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*Chair of the Assembly of the Academic Senate
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December 20, 2023

**YVETTE GULLATT, VICE PRESIDENT & VICE PROVOST GRADUATE,
UNDERGRADUATE AND EQUITY AFFAIRS**

**CHERYL LLOYD, VICE PRESIDENT
SYSTEMWIDE HUMAN RESOURCES**

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

Re: Presidential Policy on Anti-Discrimination

Dear Colleagues,

Thank you for your October 16 letter responding to the Academic Senate's [comments and concerns](#) from the spring 2023 systemwide review of the proposed Presidential Policy on Anti-Discrimination.

We appreciate your efforts to address and clarify each of the concerns described in the Academic Council's letter, including: 1) the perceived redundancy of the policy with other UC and campus policies, including the Abusive Conduct Policy, the Sexual Violence and Sexual Harassment (SVSH) Policy, and the Policy on Discrimination, Harassment, and Affirmative Action in the Workplace; 2) the role and authority of the Local Implementation Officer (LIO); 3) the potential of the policy to harm academic freedom; and 4) the interaction of this policy with the Senate's role in investigating and adjudicating these matters when they include faculty.

Council voted to endorse the policy, noting reservations about past concerns not yet addressed. The vote was 11 to 1 with 4 members abstaining.

We understand the proposed policy responds to a request from President Drake for a systemwide analysis of the University's policies and procedures for addressing complaints of discrimination and harassment based on protected categories. We appreciate your clarification that the policy replaces the existing Policy on Discrimination, Harassment, and Affirmative Action in the Workplace, and that it would be infeasible to combine the new policy with the policies on SVSH and Abusive Conduct due to different applicable regulatory requirements and scopes. We also

appreciate confirmation that the new policy will not replace or supplant existing Senate disciplinary procedures in Academic Personnel Manual (APM) 015 and APM 016, meaning that no Senate faculty member can be disciplined for violating the policy without the benefit of standard privilege and tenure processes. Finally, the letter clarifies the limits of the LIO's authority and points to several robust academic freedom protections within the policy.

While these clarifications are appreciated, Council continues to hold reservations about the policy as it stands. Members found the policy lacking in detail about the mechanism for appointing the LIO and defining their role, including whether it will be a new position or an existing one with additional duties. Some remain unsure why the specific issues the policy aims to address cannot be resolved through existing policies. The Council continues to have a more general concern about the proliferation of policies—and in particular potentially or actually overlapping policies—which suggests a need to streamline the overall systemwide policy landscape.

Council also reiterates its previous request for future presidential policy proposals to include an analysis of financial and staffing impacts. We understand that this policy will fall under a new Systemwide Office of Civil Rights, but it remains unclear how this office will be replicated across the ten campuses and what new or different staffing and resource requirements each campus will be obligated to fulfill.

Lastly, the collaborative nature of a systemwide review involves substantial effort across the ten campuses. Initiating proposed policies with predetermined outcomes (in this case, actively working to establish the new Civil Rights Office at UCOP even before the new policy is finalized) may hinder constructive engagement in the policy-making process and discourage future feedback.

I appreciate your attention to these matters and thank you for providing the opportunity to share our perspectives. Please do not hesitate to contact me if you have additional questions.

Sincerely,



James Steintrager, Chair
Academic Council

Cc: Academic Council
Provost & Executive Vice President Newman
Chief Policy Advisor McAuliffe
Senate Division Executive Directors
Senate Executive Director Lin

Encl.



OFFICE OF THE PRESIDENT
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October 16, 2023

ACADEMIC COUNCIL CHAIR JAMES STEINTRAGER

Re: Senate Comments — Systemwide Review of the Draft Presidential Policy on Anti-Discrimination

Dear Chair Steintrager,

Thank you for your review and consideration of the new Presidential Policy on Anti-Discrimination. We write in response to the letter to Vice Provost Haynes, which indicated that the Academic Council declined to endorse the proposed Presidential Policy on Anti-Discrimination, primarily due to concerns about the perceived redundancy with other UC policies, the role and authority of the local implementation officer, the perceived harm to academic freedom, and the perception that the anti-discrimination policy creates an alternative path to discipline Academic Senate faculty members outside established Academic Senate processes.

