

Executive Board

Use of CA Penal Code 626.4

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August 22, 2024

Darnell Hunt
Interim Chancellor, UCLA

Michael Levine
Interim Executive Vice Chancellor and Provost, UCLA

Michael Beck
Administrative Vice Chancellor, UCLA

Re: **Use of California Penal Code 626.4**

Dear Interim Chancellor Hunt, Interim EVCP Levine, and VC Beck,

On June 14, 2024, Academic Senate leadership met with you to discuss the use of CA Penal Code 626.4 during the weeks leading up to and including final exams. We appreciate your time in answering our questions about this topic, but some questions and concerns remain.

We are deeply concerned about several aspects of this implementation, as noted below, and look forward to working together throughout the summer to determine principles and best practices for its use at UCLA.

At the August 13, 2024, meeting of the Executive Board, members voted in favor of sending the questions below. Members affirmed the importance of transparency and accountability in order for the campus to heal, learn, and uphold our shared principles for the benefit of the university community.

- 1) The use of 626.4 on our community members is unusual. Under what specific circumstances will Administration invoke 626.4 for actions by faculty, students and staff?

RESPONSE:

UCLA will follow its tiered response model outlined in the Systemwide [UC Community Safety Plan](#), which strives for a service-oriented and community-centric approach to campus safety. Penal Code section 626.4 is considered only when circumstances warrant a high-level response in accordance with the UCLA Tiered Response Plan (i.e., incidents escalating to Tier 3, all incidents categorized as Tier 3, etc.). Tier 3 generally is limited to high risk activity involving imminent danger to safety and health and/or otherwise criminal behaviors or activities that require immediate intervention by sworn personnel and trigger Police activity. Penal Code section 626.4 may also be invoked following a serious incident or unlawful activity, such as assault or other violence.

For additional context, the California Supreme Court has interpreted the Penal Code section 626.4 standards in a manner to ensure its constitutional viability against First Amendment challenges of overbreadth, vagueness, and lack of procedural due process.¹ The level of disruptive conduct necessary to support summary exclusion from

¹ *Braxton*, at 142-145.

campus without a prior hearing under Penal Code section 626.4 is conduct, prohibited by other laws, causing a “substantial and material physical disruption incompatible with the peaceful functioning of the academic institution and of those upon its campus,”² “when [summary exclusion is] necessary to prevent significant injury to persons or property”³

Please note these lines of authority are also reflected in [UCLA Delegation of Authority 704.19: Consent to Remain on Campus](#).

- 2) UC Berkeley has extensive information of the use of 626.4 on their campus (<https://studentaffairs.berkeley.edu/student-affairs-policies/pc-626/>). Will you post similar information for UCLA?

RESPONSE:

UCLA is working on several materials in accordance with Senate Bill 108/President Drake’s Directive, which will provide the UCLA community with resources pertaining to public expression activities and policies that discuss the process for exclusion from UCLA property under Penal Code sections 626.4. and 626.6.

- 3) How do you determine who is excluded from campus, given the challenge in obtaining timely and accurate arrest information from law enforcement?

RESPONSE:

For any Penal Code section 626.4 exclusion order that is issued by someone other than the Chancellor, the issuing person (e.g., Designated University Official, UCPD officer, etc.) must, by statute, submit information on the excluded individual and the facts giving rise to the exclusion to the Chancellor or designee for confirmation within 24 hours or the Penal Code section 626.4 order is void.

Who is notified when someone is excluded from campus (instructor, Dean, department chair, etc.)?

RESPONSE:

Notifications will be made in accordance with obligations under applicable student codes of conduct, faculty codes of conduct, personnel policies, and collective bargaining agreements.

Further, UCLA affiliates (i.e., staff, faculty and students) who are arrested for unlawful behavior or cited for a violation of University or UCLA policies must be referred to the applicable office that reviews staff, faculty, and student codes of conduct. The applicable office must then review the underlying conduct of the staff member, faculty member, or student under the applicable campus review process and may issue sanctions in accordance with applicable campus policies.

² Braxton, at 150

³ Braxton, at 154

- 4) In response to the protest on June 10, [students preparing for a final exam were evacuated from Moore Hall](#), and [an exam was interrupted and evacuated mid-way from Dodd Hall](#). What criteria were used to determine that these exams could no longer proceed safely?

