



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



DAVIS DIVISION OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
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academicsenate.ucdavis.edu

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", with a stylized flourish at the end.

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

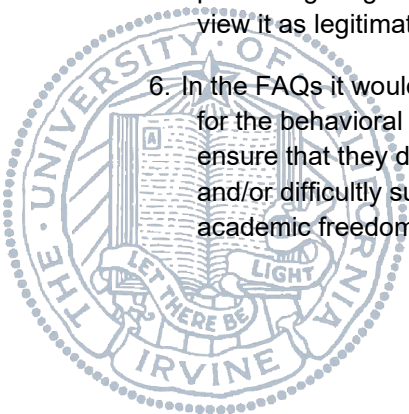
**GEORG STREIDTER, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

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.

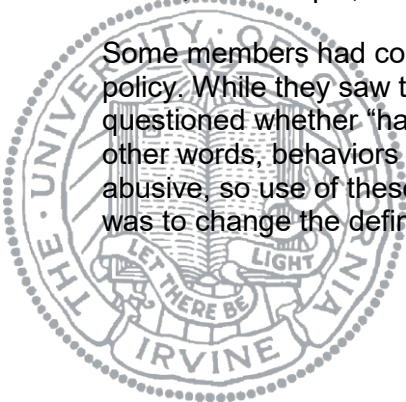
To start, members noted that the policy makes several references to implementation at the local level and deference to existing policies. This led to questions about the details of implementation. For example, who/what entities would investigate allegations of abusive conduct? They suggested that the 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 long horizontal flourish extending to the right.

Bogi Andersen, Chair
Committee on Privilege and Tenure

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

Re: Proposed Presidential Policy on Abusive Conduct in the Workplace

Dear Chair Cattellino,

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.

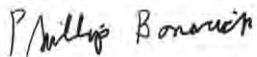
Discrimination, including harassment, against faculty on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition (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
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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) *J. P. Sexton*

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

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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

UNIVERSITY OF CALIFORNIA, MERCED

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

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, appearing to read "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.

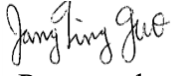


Academic Senate

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 aid 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

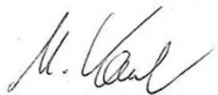
SUBJECT: Response to [Systemwide Review] Proposed Policy: *2nd Round Review - Draft Presidential Policy - Abusive Conduct in the Workplace*

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,

A handwritten signature in black ink that reads "Richard M. Carpiano".

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



UC SANTA BARBARA

Academic Senate
Susannah Scott, Chair
Shasta Delp, Executive Director

1233 Girvetz Hall
Santa Barbara, CA 93106-3050
<http://www.senate.ucsb.edu>

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.

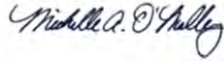
Thank you for the opportunity to comment.

**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

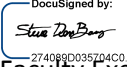
At its meeting of October 6, 2022, the Committee on Rules, Jurisdiction, and Elections (RJE) reviewed the second systemwide review of the draft Presidential Policy on Abusive Conduct in the Workplace. RJE found a number of areas to comment.

- 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

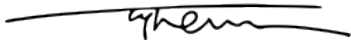
To: Susannah Scott, Chair
Academic Senate

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
FAX: (858) 534-4528

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.

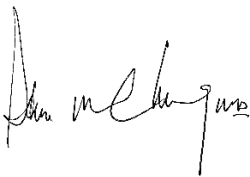
Part 2: Investigation & Reporting Issues

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 be "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
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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



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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.

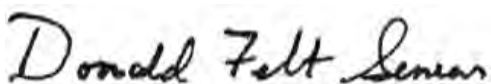
- The new policy language about Privacy and Confidentiality (Section V.B) is appreciated. Given that the language in this new section is verbatim from the SVSH policy (Section III.E.3), the committee wonders why the second half of the SVSH policy is not included. The omitted SVSH language is “The University 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 script is cursive and fluid, with the first name "Donald" being the most prominent part of the signature.

Donald Senear, Chair
UCPB



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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