "power," can exact no such toll. Specifically mentioning the less-to-more power or same-to-same power cases de-emphasizes what should be the most compelling motivation for the abusive conduct policy in the first place.



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

October 12, 2022

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

RE: Proposed Policy: 2nd Round Review - Draft Presidential Policy - Abusive Conduct in the Workplace

Dear Susan,

The UCR Executive Council discussed the subject revision during their October 10, 2022 meeting. Council concurs with the sentiment of other reviewers that the policy is vague at several points. Including - quoting from comments from the executive committee of the College of Humanities, Arts, and Social Sciences – "...problematic, vague wording is "objectively intimidating or offensive." What does "objectively" mean here? Given that "intimidating" or "offensive" are necessarily subjective evaluations, this revision proposes that the standard for adjudicating an action as "abusive" be "objectively subjective." "Objectively subjective" is not a standard; it is a deferral of the question.

Attached are the additional comments received from local committees that responded to 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



Academic Senate

COMMITTEE ON ACADEMIC FREEDOM

October 3, 2022

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

From: Ivy Zhang, Chair
Committee on Academic Freedom

Re: Draft Presidential Policy – Abusive Conduct in the Workplace

The Committee on Academic Freedom reviewed the draft Presidential policy for abusive conduct in the workplace.

The Committee noted concern with the ambiguity of the definition of “objectively offensive” behavior. The Committee are also concerned that the policy appears to set limits on the protection of academic freedom but the limits are not clearly defined. Additional concern was noted that distinguishing abusive conduct from conduct protected by academic freedom will in many cases be field and discipline specific. The Committee recommended that the policy be updated to document through what process is “objectively abusive behavior” identified and when the limit of academic freedom has been passed. Finally, the Committee noted concerns about the implementation of the policy and recommended that cases should be evaluated by the faculty senate with the involvement of the Committee on Academic Freedom.

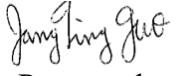


Academic Senate

COMMITTEE ON ACADEMIC PERSONNEL

September 22, 2022

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


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

Re: [Systemwide Review] Proposed Revisions to Draft Presidential Policy on
Abusive Conduct in the Workplace

CAP discussed the proposed revisions to draft Presidential Policy on Abusive Conduct in the Workplace. The committee noted that most of its comments on the original draft have been adequately addressed and trusted that its remaining comments were given careful consideration by UC Academic Council. Accordingly, CAP has no further comment on the revised draft.

September 29, 2022

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

FROM: John Kim, Chair 
CHASS Executive Committee

RE: [Systemwide Review] Proposed Policy: 2nd Round Review - Draft Presidential
Policy -- Abusive Conduct in the Workplace

The CHASS Executive Committee (EC) has reviewed the revisions to the Policy on Abusive Conduct in the Workplace at its regular meeting on September 29, 2022, and continues to affirm the spirit and intent of this policy, as it also had in its review of the first version of this policy in its letter to the Senate on December 17, 2021 (attached). Abusive conduct is a serious issue that deeply affects the life of the University and must be addressed. We thank those who are working on this policy for their time and effort in this difficult task. We also thank them for revising the policy to replace the term “bullying” with “abusive conduct” and for eliminating the “reasonable person” standard in defining “abusive conduct.”

However, we continue to have several concerns about the wording of the proposed revision of this policy, especially within the context of how charges are procedurally handled.

Our concerns around this policy are five-fold:

- 1) The replacement of the term “bullying” with “abusive conduct” appears cosmetic and does not address EC’s previous concerns about the scope and definition of “abusive conduct.” Quoting from EC’s review of the previous version of this proposed policy, we continue to note:

The text is not a comprehensive vision of how bullying can happen and its effects. It creates a narrow definition of bullying, which licenses bullying that was not explicitly mentioned in the text. It reprimands specific forms of behavior and context that constitutes bullying, but it fails to include many others. The forms of bullying are often subtle. Bullying can be ineffable. Yet this document does not address this. If this text is intended to be a guide policy, accounting for the blurriness of bullying and its deep effects for individuals and culture at the

University of California as whole is imperative. (EC Letter to the Divisional Senate, December 17, 2020, p. 1)

In this regard, an explicit acknowledgement of the possible subtlety, ineffability or blurriness of “abusive conduct” may be warranted.

- 2) Related to the above is the seemingly opposite but no less justifiable concern that the revised standard of “abusive conduct” is still too vague. The current version of the policy states:

The conduct creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University’s legitimate educational, employment, and business interests. (§II Definitions, p. 3).

The problematic, vague wording is “objectively intimidating or offensive.” What does “objectively” mean here? Given that “intimidating” or “offensive” are necessarily *subjective* evaluations, this revision proposes that the standard for adjudicating an action as “abusive” be “objectively subjective.” “Objectively subjective” is not a standard; it is a deferral of the question.

Moreover, the qualification that the action must be “*unrelated* to the University’s legitimate educational, employment, and business interests” does not take into account “abusive conduct” that takes place within the context of “the University’s legitimate educational, employment, and business interests.” Using the examples provided for in the FAQ, we can imagine a situation in which a chair, dean or other faculty administrator could “yell” or “scream” (§VII.1, p. 14) at staff members for their poor workplace performance and yet not be engaging in “abusive conduct” by this qualification because it is *related* “to the University’s legitimate educational, employment, and business interests.” This is clearly not the intent of this policy; its intent is to protect the staff member in this case.

- 3) The revision in the definition of abusive conduct from “A single act shall not constitute Abusive Conduct unless especially severe or egregious” to “A single act may constitute Abusive Conduct, if especially severe or egregious” (§II, p. 3) seems too permissive. It does not take into account that even the best among us can have momentary (negative) outbursts about workplace matters. A stricter standard – such as “repeated” or “persistent” actions – seems necessary to guard against frivolous charges. At a minimum, the previous wording of this sentence seems more advisable than the newly proposed wording.
- 4) Several concerns were also raised regarding the application of the Code of Conduct, including the previous version of the Abusive Conduct policy, and how it can itself be abused by the Administration to discipline faculty with views critical of the Administration. The EC calls for a system-wide study of the demographics of the Complainants and Respondents by protected category, by employment status and by the category of charges filed. The purpose of such a study would be to understand what types of purported violations there have been over a certain amount of time and if any particular protected category is more severely affected than others.

- 5) Several concerns were also raised regarding the current procedures for adjudicating charges as outlined in Appendix 5. According to Appendix 5, Chancellors – and their delegates, such as VPARs – can and have set aside judgements made by the Committee on Charges and the Committee on Privilege and Tenure. Nothing in Appendix 5 binds Chancellors to the determinations made by these two committees. This has happened in recent memory and resulted in the termination of a tenured full professor contrary to both Senate committees’ recommendations. In view of the vagueness of the Abusive Conduct policy, Appendix 5 should be revised to bind Chancellors to these committees’ decisions or otherwise to protect faculty from administrative abuse of the Code of Conduct.



Academic Senate

GRADUATE COUNCIL

September 22, 2022

To: Sang-Hee Lee, Chair
Riverside Division

From: Christiane Weirauch, Chair
Graduate Council

Re: [Systemwide Review] Proposed Policy: 2nd Round Review - Draft Presidential Policy -- Abusive Conduct in the Workplace

Graduate Council reviewed the Proposed Policy: 2nd Round Review - Draft Presidential Policy -- Abusive Conduct in the Workplace at their September 22, 2022 meeting. The Council approved of the revised policy with the suggestion that the list of those who are considered managers and supervisors to report incidents of abusive conduct to be expanded to include Graduate Advisors, Equity Advisors, and the campus Ombudsperson. The Council feels that expanding the list will aide in students (especially international students) understanding that there are multiple options available to report incidents to.



October 3, 2022

Subject: [Systemwide Review] (Proposed Policy) 2nd Round Review - Draft Presidential Policy -
- Abusive Conduct in the Workplace

The SOE Executive Committee reviewed the Proposed Policy on Abusive Conduct in the Workplace and discussed the policy at our executive committee meeting on September 27, 2022.

The committee did not have any substantial edits or comments to the policy as presented. In particular, we like the changes already made that clarify that this policy applies to students, regardless of their employment status, and that students can be classified as complainants or reporters.

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

September 27, 2022

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

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

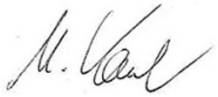
SUBJECT: Response to [Systemwide Review] Proposed Policy: *2nd Round Review - Draft Presidential Policy - Abusive Conduct in the Workplace*

Dear Sang-Hee,

The SOM Faculty Executive Committee has reviewed the Proposed Policy: 2nd Round Review - Draft Presidential Policy - Abusive Conduct in the Workplace. The Committee agreed that an abusive workplace policy is considered necessary, timely, and very well intentioned. However, the current version raises some concerns with the committee as described below:

1. Page 3 of 15 – II. DEFINITIONS – Abusive Conduct
While the “objectively offensive” standard appears well intended by considering all case-related circumstances, the concern is that it remains unclear how the “objectively offensive” standard is defined and thus can be determined to have been met or not.
2. Page 8 of 15 – V. PROCEDURES – C. Reporting Incidents of Abusive Conduct – 3. Anonymous, Third-Party, and Aggregate Reports
This section raised the concern that it opens the door to the UC system being deployed as the social secret police recording and keeping files on all the faculty and employees related to what any random person thinks they may/may not have done. This could easily turn into a situation where everyone is so fearful of upsetting someone, staff, student, etc, that academic and personal freedom are impacted. The section is vague as not to delineate that the activities alleged to have occurred need to be somehow university-related. The way it currently reads, it appears easily possible that someone getting into a quarrel with their neighbor and the neighbor reporting them to the university under this policy. This section needs clarification.
3. Page 9 of 15 – V. PROCEDURES – D. Timelines for Making Reports
The absence of any time limit raised concern because 3 years is the limit to file a complaint alleging sexual harassment or discrimination in California. The statute of limitations was set with Assembly Bill No. 9, which went into effect on January 1, 2020.
4. Page 12 of 15 – V. PROCEDURES - F. Resolution Options – 2. Formal Investigations – b. Formal Investigation Requirements – 7.
The investigator needs to be defined. Who can be an investigator, faculty, staff, or any UC employee, or third party, or any combination thereof? This is important because determining whether an act, or actions falls under academic freedom for a faculty in route to determining if the act violates the policy should be the providence of academic faculty. There was also concern that the policy as written may fail the standard of the individual being considered innocent until proven guilty.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Kaul', written in a cursive style.

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: 2nd Round Review—Draft Presidential Policy—
Abusive Conduct in the Workplace

Date: October 9, 2022

The Executive Committee of the School of Public Policy reviewed the documents for “[Systemwide Review] Proposed Policy: 2nd Round Review—Draft Presidential Policy—Abusive Conduct in the Workplace.” We have no substantive comments, but wish to note that, for the Table of Contents in the second set of documents, pages 1 of 16 and 2 of 16, the specific page numbers for certain sections need to be corrected to properly correspond to the page numbers for which they refer.

Sincerely,



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



October 18, 2022

To: Susan Cochran, Chair
Academic Senate

From: Susannah Scott, Chair
Santa Barbara Division *Susannah L Scott*

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

The Santa Barbara Division distributed the proposed revisions to the Council on Faculty Welfare, Academic Freedom, and Awards (CFW), Undergraduate Council (UgC), Graduate Council (GC), Committee on Diversity and Equity (CDE), Committee on International Education (CIE), Committee on Academic Personnel (CAP), Council on Planning and Budget (CPB), Council on Research and Instructional Resources (CRIR), Committee on Privilege and Tenure (P&T), Committee on Admissions, Enrollment, and Relations with Schools (CAERS), Committee on Rules, Jurisdiction, and Elections (RJ&E), Committee on Courses and General Education (CCGE), and the Faculty Executive Committees (FECs) of the College of Letters and Science (L&S), College of Engineering (COE), Gevirtz Graduate School of Education (GGSE), and Bren School of Environmental Science and Management (BREN). P&T, CAERS, CCGE, and the L&S and BREN FECs opted not to opine.

Though the Santa Barbara Division recognizes and supports the goals of the proposed policy, it is unable to support the revised document in its current form, given that significant and consequential issues still need to be addressed. While some reviewers appreciated the revisions, there is widespread concern that some revisions are not improvements and may actually be less useful than the original version. The main points are summarized below, with more details in the attached reviewing group responses.

First, significant uncertainties remain about how the policy is intended to be situated in relation to other UC and campus policies, and how it will be implemented. There is a profusion of complex policy documents that a complainant must navigate and understand in order to properly file a grievance, and as CPB emphasizes, there is the need for a clearer vision to establish separation of the policies and promote a better understanding among the different segments of the campus community. Reviewers remain unsure about the agencies responsible for oversight at the campus level, the mechanism for reporting allegations of abusive conduct, the procedures for investigation and adjudication, jurisdiction in the event of policy overlap, and interoffice coordination. For example, several reviewers raise concerns about the

interaction between allegations of abusive conduct, academic freedom, and free speech. The draft policy is unclear with regard to which university agency is charged with determining the scope of academic freedom. The overall scope of the policy should be clearly articulated, and the details regarding its implementation more fully developed.

Reviewers express serious concerns about the lack of both a well-articulated definition of “abusive conduct” and a set of standards for classifying conduct as abusive. One key issue reviewers raise is the elimination of the “reasonable person” standard in favor of the language “objectively intimidating or offensive.” While some reviewers favor the “reasonable person” standard for its accessibility and its existing use in law, others acknowledge its imperfections. For example, CDE asserts that the term “reasonable person” needs to be qualified to acknowledge a person’s context such as race, gender, or sexual orientation. Put another way, it must be acknowledged that the “reasonable person” standard not be limited to the beliefs that might be held by a cisgender, heterosexual white male. The Committee also finds it deeply troubling that the policy does not mention the impacts of implicit bias. CAP notes that complaints could, in certain cases, stem from assumptions and behaviors by a majority group that might be discriminatory or abusive in and of themselves. However flawed the previous language was, it is widely held that the replacement language is not an improvement. The term “objectively offensive” is unclear, ambiguous, and open to interpretation. The reviewers request a definition for “objectively offensive” and a detailed rationale for the change in terminology.

Similarly, reviewers identify problematic language adjustments in the latest iteration of the draft that appear to remove safeguards against frivolous allegations. CRIR points out that the terms “repeated and egregious” have been removed in multiple instances, and the language has been shifted to infer that a determination of abusive conduct may be made on the basis of a single act. They further observe that under Reporting Incidents of Abusive Conduct, the revised language seemingly diminishes the manager’s discretion and mandates reporting. Here, CAP argues that the call for reporters to act in response to behavior that “may” be abusive conduct is highly problematic without the articulation of clear standards. Reviewers raise the issue of faculty welfare in cases where faculty members are respondents to accusations of abusive conduct, CFW asserts that faculty are not provided with sufficient protections and care in these circumstances, particularly when accusations may not be made in good faith.

CPB raises concerns about the potential costs associated with implementing a too-broadly formulated policy that leads to increased litigation. CPB recommends stronger language in support of early resolution, and adequate training for administrators in campus implementation procedures including “early resolution” processes.

Reviewers identify the need for clarity regarding the scope of the policy for students. While the revised language makes it clear that students can be complainants or reporters, it does not specify whether students can or cannot be respondents. Presumably, the policy would not be applicable to students as respondents, as they would already be held to the student conduct policy on their campus, but this should be clarified in the document. RJ&E suggests the addition of references to the appropriate student conduct policies.

Taken together these comments indicate that the policy as written is somewhat vague and lacks sufficient implementation procedures and adequate protections for faculty. These issues must be addressed in order to avoid significant unintended consequences. The policy should do more to delineate the behavior it is attempting to address and adjust its provisions accordingly.

Finally, reviewers emphasize the need for Senate consultation with regard to various aspects of the proposed policy. The Senate should be involved in the review of the implementation procedures at each campus. The administration must work with the Senate on any potential changes to faculty disciplinary policies at the systemwide or divisional levels. At the point the policy is able to be implemented, the Senate should be included in any subsequent reviews of the policy, in order to assess whether it is fulfilling its intended purpose.

We appreciate the opportunity to comment.



October 10, 2022

To: Susannah Scott, Divisional Chair, Academic Senate

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

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

The Council on Faculty Welfare, Academic Freedom, and Awards (the Council) recently reviewed the University of California's Second Systemwide Draft Presidential Policy on Abusive Conduct in the Workplace. The Council would like to share the following feedback.

While the Council agrees with the intent of the document to create a safe campus environment, they expressed several general concerns with its content. Specifically, the Council raised the issue of faculty welfare in cases where faculty members are accused of abusive conduct. Concerns were shared that faculty are not provided with sufficient protections and care in these circumstances, particularly when accusations may not be made in good faith.

Additionally, the Council would like clarification regarding which university entities determine the scope of "academic freedom," particularly in the context of the subsequent adjudication of potential charges. It is not always clear who the "appropriate" authorities are in each circumstance; i.e., in some cases, the appropriate office is the Academic Senate, in others, it is Academic Personnel or Human Resources, etc.

The Council also questioned whether the definitions of abusive conduct are too broad. In Section II. Definitions, the definition of abusive conduct includes the explanation that:

[Abusive] conduct creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests.

The Council has concerns with the phrase "intended or not," as this appears to expand the range of abusive conduct to a degree that faculty may not reasonably perceive whether their conduct is unintentionally abusive or not.

Finally, the Council would also like to note a minor typo on page 14, under section VII. Frequently Asked Questions. The sixth bullet point includes the phrase,

Teasing or making someone the brunt of pranks or practical jokes.

The Council believes that the term "brunt" is grammatically incorrect in this context, and suggests the following wording: "*Teasing or making someone the target of pranks or practical jokes.*"

The Council on Faculty Welfare appreciates the opportunity to comment on these proposed recommendations.

Cc: Shasta Delp, Executive Director, Academic Senate
Monica J. Solorzano, Analyst, Academic Senate

October 16, 2022

To: Susannah Scott, Divisional Chair

From: Julie Bianchini, Chair
Undergraduate Council

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

The Undergraduate Council reviewed the proposed revised policy at its meeting of September 22. The Council offers the following comments for consideration.

Council members would have liked more justification in the review materials about why the "reasonable person standard" was removed. Some felt that the change in language to "objectively intimidating or offensive" was a step backward in terms of acknowledging real power inequities in the workplace, and effectively puts the burden of truth on the victim.

The Council recommends that the Office of the President formulate a plan to reassess the policy after 3-5 years to determine whether it is working as designed or is in need of further adjustment.

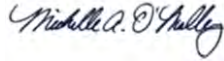
Thank you for the opportunity to comment.

**Academic Senate
Santa Barbara Division**

October 11, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Michelle O'Malley, Chair
Graduate Council



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


At its meeting of October 3, 2022, Graduate Council reviewed the second systemwide review of the draft Presidential Policy on Abusive Conduct in the Workplace. Section VII: Frequently Asked Questions, bullet point five, needs to include disability or ability. It was also noted that some guidance on accountability of faculty to these guidelines should be created.

CC: Shasta Delp, Executive Director, Academic Senate

**Academic Senate
Santa Barbara Division**

October 11, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Peng Oh, Chair 
Committee on Diversity and Equity

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

At its meeting of October 3, 2022, the Committee on Diversity and Equity (CDE) reviewed the second systemwide review of the draft Presidential Policy on Abusive Conduct in the Workplace.

The Committee agreed that “reasonable person”, used in the previous draft, is a better term to use than “objectively offensive”. While both of these terms are hard to pin down as a standard, “reasonable person” is easier to understand and covers more ground; it is also a term used in law. In particular, “objectively offensive” is even more difficult to define and open to interpretation. This document is also absent any recognition of race, gender, sexual orientations, etc., that might shape the delivery of an accusation. There is no mention of implicit bias, which is deeply troubling from a DEI standpoint. The term “reasonable person” would then need to be qualified where the situation of a person is taken into context. “Reasonable person” has to be understood to *not* just mean an educated, white male.

CDE also agreed that there needs to be a document or flow chart, likely at the campus level, explaining the reporting process, implementing offices, and names of who is responsible for which pieces of the policy.

CC: Shasta Delp, Executive Director, Academic Senate

October 13, 2022

To: Susannah Scott
Divisional Chair, Academic Senate

From: Spencer Smith, Chair
Committee on International Education



Re: Abusive Conduct/Bullying in the Workplace

The Committee on International Education (CIE) has reviewed the “Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace.”

The committee notes the removal of language CIE raised concerns over in the previous draft and appreciates the updates, including inclusion of language regarding “country of origin” and “visa status.” CIE supports these new changes.

Please do not hesitate to contact the committee if you have additional questions.

Cc: Shasta Delp, Executive Director, Academic Senate

ACADEMIC SENATE
SANTA BARBARA DIVISION

October 14, 2022

TO: Susannah Scott, Divisional Chair
Academic Senate

FROM: Janet Walker, Chair
Committee on Academic Personnel

RE: Second Systemwide Review of Draft Presidential Policy – “Abusive Conduct in the Workplace

The Committee on Academic Personnel (CAP) has reviewed the “Draft Presidential Policy – “Abusive Conduct in the Workplace.” The Committee recognizes the need for a policy clearly stating that abusive conduct is unacceptable. The Committee observed that the current Faculty Code of Conduct does not have such a statement and that the proposed policy is different from and necessary in conjunction with the University’s Discrimination, Harassment, and Affirmative Action in the Workplace policy that outlines protected categories.

Nevertheless, a number of serious concerns about the proposed revisions were raised:

- Although each case is unique and “case-by-case” specificity is a necessary element of evaluation, at the same time, agreed-upon standards should be articulated and incorporated into the case review process.
- Concern was expressed that the delegation to campuses of case review management might weaken or partially undo the policy’s intent.
- While the committee appreciates the removal of the “reasonable person” standard, members are skeptical of the terminology in Section 1 that refers to “objectively intimidating or offensive behavior.” The work of the evaluative group must be upheld over any assumption that there is a purely “objective” standard as to what constitutes abusive conduct. And yet, as noted above, there must be articulated standards for acceptable and unacceptable behavior. CAP acknowledges the challenges of writing a policy that balances between case specificity and agreed-upon standards.
- A suggestion was made to shift from “objectively abusive” terminology to what the adjective “objective” modifies: e.g., *evidence* of abuse or its consequences.
- Members asked that the policy be written – and revised – to prevent the targeting of people who are structurally vulnerable to being found to engage in abusive conduct. One way this was expressed is that the “tyranny of the majority” must not be upheld by written policy; expressed differences of opinion must continue to enrich the university community.
- Relatedly, in its current form, the document has insufficient provisions for adjudicating the complaint itself, which could in certain cases stem from assumptions and behaviors by a majority group that might be discriminatory or abusive in and of themselves.

- While CAP appreciates the sections of the accompanying memo affirming academic freedom and free speech, there was a suggestion to clarify further the FAQs and distinction between “abusive conduct” and “academic freedom and free speech.”
- The call for Reporters to act in response to behavior that “may” be abusive conduct is highly problematic without the articulation of clear standards.

Thank you for the opportunity to review this draft policy.

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

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

October 13, 2022

To: Susannah Scott, Divisional Chair
UCSB Academic Senate

From: James Rawlings, Chair
Council on Planning & Budget



Re: Abusive Conduct Policy

The Council on Planning & Budget has reviewed the proposed Presidential Policy on Abusive Conduct in the Workplace (the policy). On the whole the policy is reasonable and has the Council's support. CPB also offers the following comments and recommendations to clarify several specific points.

The proposed policy states on page 9 (Section F): "Instead of, or in addition to, reporting Abusive Conduct in violation of this policy, an employee may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure (PPSM-70 (Complaint Resolution), APM-015 (The Faculty Code of Conduct), APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), APM - 140 (Non-Senate Academic Appointees/Grievances), APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal), or applicable collective bargaining agreements)." In other words, there are five other documents, not counting the role of the Title IX office, that may need to be understood *before* filing a grievance. This overhead appears to be too high.

The University has a collection of related and somewhat overlapping policies concerning behaviors and conduct on campuses, in the workplace, online, or otherwise. Understandably some of the policies reflect the current climate. It is important for the University to have a clear vision on the collection of policies to help 1) establish separation of policies (removing ambiguities and redundancies), and 2) guide the faculty, staff, and students to better understand the policies. The Council wonders if this "legal structure" (the existing policies plus the new proposed one) is appropriate and efficient.

The Council is concerned about the potential hidden implementation costs of a policy that may result in increased litigation. In this regard, CPB believes that the policy could contain stronger language in support of "Early Resolution" (page 10, Section F.1). The Council would very much like to see that administrators including department chairs and deans be adequately trained in "early resolution" processes and templates in the campus implementation/procedure.

The council further requests that the campus implementation procedure be reviewed by the Senate.

Finally, the second example type of conduct in FAQ Part 1, "Spreading false information," may need to be further qualified, "intentionally", "with an abusive intention", or something similar.

cc: Shasta Delp, Academic Senate Executive Director

October 14, 2022

To: Susannah Scott, Divisional Chair

From: David Stuart, Chair
Council on Research and Instructional Resources

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

The Council on Research and Instructional Resources (CRIR) considered the revised draft of the Presidential Policy on Abusive Conduct in the Workplace at its meeting of September 30. Overall, there were a number of concerning modifications in the most recent iteration in the policy. The Council offers the following comments for consideration.

Members observed that the criteria used to classify "abusive conduct" were, on the whole, loosened. First, the reasonable person standard has been purged from the document, and replaced with more ambiguous language. In addition, the terms "repeated and egregious" have been removed in several instances, substantially lowering the bar for what constitutes abusive conduct. In the Definitions and Frequently Asked Questions sections, the text has been adjusted in a manner that suggests that a determination of abusive conduct may be made on the basis of a single act (pp. 2-3, 14). Further, under Reporting Incidents of Abusive Conduct, the revised language seemingly diminishes the manager's discretion and mandates reporting (p. 8). Many of these proposed changes seem to be focused on removing safeguards against individuals being accused of abusive behavior for relatively minor offenses. Though the aim of the policy is laudable, these modifications have the potential to give rise to a higher number of complaints that are not particularly well-supported.


Another issue raised was the scope of the policy with respect to students. While the revised language makes it clear that students can be complainants or reporters, it does not specify whether students can or cannot be respondents. Presumably, the policy would not be applicable to students as respondents, as they would already be held to the student conduct policy on their campus, but this should be clarified in the document.

Thank you for the opportunity to comment.

**Academic Senate
Santa Barbara Division**

October 11, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Don Marolf, Chair 
Committee on Rules, Jurisdiction & Elections

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

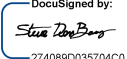
At its meeting of October 6, 2022, the Committee on Rules, Jurisdiction, and Elections (RJE) reviewed the second systemwide review of the draft Presidential Policy on Abusive Conduct in the Workplace. RJE found a number of areas to comment.

- While the "reasonable person test" had some flaws, it is unclear what it means for behavior to be "objectively" intimidating or offensive. "Reasonable person" has a legal meaning. How is "objectively offensive" defined?
- "Objectively offensive" seems like it may only be enforceable for a small number of narrowly defined actions. This might lead to a more limited policy than is desirable.
- Campus procedures are not laid out at all. What office will oversee this? What will be mechanisms for reporting? What will be the procedures from beginning to end?
- Is there a possibility of double jeopardy? For example, can actions only fall under either this policy OR the University's policies prohibiting discrimination or the University's Sexual Violence and Sexual Harassment policy? This should be stated more clearly.
- Campus Academic Senates must be involved in any potential changes to local systemwide or local Charges and Privilege and Tenure policies.
- Section III-A, paragraph 2: Including references to appropriate student policies, in addition to HR and AP policies would be useful.
- Section III-B, paragraph 3: Nonviolent incidents can also lead to criminal charges, so including police more broadly as a resource may be useful.
- Section III-B, paragraph 2: It appears that instruction is limited to 'within the classroom' activities. Was this intentional? Many 'instructional' activities, particularly with regard to graduate student instruction occur outside of classroom settings.
- Section V-C-4, paragraph 4: If a complaint is reviewed for possible Title IX or EEO action, and found to fall outside of their purview, by what mechanism is it returned for review under this policy? How would the coordination between offices impact the timeline described in this memo?
- Section V-F-2-b-4, paragraph 1: Are there any policies regarding who may serve as an advisor in this context that should be included?
- Section V-J: Why has the option to request a redacted report been eliminated in this draft?

Cc: Shasta Delp, Executive Director, Academic Senate

October 4, 2022

TO: Susannah Scott
Divisional Chair, Academic Senate

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

RE: Second Systemwide Review of Draft Presidential Policy – Abusive Conduct in the
Workplace

The College of Engineering FEC met on Tuesday, October 4th and reviewed and approved of the draft policy as written. The committee recommended that, once official, UCSB administrators distribute the revised policy broadly and clarify local reporting structures. 9 yes, 0 abstained, 0 no (out of 12 eligible faculty members).

September 29, 2022

To: Susannah Scott, Chair
Academic Senate

From: Ty Vernon, Chair
Faculty Executive Committee, GGSE

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

The GGSE FEC reviewed the Second System Review of Draft Presidential Policy - Abusive Conduct in the Workplace, and is very much in support of the modifications and changes.

The FEC does request further clarification on the term "objectively offensive," as abusive conduct requires evaluation and interpretation of behavior, which is an inherently subjective process. Differentiation of what constitutes objectively offensive versus abusive as perceived by a reasonable person will help our faculty and staff to better identify and recognize those behaviors.



Ty Vernon, Ph.D.

Faculty Executive Committee Chair

Gevirtz Graduate School of Education

UC SANTA BARBARA



OFFICE OF THE ACADEMIC SENATE

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0002
TELEPHONE: (858) 534-3640
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October 6, 2022

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

Re: Second Divisional Review of Draft Presidential Policy -- Abusive Conduct in the Workplace

Dear Professor Cochran,

The proposed Presidential Policy on Abusive Conduct in the Workplace was discussed at the September 19, 2022 Divisional Senate Council meeting. Senate Council endorsed the proposal. Overall, Council was supportive of the changes and thought the revised policy addresses many of the criticisms of the first version of the policy. A few additional comments, included below, were offered during discussion, as suggestions for further refinement. In addition, the Council also recommended that the Senate's response convey the importance of involving Divisional Senates in the development and review of the implementation procedures once the policy is enacted.

It was noted that the reporting procedures are confusing and it would be helpful if the policy clearly specified who is involved in the process and what their role is, and outlined the steps for reporting and resolving issues. It was also suggested that more information be included as it relates to social media, especially to specify how the policy applies to social media use outside of the workplace and through personal accounts. More details could also be provided to explain the "reasonably necessary" limit for formal investigations.

Finally, the following edits to the policy's language were suggested by reviewers:

- Change the term "cyberbullying" to "cyber harassment" or "abuse using digital technologies" given the term "bullying" was removed from the rest of the policy.
- Change the first part of Section C.4 to "If the conduct is sexual in nature or gender-based (i.e. based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation)..."
- Clarify whether a Reporter is required to be someone within the University and whether a student Reporter has to be a student at the time of the incident.

Due to the review schedule, there was insufficient time to distribute the review materials to all 2022-23 standing committees for formal review. The materials were informally shared with the 2021-22 standing committees in May 2022. The 2021-22 Divisional Committee on Privilege and Tenure submitted a response, which is attached.

Sincerely,

A handwritten signature in black ink that reads "Nancy Grey Postero". The signature is written in a cursive, flowing style.

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

August 30, 2022

TARA JAVIDI

Chair, San Diego Divisional Academic Senate

SUBJECT: Second Review of the Proposed Presidential Policy on Abusive Conduct
in the Workplace

Dear Chair Javidi,

The Committee on Privilege and Tenure (CPT) reviewed the revised Presidential Policy on Abusive Conduct in the Workplace at its June 2, 2022 meeting. CPT endorsed the proposal, and was pleased to see that the revised policy was much improved from the first version. CPT continues to agree that this is an important and needed policy, and offered the following comments to further improve the proposal.

- Although the policy references social media in the FAQ section, it is not clear if that only pertains to social media associated with the University or if that also includes personal accounts as well. The definition provided for “workplace” does not include any online forums, so that may need to be expanded to include social media.
- CPT discussed if there are any rights for the accused person. For instance, could a faculty member file a grievance if they were charged with abusive conduct, but felt that their rights were violated? If so, how would that process interact with the abusive conduct investigation? It is not clear if situations like this would fall under the purview of this policy or not.
- CPT noted that the reporting procedures are confusing, and suggested that the policy may benefit from a flowchart or a table explaining what happens at each step and what is required by each person in the process. It is also not clear if there are any requirements for staff in this process, particularly for those in HR roles.
- In the FAQ section, “spreading false information...” is listed as one of the types of abusive conduct. However, disseminating incorrect information about someone or something does not necessarily mean that it is being done in a malicious way. It was suggested that “spreading misinformation” may be better since that would imply that someone is spreading information that they know to be false and is designed to mislead others.
- Additionally, in the FAQ section, “making inappropriate comments about a person’s appearance...” is vague. The word “inappropriate” seems to be too vague, and it may be better to use something like “Making comments that seek to demean a person based on their appearance...”

Sincerely,

Philip Gill, Chair
Committee on Privilege and Tenure

cc: Lori Hullings, Executive Director
Nancy Postero, Senate Vice Chair

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Steven W. Cheung, MD, Chair
Steve Hetts, MD, Vice Chair
Pamela Ling, MD, Secretary
Kathy Yang, PharmD, Parliamentarian

October 18, 2022

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: UCSF Comments on the Revised Presidential Policy on Abusive Conduct

Dear Susan:

The San Francisco Division of the Academic Senate recently reviewed the revisions to the Presidential Policy on Abusive Conduct Enclosed for a second systemwide review. This policy addresses the University's commitment to promoting and maintaining a healthy and respectful working environment that not only recognizes rights to freedom of speech and expression, but also mitigates speech or expressive conduct that violates federal law, state law, or the University's policies. It responds to a Regents' and the Academic Senate request for a systemwide policy that addresses the University's responsibilities and procedures related to Abusive Conduct. While the UCSF Academic Senate believes the revised policy is thoughtful, well-written, and includes significant improvements based on feedback gathered in the first systemwide review, we would like to submit comments from our Committee on Academic Freedom (CAF), Clinical Affairs Committee (CAC), Committee on Rules & Jurisdiction (R&J), Committee on Faculty Welfare (CFW), and the School of Medicine Faculty Council (SOMFC). These committees opined on the definition of "Abusive Conduct", asked for additional clarity regarding investigation and reporting guidelines, and elaboration on both the definition of the 'workplace' and the extent of the policy itself.

Part 1: Definition of "Abusive Conduct"

Despite the considerable work done on the proposed policy, UCSF Senate committees still noted a lack in clarity with respect to the definition of "Abusive Conduct". In particular, R&J is concerned about the clause (in the second sentence of the definition describing the impact of abusive conduction on the workplace) that states that such conduct "... and unrelated to the University's legitimate educational, employment, or business interests." While unintended, R&J questions whether this clause confuses the issue, and whether someone could reasonably claim that their conduct is related to university business to avoid having it classified under abusive conduct. Relatedly, FAQ #2 (last bullet) may give shelter to people engaging in abusive conduct by allowing them to be protected by an individual's right to free speech or academic freedom. Furthermore, CAC members wondered if the term "policy issues" are in reference to UC policy or Federal policy issues, with the latter being more prone to abusive conduct given the polarity in today's national politics.

While the UCSF Senate appreciates that the proposed policy explicitly states that "a single act may constitute Abusive Conduct if especially severe or egregious," the SOMFC recommends that the Abusive Conduct definition's description of evaluating claims of abusive conduct be revised to state that it will take into account "the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature, and/or severity of the alleged conduct[.]" The SOMFC believes "and/or" better accounts for single severe or egregious events.

Second, both CFW and the SOMFC have concerns about the new “objectively intimidating or offensive” standard. A disagreement among parties implies that an “objective” standard would be very difficult, if not impossible, to find. Rather, we recommend that the Abusive Conduct definition rely on terms like offensive, hostile, and oppressive, and that the terms racism denial, transphobia, sexism, misogyny, and xenophobia be in the list of examples of “Abusive Conduct” in Section VII.1. Furthermore, the SOMFC would like to emphasize the importance of including diverse individuals in the review and adjudication process, because our understanding of what constitutes intimidating or offensive conduct is culturally bound, and it will be important to have multiple and diverse perspectives reviewing cases.

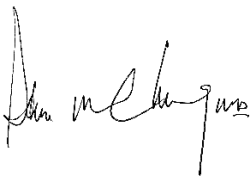
Part 2: Investigation & Reporting Issues

Committee members request that investigation and reporting content of the Policy be clarified. First, the SOMFC recommends that the policy state who has the burden of proof when a formal Investigation goes forward (Section V.F.2.b.7) because the policy does not clearly state who must meet the evidence standard. For instance, is it the University’s burden, the Complainant’s, or the Respondent’s to disprove? Second, R&J recommends that the policy consistently state that all types of misconduct “shall be” made or forwarded to the appropriate offices in Section V.C.4 of the proposed policy because currently, reporting requirements are described differently for sex-based conduct and discriminatory conduct. Third, under Section V.F.1, Early Resolution, the SOMFC suggests including the stated goal of preventing future “Abusive Conduct” and ensuring workplace safety because it currently does not convey the seriousness of this work and suggests that the Early Resolution process is simply designed to resolve differences of opinion rather than stopping “Abusive Conduct”.

