



Jim Chalfant
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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*

February 1, 2017

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

Re: Proposed Revisions to Nondiscrimination Policy and APM 015

Dear Susan:

As you requested, I distributed for systemwide Senate review proposed revisions to the Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and additional amendments to APM 015.

Eight Academic Senate divisions (UCB, UCD, UCLA, UCM, UCR, UCSB, UCSD, and UCSF) and five systemwide committees (UCAF, UCAADE, UCAP, UCFW, and UCORP) submitted comments. These comments were discussed at Academic Council's January 18, 2017 meeting. They are summarized below and attached for your reference.

Our understanding is that the revisions are prompted by new state and federal requirements—specifically, amendments to the California Fair Employment and Housing Act (FEHA) that extend non-discrimination and non-harassment protections to volunteers, unpaid interns, and trainees; and the Office of Federal Contract Compliance Programs' new Pay Transparency Rule, which prohibits discrimination against employees and applicants for discussing, disclosing or inquiring about compensation.

Most of the Senate reviewer comments focused on the Presidential Policy. On the whole, reviewers expressed support for the revisions, noting that they improve existing language about the prevention of discrimination and harassment in the workplace, and are effective in aligning UC policies with state and federal requirements. Reviewers also expressed several concerns about the revised policy, including the policy's description of academic freedom protections, and its description of specific terms and concepts related to sexual orientation, gender identity, and other areas. The Senate requests additional improvements and clarifications to these aspects of the policy.

Presidential Policy

UCAF and other reviewers are concerned that new language describing free speech and academic freedom protections in Section F of the policy does not accurately depict how those protections apply in a campus environment. We encourage you to consider UCAF's proposal for better characterizing the nature and significance of academic freedom and free speech rights on campus. In related comments, UCD recommends including references to federal and state laws as additional guidance about free speech and academic freedom. And UCSB recommends references to the *Student Freedom of Scholarly*

Inquiry Principles (APM 010, Appendix B) as guidance about the freedom of scholarly inquiry of students and to the *Faculty Code of Conduct* (APM 015) as guidance about the ethical responsibilities of faculty.

UCAADE recommends several specific revisions to the Presidential Policy to more accurately define and describe the terms “gender,” “gender identity,” and “sex”; to further distinguish between “discrimination” and harassment”; to incorporate specific policy references for complaints and investigations; and to increase the clarity and effectiveness of other language. Several of UCAADE’s concerns and recommendations are echoed by other reviewers. We encourage you to review UCAADE’s comments and incorporate them into a revised draft.

Reviewers made several other recommendations worth considering. These include UCLA’s recommendations to include a specific definition for a “volunteer” covered under the policy, and to clarify the concept of “timely” reporting of and response to complaints of discrimination or harassment; UCSB’s recommendation to include more specific references to a “fair, timely, and thorough investigation” of complaints, in order to promote uniformity across campuses; UCSF’s recommendations to add a definition of “minorities” to Section II and a link to information about each campus’s office responsible for developing an affirmative action plan in Section III.E; and UCSB’s recommendation to include “the Academic Senate” as a body that can receive and investigate complaints under III(B).

APM 015

There were only a handful of comments from Senate reviewers about the proposed amendments to APM 015. Reviewers recognize that the revisions are required to align with state and federal requirements. UCR suggests a small but helpful amendment to improve the grammatical construction of the added language, and UCAADE recommends changing “volunteer capacity” to “volunteer service.”

Thank you for the opportunity to comment.

Sincerely,



Jim Chalfant, Chair
Academic Council

Encl

Cc: Academic Council
Policy Manager Lockwood
Senate Director Baxter
Senate Executive Directors



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 11, 2017

JAMES CHALFANT
Chair, Academic Council

Subject: Draft revised nondiscrimination and affirmative action policy regarding academic and staff employment

Dear Jim,

On December 5, 2016, the Divisional Council of the Berkeley Division (DIVCO) considered the proposal cited in the subject line, informed by reports from our divisional Committee on Diversity, Equity, and Campus Climate. DIVCO endorsed the proposal without comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Powell', with a horizontal line underneath.