We have carefully reviewed the comments from the Academic Council, as well as the broader set of comments submitted by Academic Senate committees. These concerns are important and, as set forth below, we believe they have been appropriately addressed. At the same time, we will monitor those concerns carefully as we move forward with implementation.

Relationship of the Presidential Policy on Anti-Discrimination to other university policies

The Academic Council expressed concerns and raised questions about the relationship of the proposed anti-discrimination policy to other existing policies, including the Abusive Conduct Policy; the Sexual Violence and Sexual Harassment Policy; the Policy on Discrimination, Harassment and Affirmative Action, and; the Faculty Code of Conduct, and asked for clarification about the overlap between them and the need for these distinct policies.

We understand the desire for clarification regarding how the proposed anti-discrimination policy fits with other university policies. The new presidential policy will replace the existing 2018 Policy on Discrimination, Harassment and Affirmative Action in the Workplace, which applies to all employees including faculty, as well as UC's Policies Applying to Campus Activities, Organizations and Students (PACAOS) 102.9, which is applicable to students. The new policy consolidates these existing policies into a single and consistent framework that is applicable to students, staff, faculty, and other academic appointees.

Based on questions raised by the Academic Senate and other commenters, there will be written guidance and clarification provided regarding the relationship between the proposed anti-discrimination policy and the sexual violence/sexual harassment and abusive conduct policies as well, including how allegations will be handled that may fall under more than one policy. As to whether these policies could be combined into a single policy, it would not be feasible to combine them because of different applicable regulatory requirements (*e.g.*, Title IX regulations impose some specialized procedures that may not be appropriate for all types of complaints) as well as different scopes (*e.g.*, the Abusive Conduct Policy generally does not apply to student respondents).

The Academic Council asked for information underlying the purpose and need for the proposed anti-discrimination policy. Over the last decade, there have been significant efforts to update and strengthen the university's response to sexual violence and sexual harassment and to comply with our associated obligations under Title IX of the Civil Rights Act of 1964, including a robust and detailed systemwide policy on Sexual Violence and Sexual Harassment. By contrast, the university currently has several different policies related to discrimination and harassment based on other protected categories (one for employees and staff, one for students, and a provision in the Faculty Code of Conduct prohibiting discrimination and harassment), along with separate policies at many of the campuses. Among these various policies, some do not define key terms such as harassment and discrimination or include detailed procedures for responding to complaints, and they are inconsistent in other areas such as the list of protected categories. The disparity among the policy approaches has raised concerns from across the university community, including from the Academic Senate.

Based on the recommendations of a multicampus, multidiscipline systemwide working group charged by President Drake, the proposed anti-discrimination policy resolves these concerns by providing a systemwide policy addressing discrimination based on protected categories, with clear definitions of prohibited conduct, including protections for speech protected by the First Amendment or academic freedom, and clear procedures for investigating allegations, which will provide greater clarity to all members of the university community. It also complies with our obligation under Title VI of the Civil Rights Act and California's Fair Employment and Housing Act to have a clear policy and to respond appropriately to discrimination and harassment based on protected categories.

Faculty discipline

The Academic Council expressed concern that the proposed anti-discrimination policy bypasses Academic Senate disciplinary procedures, including the privilege and tenure process, and represents a workaround of existing disciplinary procedures for faculty.

We want to emphasize and make clear that this proposed policy does not replace or supplant existing Academic Senate procedures for discipline as set forth in sections 015 and 016 of the Academic Personnel Manual (APM - 015 and APM - 016). No Academic Senate faculty member can be disciplined without a hearing before the Privilege and Tenure Committee, where Privilege and Tenure Committee members will hear witness testimony and make their own independent determinations about whether the anti-discrimination policy was violated. Consistent with this, the proposed policy states on page 9: "This Policy does not supplant disciplinary processes described in the APM or in the Academic Senate's Bylaws or regulations."

