



Robert Horwitz
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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 3, 2022

**SUSAN CARLSON, VICE PROVOST
ACADEMIC PERSONNEL**

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

Dear Susan:

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

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

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

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

Unclear Policy Language

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

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

Free Speech and Academic Freedom

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

Policy Scope

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

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

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

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

Reporting & Accountability

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

Faculty Discipline

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

We appreciate the opportunity to comment and look forward to reviewing a revised draft of the policy. Please do not hesitate to contact me if you have additional questions.

Sincerely,



Robert Horwitz, Chair
Academic Council

Cc: Academic Council
Campus Senate Directors
Executive Director Baxter

Encl.



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 24, 2022

ROBERT HORWITZ
Chair, Academic Council

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

Dear Chair Horwitz:

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

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

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

Please see attached committee letters for more information.

Sincerely,



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

Enclosures

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

To: Ronald Cohen, Chair, Berkeley Division of the Academic Senate

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

Re.: Draft systemwide policy on abusive conduct/workplace bullying

Date: 1/18/22

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

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



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

January 7, 2022

CHAIR RONALD COHEN
Academic Senate

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

Dear Chair Cohen,

On December 3, 2021, the Committee on Privilege and Tenure reviewed and discussed the proposed UC Presidential Policy on Abusive Conduct and Bullying in the Workplace. Overall, the Committee supports the proposed policy and view it as a valuable effort to address concerns of abusive behaviors in the workplace.

P&T Committee members wish to raise questions about the scope of specific language in the proposal and about the conduct of formal investigations:

- Section III.C: Prohibited Conduct (p. 4). The policy provides examples of the types of behaviors that may be considered as Abusive Conduct/Bullying. Committee members were concerned about the breadth of such phrases as “spreading of misinformation and malicious rumors” (does the phrase refer only to information about the person being bullied?) and “circulating inappropriate or embarrassing photos, videos, or information” (the adjective “embarrassing” seems too subjective and problematically vague).
- Section V.D.2: Formal Investigation (pp. 9-10). The policy establishes guidelines by which formal investigations are to be conducted regarding Abusive Conduct/Bullying. The investigations seem entirely decentralized, and it remains unclear who will be conducting such investigations in the local venues and how (at least a rough) consistency will be maintained and precedent applied across cases. Committee members hope that further thought will be given to ensuring fairness in what seems to be a disparate apparatus for determining violations of the new policy and seeking resolutions.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sam Otter', with a long horizontal flourish extending to the right.

Samuel Otter, Chair
Committee on Privilege and Tenure

SO/pgs



January 21, 2022

PROFESSOR RONALD COHEN
Chair, 2021-2022 Berkeley Division of the Academic Senate

Re: DECC's Comments on the Draft UC Presidential Policy on Abusive Conduct and Bullying in the Workplace

The Committee on Diversity, Equity, and Campus Climate (DECC) appreciates the opportunity to review the Draft UC Presidential Policy on Abusive Conduct and Bullying in the Workplace. The Committee discussed the draft on November 18, 2021. We commend the effort to establish a systemwide policy on the University's responsibilities and procedures related to abusive conduct/bullying. This is a critical step toward improving equity, inclusion, belonging, and campus climate.

In general, the Committee's broad recommendations include the following:

- 1) The adoption of core principles, similar to those used in the development of the University's SVSH policy, to guide the implementation of this policy. Both the SVSH policy and this Presidential Policy on Abusive Conduct and Bullying in the Workplace share a common goal of addressing abusive behavior at the University. It may be helpful to consider reviewing the procedures and guidelines already established in the SVSH policy for the development of this new policy.
- 2) *Section V - Procedures* can benefit from further elaboration in a number of areas, including:
 - a. standards of evidence used for assessment
 - b. reporting
 - c. responding to reports
 - d. initial assessment of a report/immediate health and safety
 - e. resolution options
 - f. investigation report and outcome, including remedy and discipline
- 3) A centralized office with expertise in these issues, like the Office for the Prevention of Harassment and Discrimination (OPHD) at UCB, should be assigned the responsibility of policy implementation and compliance. OPHD already has trained staff with expert knowledge and extensive experience in responding to abusive conduct related to SVSH. Their

expertise can be effectively broadened to address other forms of abusive conduct and bullying. Identifying a centralized office for collecting reports and overseeing the entire process from reporting to assessment to final outcome helps ensure consistent communication and timely implementation of the policy. It ensures that cases are handled by experts knowledgeable in this area, and it facilitates effective documentation and record-keeping.

Thank you for the opportunity to review this Presidential Policy. Establishing a systemwide policy on abusive conduct and bullying affirms the University's commitment to promoting and sustaining a healthy working and learning environment. More importantly, it provides clear guidelines for reporting, investigating, and resolving issues related to abusive conduct and bullying.

Sincerely,

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

Lok Siu
Chair, Committee on Diversity, Equity, and Campus Climate

LS/lc



320 STEPHENS HALL
UNIVERSITY OF CALIFORNIA

December 13, 2021

CHAIR RONALD COHEN
Academic Senate

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

Dear Chair Cohen,

The Committee on Faculty Welfare reviewed and discussed the proposed draft of the UC Presidential Policy on Abusive Conduct and Bullying in the Workplace.

The draft policy addresses an important need, but lacks a clear and accessible path for reporting that considers the complexity of power structures inherent in interactions among people in different roles, including senate faculty, adjunct lecturers, permanent staff, postdoctoral scholars and students. Without a clear line of reporting, which specifies whom the complainant should contact and what that person's actions and responsibilities should be, the policy is meaningless. Each campus will need to specify the precise offices and lines of reporting, but the UC-wide policy should specify the outlines of procedures that should be followed by campuses. This is especially important in the case that a direct supervisor is involved in the bullying allegations, is not dealing with the allegations appropriately, or attempts to block access to the Ombuds office.

In addition, the list of reasonable actions that would not constitute bullying contains some actions that if carried out in the presence of a power differential or over an extended period of time could constitute a hostile working environment that amounted to bullying (e.g., engaging in assertive behavior, having a simple disagreement, failing to engage in social niceties). The addition of these items to the list of actions that do not constitute bullying will make the policy almost impossible to enforce, because many known accounts of bullying involve these and other seemingly innocuous actions, if the actions are considered without taking power differentials and patterns of interaction into account.

We appreciate the opportunity to weigh in on these matters.

Sincerely,

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

Thomas Leonard, Co-Chair
Committee on Faculty Welfare

A handwritten signature in black ink, appearing to read 'Laura Nelson'.

Laura Nelson, Co-Chair
Committee on Faculty Welfare

TL/LN/pgs



DAVIS DIVISION OF THE ACADEMIC SENATE
ONE SHIELDS AVENUE
DAVIS, CALIFORNIA 95616-8502
(530) 752-2220
academicsenate.ucdavis.edu

January 18, 2022

Robert Horwitz
Chair, Academic Council

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

Dear Robert,

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was forwarded to all standing committees of the Davis Division of the Academic Senate. Three committees responded: Faculty Welfare (FW), Privilege and Tenure Investigative (P&T), and the Faculty Executive Committee of the College of Biological Sciences (CBS).

Committees support the proposed policy. P&T and CBS note that the "Policy Coverage" section does not explicitly mention students, but other areas of the policy suggest that students should be included. If students are indeed included, CBS notes that more guidance should be included for addressing "interpersonal issues arising in the classroom between students, if these issues rise to the level of abusive conduct." Similarly, CBS recommends that the policy further address potential electronic or online abuse, such as repeated abusive comments on ratemyprofessor.com or on teaching evaluations.

Lastly, P&T advises that the policy has not clearly demarcated the boundary that separates freedom of speech and academic freedom from abusive conduct/bullying. Though the policy does state that it will be "implemented in a manner that recognizes the importance of rights to freedom of speech and expression," details of such implementation should be more clearly defined.

The Davis Division appreciates the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Tucker".

Richard P. Tucker, Ph.D.
Chair, Davis Division of the Academic Senate
University of California, Davis

Enclosed: Davis Division Committee Responses

January 11, 2021

Richard Tucker

Chair, Davis Division of Academic Senate

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

Dear Richard:

The Committee on Privilege & Tenure -- Investigative Subcommittee reviewed the Request for Consultation (RFC) of the Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. Overall, the committee is in agreement with having a Presidential Policy regarding this issue.

The committee raised concerns about the definition of 'Workplace,' the description of the 'Policy Coverage,' and lack of clarification around freedom of speech and academic freedom within the policy that may warrant additional consideration and/or revisions.

By defining the space as 'workplace' it seems to convolute the potential various spaces that this policy may apply to. For example, the definition states "Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity..." however, does this include spaces such as on-campus residence halls? Using the term 'workplace' seems to undermine and potentially exclude places that the policy may be attempting to comprehensively apply to all university spaces. This definition may need further consideration.

Secondly, the committee, specifically feels that the 'Policy Coverage' description should explicitly state that this policy applies to students. The policy refers to students later in the document, but it is not explicitly stated here and it should be if the policy also applies to students.

Lastly, the committee was concerned that policy has not made a clear demarcation of what is freedom of speech and academic freedom from what violates university policy.

Thank you.



Catherine VandeVoort

Chair, Committee on Privilege and Tenure – Investigative Subcommittee

January 10, 2022

Richard Tucker
Chair, UC Davis Division of the Academic Senate

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

Dear Richard,

The Faculty Executive Committee of the College of Biological Sciences has reviewed the request for consultation regarding the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace. We found some provisions of this policy vague – in particular, it is unclear if this policy applies to all members of the university community including students. Students are not mentioned specifically as a group, or as complainants or possible abusers/bullies (the language used is “University employees, unpaid interns, volunteers, and independent contractors”). On the other hand, Student Judicial Affairs is listed as a reporting unit in V.A.1., which suggests that this policy may be expected to apply to students. If so, it should provide some guidance for addressing interpersonal issues arising in the classroom between students, if these issues raise to the level of abusive conduct. The definition of electronic or online abuse is also too vague. For example, would repeated and coordinated rants on rate-my-professor.com be considered bullying behavior? What about teaching evaluations, where students can make anonymous and abusive (and occasionally sexist) comments about faculty? More clarity about the boundaries of what constitutes “abusive conduct” would reduce the chance of bias in the application of this policy.

With this exception, we approve this proposal and have nothing to add. We appreciate being consulted on this proposal.

Artyom Kopp
On behalf of the CBS Faculty Executive Committee

January 6, 2022

Robert Horwitz, Chair
Academic Council

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

Dear Chair Horwitz,

The Irvine Division discussed the draft presidential policy on abusive conduct/bullying in the workplace at its January 4, 2022 Cabinet meeting. The Committee on Privilege and Tenure (CPT) and the Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) also reviewed the policy. Feedback from those committees is attached for your review.

Members agreed that the draft policy is a good first attempt to make the UC a more positive work environment by responding to behavior that is neither discrimination nor sexual violence/sexual harassment and therefore already covered by other policies. Members felt the examples of what constitutes abusive conduct/bullying – and what does not – were helpful and appreciated that the policy covers both situations where the respondent is a person with relative power or authority and peer-to-peer interactions. At the same time, they felt that there should be clear procedures for reporting abusive conduct/bullying outside of the supervisor or manager chain, such as when the supervisor or manager is the respondent.

One member noted that the policy focuses on individual acts rather than systemic or structural abuse and suggested this should be addressed, as well. Another member raised a concern about vague language throughout, noting that terms such as “inappropriate” or “legitimate” could be interpreted subjectively; for example, who decides what “legitimate” free speech is? There was also some concern that the policy could be used as a cudgel against others or a way for the administration to deal with faculty it believes are difficult. Members, therefore, felt the policy should clearly address consequences for false claims and due process rights for respondents.

The Irvine Division appreciates the opportunity to comment.

Sincerely,



Joanna Ho, Chair
Academic Senate, Irvine Division

Encl: CPT, CFW memos

Cc: Georg Striedter, Chair Elect-Secretary
Gina Anzivino, Interim Executive Director



December 15, 2021

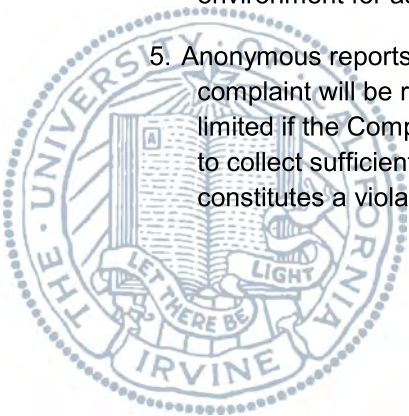
**JOANNA HO, CHAIR
ACADEMIC SENATE – IRVINE DIVISION**

**Re: Draft Presidential Policy on Abusive Conduct and Bullying in the
Workplace**

Systemwide Senate Chair Robert Horwitz has distributed for review a draft presidential policy on abusive conduct/bullying in the workplace. The proposed policy covers abusive conduct/bullying and retaliation by and against members of the university community in the workplace.

The Council on Faculty Welfare, Diversity, and Academic Freedom (CFW) discussed this issue at its meeting on November 9, 2021, and would like to submit the following comments:

1. "Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are in peer-to-peer interactions." Could this also include a person whose title does not put them in power or authority over others but they engage in hostile behavior?
2. The basis for determining whether the conduct at issue rises to the level of Abusive Conduct/Bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the Workplace given the totality of the circumstances. Although the intention of the person responsible for the conduct may be considered, it is not determinative. Many may disagree as to what is offensive, it may be based on characteristics of the individual(s) to which the bullying is targeted. This issue may be covered by "totality of the circumstances." However, something written indicating that the totality of the circumstances includes the (likely) known stressors in an individual's life would be helpful.
3. This policy should be useful for department chairs. Even in the absence of status or power differentials, bullying does occur. One thinks that tenure is a shield against bullying, but tenure may embolden others to think they may not be held responsible for unacceptable behavior. This policy attempts to clarify a form of misbehavior that is sometimes overlooked because there is no obvious status difference between the parties, because sexual or racial and ethnic abuse have been more salient, or when the misbehavior is dismissed as "faculty politics."
4. This is a good first attempt at a necessary building block for helping make UC a positive work environment for as many people as possible.
5. Anonymous reports and allegations from third-party Reporters not directly involved in the complaint will be reviewed and may be investigated. The response to such reports may be limited if the Complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy.