Robert Powell
Chair, Berkeley Division of the Academic Senate
Professor of Political Science

Cc: Donna Jones, Chair, Committee on Diversity, Equity, and Campus Climate
Linda Corley, Senate Analyst, Committee on Diversity, Equity, and Campus Climate



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academicsenate.ucdavis.edu

January 10, 2017

Jim Chalfant

Chair, Academic Council

RE: Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and Additional Revisions to APM 015

Dear Jim:

The proposed revisions to the Presidential Policy on Nondiscrimination and Affirmative Action, as well as the additional revisions to APM 015, were forwarded to all standing committees of the Davis Division. Responses were received from the Committees on Affirmative Action and Diversity (AA&D), Academic Personnel Oversight (CAP), Faculty Welfare, and Privilege and Tenure Investigative (P&T).

AA&D and CAP support the proposed revisions. P&T and Faculty Welfare recommend modifying Section F (Free Speech and Academic Freedom) of the Presidential Policy, and P&T reiterated their previous recommendations on APM 015.

Presidential Policy

P&T thinks Section F “is not sensitive to the issues and beliefs that can arise on a college campus—particularly in the humanities field,” and notes that “there is no reference to hate speech or previous court cases that have defined hate speech.” In addition, P&T thinks the final sentence of the section, which states that “freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws,” should reference state and federal laws to better define what is and what is not considered free speech.

Faculty Welfare points out that Section F specifies “faculty and other academic appointees, staff and students of the University of California,” but does not include people “providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California.” Faculty Welfare therefore recommends modifying section F to include “all stated campus community members” as defined in the overall policy.

APM 015

P&T reiterated its recommendations from the previous consultation on APM 015: “Lastly, members of [P&T] agree that there should not be a separate Sexual Violence Sexual Harassment (SVSH) Policy and that the information and text of the SVSH Policy should instead be included in the Nondiscrimination and Affirmative Action Policy.... While SVSH are obviously serious and intolerable situations that are seriously detrimental to the UC campuses climate and the well-being of UC personnel, we respectfully suggest that highlighting SVSH is short-sighted given the recrudescence of other discrimination and harassment incidents.”

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in cursive script that reads "Rachael E. Goodhue".

Rachael E. Goodhue
Chair, Davis Division of the Academic Senate
Professor and Chair, Agricultural and Resource Economics

Enclosed: Davis Division Committee Responses

c: Edwin M. Arevalo, Executive Director, Davis Division of the Academic Senate
Hilary Baxter, Executive Director, Systemwide Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate

December 9, 2016

RFC: Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and Additional Revisions to APM 015

The committee on Affirmative Action and Diversity reviewed the Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and Additional Revisions to APM 015 and has no comments on the overall changes at this time. The committee would like to point out one typo on page 6 of 10 in the Academic Freedom section. In the second paragraph, third line, change “provison” to “provision.”

CAP Oversight Committee

December 18, 2016 1:48 PM

The Committee on Academic Personnel (CAP) has reviewed the revisions to the UC Policy – Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment document, and associated changes to the Faculty Code of Conduct

(APM 015, Part II, article C.5)

CAP finds the revisions adequate and appropriate in addressing recent amendments to the California Fair Employment and Housing Act (FEHA) and the Office of Federal Contract Compliance Programs (OFCCP) Pay Transparency Rule.

CAP does not foresee any untoward consequences of these revisions, and has no suggestions for changes.

Committee on Privilege and Tenure – Investigative Subcommittee
Request for Consultation Response: Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment

The Privilege and Tenure – Investigative Subcommittee has reviewed the proposed Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment and would like to submit the following comments including several concerns regarding the Free Speech and Academic Freedom section of the Policy.

As written, the Free Speech and Academic Freedom section of the Policy is not sensitive to the issues and beliefs that can arise on a college campus – particularly in the humanities field. The Subcommittee would also like to note that there is no reference to hate speech or previous court cases that have defined hate speech.

Additionally, the revised policy states that “freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.” However, the limits of freedom of speech and academic freedom are not clear and not enough information is provided to determine what is and is not free speech. The revised policy should reference federal and state laws and should include explanations as to what can and cannot be done. The Policy must provide more references and sources for additional information and guidance.