Part 3: Language Clarification around Workplace & Policy Coverage

- **Workplace.** The SOMFC suggests that the defined term explicitly state that the “Workplace” can be on or off campus because the current definition is simply too broad. CAF adds that not only that the University can and should be expected to react to the private, off-duty online speech of its employees, but also to the online speech of private individuals with no university affiliation. The term “on-line workplace” also needs to be more clearly and narrowly defined to protect the private, off-duty activities of both employees and non-employees from university action.
- **Clarification of Policy Coverage.** Section III.B, Policy Coverage, does not clarify whether this policy applies to participants at UC events and whether it applies to visitors. The SOMFC recommends that if there is indeed a policy that applies to visitors, it should be referenced within the ‘Abusive Conduct’ policy.

Thank you for the opportunity to opine on the revisions to this important Policy. If you have any questions, please let me know.



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

Enclosures (5)

Cc: Matt Tierney, Chair, UCSF Clinical Affairs Committee
Donald Taylor, Chair, UCSF Committee on Academic Freedom
Jenny Liu, Chair, UCSF Committee on Faculty Welfare
Spencer Behr, Chair, UCSF Rules & Jurisdiction
Mia Williams, Chair School of Medicine Faculty Council

Clinical Affairs Committee

Matt Tierney, MS, NP, FAAN, Chair

October 13, 2022

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cheung:

The Committee on Clinical Affairs (CAC) writes to comment on the [Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace](#).

In the Frequently Asked Questions section of the proposed policy, under examples of conduct that generally do not constitute Abusive Conduct, the policy includes the following example:

“Exercising academic freedom, including comments about scholarship, instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the recipient and even if delivered passionately[.]”

CAC members wondered if the “policy issues” referenced in this example are University policy issues or any issues of policy. CAC suggests that this be clarified. CAC suspects that this relates to issues of University policy rather than topics of general public discourse that relate to policy, but members were unsure.

Please contact me or Senate analyst Kristie Tappan if you have questions.

Sincerely,

DocuSigned by:

3F112123E90F4DC...

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

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

Committee on Academic Freedom
Donald Taylor, MD, PhD, Chair

October 10, 2022

Steven Cheung, Chair
Executive Council
UCSF Academic Senate

Re: Second Systemwide Senate Review of the Draft Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cheung,

The Committee on Academic Freedom (CAF) at UCSF writes to comment on the [Second Systemwide Review of the Draft Presidential Policy on Abusive Conduct in the Workplace](#), which was recently circulated for comment. As a committee, we have specific concerns related to the language contained in the policy that we wish to call your attention to.

The revised draft policy defines “workplace” as *“Any space where University business is conducted or occurs ... **as well as the on-line workplace**”*. Subsequently, in Section V., the policy affirms that *“The University recognizes its responsibility to address all concerns of Abusive Conduct, even when they involve individuals who are not employees”*. We find this language and its resulting policy implications to be overly broad and deeply troubling. This language suggests not only that the University can and should be expected to react to the private, off-duty online speech of its employees, but also to the online speech of private individuals with no university affiliation whatsoever.

We strongly recommend that the term “on-line workplace” be more clearly and narrowly defined to protect the private, off-duty activities of both employees and non-employees from university action. We appreciate the opportunity to provide feedback on this important topic. Thank you for your consideration.

Sincerely,

Donald Taylor
Chair, UCSF Committee on Academic Freedom

Committee on Faculty Welfare

Jenny Liu, PhD, MPP, MA, Chair

October 12, 2022

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Presidential Policy on Abusive Conduct in the Workplace – Second Systemwide Review

Dear Chair Cheung:

The Committee on Faculty Welfare (CFW) writes to endorse the [Presidential Policy on Abusive Conduct in the Workplace](#) that is out for a second systemwide review. CFW believes the revised policy is thoughtful, well-written, and includes significant improvements based on feedback gathered in the first systemwide review. CFW believes having a systemwide policy on abusive conduct is an important step toward improving the University and making it a world class workplace.

CFW would like to raise a concern about the use of the word “objectively” in the new definition of Abusive Conduct. CFW believes that whether something is offensive is inherently subjective, and the use of the word objective incorrectly suggests there is a single standard. CFW recommends that CFW use a community standard for offensive conduct or some other standard that does not rely on the word objective.

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,



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

Committee on Rules and Jurisdiction
Spencer Behr, MD, Chair

October 13, 2022

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: R&J Comments on the [Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace](#)

Dear Chair Cheung:

The Committee on Rules and Jurisdiction (R&J) writes to comment on the second systemwide review of the proposed Presidential Policy on Abusive Conduct in the Workplace. R&J renews its recommendation that the policy use consistent language for reporting requirements.

As noted in R&J's comments on the first systemwide review, in what is now Section V.C.4 of the proposed policy, reporting requirements are described differently for sex-based conduct and discriminatory conduct. Sex-based conduct reports "shall be" made or forwarded to the appropriate Title IX office. In contrast, discriminatory conduct "should be" reported to Equal Employment Opportunity/Affirmative Action offices but is not required. Additionally, in the new version of the policy, there is a new paragraph that says potential allegations of SVSH "should be" submitted to the Title IX office. R&J recommends that the policy consistently state that all types of misconduct "shall be" made or forwarded to the appropriate offices.


R&J also writes to call attention to a section of the new definition of "Abusive Conduct." The new proposed definition is below, with emphasis added by R&J.

Abusive Conduct is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University. **The conduct creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests.** The conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may constitute Abusive Conduct if especially severe or egregious. When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the Academic Senate.

R&J questions whether the University intends for conduct that creates an environment that is objectively intimidating or offensive to be outside the definition of "Abusive Conduct" if the conduct is related to the University's legitimate educational, employment, and business interests. R&J is concerned that people could reasonably claim their conduct is related to University business and then avoid having the conduct be defined as Abusive Conduct. R&J requests that the University consider whether it really intends for this to be a requirement of the definition. R&J is not advocating for its removal, but R&J would like the University to consider the question and confirm its intent.

Thank you for the opportunity to comment on this review. Please reach out to me or Senate analyst Kristie Tappan if you have any questions.

Sincerely,

A handwritten signature in purple ink, appearing to read 'SB', with a horizontal line underneath.

Spencer Behr, MD
Committee on Rules and Jurisdiction Chair

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

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

October 13, 2022

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

Re: Second Systemwide Review of Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cheung:

The School of Medicine Faculty Council (SOMFC) writes to comment on the second systemwide review of the proposed *Presidential Policy on Abusive Conduct in the Workplace*. The SOMFC's comments are organized to follow the sections of the proposed policy.

Section II. Definitions

Abusive Conduct: The revised proposed policy defines "Abusive Conduct" as follows, with emphasis added to highlight language discussed by the SOMFC.

Abusive Conduct is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University. The conduct creates an environment, whether intended or not, that is **objectively** intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests. The conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature **and** severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may constitute Abusive Conduct if especially severe or egregious. When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the Academic Senate.

Use of "Objectively"

The SOMFC has concerns about the new “objectively intimidating or offensive” standard in the definition of Abusive Conduct. The use of “objective” implies that there is one truth. Who defines what is objective when there is disagreement among parties? There could be situations in which the Respondent (potentially an abuser/bully) and their allies perceive their behavior to be acceptable, but the Complainant (and others) do not, which undermines the idea that there is an objective truth. The SOMFC believes this is especially likely when there is a power imbalance, which makes differences in perception more likely.

The SOMFC recommends that the Abusive Conduct definition rely on terms like offensive, hostile, and oppressive rather than objective. If conduct can be shown to be offensive, hostile, and oppressive by a preponderance of evidence, the conduct would be Abusive Conduct. The SOMFC would not recommend a higher burden of proof. With in-person interactions, there may not be witnesses beyond the Respondent. In cases involving electronic media, the Respondent’s identity may be implied or assumed but not named. It is easy to imagine how difficult it could be to prove Abusive Conduct when it occurs, and the SOMFC believes a preponderance of the evidence is the most appropriate burden of proof.

The SOMFC would also like to emphasize the importance of including diverse individuals in the review and adjudication process. Our understanding of what constitutes intimidating or offensive conduct is culturally bound, and it will be important to have multiple and diverse perspectives reviewing cases. The SOMFC does not believe there is a single objective standard for what constitutes intimidating or offensive conduct, but having diverse people review cases will bring the University closer to having consistent and fair investigations.

Suggested Revision to Better Account for Single Severe Events

The SOMFC appreciates that the proposed policy explicitly states that “a single act may constitute Abusive Conduct if especially severe or egregious.” The SOMFC agrees with this and recommends that the Abusive Conduct definition’s description of evaluating claims of Abusive Conduct be slightly revised to state that it will take into account “the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature, and/or severity of the alleged conduct[.]” The current language says “and” instead of “and/or.” The SOMFC believes “and/or” better accounts for single severe or egregious events.

Workplace

The SOMFC recommends that the definition of “Workplace” be refined to explicitly state that the Workplace can be on or off campus. The current definition suggests this by being broad and by including the on-line workplace, but the SOMFC recommends that the definition explicitly state that the workplace need not be on a campus.

Section III.B Policy Coverage

The proposed policy states that it is “intended to protect all members of the University community.” The SOMFC would like to know whether this applies to participants at UC events and whether it applies to visitors. If it does not, and if there is a policy that applies to visitors, the SOMFC recommends that the proposed policy include a reference to it.

Section V.F.1 Early Resolution

The SOMFC recommends adding language to the Early Resolution section of the policy so that it includes the stated goal of preventing future abusive conduct and ensuring workplace safety. The current draft of the Early Resolution section of the policy does not convey the seriousness of this work and suggests the Early Resolution process is designed to resolve differences of opinion rather than stopping abusive conduct.

Section VII.1 What are examples of abusive conduct?

The SOMFC recommends adding racism denial, transphobia, sexism, misogyny, and xenophobia to the list of examples of abusive conduct in the frequently asked questions section. The SOMFC believes these should be listed explicitly rather than implied.

Section VII.2 What are examples of conduct that generally do not constitute Abusive Conduct as defined in Section II of this policy?

SOMFC appreciates that there can be tension between free speech and efforts to stop speech that is harmful and offensive. The SOMFC is concerned that the language in the proposed policy, particularly in the FAQ section describing examples of conduct that generally do not constitute Abusive Conduct, gives shelter to people engaging in Abusive Conduct. People should not be able to use free speech or academic freedom as a shield when they engage in racist or oppressive behavior.

Section V.F.2.b.7 Formal Investigation Requirements

Last, the SOMFC recommends that the policy state who has the burden of proof when a Formal Investigation goes forward. Section V.F.2.b.7 states that the investigator will apply the preponderance of the evidence standard, but the policy does not state who must meet this standard. Is it the University's burden, the Complainant's, or the Respondent's to disprove? The SOMFC recommends this information be included in the policy or that the policy refer to another policy that clarifies who has the burden of proof in a Formal Investigation.

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,

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
Karen Hauer, Associate Dean, Competency, Assessment and Professional Studies



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October 18, 2022

Susan D. Cochran, Chair
Academic Council

**RE: Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct
in the Workplace**

Dear Susan,

The Santa Cruz Academic Senate has reviewed your request for the second systemwide review of the proposed Presidential Policy on Abusive Conduct in the Workplace. The UC Santa Cruz Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Career Advising (CCA), Faculty Welfare (CFW), Teaching (COT), and Privilege & Tenure (CPT) have responded.

We broadly support the creation of such a policy, the absence of existing policy to address abusive conduct leads to situations in which faculty members ineffectively grieve such behavior, when the more effective approach would include a charge. For a charge to be effectively leveraged as discipline, however, it requires a violation of the Faculty Code of Conduct, which can include a violation of policy. Therefore, this proposed policy fills a lacuna. Some of our committee members noted that many of the changes in the policy draft document, however, seem administrative rather than substantial. That said, we also find many of the changes to be salutary and responsive to some of the concerns we outlined in our prior comments in January 2022.

We were glad to see that this revision of the previously named “bullying” policy addressed our primary concerns: the protection of academic freedom and clearer procedures for adjudicating the cases. Our committees asked for more clarity around both language and policy procedure.

Language clarifications and recommendations

- The reporting obligation of this policy includes managers and supervisors (which is inclusive of deans and chairs) but does not clarify the term “supervisor”. The policy must clearly specify who is a mandated reporter. Would supervising graduate students, for instance, require a faculty member to be a mandated reporter?

- There is language in the proposed policy that prohibits retaliation against any person who in good faith reports abusive conduct or participates in an investigation or other process under the policy. However, there is no language that states that those who are accused should also be protected until the issue is resolved. Such language should be added to protect those who may be falsely accused. Manager/supervisor responsibilities are not clearly spelled out in the draft. More detail would be helpful.
- The new version has much more to say about academic freedom. While CAAD recognizes academic freedom as an important issue, it is not the subject of this policy, which is about freedom from abuse, not freedom to express certain views. Other systemwide policies focus on academic freedom (including APM 010), and CAAD finds that the new emphasis on academic freedom in this revision undercuts the main intent of the policy.
- While the “reasonable person test” has been removed, it has been replaced with an “objectively offensive” standard, which is not sufficiently defined in the policy (more on this below).
- We find the shift from language of “bullying” to “abusive conduct” to be apt and constructive.

Policy Issues

- Our committees recognize that abusive conduct can happen at various levels and in various relationships. A 30-day timeline for providing an initial assessment in response to a report of abusive conduct (p. 10) has been added, as well as the ability for the Complainant to have an advisor present (instead of having to request permission for an advisor) (p. 12).
- We were pleased that the revised policy has added students to the policy in a way that acknowledges the multiple roles they often play in the university, though there may be additional complexities to be addressed in this regard. Revisions to the free-speech text and the additional statement, “This policy is intended to protect all members of the University community,” has been included, which we interpret as including staff members (though they are still not explicitly mentioned). Many of the concerns we iterated in our past review persist, including unclear lines of reporting and a lack of attention to abusive conduct by institutions. CAAD reiterates the concern expressed in our earlier letter, which suggested removing the list of what is not abusive conduct: “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.” Our view is that this creates more problems than it solves because there is no way to determine what is objectively offensive. We believe the reasonable person standard, which is an existing legal standard, is the better alternative. A more exhaustive list of the types of conduct that are prohibited and an expanded discussion of the intent of the policy would provide further helpful guidance on what is considered abusive conduct in the workplace. Our committees also felt that just removing “embarrassing” photos does not solve the fundamental problem of the policy potentially being weaponized against consensual sexual minorities in relationships in which the circulating of sexual photos, videos, and information via social media is done consensually. On the research front, this could - mean that scholars who study sexuality might be found in violation of this policy for, say, circulating an email with a suggestive photo in it advertising an upcoming talk about sexuality or pornography. CAF recommends adding “without the consent of the depicted person” to help further clarify this (VII.1, bullet eight). We recommend more specific guidance on “local implementation procedures.”

- Under Section III.B. – Policy Coverage, the new draft states that policy will apply to students who are not employed by the UC if they are Respondents or Reporters. However, the policy does not state what UC policy covers students who are not employed if they are Respondents. Members note that abusive behavior may come from students who are not employed by the University. Therefore, the policy that governs this cohort should be referenced in this policy. If not, what policy and processes are in place to address abuse by a student of any community member, including staff, lecturers, other students, and faculty?

Interface with Current Policy

Some members wondered how this policy will interact with the faculty code of conduct and/or established discipline processes on campus. The revised draft aims to clarify that the proposed policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations. Both CFW and CPT raised concerns that the policy doesn't specify how violation would or would not intersect with the personnel review process. There is inconsistency at the interface of abusive conduct and the personnel process. Say a faculty member violates this policy and is disciplined with a censure or salary cut. Would that count as discipline enough, analogous to "time served," or does the administration imagine that the finding of abusive conduct would additionally be considered in a personnel action? Additionally, would failing to utilize this policy to address abusive conduct effectively nullify concerns raised in a personnel action? We speculate they might hold less water. These are practical considerations that CPTs throughout the system might encounter and deserve consideration.

Implementation and Communication

- Committee members felt the policy should include a training requirement for new and existing employees. This would ensure that all employees have access to similar information about abusive conduct. The employee training should cover the policy itself, general information and protections of pre-existing policies, introduction to workplace culture, and awareness of employee rights, protections and/or awareness of conflict of interest procedures.
- Members signaled concern that this policy is being circulated for implementation prior to the completion of this full Senate review. One of our faculty members was at a divisional meeting where the draft policy was introduced by Labor Relations.

On behalf of the Santa Cruz Division, I thank you for the opportunity to provide comment on what stands to be a very significant policy for the University.

Sincerely,



Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

cc: Melissa Caldwell, Vice Chair Academic Senate
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Roger Schoenman, Chair, Committee on Academic Freedom

Steven Ritz, Chair, Committee on Career Advising
Alexander Sher, Chair, Committee on Faculty Welfare
Catherine Jones, Chair, Committee on Teaching
Onuttom Narayan, Chair, Privilege and Tenure
Matthew Mednick, Executive Director, Academic Senate



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

Luca Ferrero, Chair
luca.ferrero@ucr.edu

ACADEMIC SENATE

University of California
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July 22, 2022

ROBERT HORWITZ
ACADEMIC SENATE CHAIR

Dear Robert,

This report is based on the discussion of the second version of the draft policy on Abusive Conduct (AC hereafter) that took place at the UCPT meeting in spring 2022.

The committee considers this new version a vast improvement over the previous draft and appreciates that many of our original suggestions and concerns were appropriately addressed in the new draft. There are, however, still some important issues to consider.

Our main concern is the lack of clarity on the process that leads to the initial reporting, investigation, and adjudication of the alleged violations of the policy. The current draft of the policy leaves the details of implementation to the Divisions but we fear that in absence of clearer guidelines, including the interaction with Title IX and Discrimination offices, local implementations might give rise to inconsistent, unclear, or inefficient local policies. To address some of these problems, we recommend that a clear flowchart be included, which would outline the main steps in the process of reporting, investigation, and adjudication. This flowchart would be of great help in devising more detailed implementation at the divisional level.

Of particular concern to this committee is the interaction of the Presidential policy with the procedures for handling faculty grievances and complaints about violations of the Faculty Code of Conduct. In the cover letter, it is said that the current draft “clarifies that the proposed policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.” This is a welcome clarification, but we must point out that some of the specific provisions appear to enter in potential conflict with faculty disciplinary processes and Academic Senate Bylaws and regulations.

Consider the following issues

1. Under V.F “Resolutions Options” it is indicated that a grievance or complaint about Abusive Conduct “will be forwarded to the investigator for violations of this policy, and the grievance or complaint procedure **will be held in abeyance** pending resolution under this policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this policy, the grievance or complaint **may be reactivated** under the applicable grievance or complaint procedure.” (Our emphasis.)

The grievance and complaints procedures in APM 015, 016 and Bylaws 335 and 336 do not, however, contemplate being “held in abeyance” during any of the investigations of potential violations. There are already provisos in place for the handling of investigations of violation as part of the grievance and disciplinary procedures – no suspension is necessary. In addition, APM and Academic Bylaws might contain provisions about the timing of the various procedures that could be affected if investigations of Abusive Conduct are able to suspend any of these procedures. We are not aware of any analogous suspension of grievance or complaints procedures for the investigations of other kinds of alleged violations of the Faculty code of conduct, including SHSV and discrimination cases. We see no reasons why the investigations of Abusive Conduct should be treated any different.

2. According to V.F.2.b.7 a Formal Investigation will determine whether there has been a violation of the policy according to the standards of the preponderance of evidence. It is important to point out that according to Academic Senate Bylaws a different set of standards are to be used to determine whether a faculty member has violated the Faculty Code of Conduct. In addition, this determination is to be done by a hearing committee. According to the current draft of the Abusive Conduct policy, a situation might arise in which a faculty member is determined to have violated the Abusive Conduct policy at the conclusion of the investigation by the “applicable office” but not found in violation of the Faculty Code of Conduct by a hearing committee established under Bylaw 336---a committee who is to use the standards of clear and convincing evidence (but for SVSH cases).

In order to avoid any possible conflict in the determinations of violation and responsibility, we recommend that V.F.2.b.7 be reformulated so that the applicable office only makes a *recommendation* rather than a *determination* of violation of the policy, a recommendation that has to be taken up by other appropriate bodies for the determination of sanctions according to existing procedures.

Some other important issues:

Abusive Conduct and Personnel Actions

The policy does not explicitly address how violations of Abusive Conduct Policy might interact with Faculty Personnel Actions (Merits and Advancements).

Responsibility of Supervisors

The expectations about Supervisors actions and responsibilities under V.C.2 are unclear.

At first, it is indicated that a supervisor who observes a possible violation is “to address” the problematic conduct, in consultation with the “applicable office.” It is unclear whether “addressing” should understood to include an attempt at initial resolution which does not yet constitute a “report” to the applicable office, a report that might lead to an “escalation.” But in the following sentences, the policy switches from talking about “observing” possible violations to “reports” (presumably from third parties) of possible violations. And with respect to these reports, it seems that the responsibility of the supervisor is to submit the reports to the appropriate offices. Does the supervisor also have the responsibility to “address” the problematic conduct? Or only to pass the report on? V.C.2 moves seamless from first-person observation of problematic conduct to be “addressed” in consultation with appropriate office to the receiving of (third-party) reports

to be immediately forwarded to the appropriate office. The expectations and responsibilities of supervisors need to be clarified.

Cyber-bullying on social media

The definition of “workplace” includes “any space where University business is conducted or occurs” – this includes “on-line workplace.” In the FAQ, among the examples of on-line workplace are on-line meetings and e-mail. We wonder, however, about cases in which abusive conduct appears to take place on social media, when a member of the University might be the target of an abusive campaign or forms of cyber-bullying. Would these cases fall outside of the policy because they do not occur “in the workplace” even if they are perpetrated by members of the University?

“Inappropriate” conduct

In FAQ VII.1, the terms “inappropriate” is used at least four times to describe examples of Abusive Conduct. We are concerned that this term is too vague since no standards of “propriety” are explicitly indicated. Some conduct might be reasonably described as “inappropriate” because of violations of standards of politeness, for instance. Would impoliteness thereby count as instance of Abusive Conduct?

UCPT appreciates the opportunity to comment on this draft policy. Please do not hesitate to contact me if you have any questions.

Sincerely,



Luca Ferrero
UCPT Chair

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



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
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October 17, 2022

**SUSAN COCHRAN, CHAIR
ACADEMIC SENATE**

**RE: Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct
in the Workplace**

Dear Susan,

UCAF appreciates the opportunity to comment on the revised Policy on Abusive Conduct in the workplace. While there is general recognition that the issues motivating the proposed policy, i.e., problematic behaviors purported not to be within the scope of by Title IX regulations nor to represent evident violations of Academic Freedom, require a formal means of redress, there are some concerns about the manner in which the reported behaviors are determined to be within the purview of the policy as well as with the procedures for implementation. In line with this, there is a question whether, after careful evaluation by Title IX and Academic Freedom monitors, reported “abusive” behaviors are actually within the jurisdictions of Title IX and the Academic Senate and do not actually represent behaviors warranting independent treatment by new administrative offices.

Though we will focus primarily on the relevance of the policy to Academic Freedom, it is worth noting that the determination of the status of reported behavior does not seem trivial from the perspective of Title IX. This is because in laws regulating *workplace harassment* “The Supreme Court has ruled that persistent harassment may be punished if it is sufficiently “severe or pervasive to alter the conditions of [the victim’s] employment and create an abusive working environment.”¹ What seems important is that determining “workplace harassment” considers “abusive” conditions, so that perhaps appropriate applications of Title IX may be adequate to address targeted “abusive conduct” in the policy instead of creating an entirely new policy and administrative office. This also raises the question of who determines whether any reported behavior claimed to be abusive does or does not fall within domain of Title IX or Academic Freedom. The proposed policy doesn’t specify a filtering process that subjects the reported behavior to evaluation by either of the two authoritative groups best positioned to determine its status, but pretty much begins with the creation of administrative offices to make the determination.

¹ Nadine Stossen. *HATE: Why We Should Resist It with Free Speech, Not Censorship (Inalienable Rights)*
Oxford University Press 2018:91.

In both instances a basic question arises: Should those authorities most able to determine the status of such behavior as Title IX or Academic Freedom be consulted first and then, if they find that the behavior does not fall within their jurisdiction, refer it to some well-defined administrative route? This neglect is evident in the language concerning Reporting Incidents of Abusive Conduct:

Individuals should report conduct believed to constitute Abusive Conduct to their manager, any supervisor, or directly to the applicable University office. Chairs and Deans, among others, are considered managers and supervisors. Local implementing procedures should specify the applicable office and/or teams for handling such reports. Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams. Complaints may be handled by multiple offices in accordance with local implementing procedures. Reports may also be made to the UC Whistleblower hotline.

Managers and supervisors (including, among others, Chairs and Deans) who observe conduct that may constitute Abusive Conduct have a responsibility to address such conduct immediately. Managers and supervisors should consult the applicable office regarding appropriate next steps, even if the incident(s) appear(s) to be resolved. This consultation will help support the manager or supervisor in responding to the report or may result in the matter being escalated or referred to another office or process, such as for investigation. Consultation will also ensure that the incident is tracked appropriately.

Managers and supervisors who receive a report of Abusive Conduct must immediately submit the report to the applicable office.

Most relevantly, UCAF believes that the policy neglects the role of peer evaluation for determining whether the reported behavior comports with Academic Freedom, while permitting administrative offices to make this determination. Whether some reported behavior falls within Title IX regulations is explicitly addressed in 1.4 on page 9, but there is no equivalent evaluation concerning whether it falls within the protections of Academic Freedom. UCAF contends that this determination can only be made by a committee of peers, when concerning faculty conduct and is, accordingly, best determined by the local CAF committee or some CAF *ad hoc* subcommittee constituted to address the specific case reported. As with the Title IX evaluation, if the behavior is found not to be within the scope of Academic Freedom privileges, then the behavior can be evaluated by the office designated to review abusive behavior. UCAF does not believe the present language concerning the role of the Academic Senate provides sufficient peer evaluation concerning Academic Freedom. The present language states:

When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the Academic Senate.

This language relies on the ability of the applicable University 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: this insures among other things in each case an equitable and consistent application of Academic Freedom principles. If found to be outside the protections of Academic Freedom, the behavior can be reported to responsible offices for further investigation.

This reconceptualization of the Policy puts the focus on the Academic Freedom privileges of faculty members and locates the initial evaluation process within the purview of the Senate. If the reported behavior is not protected by Academic Freedom (and is not a Title IX violation as determined elsewhere), then administrative mechanisms can be used to address it. This would entail some revisions of revised draft concerning Procedures, Implementation and Enforcement.

How does (initial) reporting work?

1. Should the Senate have a mechanism to create a CAF *ad hoc* committee to evaluate reports concerning abusive conduct? This would serve as a first pass to adjudicate whether the situation falls within or outside of Academic Freedom.
2. If it falls outside, then question arises as to how the case is addressed: (1) Does the *ad hoc* identify the relevant administrative unit on campus for investigation or (2) does the issue still remain with the Senate as matter to resolve among peers even though it is not an Academic Freedom issue?
3. If (1), much of the revised draft can remain, with additional language specifying that the 1st pass is investigated by a Senate committee and then making clearer what the actual responsible offices and procedures are (see below).
4. If (2), then mechanisms must be developed within the Senate for investigating, evaluating and rendering judgments – This, however, seems impracticable.

A relevant and important question is what counts as the “applicable office and/or teams for handling such reports [of abusive conduct].” The following language appears to provide an answer:

Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams.

The local office responsible for investigating Abusive Conduct oversees the reporting and response processes outlined in local implementing procedures. That office may identify violations of other policies arising from the same set of alleged facts that led to the Abusive Conduct report (such as Sexual Violence and Sexual Harassment and/or Discrimination, Harassment, and Affirmative Action in the Workplace).

It is unclear whether the applicable office is one or more of the existing offices and teams, or the policy suggests a new local office altogether. It is also unclear who staffs such local offices, whether there are any systemwide constraints or criteria on their operation or who oversees them to determine whether they are operating appropriately.

There are some other specific issues.

1. **“objectively offensive (OO)” standard as replacement for “reasonable person (RP)” standard:** the original objection to the RP standard was, in effect, that it provides no guidance as to how to determine what could count as reasonable. The new OO is accompanied by a characterization of determining factors for evaluating whether any particular instance falls within the standard. Arguably, the identified factors actually characterize what can be determined as “reasonable” on a case by case basis, but it strains the usual definition of “objective” to conclude that this is ultimately anything except a “subjective” determination of applicability. Additionally, there is an intrinsic problem associated with the evaluation criteria however it is labeled: its essential vagueness raises the question as to whether it can be applied equally and without discrimination.

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

Recommendation: keep the original term RP, but associate it with the characterization associated with OO in the revised draft.

2. **Several different issues associated with Disciplinary Processes/Policy Coverage/Interaction with other UC Policies:** While the present policy clarifies its application to students as employees, there is a question as to (1) whether students/staff and faculty should all be covered under the same policy and (2), if so, whether the proposed administrative, rather than a faculty/senate committee mechanism is appropriate, as suggested above. Concerning the first question, if the investigations will be conducted by different offices depending on whether the respondents are staff, student or faculty based on other existing policies, what is the benefit of this policy? Concerning the second question, the presumption for faculty should be that faculty will be evaluated and adjudicated by Faculty Senate. Behaviors that may run afoul of Academic Freedom should also be evaluated/ adjudicated by Senate Committees, to determine whether the behavior violates principles of Academic Freedom with respect to other faculty colleagues, students and staff, and, if so, then what sort of response would be appropriate – this preserves the integrity of Academic Freedom as a prerogative of the faculty and avoids administration evaluation of Academic Freedom prerogatives.

Recommendation: Separate policies for staff, student employees and faculty or modification of existing policies for each can be considered. Alternatively, the mechanisms of implementation and compliance for staff, students, senate faculty and non-senate faculty should each be clearly specified. For all instances evaluating faculty conduct, the case should be referred to Academic Personnel. Either the local CAF committee or a CAF *ad hoc* subcommittee can assess whether the alleged behavior is protected by academic freedom or whether it violates the academic freedom of other faculty and students.

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", written in a cursive style.

Melike Pekmezci, Chair



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October 24, 2022

**SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL**

RE: Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace

Dear Susan,

The University Committee on Faculty Welfare (UCFW) has conducted its Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace. The faculty at the University of California are unique inasmuch as we have a system of shared governance; one policy to cover all possible individuals involved in claims of abusive conduct is not possible as there must necessarily be a separate process for faculty. More generally, we assert the significance of, and deference to, existing Academic Senate processes. The proposed presidential policy on abusive conduct in the workplace, provides little, if any, Academic Senate involvement and/or oversight. Any policy that could result in disciplining a faculty member in which an investigation and determination of probable cause are required, should be conducted by a Senate Committee. As OEOD authority has grown over the years, so have the number of faculty experiencing egregious mistreatment by OEOD handling of investigations and determinations. The Administration does not have neutrality in many personnel matters concerning claims of faculty misconduct, by extension neither does OEOD. We do not feel a separate policy concerning abusive conduct involving faculty is necessary, APM 015 should be sufficient to cover abuse behavior on the part of faculty.

Sincerely,

Terry Dalton, UCFW Chair

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



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Terry Dalton, Chair
tdalton@uci.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
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October 24, 2022

**SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL**

RE: Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace

Dear Susan,

The University Committee on Faculty Welfare (UCFW) has conducted its Second Systemwide Review of the Presidential Policy on Abusive Conduct in the Workplace, and we have several comments. UCFW appreciates the improvements to the draft, and we make further suggestions for improvement below. First, though, we note that the cultivation of a workplace free of abusive conduct is a laudable moral goal, and it will likely facilitate better support for research productivity, particularly for colleagues who might otherwise be at higher risk for targeting (younger colleagues in untenured positions, LGBTQ+ colleagues, BIPOC colleagues, colleagues in non-traditional areas of a discipline, etc.). While it is important to identify individuals who engage in abusive conduct (the focus of this Policy), we would like the document to recognize that abusive conduct often emerges in an environment that supports such conduct either actively or passively/tacitly, through hierarchical structures of power and/or through cultural practices of tolerance of abusive conduct. Any incident of abusive conduct in the workplace should suggest to the unit in which it has occurred that it would benefit from reflection on how the unit might learn from this incident and prevent such conduct in the future. We suggest this issue of unit culture should be added to the General remarks introducing the policy.

A few specific suggestions for change:

- On page 3 (of the clean copy), under definition: The current draft deleted the "reasonable person test" text and used "objectively intimidating or offensive" in an attempt to define what the conduct is. We recognize that there are problems with defining "reasonable person" as well as "objectively intimidating or offensive" as any viewpoint is partial and positioned. Moreover, we recognize also that the cultural sense of what is abusive may change over time. Therefore, we suggest adding the phrase "from a contemporary and inclusive viewpoint" to the definition: "The conduct creates an environment, whether intended or not, that is, from a contemporary and inclusive viewpoint, objectively intimidating or offensive ..."
- Timeline: Section V Procedures: D-F (p. 9-12 of the clean document)
The timeline lists a sequence of initial assessment and report (30 business days), early resolution (60-75 business days), and formal investigation (120 business days). If these actions are sequential, the timeline could stretch to 225 business days, or approximately 45 weeks. We suggest that the policy allow for simultaneous activity following the initial assessment and

report, with a formal investigation commencing with early resolution if a formal investigation is considered to be warranted. We also recognize that these drawn-out time lines may reflect anticipated (under)resourcing of staff; this policy allocates no additional resources to campuses for implementation. A commitment to this policy might suggest that resources be allocated, from the UC President's Office, to support sufficient staffing for timely resolution of cases.

- In Section V, Procedures, the second paragraph (page 6 of the clean copy) specifies that locations are responsible for developing their own implementation procedures. We believe that meaningful faculty representation and participation is essential in the development process. The text currently reads, "Each location's Divisional Senate or equivalent body should be involved in the development of local implementing procedures for this policy", we suggest stronger language, replacing "be involved in" with "have a substantive role in." The sentence would then read, "Each location's Divisional Senate or equivalent body should have a substantive role in the development of local implementing procedures for this policy."
- Section V, F, (page 9) states: "Resolution of alleged Abusive Conduct may take different forms, including early resolution and/or a violation investigation." This language is excessively vague. It would be helpful to know what some possible resolutions (or categories of resolutions) might be, including what consequences are envisioned for people who have engaged in conduct that has been determined to be abusive. The next paragraph states that an employee may file a grievance or a complaint, but that grievance and complaints must "meet requirements" which suggests that a report of Abusive Conduct is a lesser procedure. What are the limits of possible consequences for this policy? (Will a finding of abusive conduct result in a consequence in merit reviews, for example, if the offender is a member of the faculty?)
- The FAQs are unchanged, and retain vague language. For example, "false information and malicious rumors" could be disputed or irrelevant to University business or personnel. Greater clarity is needed throughout.

Greater specification of the investigative process is needed. To this end, we suggest formalized process similar to that adopted for Sexual Violence/Sexual Harassment complaints and investigations. For example:

Required Department of Education (DOE) Title IX complaint process

1. investigate (witness statements, collecting evidence)
2. conduct live hearings with cross-examinations for all witnesses including the investigator
 - a. the decision-maker for these hearings must not be the initial investigator (see DOE Title IX policy below)
3. decision-maker to make determination of the case based on witness statements (with cross-examination, evidence provided, parties statements (with cross-examination), and investigator cross-examination

**Note (italics below) are direct copy from DOE policy on Title IX complaint process:*

*The decision-maker (**who cannot be the same person as the Title IX Coordinator or the investigator**) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.*

The Department emphasizes that the decision-maker must not only be a separate person from any investigator, but the decision-maker is under an obligation to objectively evaluate all

relevant evidence both inculpatory and exculpatory, and must therefore independently reach a determination regarding responsibility without giving deference to the investigative report.

Finally, we note that the document lacks an explanation of how records of complaints and investigations will be archived, and how patterns of behavior might be identified. If an investigation finds evidence of abusive conduct, will that finding be attached to the personnel file? If an investigation does not find sufficient evidence in one case, but at a later time additional complaints of abusive conduct are brought against an individual (or in a unit), will the pattern of behavior be visible to investigators of separate incidents?

Thank you for your assistance in addressing this critical area.

Sincerely,

Terry Dalton, UCFW Chair

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



UNIVERSITY COMMITTEE ON PLANNING AND BUDGET (UCPB)
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October 13, 2022

**SUSAN COCHRAN, CHAIR,
ACADEMIC COUNCIL**

**RE: SECOND SYSTEMWIDE REVIEW OF PRESIDENTIAL POLICY ON ABUSIVE
CONDUCT IN THE WORKPLACE**

Dear Susan,

UCPB welcomes the opportunity to provide feedback on the proposed revisions to the Presidential Policy on Abusive Conduct in the Workplace. In February 2022, the Chair of the Academic Council wrote a letter outlining the Academic Senate Concerns about the original policy proposal. This highlighted the following five key concerns:

1. The detail and clarity of key policy elements
2. The scope of the policy
3. The policy's articulation with free speech and academic freedom
4. The University's ability to implement the policy
5. The policy's potential effect on Senate adjudication processes.