The complainant should have complete agency in this matter and the University should not be able to pursue the complaint in the absence of an expressed desire. This is a conundrum that also affects reports of sexual harassment. There is a tension between the complainants right to privacy and independence, but if the institution sees a larger pattern it may nonetheless want to intervene. There may not be a resolution to this issue, but it is worth discussing.

6. The policy states that "Individuals should report conduct believed to constitute Abusive Conduct/Bullying to their manager, any supervisor, or applicable University office." Would allegations of bullying rise to the level of a "duty to report?"

Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Dalton', with a large, stylized loop at the top.

Terry Dalton, Chair
Council on Faculty Welfare, Diversity, and Academic Freedom

C: Gina Anzivino, Associate Director
Academic Senate

Matthew Hurley, Cabinet Analyst
Academic Senate

December 17, 2021

**JOANNA HO, CHAIR
ACADEMIC SENATE, IRVINE DIVISION**

RE: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace

At its meeting on December 13, 2021, the Committee on Privilege and Tenure (CPT) discussed a draft presidential policy on abusive conduct/bullying in the workplace.

Members felt the policy was a positive step toward responding to behavior that is neither discrimination nor sexual violence/sexual harassment and therefore not covered by other policies. They also found the examples of what constitutes abusive conduct or bullying useful. Finally, members appreciated that the policy will be implemented in a manner that recognizes the importance of rights to free speech and academic freedom.

Some members felt that additional clarification of what constitutes the “workplace” might be useful. The policy defines the workplace as “any space where university business is conducted or occurs, in connection with university employment and/or in the context of a university program or activity.” One member raised the question of whether abusive conduct/bullying or retaliation against a colleague while serving on an external grant panel, for example, would be covered under this policy. The committee recognizes, however, that the policy cannot address all possible scenarios.

The Committee on Privilege and Tenure appreciates the opportunity to comment.

Sincerely,



Irene Tucker, Chair
Committee on Privilege and Tenure

C: Gina Anzivino, Associate Director
Julie Kennedy, CPT Analyst
Matthew Hurley, Cabinet Analyst



January 10, 2022

Robert Horowitz
Chair, UC Academic Senate

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

Dear Chair Horowitz,

The Divisional Executive Board, councils, and committees appreciate the opportunity to review the Proposed Presidential Policy on Abusive Conduct & Bullying in the Workplace. The Executive Board reviewed the proposal and divisional council and committee feedback at its meeting on January 6, 2022.

Executive Board members applauded the effort and intent of the proposed policy. Members appreciated the intention to protect the institution and hold individuals accountable. They noted the need for ways to counsel people demonstrating bad behavior. Departments often have a hard time holding faculty accountable and there appears to be little recourse.

However, they expressed concerns that this proposal was an inelegant solution that would neither reduce incidents of bullying nor increase the speed or likelihood of remediation. Moreover, members concluded that the proposed policy introduced problematic aspects: it threatened shared governance by mandating a non-Senate process of adjudication, seemed to exceed state law requirements by focusing on investigations, and lacked sufficient provisions for addressing cultural differences and misunderstandings. Some members noted that most of the behaviors cited in the proposal are already prohibited by the faculty code of conduct.

The Executive Board voted unanimously to not endorse the proposed policy as written based on its limitations, including lack of attention to early detection/intervention and to ways to reduce or remedy bullying on campus. This is particularly of concern in the case of bullying of staff by faculty, where unequal power can pose a barrier to both reporting and remediation. Executive Board suggested that policy revisions make explicit the manner in which the policy applies to this (unfortunately) common kind of bullying, versus only cases of faculty bullying other faculty.

Sincerely,



Jody Kreiman
Chair
UCLA Academic Senate

Encl.

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

UCLA Academic Senate
Committee on Diversity, Equity & Inclusion

December 9, 2021

To: Jody Kreiman, Chair
Academic Senate

Re: **Draft Presidential Policy on Bullying and the Workplace**

Dear Chair Kreiman,

At its meeting on December 6, 2021, the Committee on Diversity Equity and Inclusion (CODEI) reviewed and discussed the Presidential Policy on Bullying and the Workplace.

Committee members were generally supportive of current policy. There are multiple items which the committee would like to comment on before moving forward:

- The committee would like to be involved in the implementation and particularly with the faculty code of conduct and the degree that behaviors, such as language, are to be pre-controlled.
- The policy has created an unclear meaning of terms. CODEI encourages clarity in the text itself, and that upon edits there be a conscious distinction of where and what situations implicate the concept of bullying. The current definition is not specific enough to bullying in this situation.

Thank you for the opportunity to review and comment on this policy. If you have any questions, please do not hesitate to contact me at reynaldo@chavez.ucla.edu or the Committee on Diversity, Equity, and Inclusion Analyst, Lilia Valdez at lvaldez@senate.ucla.edu.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reynaldo Macias", with a stylized flourish at the end.

Signature Needed

Professor Reynaldo Macias, Chair
Committee on Diversity, Equity and Inclusion
UCLA Academic Senate

December 17, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Sandra Graham, Chair 
Committee on Privilege and Tenure

Re: (Systemwide Senate Review) Proposed Systemwide Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meetings on November 18, 2021 and December 2, 2021, the Committee on Privilege and Tenure (P&T) had an opportunity to discuss the proposed new systemwide Policy on Abusive Conduct/Bullying in the Workplace. Given that California law now requires that employers include “prevention of abusive conduct” as part of their “interactive training and education regarding sexual harassment,”¹ Committee members appreciate the intent of the policy, but have several concerns.

A principal concern is that the proposed systemwide policy goes far beyond training and education for prevention purposes, and mandates a specific formal investigation and adjudication process. This effectively removes the Senate from review of faculty conduct, a violation of one of the core faculty rights under shared governance. The policy should specify instead that investigation and adjudication of conduct under the policy will fall under existing conduct policies for faculty and staff. The policy also gives no consideration to resources for the described investigation process.

Apart from the investigation sections of the proposed policy, the Committee appreciates the effort to provide definitions of “abusive conduct” and “bullying.” Insofar as it might be helpful to have a policy providing further definition of bullying and abusive conduct, the Committee was concerned that words and phrasing in the proposed policy for “unallowable” conduct go beyond the definition in the California Code, which reads as follows:

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

¹ See [Cal.Govt.Code section 12950.1](#)(a)(1)(2); (h)(2).

² Ibid. §(h)(2).

The policy's expanded definition adds words with variable definitions, some of which could even invite a form of discrimination based on how different individuals might interpret them. Some examples include:

- civility³
- respect
- cohesive (could conflict with coerced agreement)
- honor compliance (to what or whom?)
- intention (who defines it and decides when it matters?)
- gestures
- yelling, screaming
- frighten (what about cultural misunderstanding?)
- teasing and practical jokes
- personal space

The Committee also found that some of the items listed as conduct that is “allowable” under the policy could have variable interpretations:

- assertive behavior
- a simple disagreement (does this mean complex disagreements are not allowed?)

Additional comments:

- The “Scope” does not include students. Although the policy seems to be aimed as a “workplace” policy for employees, students are often also employees. The policy should specify that when students are employees, they are responsible to follow this policy.
- Members suggested that the policy could clarify the academic freedom exception by specifying that comments about scholarship, different approaches to curriculum, opposing opinions about policy issues, or academic achievement are permissible, even if the content is considered insulting by the recipient and even if delivered passionately, but comments about a person’s character are not permissible, even if delivered quietly. These are mentioned in the “allowable” list, but without qualification.
- Section III.E mentions academic freedom in the title, but not in the paragraph body.

Thank you for the opportunity to review the proposed revisions.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
 April de Stefano, Executive Director, Academic Senate
 Shane White, Immediate Past Chair, Academic Senate
 Members of the Committee on Privilege and Tenure
 Marian M. Olivas, Principal Policy Analyst, Judicial Committees

³ See, for example, the [Academic Council’s statement on civility \(2015\)](#)

December 16, 2021

To: Jody Kreiman
Chair, Executive Board

Re: **Systemwide Review: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace**

Dear Chair Kreiman,

The Committee on Academic Freedom (CAF) reviewed the Systemwide Review: Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace proposal at its meeting on December 10, 2021.

Due to the range of views expressed by members, CAF unanimously approved a motion to provide feedback but not to endorse the proposal as written.

Members expressed support for the concept of the proposal. However, members differed on their views of the actual draft proposal.

Some members supported the draft policy as written. Others suggested that the policy should be applicable to everyone in all campus contexts, not only workplace (e.g. students often switch between employee and student roles).

Other members suggested that bullying involves a power dynamic, noting that the draft document seems to include bullying and hostile work environment, which could allow a possible slippage into protected/free speech issues. In other words, it is important to distinguish between disagreements/differences of opinion and bullying per se.

Some members also sought clarity on when an allegation was confidential versus anonymous, and to require a name so it is confidential.

Sincerely,

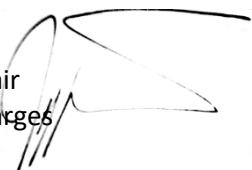
Susanne Lohmann
Chair, Committee on Academic Freedom

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

December 15, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Jeff Bronstein, Chair
Committee on Charges



Re: (Systemwide Senate Review) Proposed Systemwide Policy on Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

The Committee on Charges appreciates the opportunity to review the proposed new systemwide Policy on Abusive Conduct/Bullying in the Workplace. The Committee agrees that abusive conduct and bullying is a problem that needs to be better addressed. Our concerns are three-fold: (1) the role of the Academic Senate in formally investigating abusive conduct/bullying in the workplace; (2) the definition of abusive conduct/bullying, in particular the list of unallowed behaviors; and (3) questions about whether the proposed policy would adequately address the underlying causes of why abusive conduct/bullying persists.

First, the policy takes conduct that is normally subject to faculty review and investigation and seems to mandate a formal investigation process outside of the Academic Senate with procedural steps that mirror those of an SVSH investigation. **The policy as written therefore is in conflict with existing UC policy and UCLA bylaws¹** and breaches one of the core professional rights of the Faculty Code of Conduct that faculty have “the right to be judged by one’s colleagues, in accordance with fair procedures and due process, in matters of . . . discipline” (emphasis added). It is important to note that “fair procedures and due process” involve *more than the right to a disciplinary hearing*; they involve faculty- /University-approved procedures that “involve the faculty in participating in the investigation of allegations of misconduct.”² The conduct described by the proposed policy is already disallowed by several sections of the Faculty Code of Conduct (FCC) and therefore falls under the authority of the Academic Senate, which at UCLA means that the Charges Committee is the body that should investigate and find probable cause.³ Committee members do not agree that allegations of “abusive conduct” or “bullying” by faculty should be investigated outside of the Academic Senate processes, which is what the policy describes.

Second, the Committee nonetheless endorses the need for a policy that provides more specific language regarding bullying that is not necessarily tied to sexual harassment or discrimination as it is commonly understood. This policy makes an adequate start at creating such language, but the Committee finds that there are significant problems with the list of unallowed behaviors. For example, “teasing” is highly subjective and can be affectionate or comradely. Interpretation of acceptable personal space also varies widely, often among those from different cultural backgrounds.

Third, members believe abusive or bullying conduct persists because of serious gaps in reporting, documenting, and correcting faculty behavior that might become serious through its repetition or its consequences. In the Committees’ experience, the individuals most vulnerable to potentially abusive or bullying

conduct are typically not in an ideal position to file charges themselves, often meet resistance at the departmental level to correct a colleague, and, even if they consider filing charges, may not have access to sufficient documented information to establish violation of a policy. There is no system, especially for faculty, for documenting and correcting abusive or bullying conduct that has not yet been established as a pattern. Like violations of the FCC, the proposed policy is also not applicable unless the behavior rises to the standard of serious or egregious by its repetition. In short, the proposed policy is likely to raise expectations of better behavior, but is unlikely to address these gaps.

The Committee therefore strongly suggests that efforts to prevent abusive conduct and bullying might be more effective by (1) further refining a workable definition of abusive conduct / bullying; (2) developing a system for reporting and documenting concerns about “abusive conduct” or “bullying” behavior that includes warning and administrative correction for potential offenders (and will better document those who exhibit repeated patterns of abusive/bullying behavior); and (3) providing an avenue for redress and protections for those who report potentially “abusive conduct” or “bullying” behavior.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Committee on Charges
Marian M. Olivas, Principal Policy Analyst, Judicial Committees

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

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

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

³ The Faculty Code of Conduct applies to all Senate and non-Senate faculty who are not subject to a collective bargaining unit. The contract for Unit 18 lecturers incorporates the provisions quoted here into their contract.

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

Several other examples of the “Prohibited Conduct” (Section III.C, pp. 3-4) align with the “Types of Unacceptable Conduct” in the FCC, including these provisions:

- “Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons” (FCC§A.5).
- “Participating in or deliberately abetting disruption, interference, or intimidation in the classroom” (FCC§A.6).
- “Intentional disruption of functions or activities sponsored or authorized by the University” (FCC§C.1).
- “Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities” (FCC§C.4).

In addition, conduct in the proposed policy that is not specifically described by one of the FCC “types of conduct” could nonetheless still be considered a violation under the FCC since it also includes this general provision: “[o]ther types of serious misconduct, not specifically enumerated herein, may nonetheless be the basis for disciplinary action if they also meet the preceding standards.”