Lastly, members of the Subcommittee agree that there should not be a separate Sexual Violence Sexual Harassment (SVSH) Policy and that the information and text of the SVSH Policy should instead be included in the Nondiscrimination and Affirmative Action Policy. Members of the Subcommittee already made this suggestion in a previous request for consultation - the Systemwide review of the proposed revisions of APM 015 and 016 and Academic Senate Bylaw 336. While SVSH are obviously serious and intolerable situations that are seriously detrimental to the UC campuses climate and the well-being of UC personnel, we respectfully suggest that highlighting SVSH is short-sighted given the recrudescence of other discrimination and harassment incidents.

The Investigative Subcommittee appreciates the opportunity to review and provide feedback on this item.

November 28, 2016

RFC: Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and Additional Revisions to APM 015

In general, the committee on Faculty Welfare does not foresee issues in regards to faculty welfare, but would like clarification on item III section F of the policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment and how it relates to the rest of the document.

The proposed revisions seem to be broadening the scope of the policy by including the following changes in item I, Policy Summary: “The University prohibits discrimination against or harassment of any person employed; 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](#) with the University of California.” But, item III section F only specifies “faculty and other academic appointees, staff, and students...”

Since the overall policy expanded to include a wider range of the campus community, the committee recommends clarifying item III section F to include how Free Speech and Academic Freedom impacts all stated campus community members.

January 11, 2017

Jim Chalfant
Chair, Academic Council

RE: Systemwide Senate Review: Presidential Nondiscrimination Policy and APM 015

Dear Jim,

The Executive Board of the UCLA Academic Senate discussed Presidential Nondiscrimination Policy and Academic Personnel Manual (APM) APM 015 at its meeting on December 8, 2016. The Executive Board solicited comments from the standing committees of the Senate, as well as the Faculty Executive Committees, to maximize faculty feedback; the individual responses from our various committees are available [online](#).

The committees were supportive of the proposed language and the policy, in general. However, the [College FEC](#) raised concerns about the UC's ability to enforce the policies with independent contractors, such as research done off campus. Where does UC's liability end? For example, how would you enforce all the staff hired for a football game? Who is in charge of enforcing these policies?

Additionally, members asked for clarification and that specific definitions be included for the concepts of "volunteer" and "timely." What is considered "timely" both in terms of reporting and in terms of response?

The Executive Board appreciates the opportunity to opine and has no additional suggestions.

Please feel free to contact me should have any questions.

Sincerely,



Chair, UCLA Academic Senate

cc: Hilary Baxter, Executive Director, Systemwide Academic Senate
Leo Estrada, Immediate Past Chair, UCLA Academic Senate
Sandra Graham, Vice Chair/Chair-Elect, UCLA Academic Senate
Michael LaBriola, Principal Policy Analyst, Systemwide Academic Senate
Linda Mohr, Chief Administrative Officer, UCLA Academic Senate
Shane White, Vice Chair, Academic Council



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January 10, 2017

JIM CHALFANT, CHAIR, ACADEMIC COUNCIL

Re: Proposed Revisions to Presidential *Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment* and APM 15

The proposed revisions to the *Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment*, and related proposed technical revisions to APM 015, were distributed to the standing committees of the Merced Division of the Academic Senate and the school executive committees.

The Committee on Academic Personnel (CAP) and the Committee for Diversity and Equity endorsed the policy. CAP noted that the policy was well-crafted, effectively balancing the protection of free speech, academic freedom, and the prevention of harassment in the workplace. A number of committees appreciated the opportunity to opine but had no comment.

We thank you for the opportunity to opine.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Amussen".

Susan Amussen, Chair
Division Council

CC: Divisional Council
Hilary Baxter, Executive Director, Systemwide Academic Senate
Laura Martin, Executive Director, Merced Senate Office

ENC (4)



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
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DYLAN RODRIGUEZ
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January 10, 2017

Jim Chalfant, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Presidential Nondiscrimination Policy and APM 015 (Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment)

Dear Jim,

This policy has been reviewed by relevant committees in the UCR Division of the Senate, and the responses are as follows:

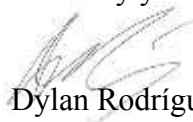
The Committee on Academic Personnel unanimously approves the change with two recommendations: 1) that the definitions of key terms and grammatical inconsistencies in the two documents be revised for consistency and to avert the possibility of misinterpretation; and 2) that specific punctuations be revised in the section of APM 015 titled "Types of Unacceptable Conduct." The recommendations for #2 are as follows:

Types of Unacceptable Conduct

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, for any of the following reasons: 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.