With respect to concerns 1-3, UCPB believes the revised proposal does a good job clarifying key policy elements and scope, while also highlighting the importance of free speech and academic freedom. The committee has some minor comments regarding these areas:

- While the replacement of the reasonable person standard with objectively offensive is perhaps an improvement, case-by-case application still creates potential inequities across cases and campuses in how these rules are applied. The lack of clear standards and guidelines are helped by the FAQs, but this issue should be monitored carefully to ensure the policy is being applied consistently.
- Although the additional detail about confidential reporting options is helpful, the fact that Chairs and Deans are mandatory reporters should be communicated clearly to faculty who

may otherwise unknowingly launch themselves into a formal complaint. Adding a FAQ about this point would be helpful.

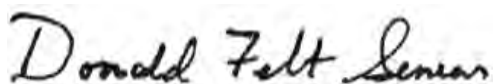
- The new policy language about Privacy and Confidentiality (Section V.B) is appreciated. Given that the language in this new section is verbatim from the SVSH policy (Section III.E.3), the committee wonders why the second half of the SVSH policy is not included. The omitted SVSH language is “The University otherwise keeps confidential the identities of parties, witnesses and those who report Prohibited Conduct, except as required by law or permitted by FERPA, and protects the privacy of personally identifiable information per all applicable state and federal privacy laws, and University policies.” We would consider adding this additional language from the SVSH policy both for the sake of consistency across policies and because the reputational cost of a complaint, while possibly less on average than an SVSH complaint, can nevertheless be quite high.
- Statute of limitations: Although the committee appreciates the concern for complainants that no time limit for complaints to be made seeks to address, we also believe this to be problematic. Although the policy does emphasize timely reporting, allegations made well past any reasonable ability to adjudicate could be very damaging even if not upheld.

With respect to Academic Senate points 4 and 5, UCPB had more serious concerns about the revised proposal.

- Although the revised proposal provides clearer reporting paths and timelines, many decisions are still left up to individual campuses, leading to lingering concerns about inequitable accountability standards. For example, if each campus has different reporting requirements, it will be difficult to track the incidence of these complaints systemwide. This issue, coupled with the “case-by-case” application language creates even more concern that the implementation of this policy will not be systematic across the campuses. At a minimum, it seems like there should be systemwide standardization and tracking of incidents.
- UCPB appreciates the revisions to the policy that state that disciplinary measures may be based on pre-existing policies in the APM and Academic Senate Bylaws and Regulations and that the new policy may not supersede or replace those pre-existing policies. However, UCPB still has concerns that the new abusive behavior policy does seem to be adding a layer of potential disciplinary action that the academic senate may not have purview over. The committee does not think the revision adequately addressed this important Academic Senate concern.

UCPB is in favor of policies that create better experiences for faculty, staff, and students. The revised proposal attempts to support that effort, but there remain serious concerns.

Sincerely,

A handwritten signature in dark ink that reads "Donald Felt Senear". The signature is written in a cursive, flowing style.

Donald Senear, Chair
UCPB



UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP)
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October 17, 2022

SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL

RE: Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct in the Workplace

Dear Susan,

UCAP discussed the second version of a draft Presidential Policy on Abusive Conduct during our meeting on October 12th. UCAP finds the proposed procedures appropriate but is concerned about the implementation of these procedures. As administrators will be responsible for setting procedures in place, and also for moving reviews forward, there needs to be some mechanism in place to ensure that administrators will themselves, in practice, be subject to the proposed policy.

UCAP appreciates the opportunity to comment on this matter. Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Francis Dunn".

Francis Dunn, Chair
UCAP



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)
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October 6, 2022

**SUSAN COCHRAN, CHAIR
ACADEMIC COUNCIL**

RE: Second Systemwide Review of the Draft Presidential Abusive Conduct Policy

Dear Susan,

UCEP discussed the second draft of the Presidential Abusive Conduct policy during our October 3rd videoconference. Overall, the committee is in agreement with the contents of the second draft of the policy but we do recommend that the guidelines regarding the use of social media should be clarified. For example, is posting on a site with access limited to friends/family excluded from the “workplace.”

We also note that section IIIB: “This policy applies to students in their capacity as student employees if they are Complainants, Respondents, or Reporters. It also applies to students who are not student employees if they are Complainants or Reporters.” provides a valuable safeguard for students.

UCEP appreciates the opportunity to comment on this matter. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Melanie Cocco".

Melanie Cocco, Chair
UCEP

October 18, 2022

Susan Cochran
Chair, UC Academic Senate

Re: **(Second Systemwide Senate Review) Draft Presidential Policy – Abusive Conduct in the Workplace**

Dear Chair Cochran,

The divisional Executive Board, councils, and committees appreciated the opportunity for a second system review of the Draft Presidential Policy on Abusive Conduct in the Workplace. The Executive Board (EB) reviewed the proposal at its meeting on September 29, 2022. Due to the unusually short review period, EB members did not have an opportunity to review divisional council and committee feedback during its meeting. Rather, we have highlighted their perspectives in this letter and enclosed their responses.

EB members expressed general support for the revised policy, more so than did some of the divisional committees. Members continued to appreciate the intent of this important community standard and noted that the revised policy addressed a series of concerns previously raised by the Board. Moreover, members affirmed there must be clear and comprehensive avenues to counsel individuals and hold them accountable for abusive conduct in the workplace, particularly when there is no protected status discrimination component. Members recognized this proposal is an important effort to address a hole in the patchwork of a complex system.

That said, EB members and several divisional committees, particularly judicial committees, have additional requests for clarification and continued concerns about the revised policy proposal.

Academic freedom. EB members affirmed the importance of maintaining and reinforcing academic freedom. They appreciated that the proposed policy indicates that if an incident implicates academic freedom then it goes to the Academic Senate. However, they noted that the policy is silent on who gets to decide on whether the issue involves academic freedom. It is important to make explicit that the Academic Senate has a key role in determining whether matters are related to academic freedom. Although members appreciated the intent of the community standard, they requested consideration of any DEI implications.

Assignment of authority in re classification and routing/Relationship between investigative mechanisms and Academic Senate processes. The revised proposal lacks specificity with regard to which individuals or units would have the authority to review and route complaints and where these processes would sit within administrative structures. Members suggested a need for greater clarification of who will administer these types of issues, particularly when they do not involve civil rights. For example, page 11 of 15 indicates investigations involving academic appointees will follow existing

processes; yet, following this statement is a new formal process. What is the proposed relationship between existing processes, particularly involving faculty, and the proposed one?

Concern about the policy's overall relationship to existing Academic Senate processes. Please see letters from the divisional committees on Privilege and Tenure and Charges for their strong criticisms of the proposed policy because they understand it to undermine, or at least conflict with, existing Academic Senate processes. The Faculty Welfare Committee expressed similar concerns in its letter.

As for the Executive Board, members asserted the centrality of, and deference to, existing Academic Senate processes. They suggested the proposed policy requires further clarity to affirm that Academic Senate processes remain in place including the right of the Academic Senate to conduct its own investigation even if administration has done so. Moreover, members advised that deference be shown to existing Senate processes when confronted by ambiguities that may arise during implementation of this policy.

Again, it is important to highlight the attached responses from the divisional committees on Charges and Privilege and Tenure that provided detailed feedback about existing policies and procedures that this proposal appears to overlap or duplicate. Thus, due diligence is needed to eliminate ambiguities in the proposed policy that could lead to confusion or undermine the Academic Senate's shared governance role.

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
Monica Lin, Executive Director, UC Academic Senate
James Steintrager, Vice Chair, UC Academic Senate
Shane White, Immediate Past Chair, UCLA Academic Senate

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

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

- 1) The policy as written is still in conflict with existing UC policy and UCLA bylaws¹ because it breaches one of the core professional rights of the Faculty Code of Conduct that faculty have “the right to be judged by one’s colleagues, in accordance with fair procedures and due process, in matters of . . . discipline” (emphasis added).” It is important to note that “fair procedures and due process” involve *more than the right to a disciplinary hearing*; they involve faculty- /University-approved procedures that “involve the faculty in participating in the investigation of allegations of misconduct.”²
- 2) The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC)³ and therefore falls under the authority of the Academic Senate. At UCLA that means that the Charges Committee is the body that should investigate and find probable cause.⁴ The policy promises not to supplant existing APM or Senate bylaws. However, the investigation piece of the policy does just that. It would supplant UCLA Bylaws Appendix XII, which

¹ UCLA Bylaw Appendix XII, originally passed in 1974, governs the campus’s procedure for investigating whether conduct meets the “probable cause” standards for violation of the Faculty Code of Conduct.

“Each Division should duly notify the University Committee on Rules and Jurisdiction and the University Committee on Privilege and Tenure of the procedures it has adopted and any subsequent changes therein. These Committees in turn are directed to report periodically to the Assembly of the Academic Senate on procedures adopted by the Divisions and to recommend to the Assembly such action as they deem appropriate for assuring compliance with the Bylaws of the Academic Senate or the promotion of uniformity among Divisions to the extent to which it appears necessary and desirable.”

² “Because it is desirable that the faculty meaningfully participate in its own self- discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.” APM-015§III.B.3 [Faculty Code of Conduct (FCC)]. See also fn. 1. UCLA’s procedures were developed using this consideration.

³ “General” (not based on protective categories) harassment is also forbidden by the Student Code of Conduct. “102.11b: Harassment” as are other forms of threatening or abusive conduct.

⁴ The Faculty Code of Conduct applies to all Senate and non-Senate faculty who are not subject to a collective bargaining unit. The contract for Unit 18 lecturers incorporates the provisions quoted here into their contract.

- the FCC forbids “discrimination, including harassment against [a student (II.A.2); University employees or individuals seeking employment (II.C.5); faculty (II.D.2 “Colleagues)] . . . for arbitrary or personal reasons.”
- The concept in the policy that “a single act shall not constitute Abusive Conduct/Bullying, unless especially severe or egregious” (Section II, p. 2) is explained in the FCC as “faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences.”

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

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

II.A. Teaching and Students

Ethical Principles

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

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

5. Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.

II.C. The University

Ethical Principles

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

4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities.

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

II.D Colleagues

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

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

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

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

conduct persists because of serious gaps in reporting, documenting, and correcting faculty behavior that might become serious through its repetition or its consequences. In the Committee's experience, the individuals most vulnerable to potentially abusive conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a professor or colleague, and, even if they consider filing charges, may not have access to sufficient documented information to establish violation of a policy. There is no system, especially for faculty, for documenting and correcting abusive conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy offers no outcomes unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy, especially promising a dedicated office to investigate allegations, is likely to raise expectations of better behavior, but is unlikely to address these gaps.

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

Sincerely yours,



Norweeta G. Milburn

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

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

October 14, 2022

Jessica Cattelino, Chair
Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

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

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

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

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

(2) One-size does not fit all.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for the opportunity to review.

Sandra Graham, Chair 
Chair, Committee on Privilege and Tenure

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

October 14, 2022

To: Jessica Cattelino, Chair
Academic Senate

Re: **(Second Systemwide Senate Review) Draft Presidential Policy on Abusive Conduct in the Workplace**

Dear Chair Cattelino,

At its meeting on October 11, 2022, the Faculty Welfare Committee (FWC) reviewed and discussed the Second Systemwide Senate Review Draft Presidential Policy on Abusive Conduct in the Workplace. Members offered the following comments.

The committee recognizes the importance to the University of maintaining a non-abusive and civil atmosphere on campus. However, by having the code apply to all employees, faculty self-governance would be reduced by this draft policy. The Administration dominates the investigation and evaluation of potentially abusive conduct. The Faculty Code of Conduct already includes abusive behavior toward students and colleagues. With respect to students, the Code includes but is not limited to the following behaviors:

STUDENTS

Discrimination, including harassment, against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.

Sexual violence and sexual harassment, as defined by University policy, of a student.

Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.

FACULTY

Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.


Discrimination, including harassment, against faculty on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family medical history), or service in the

uniformed services as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as well as state military and naval service, or, within the limits imposed by law or Sexual violence and sexual harassment, as defined by University policy, of another member of the University community.

The First stages of the valuation of this abusive or discriminatory behavior are entirely in the hands of the faculty. Allegations first assessed by the Charges Committee and probably valid complaints are next evaluated by the Committee on Privilege and Tenure. Valid complaints are forwarded to the Administration. By applying to all employees of the University, the new Abusive Conduct Policy does not recognize the existing special role of the faculty in their own self-governance. The power of the Administration is increased at the expense of Faculty autonomy.

Thank you in advance for your consideration and the opportunity to opine. If you have additional 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, Committee Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee

October 14, 2022

To: Jessica Cattelino, Chair
Academic Senate

From: Mark Greenberg, Chair
Grievance Advisory Committee

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattelino,

Members of the Grievance Advisory Committee (GAC) appreciate the opportunity to review the “Proposed Presidential Policy on Abusive Conduct in the Workplace.” While the Committee would have appreciated the opportunity to discuss the policy with the additional revisions, the Committee will not have its first meeting until October 18, 2022 and cannot therefore meet the October 14, 2022 deadline for comments.

cc: Shane White, Immediate Past Chair, Academic Senate
Andrea Kasko, Vice Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Members of the Grievance Advisory Committee
Marian M. Olivas, Principal Policy Analyst, Judicial Committees



Luskin
School of Public Affairs

3250 Public Affairs Building
337 Charles E. Young Drive East
Los Angeles, CA 90095-1656
Office: (310) 206-8858

October 13, 2022

To: Jessica Cattelino, Academic Senate Chair

Re: Draft Presidential Policy - Abusive Conduct in the Workplace

Dear Chair Cattelino,

The Faculty Executive Committee of the Luskin School of Public Affairs discussed the draft Presidential Policy on abusive conduct in the workplace and decided that we decline to offer any additional comments.

Best,

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

Ananya Roy

UCLA Luskin School of Public Affairs School-wide Faculty Executive Committee Chair
Professor of Urban Planning, Social Welfare, and Geography
The Meyer and Renee Luskin Chair in Inequality and Democracy
Founding Director, UCLA Luskin Institute on Inequality and Democracy



OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

May 3, 2022

CHANCELLORS
ACADEMIC COUNCIL CHAIR ROBERT HORWITZ
LABORATORY DIRECTOR MICHAEL WITHERELL
ANR VICE PRESIDENT GLENDA HUMISTON

**Re: Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct
in the Workplace**

Dear Colleagues:

Enclosed for a second systemwide review is a revised draft of a proposed new Presidential Policy on Abusive Conduct in the Workplace.

The proposed Presidential Policy is responsive to a request from the Regents and the Academic Senate for a systemwide policy that addresses the University's responsibilities and procedures related to abusive conduct.

Background

In spring 2021, Systemwide Human Resources convened a working group with representatives from location Human Resources offices, which drafted a policy with applicability to staff employees based upon the staff [Guidance on Abusive Conduct and Bullying in the Workplace](#). Academic Personnel and Programs (APP) subsequently convened a working group with representatives from campus Academic Personnel offices. Systemwide HR and APP worked in collaboration with UC Legal, the Systemwide Title IX office, and Graduate, Undergraduate and Equity Affairs to further refine the draft policy. Except as otherwise expressly provided in applicable collective-bargaining agreements, this policy will supersede any existing guidance, local policies, or procedures that address the topic of Abusive Conduct in the workplace.

The first systemwide review occurred from October 2021 to February 2022. Substantive feedback related to the proposed policy was submitted during the first systemwide review, thus prompting a second systemwide review. In this second systemwide review, the policy revisions are presented in two formats:

- First, there is a “clean” version of the policy as proposed.
- Second, there is a “tracked” version of the policy section indicating changes from the first systemwide review to the second systemwide review.

Policy Revisions for Second Systemwide Review

Summarized below are some of the recommendations received during the first systemwide review that were incorporated into the second draft of the proposed policy:

Policy Renamed. The word “bullying” was removed from the name of the proposed policy, which is now entitled, “Abusive Conduct in the Workplace.”

Abusive Conduct definition. The revised definition omits reference to the “reasonable person” standard and adopts the “objectively offensive” standard. Under this standard, alleged conduct shall be evaluated on a case-by-case basis, considering the circumstances of the Complainant and the Respondent; the relationship between them (including power imbalance); the frequency, nature, and severity of the alleged conduct; whether the alleged conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. The “objectively offensive” standard is intended to consider and recognize all of the complainant’s and respondent’s circumstances to determine the effects of all of the relevant factors.

Civility and Cohesiveness. References to “civility” and “cohesiveness” were removed.

Disciplinary Processes for Academic Personnel. The revised draft clarifies that the proposed policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.

Policy Coverage. The revised draft clarifies that the proposed policy applies to students in their capacity as student employees if they are Complainants, Respondents, or Reporters. The policy also applies to students who are not student employees if they are Complainants or Reporters. The University of California Policy on Student Conduct and Discipline applies to student Respondents who are not student employees.

Free Speech and Academic Freedom. The revised draft of the proposed policy affirms that academic freedom and free speech are essential to the mission of the University and upholds protections of academic freedom, as described in APM - 010, APM - 011, and APM - 015.

Interaction with Other University Policies. The revised draft clarifies that the local office responsible for investigating Abusive Conduct may identify violations of other policies arising from the same set of alleged facts that led to a report of Abusive Conduct. In these cases, the investigator of the Abusive Conduct report will gather evidence and make factual findings to assist the appropriate offices in determining whether other policies or standards were violated.

Procedures. The revised draft of the proposed policy includes timelines for initial assessments of reports of alleged abusive conduct, early resolution, and formal investigations.

Frequently Asked Questions (FAQ). Examples of what falls under the definition of Abusive Conduct and conduct that does not generally constitute Abusive Conduct have been moved to the FAQ section of the proposed policy and further clarification of examples have been provided.

Systemwide Review

The second Systemwide review is intended to resolve prior concerns and to answer remaining questions. It is distributed for additional input and comment to the Chancellors, the Chair of the Academic Council, the Director of the Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. This current review includes a 30-day comment period.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about the draft policy. The University will adhere to its bargaining obligations, if any, that may exist in connection with the adoption of this policy. Accordingly, the University will follow appropriate procedures with respect to represented employees and the Office of the President's Systemwide Labor Relations office will coordinate that process.

The systemwide review period for the Abusive Conduct draft policy is **May 3, 2022, through June 3, 2022**. The draft policy is posted at <https://ucnet.universityofcalifornia.edu/working-at-uc/abusive-conduct-review.html>.

Comments from the Academic Senate and campus academic administrators should be submitted to VP-ACADEMICPERSONNEL@ucop.edu. Comments from HR leadership and staff employees should be compiled by HR Policy Coordinators and submitted to SHR Policy. SHR Policy will communicate with HR Policy Coordinators about this process.

Questions relating to academic personnel may be directed to Rebecca Woolston at Rebecca.Woolston@ucop.edu. Questions from staff should be directed to location HR Policy Coordinators. Location questions related to staff employees may be directed to Abby Norris at Abigail.Norris@ucop.edu.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs



Cheryl Lloyd
Vice President
Systemwide Human Resources

Enclosures:

1. Proposed Revised Draft Presidential Policy – Abusive Conduct in the Workplace (Clean)
2. Proposed Revised Draft Presidential Policy – Abusive Conduct in the Workplace (Tracked)
3. Model Communication

cc: President Drake
Provost and Executive Vice President Brown
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Operating Officer Nava
Senior Vice President and Chief Compliance Officer Bustamante
Vice President Maldonado
Vice President and Vice Provost Gullatt
Vice Provosts/Vice Chancellors for Academic Affairs/Personnel
Assistant Vice Provosts/Vice Chancellors/Directors - Academic Personnel
Chief Human Resources Officers
Associate Vice Provost Lee
Deputy General Counsel Woodall
Academic Council Vice Chair Cochran
Executive Director Baxter
Executive Director Silas
Chief of Staff and Executive Director Henderson
Chief of Staff Kao
Chief of Staff Levintov
Chief of Staff Peterson
Chief Policy Advisor McAuliffe
Principal Counsel Chin
Principal Counsel Elconin
Principal Counsel Sanchez
Director Grant
Director Hairston
Director Roller
Director Sykes
Associate Director DiCaprio
Associate Director Nguyen
Associate Director Woolston
Assistant Director LaBriola
Manager Carr
Manager Donnelly
HR Manager Crosson
Policy Specialist Norris
Analyst Durrin
Analyst Wilson
Administrative Officer Babbitt
Policy Advisory Committee



Abusive Conduct in the Workplace

Academic Officer:	Vice Provost - Academic Personnel and Programs
Academic Office:	APP - Academic Personnel and Programs
Staff Officer:	VP – Systemwide Human Resources
Staff Office:	SHR – Systemwide Human Resources Policy
Issuance Date:	January 1, 2023
Effective Date:	January 1, 2023
Last Review Date:	NA
Scope:	This policy on Abusive Conduct (“policy”) applies to all University employees, unpaid interns, and third parties. The policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.

	Academic	Staff
Contact:	Rebecca Woolston (APP)	Abby Norris (SHR)
Title:	Academic Policy and Policy Exceptions Associate Director	Systemwide Human Resources Policy Specialist
Email:	Rebecca.Woolston@ucop.edu	Abigail.Norris@ucop.edu
Phone #:	(510) 987-9153	(510) 987-0612

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I. POLICY SUMMARY

The University of California (“University”) is committed to promoting and maintaining a healthy working environment in which every individual is treated with respect. This policy addresses the University’s responsibilities and procedures related to Abusive Conduct and Retaliation for reporting, or participating in, an investigation or other process provided for in this policy. This policy will be implemented in a manner that recognizes rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal law state law, or University policies.

Abusive Conduct in violation of this policy is prohibited and will not be tolerated. The University encourages anyone who is subjected to or becomes aware of Abusive Conduct to promptly report it. Managers and supervisors who observe or become aware of Abusive Conduct have response and reporting obligations. Chairs and Deans, among others, are considered managers and supervisors. The University will respond swiftly to reports of Abusive Conduct, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy.

II. DEFINITIONS

Abusive Conduct: Abusive Conduct is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University. The conduct creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests. The conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may constitute Abusive Conduct if especially severe or egregious. When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the Academic Senate.

Complainant: An individual who alleges and/or has been reported to have been subjected to Abusive Conduct. Any individual, including a student, can be a Complainant.

Reporter: An individual who makes a report of alleged Abusive Conduct. Any individual, including a student, can be a Reporter.

Respondent: An individual alleged to have engaged in Abusive Conduct.

Retaliation: An adverse action taken against an individual based on their report of Abusive Conduct or participation in an investigation or other resolution process provided for in this policy. An adverse action is conduct that would discourage reporting Abusive Conduct or participating in a process provided for in this policy, and includes but is not limited to threats, intimidation, or coercion.

Workplace: Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity (for example, University-sponsored study abroad, research, health services, or internship programs, as well as the online workplace).

III. POLICY STATEMENT

A. General

The University of California ("University") is committed to promoting and maintaining a healthy working and learning environment in which every individual is treated with respect. Abusive Conduct, including disruptive behavior, may erode morale and lead to stress; disrupt the functioning of the University community; and interfere with individuals' ability to learn, teach, research, and work. Abusive Conduct may occur in

situations in which the Respondent has more, less, or equal relative power or authority than the Complainant. Abusive Conduct in violation of this policy is prohibited.

The University strives to foster an environment in which individuals feel safe making good-faith reports of Abusive Conduct. The University will respond promptly to reports of Abusive Conduct, and will take appropriate action to stop, prevent, correct, and/or discipline individuals who violate this policy. Violations of this policy may result in disciplinary measures pursuant to applicable University staff and academic personnel policies and collective bargaining agreements. This policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.

B. Policy Coverage

This policy is intended to protect all members of the University community. It governs conduct by prohibiting acts of Abusive Conduct and Retaliation in the Workplace, including by and against all University employees, unpaid interns, and third parties. This includes but is not limited to conduct that occurs in person or through other means such as electronic media.

This policy applies to students in their capacity as student employees if they are Complainants, Respondents, or Reporters. It also applies to students who are not student employees if they are Complainants or Reporters.

Physical violence or threats of physical violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police department or threat response team. Such incidents may also violate workplace violence policies and criminal laws.

C. Retaliation

This policy prohibits Retaliation (e.g., threats, intimidation, reprisals, or other adverse actions) against any person who reports Abusive Conduct, assists someone with a report of Abusive Conduct, or participates, in good faith, in an investigation or other process under this policy. Any such Retaliation is a violation of this policy, independent of whether the report of Abusive Conduct is substantiated. Reports of Retaliation will be addressed under the procedures outlined below.

D. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section II of the California Constitution. This policy is intended to protect members of the University community from Abusive Conduct, not to regulate protected speech. This policy will be implemented in a manner that recognizes rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or 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. Academic freedom, as described in APM - 010, APM - 011, and APM - 015, 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, but is not limited to, discussions, perspectives, information, and challenges to conventional beliefs.

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. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates University policies when interpreted in light of free speech or academic freedom, or that violates federal law or state law.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellors, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees will develop procedures and supplementary information to support implementation of this policy. Responsible Officers (Vice Provost – Academic Personnel and Programs and Vice President – Systemwide Human Resources) may interpret and clarify the policy. All substantive policy changes are made through the standard process for Presidential policies.

Exceptions to local implementing procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President approves this policy and any revisions upon recommendation by the Responsible Officers. The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved according to local procedures. Actions related to Senior Management Group employees must be approved by the President.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President and Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Noncompliance with the Policy

Noncompliance with this policy may result in remediation, educational efforts, and/or employment consequences up to and including informal counseling, adverse performance evaluations, corrective action/discipline, and termination.

For policy-covered staff employees, corrective action/discipline is governed by Personnel Policies for Staff Members [62 \(Corrective Action\)](#), [63 \(Investigatory Leave\)](#), and [64 \(Termination and Job Abandonment\)](#); [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\)](#), which applies to Senior Management Group (SMG) employees; and as applicable, other policies and procedures.

For academic personnel, formal corrective action/discipline is governed by APM - 015 (The Faculty Code of Conduct), APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal), and as applicable, other policies and procedures. This policy does not supplant disciplinary processes described in the APM or Academic Senate Bylaws or regulations.

For represented employees, formal corrective action/discipline is governed by collective bargaining agreements.

V. PROCEDURES

The University will respond promptly to allegations of Abusive Conduct. Allegations of Abusive Conduct will be given the serious attention they warrant and will be addressed in accordance with applicable University policies and procedures.

Locations are responsible for developing implementing procedures that include the identification of responsible offices for reporting and investigation, details of resolution options, tracking of reports, training, and communication. Each location's Divisional Senate or equivalent body should be involved in the development of local implementing procedures for this policy. The specific procedures for investigating and resolving complaints of Abusive Conduct depend on the Respondent's position in or relationship to the University. The Complainant and Respondent are sometimes referred to together in this section as "the parties."

A. Confidential Resources

The University provides confidential resources to individuals who witness or experience Abusive Conduct. They may consult with these confidential resources before making a report or at any point. Meeting with any confidential resource is not considered making a formal report and will not lead to an investigation.

Faculty & Staff Assistance Programs, also known as Employee Assistance Programs, are confidential resources that provide assessment, consultation, counseling and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in their professional Workplace or academic setting.

Ombuds offices also provide confidential, impartial, independent, and informal conflict resolution and problem-solving services. Ombuds services include conflict analysis, strategies to resolve and prevent disputes, identification of options and information, effective communication coaching, mediation, group facilitation, and resource referrals. Individuals experiencing Abusive Conduct may seek confidential assistance from Ombuds offices to discuss strategies and options for moving forward based on the conduct they are experiencing. Ombuds may help identify options when the individual is determining which resolution route is best for the situation.

Although Ombuds offices are independent from and do not share information with formal compliance and complaint processes, Ombuds may assist individuals with identifying the applicable offices identified by local procedures and additional location support resources.

B. Privacy and Confidentiality

The University must balance the privacy interests of people involved in a report of Abusive Conduct against the need to gather information, ensure a fair process, and stop, prevent, and remedy the alleged conduct. In this context, the University protects people's privacy to the extent permitted by law and University policies.

C. Reporting Incidents of Abusive Conduct

1. General

Individuals should report conduct believed to constitute Abusive Conduct to their manager, any supervisor, or directly to the applicable University office. Chairs and Deans, among others, are considered managers and supervisors. Local implementing procedures should specify the applicable office and/or teams for handling such reports. Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams. Complaints may be handled by multiple offices in accordance with local implementing procedures. Reports may also be made to the UC Whistleblower hotline.

2. Manager and Supervisor Reports

Managers and supervisors (including, among others, Chairs and Deans) who observe conduct that may constitute Abusive Conduct have a responsibility to address such conduct immediately. Managers and supervisors should consult the applicable office regarding appropriate next steps, even if the incident(s) appear(s) to be resolved. This consultation will help support the manager or supervisor in responding to the report or may result in the matter being escalated or referred to another office or process, such as for investigation. Consultation will also ensure that the incident is tracked appropriately.

Managers and supervisors who receive a report of Abusive Conduct must immediately submit the report to the applicable office.

3. Anonymous, Third-Party, and Aggregate Reports

Anonymous reports and allegations from Reporters who are not Complainants will be reviewed and may be investigated. Such reports will be tracked, even if they are not investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.

The University recognizes its responsibility to address all concerns of Abusive Conduct, even when they involve individuals who are not employees. When the Respondent is a third party, the applicable office will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process. The University's ability to take responsive action depends on its relationship and level of control over the third party, if any. The extent of the inquiry and responsive steps will depend on the specific circumstances.

Such an investigation may also be appropriate when there is no identifiable, individual Respondent (such as where the Complainant alleges Abusive Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple people that rises to the level of Abusive Conduct only when considered in the aggregate).

4. Reports of Sexual Violence/Sexual Harassment and/or Discrimination

If the conduct is sex-based, including conduct that is sexual in nature or based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation, the University's [Sexual Violence and Sexual Harassment \(SVSH\) Policy](#) will apply. Reports shall be made or forwarded to the location's Title IX Office, as required by and described in the SVSH policy.

If the conduct is based on one or more protected categories outlined in the University's [Discrimination, Harassment, and Affirmative Action in the Workplace](#)

[policy](#), that policy will apply. Reports should be made or forwarded to local Equal Employment Opportunity/Affirmative Action offices.

The local office responsible for investigating Abusive Conduct oversees the reporting and response processes outlined in local implementing procedures. That office may identify violations of other policies arising from the same set of alleged facts that led to the Abusive Conduct report (such as Sexual Violence and Sexual Harassment and/or Discrimination, Harassment, and Affirmative Action in the Workplace).

The investigator of the Abusive Conduct report will gather evidence and make factual findings to assist the appropriate offices in determining whether other policies or standards were violated. If evidence or factual findings that may constitute SVSH are found, such potential allegations should be submitted to the Title IX office immediately.

D. Timelines for Making Reports

There is no time limit for a Complainant to submit a report, and Complainants should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline, if appropriate.

E. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable, and no more than 30 business days, after receiving a report, the applicable office(s) will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed and whether an investigation is warranted. The facilitating manager or University office may extend this timeline for good cause.

If an individual's health and safety is threatened, an immediate response is required. Physical violence or threats of violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police department or threat response team.

F. Resolution Options

Resolution of alleged Abusive Conduct may take different forms, including early resolution and/or a violation investigation. Regardless of the outcome, the Complainant shall be notified in writing that the complaint was reviewed and appropriate steps were taken to reach resolution in the matter.

Instead of, or in addition to, reporting Abusive Conduct in violation of this policy, an employee may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure ([PPSM-70 \(Complaint Resolution\)](#), [APM-015 \(The](#)

[Faculty Code of Conduct](#)), APM - 016 ([University Policy on Faculty Conduct and the Administration of Discipline](#)), [APM - 140 \(Non-Senate Academic Appointees/Grievances\)](#), APM - 150 ([Non-Senate Academic Appointees/Corrective Action and Dismissal](#)), or applicable collective bargaining agreements). Any such grievance or complaint will be forwarded to the investigator for violations of this policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedure.

1. Early Resolution

The University encourages early resolution when possible. The goal of early resolution is to settle differences fairly, at an early stage, and in an open manner, without Retaliation.

Resolution may be facilitated by a manager, Employee and/or Labor Relations, Academic Personnel, or another appropriate office. The facilitating manager or University office will initiate the early resolution process promptly, typically within 60 to 75 business days after the applicable office has made an initial assessment of a report. The facilitating manager or University office may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline. Options for early resolution may include, but are not limited to:

- Facilitated discussion or mediation to obtain an agreement between the parties
- Agreement to counseling, coaching, educational, and/or training programs
- Negotiating an agreement for corrective action/discipline

The parties should contact the applicable University office if the resolution measure is no longer effective in addressing the reported conduct .

The University encourages early resolution, but it does not require that the parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, early resolution may not be the best approach and the applicable University office may initiate a formal investigation instead.

Attempts at early resolution and informal conflict management do not extend the time limit established by the employee's applicable formal complaint resolution or grievance process.

2. Formal Investigations

a. General

The Executive Officer at each location will designate the local personnel or management office responsible for conducting investigations and will develop local implementing procedures for the conduct of investigations. Investigations and consideration of disciplinary actions involving academic appointees will be handled in accordance with the University policies applicable to this population.

The applicable University office may initiate a formal investigation after a preliminary review of the allegations even in cases where the Complainant does not wish to pursue the complaint. This may occur if the applicable office determines that an investigation is necessary to mitigate risk to the campus community.

Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with local implementation procedures.

b. Formal Investigation Requirements

Formal investigation of reports of Abusive Conduct will incorporate the following procedures:

1. The Respondent will be advised of the relevant allegations in the complaint and will be reminded that Retaliation is prohibited by this policy.
2. The investigation generally will include interviews with the parties, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.
3. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation, consistent with University policy. Participants in an investigation may be advised to maintain confidentiality when essential to protect the integrity of the investigation.
4. The Complainant and the Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies. Other witnesses may have an advisor present at the discretion of the applicable University office or as required by University policy or a collective bargaining agreement.
5. Interim protections or measures may be necessary prior to or during the investigation. These interim protections or measures should be implemented in accordance with local procedures.
6. The applicable University office and/or response team conducting the investigation will complete the investigation promptly, typically within 120 business days of notifying the parties in writing that a formal investigation of the complaint will be conducted. The applicable University office and/or response

team may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline.

7. Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues; the positions of the parties; a summary of the evidence; findings of fact; and a determination by the investigator as to whether the conduct at issue violated this policy. In determining whether this policy was violated, the investigator will apply the preponderance of evidence standard.

8. The applicable University office and/or response team conducting the investigation will submit the report to the appropriate University official, who will recommend next steps, in accordance with local procedures.

9. The Complainant and the Respondent will be informed when the investigation is completed and whether or not a violation of this policy has occurred. Actions taken to resolve the complaint, if any, that are directly related to the Complainant, such as an order that the Respondent not contact the Complainant, will be shared with the Complainant. In accordance with University policies protecting individuals' privacy, the Complainant may be notified generally that the matter has been referred for appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent's consent.

VI. RELATED INFORMATION

- [Sexual Violence and Sexual Harassment](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Discrimination, Harassment, and Affirmative Action in the Workplace](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Collective bargaining agreements](#) (referenced in Section III.A of this policy)
- Personnel Policies for Staff Members [62](#), [63](#), and [64](#) (referenced in Section IV.E of this policy)
- [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\)](#) (referenced in Section IV.E of this policy)
- [APM - 015 \(The Faculty Code of Conduct\)](#), [APM - 016 \(University Policy on Faculty Conduct and the Administration of Discipline\)](#), and [APM - 150 \(Non-Senate Academic Appointees/Corrective Action and Dismissal\)](#) (referenced in Section IV.E and Section V.F of this policy)
- [Personnel Policies for Staff Members-70 \(Complaint Resolution\)](#) (referenced in Section V.F of this policy)
- UC Academic Senate Bylaws [335](#), [336](#), and [337](#)
- [Policy on Student Conduct and Discipline](#)

- [UC Regents Policy 1111: Statement of Ethical Values and Standards of Ethical Conduct](#)
- [Whistleblower Policy](#)
- [Whistleblower Protection Policy](#)

VII. FREQUENTLY ASKED QUESTIONS

1. What are examples of Abusive Conduct?

Abusive Conduct may take many forms, including but not limited to conduct involving physical actions and/or verbal, non-verbal, electronic, or written communication.