December 14, 2021

Jody Kreiman, Chair
Academic Senate

Re: (Systemwide Senate Review) Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

Dear Chair Kreiman,

At its meetings on November 9, 2021 and December 7, 2021, the Council on Academic Personnel (CAP) had opportunities to review the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace.

CAP supports the principle to promote and maintain a healthy working and learning environment at the University of California. However, members had serious concerns that the draft policy removes the Senate from the review of faculty conduct, which is a core professional right of faculty under shared governance. Members felt that existing policies, specifically the Faculty Code of Conduct ([APM-015](#)), adequately address abusive conduct/bullying in the workplace and that new policies mandating formal investigation independently from faculty evaluation were in conflict with the Faculty Code of Conduct. Some members also found the policy language to be vague and unclear, which may allow for loopholes or abuse.

CAP unanimously voted to support and endorse the recommendations from the Committee on Charges and the Committee on Privilege and Tenure and did not support the proposed Systemwide Policy Abusive Conduct/Bullying in the Workplace.

If you have any questions for us, please do not hesitate to contact me at csternin@ucla.edu or via the Council's analyst, Lori Ishimaru, at lishimaru@senate.ucla.edu.

Sincerely,



Catia Sternini, Chair
Council on Academic Personnel

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
Shane White, Immediate Past Chair, Academic Senate

December 13, 2021

To: Jody Kreiman, Chair
Academic Senate

From: Carson T. Schutze, Chair
Faculty Welfare Committee

Re: **Systemwide Senate Review – Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace**

Dear Chair Kreiman,

At its meeting on November 15, 2021, the Faculty Welfare Committee (FWC) reviewed and discussed the Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. Members resumed the discussion electronically and offered the following comments.

I. General Remarks

The FWC believes that such a policy is necessary and useful, so we support the initiative in principle. We are eager to see details fleshed out, particularly when it comes to implementation (reporting and enforcement), though perhaps these will have to be specific to each campus. We also have some suggestions and questions concerning details in the current draft, as specified below.

II. Suggestions Concerning Definitions

1. We suggest that the relevant portion of the definition of Abusive Conduct/Bullying in §II be reworded as follows:

Abusive Conduct/Bullying is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University, ~~and~~ **or** creates an environment that a reasonable person would find to be intimidating or offensive ~~and unrelated to the University's legitimate educational and business interests.~~

That is, we think interfering with a person's participation **OR** creating an intimidating/offensive environment would each on their own be sufficient to constitute bullying; bullying need not have both consequences in all cases. As to the final phrase, "unrelated to...", it was unclear what this was intended to modify (*conduct, environment, ...?*), but in any case, we do not see how somehow being related to the University's interests would exempt undesirable behavior from counting as bullying.

2. We suggest that the wording of the **Reasonable Person Test** in §II should match the wording in the definition quoted in the previous point. Currently the former refers to “hostile or offensive” conduct while the latter refers to “intimidating or offensive” environment.
3. §III.A, first paragraph, states “Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are peer-to-peer interactions.” It is unclear whether this is intended as an exhaustive list of bullying situations. We think it should not be, since it would exclude ones we consider a priori plausible, e.g., faculty bullying staff. We therefore suggest re-wording as “includes but is not limited to.”
4. Some of the examples listed in §III.C to illustrate what can constitute bullying seem excessively broad on their face, e.g. “Spreading misinformation and malicious rumors”—if the information/rumors are about a member of the University community, perhaps this would constitute bullying, but if they are the sort of thing one might find in a tabloid story, we suspect not. Perhaps specific examples would help to clarify the intent of some of these bullet points—what kind of misinformation would rise to the level of bullying?

In fact, spreading misinformation would generally be protected as free speech, and §III.E indicates the policy’s implementation will recognize freedom of speech and expression. But we suggest that a commitment that it will not impinge on intellectual debate is also needed, and that consideration be given to how the proposed implementation steps can ensure these commitments.

5. Because we suspect that some of the example behaviors listed in §III.C might not be construed as bullying within certain subgroups of campus employees, we suggest rewording the sentence introducing the list of bullet points as
“The following types of behavior could constitute Abusive Conduct/Bullying, defined in Section II of this policy, depending on the situation:”
6. In the penultimate paragraph of §III.C, we suggest deleting the word “necessarily”:

“...are an inevitable part of working life and do not ~~necessarily~~ constitute Abusive Conduct/Bullying”

Otherwise, the paragraph implies that these inevitable parts of working life COULD constitute bullying, which we do not think was the intent.

III. Questions About Groups Likely to be Impacted

1. It should be made clearer how this policy applies to students, if it does: only when they are acting in a UC employee capacity (e.g., TA, RA, food service, library worker)? And otherwise their behavior would fall under the Student Conduct Code? Does that Code define bullying the same way as this draft policy?
2. There is an apparent contradiction between the statement of “Scope” on the first page, which is limited to employees, versus §III.B., which refers to “members of the University community in the Workplace,” where Workplace is defined very broadly in §.II to include “any space where University business occurs...in the context of a University program or activity”—the latter would seem to include, e.g., student club or intramural athletic activities where no University employees are present.

IV. Concerns About Reporting and Enforcement

1. It will be vital for each campus to spell out clearly and comprehensively who bullying is to be reported to and who is responsible for dealing with it, and to make this information easy to find. (Perhaps at least the reporting ought to be coordinated through a single central office on each campus?)
2. §V lays out procedures for reporting, investigation, and resolution in considerable detail, but we suspect that some of these details are not consistent with the statements in §IV.E that discipline is covered by APM 015/016/150 (for academic personnel) and policies 62/63/64 (for relevant staff). For example, for regular faculty the APM specifies that the Committee on Privilege & Tenure is the body that holds hearings and recommends disciplinary action, not the “supervisor” (who would typically be the department chair), who “should address such behavior immediately” according to §V.A.3.

cc: Jessica Cattelino, Vice Chair/Chair-Elect, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Assistant Director, Academic Senate
Shane White, Immediate Past Chair, Academic Senate
Members of the Faculty Welfare Committee



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5200 NORTH LAKE ROAD
MERCED, CA 95343

January 14, 2022

To: Robert Horwitz, Chair, Academic Council

From: LeRoy Westerling, Chair, UCM Divisional Council

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

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was distributed for comment to the Merced Division Senate Committees and the School Executive Committees. The following committees offered several comments for consideration by Academic Council.

- Committee on Research (CoR)
- Committee for Equity, Diversity and Inclusion (EDI)
- Faculty Welfare and Academic Freedom (FWAF)
- Graduate Council (GC)
- Library and Scholarly Communication (LASC)
- School of Engineering Executive Committee (SOE EC)
- School of Social Sciences, Humanities and Arts Executive Committee (SSHA EC)

The aforementioned committee comments are briefly summarized below and are appended to this memo.

CoR's shares general concerns about the implementation of this policy and encourages clarification of the definitions and distinction between "bullying" and "abuse". CoR also noted its concerns about the potential for the policy to backfire and hurt those it was designed to protect. Since both of these problem behaviors require a particular power dynamic (e.g., the bullying/abuse cannot happen from a subordinate up), but the policy is rather unclear, people in positions of less power –often women and people of color -- may be criticized as abusive/bullying when simply asserting their rights.

EDI found the policy to be overly broad, lacking firm definitions and ignores relations of power. EDI is also concerned that the policy could be weaponized against marginalized groups, including women and faculty of color, and wonders how it interfaces with APM-15, 16 and 250. The committee offers additional comments and suggestions. They are appended to this memo, for your consideration.

FWAF generally supports the systemwide efforts to address abusive conduct/bullying and finds the

definition of bullying helpful. The committee discussed how the policy might related to Title VII, Title IX, APM 015 and UC Merced's anti-bullying policy.

GC offers comments regarding sections V.A, B. and E of the policy, specifically, GC encourages the adoption of a model similar to University College London's which enables anonymous reporting or reporting to a supervisor with contact details. GC also offers comments related to the availability of resources for timely investigations, especially for vulnerable constituents such as graduate students and postdoctoral scholars. Lastly, GC emphasizes the importance of the availability of immediate support for students and postdocs.

LASC recognizes and supports the importance of a healthy and civil workplace and deems this policy as an important step toward fostering a respectful work environment.

SOE EC faculty appreciate the attention given to the issue of bullying/abusive conduct. However, some faculty expressed skepticism about the enforcement of the policy and wonder if bullying could be addressed with effective enforcement of current policies. SOE EC also offers suggestions for revision of the proposed policy language in section III.C "Prohibited Conduct" (proposed edits are provided in **bold underlined font**).

- Encouraging others to act, singly or in a group, to bully or harass **(or defame)** other individuals
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate **or unstated** business purposes
- **Start rumors about one's professional performance without evidence.**

SSHA EC is broadly supportive of the goal of the policy and appreciates the attempt to delineate what is and is not covered by the policy; however SSHA EC also shares several concerns related to implementation of the policy locally, and echoes CoR's and EDI's concerns; specifically, how this policy could be weaponized against vulnerable populations, i.e., women and people of color.

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

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

CC:

Divisional Council and UCM Senate Office

Hilary Baxter, Executive Director, Systemwide Academic Senate

Michael LaBriola, Assistant Director, Systemwide Academic Senate

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON RESEARCH (CoR)
JASON SEXTON, CHAIR

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

November 19, 2021

To: LeRoy Westerling, Senate Chair

From: Jason Sexton, Chair, Committee on Research (CoR) *J. P. Sexton*

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

At their November 15 meeting, CoR discussed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace.

CoR has three essential concerns about the policy:

1. The lack of clarity around the definitions and distinction between “bullying” and “abuse”. Examples would be helpful.
2. The potential for the policy to backfire and hurt those it was designed to protect. Since both of these problem behaviors require a particular power dynamic (e.g., the bullying/abuse cannot happen from a subordinate up), but the policy is rather unclear, people in positions of less power – often women and people of color -- may be criticized as abusive/bullying when simply asserting their rights.
3. General concerns about the implementation of the policy. There are no specified mechanisms for reporting or enforcement, nor any specified consequences for people found to have engaged in bullying or abusive conduct.

We appreciate the opportunity to review.

cc: Senate Office



ACADEMIC SENATE, MERCED DIVISION
COMMITTEE FOR EQUITY, DIVERSITY AND INCLUSION

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

November 19, 2021

To: LeRoy Westerling, Senate Chair

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

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

The Committee for Equity, Diversity, and Inclusion (EDI) reviewed [the Proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace](#) and offers its comments below.

While the stated aim of this policy, producing a work environment free from bullying and abusive conduct, is laudable, as written it is overly broad, lacks firm definitions, ignores relations of power, and could easily be weaponized against marginalized groups, including women and faculty of color.

First, this policy as written applies to all university employees. However, as noted in the Section IV on "Compliance/Responsibilities," for faculty any disciplinary action is already governed under APM-15, -16, and -250. Unless this policy proposes revisions to the afore-mentioned APMs, it would have no effect on Senate faculty disciplinary processes and therefore is not proposing anything that would actually be actionable. If the administration believes that the kinds of conduct covered by this policy should be prohibited, then it should propose alterations to the relevant sections of the APM, rather than simply outlining an aspirational policy that cannot be enforced on faculty. Absent such alterations, this policy is essentially sterile with respect to faculty.

Second, the policy as written is lacking in definition in such a way that were it to be enforceable against faculty, it could easily be used in a discriminatory manner. The definition provided collapses distinctions between conduct that may be unpleasant or unwelcome and bullying, which, by definition, should require there to be an imbalance of power between the individuals involved. An Assistant Professor who uses "abusive and/or insulting language" in addressing, for example, the Chancellor may be acting in a way deemed "uncivil" by some, but given the inherent power imbalance, the faculty member cannot reasonably be said to be bullying the Chancellor. Any policy that seeks to address bullying must explicitly consider power differentials between the individuals involved, particularly given that this policy is intended to apply to all members of the university community. The potential for discriminatory application comes from the fact that there is a long history of marginalized people being labeled "hostile" or "uncivil" when they call attention to issues such as racism and sexism within the academy. As written, it is easy to imagine this policy being used against marginalized people who are seeking to call attention to their oppression in ways that make the guardians of a racist and sexist status quo uncomfortable.

Third, the policy lacks clear generalized procedure (and place) to report abusive behavior/bullying. Some form of flowchart or steps could be very helpful. In the case of two faculty, it seems to be defaulting to the department chair or the Dean. Ombuds is probable more appropriate in all cases. Furthermore, individuals with disabilities (including neurodiverse), especially when not ladder-rank faculty, are likely to have a harder time in reporting abusive conduct/bullying. There should be some intermediate process as well in cases in which bullying or abusive conduct might be emerging but it is still unclear if it will advance in that direction. In other words, there should be some form of record-keeping what could evolve into bullying without involving the defendant in such an early stage.

In addition, EDI offers more specific suggestions for the policy language below:

1. Section II, definitions: single acts are not constituting abusive conduct or bullying, should be revised. One single abusive conduct or bullying act can be enough to intimidate the compliant and affect its performance in the workplace.
2. Section II: Reasonable person test can be very relative.
3. Section III C: exceptions to abusive conduct/bullying (or reasonable actions) leave a large margin for individuals to get away with it. Almost anything can be carefully categorized as an exception.
4. Last paragraph in Section III: freedom of speech and expressive conduct in violation of law would benefit some example cases explicitly listed.
5. The policy should stipulate that employees are to receive training on abusive conduct/bullying.