The Committees on Rules and Jurisdiction, Faculty Welfare, Privilege and Tenure, and Charges approve the Proposed Revised Policy with no additional comment.

Sincerely yours,



Dylan Rodríguez

Professor of Ethnic Studies and Chair of the Riverside Division

CC: Hilary Baxter, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office



ACADEMIC SENATE
Santa Barbara Division
1233 Girvetz Hall
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(805) 893-4511
<http://www.senate.ucsb.edu>
Henning Bohn, Chair

January 8, 2017

To: Jim Chalfant, Chair
Academic Council

From: Henning Bohn, Chair
Santa Barbara Division

A handwritten signature in black ink that reads "Henning Bohn". The signature is written in a cursive style and is positioned to the right of the printed name and title.

Re: Proposed Revised Presidential Policy on Nondiscrimination and Affirmative Action
regarding Academic and Staff Employment and Proposed Revised Academic Personnel
Policy Section 015, The Faculty Code of Conduct (APM-015)

The Santa Barbara Division distributed the proposed revisions for review by relevant Councils and Committees. While some groups opted not to opine, all that responded were generally supportive of this effort to bring UC policy into consistency with State and Federal Law. The following suggestions were offered for the purpose of achieving greater clarity.

The Committee on Diversity & Equity (CDE) agrees that the proposed changes represent an appropriate expansion of the policy with improved language regarding harassment and increased compliance with Title VII (of the Civil Rights Act of 1964), but members were concerned about the lack of clarity regarding the corresponding campus implementation guidelines, although it is understood that each campus is to develop its own procedures. In addition, the committee recommends that the references to a "fair, timely, and thorough investigation" be more specific and should be uniform across all campuses. (The Policy on Sexual Violence & Sexual Harassment, for example, specifies an investigation period of 60 working days.) CDE also suggests clarification regarding the references to "medical condition (cancer-related or genetic characteristics)" in Section III-A of the presidential policy and Section II-C-5 of the APM. It was not clear to members if this means "including cancer-related or genetic characteristics" or if it applies only to these two situations. If the former, then CDE recommends the addition of the word "including," and if the latter, CDE recommends striking the phrase "medical condition" and the parentheses.

Members of the Council on Faculty Issues and Awards noted that the language in Section III.F. Free Speech and Academic Freedom (page 5 of 9) is ambivalent. The Council's understanding is that APM – 010 Academic Freedom protects faculty and does not extend to students. While the

first paragraph states the rights to freedom of speech for “faculty and other academic appointees, staff, and students of the University of California,” it is followed by a statement of academic freedom in the second paragraph and may be read to include all of the groups stated above. The Council recommends referencing the language in APM - 010 Appendix B for the freedom of scholarly inquiry of students and APM – 015 for scholarly and professional ethics of faculty. Overall the Council supports the revisions.

The Gevirtz Graduate School of Education Faculty Executive Committee recommends that the term “workplace” be better defined in the final version of the policy.

The Letters and Science Faculty Executive Committee commented that, as written, several of the policy definitions are too narrow (e.g., Discrimination, Harassment). The Committee suggested contextualizing these definitions, for example, by adding “for the purposes of this policy.” Consistent with its recommendation when reviewing the Report on Faculty Disciplinary Processes Related to Sexual Violence (March 3, 2016), under III(B), the Committee strongly urged the inclusion of “the Academic Senate” as a body that can receive and investigate complaints, and ensuring the independence of the EEO and Senate offices as investigative bodies. It was also suggested that “legitimately” be removed from III(F), as it is unclear who would determine such legitimacy, especially over course content, which is the instructor’s prerogative.



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January 12, 2017

Professor Jim Chalfant
Chair, Academic Senate
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200

SUBJECT: Review of Proposed Revisions to the Presidential Policy on Nondiscrimination
and APM 015, The Faculty Code of Conduct

Dear Jim:

The proposed revisions to the Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment, and APM 015, The Faculty Code of Conduct, were circulated to San Diego Divisional standing committees for review. There were no objections to the proposed revisions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kaustuv Roy".