Abusive Conduct, as defined in Section II of this policy, may include but is not limited to the following types of conduct:

- Use of abusive and/or insulting language (written, electronic or verbal)
- Spreading false information and malicious rumors
- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats implicit threats, or insults
- Encouraging others to act, singly or in a group, to intimidate or harass other individuals
- Making inappropriate comments about a person's appearance, lifestyle, family, culture, country of origin, visa status, religious/spiritual/philosophical beliefs, or political views in a manner not covered by the University's policies prohibiting discrimination
- Teasing or making someone the brunt of pranks or practical jokes
- Inappropriately interfering with a person's personal property or work equipment
- Circulating inappropriate photos, videos, or information via e-mail, social media, or other means
- Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause discomfort and unease, in a manner not covered by the University's [Sexual Violence and Sexual Harassment policy](#)
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes
- Repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not that individual's responsibility, for which the employee does not have authority, or repeatedly refusing to take "no" for an answer when the individual is within the individual's right to decline a demand; pressuring an individual to provide information that the individual is not authorized to release (or may not even possess)

- Making inappropriate threats to block a person's academic or other advancement, opportunities, or continued employment at the University
- Sabotaging or undermining a person's work performance

Abusive Conduct does not include exercising appropriate supervision of employees or carrying out instruction, grading, assessment, and evaluation. It does not include performance management or providing appropriate feedback.

2. What are examples of conduct that generally do not constitute Abusive Conduct as defined in Section II of this policy??

Examples include but are not limited to: :

- Providing performance appraisals to employees, including negative appraisals
- Delivering constructive criticism
- Grading student performance, including negative assessments
- Coaching or providing constructive feedback
- Monitoring or restricting access to sensitive and confidential information for legitimate business reasons
- Scheduling regular or ongoing meetings to address performance issues
- Setting ambitious performance goals to align with departmental goals
- Investigating alleged misconduct or violation of University policy
- Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy
- Engaging in assertive behavior
- Having a disagreement
- Making unpopular statements or articulating positions on controversial issues
- Participating in debates and expressing differences of opinion about academic decisions
- Participating in a formal complaint resolution or grievance process
- Exercising academic freedom, including comments about scholarship, instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the recipient and even if delivered passionately

Differences of opinion, miscommunication, differences in work styles, business disagreements handled professionally, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute Abusive Conduct, as defined in Section II.

3. Is cyberbullying addressed in this policy?

Yes. Abusive Conduct can occur in many different settings, from a physical workplace (e.g. an office building) to an online workplace (e.g. an online meeting or an e-mail). Any type of Abusive Conduct, regardless of the format in which it occurs, is prohibited by this policy.

VIII. REVISION HISTORY

January 1, 2023: This is the first issuance of this policy.

DRAFT



Abusive Conduct/**Bullying** in the Workplace

Academic Officer:	Vice Provost - Academic Personnel and Programs
Academic Office:	APP - Academic Personnel and Programs
Staff Officer:	VP – Systemwide Human Resources
Staff Office:	SHR – Systemwide Human Resources Policy
Issuance Date:	TBD <u>January 1, 2023</u>
Effective Date:	<u>January 1, 2023</u>
Last Review Date:	NA
Scope:	This policy on Abusive Conduct/ Bullying (“policy”) applies to all University employees, unpaid interns, <u>and third parties</u> volunteers, and independent contractors . The policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.

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I. POLICY SUMMARY

The University of California (“University”) is committed to promoting and maintaining a healthy working environment in which every individual is treated with ~~civility and~~ respect. This policy addresses the University’s responsibilities and procedures related to Abusive Conduct/~~Bullying~~ and Retaliation for reporting, or participating in, an investigation or other process provided for in this policy. This policy will be implemented in a manner that recognizes ~~the importance of~~ rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal ~~law or~~, state law, or University policies.

Abusive Conduct/~~Bullying behavior~~ in violation of this policy is prohibited and will not be tolerated. The University encourages anyone who is subjected to or becomes aware of Abusive Conduct/~~Bullying behavior~~ to promptly report it. Managers and supervisors who observe or become aware of Abusive Conduct have response and reporting obligations. Chairs and Deans, among others, are considered managers and supervisors. The University will respond swiftly to reports of Abusive Conduct/~~Bullying~~, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy.

II. DEFINITIONS

Abusive Conduct/~~Bullying~~: ~~For purposes of this policy, abusive conduct and bullying are synonymous.~~ Abusive Conduct/~~Bullying~~ is harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person’s participation in or benefit from the education, employment, or other programs or activities of the University, and The conduct creates an environment, whether intended or not, that is objectively a reasonable person would find to be intimidating or offensive and unrelated to the University’s legitimate educational, employment, and business interests. The conduct shall be evaluated on a case-by-case basis, taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency,

nature and severity of the alleged conduct; whether the conduct was physically threatening; and whether the conduct may be protected as academic freedom or free speech. A single act may ~~shall not~~ constitute Abusive Conduct/~~Bullying~~ if, unless especially severe or egregious. When the alleged conduct involves issues related to academic freedom, the applicable University Office will consult with the Academic Senate.

Complainant: An individual who alleges and/or has been reported to have been subjected to Abusive Conduct/~~Bullying~~. Any individual, including a student, can be a Complainant.

~~**Reasonable Person Test:** The basis for determining whether the conduct at issue rises to the level of Abusive Conduct/~~Bullying~~ is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the Workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative.~~

Reporter: An individual who makes a report of alleged Abusive Conduct/~~Bullying~~. Any individual, including a student, can be a Reporter.

Respondent: An individual alleged to have engaged in Abusive Conduct/~~Bullying~~.

Retaliation: An adverse action taken against an individual based on their report of Abusive Conduct/~~Bullying~~ or participation in an investigation or other resolution process provided for in this policy. An adverse action is conduct that would discourage ~~a reasonable person from~~ reporting Abusive Conduct/~~Bullying~~ or participating in a process provided for in this policy, and includes but is not limited to threats, intimidation, ~~discrimination,~~ or coercion.

Workplace: Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity (~~including,~~ for example, University-sponsored study abroad, research, health services, or internship programs, as well as the on-line workplace~~courses~~).

III. POLICY STATEMENT

A. General

The University of California (“University”) is committed to promoting and maintaining a healthy working and learning environment in which every individual is treated with ~~civility and~~ respect. Abusive Conduct/~~Bullying~~, including disruptive behavior, may ~~erode/undermine~~ morale and lead to stress; disrupt the functioning ~~and cohesiveness~~ of the University community; and interfere with individuals’ ability to learn, teach, research, and work; ~~and undermine a culture that is civil, ethical and that honors compliance.~~ Abusive Conduct/~~Bullying~~ may occur in ~~includes~~ situations in ~~which/where~~ the ~~R~~espondent has more, less, or equal ~~is a person with~~ relative power

or authority ~~than the Complainant, and also situations in which there are in peer-to-peer interactions. Accordingly,~~ Abusive Conduct/~~Bullying behavior~~ in violation of this policy is prohibited.

The University strives to foster an environment in which individuals feel ~~safe~~comfortable making good-faith reports of Abusive Conduct/~~Bullying in good faith~~. The University will respond promptly to reports of Abusive Conduct/~~Bullying~~, and will take appropriate action to stop, prevent, correct, and/or discipline individuals who violate this policy. Violations of this policy may result in disciplinary measures pursuant to applicable University staff and academic personnel policies (~~including Sexual Violence and Sexual Harassment (SVSH) and Discrimination, Harassment, and Affirmative Action in the Workplace~~) and collective bargaining agreements. This policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.

B. Policy Coverage

This policy is intended to protect all members of the University community. It governs conduct by prohibiting~~covers~~ acts of Abusive Conduct/~~Bullying~~ and ~~R~~etalia~~tion by and against members of the University community~~ in the Workplace, including by and against all University employees, unpaid interns, and third parties~~volunteers, and independent contractors~~. This includes but is not limited to conduct that occurs in person or through other means such as electronic media.

This policy applies to students in their capacity as student employees if they are Complainants, Respondents, or Reporters. It also applies to students who are not student employees if they are Complainants or Reporters.

Physical violence or threats of physical violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police department or threat response team. Such incidents may also violate workplace violence policies and criminal laws.

CD. Retaliation

This policy prohibits ~~R~~etalia~~tion~~ (e.g., threats, intimidation, reprisals, or other adverse actions) against any person who reports Abusive Conduct/~~Bullying~~, assists someone with a report of Abusive Conduct/~~Bullying~~, or participates, in good faith, in an investigation or other process under this policy. Any such ~~R~~etalia~~tion~~ is a violation of this policy, independent of whether the report of Abusive Conduct/~~Bullying~~ is substantiated. Reports of ~~R~~etalia~~tion~~ will be addressed under the procedures outlined below.

DE. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the

United States Constitution and Article I, Section II of the California Constitution. This policy is intended to protect members of the University community from Abusive Conduct/~~Bullying~~, not to regulate protected speech. This policy will be implemented in a manner that recognizes ~~the importance of~~ rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or 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 ~~(See APM-010, APM-011, and APM-015.)~~ Academic freedom, as described in APM - 010, APM - 011, and APM - 015, 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, but is not limited to, discussions, perspectives, information, and challenges to conventional beliefs.

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. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal law, or sState law, or University policies when interpreted in light of free speech or academic freedom, or that violates federal law or state law.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellors, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees will develop procedures and supplementary information to support implementation of this policy. Responsible Officers (Vice Provost – Academic Personnel and Programs and Vice President – Systemwide Human Resources) may interpret and clarify the policy. All substantive policy changes are made through the standard process for Presidential policies.

Exceptions to local implementing procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President approves this policy and any revisions upon recommendation by the Responsible Officers. The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy,

consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved according to local procedures. Actions related to Senior Management Group employees must be approved by the President.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President and Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Noncompliance with the Policy

Noncompliance with this policy may result in remediation, educational efforts, and/or employment consequences up to and including informal counseling, adverse performance evaluations, corrective action/discipline, and termination.

For policy-covered staff employees, corrective action/discipline is governed by Personnel Policies for Staff Members [62 \(Corrective Action\)](#), [63 \(Investigatory Leave\)](#), and [64 \(Termination and Job Abandonment\)](#); [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\), which applies to Senior Management Group \(SMG\) employees](#); and as applicable, other policies and procedures.

For academic personnel, formal corrective action/discipline is governed by APM - 015 (The Faculty Code of Conduct), ~~and~~ APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), ~~and~~ APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal), and as applicable, other policies and procedures. This policy does not supplant disciplinary processes described in the APM or Academic Senate Bylaws or regulations.

For represented employees, formal corrective action/discipline is governed by collective bargaining agreements, ~~and as applicable, other policies and procedures.~~

V. PROCEDURES

The University will respond promptly to allegations of Abusive Conduct/~~Bullying~~. Allegations of Abusive Conduct/~~Bullying~~ will be given the serious attention they~~it~~ warrants and will be addressed in accordance with applicable University policies and procedures.

Locations are responsible for developing implementing procedures that include the identification of responsible offices for reporting and investigation, details of resolution options, tracking of reports, training, and communication. Each location's Divisional Senate or equivalent body should be involved in the development of local implementing procedures for this policy. The specific procedures for investigating and resolving complaints of Abusive Conduct depend on the Respondent's position in or relationship to the University. The Complainant and Respondent are sometimes referred to together in this section as "the parties."

A. Reporting Incidents of Abusive Conduct/~~Bullying~~ Confidential Resources

1. E. Confidential Resources

The University provides confidential resources to individuals ~~employees~~ who witness or experience Abusive Conduct/~~Bullying~~. They may consult with these confidential resources before making a report or at any point. Meeting with any confidential resource is not considered making a formal report and will not lead to an investigation.

Faculty & Staff Assistance Programs, also known as Employee Assistance Programs, are confidential resources that provide assessment, consultation, counseling and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in their professional Workplace or academic setting.

Ombuds offices also provide confidential, impartial, independent, and informal conflict resolution and problem-solving services ~~for UC employees~~. Ombuds services include conflict analysis, strategies to resolve and prevent disputes, identification of options and information, effective communication coaching, mediation, group facilitation, and resource referrals. Individuals experiencing Abusive Conduct may seek confidential assistance from Ombuds offices to discuss strategies and options for moving forward based on the conduct they are experiencing. Ombuds may help identify options when the individual is determining which resolution route is best for the situation.

Although Ombuds offices are independent from and do not share information with formal compliance and complaint processes, Ombuds may assist individuals with identifying the applicable offices identified by local procedures and additional location support resources.

B. Privacy and Confidentiality

The University must balance the privacy interests of people involved in a report of Abusive Conduct against the need to gather information, ensure a fair process, and stop, prevent, and remedy the alleged conduct. In this context, the University protects people's privacy to the extent permitted by law and University policies.

C. Reporting Incidents of Abusive Conduct/~~Bullying~~

1. General

Reports of Abusive Conduct/~~Bullying~~

~~For immediate safety or criminal concerns, call 911.~~

Individuals should report conduct believed to constitute Abusive Conduct/~~Bullying~~ to their manager, any supervisor, or directly to the applicable University office. Chairs and Deans, among others, are considered managers and supervisors. Local implementing procedures should specify the applicable office and/or teams for handling such reports. Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams. Complaints may be handled by multiple offices in accordance with local implementing procedures. Reports may also be made to the UC Whistleblower hotline.

2. Anonymous and Third-Party Reports

~~Anonymous reports and allegations from third-party Reporters not directly involved in the complaint will be reviewed and may be investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.~~

23. Manager and Supervisor Reports

Managers and supervisors (including, among others, Chairs and Deans) who observe conduct that may constitute Abusive Conduct/~~Bullying behavior~~ have a responsibility to ~~should~~ address such behavior conduct immediately, ~~and should seek assistance if they are unable to address it.~~ Managers and supervisors should consult the applicable office regarding appropriate next steps, even if the incident(s) appear(s) to be resolved. This consultation will help support the manager or supervisor in responding to the report, or report or may result in the matter being escalated or referred to another office or process, such as for investigation. Consultation will also ensure that the incident is tracked appropriately.

Managers and supervisors who receive a report of Abusive Conduct/~~Bullying~~ must ~~should~~ immediately submit the report to the applicable office.

3. Anonymous, Third-Party, and Aggregate Reports

Anonymous reports and allegations from Reporters who are not Complainants will be reviewed and may be investigated. Such reports will be tracked, even if they are not investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.

The University recognizes its responsibility to address all concerns of Abusive Conduct, even when they involve individuals who are not employees. When the Respondent is a third party, the applicable office will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process. The University's ability to take responsive action depends on its relationship and level of control over the third party, if any. The extent of the inquiry and responsive steps will depend on the specific circumstances.

Such an investigation may also be appropriate when there is no identifiable, individual Respondent (such as where the Complainant alleges Abusive Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple people that rises to the level of Abusive Conduct only when considered in the aggregate).

44. Reports of Sexual Violence/Sexual Harassment and/or Discrimination

If the ~~conduct~~Abusive Conduct/Bullying is sex-based, including conduct that is sexual in nature or based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation, the University's Sexual Violence and Sexual Harassment (SVSH) Policy will ~~typically~~ apply. Reports shall be made or forwarded to the location's Title IX Office, as required by and described in the SVSH policy.

If the conduct is ~~discriminatory~~ based on one or more protected categories outlined in the University's Discrimination, Harassment, and Affirmative Action in the Workplace policy, that policy will apply. Reports should be made or forwarded to local Equal Employment Opportunity/Affirmative Action offices.

The local office responsible for investigating Abusive Conduct oversees the reporting and response processes outlined in local implementing procedures. That office may identify violations of other policies arising from the same set of alleged facts that led to the Abusive Conduct report (such as Sexual Violence and Sexual Harassment and/or Discrimination, Harassment, and Affirmative Action in the Workplace).

The investigator of the Abusive Conduct report will gather evidence and make factual findings to assist the appropriate offices in determining whether other policies or standards were violated. If evidence or factual findings that may constitute SVSH are found, such potential allegations should be submitted to the Title IX office immediately.

DB. Timelines for Making Reports

There is no time limit for a Complainant to submit a report, and Complainants should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline, if appropriate.

EG. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable, and no more than 30 business days, after receiving a report, the applicable office(s) will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed and whether an investigation is warranted. The facilitating manager or University office may extend this timeline for good cause.

If an individual's health and safety is threatened, an immediate response is required. Physical violence or threats of violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police department or threat response team.

FD. Resolution Options

~~If there was no closure after initial assessment, r~~Resolution of alleged Abusive Conduct/~~Bullying~~ may take different forms, including early resolution and/or a violation investigation. Regardless of the outcome, the Complainant shall be notified in writing that the complaint was reviewed and appropriate steps were taken to reach resolution in the matter.

Instead of, or in addition to, reporting Abusive Conduct in violation of this policy, an employee may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure (PPSM-70 (Complaint Resolution), APM-015 (The Faculty Code of Conduct), APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), APM - 140 (Non-Senate Academic Appointees/Grievances), APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal), or applicable collective bargaining agreements). Any such grievance or complaint will be forwarded to the investigator for violations of this policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedure.

1. Early Resolution

The University encourages early resolution when possible. The goal of early resolution is to settle differences fairly, at an early stage, and in an open manner, without Retaliation.

Resolution may be facilitated by a manager, Employee and/or Labor Relations, ~~an Ombuds~~, Academic Personnel, or another appropriate office. The facilitating manager or University office will initiatecomplete the early resolution process

promptly, typically within 60 to 75 business days after the applicable office has made an initial assessment of a report of notifying the parties in writing of starting the process. The facilitating manager or University office may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline. Options for early resolution may include, but are not limited to:

- Facilitated discussion or mediation to obtain an agreement between the parties
- ~~Physically separating the parties~~
- ~~Changing reporting lines~~
- Agreement to counseling, coaching, educational, and/or training programs
- ~~Negotiating an agreement for corrective action/discipline~~

The parties should contact the applicable appropriate University office if the resolution measure is no longer effective in addressing the reported conduct should follow up with the parties after a period of time to ensure that the resolution has been implemented effectively and has addressed the report of Abusive Conduct/Bullying.

The University encourages early resolution, but it does not require that the parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, early resolution may not be the best approach and the applicable University office may initiate a formal investigation instead.

Attempts at early resolution and informal conflict management do not extend the time limit established by the employee's applicable formal complaint resolution or grievance process.

2. Formal Investigations

a. General

The Executive Officer at each location will designate the local personnel or management office responsible for conducting investigations and will develop local implementing procedures for the conduct of investigations. Investigations and consideration of disciplinary actions involving academic appointees will be handled in accordance with the University policies applicable to this population.

The applicable University office may initiate a formal investigation after a preliminary review of the allegations even in cases where the Complainant does not wish to pursue the complaint. This may occur if the applicable office determines that an investigation is necessary to mitigate risk to the campus community.

Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with local implementation procedures.

b. Formal Investigation Requirements

Formal investigation of reports of Abusive Conduct/~~Bullying~~ will incorporate the following procedures:

1A. The Respondent will be advised of the relevant allegations in the complaint and will be reminded that Retaliation is prohibited by this policy.

2B. The investigation generally will include interviews with the parties, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.

3C. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation, consistent with University policy. Participants in an investigation may be advised to maintain confidentiality when essential to protect the integrity of the investigation.

4D. The Complainant and the Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies. Other witnesses may have an advisor present at the discretion of the applicable University office or as required by University policy or a collective bargaining agreement.~~request to have a representative present when they are interviewed. Requests will be reviewed in accordance with local procedures.~~

5E. ~~At any time during the investigation, i~~nterim protections or measures ~~remedies~~ may be necessary prior to or during the investigation. These interim protections or measures~~remedies~~ should be implemented in accordance with local procedures.

6F. ~~The applicable University office and/or response team conducting the investigation will provide the Complainant and Respondent an estimated timeline for completion of the investigation. The applicable University office and/or response team conducting the investigation will complete the investigation promptly, typically within 120 business days of notifying the parties in writing that a formal investigation of the complaint will be conducted. The applicable University office and/or response team may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline. If the investigation timeline is extended, the Complainant and Respondent will be notified.~~

~~7G.~~ Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues; the positions of the parties; a summary of the evidence; findings of fact; and a determination by the investigator as to whether the conduct at issue violated this policy. In determining whether this policy was violated, the investigator will apply the preponderance of evidence standard.

~~8H.~~ The applicable University office and/or response team conducting the investigation will submit the report to the appropriate University official, who will recommend next steps, in accordance with local procedures.

~~9I.~~ The Complainant and the Respondent will be informed when the investigation is completed and whether or not a violation of this policy has occurred. Actions taken to resolve the complaint, if any, that are directly related to the Complainant, such as an order that the Respondent not contact the Complainant, will be shared with the Complainant. In accordance with University policies protecting individuals' privacy, the Complainant may be notified generally that the matter has been referred for appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent's consent.

~~J. The Complainant and the Respondent may request a copy of the investigative report pursuant to University policies governing privacy and access to personal information. In accordance with University policy, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report.~~

~~Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with local implementation procedures.~~

VI. RELATED INFORMATION

- [Sexual Violence and Sexual Harassment](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Discrimination, Harassment, and Affirmative Action in the Workplace](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Collective bargaining agreements](#) (referenced in Section III.A of this policy)
- Personnel Policies for Staff Members [62](#), [63](#), and [64](#) (referenced in Section IV.E of this policy)
- [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\)](#) (referenced in Section IV.E of this policy)
- [APM - 015 \(The Faculty Code of Conduct\)](#), [APM - 016 \(University Policy on Faculty Conduct and the Administration of Discipline\)](#), and [APM - 150 \(Non-](#)

[Senate Academic Appointees/Corrective Action and Dismissal](#) (referenced in Section IV.E and Section V.F of this policy)

- [Personnel Policies for Staff Members-70 \(Complaint Resolution\)](#) (referenced in Section V.F of this policy)
- [UC Academic Senate Bylaws 335, 336, and 337](#)
- [Policy on Student Conduct and Discipline](#)
- [UC Regents Policy 1111: Statement of Ethical Values and Standards of Ethical Conduct](#)
- [Whistleblower Policy](#)
- [Whistleblower Protection Policy](#)

VII. FREQUENTLY ASKED QUESTIONS

1. What are examples of prohibited conduct?

TBDC. Prohibited Conduct

Abusive Conduct/~~Bullying behavior~~ may take many forms, including but not limited to conduct involving physical actions and/or verbal, non-verbal, electronic, or written communication.

Abusive Conduct/~~Bullying~~, as defined in Section II of this policy, may include but is not limited to the following types of ~~behavior~~conduct:

- ~~Persistent or egregious u~~Use of abusive and/or insulting language (written, electronic or verbal)
- Spreading false information ~~misinformation~~ and malicious rumors
- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats ~~or (including~~ implicit threats), or insults
- Encouraging others to act, singly or in a group, to ~~bully~~intimidate or harass other individuals
- Making ~~repeated or egregious~~ inappropriate comments about a person's appearance, lifestyle, family, ~~or~~ culture, country of origin, visa status, religious/spiritual/philosophical beliefs, or political views in a manner not covered by the University's policies prohibiting discrimination
- ~~Regularly t~~Teasing or making someone the brunt of pranks or practical jokes
- Inappropriately interfering with a person's personal property or work equipment
- Circulating inappropriate ~~or embarrassing~~ photos, videos, or information via e-mail, social media, or other means
- Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause ~~a reasonable person~~ discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy

- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes
- Repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not that individual's responsibility, for which the employee does not have authority, or repeatedly refusing to take "no" for an answer when the individual is within the individual's right to decline a demand; pressuring an individual to provide information that the individual is not authorized to release (or may not even possess)
- Making inappropriate threats to block a person's academic or other advancement, opportunities, or continued employment at the University
- Sabotaging or undermining a person's work performance

Abusive Conduct/~~Bullying~~ does not include exercising appropriate supervision of employees or carrying out instruction, at grading, assessment, and evaluation. It does not include performance management or providing appropriate feedback.

2. What are e

Examples of reasonable conductactions that generally do not constitute Abusive Conduct as defined in Section II of this policy?/~~Bullying~~?

Examples include but are not limited to: ~~Examples include but are not limited to:~~

- Providing performance appraisals to employees, including negative appraisals
- Delivering constructive criticism
- Grading student performance, including negative assessments
- Coaching or providing constructive feedback
- Monitoring or restricting access to sensitive and confidential information for legitimate business reasons
- Scheduling regular or ongoing meetings to address performance issues
- Setting ambitious performance goals to align with departmental goals
- Investigating alleged misconduct or violation of University policy
- Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy
- Engaging in assertive behavior
- Having a ~~simple~~ disagreement
- Making unpopular statements or articulating positions on controversial issues
- Participating in debates and expressing differences of opinion about academic decisions ~~and differences of opinion~~
- ~~Failing to engage in social niceties (e.g., not greeting colleagues)~~
- Participating in a formal complaint resolution or grievance process
- Exercising academic freedom, including comments about scholarship, instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the recipient and even if delivered passionately

Differences of opinion, ~~reasonable~~ miscommunication, differences in work styles, business disagreements handled professionally, ~~reasonable~~ interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute Abusive Conduct/~~Bullying~~, as defined in Section II.

~~Any person found to have violated this policy may be subject to discipline as set forth in the applicable corrective action policy as outlined in Section IV.E. (Noncompliance with the Policy), below.~~

3. Is cyberbullying addressed in this policy?

Yes. Abusive Conduct can occur in many different settings, from a physical workplace (e.g. an office building) to an online workplace (e.g. an online meeting or an e-mail). Any type of Abusive Conduct, regardless of the format in which it occurs, is prohibited by this policy.

VIII. REVISION HISTORY

January 1, 2023~~TBD~~: This is the first issuance of this policy.



Robert Horwitz
Telephone: (510) 987-0887
Email: robert.horwitz@ucop.edu

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

February 3, 2022

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Susan:

As requested, I distributed for systemwide Senate review the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. All ten Academic Senate divisions and three systemwide committee (UCPT, UCEP, and UCFW) submitted comments. These comments were discussed at Academic Council's January 26 meeting and are attached for your reference.

We understand that the policy is intended to provide a framework for campuses to address abusive conduct and bullying by and against members of the UC community in the workplace. The policy also addresses retaliation for reporting or participating in an investigation of prohibited conduct.

The Senate supports systemwide efforts to address abusive conduct and bullying, to minimize the occurrence of those behaviors, and to discipline offenders. The Senate also supports, in principle, a systemwide policy that addresses behavior not covered by other policies specifically tied to sexual harassment or discrimination; that affirms UC's commitment to promoting and sustaining a healthy working and learning environment; and that provides clear guidelines for reporting, investigating, and resolving issues related to these behaviors.

The Senate is unable to fully support the current version of the proposed policy given numerous concerns about 1) the detail and clarity of key policy elements, 2) the scope of the policy, 3) its interaction with free speech and academic freedom, 4) the University's ability to implement the policy, and 5) its potential effect on Senate adjudication processes. These concerns are summarized below and discussed in more detail by faculty reviewers in the attached packet.

Unclear Policy Language

The policy defines and provides examples of prohibited conduct as well as examples of "reasonable" actions that do not constitute abusive conduct and bullying. Reviewers cite multiple examples in which these definitions, terms, and examples fail to provide adequate or clear guidance about behavior that may or may not constitute bullying or abuse. One frequently mentioned example is the "reasonable person" standard for determining whether conduct rises to

the level of Abusive Conduct/Bullying. This vagueness of this standard is worrisome given that legitimate scholarship or creative expression may offend a “reasonable person,” and that an individual’s conception of “reasonable” can vary by gender, race, rank, and other dimensions. Some Senate respondents found the distinction between “bullying” and “abuse” unclear. Other respondents were uncertain what constitutes “embarrassing,” “inappropriate,” “teasing,” and “assertive” behavior.

Free Speech and Academic Freedom

A related concern is that the policy does not include sufficient protections for academic freedom and free speech principles by failing to distinguish between language that would be considered protected under free speech or academic freedom, and language that would be considered bullying or abusive conduct. Some Senate reviewers found the concept of “civility” troubling inasmuch as it is particularly prone to subjective interpretation. They note that charges of “uncivil” behavior have occasionally been used to silence dissenting voices in the academy. The Senate cautions that much “uncivil” behavior may be protected by academic freedom. University policy should not inadvertently discourage or prohibit scholarship or creative expression that may offend some members of the University community.

Policy Scope

The policy sets a high bar for abusive conduct and bullying by establishing that prohibited behavior must be repeated or severe. It excludes some behaviors that may not constitute bullying upon one occurrence, but would if repeated multiple times. The policy should clarify the boundaries of “abusive conduct” to reduce the chance of confusion or bias in its application. In addition, the policy limits its scope to the “workplace,” which could exclude some university spaces that should be included to make the policy comprehensive to the full community. Moreover, how far does the “workplace” extend? Does it include social media posts that include abusive conduct but happen outside the actual confines of the workplace? The policy should address this conundrum.

Senate reviewers raised other areas of concern. Here reviewers offered different, occasionally contradictory, readings of the policy. For some, the policy fails to address the substantial and complex power differences across different roles in the UC community that require special protection against abusive conduct and bullying. For example, the policy is vague about its application to students, who are a particularly vulnerable population but who may also be potential respondents in their role as University employees. The policy also fails to address the potential bullying of staff by faculty, where unequal power can pose a barrier to both reporting and remediation. Other Senate reviewers wondered whether students or personnel of lesser rank or status should be covered by the policy inasmuch as they too could engage in abusive conduct even toward those of higher rank. The policy should provide staff with clear procedures for reporting abusive conduct and bullying to someone other than a supervisor when the supervisor is the respondent. Do bullying or abusive conduct trigger a mandatory reporting requirement on the part of third parties who become aware of the conduct?

The current draft is also vague about the overlap between its implementation and the implementation of other related university policies, including SVSH and Discrimination. It is easy to imagine situations in which the same conduct is subjected to separate investigations and adjudications under different policies. The University should establish a clear hierarchy about which policy violations should be investigated and adjudicated first, to avoid unnecessary

duplication and confusion. Jurisdictional confusion (i.e., such as whether a complaint should go to P&T or some unit of HR) should be avoided if at all possible.

Reporting & Accountability

The policy allows individual UC locations to determine how to investigate and adjudicate complaints of abusive conduct or bullying, but provides no guidance about local policy implementation and enforcement. We recommend a systemwide process that ensures each location meets a common set of accountability standards that are applied equitably. This guidance should address paths for reporting incidents, procedures for training, reporting, investigation, and record-keeping, a process for effective communication of the policy, preventive education to limit the risk of abusive conduct/bullying, provisions for addressing cultural differences and misunderstandings, and guidelines for enforcement actions. The policy should also address the consequences of abusive/bullying behaviors as well as consequences for false claims and due process rights for respondents.

Faculty Discipline

Finally, it is unclear how specific disciplinary elements of the policy would be enforceable for Senate faculty, given that the policy does not affect the disciplinary processes outlined in APM 015 and 016 (the Faculty Code of Conduct.) Many behaviors cited in the proposal are already prohibited by APM 015 and 016. The procedures and guidelines are already established in the SVSH policy. The policy goes beyond prevention education, and mandates a specific non-Senate formal investigation and adjudication process, which would effectively remove the Senate from review of faculty conduct, a violation of one of the core faculty rights under shared governance.

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,



Robert Horwitz, Chair
Academic Council

Cc: Academic Council
Campus Senate Directors
Executive Director Baxter

Encl.



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 24, 2022

ROBERT HORWITZ
Chair, Academic Council

Subject: Systemwide Review of New Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

Dear Chair Horwitz:

On January 24, 2022, the Council of the Berkeley Division (DIVCO) discussed the proposed new Presidential Policy on *Abusive Conduct/Bullying in the Workplace*, informed by written comments from the Committees on Academic Freedom (ACFR); Privilege and Tenure (P&T); Diversity, Equity, and Campus Climate (DECC); and Faculty Welfare (FWEL).

DIVCO agreed that the university should work to minimize the occurrence of workplace bullying and discipline offenders appropriately. However, DIVCO did not find the policy as proposed to be workable. DIVCO raised questions about the paths for reporting, the lack of guidelines for formal investigations, and the lack of details about possible enforcement actions. DIVCO recommended that a centralized campus office should be assigned the responsibility of policy implementation and compliance and concurred with the recommendation from DECC that the implementation of the *Sexual Violence and Sexual Harassment (SVSH)* policy might be a good operational model for implementation of a workplace bullying policy, as well as enforcement and disciplinary actions.

DIVCO also noted that some of the terms in the policy are vague and that some items are excluded which might not constitute bullying upon one occurrence but would if repeated multiple times. At the same time, DIVCO noted that the policy does not affirm the principles of academic freedom. We note, in concurrence with ACFR, that legitimate scholarship or creative expression may offend a “reasonable person” and the university should not do anything to discourage or prohibit such activity. The UC Academic Council Statement on Academic Freedom and Civility (https://senate.universityofcalifornia.edu/files/reports/documents/MG_ChairsDirectors_AcademicFreedomStatement.pdf, dated April 16, 2015) provides some guidance on this point. This statement affirms that concern for civil and respectful discourse must not restrain the freedom of members of the university community to express their views on matters of public importance, in or out of the classroom.

Please see attached committee letters for more information.

Sincerely,



Ronald C. Cohen
Professor of Chemistry
Professor of Earth and Planetary Science
Chair, Berkeley Division of the Academic Senate

Enclosures

cc: Mary Ann Smart, Vice Chair, Berkeley Division of the Academic Senate
Jocelyn Surla Banaria, Executive Director
Sean Gailmard, Chair, Committee on Academic Freedom
Samuel Otter, Chair, Committee on Privilege and Tenure
Lok Siu, Chair, Chair, Committee on Diversity, Equity, and Campus Climate
Laura Nelson, Co-Chair, Committee on Faculty Welfare
Thomas Leonard, Co-Chair, Committee on Faculty Welfare
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate
Patrick Allen, Senate Analyst, Committees on Privilege & Tenure; and Faculty Welfare

To: Ronald Cohen, Chair, Berkeley Division of the Academic Senate
From: Sean Gailmard, Chair, Committee on Academic Freedom (ACFR), Berkeley Division
Re.: Draft systemwide policy on abusive conduct/workplace bullying
Date: 1/18/22

ACFR met on 12/7/21 to discuss the draft policy on workplace bullying. ACFR unanimously agreed that workplace bullying has no legitimate purpose, and the university has sound reasons to eliminate it. At the same time, ACFR members expressed concern about how the policy is operationalized. In particular, ACFR noted with concern that the definition of “workplace” in section 2 of the draft policy can be interpreted to include literally any activity of a faculty member or member of the university community, in the classroom or in research or creative expression. Several ACFR members affirmed that legitimate scholarship or creative expression may in some cases offend a “reasonable person” (as defined in the policy), and the university must not prohibit such activity.

The consensus on ACFR was that concerns for civility and respect expressed in the draft policy (e.g. section 1) must not supersede the university’s mission of pursuit of knowledge, and the paramount mission of the university is protection of members of the university community when they engage in this pursuit. In this respect, ACFR expressed that it is essential that the final policy retain the draft policy language that it does not apply to conduct that is related to the “University’s legitimate educational...interests” (section 2). In addition, ACFR unanimously agreed that the workplace bullying policy should be interpreted as subordinate to the UC Academic Council Statement on Academic Freedom and Civility, April 16, 2015, which affirmed that concern for civil and respectful discourse must not restrain the freedom of members of the university community to express their views on matters of public importance, in or out of the classroom.



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 7, 2022

CHAIR RONALD COHEN
Academic Senate

Re: Proposed UC Presidential Policy on Abusive Conduct and Bullying in the Workplace

Dear Chair Cohen,

On December 3, 2021, the Committee on Privilege and Tenure reviewed and discussed the proposed UC Presidential Policy on Abusive Conduct and Bullying in the Workplace. Overall, the Committee supports the proposed policy and view it as a valuable effort to address concerns of abusive behaviors in the workplace.

P&T Committee members wish to raise questions about the scope of specific language in the proposal and about the conduct of formal investigations:

- Section III.C: Prohibited Conduct (p. 4). The policy provides examples of the types of behaviors that may be considered as Abusive Conduct/Bullying. Committee members were concerned about the breadth of such phrases as “spreading of misinformation and malicious rumors” (does the phrase refer only to information about the person being bullied?) and “circulating inappropriate or embarrassing photos, videos, or information” (the adjective “embarrassing” seems too subjective and problematically vague).
- Section V.D.2: Formal Investigation (pp. 9-10). The policy establishes guidelines by which formal investigations are to be conducted regarding Abusive Conduct/Bullying. The investigations seem entirely decentralized, and it remains unclear who will be conducting such investigations in the local venues and how (at least a rough) consistency will be maintained and precedent applied across cases. Committee members hope that further thought will be given to ensuring fairness in what seems to be a disparate apparatus for determining violations of the new policy and seeking resolutions.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

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

Samuel Otter, Chair
Committee on Privilege and Tenure

SO/pgs



January 21, 2022

PROFESSOR RONALD COHEN
Chair, 2021-2022 Berkeley Division of the Academic Senate

Re: DECC's Comments on the Draft UC Presidential Policy on Abusive Conduct and Bullying in the Workplace

The Committee on Diversity, Equity, and Campus Climate (DECC) appreciates the opportunity to review the Draft UC Presidential Policy on Abusive Conduct and Bullying in the Workplace. The Committee discussed the draft on November 18, 2021. We commend the effort to establish a systemwide policy on the University's responsibilities and procedures related to abusive conduct/bullying. This is a critical step toward improving equity, inclusion, belonging, and campus climate.