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

cc: EDI Members
Fatima Paul, Executive Director, Senate Office
Senate Office

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ACADEMIC SENATE, MERCED DIVISION
COMMITTEE ON FACULTY WELFARE AND ACADEMIC FREEDOM
DAVID JENNINGS, CHAIR
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December 7 2021

To: LeRoy Westerling, Chair, Divisional Council

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

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

At its meeting on December 2, 2021, FWAF reviewed the [proposed Presidential Policy on Abusive Conduct/ Bullying in the Workplace](#). FWAF supports the systemwide efforts to address abusive conduct/bullying and finds the definition of bullying (page 2 of the policy document) helpful. FWAF discussed how the proposed policy might relate to Title VII, Title IX, APM 015, and the anti-bullying policy at UC Merced that has been in effect since 2017. We had the following comments and questions:

- 1) We find the delineation between the conducts subject to this policy and conducts that are addressed under Title VII and Title IX unclear. This may be intentional, to avoid suggesting the policy has too narrow a scope, but we would like to know how and who determines under which policy a conduct/complaint will be reviewed.
- 2) The proposed policy seems to extend the range conducts for which a faculty member can file a complaint beyond those currently codified in APM 015. Will APM 015 be revised to include bullying? We think a clarification on the relationship between APM 015 and this proposed policy would be beneficial.
- 3) UC Merced's anti-bullying policy applies to students. By contrast, the proposed policy focuses on "the Workplace" and precludes bullying that happens between students (except when they are employees or volunteers). If the proposed policy were enacted, would the UC Merced policy need to be amended to align with the systemwide policy? Is there a similar systemwide policy that protects students against bullying?

FWAF appreciates the opportunity to opine.

cc: Senate office

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OFFICE OF THE ACADEMIC SENATE
ERIN HESTIR, CHAIR, GRADUATE COUNCIL
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5200 NORTH LAKE ROAD
MERCED, CA 95343

DECEMBER 7, 2021

TO: LEROY WESTERLING, CHAIR, DIVISIONAL COUNCIL

FROM: ERIN HESTIR, CHAIR, GRADUATE COUNCIL

RE: PROPOSED PRESIDENTIAL POLICY ON ABUSIVE CONDUCT/BULLYING IN THE WORKPLACE

Graduate Council (GC) has reviewed the [proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace](#), and offers its comments below.

Item V.A.:

We would like to draw attention to the model of University of College London, which uses a Report + Support program that enables reporting anonymously or reporting to a supervisor with contact details. It provides reporters with the opportunity to speak with a faculty equity adviser if they are uncomfortable reporting to a supervisor. GC encourages adoption of a similar model using the faculty equity adviser program.

Item V.B:

Graduate students and postdoctoral scholars are particularly vulnerable constituents, especially those with marginalized identities and those depending on a supervisor for career progression such as work permits, visas and letters of recommendation. Investigation and resolution processes and procedures need to be timely, considering a postdoctoral contract may only be for 12 months. This means the responsible parties must be appropriately resourced to conduct timely investigations.

Item V.E.:

We also wish to emphasize the *support* aspect of the aforementioned program, which goes beyond reporting to providing support services, including internal and external resources, advisors, and education on behavioral change (such as bystander intervention). This is particularly important for students and postdocs who need immediate support while navigating reporting and maintaining career progression, and we feel the Employee Assistance Program and campus Ombuds offices are not sufficient confidential resources and are reactive only, as opposed to being proactive in reducing and stopping bullying behavior.

Graduate Council appreciates the opportunity to opine.

CC: Graduate Council
Senate Office

Enclosure: 0

UNIVERSITY OF CALIFORNIA, MERCED

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SANTA BARBARA • SANTA CRUZ

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

Tuesday, November 16, 2021

To: LeRoy Westerling, Senate Chair

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

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

LASC reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace.

LASC recognizes and supports the importance of a healthy and civil workplace. The proposed systemwide "Presidential Policy on Abusive Conduct and Bullying the Workplace" is an important step toward fostering a respectful work environment.

We appreciate the opportunity to opine.

Cc: Senate Office



SCHOOL OF ENGINEERING

University of California, Merced
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PHONE: 209-228-4411
FAX: 209-228-4047

November 19, 2021

To: UC-M Academic Senate Chair and Vice Chair
From: Catherine Keske (Chair), School of Engineering Executive Committee (SoE ExComm)

Re: Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

Dear Senate Chair Westerling and Vice Chair LiWang:

SoE ExComm thanks the Senate for opportunity to opine about the *Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace*. The Chair received input from 4 anonymous faculty. Two comments were collected and distributed by a SoE Department Chair; two comments were directly submitted to the Chair on the condition of anonymity. One individual stated he/she/they wished to remain anonymous due to on-going bullying and abusive conduct within his/her/their Bylaw 55 Unit.

In summary, most of those who contributed comments appreciated that attention is being given to the bullying/abusive conduct issue, which is perceived as prevalent at UCM. Some who submitted comments expressed skepticism about policy enforcement. Others questioned whether bullying would be better addressed by effective enforcement of current policies. One reviewer provided suggestions to modify the language of the proposed policy.

Comments are provided, below:

Comment #1

"The issue is that it is a presidential policy that appears to cover all roles at the university. Most of that could be handled by strengthening and enforcing the policies that already apply to those various roles. For faculty, the dean or department chair could act on reports of bullying using established policies and those policies could be modified to specifically address bullying, if they don't already.

"In addition to working with the policies we already have, I think it's important they create mechanisms for effectively hearing and addressing serious concerns with university practices.

"That's a positive approach rather than a broadly restrictive or punitive approach that could really get misused.

“Another issue with that policy is that we know some groups have greater latitude [sic] in how they can express themselves without being perceived as being aggressive or bullying (e.g. males vs. females). The reasonable person test allows for those biases to factor into adjudication of cases. The same applies to issues of race and ethnicity.”

Comment #2

“Our campus has a lot of bullying. It’s prevalent among Faculty and the Administration, who co-mingle a lot and sometime [sic] bully people together. Faculty come and go at Merced, probably because of all of the bullying. It’s hard to nail down the real bullies. The proposed policy is directionally OK, but the Administration needs to focus on improving faculty climate. Having a new Presidential policy can lead to more bullying. Bullying can be sophisticated. A bully might try to “pin down” someone with the proposed policy.”

Comment #3

While some sort of action to address bullying seems needed, the current well-intentioned draft policy seems too broad and too discretionary in its application and adjudication of cases. It has the potential to generate a large number of spurious cases, and stifle freedom of expression and genuine dissent that help make the university a better and more effective organization.

If anything, UC already has a culture of discouraging dissent, even within the context of academic and academic support planning, where questionable decisions proceed without the serious concerns of stakeholders being heard and addressed. Instead of a restrictive and punitive policy, I think what we need is to work on creating a culture where appropriate means of expressing dissent are described and encouraged, and robustly supported.

This has the potential to create a real mess. It allows third party complaints from people who did not suffer the abuse, there is no time limit for the complaints, it doesn't constrain the policy to certain frameworks such as when the person doing the bullying is in a position of power over the person making the complaint, and the "reasonable person" test is proposed but it does not discuss who the people are who will be making this judgement and how they are appointed.

Comment #4

On page 4 out of 12, the following edits are suggested as indicated by the track changes

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

Abusive Conduct/Bullying, defined in Section II of this policy, may include the following types of behavior:

- Persistent or egregious use of abusive and/or insulting language (written, electronic or verbal)
- Spreading misinformation and malicious rumors
- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats (including implicit threats), or insults

- Encouraging others to act, singly or in a group, to bully or harass (or defame) other individuals
- Making repeated or egregious inappropriate comments about a person's appearance, lifestyle, family, or culture
- Regularly teasing or making someone the brunt of pranks or practical jokes
- Inappropriately interfering with a person's personal property or work equipment
- Circulating inappropriate or embarrassing photos, videos, or information via e-mail, social media, or other means
- Making unwanted physical contact or inappropriately encroaching on another individual's personal space, in ways that would cause a reasonable person discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate or unstated business purposes
- Start rumors about one's professional performance without evidence.



SCHOOL OF SOCIAL SCIENCES, HUMANITIES AND ARTS

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To: Leroy Westerling, Chair, Merced Division

From: Susan Amussen, Chair, SSHA EC

Re: Proposed Presidential Policy on Abusive Conduct/ Bullying

The SSHA Executive Committee has reviewed the proposed policy on abusive conduct and bullying. We are broadly supportive of the goal: no one wants an abusive workplace. We especially appreciate the attempt to delineate what is and is not covered by the policy, but we have several concerns with the policy as drafted.

First, a primary concern is procedural. Much about implementation is left to the discretion of the campus. We have no confidence that UC Merced's administration can adequately respond to these issues.

In substantive terms, here are our concerns:

1. Abusive conduct is not the same thing as bullying, and the differences between them are significant. It may be useful to separate the two for purposes of the policy: here's what abusive behavior is, here is what bullying is.
2. In general, a one-time event should not be considered abusive; the document should state that except in extraordinary circumstances, repetition is a key component of both bullying and abuse.
3. Both abusive conduct and bullying are shaped by relative power relations (whether structural or physical): who says what to whom is often as important as what is said. *Lèse majesté* is generally not bullying.
4. More important, we see threat (and the ability to act on that threat) as central to bullying. While it is implicit in several definitions, it is only mentioned in two items in the list of prohibited behaviors. We recommend that the importance of explicit and implicit threats to bullying and abuse be more clearly delineated.

A focus on the power relations involved and implementation is important because both experience and multiple studies have taught us that women and people of color are often criticized for being abusive

when they challenge those in power. Women are considered aggressive when they act in ways that men do; people of color are branded as uppity. Those in authority will take energetic challenges as bullying. This is a policy that could be weaponized against vulnerable faculty, staff, and students. These concerns need to be uppermost as the draft policy is refined.



CHAIR, ACADEMIC SENATE
RIVERSIDE DIVISION
UNIVERSITY OFFICE BUILDING, RM 225

JASON STAJICH
PROFESSOR OF BIOINFORMATICS
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January 14, 2022

Robert Horwitz, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: (Systemwide Review) Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Dear Robert,

The Riverside Executive Council discussed the draft **Presidential Policy on Abusive Conduct/Bullying in the Workplace** at their January 10, 2022 meeting.

Members discussed concerns about the policy perhaps being activated without the appropriate administrative structures in place to ensure compliance and assessment thereof and being vague in terms of process. Others mentioned that the draft does not include passages regarding policy should students bully faculty.

I trust these comments and those attached from Riverside Divisional committees prove helpful.

Sincerely yours,

/s/ Jason

Jason Stajich
Professor of Bioinformatics and Chair of the Riverside Division

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



Academic Senate

COMMITTEE ON ACADEMIC FREEDOM

December 14, 2021

To: Jason Stajich, Chair
Riverside Division Academic Senate

From: Ivy Zhang, Chair
Committee on Academic Freedom

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

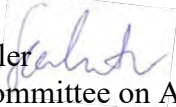
The Committee on Academic Freedom reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace and did not find any significant concerns regarding Academic Freedom. The Committee recommends that systemwide and campus-specific policies be as well aligned as possible, in order to avoid confusion that may give rise to disputes related to academic freedom.



COMMITTEE ON ACADEMIC PERSONNEL

December 14, 2021

To: Jason Stajich
Chair, Riverside Division Academic Senate

From: Sean Cutler 
Chair, Committee on Academic Personnel

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

CAP has evaluated the Draft Presidential Policy on Abusive Conduct/Bullying. The committee is very supportive of the proposal but did have a number of comments regarding the sections quoted below. CAP also noted that the proposal does not consider the consequences of non-compliance on the Faculty personnel review process. At present, CAP is not informed about disciplinary actions taken against faculty. As such, perpetrators of bullying or harassment can receive positive recommendations for career advancement, which seems like a substantial blind spot. CAP suggests that the consequences of non-compliance on Senate Faculty merit and promotion processes receive comment. Here are our additional comments:

Free Speech and Academic Freedom. The proposed policy is intended to protect members of the University community from abusive conduct/bullying, not to regulate protected speech. The proposed policy recognizes that freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violate federal, State, or University policies. (p. 2 of 12)

Comment: It is conceivable (and has probably actually occurred) that a federal, State, or University policy has conflicted with freedom of speech and/or with academic freedom. So in some cases implementation of the policy might conflict with protected speech.

Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are in peer-to-peer interactions. Accordingly, Abusive Conduct/Bullying behavior in violation of this policy is prohibited. (p. 3 of 12)

Comment: It does not seem true that abusive conduct/bullying is limited to situations when the person engaged in bullying has more or equal power or authority (a higher or equal standing in the organizational chart, as it were). Someone who has lower "relative power or authority" can engage in abusive conduct/bullying with respect to someone with more "relative power or authority." A professor can bully a Department Chairperson. A Chairperson can bully an Associate Dean, etc. The same holds true for non-academic organizational structures in the University. The abusive conduct/behavior should be prohibited regardless.



Academic Senate

COMMITTEE ON CHARGES

November 23, 2021

To: Jason Stajich, Chair
Riverside Division

Fr: Richard Stouthamer
Chair, Committee on Charges


Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

The Committee on Charges reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace at its meeting on November 17, 2021. Overall, the Committee is in support of the proposed policy with one additional comment. The Committee asks if the particular university policies, as noted in page 2 and 6 of the policy document, should be more clearly defined.



December 17, 2021

TO: Jason Stajich, Chair
Riverside Division of the Academic Senate

FROM: Peter Graham, Chair 
CHASS Executive Committee

RE: Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

The CHASS Executive Committee reviewed the Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace at the regular meeting on December 15, 2021. This is an important issue, and we are thankful that the University of California Office of the President is taking it seriously. Our main concern with this document is how it defines bullying, or rather what is “not bullying.”

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

Furthermore, the nature of bullying means that it can occur across circumstances, including that which is indicated in this document as not constituting bullying. That is, bullying can and does occur through performance appraisals, in the guise of “constructive criticism” or framed as “simple disagreements,” among others. Therefore, the “examples of reasonable actions that do not constitute Abusive Conduct/Bullying include but are not limited to” could provide language and a guide for how to defend abusive and bullying behavior and therefore should be removed or substantially qualified. A performance appraisal as such, for example, might not be bullying, but it can be used as an occasion to bully someone without any of the forms of behavior listed in the document as examples of forbidden behavior. Not all performance evaluations are free of bullying, even if they are free of instances of behavior explicitly listed by the document.