Kaustuv Roy, Chair
Academic Senate, San Diego Division

cc: F. Ackerman
H. Baxter
R. Rodriguez

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Ruth Greenblatt, MD, Chair
David Teitel, MD, Vice Chair
Arthur Miller, PhD, Secretary
Jae Woo Lee, MD, Parliamentarian

January 13, 2017

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

Re: Review of the Draft Revised Presidential Policy & the
Nondiscrimination and Affirmative Action Policy

Dear Jim,

The San Francisco Division of the Academic Senate has reviewed the draft revised Presidential Policy and the Nondiscrimination and Affirmative Action Policy regarding Academic and Staff Employment. Our Equal Opportunity Committee (EQOP) focused its comments on Sections II (definitions) and III E (Affirmative Action Policy Text).

EQOP observed that Section II of the Proposed Revised Presidential Policy (Policy) does not include a definition of minorities that the Policy later mentions under Section III E. The Committee feels that a definition of minorities should be added to Section II, and any applicable reference in federal or state statute to this definition.

Furthermore, following Section III E, EQOP suggests adding links to the respective campus office responsible for developing its affirmative action plans.

Thank you for the opportunity to review this important Presidential Policy. If you have any questions on UCSF's comments, please do not hesitate to let me know.

Sincerely,



Ruth Greenblatt, MD, 2015-17 Chair
UCSF Academic Senate

Encl. (1)

CC: David Teitel, Vice Chair, UCSF Academic Senate

Committee on Equal Opportunity
Communication from the Chair

December 21, 2016

To: Ruth Greenblatt, Chair, Academic Senate
From: Linda Centore, Chair, Committee on Equal Opportunity
Cc: Todd Giedt, Executive Director, Academic Senate
Re: Comment on Systemwide Review:
*Proposed Revised Presidential Policy on Nondiscrimination and Affirmative Action
regarding Academic and Staff Employment*

Dear Chair Greenblatt,

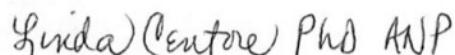
As requested, the Committee on Equal Opportunity reviewed the *Proposed Revised Presidential Policy on Nondiscrimination and Affirmative Action regarding Academic and Staff Employment* at its December 12 meeting. EQOP focused its comments on Sections II (definitions) and III E (Affirmative Action Policy Text).

The Committee noted Section II of the *Proposed Revised Presidential Policy* (Policy) excludes a definition of *minorities* the Policy later mentions under Section III E. The Committee's consensus was that the definition of *minorities* should be added to Section II, and any applicable reference in federal or state statute to this definition.

Following Section III E, the Committee suggested adding links to the campus office responsible for developing its campus' affirmative action plans.

Thank you for facilitating an opportunity for EQOP to comment on this Systemwide review.

Best regards,



Linda Centore, PhD, ANP



UNIVERSITY COMMITTEE ON AFFIRMATIVE ACTION, DIVERSITY,
AND EQUITY (UCAADE)
Amani Nuru-Jeter, Chair
Email: anjeter@berkeley.edu

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University of California
1111 Franklin Street, 12th Floor
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January 10, 2017

JAMES A. CHALFANT
ACADEMIC COUNCIL CHAIR

Dear Jim:

UCAADE submits the following comments in response to the proposed revisions to the Presidential Policy on Nondiscrimination and Affirmative Action Regarding Academic and Staff Employment and Academic Personnel Policy, Section 015, The Faculty Code of Conduct (APM 015):

Presidential Policy on Nondiscrimination and Affirmative Action

- UCOP might consider changing the proposed title, “Nondiscrimination, Harassment, and Affirmative Action in the Workplace”, to “Discrimination, Harassment, and Affirmative Action in the Workplace” so that there is consistent valence in the wording and to avoid any confusion. Nondiscrimination and Harassment have opposite valence. We propose that the title indicate that this is a policy on “Discrimination, Harassment, and Affirmative Action in the Workplace”, setting forth rules for protections against both discrimination and harassment and policies and procedures for violations of those protections.
- Section I: the policy states, “The University prohibits discrimination against or harassment of any person employed; 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 with the University of California.

The wording, “...applying for or engaged in...volunteer capacity” is awkward.

We recommend revising this language to read: “...University prohibits discrimination against or harassment of any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer service, or training program leading to employment with the University of California.”