This approach is consistent with the Sexual Violence and Sexual Harassment Policy and the Abusive Conduct Policy, wherein investigations are conducted pursuant to the applicable policy, but if the investigation finds there was a violation of the policy, no discipline could be imposed without a full privilege and tenure hearing, at which the Privilege and Tenure Committee would be empowered to reach its own conclusions and would not be bound by the investigator's findings of a policy violation. To further clarify this point, the issuance letter will reconfirm that no Academic Senate faculty member can be disciplined without going through the privilege and tenure process.

Local implementation officer

The Academic Council expressed concerns about the authority of the local implementation officer and whether there were appropriate checks and balances on their authority.

The authority of the local implementation officer is consistent with the authority of the corresponding officials in both the Sexual Violence and Sexual Harassment Policy and the Abusive Conduct Policy. And as compared with the existing systemwide policies, the proposed Presidential Policy on Anti-Discrimination (1) cabins the discretion of the local implementation officer by clearly identifying the standard that must be met to establish discrimination or harassment, including specifically identifying conduct that will be protected as academic freedom and (2) provides for procedural protections such as the right of an advisor to be present during interviews and meetings and the provision of a procedure for closing matters after an initial assessment before conducting an investigation.

In addition to the limits built into the proposed policy, with respect to Academic Senate faculty specifically, as noted above, an important check on the local implementation officer's authority is that no Academic Senate faculty member can be disciplined without a privilege and tenure hearing. This right goes beyond mere appeal rights and enables the Privilege and Tenure Hearing Committee to make its own independent assessment of the evidence.

Academic freedom

The Academic Council expressed concerns that the proposed policy does not explicitly require consultation with the Academic Senate regarding issues around academic freedom.

The concerns about academic freedom were carefully considered, and whereas the existing systemwide nondiscrimination policies are silent on issues of academic freedom, the proposed policy contains robust protection for academic freedom. The policy drafters carefully considered the extensive feedback that the Academic Senate provided on the Abusive Conduct Policy related to academic freedom, and they adopted the final result of that process as the starting point for the Anti-Discrimination Policy. This includes incorporating considerations of academic freedom into the definition of harassment itself, and specifically providing that "no provision of this Policy will be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or the public commentary of an individual faculty member, other academic appointee, or the educational, political, artistic, or literary expression of students in classrooms and public forums."

The policy's approach of requiring the local implementation officer to consult with the "appropriate academic officer for relevant academic expertise" when academic freedom is

implicated in an investigation is consistent with the approach taken in both the Sexual Violence and Sexual Harassment Policy and the Abusive Conduct Policy. Campuses will have the opportunity to develop appropriate local procedures for considering academic freedom, including identifying who the “appropriate academic officer” would be on each campus and for different situations. In addition, there will be training for investigators that will include considerations of academic freedom and free speech to avoid infringing on these important rights.

Finally, as noted, before any discipline could be imposed, an Academic Senate member would have the opportunity to present their argument that any conduct was protected by academic freedom to the Privilege and Tenure Committee and have that determination made by their Senate peers.

We believe this approach provides appropriate consideration for academic freedom throughout the process, while ensuring Academic Senate involvement before any discipline can be imposed.

Other Comments

While this letter specifically addresses the concerns raised in the Academic Council letter dated May 1, 2023, we took great care in reviewing and addressing, as appropriate, all comments and concerns that arose during systemwide review. We look forward to working together to monitor and support the implementation of this policy across the system, especially given that this is a new policy and given the importance of the various concerns raised.

Sincerely,



Yvette Gullatt
Vice President for Graduate
and Undergraduate Affairs
Vice Provost for Equity,
Diversity and Inclusion



Cheryl Lloyd
Vice President
Systemwide Human
Resources



Douglas M. Haynes
Vice Provost
Academic Personnel
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cc: President Drake
Provost Newman
Vice Chair Cheung
Executive Director Lin