Furthermore, the document suggests that the implementers of the policy should be guided by a reasonable person standard. However, what counts as “reasonable” can vary by gender, race, rank, and other dimensions. We believe this portion of the document can be improved by taking into consideration that the reasonable person standard may take into account the reasonable perceptions of a member of a protected group under law in assessing whether the conduct at issue constitutes bullying under University rules and policies.

In addition to the “objective” approach to determinations of bullying provided by the reasonable person standard, as modified along the lines just suggested, whether an act or acts constitute bullying may also be established by reference to a prior course of conduct by the accused that permits a reasonable inference of an impermissible intent to bully or harass, regardless of whether the conduct at issue is facially neutral and non-discriminatory or targeted at an individual in a way that would lead a reasonable person to suffer mental distress. A subjective belief in the appropriateness of the conduct at issue or denial of bullying or harassment is not a valid defense against such charges under either standard of inquiry.

Part of what bullying does, in fact, is to play with what is considered “reasonable” and with the criteria that define what “reasonable” means, rendering “unreasonable” any claim against the form of behavior it condones, promotes and even imposes on individuals. In this sense, the document seems to not take enough into account this side of bullying. Defenses to charges of bullying can be advanced as a bad faith denial, or as a reflection of an honest subjective belief that conflicts with the substantive definition of and standards for determining an act of bullying. In short, bullying is not simply constituted by the forms of behavior enumerated in the document. The document should take a broader view with a better understanding of how to adjudicate instances of bullying informed by the implementation of reasonable person standards in other areas of policy and law as well as criteria for determining the assignment of impermissible intent informed by a reasonable perception standard for members of the relevant group.



3 January 2021

To: Jason Stajich, Chair
Riverside Division

From: Theodore Garland, Jr., Chair, Executive Committee
College of Natural and Agricultural Science

Re: [Systemwide Review] (Proposed Policy) Draft Presidential Policy --
Abusive Conduct/Bullying in the Workplace

The CNAS Executive Committee (EC) has reviewed this draft policy.

It is great that the UC is establishing an anti-bullying workplace policy -- but it seems that the definition of bullying is not very 'victim centered' -- who is the 'reasonable person' who decides if behavior is sufficiently severe, persistent, etc. Maybe this is written by lawyers so there may be a reason for this definition, but this reasonable person does not know why one incident would not be considered bullying -- if it was!

Also, implementation of the policy is left to the local Executive Officers and Responsible Officers. Where is the accountability of the UCOP? Will the "local management office that is responsible for monitoring, enforcing, and reporting policy compliance" report that information to UC and what will happen if they do not implement and enforce a policy?

Sincerely,

A handwritten signature in black ink that reads "Ted Garland".




Academic Senate

COMMITTEE ON FACULTY WELFARE

December 17, 2021

To: Jason Stajich
Riverside Division Academic Senate

Fr: John Heraty, Chair 
Committee on Faculty Welfare

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

The Committee on Faculty Welfare reviewed the Draft Presidential Policy on Abusive Conduct/Bullying in the Workplace at their December 14, 2021 meeting. The committee is fully supportive of the proposed policy but suggested there be a reasonable amount of time defined for reporting, not indefinitely.



Academic Senate

GRADUATE COUNCIL

December 16, 2021

To: Jason Stajich, Chair
Riverside Division

From: Don Collins, Chair
Graduate Council

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Graduate Council reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace at their December 9, 2021 meeting.

The Council felt that it would help to be very clear about who is covered under the policy – at the bottom of page 3 of 12 of the proposed policy it states: “B. Policy Coverage -- This policy covers acts of Abusive Conduct/Bullying and retaliation by and against members of the University community in the Workplace, including all University employees, unpaid interns, volunteers, and independent contractors”. Does this include all types of graduate students (e.g., those on fellowships)?

Concerns were raised that included how the charge of bullying can be used and weaponized by bullies, sometimes as a disguised form of retaliation. Another concern that was raised had to do with freedom of speech. Not unlike civility codes, this policy might be used to censor controversial research or teaching.



Academic Senate

COMMITTEE ON PRIVILEGE & TENURE

November 17, 2021

To: Jason Stajich, Chair
Riverside Division

Fr: James Tobias, Chair
Committee on Privilege & Tenure

Re: [Systemwide Review] Proposed Policy: Draft Presidential Policy -- Abusive
Conduct/Bullying in the Workplace

UCR's Committee on Privilege and Tenure has reviewed the proposed draft presidential policy on "Abusive Conduct/Bullying in the Workplace." The proposed policy stands out for clarifying inappropriate workplace conduct in the short term, as well as for its potential to contribute to a positive campus climate longer term.

Privilege and Tenure Committee members view this draft policy as well articulated with appropriate detail in respect to goals; the draft policy is concise without being overly prescriptive. The additional detail regarding specific types of problematic behavior (p. 4, III.C) in comparison to that given in the draft campus policy, is welcome. Abusive conduct can be hard to identify and articulate uniformly especially given the wide and diverse range of different kinds of work typical of a UC campus; further, since this policy may supervene campus policy in some cases, and in any case should be consistent with it, we feel it is crucial that the Presidential policy be as clearly formulated as possible. For both of these reasons, the committee appreciates the more extensive list of types of problematic conduct this draft document provides. We also appreciate the clarifications this document makes regarding its inter-articulation with relevant policies on SVSH and workplace discrimination.

Regarding the list of examples of problematic conduct on page 4, in the interest of clarity, we note that unwanted contact and inappropriate encroachment on personal space may be verbal as well as physical. So where the list of problematic conduct mentions "Making unwanted physical contact ...", we suggest that the list include an additional statement clarifying that "Making repeated and explicitly unwanted verbal contact or inappropriately encroaching on another individual's private life, in ways that would cause a reasonable person discomfort and unease" is abusive conduct as well. In short, we would like to see language in the policy that addresses harassment that may be more nuanced than the indeed unacceptable "use of abusive and/or insulting language" mentioned here.

Another suggestion regarding the conduct described as abusive has to do with the last example on the list identifying “sabotage or undermining a person’s work performance” as abusive conduct. In this case, “sabotage” seems like it would be very clear to observe, while “undermine” may seem hard to define. Just as importantly, bullying behavior does not only aim to obstruct someone’s ability to perform their work (and thus threatening an employee’s personal sense of professional wellbeing, their performance reviews, and their professional reputation); what’s more, bullying behavior can be aimed at *preventing* employees from receiving recognition for work they do. Here, then, we suggest that this final example regarding “sabotage” will benefit from additional detail if it is revised as follows:

“Sabotaging or undermining a person’s work performance; or engaging in a pattern of inappropriate or even obstructive workplace behavior prejudicial to or detrimental to employees’ ability to perform their work; or, engaging in inappropriate workplace behavior prejudicial or detrimental to employees’ receiving appropriate recognition for the work that they do.”

In closing, committee members note that in addition to inter-articulating this policy with policies on SVSH or discriminatory conduct, there may be additional policies or contracts which would come into play regarding abusive workplace conduct or bullying or with the reporting thereof. For example, union or other contracts may govern rights or responsibilities also at stake in the implementation of this policy, and we encourage the University, where feasible, to work with the full range of stakeholders to implement and uphold the very best version of workplace policies calling for ethical, equity-driven, and efficient places of work. We are concerned, for example, as much with international graduate student researchers’ abilities to not feel forced to take on additional unpaid labor for faculty as we are with faculty members’ ability to enjoy productive and creative research environments.

Thank you for the opportunity to comment on what appears to be an excellent draft of a policy that will be as timely as it is necessary.



December 13, 2021

To: Jason Stajich, Ph.D., Chair, Academic Senate, UCR Division

From: Declan McCole, Ph.D., Chair, Faculty Executive Committee, UCR School of Medicine

Subject: [Systemwide Review] Proposed Policy: *Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace*

Dear Jason,

The SOM Faculty Executive Committee has reviewed Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace. There was broad approval for the policy, but we offer the following feedback.

The policy should consider the “classic” bullying of faculty that may appear in forms of:

Maliciously tinkering with teaching assignments (whether assigning new lectures outside the lecturer’s area of expertise, or taking away lectures) in a way that is meant to interfere with the faculty performance or to create undue burden to the faculty.

Maliciously tinker with University service assignments (as above).

Maliciously tinker with faculty laboratory space assignment (creating undue burden to a faculty by restricting lab space, or maliciously assigning spaces that are inconvenient for the faculty to operate , or maliciously request the faculty to relocate to a new space or new office and the like).

Maliciously and repeatedly prevent/dismiss/interrupt the opportunity of a given faculty member to voice or express opinions at faculty meetings or at proper committee meetings.

Yours sincerely,

A handwritten signature in black ink that reads "Declan McCole".

Declan F. McCole, Ph.D.
Chair, Faculty Executive Committee School of Medicine



OFFICE OF THE ACADEMIC SENATE

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January 18, 2022

Professor Robert Horwitz
Chair, Academic Senate
University of California
VIA EMAIL

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

Dear Professor Horwitz,

The proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace was distributed to San Diego Divisional Senate standing committees and discussed at the January 10, 2022 Divisional Senate Council meeting. Senate Council endorsed the proposal to establish a systemwide policy on abusive conduct/bullying. Council noted that the establishment of such a proposal is long overdue and members were pleased to see this moving forward. Council offered the following comments for consideration to strengthen the proposed policy:

It was suggested that additional clarification could be added for the "reasonable person" standard, as well as further distinction between free speech and bullying. It was noted that while there seems to be a fairly well-understood legal framework around the "reasonable person" standard, the policy will need to be accessible to a potential victim of bullying who might not be informed about such a legal framework. In addition, it would be helpful to know whether academic freedom is being protected by other University policies or whether the proposed policy could be used for this purpose. Council would also like to see Systemwide and Divisional Senate involvement in the implementation and subsequent editing of the policy. Along with guidance from UCOP, the local processes would need to clearly state details such as who/which office would handle reports of abusive conduct/bullying behavior, who would conduct investigations, and who would bring charges against those accused of abusive conduct/bullying. Such involvement will also enable the Divisional Senate to review and reexamine similar processes involving privilege and tenure. There was also very strong agreement that once the policy is implemented, it should be regularly reviewed and updated.

The responses from the Divisional Committee on Academic Freedom, Committee on Diversity and Equity, Committee on Faculty Welfare, and Committee on Privilege and Tenure are attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tara Javidi", with a long horizontal flourish extending to the right.

Tara Javidi
Chair
San Diego Divisional Academic Senate



HUMAN DEVELOPMENTAL SCIENCES PROGRAM
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TO: Senate Council

FROM: Farrell Ackerman, Chair, Committee on Academic Freedom

RE: Abusive Behavior/Bullying Proposal comments

The CAF committee considered the **Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace**. We had a lively discussion about several aspects of the proposal, but I will largely restrict our comments to those that directly bear on issues of Academic Freedom. In general, it was recognized that there is value in developing a standard UC policy on an issue such as abusive conduct/bullying that does not fall clearly into the domains of SVSH and Discrimination, Harassment, and Affirmative Action in the Workplace. It was noted that the listing of example instances of Prohibited and Permitted conduct was very helpful and could assist in providing the flavor for the types of intended prohibited and permitted conduct. On the other hand, despite these lists there are inevitable questions that arise concerning definitions of particular terms in the proposal and the criteria for identifying aspects of the prohibited behaviors.

Here are some specific comments organized in their sequence of presentation in the document. The policy summary begins with the following guidance concerning implementation:

This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies.

While we concur with traditional views that Academic Freedom is not limitless, it is more difficult to define its bounds than a simple allusion to University policies suggests. What specific University policies are at issue and do they appropriately restrict Academic Freedom? Unless this is explicitly presented, it is difficult to know whether Academic Freedom is being protected with respect to some University policy or whether the cited policy itself needs to be better considered in terms of its protection of Academic Freedom.

Concerning the reasonable person standard, this seems like a commonsensical criterion: this, as I recall, is similar to the standard for constraining misleading advertising as applied by the Federal Trade Commission (FTC). The question raised, however, is how the reasonable person standard is implemented. The way this is ascertained by the FTC is by getting statistical responses to questionnaires formulated to reflect the case at hand: majority or plurality of responses that an ad is misleading, or here, possibly, that abusive conduct/bullying has occurred is not the standard, but something like 1/3 of the relevant responses is, if I remember right.

Whatever the actual numbers, the question is who evaluates the cases for the reasonable person standard and how is this determined?

Concerning restriction to the workplace, we wonder about the following scenario, which on the face of seem not to fit directly into the definition of the workplace as given. If a respondent lives in the same neighborhood as the reporter and only engaged in bullying behavior in off-campus premises, but this is suspected to have on-campus consequences, would this fall within the intended scope of the proposal?

In section III A of the Policy Statement, the phrase “disruptive behavior” is specified. What does this mean and what is it intended to include beyond what seems obvious: Is this a subjective judgement constrained by the reasonable person standard? We suspect that the notion of “disruptive behavior” is not categorical, but scalar, with some behaviors reaching a threshold or tipping point, but how is this determined in a non-arbitrary fashion?

In the same section, there is reference to the “undermining of a culture that is civil, ethical, and that honors compliance.” Most obviously, one would like to know specifically “compliance” to what. Less obviously, while an encouragement to civil engagement is certainly desirable, the relationship between civil discourse and academic freedom is more complex than presupposed in this reference to a “culture that is civil...”. Though Reichman 2021: 97 (*Understanding Academic Freedom*, Johns Hopkins 2021) refers to this issue in the context of academic freedom concerning extramural speech, i.e. blog postings and off-campus utterances, it is also arguably relevant for on-campus interactions where aspirations for civil discourse conflict with the academic freedom of faculty to express their views. In this connection and as part of extended discussion, he cites UCLA historian Michael Meranze:

The demand for civility effectively outrages a range of intellectual, literary, and political forms: satire is not civil, caricature is not civil, hyperbole and aesthetic mockery are not civil nor is polemic...If Universities are going to model intellectual discourse and life for the country, it is not going to be by imposing some rule of tone; it is going to be by demanding of people that they argue with reasons.