- Section II: Gender is defined as “The sex of a person, including a person’s gender identity, and gender expression.” We strongly recommend changing this language. The differences between ‘gender’ and ‘sex’ are generally well accepted among both scholarly and lay communities. Sex refers to biological characteristics that are generally stable

across societies,¹ whereas gender is “a social construct regarding culture-bound conventions, roles, and behaviors for, as well as relationships”² between individuals. Hence, gender refers to the more social aspects of one’s identity, roles, and behaviors. Conflating sex and gender, especially in relation to discrimination and harassment might itself be considered a micro-aggression to the extent that it does not permit flexibility in individual expression.

The policy defines Gender Identity as “An individual’s personal sense of himself/herself as being male and masculine or female and feminine, or ambivalent.” We recommend changing this language to more accurately depict ‘gender’ identity, not conflate identity with sex, and to avoid dichotomous descriptors and instead acknowledge the fluidity of one’s identity. We recommend the following revision: “Gender Identity: An individual’s personal sense of self as being masculine and/or feminine, ambivalent, or androgynous”, or a variation thereof.

- Section II: To further distinguish between “discrimination” and “harassment”, we recommend adding a definition for “employment action”. Alternatively, including some examples in parentheses would be helpful in this regard. For example, “(e.g., termination of employment, demotion, poor performance evaluation)”.
- Section III A: As stated above, we recommend revising this language to read: “The University prohibits discrimination against or harassment of any person employed; seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer service, or training program leading to employment with the University of California.”
- Section III A: revise “medical condition (cancer-related or genetic characteristics)” to read “medical condition (e.g., cancer-related or genetic characteristics)”.
- Section III A: Revise to include volunteers. “This policy applies to incidents of workplace discrimination or harassment involving members of the University community, including faculty and other academic appointees, staff, student employees, residents, interns, volunteers, and non-student or non-employee participants in University programs (e.g. vendors, contractors, visitors, and patients).”
- Section III B: We recommend including specific policy references for complaints and investigations. For example, “When the University receives an allegation of discrimination or harassment, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected pursuant to APM 016, SBL 335, PACAOS 20, PPSM 12, and PPSM 14. If the investigation finds discrimination or harassment, the Affirmative Action/Equal Employment Opportunity office, in consultation with the appropriate administrators, will take appropriate remedial measures pursuant to SBL 336, PACAOS 100, PACAOS 110, PPSM 70.”

¹ Phillips SP. Defining and measuring gender: a social determinant of health whose time has come. *Int J Equity Health*. 2005; 4:11.

² Krieger N. Genders, sexes, and health: what are the connections – and why does it matter? *Int J Epidemiol*. 2003; 32:652-657.

- Section III D: we recommend, as above, revising “volunteer capacity” to read “volunteer service”.
- Section IV A reads, “will apply appropriate and consistent interpretations of this policy that are consistent with the policy.” What is meant by “this” policy? Does this mean interpretations of local policy consistent with University policy? This should be clarified.

Faculty Code of Conduct (APM 015)

- Part II C. 5: we recommend, as above, changing “volunteer capacity” to “volunteer service”.

We appreciate the opportunity to opine on the revised presidential policy.

Sincerely,



Amani M. Nuru-Jeter, Ph.D.
Chair, UCAADE

cc: Shane White, Academic Council Vice Chair
Hilary Baxter, Academic Senate Executive Director
UCAADE Members



UNIVERSITY COMMITTEE ON ACADEMIC FREEDOM (UCAF)
Hugh Roberts, Chair
hroberts@uci.edu

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December 15, 2016

**JIM CHALFANT, CHAIR
ACADEMIC SENATE**

**RE: SYSTEMWIDE SENATE REVIEW A PROPOSED REVISED PRESIDENTIAL POLICY
ON NONDISCRIMINATION AND AFFIRMATIVE ACTION REGARDING ACADEMIC AND
STAFF EMPLOYMENT AND APM 015**

Dear Jim,

UCAF discussed the proposed revised Proposed Revised Presidential Policy on Nondiscrimination and Affirmative Action regarding Academic and Staff Employment and Proposed Revised Academic Personnel Policy Section 015 at its December 13th, 2016 meeting. While we had no comment to make on the central concerns of the policy, we were concerned by some significant inaccuracies in the policy's characterization of the nature and significance of Academic Freedom and Free Speech rights on campus.

The proposed policy includes the following language:

"F. Free Speech and Academic Freedom

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

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums (see APM - 010, Academic Freedom and APM - 015, The Faculty Code of Conduct.)