In general, the Committee's broad recommendations include the following:

- 1) The adoption of core principles, similar to those used in the development of the University's SVSH policy, to guide the implementation of this policy. Both the SVSH policy and this Presidential Policy on Abusive Conduct and Bullying in the Workplace share a common goal of addressing abusive behavior at the University. It may be helpful to consider reviewing the procedures and guidelines already established in the SVSH policy for the development of this new policy.
- 2) *Section V - Procedures* can benefit from further elaboration in a number of areas, including:
 - a. standards of evidence used for assessment
 - b. reporting
 - c. responding to reports
 - d. initial assessment of a report/immediate health and safety
 - e. resolution options
 - f. investigation report and outcome, including remedy and discipline
- 3) A centralized office with expertise in these issues, like the Office for the Prevention of Harassment and Discrimination (OPHD) at UCB, should be assigned the responsibility of policy implementation and compliance. OPHD already has trained staff with expert knowledge and extensive experience in responding to abusive conduct related to SVSH. Their

expertise can be effectively broadened to address other forms of abusive conduct and bullying. Identifying a centralized office for collecting reports and overseeing the entire process from reporting to assessment to final outcome helps ensure consistent communication and timely implementation of the policy. It ensures that cases are handled by experts knowledgeable in this area, and it facilitates effective documentation and record-keeping.

Thank you for the opportunity to review this Presidential Policy. Establishing a systemwide policy on abusive conduct and bullying affirms the University's commitment to promoting and sustaining a healthy working and learning environment. More importantly, it provides clear guidelines for reporting, investigating, and resolving issues related to abusive conduct and bullying.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lok Siu', written in a cursive style.

Lok Siu
Chair, Committee on Diversity, Equity, and Campus Climate

LS/lc



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

December 13, 2021

CHAIR RONALD COHEN
Academic Senate

Re: Proposed UC Presidential Policy on Abusive Conduct and Bullying in the Workplace

Dear Chair Cohen,

The Committee on Faculty Welfare reviewed and discussed the proposed draft of the UC Presidential Policy on Abusive Conduct and Bullying in the Workplace.

The draft policy addresses an important need, but lacks a clear and accessible path for reporting that considers the complexity of power structures inherent in interactions among people in different roles, including senate faculty, adjunct lecturers, permanent staff, postdoctoral scholars and students. Without a clear line of reporting, which specifies whom the complainant should contact and what that person's actions and responsibilities should be, the policy is meaningless. Each campus will need to specify the precise offices and lines of reporting, but the UC-wide policy should specify the outlines of procedures that should be followed by campuses. This is especially important in the case that a direct supervisor is involved in the bullying allegations, is not dealing with the allegations appropriately, or attempts to block access to the Ombuds office.

In addition, the list of reasonable actions that would not constitute bullying contains some actions that if carried out in the presence of a power differential or over an extended period of time could constitute a hostile working environment that amounted to bullying (e.g., engaging in assertive behavior, having a simple disagreement, failing to engage in social niceties). The addition of these items to the list of actions that do not constitute bullying will make the policy almost impossible to enforce, because many known accounts of bullying involve these and other seemingly innocuous actions, if the actions are considered without taking power differentials and patterns of interaction into account.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas C. Leonard'.

Thomas Leonard, Co-Chair
Committee on Faculty Welfare

A handwritten signature in black ink, appearing to read 'Laura Nelson'.

Laura Nelson, Co-Chair
Committee on Faculty Welfare

TL/LN/pgs



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

January 18, 2022

Robert Horwitz
Chair, Academic Council

RE: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Robert,

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was forwarded to all standing committees of the Davis Division of the Academic Senate. Three committees responded: Faculty Welfare (FW), Privilege and Tenure Investigative (P&T), and the Faculty Executive Committee of the College of Biological Sciences (CBS).

Committees support the proposed policy. P&T and CBS note that the "Policy Coverage" section does not explicitly mention students, but other areas of the policy suggest that students should be included. If students are indeed included, CBS notes that more guidance should be included for addressing "interpersonal issues arising in the classroom between students, if these issues rise to the level of abusive conduct." Similarly, CBS recommends that the policy further address potential electronic or online abuse, such as repeated abusive comments on ratemyprofessor.com or on teaching evaluations.

Lastly, P&T advises that the policy has not clearly demarcated the boundary that separates freedom of speech and academic freedom from abusive conduct/bullying. Though the policy does state that it will be "implemented in a manner that recognizes the importance of rights to freedom of speech and expression," details of such implementation should be more clearly defined.

The Davis Division appreciates the opportunity to comment.

Sincerely,

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

Richard P. Tucker, Ph.D.
Chair, Davis Division of the Academic Senate
University of California, Davis

Enclosed: Davis Division Committee Responses

January 11, 2021

Richard Tucker

Chair, Davis Division of Academic Senate

RE: RFC: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Richard:

The Committee on Privilege & Tenure -- Investigative Subcommittee reviewed the Request for Consultation (RFC) of the Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. Overall, the committee is in agreement with having a Presidential Policy regarding this issue.

The committee raised concerns about the definition of 'Workplace,' the description of the 'Policy Coverage,' and lack of clarification around freedom of speech and academic freedom within the policy that may warrant additional consideration and/or revisions.

By defining the space as 'workplace' it seems to convolute the potential various spaces that this policy may apply to. For example, the definition states "Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity..." however, does this include spaces such as on-campus residence halls? Using the term 'workplace' seems to undermine and potentially exclude places that the policy may be attempting to comprehensively apply to all university spaces. This definition may need further consideration.

Secondly, the committee, specifically feels that the 'Policy Coverage' description should explicitly state that this policy applies to students. The policy refers to students later in the document, but it is not explicitly stated here and it should be if the policy also applies to students.

Lastly, the committee was concerned that policy has not made a clear demarcation of what is freedom of speech and academic freedom from what violates university policy.

Thank you.



Catherine VandeVoort

Chair, Committee on Privilege and Tenure – Investigative Subcommittee

January 10, 2022

Richard Tucker
Chair, UC Davis Division of the Academic Senate

RE: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Richard,

The Faculty Executive Committee of the College of Biological Sciences has reviewed the request for consultation regarding the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace. We found some provisions of this policy vague – in particular, it is unclear if this policy applies to all members of the university community including students. Students are not mentioned specifically as a group, or as complainants or possible abusers/bullies (the language used is “University employees, unpaid interns, volunteers, and independent contractors”). On the other hand, Student Judicial Affairs is listed as a reporting unit in V.A.1., which suggests that this policy may be expected to apply to students. If so, it should provide some guidance for addressing interpersonal issues arising in the classroom between students, if these issues raise to the level of abusive conduct. The definition of electronic or online abuse is also too vague. For example, would repeated and coordinated rants on rate-my-professor.com be considered bullying behavior? What about teaching evaluations, where students can make anonymous and abusive (and occasionally sexist) comments about faculty? More clarity about the boundaries of what constitutes “abusive conduct” would reduce the chance of bias in the application of this policy.

With this exception, we approve this proposal and have nothing to add. We appreciate being consulted on this proposal.

Artyom Kopp
On behalf of the CBS Faculty Executive Committee

January 6, 2022

Robert Horwitz, Chair
Academic Council

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

Dear Chair Horwitz,

The Irvine Division discussed the draft presidential policy on abusive conduct/bullying in the workplace at its January 4, 2022 Cabinet meeting. The Committee on Privilege and Tenure (CPT) and the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) also reviewed the policy. Feedback from those committees is attached for your review.

Members agreed that the draft policy is a good first attempt to make the UC a more positive work environment by responding to behavior that is neither discrimination nor sexual violence/sexual harassment and therefore already covered by other policies. Members felt the examples of what constitutes abusive conduct/bullying – and what does not – were helpful and appreciated that the policy covers both situations where the respondent is a person with relative power or authority and peer-to-peer interactions. At the same time, they felt that there should be clear procedures for reporting abusive conduct/bullying outside of the supervisor or manager chain, such as when the supervisor or manager is the respondent.

One member noted that the policy focuses on individual acts rather than systemic or structural abuse and suggested this should be addressed, as well. Another member raised a concern about vague language throughout, noting that terms such as “inappropriate” or “legitimate” could be interpreted subjectively; for example, who decides what “legitimate” free speech is? There was also some concern that the policy could be used as a cudgel against others or a way for the administration to deal with faculty it believes are difficult. Members, therefore, felt the policy should clearly address consequences for false claims and due process rights for respondents.

The Irvine Division appreciates the opportunity to comment.

Sincerely,



Joanna Ho, Chair
Academic Senate, Irvine Division

Encl: CPT, CFW memos

Cc: Georg Striedter, Chair Elect-Secretary
Gina Anzivino, Interim Executive Director



December 15, 2021

**JOANNA HO, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

**Re: Draft Presidential Policy on Abusive Conduct and Bullying in the
Workplace**

Systemwide Senate Chair Robert Horwitz has distributed for review a draft presidential policy on abusive conduct/bullying in the workplace. The proposed policy covers abusive conduct/bullying and retaliation by and against members of the university community in the workplace.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on November 9, 2021, and would like to submit the following comments:

1. "Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are in peer-to-peer interactions." Could this also include a person whose title does not put them in power or authority over others but they engage in hostile behavior?
2. The basis for determining whether the conduct at issue rises to the level of Abusive Conduct/Bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the Workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative. Many may disagree as to what is offensive, it may be based on characteristics of the individual(s) to which the bullying is targeted. This issue may be covered by "totality of the circumstances." However, something written indicating that the totality of the circumstances includes the (likely) known stressors in an individual's life would be helpful.
3. This policy should be useful for department chairs. Even in the absence of status or power differentials, bullying does occur. One thinks that tenure is a shield against bullying, but tenure may embolden others to think they may not be held responsible for unacceptable behavior. This policy attempts to clarify a form of misbehavior that is sometimes overlooked because there is no obvious status difference between the parties, because sexual or racial and ethnic abuse have been more salient, or when the misbehavior is dismissed as "faculty politics."
4. This is a good first attempt at a necessary building block for helping make UC a positive work environment for as many people as possible.
5. Anonymous reports and allegations from third-party Reporters not directly involved in the complaint will be reviewed and may be investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.

The complainant should have complete agency in this matter and the University should not be able to pursue the complaint in the absence of an expressed desire. This is a conundrum that also affects reports of sexual harassment. There is a tension between the complainants right to privacy and independence, but if the institution sees a larger pattern it may nonetheless want to intervene. There may not be a resolution to this issue, but it is worth discussing.

6. The policy states that "Individuals should report conduct believed to constitute Abusive Conduct/Bullying to their manager, any supervisor, or applicable University office." Would allegations of bullying rise to the level of a "duty to report?"

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Dalton', with a large, stylized loop at the top.

Terry Dalton, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

C: Gina Anzivino, Associate Director
Academic Senate

Matthew Hurley, Cabinet Analyst
Academic Senate

December 17, 2021

**JOANNA HO, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

RE: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace

At its meeting on December 13, 2021, the Committee on Privilege and Tenure (CPT) discussed a draft presidential policy on abusive conduct/bullying in the workplace.

Members felt the policy was a positive step toward responding to behavior that is neither discrimination nor sexual violence/sexual harassment and therefore not covered by other policies. They also found the examples of what constitutes abusive conduct or bullying useful. Finally, members appreciated that the policy will be implemented in a manner that recognizes the importance of rights to free speech and academic freedom.

Some members felt that additional clarification of what constitutes the “workplace” might be useful. The policy defines the workplace as “any space where university business is conducted or occurs, in connection with university employment and/or in the context of a university program or activity.” One member raised the question of whether abusive conduct/bullying or retaliation against a colleague while serving on an external grant panel, for example, would be covered under this policy. The committee recognizes, however, that the policy cannot address all possible scenarios.

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

Sincerely,



Irene Tucker, Chair
Committee on Privilege and Tenure

C: Gina Anzivino, Associate Director
Julie Kennedy, CPT Analyst
Matthew Hurley, Cabinet Analyst



January 10, 2022

Robert Horowitz
Chair, UC Academic Senate

Re: Proposed Presidential Policy on Abusive Conduct & Bullying in the Workplace

Dear Chair Horowitz,

The Divisional Executive Board, councils, and committees appreciate the opportunity to review the Proposed Presidential Policy on Abusive Conduct & Bullying in the Workplace. The Executive Board reviewed the proposal and divisional council and committee feedback at its meeting on January 6, 2022.

Executive Board members applauded the effort and intent of the proposed policy. Members appreciated the intention to protect the institution and hold individuals accountable. They noted the need for ways to counsel people demonstrating bad behavior. Departments often have a hard time holding faculty accountable and there appears to be little recourse.

However, they expressed concerns that this proposal was an inelegant solution that would neither reduce incidents of bullying nor increase the speed or likelihood of remediation. Moreover, members concluded that the proposed policy introduced problematic aspects: it threatened shared governance by mandating a non-Senate process of adjudication, seemed to exceed state law requirements by focusing on investigations, and lacked sufficient provisions for addressing cultural differences and misunderstandings. Some members noted that most of the behaviors cited in the proposal are already prohibited by the faculty code of conduct.

The Executive Board voted unanimously to not endorse the proposed policy as written based on its limitations, including lack of attention to early detection/intervention and to ways to reduce or remedy bullying on campus. This is particularly of concern in the case of bullying of staff by faculty, where unequal power can pose a barrier to both reporting and remediation. Executive Board suggested that policy revisions make explicit the manner in which the policy applies to this (unfortunately) common kind of bullying, versus only cases of faculty bullying other faculty.

Sincerely,



Jody Kreiman
Chair
UCLA Academic Senate

Encl.

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

UCLA Academic Senate
Committee on Diversity, Equity & Inclusion

December 9, 2021

To: Jody Kreiman, Chair
Academic Senate

Re: **Draft Presidential Policy on Bullying and the Workplace**

Dear Chair Kreiman,

At its meeting on December 6, 2021, the Committee on Diversity Equity and Inclusion (CODEI) reviewed and discussed the Presidential Policy on Bullying and the Workplace.

Committee members were generally supportive of current policy. There are multiple items which the committee would like to comment on before moving forward:

- The committee would like to be involved in the implementation and particularly with the faculty code of conduct and the degree that behaviors, such as language, are to be pre-controlled.
- The policy has created an unclear meaning of terms. CODEI encourages clarity in the text itself, and that upon edits there be a conscious distinction of where and what situations implicate the concept of bullying. The current definition is not specific enough to bullying in this situation.

Thank you for the opportunity to review and comment on this policy. If you have any questions, please do not hesitate to contact me at reynaldo@chavez.ucla.edu or the Committee on Diversity, Equity, and Inclusion Analyst, Lilia Valdez at lvaldez@senate.ucla.edu.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reynaldo Macias", with a stylized flourish at the end.

Signature Needed

Professor Reynaldo Macias, Chair
Committee on Diversity, Equity and Inclusion
UCLA Academic Senate

December 17, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Sandra Graham, Chair 
Committee on Privilege and Tenure

Re: (Systemwide Senate Review) Proposed Systemwide Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meetings on November 18, 2021 and December 2, 2021, the Committee on Privilege and Tenure (P&T) had an opportunity to discuss the proposed new systemwide Policy on Abusive Conduct/Bullying in the Workplace. Given that California law now requires that employers include “prevention of abusive conduct” as part of their “interactive training and education regarding sexual harassment,”¹ Committee members appreciate the intent of the policy, but have several concerns.

A principal concern is that the proposed systemwide policy goes far beyond training and education for prevention purposes, and mandates a specific formal investigation and adjudication process. This effectively removes the Senate from review of faculty conduct, a violation of one of the core faculty rights under shared governance. The policy should specify instead that investigation and adjudication of conduct under the policy will fall under existing conduct policies for faculty and staff. The policy also gives no consideration to resources for the described investigation process.

Apart from the investigation sections of the proposed policy, the Committee appreciates the effort to provide definitions of “abusive conduct” and “bullying.” Insofar as it might be helpful to have a policy providing further definition of bullying and abusive conduct, the Committee was concerned that words and phrasing in the proposed policy for “unallowable” conduct go beyond the definition in the California Code, which reads as follows:

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

¹ See [Cal.Govt.Code section 12950.1](#)(a)(1)(2); (h)(2).

² Ibid. §(h)(2).

The policy's expanded definition adds words with variable definitions, some of which could even invite a form of discrimination based on how different individuals might interpret them. Some examples include:

- civility³
- respect
- cohesive (could conflict with coerced agreement)
- honor compliance (to what or whom?)
- intention (who defines it and decides when it matters?)
- gestures
- yelling, screaming
- frighten (what about cultural misunderstanding?)
- teasing and practical jokes
- personal space

The Committee also found that some of the items listed as conduct that is “allowable” under the policy could have variable interpretations:

- assertive behavior
- a simple disagreement (does this mean complex disagreements are not allowed?)

Additional comments:

- The “Scope” does not include students. Although the policy seems to be aimed as a “workplace” policy for employees, students are often also employees. The policy should specify that when students are employees, they are responsible to follow this policy.
- Members suggested that the policy could clarify the academic freedom exception by specifying that comments about scholarship, different approaches to curriculum, opposing opinions about policy issues, or academic achievement are permissible, even if the content is considered insulting by the recipient and even if delivered passionately, but comments about a person's character are not permissible, even if delivered quietly. These are mentioned in the “allowable” list, but without qualification.
- Section III.E mentions academic freedom in the title, but not in the paragraph body.

Thank you for the opportunity to review the proposed revisions.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
 April de Stefano, Executive Director, Academic Senate
 Shane White, Immediate Past Chair, Academic Senate
 Members of the Committee on Privilege and Tenure
 Marian M. Olivas, Principal Policy Analyst, Judicial Committees

³ See, for example, the [Academic Council's statement on civility \(2015\)](#)

December 16, 2021

To: Jody Kreiman
Chair, Executive Board

Re: **Systemwide Review: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace**

Dear Chair Kreiman,

The Committee on Academic Freedom (CAF) reviewed the Systemwide Review: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace proposal at its meeting on December 10, 2021.

Due to the range of views expressed by members, CAF unanimously approved a motion to provide feedback but not to endorse the proposal as written.

Members expressed support for the concept of the proposal. However, members differed on their views of the actual draft proposal.

Some members supported the draft policy as written. Others suggested that the policy should be applicable to everyone in all campus contexts, not only workplace (e.g. students often switch between employee and student roles).

Other members suggested that bullying involves a power dynamic, noting that the draft document seems to include bullying and hostile work environment, which could allow a possible slippage into protected/free speech issues. In other words, it is important to distinguish between disagreements/differences of opinion and bullying per se.

Some members also sought clarity on when an allegation was confidential versus anonymous, and to require a name so it is confidential.

Sincerely,

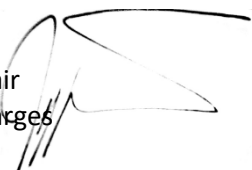
Susanne Lohmann
Chair, Committee on Academic Freedom

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

December 15, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Jeff Bronstein, Chair
Committee on Charges



Re: (Systemwide Senate Review) Proposed Systemwide Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

The Committee on Charges appreciates the opportunity to review the proposed new systemwide Policy on Abusive Conduct/Bullying in the Workplace. The Committee agrees that abusive conduct and bullying is a problem that needs to be better addressed. Our concerns are three-fold: (1) the role of the Academic Senate in formally investigating abusive conduct/bullying in the workplace; (2) the definition of abusive conduct/bullying, in particular the list of unallowed behaviors; and (3) questions about whether the proposed policy would adequately address the underlying causes of why abusive conduct/bullying persists.

First, the policy takes conduct that is normally subject to faculty review and investigation and seems to mandate a formal investigation process outside of the Academic Senate with procedural steps that mirror those of an SVSH investigation. **The policy as written therefore is in conflict with existing UC policy and UCLA bylaws¹** and breaches one of the core professional rights of the Faculty Code of Conduct that faculty have “the right to be judged by one’s colleagues, in accordance with fair procedures and due process, in matters of . . . discipline” (emphasis added). It is important to note that “fair procedures and due process” involve *more than the right to a disciplinary hearing*; they involve faculty- /University-approved procedures that “involve the faculty in participating in the investigation of allegations of misconduct.”² The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC) and therefore falls under the authority of the Academic Senate, which at UCLA means that the Charges Committee is the body that should investigate and find probable cause.³ Committee members do not agree that allegations of “abusive conduct” or “bullying” by faculty should be investigated outside of the Academic Senate processes, which is what the policy describes.

Second, the Committee nonetheless endorses the need for a policy that provides more specific language regarding bullying that is not necessarily tied to sexual harassment or discrimination as it is commonly understood. This policy makes an adequate start at creating such language, but the Committee finds that there are significant problems with the list of unallowed behaviors. For example, “teasing” is highly subjective and can be affectionate or comradely. Interpretation of acceptable personal space also varies widely, often among those from different cultural backgrounds.

Third, members believe abusive or bullying conduct persists because of serious gaps in reporting, documenting, and correcting faculty behavior that might *become* serious through its repetition or its consequences. In the Committees’ experience, the individuals most vulnerable to potentially abusive or bullying

conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a colleague, and, even if they consider filing charges, may not have access to sufficient documented information to establish violation of a policy. There is no system, especially for faculty, for documenting and correcting abusive or bullying conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy is also not applicable unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy is likely to raise expectations of better behavior, but is unlikely to address these gaps.

The Committee therefore strongly suggests that efforts to prevent abusive conduct and bullying might be more effective by (1) further refining a workable definition of abusive conduct / bullying; (2) developing a system for reporting and documenting concerns about “abusive conduct” or “bullying” behavior that includes warning and administrative correction for potential offenders (and will better document those who exhibit repeated patterns of abusive/bullying behavior); and (3) providing an avenue for redress and protections for those who report potentially “abusive conduct” or “bullying” behavior.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Committee on Charges
Marian M. Olivas, Principal Policy Analyst, Judicial Committees

¹ UCLA Bylaw Appendix XII, originally passed in 1974, governs the campus’s procedure for investigating whether conduct meets the “probable cause” standards for violation of the Faculty Code of Conduct.

“Each Division should duly notify the University Committee on Rules and Jurisdiction and the University Committee on Privilege and Tenure of the procedures it has adopted and any subsequent changes therein. These Committees in turn are directed to report periodically to the Assembly of the Academic Senate on procedures adopted by the Divisions and to recommend to the Assembly such action as they deem appropriate for assuring compliance with the Bylaws of the Academic Senate or the promotion of uniformity among Divisions to the extent to which it appears necessary and desirable.”

² “Because it is desirable that the faculty meaningfully participate in its own self-discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.” APM-015§III.B.3 [Faculty Code of Conduct (FCC)]. See also fn. 1. UCLA’s procedures were developed using this consideration.

³ The Faculty Code of Conduct applies to all Senate and non-Senate faculty who are not subject to a collective bargaining unit. The contract for Unit 18 lecturers incorporates the provisions quoted here into their contract.

- the FCC forbids “discrimination, including harassment against [a student (II.A.2); University employees or individuals seeking employment (II.C.5); faculty (II.D.2 “Colleagues)] . . . for arbitrary or personal reasons.”
- The concept in the policy that “a single act shall not constitute Abusive Conduct/Bullying, unless especially severe or egregious” (Section II, p. 2) is explained in the FCC as “faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences.”

Several other examples of the “Prohibited Conduct” (Section III.C, pp. 3-4) align with the “Types of Unacceptable Conduct” in the FCC, including these provisions:

- “Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons” (FCC§A.5).
- “Participating in or deliberately abetting disruption, interference, or intimidation in the classroom” (FCC§A.6).
- “Intentional disruption of functions or activities sponsored or authorized by the University” (FCC§C.1).
- “Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities” (FCC§C.4).

In addition, conduct in the proposed policy that is not specifically described by one of the FCC “types of conduct” could nonetheless still be considered a violation under the FCC since it also includes this general provision: “[o]ther types of serious misconduct, not specifically enumerated herein, may nonetheless be the basis for disciplinary action if they also meet the preceding standards.”

December 14, 2021

Jody Kreiman, Chair
Academic Senate

Re: (Systemwide Senate Review) Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meetings on November 9, 2021 and December 7, 2021, the Council on Academic Personnel (CAP) had opportunities to review the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace.

CAP supports the principle to promote and maintain a healthy working and learning environment at the University of California. However, members had serious concerns that the draft policy removes the Senate from the review of faculty conduct, which is a core professional right of faculty under shared governance. Members felt that existing policies, specifically the Faculty Code of Conduct ([APM-015](#)), adequately address abusive conduct/bullying in the workplace and that new policies mandating formal investigation independently from faculty evaluation were in conflict with the Faculty Code of Conduct. Some members also found the policy language to be vague and unclear, which may allow for loopholes or abuse.

CAP unanimously voted to support and endorse the recommendations from the Committee on Charges and the Committee on Privilege and Tenure and did not support the proposed Systemwide Policy Abusive Conduct/Bullying in the Workplace.

If you have any questions for us, please do not hesitate to contact me at csternin@ucla.edu or via the Council's analyst, Lori Ishimaru, at lishimaru@senate.ucla.edu.

Sincerely,



Catia Sternini, Chair
Council on Academic Personnel

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate

December 13, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Carson T. Schutze, Chair
Faculty Welfare Committee

Re: **Systemwide Senate Review – Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace**

Dear Chair Kreiman,

At its meeting on November 15, 2021, the Faculty Welfare Committee (FWC) reviewed and discussed the Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. Members resumed the discussion electronically and offered the following comments.

I. General Remarks

The FWC believes that such a policy is necessary and useful, so we support the initiative in principle. We are eager to see details fleshed out, particularly when it comes to implementation (reporting and enforcement), though perhaps these will have to be specific to each campus. We also have some suggestions and questions concerning details in the current draft, as specified below.

II. Suggestions Concerning Definitions

1. We suggest that the relevant portion of the definition of Abusive Conduct/Bullying in §II be reworded as follows:

Abusive Conduct/Bullying is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University, ~~and~~ **or** creates an environment that a reasonable person would find to be intimidating or offensive ~~and unrelated to the University's legitimate educational and business interests.~~

That is, we think interfering with a person's participation **OR** creating an intimidating/offensive environment would each on their own be sufficient to constitute bullying; bullying need not have both consequences in all cases. As to the final phrase, "unrelated to...", it was unclear what this was intended to modify (*conduct, environment, ...?*), but in any case, we do not see how somehow being related to the University's interests would exempt undesirable behavior from counting as bullying.

2. We suggest that the wording of the **Reasonable Person Test** in §II should match the wording in the definition quoted in the previous point. Currently the former refers to “hostile or offensive” conduct while the latter refers to “intimidating or offensive” environment.
3. §III.A, first paragraph, states “Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are peer-to-peer interactions.” It is unclear whether this is intended as an exhaustive list of bullying situations. We think it should not be, since it would exclude ones we consider a priori plausible, e.g., faculty bullying staff. We therefore suggest re-wording as “includes but is not limited to.”
4. Some of the examples listed in §III.C to illustrate what can constitute bullying seem excessively broad on their face, e.g. “Spreading misinformation and malicious rumors”—if the information/rumors are about a member of the University community, perhaps this would constitute bullying, but if they are the sort of thing one might find in a tabloid story, we suspect not. Perhaps specific examples would help to clarify the intent of some of these bullet points—what kind of misinformation would rise to the level of bullying?

In fact, spreading misinformation would generally be protected as free speech, and §III.E indicates the policy’s implementation will recognize freedom of speech and expression. But we suggest that a commitment that it will not impinge on intellectual debate is also needed, and that consideration be given to how the proposed implementation steps can ensure these commitments.

5. Because we suspect that some of the example behaviors listed in §III.C might not be construed as bullying within certain subgroups of campus employees, we suggest rewording the sentence introducing the list of bullet points as
“The following types of behavior could constitute Abusive Conduct/Bullying, defined in Section II of this policy, depending on the situation:”
6. In the penultimate paragraph of §III.C, we suggest deleting the word “necessarily”:

“...are an inevitable part of working life and do not ~~necessarily~~ constitute Abusive Conduct/Bullying”

Otherwise, the paragraph implies that these inevitable parts of working life COULD constitute bullying, which we do not think was the intent.

III. Questions About Groups Likely to be Impacted

1. It should be made clearer how this policy applies to students, if it does: only when they are acting in a UC employee capacity (e.g., TA, RA, food service, library worker)? And otherwise their behavior would fall under the Student Conduct Code? Does that Code define bullying the same way as this draft policy?
2. There is an apparent contradiction between the statement of “Scope” on the first page, which is limited to employees, versus §III.B., which refers to “members of the University community in the Workplace,” where Workplace is defined very broadly in §.II to include “any space where University business occurs...in the context of a University program or activity”—the latter would seem to include, e.g., student club or intramural athletic activities where no University employees are present.

IV. Concerns About Reporting and Enforcement

1. It will be vital for each campus to spell out clearly and comprehensively who bullying is to be reported to and who is responsible for dealing with it, and to make this information easy to find. (Perhaps at least the reporting ought to be coordinated through a single central office on each campus?)
2. §V lays out procedures for reporting, investigation, and resolution in considerable detail, but we suspect that some of these details are not consistent with the statements in §IV.E that discipline is covered by APM 015/016/150 (for academic personnel) and policies 62/63/64 (for relevant staff). For example, for regular faculty the APM specifies that the Committee on Privilege & Tenure is the body that holds hearings and recommends disciplinary action, not the “supervisor” (who would typically be the department chair), who “should address such behavior immediately” according to §V.A.3.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Assistant Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Faculty Welfare Committee



OFFICE OF THE ACADEMIC SENATE
LEROY WESTERLING, CHAIR, ACADEMIC SENATE
senatechair@ucmerced.edu

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

January 14, 2022

To: Robert Horwitz, Chair, Academic Council

From: LeRoy Westerling, Chair, UCM Divisional Council

Re: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was distributed for comment to the Merced Division Senate Committees and the School Executive Committees. The following committees offered several comments for consideration by Academic Council.

- Committee on Research (CoR)
- Committee for Equity, Diversity and Inclusion (EDI)
- Faculty Welfare and Academic Freedom (FWAF)
- Graduate Council (GC)
- Library and Scholarly Communication (LASC)
- School of Engineering Executive Committee (SOE EC)
- School of Social Sciences, Humanities and Arts Executive Committee (SSHA EC)

The aforementioned committee comments are briefly summarized below and are appended to this memo.

CoR's shares general concerns about the implementation of this policy and encourages clarification of the definitions and distinction between "bullying" and "abuse". CoR also noted its concerns about the potential for the policy to backfire and hurt those it was designed to protect. Since both of these problem behaviors require a particular power dynamic (e.g., the bullying/abuse cannot happen from a subordinate up), but the policy is rather unclear, people in positions of less power –often women and people of color -- may be criticized as abusive/bullying when simply asserting their rights.

EDI found the policy to be overly broad, lacking firm definitions and ignores relations of power. EDI is also concerned that the policy could be weaponized against marginalized groups, including women and faculty of color, and wonders how it interfaces with APM-15, 16 and 250. The committee offers additional comments and suggestions. They are appended to this memo, for your consideration.

FWAF generally supports the systemwide efforts to address abusive conduct/bullying and finds the

definition of bullying helpful. The committee discussed how the policy might related to Title VII, Title IX, APM 015 and UC Merced's anti-bullying policy.

GC offers comments regarding sections V.A, B. and E of the policy, specifically, GC encourages the adoption of a model similar to University College London's which enables anonymous reporting or reporting to a supervisor with contact details. GC also offers comments related to the availability of resources for timely investigations, especially for vulnerable constituents such as graduate students and postdoctoral scholars. Lastly, GC emphasizes the importance of the availability of immediate support for students and postdocs.

LASC recognizes and supports the importance of a healthy and civil workplace and deems this policy as an important step toward fostering a respectful work environment.

SOE EC faculty appreciate the attention given to the issue of bullying/abusive conduct. However, some faculty expressed skepticism about the enforcement of the policy and wonder if bullying could be addressed with effective enforcement of current policies. SOE EC also offers suggestions for revision of the proposed policy language in section III.C "Prohibited Conduct" (proposed edits are provided in **bold underlined font**).

- Encouraging others to act, singly or in a group, to bully or harass **(or defame)** other individuals
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate **or unstated** business purposes
- **Start rumors about one's professional performance without evidence.**

SSHA EC is broadly supportive of the goal of the policy and appreciates the attempt to delineate what is and is not covered by the policy; however SSHA EC also shares several concerns related to implementation of the policy locally, and echoes CoR's and EDI's concerns; specifically, how this policy could be weaponized against vulnerable populations, i.e., women and people of color.

Divisional Council reviewed the committees' comments via email and supports their various points and suggestions.

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

CC:

Divisional Council and UCM Senate Office

Hilary Baxter, Executive Director, Systemwide Academic Senate

Michael LaBriola, Assistant Director, Systemwide Academic Senate

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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

November 19, 2021

To: LeRoy Westerling, Senate Chair

From: Jason Sexton, Chair, Committee on Research (CoR) *J. P. Sexton*

Re: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

At their November 15 meeting, CoR discussed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace.

CoR has three essential concerns about the policy:

1. The lack of clarity around the definitions and distinction between “bullying” and “abuse”. Examples would be helpful.
2. The potential for the policy to backfire and hurt those it was designed to protect. Since both of these problem behaviors require a particular power dynamic (e.g., the bullying/abuse cannot happen from a subordinate up), but the policy is rather unclear, people in positions of less power – often women and people of color -- may be criticized as abusive/bullying when simply asserting their rights.
3. General concerns about the implementation of the policy. There are no specified mechanisms for reporting or enforcement, nor any specified consequences for people found to have engaged in bullying or abusive conduct.

We appreciate the opportunity to review.

cc: Senate Office



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR EQUITY, DIVERSITY AND INCLUSION

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

November 19, 2021

To: LeRoy Westerling, Senate Chair

From: Committee for Equity, Diversity and Inclusion (EDI)

Re: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

The Committee for Equity, Diversity, and Inclusion (EDI) reviewed [the Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace](#) and offers its comments below.

While the stated aim of this policy, producing a work environment free from bullying and abusive conduct, is laudable, as written it is overly broad, lacks firm definitions, ignores relations of power, and could easily be weaponized against marginalized groups, including women and faculty of color.

First, this policy as written applies to all university employees. However, as noted in the Section IV on "Compliance/Responsibilities," for faculty any disciplinary action is already governed under APM-15, -16, and -250. Unless this policy proposes revisions to the afore-mentioned APMs, it would have no effect on Senate faculty disciplinary processes and therefore is not proposing anything that would actually be actionable. If the administration believes that the kinds of conduct covered by this policy should be prohibited, then it should propose alterations to the relevant sections of the APM, rather than simply outlining an aspirational policy that cannot be enforced on faculty. Absent such alterations, this policy is essentially sterile with respect to faculty.

Second, the policy as written is lacking in definition in such a way that were it to be enforceable against faculty, it could easily be used in a discriminatory manner. The definition provided collapses distinctions between conduct that may be unpleasant or unwelcome and bullying, which, by definition, should require there to be an imbalance of power between the individuals involved. An Assistant Professor who uses "abusive and/or insulting language" in addressing, for example, the Chancellor may be acting in a way deemed "uncivil" by some, but given the inherent power imbalance, the faculty member cannot reasonably be said to be bullying the Chancellor. Any policy that seeks to address bullying must explicitly consider power differentials between the individuals involved, particularly given that this policy is intended to apply to all members of the university community. The potential for discriminatory application comes from the fact that there is a long history of marginalized people being labeled "hostile" or "uncivil" when they call attention to issues such as racism and sexism within the academy. As written, it is easy to imagine this policy being used against marginalized people who are seeking to call attention to their oppression in ways that make the guardians of a racist and sexist status quo uncomfortable.

Third, the policy lacks clear generalized procedure (and place) to report abusive behavior/bullying. Some form of flowchart or steps could be very helpful. In the case of two faculty, it seems to be defaulting to the department chair or the Dean. Ombuds is probable more appropriate in all cases. Furthermore, individuals with disabilities (including neurodiverse), especially when not ladder-rank faculty, are likely to have a harder time in reporting abusive conduct/bullying. There should be some intermediate process as well in cases in which bullying or abusive conduct might be emerging but it is still unclear if it will advance in that direction. In other words, there should be some form of record-keeping what could evolve into bullying without involving the defendant in such an early stage.

In addition, EDI offers more specific suggestions for the policy language below:

1. Section II, definitions: single acts are not constituting abusive conduct or bullying, should be revised. One single abusive conduct or bullying act can be enough to intimidate the compliant and affect its performance in the workplace.
2. Section II: Reasonable person test can be very relative.
3. Section III C: exceptions to abusive conduct/bullying (or reasonable actions) leave a large margin for individuals to get away with it. Almost anything can be carefully categorized as an exception.
4. Last paragraph in Section III: freedom of speech and expressive conduct in violation of law would benefit some example cases explicitly listed.
5. The policy should stipulate that employees are to receive training on abusive conduct/bullying.