It is possible that this understanding of how academic freedom can trump civility may apply to one of the examples of prohibited behavior:

- Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats (including implicit threats), or insults

While this example behavior seems outrageous and indefensible on its face, it is not clear that a respondent who characteristically engages in satiric, caricaturish, hyperbolic or polemic interchanges perceived to be “humiliating, belittling, degrading” and who does so histrionically, is exceeding the bounds of their academic freedom of expression. Though few of us would like to be a target of this behavior, it seems that an argument can be made that this is protected by academic freedom, as uncivil as it might be. It seems important to separate civil interaction from academic freedom, rather than assuming that they go hand in hand. These observations suggest that the following language in the proposal:

no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member, other academic appointee, or the educational, political, artistic, or literary expression of students in classrooms and public forums,

may too narrowly construe the scope of academic freedom.

Finally, though not strictly within the considerations of academic freedom, a question arises concerning Compliance with the Policy. It is possible that inappropriate enforcement of the policy could impact the exercise of academic freedom, so that careful attention to those local parties responsible for “monitoring, enforcing and reporting policy compliance” may reveal that they themselves need to be overseen?

The committee appreciates the delicacy with which these issues, which seem to fall outside the purview of present policy, have been considered and assumes that there have been a sufficient number of challenging cases that warrant the development of a new policy and all of the administrative and conceptual considerations that it entails.

A handwritten signature in black ink, appearing to read 'Farrell Ackerman', with a stylized, flowing script.

Farrell Ackerman, CAF Chair
Professor, Linguistics Department
Director, Human Developmental Sciences Program

December 17, 2021

TARA JAVIDI, CHAIR
Academic Senate, San Diego Division

SUBJECT: Abusive Conduct/Bullying in the Workplace Policy

The Committee on Diversity & Equity (CDE) reviewed the Abusive Conduct/Bullying Policy at its November meeting. This policy applies to all University employees, unpaid interns, volunteers, and independent contractors. CDE enthusiastically supports the efforts to define this class of behaviors and outline appropriate consequences, while also protecting free speech rights. This is an important grey area that has long been exploited by bad actors at the expense of more vulnerable members of our community. Our main feedback is a request for more detail and clarity. While we recognize the inability of any one body to foresee all circumstances in which a policy might be applied, and therefore that some flexibility is wise, the committee nevertheless felt that certain elements of the policy need to be made more concrete. Here we list by section in the policy the questions (and a few concerns) that were raised by the committee members.

I. POLICY SUMMARY

The policy summary states that the University will respond swiftly to reports of abusive conduct and bullying, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy. Given that the current processes for reporting bias and harassment are widely felt to be “black holes” (information goes in, nothing comes back out), CDE thinks it would be important for the university to put a timeline and bounds around these terms. What does swiftly mean, in terms of time? What is/are appropriate action(s)?

II. DEFINITIONS

The committee broadly approved of the efforts to define abusive conduct/bullying. We appreciate the attention on sustained patterns and the general principle that a single act shall not constitute abusive conduct/bullying, unless severe or egregious. However, it will be important to understand the bounds on this. Who or what determines severity and egregiousness? There is a similar lack of clarity around the “reasonable person” test. While the sentiment is understood, this may need further clarification (and perhaps a clear responsibility chain).

IV. COMPLIANCE / RESPONSIBILITIES

The policy for interpretation of the policy and application at the campus level is not clear. This may be beyond the UC-level, but the committee encourages Senate Council to consider how this would be applied locally and whether more clarity and guidance is needed from UC.

V. PROCEDURES

The committee has a similar set of questions about complaints and how they are handled. The policy document says that these will be handled potentially by several offices in accordance with local procedures. This presents a real concern that we might simply assume that our current system takes care of these types of issues and not make meaningful reforms. What would be the procedures and offices involved here? What is the applicable office, and how are appropriate next steps/responses determined? Again, this is likely beyond the system-level, but merits some thinking at the campus level. Who are the investigators, how are complainants kept in the loop about responses, etc.?

Two final elements of the policy gave us pause. The first is the provision that “*the Complainant may be notified generally that the matter has been refereed for appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent’s consent.*” This seems to potentially lack transparency and privileges the respondent over the complainant. Presumably if the complaint is found to lack merit, there is no harm in telling the complainant that this was the ruling. In the other extreme (where the complaint is easily and fully validated) surely the complainant deserves to know what appropriate action has been undertaken? CDE feels that such transparency should be valued over the privacy of the respondent.

The second is that the policy contains no provisions for protecting complainants from retaliation, nor how power relationships might be handled to protect the complainant and the respondent while complaints are investigated. CDE cautions the UC against enshrining a system that would require a complainant who reports abusive conduct or bullying to have to remain under the supervision (or instruction, etc.) of the alleged abuser. This is already a problem in the world of sexual harassment and other bias reporting, but the new bullying policy has a chance to try to address this. We think the effort would be well worth it!

Thank you for the opportunity to review the policy.

Sincerely,

Jennifer Burney, Chair
Committee on Diversity & Equity

cc: N. Postero

December 17, 2021

TARA JAVIDI, CHAIR

Academic Senate, San Diego Division

SUBJECT: Abusive/Bullying Conduct in the Workplace Policy

The Committee on Faculty Welfare reviewed the Abusive/Bullying in the Workplace Policy at its December meeting. The committee members found it to be well-written, succinct and comprehensive, and fully endorsed it. Towards maintaining a healthy working environment, the report provides an unambiguous definition of such behavior in Section II, as well as addresses the reporting and redress mechanisms effectively, but also recognizes the limits of freedom of speech and academic freedom as not crossing the line of violation of federal, state or University policies.

We would like to point out the following, not as a criticism, but more as an observation, having served both as a supervisor and a “supervisee”. A potential for considerable ambiguity can arise when a supervisor engages in a private meeting to maintain confidentiality, “*Counseling or disciplining an employee for performance, engaging in misconduct or violating University policy*” perhaps when “*Differences of opinion*” arise in an “*occasional problem in the working relationship*”. Such meetings are almost always necessary, but can often be misused by either or both parties: the supervisor for actually bullying, (e.g. for example by “*...demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual’s job...*”) or the supervised for unfairly later bringing allegations of bullying against the supervisor. It would be better if this policy were to provide some specific guidance for supervisors to adhere to so that these types of situations can be circumvented or guarded against. A typical scenario might be to have a third person present in all such meetings to provide a neutral perspective. If specific guidelines are provided, under the auspices of our legal advisors, it might safeguard the UC from possible legal liabilities that such “private meetings” might engender.

Sincerely,

Shantanu Sinha, Chair
Committee on Faculty Welfare

cc: N. Postero

December 14, 2021

TARA JAVIDI

Chair, San Diego Divisional Academic Senate

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

Dear Chair Javidi,

The Committee on Privilege and Tenure (CPT) reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace at its December 3, 2021 meeting. CPT agreed that a policy on abusive conduct/bullying is needed, and therefore, had no objections to the proposed policy. However, the following comments were offered to further improve the proposal.

Section II. Definitions, Reasonable Person Test

The use of the “reasonable person test” as the basis for determining if the conduct rises to the level of Abusive Conduct/Bullying may need additional clarification or further explanation. The determination of whether or not someone is a reasonable person may be interpreted in many ways, especially as society’s viewpoints and attitudes are everchanging and often polarized.

Section III. Policy Statement

C. Prohibited Conduct

The item concerned with “spreading misinformation and malicious rumors” seems to be too broad in the sense that false information can be spread without a malicious intent and would not be perceived as bullying. CPT also felt that the use of the word “inappropriate” is superfluous in the items concerning comments on personal appearance, the distribution of photographs, and the use of threats.

E. Free Speech and Academic Freedom

There is no clear distinction between language that would be considered protected under free speech and language that would be considered bullying. Is it the manner in which the words are delivered? Is it speech that is directed towards a specific individual rather than towards a group? Is it language that may be malicious but was not intended to be so and is therefore, protected free speech? In addition, could a faculty member file a grievance if they were charged with bullying, but felt that their free speech rights were violated?

Section IV. Compliance/Responsibilities

A. Implementation of the Policy

Given that local Executive Officers will be developing procedures to implement the policy, the Divisional Senate should also be involved in this process. A local process would need to state clearly who/which offices would be handling the claims, who would conduct investigations, and who would bring the charges against those accused of abusive conduct/bullying.

Sincerely,

Philip Gill, Chair
Committee on Privilege and Tenure

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

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

January 18, 2021

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

Re: UCSF Comments on the Proposed Presidential Policy on Abusive Conduct & Bullying

Dear Robert:

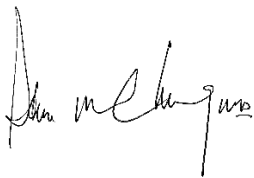
The San Francisco Division of the Academic Senate recently reviewed the proposed Presidential Policy on Abusive Conduct and Bullying, and commends the Office of the President for responding to a request from the Regents and the Academic Senate for a systemwide policy that addresses the University's responsibilities and procedures related to abusive conduct/bullying. The draft was reviewed by our Clinical Affairs Committee (CAC), Committee on Faculty Welfare (CFW), and Rules & Jurisdiction (R&J). In particular, we appreciate the proposed policy's recognition of "the importance of rights to freedom of speech and expression" and the recognition that "freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies." (CAC)

While all of committee comments are enclosed, I would like to highlight the following key comments and suggestions:

1. *Assertive Behavior*: The proposed policy lists examples of reasonable actions that do not constitute "Abusive Conduct/Bullying" in section III.C on page five. The list includes "[e]ngaging in assertive behavior". UCSF's R&J has reservations about including "assertive behavior" as appropriate conduct. The term is vague, and UCSF recommends that the policy include a definition or examples of assertive behavior that would illustrate why assertive behavior is reasonable and different from abusive conduct/bullying. (R&J)
2. *Consistent Application of the University's Policies for Reports of Sexual Violence/Sexual Harassment or Discrimination*: In cases of sex-based Abusive Conduct/Bullying, the University's Sexual Violence and Sexual Harassment (SVSH) Policy will only "typically apply." In cases of discrimination, the Discrimination Harassment and Affirmative Action in the Workplace policy "will apply." The UCSF Senate recommends that the policy use consistent language and state that the referenced policies "will apply" in both instances. Section V.A.4 also describes reporting requirements differently for sex-based conduct and discriminatory conduct. Sex-based conduct reports "shall be" made or forwarded to the appropriate Title IX office. In contrast, discriminatory conduct "should be" reported to Equal Employment Opportunity/Affirmative Action offices but is not required. We therefore recommend that the proposed policy state that both types of misconduct "shall be" made or forwarded to the appropriate offices. (R&J)
3. *Accountability & Reporting*: The proposed policy should create a systemwide process for accountability that ensures that each campus program meets systemwide standards and is applied equitably. Campuses should be required to have clear policies that meet specific criteria that are set systemwide and are consistent across the University. In addition, the proposed policy should better explain how misconduct should be reported. (CFW)

4. *Electronic Media:* The proposed policy should further explain how the policy applies to electronic media and should specifically address the question of whether it applies to personal social media accounts that owner explicitly states do not reflect the views of their employer. (CFW)
5. *More Details and Consistency on Claim Adjudication:* The proposed policy does not provide campuses with clarity about who will adjudicate claims of abusive conduct or bullying. R&J appreciates that the proposed policy needs to be flexible enough to accommodate the different systems and resources of the campuses, but R&J believes that the policy would be improved if it included more details on how claims of abusive conduct or bully should be adjudicated consistently across campuses. (R&J)
6. *Miscellaneous Comments:* 1) Reasonable person standard(s) – The proposed policy should direct readers to a reference explaining the “reasonable person” standard (CFW); and 2) silent bullying – the proposed policy should also account for passive or silent bullying.

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



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

Enclosures (3)

Cc: Kathleen Liu, Chair, UCSF Clinical Affairs Committee
Lindsay Hampson, Chair, UCSF Committee on Faculty Welfare
Mijung Park, Chair, UCSF Rules & Jurisdiction

Clinical Affairs Committee

Kathleen Liu, M.D., Ph.D., M.A.S., Chair

January 10, 2022

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

Re: **Systemwide Review of Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace**

Dear Chair Cheung:

The Clinical Affairs Committee (CAC) writes to support and endorse the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace.

CAC supports this university-wide effort to reduce and address abusive conduct and endorses creating a systemwide policy that will guide campus policies. CAC appreciates the proposed policy's recognition of "the importance of rights to freedom of speech and expression" and the recognition that "freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal, state, or University policies." CAC found this language effectively articulates the balance between free speech and a safe and supportive workplace that we strive to create.

Thank you for the opportunity to comment on this systemwide review.

Sincerely,



Kathleen Liu, M.D., Ph.D., M.A.S.
Clinical Affairs Committee Chair

CC Senate Executive Director Todd Giedt

Committee on Faculty Welfare
Lindsay Hampson, MD, MAS, Chair

January 13, 2022

Steven Cheung, MD
Division Chair, UCSF Academic Senate

**Re: Systemwide Review of Proposed Presidential Policy on Abusive Conduct and
Bullying in the Workplace**

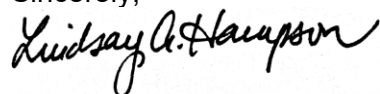
Dear Chair Cheung:

The Committee on Faculty Welfare (CFW) writes to comment on the systemwide review of the [Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace](#). CFW commends the University for developing a systemwide policy on this important topic.