RESPONSE:

On June 10, the demonstrators did not engage in a productive dialogue with law enforcement. They threw objects at police officers, assaulted a member of the media, started to enter the building with finals underway, and blocked emergency exit doors. Since the police department could not ascertain the demonstrators' intentions, and due to their violent behavior, a decision was made to evacuate the buildings for public safety. The criteria used on June 10 are the same criteria law enforcement would use in a similar dynamic situation.

- 5) Regular conduct/disciplinary procedures against faculty require Senate input. Going forward, how will 626.4 decisions and appeals provide for this?

RESPONSE:

There is no Academic Senate input arising out of an alleged Penal Code section 626.4 violation. Any discipline associated with violations of University policies will go through the standard process. Violations involving Academic Senate faculty will follow the established judicial processes, including the Committee on Charges and/or the Committee on Privilege and Tenure.

- 6) Because the administration makes the decision to revoke permission for individuals to be allowed on campus, the administration can also make exceptions. Exceptions were made for those who

reside in on-campus housing to allow them on campus to their housing units. What are the general criteria for exceptions, and how were these criteria determined?

RESPONSE:

Under Penal Code section 626.4, UCLA faculty, staff and students who receive a withdrawal of consent notice may submit a written request for a hearing anytime within the 14-day consent withdrawal period. The University must then hold a hearing within 7 days of the written request. The hearing will be held before an independent hearing officer. The Administrative Vice Chancellor will coordinate with the hearing officer who will convey any exceptions granted during the exclusion period.

Criteria for exception are considered through the appeal process and can include needing to access campus housing, medical or mental health appointments, or other public health and safety needs.

How is the validity of individual claims assessed?

RESPONSE:

Where an excluded individual has properly appealed the order withdrawing consent to be on campus, a hearing is held to evaluate the individual's claims with respect to the withdrawal. At the hearing, the excluded individual may present evidence to support their claim.

How is continuity of the academic mission balanced against potential campus disruption?

RESPONSE:

The central functions of the University are "to provide and sustain an environment conducive to sharing, extending, and critically examining knowledge and values, and to furthering the search for wisdom" (APM 015, Preamble), which is why it is important to respond to activities that disrupt the academic and research functions. In line with this mission, UCLA utilizes its tiered response strategy to determine the severity and impact of disruptions to the campus community. Please see the [UCLA Operating Status categories](#) on [Bruins Safe Online](#) for details.

In addition to these questions, we note the following significant concerns.

- A) The threshold for interrupting final exams must be high. There are specific Senate Regulations that restrict the time and place of a final exam, and this reflects the seriousness with which the campus takes the integrity of the final exam process.

- B) Communication of the dispersal orders may not be reaching all protest participants. The dispersal order must be communicated to protest participants (the composition of which may change as the protest moves across campus), especially during decentralized protests without clear leaders. Importantly, the participants must be given an opportunity to disperse before arrests for failure to disperse begin. Significant concerns were raised about these issues regarding June 10.

- C) Additional clarity is needed to better understand what transgressions on campus will be handled through criminal charges and which will be handled via conduct processes. Aligned with Recommendation 34 of the Robinson-Edley report, UCLA should develop or modify existing student discipline processes to ensure that, in appropriate circumstances, they are an available response option. UCLA should also consider adopting a policy similar to UC Berkeley's with respect to exclusions under 626.4: "[Disruptive individuals whose presence on the campus does not pose a risk of significant injury to persons or property are entitled to a hearing before an exclusion order can take effect.](#)"
- D) UCLA must prioritize instructional integrity in decision-making surrounding protests, and these priorities need to be clearly communicated to any outside entities (e.g., law enforcement, security) who may be brought to our campus in response to protests.
- E) Aligned with Recommendation 5 of the Robinson-Edley Report, UCLA must create user-friendly summaries of the campus time, place, and manner regulations and policies governing the response to events of civil disobedience, and distribute the summaries at least annually during student orientations; UCLA should highlight in the summaries descriptions of conduct that is or could be perceived as threatening to safety and thus might trigger a police response.

Thank you again for your time and engagement on these important issues. We look forward to your response to this letter as well as to the [June 12 letter](#) from the Executive Board.

Sincerely,

Andrea Kasko
Chair, UCLA Academic Senate

Cc: Kathy Bawn, Vice Chair/Chair Elect, UCLA Academic Senate
Jessica Cattelino, Immediate Past Chair, UCLA Academic Senate
April de Stefano, Executive Director, UCLA Academic Senate

Yolanda Gorman, Senior Advisor to the Chancellor and Chief of Staff
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