The Committee for Equity, Diversity and Inclusion appreciates the opportunity to opine.

cc: EDI Members
Fatima Paul, Executive Director, Senate Office
Senate Office

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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

December 7 2021

To: LeRoy Westerling, Chair, Divisional Council

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

Re: **Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace**

At its meeting on December 2, 2021, FWAF reviewed the [proposed Presidential Policy on Abusive Conduct/ Bullying in the Workplace](#). FWAF supports the systemwide efforts to address abusive conduct/bullying and finds the definition of bullying (page 2 of the policy document) helpful. FWAF discussed how the proposed policy might relate to Title VII, Title IX, APM 015, and the anti-bullying policy at UC Merced that has been in effect since 2017. We had the following comments and questions:

- 1) We find the delineation between the conducts subject to this policy and conducts that are addressed under Title VII and Title IX unclear. This may be intentional, to avoid suggesting the policy has too narrow a scope, but we would like to know how and who determines under which policy a conduct/complaint will be reviewed.
- 2) The proposed policy seems to extend the range conducts for which a faculty member can file a complaint beyond those currently codified in APM 015. Will APM 015 be revised to include bullying? We think a clarification on the relationship between APM 015 and this proposed policy would be beneficial.
- 3) UC Merced's anti-bullying policy applies to students. By contrast, the proposed policy focuses on "the Workplace" and precludes bullying that happens between students (except when they are employees or volunteers). If the proposed policy were enacted, would the UC Merced policy need to be amended to align with the systemwide policy? Is there a similar systemwide policy that protects students against bullying?

FWAF appreciates the opportunity to opine.

cc: Senate office

UNIVERSITY OF CALIFORNIA, MERCED

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SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ACADEMIC SENATE
ERIN HESTIR, CHAIR, GRADUATE COUNCIL
ehestir@ucmerced.edu

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

DECEMBER 7, 2021

TO: LEROY WESTERLING, CHAIR, DIVISIONAL COUNCIL

FROM: ERIN HESTIR, CHAIR, GRADUATE COUNCIL

RE: PROPOSED PRESIDENTIAL POLICY ON ABUSIVE CONDUCT/BULLYING IN THE WORKPLACE

Graduate Council (GC) has reviewed the [proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace](#), and offers its comments below.

Item V.A.:

We would like to draw attention to the model of University of College London, which uses a Report + Support program that enables reporting anonymously or reporting to a supervisor with contact details. It provides reporters with the opportunity to speak with a faculty equity adviser if they are uncomfortable reporting to a supervisor. GC encourages adoption of a similar model using the faculty equity adviser program.

Item V.B:

Graduate students and postdoctoral scholars are particularly vulnerable constituents, especially those with marginalized identities and those depending on a supervisor for career progression such as work permits, visas and letters of recommendation. Investigation and resolution processes and procedures need to be timely, considering a postdoctoral contract may only be for 12 months. This means the responsible parties must be appropriately resourced to conduct timely investigations.

Item V.E.:

We also wish to emphasize the *support* aspect of the aforementioned program, which goes beyond reporting to providing support services, including internal and external resources, advisors, and education on behavioral change (such as bystander intervention). This is particularly important for students and postdocs who need immediate support while navigating reporting and maintaining career progression, and we feel the Employee Assistance Program and campus Ombuds offices are not sufficient confidential resources and are reactive only, as opposed to being proactive in reducing and stopping bullying behavior.

Graduate Council appreciates the opportunity to opine.

CC: Graduate Council
Senate Office

Enclosure: 0

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SANTA BARBARA • SANTA CRUZ

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

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5200 NORTH LAKE ROAD
MERCED, CA 95343

Tuesday, November 16, 2021

To: LeRoy Westerling, Senate Chair

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

Re: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

LASC reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace.

LASC recognizes and supports the importance of a healthy and civil workplace. The proposed systemwide "Presidential Policy on Abusive Conduct and Bullying the Workplace" is an important step toward fostering a respectful work environment.

We appreciate the opportunity to opine.

Cc: Senate Office



SCHOOL OF ENGINEERING

University of California, Merced
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FAX: 209-228-4047

November 19, 2021

To: UC-M Academic Senate Chair and Vice Chair
From: Catherine Keske (Chair), School of Engineering Executive Committee (SoE ExComm)

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

Dear Senate Chair Westerling and Vice Chair LiWang:

SoE ExComm thanks the Senate for opportunity to opine about the *Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace*. The Chair received input from 4 anonymous faculty. Two comments were collected and distributed by a SoE Department Chair; two comments were directly submitted to the Chair on the condition of anonymity. One individual stated he/she/they wished to remain anonymous due to on-going bullying and abusive conduct within his/her/their Bylaw 55 Unit.

In summary, most of those who contributed comments appreciated that attention is being given to the bullying/abusive conduct issue, which is perceived as prevalent at UCM. Some who submitted comments expressed skepticism about policy enforcement. Others questioned whether bullying would be better addressed by effective enforcement of current policies. One reviewer provided suggestions to modify the language of the proposed policy.

Comments are provided, below:

Comment #1

"The issue is that it is a presidential policy that appears to cover all roles at the university. Most of that could be handled by strengthening and enforcing the policies that already apply to those various roles. For faculty, the dean or department chair could act on reports of bullying using established policies and those policies could be modified to specifically address bullying, if they don't already.

"In addition to working with the policies we already have, I think it's important they create mechanisms for effectively hearing and addressing serious concerns with university practices.

"That's a positive approach rather than a broadly restrictive or punitive approach that could really get misused.

“Another issue with that policy is that we know some groups have greater latitude [sic] in how they can express themselves without being perceived as being aggressive or bullying (e.g. males vs. females). The reasonable person test allows for those biases to factor into adjudication of cases. The same applies to issues of race and ethnicity.”

Comment #2

“Our campus has a lot of bullying. It’s prevalent among Faculty and the Administration, who co-mingle a lot and sometime [sic] bully people together. Faculty come and go at Merced, probably because of all of the bullying. It’s hard to nail down the real bullies. The proposed policy is directionally OK, but the Administration needs to focus on improving faculty climate. Having a new Presidential policy can lead to more bullying. Bullying can be sophisticated. A bully might try to “pin down” someone with the proposed policy.”

Comment #3

While some sort of action to address bullying seems needed, the current well-intentioned draft policy seems too broad and too discretionary in its application and adjudication of cases. It has the potential to generate a large number of spurious cases, and stifle freedom of expression and genuine dissent that help make the university a better and more effective organization.

If anything, UC already has a culture of discouraging dissent, even within the context of academic and academic support planning, where questionable decisions proceed without the serious concerns of stakeholders being heard and addressed. Instead of a restrictive and punitive policy, I think what we need is to work on creating a culture where appropriate means of expressing dissent are described and encouraged, and robustly supported.

This has the potential to create a real mess. It allows third party complaints from people who did not suffer the abuse, there is no time limit for the complaints, it doesn't constrain the policy to certain frameworks such as when the person doing the bullying is in a position of power over the person making the complaint, and the "reasonable person" test is proposed but it does not discuss who the people are who will be making this judgement and how they are appointed.

Comment #4

On page 4 out of 12, the following edits are suggested as indicated by the track changes

Abusive Conduct/Bullying behavior may take many forms including but not limited to conduct involving physical actions and/or verbal, non-verbal, electronic, or written communication.

Abusive Conduct/Bullying, defined in Section II of this policy, may include the following types of behavior:

- Persistent or egregious use of abusive and/or insulting language (written, electronic or verbal)
- Spreading misinformation and malicious rumors
- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats (including implicit threats), or insults

- Encouraging others to act, singly or in a group, to bully or harass (or defame) other individuals
- Making repeated or egregious inappropriate comments about a person's appearance, lifestyle, family, or culture
- Regularly teasing or making someone the brunt of pranks or practical jokes
- Inappropriately interfering with a person's personal property or work equipment
- Circulating inappropriate or embarrassing photos, videos, or information via e-mail, social media, or other means
- Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause a reasonable person discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate or unstated business purposes
- Start rumors about one's professional performance without evidence.



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To: Leroy Westerling, Chair, Merced Division

From: Susan Amussen, Chair, SSHA EC

Re: Proposed Presidential Policy on Abusive Conduct/ Bullying

The SSHA Executive Committee has reviewed the proposed policy on abusive conduct and bullying. We are broadly supportive of the goal: no one wants an abusive workplace. We especially appreciate the attempt to delineate what is and is not covered by the policy, but we have several concerns with the policy as drafted.

First, a primary concern is procedural. Much about implementation is left to the discretion of the campus. We have no confidence that UC Merced's administration can adequately respond to these issues.

In substantive terms, here are our concerns:

1. Abusive conduct is not the same thing as bullying, and the differences between them are significant. It may be useful to separate the two for purposes of the policy: here's what abusive behavior is, here is what bullying is.
2. In general, a one-time event should not be considered abusive; the document should state that except in extraordinary circumstances, repetition is a key component of both bullying and abuse.
3. Both abusive conduct and bullying are shaped by relative power relations (whether structural or physical): who says what to whom is often as important as what is said. *Lèse majesté* is generally not bullying.
4. More important, we see threat (and the ability to act on that threat) as central to bullying. While it is implicit in several definitions, it is only mentioned in two items in the list of prohibited behaviors. We recommend that the importance of explicit and implicit threats to bullying and abuse be more clearly delineated.

A focus on the power relations involved and implementation is important because both experience and multiple studies have taught us that women and people of color are often criticized for being abusive

when they challenge those in power. Women are considered aggressive when they act in ways that men do; people of color are branded as uppity. Those in authority will take energetic challenges as bullying. This is a policy that could be weaponized against vulnerable faculty, staff, and students. These concerns need to be uppermost as the draft policy is refined.



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

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January 14, 2022

Robert Horwitz, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: (Systemwide Review) Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Dear Robert,

The Riverside Executive Council discussed the draft **Presidential Policy on Abusive Conduct/Bullying in the Workplace** at their January 10, 2022 meeting.

Members discussed concerns about the policy perhaps being activated without the appropriate administrative structures in place to ensure compliance and assessment thereof and being vague in terms of process. Others mentioned that the draft does not include passages regarding policy should students bully faculty.

I trust these comments and those attached from Riverside Divisional committees prove helpful.

Sincerely yours,

/s/ Jason

Jason Stajich
Professor of Bioinformatics and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office



Academic Senate

COMMITTEE ON ACADEMIC FREEDOM

December 14, 2021

To: Jason Stajich, Chair
Riverside Division Academic Senate

From: Ivy Zhang, Chair
Committee on Academic Freedom

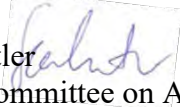
Re: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace

The Committee on Academic Freedom reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace and did not find any significant concerns regarding Academic Freedom. The Committee recommends that systemwide and campus-specific policies be as well aligned as possible, in order to avoid confusion that may give rise to disputes related to academic freedom.

COMMITTEE ON ACADEMIC PERSONNEL

December 14, 2021

To: Jason Stajich
Chair, Riverside Division Academic Senate

From: Sean Cutler 
Chair, Committee on Academic Personnel

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

CAP has evaluated the Draft Presidential Policy on Abusive Conduct/Bullying. The committee is very supportive of the proposal but did have a number of comments regarding the sections quoted below. CAP also noted that the proposal does not consider the consequences of non-compliance on the Faculty personnel review process. At present, CAP is not informed about disciplinary actions taken against faculty. As such, perpetrators of bullying or harassment can receive positive recommendations for career advancement, which seems like a substantial blind spot. CAP suggests that the consequences of non-compliance on Senate Faculty merit and promotion processes receive comment. Here are our additional comments:

Free Speech and Academic Freedom. The proposed policy is intended to protect members of the University community from abusive conduct/bullying, not to regulate protected speech. The proposed policy recognizes that freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violate federal, State, or University policies. (p. 2 of 12)

Comment: It is conceivable (and has probably actually occurred) that a federal, State, or University policy has conflicted with freedom of speech and/or with academic freedom. So in some cases implementation of the policy might conflict with protected speech.

Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are in peer-to-peer interactions. Accordingly, Abusive Conduct/Bullying behavior in violation of this policy is prohibited. (p. 3 of 12)

Comment: It does not seem true that abusive conduct/bullying is limited to situations when the person engaged in bullying has more or equal power or authority (a higher or equal standing in the organizational chart, as it were). Someone who has lower "relative power or authority" can engage in abusive conduct/bullying with respect to someone with more "relative power or authority." A professor can bully a Department Chairperson. A Chairperson can bully an Associate Dean, etc. The same holds true for non-academic organizational structures in the University. The abusive conduct/behavior should be prohibited regardless.



Academic Senate

COMMITTEE ON CHARGES

November 23, 2021

To: Jason Stajich, Chair
Riverside Division


Fr: Richard Stouthamer
Chair, Committee on Charges

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

The Committee on Charges reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace at its meeting on November 17, 2021. Overall, the Committee is in support of the proposed policy with one additional comment. The Committee asks if the particular university policies, as noted in page 2 and 6 of the policy document, should be more clearly defined.

December 17, 2021

TO: Jason Stajich, Chair
Riverside Division of the Academic Senate

FROM: Peter Graham, Chair 
CHASS Executive Committee

RE: Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

The CHASS Executive Committee reviewed the Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace at the regular meeting on December 15, 2021. This is an important issue, and we are thankful that the University of California Office of the President is taking it seriously. Our main concern with this document is how it defines bullying, or rather what is “not bullying.”

The text is not a comprehensive vision of how bullying can happen and its effects. It creates a narrow definition of bullying, which licenses bullying that was not explicitly mentioned in the text. It reprimands specific forms of behavior and context that constitutes bullying, but it fails to include many others. The forms of bullying are often subtle. Bullying can be ineffable. Yet this document does not address this. If this text is intended to be a guide policy, accounting for the blurriness of bullying and its deep effects for individuals and culture at the University of California as whole is imperative.

Furthermore, the nature of bullying means that it can occur across circumstances, including that which is indicated in this document as not constituting bullying. That is, bullying can and does occur through performance appraisals, in the guise of “constructive criticism” or framed as “simple disagreements,” among others. Therefore, the “examples of reasonable actions that do not constitute Abusive Conduct/Bullying include but are not limited to” could provide language and a guide for how to defend abusive and bullying behavior and therefore should be removed or substantially qualified. A performance appraisal as such, for example, might not be bullying, but it can be used as an occasion to bully someone without any of the forms of behavior listed in the document as examples of forbidden behavior. Not all performance evaluations are free of bullying, even if they are free of instances of behavior explicitly listed by the document.

Furthermore, the document suggests that the implementers of the policy should be guided by a reasonable person standard. However, what counts as “reasonable” can vary by gender, race, rank, and other dimensions. We believe this portion of the document can be improved by taking into consideration that the reasonable person standard may take into account the reasonable perceptions of a member of a protected group under law in assessing whether the conduct at issue constitutes bullying under University rules and policies.

In addition to the “objective” approach to determinations of bullying provided by the reasonable person standard, as modified along the lines just suggested, whether an act or acts constitute bullying may also be established by reference to a prior course of conduct by the accused that permits a reasonable inference of an impermissible intent to bully or harass, regardless of whether the conduct at issue is facially neutral and non-discriminatory or targeted at an individual in a way that would lead a reasonable person to suffer mental distress. A subjective belief in the appropriateness of the conduct at issue or denial of bullying or harassment is not a valid defense against such charges under either standard of inquiry.

Part of what bullying does, in fact, is to play with what is considered “reasonable” and with the criteria that define what “reasonable” means, rendering “unreasonable” any claim against the form of behavior it condones, promotes and even imposes on individuals. In this sense, the document seems to not take enough into account this side of bullying. Defenses to charges of bullying can be advanced as a bad faith denial, or as a reflection of an honest subjective belief that conflicts with the substantive definition of and standards for determining an act of bullying. In short, bullying is not simply constituted by the forms of behavior enumerated in the document. The document should take a broader view with a better understanding of how to adjudicate instances of bullying informed by the implementation of reasonable person standards in other areas of policy and law as well as criteria for determining the assignment of impermissible intent informed by a reasonable perception standard for members of the relevant group.



3 January 2021

To: Jason Stajich, Chair
Riverside Division

From: Theodore Garland, Jr., Chair, Executive Committee
College of Natural and Agricultural Science

Re: [Systemwide Review] (Proposed Policy) Draft Presidential Policy --
Abusive Conduct/Bullying in the Workplace

The CNAS Executive Committee (EC) has reviewed this draft policy.

It is great that the UC is establishing an anti-bullying workplace policy -- but it seems that the definition of bullying is not very 'victim centered' -- who is the 'reasonable person' who decides if behavior is sufficiently severe, persistent, etc. Maybe this is written by lawyers so there may be a reason for this definition, but this reasonable person does not know why one incident would not be considered bullying -- if it was!

Also, implementation of the policy is left to the local Executive Officers and Responsible Officers. Where is the accountability of the UCOP? Will the "local management office that is responsible for monitoring, enforcing, and reporting policy compliance" report that information to UC and what will happen if they do not implement and enforce a policy?

Sincerely,

A handwritten signature in black ink that reads "Ted Garland".




Academic Senate

COMMITTEE ON FACULTY WELFARE

December 17, 2021

To: Jason Stajich
Riverside Division Academic Senate

Fr: John Heraty, Chair 
Committee on Faculty Welfare

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

The Committee on Faculty Welfare reviewed the Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace at their December 14, 2021 meeting. The committee is fully supportive of the proposed policy but suggested there be a reasonable amount of time defined for reporting, not indefinitely.



Academic Senate

GRADUATE COUNCIL

December 16, 2021

To: Jason Stajich, Chair
Riverside Division

From: Don Collins, Chair
Graduate Council

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Graduate Council reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace at their December 9, 2021 meeting.

The Council felt that it would help to be very clear about who is covered under the policy – at the bottom of page 3 of 12 of the proposed policy it states: “B. Policy Coverage -- This policy covers acts of Abusive Conduct/Bullying and retaliation by and against members of the University community in the Workplace, including all University employees, unpaid interns, volunteers, and independent contractors”. Does this include all types of graduate students (e.g., those on fellowships)?

Concerns were raised that included how the charge of bullying can be used and weaponized by bullies, sometimes as a disguised form of retaliation. Another concern that was raised had to do with freedom of speech. Not unlike civility codes, this policy might be used to censor controversial research or teaching.



Academic Senate

COMMITTEE ON PRIVILEGE & TENURE

November 17, 2021

To: Jason Stajich, Chair
Riverside Division

Fr: James Tobias, Chair
Committee on Privilege & Tenure

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

UCR's Committee on Privilege and Tenure has reviewed the proposed draft presidential policy on "Abusive Conduct/Bullying in the Workplace." The proposed policy stands out for clarifying inappropriate workplace conduct in the short term, as well as for its potential to contribute to a positive campus climate longer term.

Privilege and Tenure Committee members view this draft policy as well articulated with appropriate detail in respect to goals; the draft policy is concise without being overly prescriptive. The additional detail regarding specific types of problematic behavior (p. 4, III.C) in comparison to that given in the draft campus policy, is welcome. Abusive conduct can be hard to identify and articulate uniformly especially given the wide and diverse range of different kinds of work typical of a UC campus; further, since this policy may supervene campus policy in some cases, and in any case should be consistent with it, we feel it is crucial that the Presidential policy be as clearly formulated as possible. For both of these reasons, the committee appreciates the more extensive list of types of problematic conduct this draft document provides. We also appreciate the clarifications this document makes regarding its inter-articulation with relevant policies on SVSH and workplace discrimination.

Regarding the list of examples of problematic conduct on page 4, in the interest of clarity, we note that unwanted contact and inappropriate encroachment on personal space may be verbal as well as physical. So where the list of problematic conduct mentions "Making unwanted physical contact ...", we suggest that the list include an additional statement clarifying that "Making repeated and explicitly unwanted verbal contact or inappropriately encroaching on another individual's private life, in ways that would cause a reasonable person discomfort and unease" is abusive conduct as well. In short, we would like to see language in the policy that addresses harassment that may be more nuanced than the indeed unacceptable "use of abusive and/or insulting language" mentioned here.

Another suggestion regarding the conduct described as abusive has to do with the last example on the list identifying “sabotage or undermining a person’s work performance” as abusive conduct. In this case, “sabotage” seems like it would be very clear to observe, while “undermine” may seem hard to define. Just as importantly, bullying behavior does not only aim to obstruct someone’s ability to perform their work (and thus threatening an employee’s personal sense of professional wellbeing, their performance reviews, and their professional reputation); what’s more, bullying behavior can be aimed at *preventing* employees from receiving recognition for work they do. Here, then, we suggest that this final example regarding “sabotage” will benefit from additional detail if it is revised as follows:

“Sabotaging or undermining a person’s work performance; or engaging in a pattern of inappropriate or even obstructive workplace behavior prejudicial to or detrimental to employees’ ability to perform their work; or, engaging in inappropriate workplace behavior prejudicial or detrimental to employees’ receiving appropriate recognition for the work that they do.”

In closing, committee members note that in addition to inter-articulating this policy with policies on SVSH or discriminatory conduct, there may be additional policies or contracts which would come into play regarding abusive workplace conduct or bullying or with the reporting thereof. For example, union or other contracts may govern rights or responsibilities also at stake in the implementation of this policy, and we encourage the University, where feasible, to work with the full range of stakeholders to implement and uphold the very best version of workplace policies calling for ethical, equity-driven, and efficient places of work. We are concerned, for example, as much with international graduate student researchers’ abilities to not feel forced to take on additional unpaid labor for faculty as we are with faculty members’ ability to enjoy productive and creative research environments.

Thank you for the opportunity to comment on what appears to be an excellent draft of a policy that will be as timely as it is necessary.



December 13, 2021

To: Jason Stajich, Ph.D., Chair, Academic Senate, UCR Division

From: Declan McCole, Ph.D., Chair, Faculty Executive Committee, UCR School of Medicine

Subject: [Systemwide Review] Proposed Policy: *Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace*

Dear Jason,

The SOM Faculty Executive Committee has reviewed Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace. There was broad approval for the policy, but we offer the following feedback.

The policy should consider the “classic” bullying of faculty that may appear in forms of:

Maliciously tinkering with teaching assignments (whether assigning new lectures outside the lecturer’s area of expertise, or taking away lectures) in a way that is meant to interfere with the faculty performance or to create undue burden to the faculty.

Maliciously tinker with University service assignments (as above).

Maliciously tinker with faculty laboratory space assignment (creating undue burden to a faculty by restricting lab space, or maliciously assigning spaces that are inconvenient for the faculty to operate , or maliciously request the faculty to relocate to a new space or new office and the like).

Maliciously and repeatedly prevent/dismiss/interrupt the opportunity of a given faculty member to voice or express opinions at faculty meetings or at proper committee meetings.

Yours sincerely,

A handwritten signature in black ink that reads "Declan McCole".

Declan F. McCole, Ph.D.
Chair, Faculty Executive Committee School of Medicine



OFFICE OF THE ACADEMIC SENATE

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January 18, 2022

Professor Robert Horwitz
Chair, Academic Senate
University of California
VIA EMAIL

Re: Divisional Review of Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Professor Horwitz,

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was distributed to San Diego Divisional Senate standing committees and discussed at the January 10, 2022 Divisional Senate Council meeting. Senate Council endorsed the proposal to establish a systemwide policy on abusive conduct/bullying. Council noted that the establishment of such a proposal is long overdue and members were pleased to see this moving forward. Council offered the following comments for consideration to strengthen the proposed policy:

It was suggested that additional clarification could be added for the "reasonable person" standard, as well as further distinction between free speech and bullying. It was noted that while there seems to be a fairly well-understood legal framework around the "reasonable person" standard, the policy will need to be accessible to a potential victim of bullying who might not be informed about such a legal framework. In addition, it would be helpful to know whether academic freedom is being protected by other University policies or whether the proposed policy could be used for this purpose. Council would also like to see Systemwide and Divisional Senate involvement in the implementation and subsequent editing of the policy. Along with guidance from UCOP, the local processes would need to clearly state details such as who/which office would handle reports of abusive conduct/bullying behavior, who would conduct investigations, and who would bring charges against those accused of abusive conduct/bullying. Such involvement will also enable the Divisional Senate to review and reexamine similar processes involving privilege and tenure. There was also very strong agreement that once the policy is implemented, it should be regularly reviewed and updated.

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

Sincerely,

A handwritten signature in dark ink, appearing to read "Tara Javidi", with a long horizontal flourish extending to the right.

Tara Javidi
Chair
San Diego Divisional Academic Senate



HUMAN DEVELOPMENTAL SCIENCES PROGRAM
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TO: Senate Council

FROM: Farrell Ackerman, Chair, Committee on Academic Freedom

RE: Abusive Behavior/Bullying Proposal comments

The CAF committee considered the **Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace**. We had a lively discussion about several aspects of the proposal, but I will largely restrict our comments to those that directly bear on issues of Academic Freedom. In general, it was recognized that there is value in developing a standard UC policy on an issue such as abusive conduct/bullying that does not fall clearly into the domains of SVSH and Discrimination, Harassment, and Affirmative Action in the Workplace. It was noted that the listing of example instances of Prohibited and Permitted conduct was very helpful and could assist in providing the flavor for the types of intended prohibited and permitted conduct. On the other hand, despite these lists there are inevitable questions that arise concerning definitions of particular terms in the proposal and the criteria for identifying aspects of the prohibited behaviors.

Here are some specific comments organized in their sequence of presentation in the document. The policy summary begins with the following guidance concerning implementation:

This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies.

While we concur with traditional views that Academic Freedom is not limitless, it is more difficult to define its bounds than a simple allusion to University policies suggests. What specific University policies are at issue and do they appropriately restrict Academic Freedom? Unless this is explicitly presented, it is difficult to know whether Academic Freedom is being protected with respect to some University policy or whether the cited policy itself needs to be better considered in terms of its protection of Academic Freedom.

Concerning the reasonable person standard, this seems like a commonsensical criterion: this, as I recall, is a similar to the standard for constraining misleading advertising as applied by the Federal Trade Commission (FTC). The question raised, however, is how the reasonable person standard is implemented. The way this is ascertained by the FTC is by getting statistical responses to questionnaires formulated to reflect the case at hand: majority or plurality of responses that an ad is misleading, or here, possibly, that abusive conduct/bullying has occurred is not the standard, but something like 1/3 of the relevant responses is, if I remember right.

Whatever the actual numbers, the question is who evaluates the cases for the reasonable person standard and how is this determined?

Concerning restriction to the workplace, we wonder about the following scenario, which on the face of seem not to fit directly into the definition of the workplace as given. If a respondent lives in the same neighborhood as the reporter and only engaged in bullying behavior in off-campus premises, but this is suspected to have on-campus consequences, would this fall within the intended scope of the proposal?

In section III A of the Policy Statement, the phrase “disruptive behavior” is specified. What does this mean and what is it intended to include beyond what seems obvious: Is this a subjective judgement constrained by the reasonable person standard? We suspect that the notion of “disruptive behavior” is not categorical, but scalar, with some behaviors reaching a threshold or tipping point, but how is this determined in a non-arbitrary fashion?

In the same section, there is reference to the “undermining of a culture that is civil, ethical, and that honors compliance.” Most obviously, one would like to know specifically “compliance” to what. Less obviously, while an encouragement to civil engagement is certainly desirable, the relationship between civil discourse and academic freedom is more complex than presupposed in this reference to a “culture that is civil...”. Though Reichman 2021: 97 (*Understanding Academic Freedom*, Johns Hopkins 2021) refers to this issue in the context of academic freedom concerning extramural speech, i.e. blog postings and off-campus utterances, it is also arguably relevant for on-campus interactions where aspirations for civil discourse conflict with the academic freedom of faculty to express their views. In this connection and as part of extended discussion, he cites UCLA historian Michael Meranze:

The demand for civility effectively outrages a range of intellectual, literary, and political forms: satire is not civil, caricature is not civil, hyperbole and aesthetic mockery are not civil nor is polemic...If Universities are going to model intellectual discourse and life for the country, it is not going to be by imposing some rule of tone; it is going to be by demanding of people that they argue with reasons.

It is possible that this understanding of how academic freedom can trump civility may apply to one of the examples of prohibited behavior:

- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats (including implicit threats), or insults

While this example behavior seems outrageous and indefensible on its face, it is not clear that a respondent who characteristically engages in satiric, caricaturish, hyperbolic or polemic interchanges perceived to be “humiliating, belittling, degrading” and who does so histrionically, is exceeding the bounds of their academic freedom of expression. Though few of us would like to be a target of this behavior, it seems that an argument can be made that this is protected by academic freedom, as uncivil as it might be. It seems important to separate civil interaction from academic freedom, rather than assuming that they go hand in hand. These observations suggest that the following language in the proposal:

no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or 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,

may too narrowly construe the scope of academic freedom.

Finally, though not strictly within the considerations of academic freedom, a question arises concerning Compliance with the Policy. It is possible that inappropriate enforcement of the policy could impact the exercise of academic freedom, so that careful attention to those local parties responsible for “monitoring, enforcing and reporting policy compliance” may reveal that they themselves need to be overseen?

The committee appreciates the delicacy with which these issues, which seem to fall outside the purview of present policy, have been considered and assumes that there have been a sufficient number of challenging cases that warrant the development of a new policy and all of the administrative and conceptual considerations that it entails.

A handwritten signature in black ink, appearing to read 'Farrell Ackerman', with a stylized, flowing script.

Farrell Ackerman, CAF Chair
Professor, Linguistics Department
Director, Human Developmental Sciences Program

December 17, 2021

TARA JAVIDI, CHAIR
Academic Senate, San Diego Division

SUBJECT: Abusive Conduct/Bullying in the Workplace Policy

The Committee on Diversity & Equity (CDE) reviewed the Abusive Conduct/Bullying Policy at its November meeting. This policy applies to all University employees, unpaid interns, volunteers, and independent contractors. CDE enthusiastically supports the efforts to define this class of behaviors and outline appropriate consequences, while also protecting free speech rights. This is an important grey area that has long been exploited by bad actors at the expense of more vulnerable members of our community. Our main feedback is a request for more detail and clarity. While we recognize the inability of any one body to foresee all circumstances in which a policy might be applied, and therefore that some flexibility is wise, the committee nevertheless felt that certain elements of the policy need to be made more concrete. Here we list by section in the policy the questions (and a few concerns) that were raised by the committee members.

I. POLICY SUMMARY

The policy summary states that the University will respond swiftly to reports of abusive conduct and bullying, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy. Given that the current processes for reporting bias and harassment are widely felt to be “black holes” (information goes in, nothing comes back out), CDE thinks it would be important for the university to put a timeline and bounds around these terms. What does swiftly mean, in terms of time? What is/are appropriate action(s)?

II. DEFINITIONS

The committee broadly approved of the efforts to define abusive conduct/bullying. We appreciate the attention on sustained patterns and the general principle that a single act shall not constitute abusive conduct/bullying, unless severe or egregious. However, it will be important to understand the bounds on this. Who or what determines severity and egregiousness? There is a similar lack of clarity around the “reasonable person” test. While the sentiment is understood, this may need further clarification (and perhaps a clear responsibility chain).

IV. COMPLIANCE / RESPONSIBILITIES

The policy for interpretation of the policy and application at the campus level is not clear. This may be beyond the UC-level, but the committee encourages Senate Council to consider how this would be applied locally and whether more clarity and guidance is needed from UC.

V. PROCEDURES

The committee has a similar set of questions about complaints and how they are handled. The policy document says that these will be handled potentially by several offices in accordance with local procedures. This presents a real concern that we might simply assume that our current system takes care of these types of issues and not make meaningful reforms. What would be the procedures and offices involved here? What is the applicable office, and how are appropriate next steps/responses determined? Again, this is likely beyond the system-level, but merits some thinking at the campus level. Who are the investigators, how are complainants kept in the loop about responses, etc.?

Two final elements of the policy gave us pause. The first is the provision that “*the Complainant may be notified generally that the matter has been refereed for appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent’s consent.*” This seems to potentially lack transparency and privileges the respondent over the complainant. Presumably if the complaint is found to lack merit, there is no harm in telling the complainant that this was the ruling. In the other extreme (where the complaint is easily and fully validated) surely the complainant deserves to know what appropriate action has been undertaken? CDE feels that such transparency should be valued over the privacy of the respondent.

The second is that the policy contains no provisions for protecting complainants from retaliation, nor how power relationships might be handled to protect the complainant and the respondent while complaints are investigated. CDE cautions the UC against enshrining a system that would require a complainant who reports abusive conduct or bullying to have to remain under the supervision (or instruction, etc.) of the alleged abuser. This is already a problem in the world of sexual harassment and other bias reporting, but the new bullying policy has a chance to try to address this. We think the effort would be well worth it!

Thank you for the opportunity to review the policy.

Sincerely,

Jennifer Burney, Chair
Committee on Diversity & Equity

cc: N. Postero

December 17, 2021

TARA JAVIDI, CHAIR

Academic Senate, San Diego Division

SUBJECT: Abusive/Bullying Conduct in the Workplace Policy

The Committee on Faculty Welfare reviewed the Abusive/Bullying in the Workplace Policy at its December meeting. The committee members found it to be well-written, succinct and comprehensive, and fully endorsed it. Towards maintaining a healthy working environment, the report provides an unambiguous definition of such behavior in Section II, as well as addresses the reporting and redress mechanisms effectively, but also recognizes the limits of freedom of speech and academic freedom as not crossing the line of violation of federal, state or University policies.

We would like to point out the following, not as a criticism, but more as an observation, having served both as a supervisor and a “supervisee”. A potential for considerable ambiguity can arise when a supervisor engages in a private meeting to maintain confidentiality, “*Counseling or disciplining an employee for performance, engaging in misconduct or violating University policy*” perhaps when “*Differences of opinion*” arise in an “*occasional problem in the working relationship*”. Such meetings are almost always necessary, but can often be misused by either or both parties: the supervisor for actually bullying, (e.g. for example by “*...demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual’s job...*”) or the supervised for unfairly later bringing allegations of bullying against the supervisor. It would be better if this policy were to provide some specific guidance for supervisors to adhere to so that these types of situations can be circumvented or guarded against. A typical scenario might be to have a third person present in all such meetings to provide a neutral perspective. If specific guidelines are provided, under the auspices of our legal advisors, it might safeguard the UC from possible legal liabilities that such “private meetings” might engender.

Sincerely,

Shantanu Sinha, Chair
Committee on Faculty Welfare

cc: N. Postero

December 14, 2021

TARA JAVIDI**Chair, San Diego Divisional Academic Senate**

SUBJECT: Review of the Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Javidi,

The Committee on Privilege and Tenure (CPT) reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace at its December 3, 2021 meeting. CPT agreed that a policy on abusive conduct/bullying is needed, and therefore, had no objections to the proposed policy. However, the following comments were offered to further improve the proposal.

Section II. Definitions, Reasonable Person Test

The use of the “reasonable person test” as the basis for determining if the conduct rises to the level of Abusive Conduct/Bullying may need additional clarification or further explanation. The determination of whether or not someone is a reasonable person may be interpreted in many ways, especially as society’s viewpoints and attitudes are everchanging and often polarized.

Section III. Policy Statement

C. Prohibited Conduct

The item concerned with “spreading misinformation and malicious rumors” seems to be too broad in the sense that false information can be spread without a malicious intent and would not be perceived as bullying. CPT also felt that the use of the word “inappropriate” is superfluous in the items concerning comments on personal appearance, the distribution of photographs, and the use of threats.

E. Free Speech and Academic Freedom

There is no clear distinction between language that would be considered protected under free speech and language that would be considered bullying. Is it the manner in which the words are delivered? Is it speech that is directed towards a specific individual rather than towards a group? Is it language that may be malicious but was not intended to be so and is therefore, protected free speech? In addition, could a faculty member file a grievance if they were charged with bullying, but felt that their free speech rights were violated?

Section IV. Compliance/Responsibilities

A. Implementation of the Policy

Given that local Executive Officers will be developing procedures to implement the policy, the Divisional Senate should also be involved in this process. A local process would need to state clearly who/which offices would be handling the claims, who would conduct investigations, and who would bring the charges against those accused of abusive conduct/bullying.