CFW recommends the following revisions to the proposed policy to further improve the proposed policy and workplaces across the University.

1. The proposed policy should further explain how the policy applies to electronic media and should specifically address the question of whether it applies to personal social media accounts that owner explicitly states do not reflect the views of their employer.
2. The proposed policy should define “inappropriate information.”
3. The proposed policy should better explain how it will be enforced and implemented.
4. The proposed policy should better explain how misconduct should be reported.
5. The proposed policy should create a systemwide process for accountability that ensures that each campus program meets systemwide standards and is applied equitably. Campuses should be required to have clear policies that meet specific criteria that are set systemwide and are consistent across the University.
6. The proposed policy should direct readers to a reference explaining the “reasonable person” standard.
7. The proposed policy should also account for passive or silent bullying. For example, a person who is systematically ignored and marginalized can also be a victim of abusive conduct.

Sincerely,



Lindsay Hampson, MD, MAS, Committee on Faculty Welfare Chair

Committee on Rules and Jurisdiction
Mijung Park, PhD, MPH, RN, Chair

January 10, 2022

Steven Cheung, MD
Division Chair
UCSF Academic Senate

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

Dear Chair Cheung:

The Committee on Rules and Jurisdiction (R&J) writes to comment on the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace.

R&J commends the University for its effort to establish a consistent policy across campuses designed to prevent abusive conduct and bullying. R&J offers the following suggestions to improve the proposed policy.

Assertive Behavior

The proposed policy lists examples of reasonable actions that do not constitute “Abusive Conduct/Bullying” in section III.C on page 5. The list includes “[e]ngaging in assertive behavior”. R&J has reservations about including “assertive behavior” as appropriate conduct. The term is vague, and R&J recommends that the policy include a definition or examples of assertive behavior that would illustrate why assertive behavior is reasonable and different from abusive conduct/bullying.

Consistent Application of the University’s Policies for Reports of Sexual Violence/Sexual Harassment or Discrimination

Section V.A.4 *Reports of Sexual Violence/Sexual Harassment or Discrimination* on page 8 of the proposed policy describes which university policies apply if reports of “Abusive Conduct/Bullying” are sex-based or discriminatory. The language is below for reference, and we have emphasized text to point out inconsistencies.

4. Reports of Sexual Violence/Sexual Harassment or Discrimination

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

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

In cases of sex-based Abusive Conduct/Bullying, the University's Sexual Violence and Sexual Harassment Policy will only "typically apply." In cases of discrimination, the Discrimination Harassment and Affirmative Action in the Workplace policy "will apply." R&J recommends that the policy use consistent language and state that the referenced policies "will apply" in both instances.

Section V.A.4 also describes reporting requirements differently for sex-based conduct and discriminatory conduct. Sex-based conduct reports "shall be" made or forwarded to the appropriate Title IX office. In contrast, discriminatory conduct "should be" reported to Equal Employment Opportunity/Affirmative Action offices but is not required. R&J recommends that the proposed policy state that both types of misconduct "shall be" made or forwarded to the appropriate offices.

More Details and Consistency on Claim Adjudication

Finally, the proposed policy does not provide campuses with clarity about who will adjudicate claims of abusive conduct or bullying. R&J appreciates that the proposed policy needs to be flexible enough to accommodate the different systems and resources of the campuses, but R&J believes that the policy would be improved if it included more details on how claims of abusive conduct or bully should be adjudicated consistently across campuses.

Thank you for the opportunity to comment on this important proposed policy. Please reach out if you have any questions.

Sincerely,

Mijung Park, PhD, MPH, RN
Committee on Rules and Jurisdiction, Chair



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>

January 18, 2022

To: Robert Horwitz, Chair
Academic Senate

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

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

The Santa Barbara Division distributed the proposed policy widely to Senate councils and committees, including the Council on Faculty Welfare, Academic Freedom, and Awards (CFW), Graduate Council (GC), the Committee on Research Policy and Procedures (CRPP), the Committee on Library, Information, and Instructional Resources (CLIIR), the Committee on Information Technology (CIT), Committee on Academic Personnel (CAP), Committee on Diversity and Equity (CDE), Committee on International Education (CIE), Committee on Privilege and Tenure (P&T), Committee on Rules, Jurisdiction, and Elections (RJ&E), and the Faculty Executive Committees (FECs) of the College of Letters and Science (L&S), College of Engineering (COE), and Gevirtz Graduate School of Education (GGSE). The Undergraduate Council, Committee on Admissions, Enrollment, and Relations with Schools, Committee on Courses and General Education, and the Council and Planning and Budget opted not to opine.

Reactions to the proposed policy were mixed. While some groups voiced varying levels of support for the policy (CRPP, CIT, CAP, CDE, RJ&E, L&S, COE, GGSE), or noted a lack of significant concerns (GC), many felt that it was incomplete and would require the addition of considerable detail in order to be practicable. CLIIR specifically expressed strong opposition to the policy on the basis that it constituted administrative overreach and offered insufficient protections for academic freedom. A summary of key points is included below, and the individual responses are attached for your review.

Several groups raised questions about the range of the proposed policy relative to other conduct-related university policies (e.g. Sexual Harassment and Sexual Violence, Discrimination, Harassment, and Affirmative Action in the Workplace, and the Faculty Code of Conduct). Given the potential for considerable overlap, there was some concern about the policy's necessity, added bureaucracy, and time investment. CLIIR specifically asked for examples of scenarios that would be covered under the proposed policy but not covered by other conduct policies.

One key issue presented in multiple responses was the lack of clarity regarding the campus-level implementation and enforcement of the policy. The groups raised many questions about where complaints would be directed and how they would be handled. For example, the policy does not specify a central office to which complaints would be directed, or procedures or requirements for training, reporting, investigation, and recordkeeping. Further, the policy does not include guidance for complainants and respondents, which might cover process, as well as evidentiary requirements, statute of limitations, procedures for anonymous reports, and potential disciplinary actions. All of these issues need to be addressed before the reviewing groups can offer a meaningful assessment of the proposed policy.

Another issue raised was the vague guidance regarding what behavior might or might not constitute abusive conduct. RJ&E noted, with regard to the "reasonable person test," that the definition of a "reasonable person" is subject to interpretation. Who will decide what a "reasonable person" would find? CIE further recognized the differing interpretation of certain behaviors based on cultural norms and suggested that the test be considered in the context of the individuals involved. CFW members observed that the proposed policy makes no reference to microaggressions, and wondered if and how they figure into the definitions of and behaviors associated with bullying. They also inquired about "passive bullying" or persistent manipulation of workplace norms, beyond what might be considered "not extending social niceties." RJ&E recommended that the policy include a specific list of behaviors that do not fall under the policy, and emphasized that unpopular statements or statements supporting positions on controversial issues should not be categorized as abuse or bullying. CAP raised concerns that a lack of specifics could result in claims outside of the original intent of the policy.

Several groups commented on the lack of clarity in Section III.C. regarding prohibited conduct. RJ&E noted with regard to "circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means," that activities considered to be "embarrassing" may not fall under the definition of abusive conduct/bullying as defined in Section II. Similarly, CRPP felt the policy could be more specific in defining who determines what constitutes "embarrassing" or "inappropriate." GC noted that section leaves unclear who the photos, etc., are embarrassing to, and recommended that the language be reworded to be more specific, such as adding "with regard to a specific person or victim." The L&S FEC inquired about the boundary between the professional and personal when considering electronic communications, and emphasized the need for more clarity on specific interactions related to digital platforms.

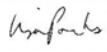
CIE suggested that the policy be made clearer for international students, and recommended that language regarding country of origin and visa status be added to the prohibited categories. In addition, the committee felt that additional language should be added so that international students would feel comfortable reporting bullying. Similarly, while CIT recognized the emphasis on local early resolution, members noted that some groups such as students, might not be comfortable reporting incidents internally.

We thank you for the opportunity to comment.

**Academic Senate
Santa Barbara Division**

January 12, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Lisa Parks, Chair 
Council on Faculty Welfare, Academic Freedom, and Awards

Re: Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

The Council on Faculty Welfare, Academic Freedom, and Awards reviewed the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace and offered comment via email. The memo was drafted based on input from council members solicited via email. It conveys points that had collective support as well as remarks submitted by individuals, as indicated below.

A number of members indicated agreement with several observations from the Chair as follows:

- Some questions have been raised about the issue of “passive bullying.” The proposed policy identifies “not extending social niceties” as an example of what bullying is not, but what about a persistent pattern of manipulating workplace norms of collegiality? For instance, if a person regularly greets and/or interacts with almost everyone in the room, but conspicuously and repeatedly ignores the same individual, is this a kind of passive bullying? Or would this behavior fall under the category of “Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes”?
- How do “microaggressions” figure into the definitions of and behaviors associated with bullying? These behaviors were discussed in multiple DEI workshops on our campus last year and seem relevant, but are not included in the policy language.
- There is a need for a clearer reporting structure and guidelines. Are all persons who receive complaints of bullying (staff, students, or faculty) required to report them to the campus office that administers bullying complaints? Will managers and supervisors who are expected to address behavior immediately (Section V. A. 3.) receive appropriate training to do so? Should reports to the appropriate office be documented in writing?
- What kinds of evidence should be presented with a bullying complaint?

Additionally, individual comments not commented upon collectively, were submitted as follows:

- In the list of prohibited conduct (Section III.C.), the use of “misinformation” should be reworded to avoid political connotations. At present, it is commonly used to label and censor alternative opinions. More appropriate terms here might be “gossip” or just “malicious rumors.”
- The word “culture” is vague in the list of inappropriate comments; suggested expansion or clarification is “...culture, religious/spiritual/philosophical beliefs, or political views”.

- The draft talks about a pattern of “repeated” behavior. Should the policy clarify (and quantify) what “repeated” means? Is twice enough, or is this best left to individual judgement?
- Section III. A. refers to a “culture that is civil, ethical and that honors compliance.” What does “honors compliance” mean and is this necessary?
- Also, in Section III.A., it is awkward to say the University strives to foster an environment in which individuals “feel comfortable making reports” when this is an inherently uncomfortable activity. The university’s stated goals should be higher i.e. to foster a climate of respect and shared decency.
- The draft policy never refers in any way to the person who experiences abuse/bullying as being a victim, only on what might happen to the bully. Getting the bullying to stop does not address the damage that might already have been done to the victim(s). This document should clearly identify what extra resources will be available to support victims and address their needs.
- The policy does not seem to address the ways in which workplace norms of collegiality might already be inequitable and biased, such as the ways in which "professionalism," especially as it regards to appearance or clothing, can be used to police racialized or trans/gender non-conforming people. Tone policing would be another example of when a framework of "respect," "collegiality," or "professionalism" can be used to silence certain kinds of people. Similarly, there is a need to think through how implicit bias can also impact who we think of as being "abusive" or a "bully." Research has shown that racialized groups or trans women are seen as more threatening or aggressive by some; this policy does not seem to think about how to prevent people from using it as a tool to further oppress and police racialized and other minorities.

CC: Shasta Delp, Executive Director, Academic Senate

**Academic Senate
Santa Barbara Division**

January 6, 2022

To: Susannah Scott, Chair
Academic Senate

From: Adam Sabra, Chair
Graduate Council



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

At its meeting of November 29, 2021, Graduate Council reviewed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. Graduate Council did not voice significant concerns about the proposed policy, but one issue raised was that the section on “circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means” leaves unclear who the photos, etc., are embarrassing to. This piece should be reworded to be more specific, such as adding “with regard to a specific person or victim”.

CC: Shasta Delp, Executive Director, Academic Senate

January 12, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Karen Lunsford, Chair 
Council on Research, Information, and Instructional Resources

Re: Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

The three subcommittees of the Council on Research and Instructional Resources reviewed the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace separately, since there was not a full council meeting scheduled between the time when the draft policy was assigned for review and when a response was due. The Committee on Research Policy and Procedures as well as the Committee on Library, Information and Instructional Resources both discussed the draft at their respective meetings of January 7, 2022 and the Committee on Information Technology offered comment by email.

The members of the Committee on Research Policy and Procedures (CRPP) noted that the draft appears to draw heavily from the existing policy on Sexual Harassment, and they wanted to see more information related to the expectations and protections of privacy of the concerned parties. They felt the policy could be more specific in defining who determines what constitutes “embarrassing” or “inappropriate.” They also noted that the policy’s language stating that anonymous reports “may be investigated” had the potential for dismissing such reports. They felt that this should be formalized and require tracking, in the event that a pattern would be established. Overall, the members supported the need for the policy, and expressed surprise that such behavior is not yet governed by a policy. However, they felt the current draft was not sufficiently complete and not particularly helpful in providing guidance.

The members of the Committee on Library, Information, and Instructional Resources, however, were staunchly opposed to this new policy being implemented without substantive justification about why it is needed and what scenarios are not already covered by existing policies. They found it to be oppressive in its expansion of administrative control and, despite its language to the contrary, that it does not adequately protect academic freedom.

Generally, members of the Committee on Information Technology found the policy to be reasonable, although a member took issue with the reference in section III.A. “Abusive Conduct/Bullying, including disruptive behavior, may ... undermine a culture that is civil, ethical and that honors compliance” and wondered what is meant by a “culture that honors compliance,” and whether that was appropriate or necessary. Another member wanted to see more information about how an accused party would defend against accusations.

While some individuals expressed appreciation for an emphasis on early, local resolution within a department, others had reservations for scenarios in which a person might not be comfortable reporting internally (such as a graduate student who is reluctant to contact the department chair about bullying by their PI, who is highly regarded within the department).

All groups were concerned about the extent to which this is redundant with existing policy(ies). They also wanted more specific information about who would be responsible for implementation and enforcement on campus (while recognizing the different campus hierarchies of the UC system).