However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws."

It is incorrect to suggest that Academic Freedom is a subset of free speech, or that it derives principally from the constitutional protections of freedom of speech and expression. It is also incorrect to suggest that freedom of speech is subordinate to federal and state law; where a court finds that the constitutional right to free speech conflicts with federal or state law, it is the law that must yield to the constitutional right.

We propose the following rewording of this section, which we think clarifies the relationship between freedom of speech and Academic Freedom as well as giving proper emphasis to the significance of Academic Freedom to the university's mission:

"F. Free Speech and Academic Freedom

The university recognizes the central importance of Academic Freedom to its mission. In addition, the faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution.

This policy is intended to protect members of the University community from discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of academic freedom and of the constitutionally guaranteed rights to freedom of speech and expression.

Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of the faculty or the educational, political, artistic, or literary expression of students in classrooms and public forums. No provision of this policy shall be interpreted in such a way as to restrict faculty or student conduct or activities that are in accordance with the provisions of APM - 010, Academic Freedom and APM - 015, The Faculty Code of Conduct."

Cheers,

A handwritten signature in black ink, appearing to read "Hugh Roberts". The signature is fluid and cursive, with the first name "Hugh" and the last name "Roberts" clearly distinguishable.

Hugh Roberts, Chair
UCAF



UNIVERSITY COMMITTEE ON ACADEMIC PERSONNEL (UCAP)
Fanis Tsoulouhas, Chair
ftsoulouhas@ucmerced.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

January 10, 2017

JIM CHALFANT, CHAIR
ACADEMIC COUNCIL

RE: PROPOSED REVISIONS TO THE PRESIDENTIAL NONDISCRIMINATION POLICY

Dear Jim,

UCAP discussed the proposed revisions to the Presidential Nondiscrimination Policy during its November 9th meeting and we have no objections.

We appreciate the opportunity to participate in this review. Feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Tsoulouhas". The signature is written on a light blue, textured background.

Fanis Tsoulouhas, Chair
UCAP



UNIVERSITY COMMITTEE ON FACULTY WELFARE (UCFW)
Lori Lubin, Chair
lmubin@ucdavis.edu

Assembly of the Academic Senate
1111 Franklin Street, 12th
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

December 14, 2016

**JIM CHALFANT, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Revised Presidential Nondiscrimination Policy and APM 015

Dear Jim,

The University Committee on Faculty Welfare (UCFW) has discussed the proposed revisions to the Presidential Policy on Nondiscrimination and APM 015. For clarity, we suggest two edits:

1. Multiple sections (a) I. Policy Summary, (b) III A & D, read in relevant part:
“The University prohibits discrimination against or harassment of any person ... applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment with the University of California....”
As written, the text suggests that the only training program participants the policy prohibits discrimination against are those whose program will lead to employment. We feel this is a misrepresentation of the goal of the edits, and suggest either clarifying the statement or removing “leading to employment” in each instance.
2. In Section III, F, the second paragraph contains several examples of Academic Freedom. For brevity and clarity, we suggest stating simply: “Consistent with these principles, no provision of this policy shall delimit Academic Freedom (see APM 010 (Academic Freedom) and APM 015 (Faculty Code of Conduct).”

Thank you for your consideration.

Sincerely,

Lori Lubin, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate



UNIVERSITY COMMITTEE ON RESEARCH POLICY (UCORP)
Isaac Martin, Chair
Email: iwmartin@ucsd.edu

University of California
Academic Senate
1111 Franklin Street, 12th Fl.
Oakland, California 94607-5200

December 9, 2016

JAMES A. CHALFANT
CHAIR, ACADEMIC COUNCIL

Re: Proposed Revised Presidential Nondiscrimination Policy and Revisions to APM-015

Dear Jim,

On Monday, November 14, the University Committee on Research Policy (UCORP) met and discussed the proposed revised presidential nondiscrimination policy and the related revisions to APM-015.

UCORP had no concerns. We support the proposed policy and revisions.

Regards,

A handwritten signature in blue ink, appearing to read "Isaac Martin".

Isaac Martin
Chair, University Committee on Research Policy

cc: Academic Council Vice Chair Shane White
Academic Senate Director Hilary Baxter
UCORP members