Sincerely,

Philip Gill, Chair
Committee on Privilege and Tenure

cc: Lori Hullings, Executive Director
Nancy Postero, Senate Vice Chair

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Steven W. Cheung, MD, Chair
Steve Hetts, MD, Vice Chair
Pamela Ling, MD, Secretary
Kathy Yang, PharmD, Parliamentarian

January 18, 2021

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

Re: UCSF Comments on the Proposed Presidential Policy on Abusive Conduct & Bullying

Dear Robert:

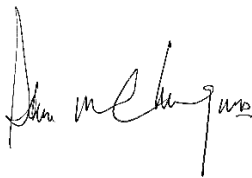
The San Francisco Division of the Academic Senate recently reviewed the proposed Presidential Policy on Abusive Conduct and Bullying, and commends the Office of the President for responding to a request from the Regents and the Academic Senate for a systemwide policy that addresses the University's responsibilities and procedures related to abusive conduct/bullying. The draft was reviewed by our Clinical Affairs Committee (CAC), Committee on Faculty Welfare (CFW), and Rules & Jurisdiction (R&J). In particular, we appreciate the proposed policy's recognition of "the importance of rights to freedom of speech and expression" and the recognition that "freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies." (CAC)

While all of committee comments are enclosed, I would like to highlight the following key comments and suggestions:

1. *Assertive Behavior*: The proposed policy lists examples of reasonable actions that do not constitute "Abusive Conduct/Bullying" in section III.C on page five. The list includes "[e]ngaging in assertive behavior". UCSF's R&J has reservations about including "assertive behavior" as appropriate conduct. The term is vague, and UCSF recommends that the policy include a definition or examples of assertive behavior that would illustrate why assertive behavior is reasonable and different from abusive conduct/bullying. (R&J)
2. *Consistent Application of the University's Policies for Reports of Sexual Violence/Sexual Harassment or Discrimination*: In cases of sex-based Abusive Conduct/Bullying, the University's Sexual Violence and Sexual Harassment (SVSH) Policy will only "typically apply." In cases of discrimination, the Discrimination Harassment and Affirmative Action in the Workplace policy "will apply." The UCSF Senate recommends that the policy use consistent language and state that the referenced policies "will apply" in both instances. Section V.A.4 also describes reporting requirements differently for sex-based conduct and discriminatory conduct. Sex-based conduct reports "shall be" made or forwarded to the appropriate Title IX office. In contrast, discriminatory conduct "should be" reported to Equal Employment Opportunity/Affirmative Action offices but is not required. We therefore recommend that the proposed policy state that both types of misconduct "shall be" made or forwarded to the appropriate offices. (R&J)
3. *Accountability & Reporting*: The proposed policy should create a systemwide process for accountability that ensures that each campus program meets systemwide standards and is applied equitably. Campuses should be required to have clear policies that meet specific criteria that are set systemwide and are consistent across the University. In addition, the proposed policy should better explain how misconduct should be reported. (CFW)

4. *Electronic Media:* The proposed policy should further explain how the policy applies to electronic media and should specifically address the question of whether it applies to personal social media accounts that owner explicitly states do not reflect the views of their employer. (CFW)
5. *More Details and Consistency on Claim Adjudication:* The proposed policy does not provide campuses with clarity about who will adjudicate claims of abusive conduct or bullying. R&J appreciates that the proposed policy needs to be flexible enough to accommodate the different systems and resources of the campuses, but R&J believes that the policy would be improved if it included more details on how claims of abusive conduct or bully should be adjudicated consistently across campuses. (R&J)
6. *Miscellaneous Comments:* 1) Reasonable person standard(s) – The proposed policy should direct readers to a reference explaining the “reasonable person” standard (CFW); and 2) silent bullying – the proposed policy should also account for passive or silent bullying.

Thank you for the opportunity to opine on the revisions to this important proposed Presidential Policy. If you have any questions, please let me know.



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

Enclosures (3)

Cc: Kathleen Liu, Chair, UCSF Clinical Affairs Committee
Lindsay Hampson, Chair, UCSF Committee on Faculty Welfare
Mijung Park, Chair, UCSF Rules & Jurisdiction

Clinical Affairs Committee

Kathleen Liu, M.D., Ph.D., M.A.S., Chair

January 10, 2022

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

Re: **Systemwide Review of Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace**

Dear Chair Cheung:

The Clinical Affairs Committee (CAC) writes to support and endorse the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace.

CAC supports this university-wide effort to reduce and address abusive conduct and endorses creating a systemwide policy that will guide campus policies. CAC appreciates the proposed policy's recognition of "the importance of rights to freedom of speech and expression" and the recognition that "freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies." CAC found this language effectively articulates the balance between free speech and a safe and supportive workplace that we strive to create.

Thank you for the opportunity to comment on this systemwide review.

Sincerely,



Kathleen Liu, M.D., Ph.D., M.A.S.
Clinical Affairs Committee Chair

CC Senate Executive Director Todd Giedt

Committee on Faculty Welfare
Lindsay Hampson, MD, MAS, Chair

January 13, 2022

Steven Cheung, MD
Division Chair, UCSF Academic Senate

**Re: Systemwide Review of Proposed Presidential Policy on Abusive Conduct and
Bullying in the Workplace**

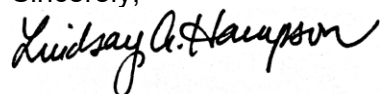
Dear Chair Cheung:

The Committee on Faculty Welfare (CFW) writes to comment on the systemwide review of the [Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace](#). CFW commends the University for developing a systemwide policy on this important topic.

CFW recommends the following revisions to the proposed policy to further improve the proposed policy and workplaces across the University.

1. The proposed policy should further explain how the policy applies to electronic media and should specifically address the question of whether it applies to personal social media accounts that owner explicitly states do not reflect the views of their employer.
2. The proposed policy should define “inappropriate information.”
3. The proposed policy should better explain how it will be enforced and implemented.
4. The proposed policy should better explain how misconduct should be reported.
5. The proposed policy should create a systemwide process for accountability that ensures that each campus program meets systemwide standards and is applied equitably. Campuses should be required to have clear policies that meet specific criteria that are set systemwide and are consistent across the University.
6. The proposed policy should direct readers to a reference explaining the “reasonable person” standard.
7. The proposed policy should also account for passive or silent bullying. For example, a person who is systematically ignored and marginalized can also be a victim of abusive conduct.

Sincerely,



Lindsay Hampson, MD, MAS, Committee on Faculty Welfare Chair

Committee on Rules and Jurisdiction
Mijung Park, PhD, MPH, RN, Chair

January 10, 2022

Steven Cheung, MD
Division Chair
UCSF Academic Senate

Re: Systemwide Review of the Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace

Dear Chair Cheung:

The Committee on Rules and Jurisdiction (R&J) writes to comment on the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace.

R&J commends the University for its effort to establish a consistent policy across campuses designed to prevent abusive conduct and bullying. R&J offers the following suggestions to improve the proposed policy.

Assertive Behavior

The proposed policy lists examples of reasonable actions that do not constitute “Abusive Conduct/Bullying” in section III.C on page 5. The list includes “[e]ngaging in assertive behavior”. R&J has reservations about including “assertive behavior” as appropriate conduct. The term is vague, and R&J recommends that the policy include a definition or examples of assertive behavior that would illustrate why assertive behavior is reasonable and different from abusive conduct/bullying.

Consistent Application of the University’s Policies for Reports of Sexual Violence/Sexual Harassment or Discrimination

Section V.A.4 *Reports of Sexual Violence/Sexual Harassment or Discrimination* on page 8 of the proposed policy describes which university policies apply if reports of “Abusive Conduct/Bullying” are sex-based or discriminatory. The language is below for reference, and we have emphasized text to point out inconsistencies.

4. Reports of Sexual Violence/Sexual Harassment or Discrimination

If the Abusive Conduct/Bullying is sex-based, including conduct that is sexual in nature or based on gender, gender identity, gender expression, sex- or gender- stereotyping, or sexual orientation, the University’s Sexual Violence and Sexual Harassment Policy **will typically apply**. Reports **shall be made or forwarded** to the location’s Title IX Office, as required by and described in the SVSH policy.

If the conduct is discriminatory based on categories outlined in the Discrimination, Harassment, and Affirmative Action in the Workplace policy, that policy **will apply**. Reports **should be made or forwarded** to local Equal Employment Opportunity/Affirmative Action offices.

In cases of sex-based Abusive Conduct/Bullying, the University's Sexual Violence and Sexual Harassment Policy will only "typically apply." In cases of discrimination, the Discrimination Harassment and Affirmative Action in the Workplace policy "will apply." R&J recommends that the policy use consistent language and state that the referenced policies "will apply" in both instances.

Section V.A.4 also describes reporting requirements differently for sex-based conduct and discriminatory conduct. Sex-based conduct reports "shall be" made or forwarded to the appropriate Title IX office. In contrast, discriminatory conduct "should be" reported to Equal Employment Opportunity/Affirmative Action offices but is not required. R&J recommends that the proposed policy state that both types of misconduct "shall be" made or forwarded to the appropriate offices.

More Details and Consistency on Claim Adjudication

Finally, the proposed policy does not provide campuses with clarity about who will adjudicate claims of abusive conduct or bullying. R&J appreciates that the proposed policy needs to be flexible enough to accommodate the different systems and resources of the campuses, but R&J believes that the policy would be improved if it included more details on how claims of abusive conduct or bully should be adjudicated consistently across campuses.

Thank you for the opportunity to comment on this important proposed policy. Please reach out if you have any questions.

Sincerely,

Mijung Park, PhD, MPH, RN
Committee on Rules and Jurisdiction, Chair



January 18, 2022

To: Robert Horwitz, Chair
Academic Senate

From: Susannah Scott, Chair
Santa Barbara Division *Susannah L Scott*

Re: Systemwide Review of Draft Presidential Policy on Abusive Conduct and Bullying in the Workplace

The Santa Barbara Division distributed the proposed policy widely to Senate councils and committees, including the Council on Faculty Welfare, Academic Freedom, and Awards (CFW), Graduate Council (GC), the Committee on Research Policy and Procedures (CRPP), the Committee on Library, Information, and Instructional Resources (CLIIR), the Committee on Information Technology (CIT), Committee on Academic Personnel (CAP), Committee on Diversity and Equity (CDE), Committee on International Education (CIE), Committee on Privilege and Tenure (P&T), Committee on Rules, Jurisdiction, and Elections (RJ&E), and the Faculty Executive Committees (FECs) of the College of Letters and Science (L&S), College of Engineering (COE), and Gevirtz Graduate School of Education (GGSE). The Undergraduate Council, Committee on Admissions, Enrollment, and Relations with Schools, Committee on Courses and General Education, and the Council and Planning and Budget opted not to opine.

Reactions to the proposed policy were mixed. While some groups voiced varying levels of support for the policy (CRPP, CIT, CAP, CDE, RJ&E, L&S, COE, GGSE), or noted a lack of significant concerns (GC), many felt that it was incomplete and would require the addition of considerable detail in order to be practicable. CLIIR specifically expressed strong opposition to the policy on the basis that it constituted administrative overreach and offered insufficient protections for academic freedom. A summary of key points is included below, and the individual responses are attached for your review.

Several groups raised questions about the range of the proposed policy relative to other conduct-related university policies (e.g. Sexual Harassment and Sexual Violence, Discrimination, Harassment, and Affirmative Action in the Workplace, and the Faculty Code of Conduct). Given the potential for considerable overlap, there was some concern about the policy's necessity, added bureaucracy, and time investment. CLIIR specifically asked for examples of scenarios that would be covered under the proposed policy but not covered by other conduct policies.

One key issue presented in multiple responses was the lack of clarity regarding the campus-level implementation and enforcement of the policy. The groups raised many questions about where complaints would be directed and how they would be handled. For example, the policy does not specify a central office to which complaints would be directed, or procedures or requirements for training, reporting, investigation, and recordkeeping. Further, the policy does not include guidance for complainants and respondents, which might cover process, as well as evidentiary requirements, statute of limitations, procedures for anonymous reports, and potential disciplinary actions. All of these issues need to be addressed before the reviewing groups can offer a meaningful assessment of the proposed policy.

Another issue raised was the vague guidance regarding what behavior might or might not constitute abusive conduct. RJ&E noted, with regard to the "reasonable person test," that the definition of a "reasonable person" is subject to interpretation. Who will decide what a "reasonable person" would find? CIE further recognized the differing interpretation of certain behaviors based on cultural norms and suggested that the test be considered in the context of the individuals involved. CFW members observed that the proposed policy makes no reference to microaggressions, and wondered if and how they figure into the definitions of and behaviors associated with bullying. They also inquired about "passive bullying" or persistent manipulation of workplace norms, beyond what might be considered "not extending social niceties." RJ&E recommended that the policy include a specific list of behaviors that do not fall under the policy, and emphasized that unpopular statements or statements supporting positions on controversial issues should not be categorized as abuse or bullying. CAP raised concerns that a lack of specifics could result in claims outside of the original intent of the policy.

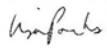
Several groups commented on the lack of clarity in Section III.C. regarding prohibited conduct. RJ&E noted with regard to "circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means," that activities considered to be "embarrassing" may not fall under the definition of abusive conduct/bullying as defined in Section II. Similarly, CRPP felt the policy could be more specific in defining who determines what constitutes "embarrassing" or "inappropriate." GC noted that section leaves unclear who the photos, etc., are embarrassing to, and recommended that the language be reworded to be more specific, such as adding "with regard to a specific person or victim." The L&S FEC inquired about the boundary between the professional and personal when considering electronic communications, and emphasized the need for more clarity on specific interactions related to digital platforms.

CIE suggested that the policy be made clearer for international students, and recommended that language regarding country of origin and visa status be added to the prohibited categories. In addition, the committee felt that additional language should be added so that international students would feel comfortable reporting bullying. Similarly, while CIT recognized the emphasis on local early resolution, members noted that some groups such as students, might not be comfortable reporting incidents internally.

We thank you for the opportunity to comment.

January 12, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Lisa Parks, Chair 
Council on Faculty Welfare, Academic Freedom, and Awards

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

The Council on Faculty Welfare, Academic Freedom, and Awards reviewed the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace and offered comment via email. The memo was drafted based on input from council members solicited via email. It conveys points that had collective support as well as remarks submitted by individuals, as indicated below.

A number of members indicated agreement with several observations from the Chair as follows:

- Some questions have been raised about the issue of “passive bullying.” The proposed policy identifies “not extending social niceties” as an example of what bullying is not, but what about a persistent pattern of manipulating workplace norms of collegiality? For instance, if a person regularly greets and/or interacts with almost everyone in the room, but conspicuously and repeatedly ignores the same individual, is this a kind of passive bullying? Or would this behavior fall under the category of “Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes”?
- How do “microaggressions” figure into the definitions of and behaviors associated with bullying? These behaviors were discussed in multiple DEI workshops on our campus last year and seem relevant, but are not included in the policy language.
- There is a need for a clearer reporting structure and guidelines. Are all persons who receive complaints of bullying (staff, students, or faculty) required to report them to the campus office that administers bullying complaints? Will managers and supervisors who are expected to address behavior immediately (Section V. A. 3.) receive appropriate training to do so? Should reports to the appropriate office be documented in writing?
- What kinds of evidence should be presented with a bullying complaint?

Additionally, individual comments not commented upon collectively, were submitted as follows:

- In the list of prohibited conduct (Section III.C.), the use of “misinformation” should be reworded to avoid political connotations. At present, it is commonly used to label and censor alternative opinions. More appropriate terms here might be “gossip” or just “malicious rumors.”
- The word “culture” is vague in the list of inappropriate comments; suggested expansion or clarification is “...culture, religious/spiritual/philosophical beliefs, or political views”.

- The draft talks about a pattern of “repeated” behavior. Should the policy clarify (and quantify) what “repeated” means? Is twice enough, or is this best left to individual judgement?
- Section III. A. refers to a “culture that is civil, ethical and that honors compliance.” What does “honors compliance” mean and is this necessary?
- Also, in Section III.A., it is awkward to say the University strives to foster an environment in which individuals “feel comfortable making reports” when this is an inherently uncomfortable activity. The university’s stated goals should be higher i.e. to foster a climate of respect and shared decency.
- The draft policy never refers in any way to the person who experiences abuse/bullying as being a victim, only on what might happen to the bully. Getting the bullying to stop does not address the damage that might already have been done to the victim(s). This document should clearly identify what extra resources will be available to support victims and address their needs.
- The policy does not seem to address the ways in which workplace norms of collegiality might already be inequitable and biased, such as the ways in which "professionalism," especially as it regards to appearance or clothing, can be used to police racialized or trans/gender non-conforming people. Tone policing would be another example of when a framework of "respect," "collegiality," or "professionalism" can be used to silence certain kinds of people. Similarly, there is a need to think through how implicit bias can also impact who we think of as being "abusive" or a "bully." Research has shown that racialized groups or trans women are seen as more threatening or aggressive by some; this policy does not seem to think about how to prevent people from using it as a tool to further oppress and police racialized and other minorities.

CC: Shasta Delp, Executive Director, Academic Senate

**Academic Senate
Santa Barbara Division**

January 6, 2022

To: Susannah Scott, Chair
Academic Senate

From: Adam Sabra, Chair
Graduate Council



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

At its meeting of November 29, 2021, Graduate Council reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. Graduate Council did not voice significant concerns about the proposed policy, but one issue raised was that the section on “circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means” leaves unclear who the photos, etc., are embarrassing to. This piece should be reworded to be more specific, such as adding “with regard to a specific person or victim”.

CC: Shasta Delp, Executive Director, Academic Senate

January 12, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Karen Lunsford, Chair 
Council on Research, Information, and Instructional Resources

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

The three subcommittees of the Council on Research and Instructional Resources reviewed the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace separately, since there was not a full council meeting scheduled between the time when the draft policy was assigned for review and when a response was due. The Committee on Research Policy and Procedures as well as the Committee on Library, Information and Instructional Resources both discussed the draft at their respective meetings of January 7, 2022 and the Committee on Information Technology offered comment by email.

The members of the Committee on Research Policy and Procedures (CRPP) noted that the draft appears to draw heavily from the existing policy on Sexual Harassment, and they wanted to see more information related to the expectations and protections of privacy of the concerned parties. They felt the policy could be more specific in defining who determines what constitutes “embarrassing” or “inappropriate.” They also noted that the policy’s language stating that anonymous reports “may be investigated” had the potential for dismissing such reports. They felt that this should be formalized and require tracking, in the event that a pattern would be established. Overall, the members supported the need for the policy, and expressed surprise that such behavior is not yet governed by a policy. However, they felt the current draft was not sufficiently complete and not particularly helpful in providing guidance.

The members of the Committee on Library, Information, and Instructional Resources, however, were staunchly opposed to this new policy being implemented without substantive justification about why it is needed and what scenarios are not already covered by existing policies. They found it to be oppressive in its expansion of administrative control and, despite its language to the contrary, that it does not adequately protect academic freedom.

Generally, members of the Committee on Information Technology found the policy to be reasonable, although a member took issue with the reference in section III.A. “Abusive Conduct/Bullying, including disruptive behavior, may ... undermine a culture that is civil, ethical and that honors compliance” and wondered what is meant by a “culture that honors compliance,” and whether that was appropriate or necessary. Another member wanted to see more information about how an accused party would defend against accusations.

While some individuals expressed appreciation for an emphasis on early, local resolution within a department, others had reservations for scenarios in which a person might not be comfortable reporting internally (such as a graduate student who is reluctant to contact the department chair about bullying by their PI, who is highly regarded within the department).

All groups were concerned about the extent to which this is redundant with existing policy(ies). They also wanted more specific information about who would be responsible for implementation and enforcement on campus (while recognizing the different campus hierarchies of the UC system).

CC: Shasta Delp, Executive Director, Academic Senate

ACADEMIC SENATE
SANTA BARBARA DIVISION

January 12, 2022

TO: Susannah Scott, Divisional Chair
Academic Senate

FROM: Omar Saleh, Chair
Committee on Academic Personnel

RE: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

The Committee on Academic Personnel (CAP) has reviewed the “Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace.” The committee felt that this proposed policy is well positioned to fill an existing gap in the faculty code of conduct. However, details of the implementation were unclear– notably, there were concerns that there was not a clear control point assigned to carry out the policy (e.g. a specific executive/administrator in charge). Details of the implementation were generally vague, and specific worries arose about the lack of a statute of limitations in the policy. A final concern was that a policy lacking specifics could then allow a certain flexibility to pursue issues of faculty conduct outside of the original intent of the policy.

For the Committee,

A handwritten signature in black ink, appearing to read 'Omar Saleh', written in a cursive style.

Omar Saleh, Chair

**Academic Senate
Santa Barbara Division**

January 7, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Jean Beaman, Chair
Committee on Diversity and Equity



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

At its meeting of November 15, 2021, the Committee on Diversity and Equity (CDE) reviewed the Presidential Policy on Abusive Conduct/Bullying in the Workplace. While the Committee agreed that it is beneficial to have this kind of policy, and that norms of professional behavior are not always established, there were a number of concerns, questions and suggestions.

- While “egregious” is used to cover one-time instances of some behaviors, it is not applied to all areas in the policy. Egregious, one-time actions should be applicable in all of the categories. If there is a pattern of creating a hostile environment, what can happen to those people?
- It seems like a one-time act made from a place of anger or emotion should not count as abusive/bullying conduct, and that actions should be premeditated. How do you define “ongoing”? Can ongoing be interpreted as actions taken far back in the past, and against different people? There needs to be more specificity of the terms being used. Documenting ongoing behavior is hard, as someone could target different people, and it can be difficult to provide evidence if behavior is occurring over a long period of time and against multiple people.
- Because of societal positions, some people might be targeted by bullying behaviors more; a line should be added that different people will be impacted differently based on their location in society. Additionally, people not used to being in positions of authority may be more likely to be accused of these behaviors.
- The policy is not very specific about who will be conducting investigations and what training they will receive.
- What happens when you make a case should be in the policy; this can be a deterrent to reporting if folks are not aware of the full process. What are the procedures for anonymous reports? People may be hesitant to report behavior if they fear retaliation.
- A corollary document should be created that lays out the processes and procedures for those who are accused of abusive conduct.

CC: Shasta Delp, Executive Director, Academic Senate

January 12, 2022

To: Susannah Scott
Divisional Chair, Academic Senate

From: Spencer Smith, Chair
Committee on International Education



Re: Abusive Conduct/Bullying in the Workplace

The Committee on International Education (CIE) has reviewed the “Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace.”

The committee raised concerns about the “Reasonable Person Test” on page 2, stating that the policy does not acknowledge that different cultures may interpret certain behaviors differently. We suggest that the test be considered in the context of the individuals involved, including their cultural backgrounds.

The committee suggests that policies be made clearer to ensure international students have reasonable expectations and understand the policies and that “Country of Origin” be added to groups in which bullying is prohibited.

Further, the committee felt that additional language should be added so that international students would feel comfortable reporting bullying. We want them to know that there are protections for them, and their visa status will not be adversely affected by reporting. Considering that international students are often the target of mistreatment, committee members suggest that additional language about country of origin be included as well as visa status.

Please do not hesitate to contact the committee if you have additional questions.

Cc: Shasta Delp, Executive Director, Academic Senate



November 1, 2021

To: Susannah Scott, Divisional Chair, Academic Senate

From: Risa Brainin, Chair, Committee on Privilege and Tenure

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

The Committee on Privilege and Tenure (P&T) reviewed and discussed the proposed revisions to the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace. While the Committee is supportive of the majority of the draft policy, there are two areas of concern.

Specifically, Section III.C. Prohibited Conduct includes the following bullet point regarding examples of abusive conduct/bullying: "Circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means." Committee members noted that the term "embarrassing" may be misleading. Activities considered to be "embarrassing" may not fall under the definition of abusive conduct/bullying as defined in Section II, i.e., equating to conduct that, "denies, adversely limits, or interferes with a person'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 and unrelated to the University's legitimate educational and business interests."

Additionally, Committee members observed that the regulations in the policy do not seem to apply to campus visitors, thus ignoring a substantial campus constituency. While the avenues for recourse in this scenario are unclear, the Committee nevertheless noted the absence.

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

Cc: Shasta Delp, Executive Director, Academic Senate
Monica J. Solorzano, Analyst, Committee on Privilege and Tenure

**Academic Senate
Santa Barbara Division**

January 7, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Don Marolf, Chair
Committee on Rules, Jurisdiction & Elections



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

The Committee on Rules, Jurisdiction & Elections (RJE) reviewed the Presidential Policy on Abusive Conduct/Bullying in the Workplace and makes the following comments:

- 1) It is unclear how complaints are to be handled. Will they be directed to department chairs? Will they be directed to the Ombudsman or other campus entities? Will each campus be instructed to come up with its own plan for processing accusations?
- 2) The policy refers to a "Reasonable Person Test":

"Reasonable Person Test: The basis for determining whether the conduct at issue rises to the level of Abusive Conduct/Bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the Workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative".

The definition of a "reasonable person" is subject to interpretation. Who will decide what a "reasonable person" would find?

- 3) It is very important that unpopular statements or statements supporting positions on controversial issues not be categorized as abuse or bullying. While Section IIIC of the proposed policy appears to take this into account, RJE recommends explicitly adding this to this list of behaviors that do not constitute bullying or abuse. This would, in particular help to avoid the possibility of frivolous complaints made by individuals who misinterpret the stance sustained by others on controversial issues as being abusive or bullying.
- 4) "Retaliation" is capitalized inconsistently throughout the document. An example occurs in the first paragraph of section V.D.1:

"The University encourages early resolution when possible. The goal of early resolution is to settle differences fairly, at an early stage, and in an open manner, without Retaliation."

Cc: Shasta Delp, Executive Director, Academic Senate

December 13, 2021

To: Susannah Scott
Chair, Divisional Academic Senate

From: Sabine Fröhstück
Chair, L&S Faculty Executive Committee



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

At its meeting on December 2, 2021, the Faculty Executive Committee of the College of Letters and Science (FEC) reviewed the draft of the Presidential Policy for Abusive Conduct/Bullying in the Workplace. This is a new policy document that establishes guidelines for abusive conduct that ostensibly does not fall within existing systemwide policy, such as "Sexual Violence and Sexual Harassment (SVSH)" or "Discrimination, Harassment, and Affirmative Action in the Workplace."

The committee in general appreciates the principle of this change and sees value in the creation of this policy. A few concerns and observations were raised involving overlap with existing policies, the bureaucratic process required, and vague definitions for abusive conduct within the proposal—all outlined below.

A potential concern with any new policy is the addition of layers of bureaucracy that create an added and possibly unnecessary time investment, which is particularly relevant given the existence of multiple other conduct related policies with their own bureaucratic systems that appear to be overlapping with this policy to a degree. The committee would like to see more discussion of the potential future impacts and resource costs in implementing this policy, particularly around staffing and infrastructure that may be required.

Concerns around vague definitions for abusive conduct were expressed. Ultimately, the committee acknowledged that some lack of clarity is unavoidable when attempting to draw a line where conduct becomes inappropriate across a broad spectrum of behaviors and contexts. However, the committee felt strongly that more clarity was needed around specific interactions related to digital platforms, such as social media, where demarcations between professional and personal space are less clear. The proposal mentions "electronic" communications as covered under policy several times, but does not address specific digital mediums and where the boundaries lay for those mediums in terms of being considered "in the workplace."

It was also observed that the policy could better articulate the overlap and relationship with Senate faculty conduct processes, such as the Privilege and Tenure disciplinary process at UCSB.

Ultimately, the committee determined to endorse the policy in its goal of articulating a basic process for resolving workplace conduct disputes that fall outside of existing systemwide policies.

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

December 3, 2021

TO: Susannah Scott
Divisional Chair, Academic Senate

FROM: Tobias Hollerer, Chair
College of Engineering, Faculty Executive Committee

RE: Draft Presidential policy – Abusive Conduct/Bullying in the Workplace

DocuSigned by:
Tobias Hollerer
41EFFFAB98F442F...

The College of Engineering FEC met on Monday, November 29th and reviewed and approved of the draft policy as written. 10 yes, 0 abstained, 0 no (out of 10 eligible faculty members).

December 14, 2021

To: Susannah Scott, Chair
Academic Senate

From: Ty Vernon, Chair
Faculty Executive Committee, GGSE

Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

The GGSE FEC is in support of the proposed draft of the Presidential Policy.



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

January 18, 2022

ROBERT HORWITZ, Chair
Academic Council

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

Dear Robert,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace with the Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Career Advising (CCI), Faculty Welfare (CFW), Teaching (COT), and Privilege and Tenure (P&T) responding. The comments made by the reviewing committees fell for the most part within three large categories: 1) concern over the lack of specificity concerning key elements, 2) the scope of the policy, and 3) concerns about the University's ability to implement it.

Policy Language

With regard to the first area of concern, the committees found that key provisions and terms lacked adequate specificity. CAAD and COT commented that the use of the "reasonable person standard" was problematic. This is far too open ended and needs to be revised to consider the diversity that exists within the university community with regard to social status, race, and the dynamics present in employer/employee and student/teacher hierarchical relationships, for example. Similarly, "inappropriate" is used to describe prohibited behavior without an adequate definition of what types of acts that category encompasses (CAAD). Another term in need of clarification is "supervisors and managers," which applies to staff but requires further elucidation with regard to faculty. If the policy includes 'chairs' and 'deans' etc., then a definition should be provided that makes clear their inclusion within this group.

Most glaring within this area of concern is the lack of clarity in how this new policy will interact with existing policies. CAF is curious as to how the "policy works in parallel with any applicable grievance processes, rather than superseding those processes nor being considered inferior to those policies." This is a concern shared by P&T, COT, CFW, and CAAD, which writes "While multiple reporting options are desirable, there are so many options as to be confusing, with no clear line of reporting or responsibility."

Scope

The concerns regarding scope have to do with what behaviors may and may not be included. CAAD notes that the policy explicitly defines “prohibited behavior” as “[m]aking repeated or egregious inappropriate comments about a person’s appearance, lifestyle, family, or culture” and wonders why it has to be egregious and repeated. CAAD goes on to suggest that the policy does not contemplate that the abusive behavior could be “institutional” and not just perpetrated by individual bad actors. Relatedly CAF is unclear if more subtle forms of sabotaging behavior would be covered. The comments related to definitions of “inappropriate” made above could also fall within this concern since it is unclear what acts/behaviors would be deemed as “inappropriate.” CCA observes that there is no explicit inclusion of staff within the policy nor mention of student-on-student bullying.

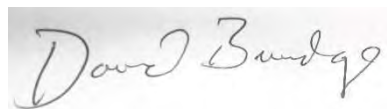
Implementation

On the issue of implementation COT notes a vagueness in the implementation procedures as the proposed policy lacks any substantive guidance on how the system will register, assess and adjudicate complaints leaving the members to infer that this will be left to the individual divisions to determine. As well P&T observes, “that the policy was insufficient in articulating or even contemplating appropriate investigatory bodies and adjudication processes to ensure due process and safeguards.” CAAD would like to see the policy focus more on the safety of constituents as it lacks any language invoking safeguards for Complainants, and argues that the policy may make existing problems worse.

Last within the group is the policy’s relationship with free speech, a subject on which the policy is surprisingly glib. CCA commented that the language in Section I declares that the policy “will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression” and then observes “In addition to the weakening “importance of” language, there is no clear explanation of how the policy will be implemented to accomplish the stated intention.” P&T recommends that the policy include a clear and unequivocal statement that academic freedom, and the speech this principle allows, is the lifeblood of the University.

On behalf of the Santa Cruz Division, I thank you for the opportunity to provide comment on what stands to be a very significant policy for the University.

Sincerely,



David Brundage, Chair
Santa Cruz Division of the Academic Senate

encl: Committee Responses Bundle_Abusive Conduct-Bullying

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
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

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

December 21, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

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

Dear David,

On November 15, 2021, the Committee on Academic Freedom (CAF) discussed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. The policy is new. It is most likely designed to bring more significant equity between policies covering students, staff, and faculty and procedures covering the protected classes of staff members. The University of California took similar actions last year around standards of proof in disciplinary cases involving allegations implicating the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH), with subsequent guidance provided by the University Committee on Rules and Jurisdiction (UCRJ).¹ CAF understands that the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace brings greater alignment in the disciplinary processes involving staff, students, and faculty. This new bullying policy could further UC's efforts to obtain a better sense of equity to the various disciplinary procedures by creating a unitary policy around this issue.

CAF seeks clarification of the following two points:

1. CAF finds it difficult to distinguish subtle and less aggressive bullying behavior from what the university administration calls microaggression. CAF understands that the distinction could be fluid, and the actual cases made could be context-dependent. Nevertheless, CAF seeks to clarify the specific circumstances of university faculty, students, and staff members. For example, a superior, such as a department chair, a senior colleague, or even a colleague at an identical rank sabotages someone's professional career without using threats but instead using more subtle tactics. Would this be considered and applied under the current policy language?
2. Some of the prohibited behaviors listed within the policy might also fall under existing guidelines negotiated with union contracts. For example, graduate students could file grievance claims against a faculty member for repeated demands to engage in labor beyond

¹ UCRJ Chair Hankamer to Divisional P&Ts Re: Standards of Proof Involving Allegations of SVSH - August 19, 2021 "This change was prompted by the combination of the 2020 Title IX regulation requiring the use of a consistent evidentiary standard for faculty respondents and student respondents for certain SVSH cases, and state law requiring use of the preponderance of the evidence standard in an overlapping set of SVSH cases with student respondents."

job responsibilities. CAF seeks to clarify that the policy works in parallel with any applicable grievance processes, rather than superseding those processes nor being considered inferior to those policies. Would it be equally applied to office politics among staff members and the hierarchical relationship between faculty members and graduate students? When the abusive conduct/bullying policy overlaps with the Faculty Code of Conduct, which approach will take effect first?

Despite the vague definition of the bullying behaviors and the issues of overlapping areas of different policy coverage, CAF does not find any serious concerns on the academic freedom issues in the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace.

Sincerely,

/s/

Minghui Hu, Chair

Committee on Academic Freedom

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Julie Guthman, Chair, Committee on Privilege and Tenure
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Catherine Jones, Chair, Committee on Teaching

David Brundage, Chair
Academic Senate

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

Dear David,

The Committee on Career Advising (CCA) considered the document, *Systemwide Senate Review: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace*. At its meeting on January 4, 2021, the CCA discussed the document. Issues related to abusive conduct and bullying have been a focus of the CCA this year, as you know. Any form of intimidation that hinders free and open discourse on sensitive topics, or harms workplace culture, should have no place in academia. However, CCA has identified several concerns about this policy draft:

1. The policy seems to add little that is substantive to existing policy, specifically Part II of the faculty code of conduct, [APM-15](#), and [our student code of conduct](#). The CCA is therefore concerned that the draft policy would actually do more harm (see below) than good. Despite the admirable intentions for the policy, which we very much appreciate, we are concerned it could be received as little more than an empty PR document.
2. The policy does not appear to be based on a foundation of facts. A UC-wide survey on abusive conduct and bullying would be a more productive first step. As you know, we have been discussing such a survey among Senate Faculty, and a fundamental problem has been how to make that survey more effective by including more of the campus. A UC-wide survey would solve many problems and would inform a revised draft policy.
3. The lack of explicit inclusion of staff, who could be among the most abused groups, is a major omission. There is also no discussion of bullying *by* students of other students, of staff, or of faculty.
4. The draft language raises numerous red flags related to freedom of speech and expression. Here are the most concerning we identified:
 - a. Section I. “This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.” That free speech isn’t an absolute right is already well established, so why is “importance of” in this sentence? These rights are not just “important”, and there is no need for a qualification that seems to open the door to a reduction in freedom. The problem occurs again in III.E: “This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.” In addition to the weakening “importance of” language, there is no clear explanation of how the policy will be implemented to accomplish the stated intention. This gives the impression that the draft policy document is not carefully crafted.

5. Section III D. Retaliation against those who have been accused of bullying is not explicitly addressed. This could be another form of preventable bullying.

Thank you for the opportunity to provide these comments. We hope they will be received as we intended, which is to support the development of the best policy for this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Ritz", with a large, stylized "S" and "R".

Steve Ritz, Chair
The Committee on Career Advising
Owen Arden
Melissa Gwyn
Fernando Leiva
Heather Shearer

cc: Minghui Hu, Chair, Committee on Academic Freedom
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Catherine Jones, Chair, Committee on Teaching

November 30, 2021

David Brundage, Chair
Academic Senate

Re: Systemwide Review – Draft Presidential Policy, Abusive Conduct/Bullying

Dear David,

During its meeting of November 4, 2021, the Committee on Faculty Welfare (CFW) reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. CFW welcomes this policy and appreciates the attempt to spell out both what constitutes bullying behavior and what does not. CFW also supports the inclusion of staff as a demographic that can wage a complaint. Members, however, remarked that this policy should mention specifically bullying of faculty members and staff by students, both graduate and undergraduate. CFW members believe that this type of bullying is a persistent problem that should be clearly addressed.

The rest of CFW's comments pertain to the vagueness of the implementation procedures. The policy seems to intentionally leave it up to individual campuses to assess how complaints will be raised, investigated and adjudicated. Members do not support this approach. Like in the case of Sexual Violence and Sexual Harassment policies, there should be a clear set of procedures (e.g. an actual flowchart) that specify how a complaint will be handled. Without such specificity, we risk treating complaints in different ways at different UC campuses, a result that conflicts with a just and equal process.

The procedures should also include reference to whether the adjudication procedure will involve the Committee on Privilege and Tenure (for faculty). Members were concerned that "managers" and the "Academic Personnel Office" noted in the proposal are not the appropriate entities to serve in complaint resolutions. Explicit guidelines should also be included for when managers (presumably chairs and deans in the case of faculty) are the offending party.

Thank you for the opportunity to provide feedback.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nico Orlandi', with a stylized, cursive script.

Nico Orlandi, Chair
Committee on Faculty Welfare

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Catherine Jones, Chair, Committee on Teaching
Julie Guthman, Chair, Committee on Privilege and Tenure

January 11, 2022

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 Teaching (COT) has reviewed the Systemwide Review of Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace proposed policy. The committee welcomes the effort to address bullying at UC and supports the broad objectives of the policy. We have some reservations, however, about specific aspects of the policy proposed and see a need for further deliberation and revision before implementation. In many ways our concerns echo those conveyed by our colleagues on other committees, so we will be brief and try to highlight points of agreement.

We appreciate the effort to tackle the challenging matter of defining bullying but believe greater precision is needed to support meaningful implementation. We encourage you to consider the observations shared in the Committee on Affirmative Action and Diversity's (CAAD) letter of December 3, 2020, specifically the limitations of a "reasonable person standard" in relationship to bullying, which is often distinguished by asymmetries of power, and the need to consider safety, not just civility, as an objective of the policy.

We also see a pressing need for clarification of how this policy would be implemented, specifically the need to identify clear reporting paths for the different community members covered by this policy. In addition to the concerns about consistency across UC campuses identified in the Committee on Faculty Welfare's (CFW) letter of November 30, 2021, we are concerned that the absence of clear information regarding reporting paths will impede the ability of the policy to address the needs of those experiencing bullying. Further, as noted in the Committee on Privilege and Tenure's (P&T) letter of November 8, 2021, the current proposal leaves unclear how the process of responding to these reports articulates with existing grievance and disciplinary procedures. Without clarifying these pathways and evaluating whether there is administrative capacity to take on these additional responsibilities, the policy risks being an inadequately supported undertaking, which in turn would undermine the possibility of successful implementation.

Finally, we appreciate the inclusion of staff and faculty in the policy but see a need to clarify how it would apply to students. As CFW notes, bullying can involve students, staff, and faculty, so it is vital to specify how they fit in this policy, particularly in regard to reporting and adjudication.

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

Sincerely,

A handwritten signature in blue ink that reads "Catherine A. Jones". The signature is written in a cursive style with a large, stylized "C" and "J".

Catherine Jones, Chair
Committee on Teaching

cc: Minghui Hu, Chair, Committee on Academic Freedom
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure

November 8, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

Review: Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace

Dear David,

On November 3, 2021 the committee on Privilege and Tenure (P&T) discussed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. Our comments and concerns largely revolved on two obviously related but still separable issues: one regarding the content of the policy and the other regarding implementation.

Our discussion regarding content was robust, and we did not reach consensus. Most members agreed on the need for such a policy, given the prevalence of bullying within the university, and felt that the contemplated behaviors named in the policy sufficiently articulated the range of concerning behaviors. Recognizing that any adjudication of this policy would require judgement on very difficult issues, they also felt that the examples of reasonable actions that do not constitute Abusive Conduct/Bullying were important to include and would provide adequate guidance to whatever bodies investigate and hear these cases. Dissenting members expressed concern about further university overreach and bureaucracy, and squelching of freedom of speech (about which all members agreed), and felt that existing policies were probably sufficient to cover the most egregious bullying behaviors. They also questioned whether any investigative or regulatory body could judge these behaviors fairly or consistently. In addition, they questioned whether this policy would actually protect those whose minority voices are often squelched by bullying.

Regarding implementation, the committee was completely in agreement that the policy was insufficient in articulating or even contemplating appropriate investigatory bodies and adjudication processes to ensure due process and safeguards. The committee specifically noted that in trying to address bullying and abusive behaviors across all campus constituencies, the policy did not adequately incorporate existing policies and procedures for faculty grievances and discipline, nor did it address how complaints across different campus constituencies would be handled. (E.g., how would a staff member or student make a complaint about the conduct of a faculty member?)

Based on our discussions, P&T recommends the following at the very least:

- That the policy be prefaced with a clear and unequivocal statement that academic freedom, and the speech that this principle allows, is the lifeblood of the university, and that the free exchange of ideas is necessary for the discovery and dissemination of knowledge.
- That the policy be amended to include or refer to a clear chain of action, and a flowchart akin to the SVSH adjudication framework. This should clarify who the investigatory and deliberative bodies are or will be, and it should absolutely reference that cases involving faculty grievants and respondents will be handled by P&T.
- That if new organizations are required to handle complaints under the new policy, funding for those organizations needs to be provided from the center as part of the policy implementation.
- That the policy be amended to specify the analogues for “supervisors and managers” for faculty (probably chair and deans) while also recognizing and addressing that many complaints of bullying are directed towards one’s superiors, such as chairs and deans. The normal faculty grievance process should also be explicitly included here as a logical recourse.

Sincerely,

/s/

Julie Guthman, Chair

Committee on Privilege and Tenure

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Catherine Jones, Chair, Committee on Teaching



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

Luca Ferrero, Chair
luca.ferrero@ucr.edu

ACADEMIC SENATE

University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

January 18, 2022

ROBERT HORWITZ, ACADEMIC COUNCIL CHAIR

Dear Chair Horwitz,

This report is based on the discussion of the draft policy on Abusive Conduct/Bullying (AC/B hereafter) that took place at the UCPT meeting on November 19, 2021.

Two preliminary remarks:

1. The following comments and concerns are complementary to the reports of each divisional P&T committee, which were sent to the respective Divisional Academic Senate.
2. No objections were raised at the UCPT meeting about the very necessity of the policy but it was reported that this issue was the topic of a robust discussion at least one of the divisional P&T committees.

There was a consensus at UCPT about all of the following matters. They are presented following the order of the relevant sections in the draft policy.

Sec. II Definition of Abusive Conduct/Bullying:

The definition of whether a single act might constitute AC/B should be re-framed to be less 'exonerative.' The emphasis should be put on the fact that a single act is sufficient to constitute AC/B when severe or egregious, rather than starting with the claim that single acts do *not* constitute prohibited conduct *unless* particularly severe or egregious.

Sec. III. A The value of Cohesiveness

UCPT is concerned about the interpretation of the value of the "cohesiveness of the University community," which is supposed to be preserved by the policy. But in our view, a University is a locus for healthy intellectual contentions, disputes, and debates. As such, the University should not be valuing "cohesion" or uniformity, if this is supposed to affect intellectual matters. Although the policy is explicitly presented as respecting freedom of speech and academic freedom, the worry is that too broad an interpretation of the idea of "cohesiveness" might interfere with the very respect of these freedoms. Given the ambiguity of the term "cohesiveness," we recommend that any mention of it be dropped from the policy. In our view, if so amended, the relevant portion of the policy statement would still capture the core nature of AC/B.

Sec. III.B Policy Coverage

There is a lack of clarity on the exact extension of the policy coverage. The draft states that the policy covers “acts by and against members of the University community *in the Workplace*” (our emphasis).

This committee is unclear about the status of students as potential responders to a complaint. Does the policy cover students when they are engaged in some activity that would make the University a “workplace” for them? What about the conduct of students when they are not working on campus? Is there any similar policy concerning AC/B for students?

We also note that by comparison to such policies as the one dealing with SHSV, the present draft only mentions two kinds of third parties (namely, volunteers and independent contractors). Is there a principled reason to exclude other third parties (such as Regents, vendors, visitors, guests, and patients) which are instead covered by other policies such as SHSV?

Sec. III.C Prohibited Conduct

Several members of the committee pointed out various ambiguities in the description of AC/B. For instance, it is unclear how “embarrassing” material relates to the general definition of AC/B in Section II. The terms “sabotaging” and “undermining” a work performance seem problematic for opposite reasons. “Sabotaging” seems too strong, whereas “undermining” seems too weak. Most cases of alleged AC/B seem to fall somewhere between sabotaging and undermining.

It is also worth remarking that none of the examples listed in the draft are instances of omissive conduct. But it seems that some instances of AC/B can take an omissive form (for instance, systematic failures to properly acknowledge or give credit for the contributions of a co-worker).

Sec. V.A.2 Anonymous and Third-Party Reports

The reference to anonymous and third-party reports and allegations is unclear. As presented in the draft policy, it seems to refer only to cases in which a complaint has already been filed, since there is mention both of a complaint and a Complainant. Is the suggestion that anonymous or third-party reports cannot be used to initiate an investigation into AC/B in the absence of a formal complaint by the purported victim of the abusive conduct? If this is so, this must be made explicit. If not, then this section needs to be rephrased to avoid any confusion.

Sec V.A.4 Reports of SVSH or Discrimination

This section addresses cases where AC/B conduct might be sex-based or discriminatory. The draft indicates that the SVSH policy will *typically* apply, and in the case of Discrimination it *will* apply.

We have serious concerns about the coordination between the implementation of AC/B policy and other university policies, including SVSH and Discrimination. The various policies have different investigation, adjudication, timeline, and confidentiality requirements; they are handled by different offices. It is easy to envisage situations in which the same conduct might be subjected to separate investigations and adjudications under different policies. The overlap between the different implementation frameworks is likely to be confusing to all the parties. In addition, based on our experiences serving on P&T and hearing committees, the overlap is very likely to give rise to implementation grievances by both Complainants and Respondents.

The current draft is too vague about the handling of the overlap between the implementation of different policies. For instance, what does it mean that the Discrimination policy *will apply*? Does this mean that the AC/B policy won't apply until the investigation of the alleged discrimination is completed and adjudicated? Or that the AC/B is not to be applied if a violation of the Discrimination policy has been established? Similar questions arise for the possible overlap with SVSH policy.

Additionally, why the draft only says that SVSH policy will *typically* apply? Who is to make such a determination?

Our recommendation is that a clear hierarchy be established about which policy violations should be investigated and adjudicated first, to avoid unnecessary duplication and confusion. Likewise, there is also likely to be a lack of clarity and some confusion about the proper reporting routes of possible violations, when these violations might fall under multiple policies.

Sec. V.D.2.C Confidentiality

The confidentiality requirement under section V.D.2.C appears to be weaker than the confidentiality expected of other investigations. The relevant passage reads "Participants in an investigation *may* be advised to maintain confidentiality to protect the integrity of the investigation." (Our emphasis).

The draft policy appears to be concerned with confidentiality only in relation to the integrity of the investigation but not to the possible reputational effects on both the Complainant and the Respondent. There is no indication, for instance, that the very existence of an ongoing investigation should be kept confidential except to the parties and officers involved. In the absence of stronger protection of confidentiality of the investigation, it is easy to envisage situations in which public knowledge of the existence of formal complaints still under investigation might make early resolution more difficult (not to mention the possibility that allegations of AC/B might themselves be used in an abusive way, especially when they can inflict reputational damage prior to any adjudication).

Thank you for inviting UCPT to opine on this matter. If you have any questions, please do not hesitate to ask me.

Sincerely,



Luca Ferrero
UCPT Chair

c: Susan Cochran, Academic Council Vice Chair
UCPT
Hilary Baxter, Academic Senate Executive Director
Michael LaBriola, Academic Senate Assistant Director



UNIVERSITY COMMITTEE ON EDUCATIONAL POLICY (UCEP)
Mary Lynch, Chair
Mary.Lynch@ucsf.edu

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1111 Franklin Street, 12th Floor
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Phone: (510) 987-9466

January 14, 2022

**ROBERT HORWITZ, CHAIR
ACADEMIC COUNCIL**

RE: DRAFT PRESIDENTIAL POLICY-ABUSIVE CONDUCT/BULLYING IN THE WORKPLACE.

Dear Robert,

UCEP has reviewed the Draft Presidential Policy-Abusive Conduct/Bullying in the Workplace and we have concerns regarding whether this Policy addresses faculty and staff versus students. The committee offers the following comments:

This Policy is similar/boilerplate to many other workplace documents that address supporting workplace environments that are equitable and free of abusive conduct and this may be logical for this document if it were solely addressing faculty and staff. In comparison to anti-bullying documents described for California <https://www.stopbullying.gov/resources/laws/california>, this document has limited/no detail regarding consequences of abusive/bullying behaviors, how this policy will be communicated, and preventive education to limit the risk of abusive conduct/bullying in the workplace.

The expectation that this document also incorporates protections for students is a fallacy. There are substantial differences regarding gender, age and power between faculty and students that require a higher level of protection against abusive conduct and bullying for students. It would be logical that given the history of allegations made against faculty regarding abusive and bullying behaviors towards students that this document would either be separate from a document that addresses University employees or that calls out additional protections for students.

In summary, this draft Presidential Policy may be sufficient for University employees, however this document is greatly deficient in supporting the potentially vulnerable student population who require increased protections and guidance if they experience abusive/bullying behaviors from their peers or any University employee.

UCEP appreciates the opportunity to comment on this matter. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Lynch".

Mary Lynch, Chair
UCEP



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Jill Hollenbach, Chair
Jill.Hollenbach@ucsf.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

January 19, 2022

**ROBERT HORWITZ, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace

Dear Robert,

The University Committee on Faculty Welfare (UCFW) has reviewed the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace, and we have several comments. First, we applaud the administration for addressing this important issue. However, we have several concerns that should be addressed before we can support the proposal. First, we note that the proposal is silent and/or inconsistent in addressing students and staff. Sometimes the text includes “employees” and in other places “the University community” and the like. Similarly, use of “workplace” to define the locus and requirements of abusive conduct or bullying could exclude student clubs or activities where no “employees” are present. Consistent and specific verbiage is needed.

Second, we have concerns about reporting protocols, investigation, and enforcement. In many cases, supervisors are the bullies, so alternate reporting lines must be available. We note that staff are rarely if ever consulted when promotions are considered, often making it easy for (latent) bullies to advance. Mentor/mentee relationships might require special consideration since they do not follow the typical “workplace” structure. The ability and availability of ombuds offices to help is unknown. We also suggest systemwide consistency regarding definitions and protocols, perhaps following the anti-sexual violence and sexual harassment policy process.

Finally, there are several instances where “wordsmithing” is needed. For example, “and” should be replaced with “or” in section 2, and “but is not limited to” should be added to section 3, paragraph 1. Overall, a careful review of mandatory and contingent verbs and qualifiers is needed.

Thank you for your consideration.

Sincerely,

Jill Hollenbach, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate
Susan Cochran, Academic Council Vice Chair

UCLA Academic Senate
Committee on Diversity, Equity & Inclusion

December 9, 2021

To: Jody Kreiman, Chair
Academic Senate

Re: **Draft Presidential Policy on Bullying and the Workplace**

Dear Chair Kreiman,

At its meeting on December 6, 2021, the Committee on Diversity Equity and Inclusion (CODEI) reviewed and discussed the Presidential Policy on Bullying and the Workplace.

Committee members were generally supportive of current policy. There are multiple items which the committee would like to comment on before moving forward:

- The committee would like to be involved in the implementation and particularly with the faculty code of conduct and the degree that behaviors, such as language, are to be pre-controlled.
- The policy has created an unclear meaning of terms. CODEI encourages clarity in the text itself, and that upon edits there be a conscious distinction of where and what situations implicate the concept of bullying. The current definition is not specific enough to bullying in this situation.

Thank you for the opportunity to review and comment on this policy. If you have any questions, please do not hesitate to contact me at reynaldo@chavez.ucla.edu or the Committee on Diversity, Equity, and Inclusion Analyst, Lilia Valdez at lvaldez@senate.ucla.edu.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reynaldo Macias", with a stylized flourish at the end.

Signature Needed

Professor Reynaldo Macias, Chair
Committee on Diversity, Equity and Inclusion
UCLA Academic Senate

December 16, 2021

To: Jody Kreiman
Chair, Executive Board

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

Dear Chair Kreiman,

The Committee on Academic Freedom (CAF) reviewed the Systemwide Review: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace proposal at its meeting on December 10, 2021.

Due to the range of views expressed by members, CAF unanimously approved a motion to provide feedback but not to endorse the proposal as written.

Members expressed support for the concept of the proposal. However, members differed on their views of the actual draft proposal.

Some members supported the draft policy as written. Others suggested that the policy should be applicable to everyone in all campus contexts, not only workplace (e.g. students often switch between employee and student roles).

Other members suggested that bullying involves a power dynamic, noting that the draft document seems to include bullying and hostile work environment, which could allow a possible slippage into protected/free speech issues. In other words, it is important to distinguish between disagreements/differences of opinion and bullying per se.

Some members also sought clarity on when an allegation was confidential versus anonymous, and to require a name so it is confidential.

Sincerely,

Susanne Lohmann
Chair, Committee on Academic Freedom

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

December 14, 2021

Jody Kreiman, Chair
Academic Senate

Re: (Systemwide Senate Review) Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meetings on November 9, 2021 and December 7, 2021, the Council on Academic Personnel (CAP) had opportunities to review the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace.

CAP supports the principle to promote and maintain a healthy working and learning environment at the University of California. However, members had serious concerns that the draft policy removes the Senate from the review of faculty conduct, which is a core professional right of faculty under shared governance. Members felt that existing policies, specifically the Faculty Code of Conduct ([APM-015](#)), adequately address abusive conduct/bullying in the workplace and that new policies mandating formal investigation independently from faculty evaluation were in conflict with the Faculty Code of Conduct. Some members also found the policy language to be vague and unclear, which may allow for loopholes or abuse.

CAP unanimously voted to support and endorse the recommendations from the Committee on Charges and the Committee on Privilege and Tenure and did not support the proposed Systemwide Policy Abusive Conduct/Bullying in the Workplace.

If you have any questions for us, please do not hesitate to contact me at csternin@ucla.edu or via the Council's analyst, Lori Ishimaru, at lishimaru@senate.ucla.edu.

Sincerely,



Catia Sternini, Chair
Council on Academic Personnel

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate

April de Stefano, Executive Director, Academic Senate
Lori Ishimaru, Senior Policy Analyst, Academic Senate
Members of the Council on Academic Personnel



OFFICE OF THE PRESIDENT
1111 Franklin Street, 11th Floor
Oakland, California 94607-5200

October 20, 2021

CHANCELLORS
ACADEMIC COUNCIL CHAIR ROBERT HORWITZ
LABORATORY DIRECTOR MICHAEL WITHERELL
ANR VICE PRESIDENT GLENDA HUMISTON

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

Dear Colleagues:

Enclosed for systemwide review is a proposed new Presidential Policy on Abusive Conduct/Bullying in the Workplace.

The proposed Presidential Policy is responsive to a request from the Regents and the Academic Senate for a systemwide policy that addresses the University's responsibilities and procedures related to abusive conduct/bullying.

Background

In spring 2021, Systemwide Human Resources convened a working group with representatives from location Human Resources offices, which drafted a policy with applicability to staff employees based upon the staff [Guidance on Abusive Conduct and Bullying in the Workplace](#). Academic Personnel and Programs (APP) subsequently convened a working group with representatives from campus Academic Personnel offices. Systemwide HR and APP worked in collaboration with UC Legal, the Systemwide Title IX office, and Graduate, Undergraduate and Equity Affairs to further refine the draft policy. Except as otherwise expressly provided in applicable collective-bargaining agreements, this policy will supersede any existing guidance, local policies, or procedures that address the topic of Abusive Conduct/Bullying in the workplace.

Key Policy Principles

The proposed systemwide policy affirms the University of California's commitment to promoting and maintaining a healthy working and learning environment in which each individual is treated with civility and respect. Abusive conduct/bullying may undermine morale and lead to stress; disrupt the functioning and cohesiveness of the University community; interfere with individuals' ability to learn, teach, research, and work; and undermine a culture that is civil, ethical, and that honors compliance. The proposed policy contains the following provisions:

Policy Coverage. The proposed policy covers abusive conduct/bullying and retaliation by and against members of the University community in the workplace.

Prohibited Conduct. The proposed policy identifies examples of abusive conduct/bullying, as well as examples of reasonable actions that do not constitute abusive conduct/bullying.

Retaliation. The proposed policy prohibits retaliation against any person who, in good faith, reports abusive conduct/bullying, assists someone with a report of abusive conduct/bullying, or participates in an investigation or other process under the policy.

Free Speech and Academic Freedom. The proposed policy is intended to protect members of the University community from abusive conduct/bullying, not to regulate protected speech. The proposed policy recognizes that freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, State, or University policies.

Compliance with the Policy. The proposed policy outlines the consequences of noncompliance, which include remediation, educational efforts, and/or employment consequences including informal counseling, adverse performance evaluations, corrective action/discipline, and termination.

Systemwide Review

Systemwide review is a public review distributed to the Chancellors, the Chair of the Academic Council, the Director of the Lawrence Berkeley National Laboratory, and the Vice President of Agriculture and Natural Resources requesting that they inform the general University community, especially affected employees, about policy proposals. Systemwide review also includes a mandatory, 90-day full Academic Senate review.

Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about the draft policy. The University will adhere to its bargaining obligations, if any, that may exist in connection with the adoption of this policy. Accordingly, the University will follow appropriate procedures with respect to represented employees and the Office of the President's Systemwide Labor Relations office will coordinate that process.

The systemwide review period for the Abusive Conduct/Bullying draft policy is **October 20, 2021 through February 7, 2022**. The draft policy is posted on [UCnet](#).

Comments from the Academic Senate and campus academic administrators should be submitted to ADV-VPCARLSON-SA@ucop.edu. Comments from HR leadership and staff employees should be compiled by HR Policy Coordinators and submitted to SHR Policy through Box. SHR Policy will communicate further with HR Policy Coordinators about this process.

Questions relating to academic personnel may be directed to Rebecca Woolston at Rebecca.Woolston@ucop.edu. Questions from staff should be directed to location HR Policy Coordinators. Location questions related to staff employees may be directed to Systemwide HR Policy Specialist Abby Norris at Abigail.Norris@ucop.edu.

Sincerely,



Susan Carlson
Vice Provost
Academic Personnel and Programs



Cheryl Lloyd
Vice President
Systemwide Human Resources

Enclosures:

1. Proposed Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace
2. Model Communication

cc: President Drake

Provost and Executive Vice President Brown
Executive Vice Chancellors/Provosts
Executive Vice President and Chief Operating Officer Nava
Senior Vice President and Chief Compliance Officer Bustamante
Vice President Maldonado
Vice President and Vice Provost Gullatt
Vice Provosts/Vice Chancellors for Academic Affairs/Personnel
Assistant Vice Provosts/Vice Chancellors/Directors - Academic Personnel
Chief Human Resources Officers
Associate Vice Provost Lee
Deputy General Counsel Woodall
Academic Council Vice Chair Cochran
Executive Director Baxter
Executive Director Silas
Chief of Staff and Executive Director Henderson
Chief of Staff Kao
Chief of Staff Levintov
Chief of Staff Peterson
Chief Policy Advisor McAuliffe
Principal Counsel Chin
Director Grant
Director Roller
Director Sykes
Associate Director DiCaprio
Associate Director Nguyen
Associate Director Woolston
Assistant Director LaBriola
Manager Carr
Manager Donnelly
Manager Smith
HR Manager Crosson

October 20, 2021

Page 4

Policy Specialist Norris
Analyst Durrin
Analyst Wilson
Policy Advisory Committee



Abusive Conduct/Bullying in the Workplace

Academic Officer:	Vice Provost - Academic Personnel and Programs
Academic Office:	APP - Academic Personnel and Programs
Staff Officer:	VP – Systemwide Human Resources
Staff Office:	SHR – Systemwide Human Resources Policy
Issuance Date:	TBD
Effective Date:	Click here to enter a date.
Last Review Date:	NA
Scope:	This policy on Abusive Conduct/Bullying (“policy”) applies to all University employees, unpaid interns, volunteers, and independent contractors. The policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.

	Academic	Staff
Contact:	Rebecca Woolston (APP)	Abby Norris (SHR)
Title:	Academic Policy and Policy Exceptions Associate Director	Systemwide Human Resources Policy Specialist
Email:	Rebecca.Woolston@ucop.edu	Abigail.Norris@ucop.edu
Phone #:	(510) 987-9153	(510) 987-0612

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I. POLICY SUMMARY

The University of California (“University”) is committed to promoting and maintaining a healthy working environment in which every individual is treated with civility and respect. This policy addresses the University’s responsibilities and procedures related to Abusive Conduct/Bullying and Retaliation for reporting, or participating in, an investigation or other process provided for in this policy. This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies.

Abusive Conduct/Bullying behavior in violation of this policy is prohibited and will not be tolerated. The University encourages anyone who is subjected to or becomes aware of Abusive Conduct/Bullying behavior to promptly report it. The University will respond swiftly to reports of Abusive Conduct/Bullying, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy.

II. DEFINITIONS

Abusive Conduct/Bullying: For purposes of this policy, abusive conduct and bullying are synonymous. Abusive Conduct/Bullying is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person’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 and unrelated to the University’s legitimate educational and business interests. A single act shall not constitute Abusive Conduct/Bullying, unless especially severe or egregious.

Complainant: An individual who alleges and/or has been reported to have been subjected to Abusive Conduct/Bullying.

Reasonable Person Test: The basis for determining whether the conduct at issue rises to the level of Abusive Conduct/Bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the Workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative.

Reporter: An individual who makes a report of alleged Abusive Conduct/Bullying.

Respondent: An individual alleged to have engaged in Abusive Conduct/Bullying.

Retaliation: An adverse action taken against an individual based on their report of Abusive Conduct/Bullying or participation in an investigation or other resolution process provided for in this policy. An adverse action is conduct that would discourage a reasonable person from reporting Abusive Conduct/Bullying or participating in a process provided for in this policy, and includes but is not limited to threats, intimidation, discrimination, or coercion.

Workplace: Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity (including, for example, University-sponsored study abroad, research, health services, or internship programs, as well as on-line courses).

III. POLICY STATEMENT

A. General

The University of California (“University”) is committed to promoting and maintaining a healthy working and learning environment in which every individual is treated with civility and respect. Abusive Conduct/Bullying, including disruptive behavior, may undermine morale and lead to stress; disrupt the functioning and cohesiveness of the University community; interfere with individuals’ ability to learn, teach, research, and work; and undermine a culture that is civil, ethical and that honors compliance. Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are in peer-to-peer interactions. Accordingly, Abusive Conduct/Bullying behavior in violation of this policy is prohibited.

The University strives to foster an environment in which individuals feel comfortable making reports of Abusive Conduct/Bullying in good faith. The University will respond promptly to reports of Abusive Conduct/Bullying, and will take appropriate action to stop, prevent, correct, and/or discipline individuals who violate this policy. Violations of this policy may result in disciplinary measures pursuant to University policies (including [Sexual Violence and Sexual Harassment \(SVSH\)](#) and [Discrimination, Harassment, and Affirmative Action in the Workplace](#)) and collective bargaining agreements.

B. Policy Coverage

This policy covers acts of Abusive Conduct/Bullying and retaliation by and against members of the University community in the Workplace, including all University employees, unpaid interns, volunteers, and independent contractors. This includes but is not limited to conduct that occurs in person or through other means such as electronic media.

C. Prohibited Conduct

Abusive Conduct/Bullying behavior may take many forms including but not limited to conduct involving physical actions and/or verbal, non-verbal, electronic, or written communication.

Abusive Conduct/Bullying, defined in Section II of this policy, may include the following types of behavior:

- Persistent or egregious use of abusive and/or insulting language (written, electronic or verbal)
- Spreading misinformation and malicious rumors
- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats (including implicit threats), or insults
- Encouraging others to act, singly or in a group, to bully or harass other individuals
- Making repeated or egregious inappropriate comments about a person's appearance, lifestyle, family, or culture
- Regularly teasing or making someone the brunt of pranks or practical jokes
- Inappropriately interfering with a person's personal property or work equipment
- Circulating inappropriate or embarrassing photos, videos, or information via e-mail, social media, or other means
- Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause a reasonable person discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes
- Repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not that individual's responsibility, for which the employee does not have authority, or repeatedly refusing to take "no" for an answer when the individual is within the individual's right to decline a demand; pressuring an individual to provide information that the individual is not authorized to release (or may not even possess)
- Making inappropriate threats to block a person's academic or other advancement, opportunities, or continued employment at the University
- Sabotaging or undermining a person's work performance

Abusive Conduct/Bullying does not include exercising appropriate supervision of employees or carrying out instructional grading, assessment, and evaluation. It does not include performance management or providing appropriate feedback.

Examples of reasonable actions that do not constitute Abusive Conduct/Bullying include but are not limited to:

- Providing performance appraisals to employees, including negative appraisals
- Delivering constructive criticism
- Grading student performance, including negative assessments
- Coaching or providing constructive feedback
- Monitoring or restricting access to sensitive and confidential information for legitimate business reasons
- Scheduling regular or ongoing meetings to address performance issues
- Setting ambitious performance goals to align with departmental goals
- Investigating alleged misconduct or violation of University policy
- Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy
- Engaging in assertive behavior
- Having a simple disagreement
- Participating in debates about academic decisions and differences of opinion
- Failing to engage in social niceties (e.g., not greeting colleagues)
- Participating in a formal complaint resolution or grievance process

Differences of opinion, reasonable miscommunication, differences in work styles, business disagreements handled professionally, reasonable interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute Abusive Conduct/Bullying, as defined in Section II..

Any person found to have violated this policy may be subject to discipline as set forth in the applicable corrective action policy as outlined in Section IV.E. (Noncompliance with the Policy), below.

D. Retaliation

This policy prohibits retaliation (e.g., threats, intimidation, reprisals, or other adverse actions) against any person who reports Abusive Conduct/Bullying, assists someone with a report of Abusive Conduct/Bullying, or participates, in good faith, in an investigation or other process under this policy. Any such retaliation is a violation of this policy, independent of whether the report of Abusive Conduct/Bullying is substantiated. Reports of retaliation will be addressed under the procedures outlined below.

E. Free Speech and Academic Freedom

The faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section II of the California Constitution. This policy is intended to protect members of the University community from Abusive Conduct/Bullying, not to regulate protected speech. This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or 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 (See APM-010, APM-011, and APM - 015.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, State, or University policies.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellors, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural Resources) and their designees will develop procedures and supplementary information to support implementation of this policy. Responsible Officers (Vice Provost – Academic Personnel and Programs and Vice President – Systemwide Human Resources) may interpret and clarify the policy. All substantive policy changes are made through the standard process for Presidential policy.

Exceptions to local procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President approves this policy and any revisions upon recommendation by the Responsible Officers. The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved according to local procedures. Actions related to Senior Management Group employees must be approved by the President.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President and Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Noncompliance with the Policy

Noncompliance with this policy may result in remediation, educational efforts, and/or employment consequences up to and including informal counseling, adverse performance evaluations, corrective action/discipline, and termination.

For policy-covered staff employees, corrective action/discipline is governed by Personnel Policies for Staff Members 62 (Corrective Action), 63 (Investigatory Leave), and 64 (Termination and Job Abandonment); [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\), which applies to Senior Management Group \(SMG\) employees](#); and as applicable, other policies and procedures.

For academic personnel, formal corrective action/discipline is governed by APM - 015 (The Faculty Code of Conduct) and APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline); APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal) and as applicable, other policies and procedures.

For represented employees, formal corrective action/discipline is governed by collective bargaining agreements, and as applicable, other policies and procedures.

V. PROCEDURES

The University will respond promptly to allegations of Abusive Conduct/Bullying. Abusive Conduct/Bullying will be given the serious attention it warrants and will be addressed in accordance with applicable University policies and procedures.

A. Reporting Incidents of Abusive Conduct/Bullying

1. Reports of Abusive Conduct/Bullying

For immediate safety or criminal concerns, call 911.

Individuals should report conduct believed to constitute Abusive Conduct/Bullying to their manager, any supervisor, or applicable University office. Local procedures should specify the applicable office and/or teams for handling such reports. Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams. Complaints may be handled by multiple offices in accordance with local procedures. Reports may also be made to the UC Whistleblower hotline.

2. Anonymous and Third-Party Reports

Anonymous reports and allegations from third-party Reporters not directly involved in the complaint will be reviewed and may be investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or

if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.

3. Manager and Supervisor Reports

Managers and supervisors who observe conduct that may constitute Abusive Conduct/Bullying behavior should address such behavior immediately, and should seek assistance if they are unable to address it. Managers and supervisors should consult the applicable office regarding appropriate next steps, even if the incident(s) appear(s) to be resolved.

Managers and supervisors who receive a report of Abusive Conduct/Bullying should immediately submit the report to the applicable office.

4. Reports of Sexual Violence/Sexual Harassment or Discrimination

If the Abusive Conduct/Bullying is sex-based, including conduct that is sexual in nature or based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation, the University's [Sexual Violence and Sexual Harassment Policy](#) will typically apply. Reports shall be made or forwarded to the location's Title IX Office, as required by and described in the SVSH policy.

If the conduct is discriminatory based on categories outlined in the [Discrimination, Harassment, and Affirmative Action in the Workplace policy](#), that policy will apply. Reports should be made or forwarded to local Equal Employment Opportunity/Affirmative Action offices.

B. Timelines for Making Reports

There is no time limit for a Complainant to submit a report, and Complainants should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline if appropriate.

C. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable after receiving a report, the applicable office(s) will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed and whether an investigation is warranted.

D. Resolution Options

If there was no closure after initial assessment, resolution of alleged Abusive Conduct/Bullying may take different forms, including early resolution and/or violation investigation. Regardless of the outcome, the Complainant shall be notified in writing that the complaint was reviewed and appropriate steps were taken to reach resolution in the matter.

1. Early Resolution

The University encourages early resolution when possible. The goal of early resolution is to settle differences fairly, at an early stage, and in an open manner, without Retaliation.

Resolution may be facilitated by a manager, Employee and/or Labor Relations, an Ombuds, Academic Personnel, or another appropriate office. Options for early resolution may include, but are not limited to:

- Facilitated discussion to obtain an agreement between the parties
- Physically separating the parties
- Changing reporting lines
- Agreement to counseling, coaching, educational, and/or training programs
- Negotiating an agreement for corrective action/discipline

The appropriate University office should follow up with the parties after a period of time to ensure that the resolution has been implemented effectively and has addressed the report of Abusive Conduct/Bullying.

The University encourages early resolution, but it does not require that the parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, early resolution may not be the best approach and the applicable University office may initiate a formal investigation instead.

Attempts at early resolution and informal conflict management do not extend the time limit established by the employee's applicable formal complaint resolution or grievance process.

2. Formal Investigations

The Executive Officer at each location will designate the local personnel or management office responsible for conducting investigations and will develop local implementing procedures for the conduct of investigations.

The applicable University office may initiate a formal investigation after a preliminary review of the allegations even in cases where the Complainant does not wish to pursue the complaint. This may occur if the applicable office determines that an investigation is necessary to mitigate risk to the campus community.

Formal investigation of reports of Abusive Conduct/Bullying will incorporate the following procedures:

A. The Respondent will be advised of the relevant allegations in the complaint and will be reminded that Retaliation is prohibited by this policy.

B. The investigation generally will include interviews with the parties, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.

C. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation, consistent with University policy. Participants in an investigation may be advised to maintain confidentiality when essential to protect the integrity of the investigation.

D. The Complainant and the Respondent may request to have a representative present when they are interviewed. Requests will be reviewed in accordance with local procedures.

E. At any time during the investigation, interim protections or remedies may be necessary. These interim protections or remedies should be implemented in accordance with local procedures.

F. The applicable University office and/or response team conducting the investigation will provide the Complainant and Respondent an estimated timeline for completion of the investigation. If the investigation timeline is extended, the Complainant and Respondent will be notified.

G. Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues; the positions of the parties; a summary of the evidence; findings of fact; and a determination by the investigator as to whether the conduct at issue violated this policy.

H. The applicable University office and/or response team conducting the investigation will submit the report to the appropriate University official, who will recommend next steps, in accordance with local procedures.

I. The Complainant and the Respondent will be informed when the investigation is completed and whether or not a violation of this policy has occurred. Actions taken to resolve the complaint, if any, that are directly related to the Complainant, such as an order that the Respondent not contact the Complainant, will be shared with the Complainant. In accordance with University policies protecting individuals' privacy, the Complainant may be notified generally that the matter has been referred for appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent's consent.

J. The Complainant and the Respondent may request a copy of the investigative report pursuant to University policies governing privacy and access to personal information. In accordance with University policy, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report.

Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with local implementation procedures.

E. Confidential Resources

The University provides confidential resources to employees who witness or experience Abusive Conduct/Bullying.

Faculty & Staff Assistance Programs, also known as Employee Assistance Programs, are confidential resources that provide assessment, consultation, counseling and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in their professional Workplace or academic setting.

Ombuds offices also provide confidential, impartial, and informal conflict resolution and problem-solving services for UC employees. Ombuds services include conflict analysis, strategies to resolve and prevent disputes, identification of options and information, effective communication coaching, mediation, group facilitation, and resource referrals.

VI. RELATED INFORMATION

- [Sexual Violence and Sexual Harassment](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Discrimination, Harassment, and Affirmative Action in the Workplace](#) (referenced in Sections III.A and V.A.4 of this policy)
- [Collective bargaining agreements](#) (referenced in Section III.A of this policy)
- Personnel Policies for Staff Members [62](#), [63](#), and [64](#) (referenced in Section IV.E of this policy)
- [Personnel Policies for Staff Members-II 64 \(Termination of Appointment\)](#) (referenced in Section IV.E of this policy)
- [APM - 015 \(The Faculty Code of Conduct\)](#), [APM - 016 \(University Policy on Faculty Conduct and the Administration of Discipline\)](#) and [APM - 150 \(Non-Senate Academic Appointees/Corrective Action and Dismissal\)](#) (referenced in Section IV.E of this policy)
- [Policy on Student Conduct and Discipline](#)
- [UC Regents Policy 1111: Statement of Ethical Values and Standards of Ethical Conduct](#)
- [Whistleblower Policy](#)
- [Whistleblower Protection Policy](#)

VII. FREQUENTLY ASKED QUESTIONS

TBD

VIII. REVISION HISTORY

TBD: This is the first issuance of this policy.

DRAFT