CC: Shasta Delp, Executive Director, Academic Senate

ACADEMIC SENATE
SANTA BARBARA DIVISION

January 12, 2022

TO: Susannah Scott, Divisional Chair
Academic Senate

FROM: Omar Saleh, Chair
Committee on Academic Personnel

RE: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

The Committee on Academic Personnel (CAP) has reviewed the “Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace.” The committee felt that this proposed policy is well positioned to fill an existing gap in the faculty code of conduct. However, details of the implementation were unclear– notably, there were concerns that there was not a clear control point assigned to carry out the policy (e.g. a specific executive/administrator in charge). Details of the implementation were generally vague, and specific worries arose about the lack of a statute of limitations in the policy. A final concern was that a policy lacking specifics could then allow a certain flexibility to pursue issues of faculty conduct outside of the original intent of the policy.

For the Committee,

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

Omar Saleh, Chair

**Academic Senate
Santa Barbara Division**

January 7, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

From: Jean Beaman, Chair
Committee on Diversity and Equity



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

At its meeting of November 15, 2021, the Committee on Diversity and Equity (CDE) reviewed the Presidential Policy on Abusive Conduct/Bullying in the Workplace. While the Committee agreed that it is beneficial to have this kind of policy, and that norms of professional behavior are not always established, there were a number of concerns, questions and suggestions.

- While “egregious” is used to cover one-time instances of some behaviors, it is not applied to all areas in the policy. Egregious, one-time actions should be applicable in all of the categories. If there is a pattern of creating a hostile environment, what can happen to those people?
- It seems like a one-time act made from a place of anger or emotion should not count as abusive/bullying conduct, and that actions should be premeditated. How do you define “ongoing”? Can ongoing be interpreted as actions taken far back in the past, and against different people? There needs to be more specificity of the terms being used. Documenting ongoing behavior is hard, as someone could target different people, and it can be difficult to provide evidence if behavior is occurring over a long period of time and against multiple people.
- Because of societal positions, some people might be targeted by bullying behaviors more; a line should be added that different people will be impacted differently based on their location in society. Additionally, people not used to being in positions of authority may be more likely to be accused of these behaviors.
- The policy is not very specific about who will be conducting investigations and what training they will receive.
- What happens when you make a case should be in the policy; this can be a deterrent to reporting if folks are not aware of the full process. What are the procedures for anonymous reports? People may be hesitant to report behavior if they fear retaliation.
- A corollary document should be created that lays out the processes and procedures for those who are accused of abusive conduct.

CC: Shasta Delp, Executive Director, Academic Senate

January 12, 2022

To: Susannah Scott
Divisional Chair, Academic Senate

From: Spencer Smith, Chair
Committee on International Education

A handwritten signature in black ink, appearing to read 'Spencer Smith', with a long, sweeping horizontal line extending to the right.

Re: Abusive Conduct/Bullying in the Workplace

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

The committee raised concerns about the “Reasonable Person Test” on page 2, stating that the policy does not acknowledge that different cultures may interpret certain behaviors differently. We suggest that the test be considered in the context of the individuals involved, including their cultural backgrounds.

The committee suggests that policies be made clearer to ensure international students have reasonable expectations and understand the policies and that “Country of Origin” be added to groups in which bullying is prohibited.

Further, the committee felt that additional language should be added so that international students would feel comfortable reporting bullying. We want them to know that there are protections for them, and their visa status will not be adversely affected by reporting. Considering that international students are often the target of mistreatment, committee members suggest that additional language about country of origin be included as well as visa status.

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

Cc: Shasta Delp, Executive Director, Academic Senate



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>

November 1, 2021

To: Susannah Scott, Divisional Chair, Academic Senate

From: Risa Brainin, Chair, Committee on Privilege and Tenure

Re: Review of Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace

The Committee on Privilege and Tenure (P&T) reviewed and discussed the proposed revisions to the Draft Presidential Policy - Abusive Conduct/Bullying in the Workplace. While the Committee is supportive of the majority of the draft policy, there are two areas of concern.

Specifically, Section III.C. Prohibited Conduct includes the following bullet point regarding examples of abusive conduct/bullying: "Circulating inappropriate or embarrassing photos, videos, or information via email, social media, or other means." Committee members noted that the term "embarrassing" may be misleading. Activities considered to be "embarrassing" may not fall under the definition of abusive conduct/bullying as defined in Section II, i.e., equating to conduct that, "denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University, and creates an environment that a reasonable person would find to be intimidating or offensive and unrelated to the University's legitimate educational and business interests."

Additionally, Committee members observed that the regulations in the policy do not seem to apply to campus visitors, thus ignoring a substantial campus constituency. While the avenues for recourse in this scenario are unclear, the Committee nevertheless noted the absence.

The Committee on Privilege and Tenure appreciates the opportunity to comment on these proposed changes.

Cc: Shasta Delp, Executive Director, Academic Senate
Monica J. Solorzano, Analyst, Committee on Privilege and Tenure

**Academic Senate
Santa Barbara Division**

January 7, 2022

To: Susannah Scott, Divisional Chair
Academic Senate

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



Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

The Committee on Rules, Jurisdiction & Elections (RJE) reviewed the Presidential Policy on Abusive Conduct/Bullying in the Workplace and makes the following comments:

- 1) It is unclear how complaints are to be handled. Will they be directed to department chairs? Will they be directed to the Ombudsman or other campus entities? Will each campus be instructed to come up with its own plan for processing accusations?
- 2) The policy refers to a "Reasonable Person Test":

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

The definition of a "reasonable person" is subject to interpretation. Who will decide what a "reasonable person" would find?

- 3) It is very important that unpopular statements or statements supporting positions on controversial issues not be categorized as abuse or bullying. While Section IIIC of the proposed policy appears to take this into account, RJE recommends explicitly adding this to this list of behaviors that do not constitute bullying or abuse. This would, in particular help to avoid the possibility of frivolous complaints made by individuals who misinterpret the stance sustained by others on controversial issues as being abusive or bullying.
- 4) "Retaliation" is capitalized inconsistently throughout the document. An example occurs in the first paragraph of section V.D.1:

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

Cc: Shasta Delp, Executive Director, Academic Senate

December 13, 2021

To: Susannah Scott
Chair, Divisional Academic Senate

From: Sabine Fröhstück
Chair, L&S Faculty Executive Committee 

Re: Systemwide Review of Draft Presidential Policy for Abusive Conduct/Bullying in the Workplace

At its meeting on December 2, 2021, the Faculty Executive Committee of the College of Letters and Science (FEC) reviewed the draft of the Presidential Policy for Abusive Conduct/Bullying in the Workplace. This is a new policy document that establishes guidelines for abusive conduct that ostensibly does not fall within existing systemwide policy, such as "Sexual Violence and Sexual Harassment (SVSH)" or "Discrimination, Harassment, and Affirmative Action in the Workplace."

The committee in general appreciates the principle of this change and sees value in the creation of this policy. A few concerns and observations were raised involving overlap with existing policies, the bureaucratic process required, and vague definitions for abusive conduct within the proposal—all outlined below.

A potential concern with any new policy is the addition of layers of bureaucracy that create an added and possibly unnecessary time investment, which is particularly relevant given the existence of multiple other conduct related policies with their own bureaucratic systems that appear to be overlapping with this policy to a degree. The committee would like to see more discussion of the potential future impacts and resource costs in implementing this policy, particularly around staffing and infrastructure that may be required.

Concerns around vague definitions for abusive conduct were expressed. Ultimately, the committee acknowledged that some lack of clarity is unavoidable when attempting to draw a line where conduct becomes inappropriate across a broad spectrum of behaviors and contexts. However, the committee felt strongly that more clarity was needed around specific interactions related to digital platforms, such as social media, where demarcations between professional and personal space are less clear. The proposal mentions "electronic" communications as covered under policy several times, but does not address specific digital mediums and where the boundaries lay for those mediums in terms of being considered "in the workplace."

It was also observed that the policy could better articulate the overlap and relationship with Senate faculty conduct processes, such as the Privilege and Tenure disciplinary process at UCSB.

Ultimately, the committee determined to endorse the policy in its goal of articulating a basic process for resolving workplace conduct disputes that fall outside of existing systemwide policies.

Thank you for the opportunity to comment.

cc: Pierre Wiltzius, Executive Dean of the College and Dean of Science
Michael Miller, Interim AVC and Interim Dean of Undergraduate Education

December 3, 2021

TO: Susannah Scott
Divisional Chair, Academic Senate

FROM: Tobias Hollerer, Chair
College of Engineering, Faculty Executive Committee

RE: Draft Presidential policy – Abusive Conduct/Bullying in the Workplace

DocuSigned by:
Tobias Hollerer
41EFFFAB98F442F...

The College of Engineering FEC met on Monday, November 29th and reviewed and approved of the draft policy as written. 10 yes, 0 abstained, 0 no (out of 10 eligible faculty members).

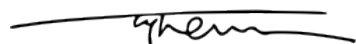
December 14, 2021

To: Susannah Scott, Chair
Academic Senate

From: Ty Vernon, Chair
Faculty Executive Committee, GGSE

Re: Draft Presidential Policy – Abusive Conduct/Bullying in the Workplace

The GGSE FEC is in support of the proposed draft of the Presidential Policy.



Ty Vernon, Ph.D.

Faculty Executive Committee Chair

Gevirtz Graduate School of Education

UC SANTA BARBARA



1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

Office of the Academic Senate
SANTA CRUZ DIVISION
125 CLARK KERR HALL
(831) 459 - 2086

January 18, 2022

ROBERT HORWITZ, Chair
Academic Council

Re: Systemwide Senate Review: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Dear Robert,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace with the Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Career Advising (CCI), Faculty Welfare (CFW), Teaching (COT), and Privilege and Tenure (P&T) responding. The comments made by the reviewing committees fell for the most part within three large categories: 1) concern over the lack of specificity concerning key elements, 2) the scope of the policy, and 3) concerns about the University's ability to implement it.

Policy Language

With regard to the first area of concern, the committees found that key provisions and terms lacked adequate specificity. CAAD and COT commented that the use of the "reasonable person standard" was problematic. This is far too open ended and needs to be revised to consider the diversity that exists within the university community with regard to social status, race, and the dynamics present in employer/employee and student/teacher hierarchical relationships, for example. Similarly, "inappropriate" is used to describe prohibited behavior without an adequate definition of what types of acts that category encompasses (CAAD). Another term in need of clarification is "supervisors and managers," which applies to staff but requires further elucidation with regard to faculty. If the policy includes 'chairs' and 'deans' etc., then a definition should be provided that makes clear their inclusion within this group.

Most glaring within this area of concern is the lack of clarity in how this new policy will interact with existing policies. CAF is curious as to how the "policy works in parallel with any applicable grievance processes, rather than superseding those processes nor being considered inferior to those policies." This is a concern shared by P&T, COT, CFW, and CAAD, which writes "While multiple reporting options are desirable, there are so many options as to be confusing, with no clear line of reporting or responsibility."

Scope

The concerns regarding scope have to do with what behaviors may and may not be included. CAAD notes that the policy explicitly defines “prohibited behavior” as “[m]aking repeated or egregious inappropriate comments about a person’s appearance, lifestyle, family, or culture” and wonders why it has to be egregious and repeated. CAAD goes on to suggest that the policy does not contemplate that the abusive behavior could be “institutional” and not just perpetrated by individual bad actors. Relatedly CAF is unclear if more subtle forms of sabotaging behavior would be covered. The comments related to definitions of “inappropriate” made above could also fall within this concern since it is unclear what acts/behaviors would be deemed as “inappropriate.” CCA observes that there is no explicit inclusion of staff within the policy nor mention of student-on-student bullying.

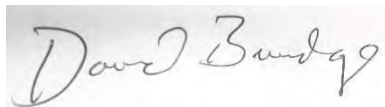
Implementation

On the issue of implementation COT notes a vagueness in the implementation procedures as the proposed policy lacks any substantive guidance on how the system will register, assess and adjudicate complaints leaving the members to infer that this will be left to the individual divisions to determine. As well P&T observes, “that the policy was insufficient in articulating or even contemplating appropriate investigatory bodies and adjudication processes to ensure due process and safeguards.” CAAD would like to see the policy focus more on the safety of constituents as it lacks any language invoking safeguards for Complainants, and argues that the policy may make existing problems worse.

Last within the group is the policy’s relationship with free speech, a subject on which the policy is surprisingly glib. CCA commented that the language in Section I declares that the policy “will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression” and then observes “In addition to the weakening “importance of” language, there is no clear explanation of how the policy will be implemented to accomplish the stated intention.” P&T recommends that the policy include a clear and unequivocal statement that academic freedom, and the speech this principle allows, is the lifeblood of the University.

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

Sincerely,



David Brundage, Chair
Santa Cruz Division of the Academic Senate

encl: Committee Responses Bundle_Abusive Conduct-Bullying

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Catherine Jones, Chair, Committee on Teaching

December 3, 2021

David Brundage, Chair
Academic Senate, Santa Cruz Division

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

Dear David,

The Committee on Affirmative Action and Diversity (CAAD) has reviewed the Systemwide Review of Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace proposed policy. The committee supports the policy while having several significant concerns.

The committee is unclear on how this new procedure interacts with other systems and what happens when bullying involves multiple forms of discrimination (see Section VA.4). Further clarification regarding how these systems overlap, and whether a complaint might move through multiple channels simultaneously or serially, is needed.

The bar for abusive conduct/bullying is set high in the policy, as prohibited behavior must repeat or be rather severe. For instance, the first bullet in defining “prohibited behavior” is “[p]ersistent or egregious use of abusive and/or insulting language (written, electronic or verbal)” (Section IIIC). Similarly, on the same page, another bullet defines prohibited conduct as “[m]aking repeated or egregious inappropriate comments about a person’s appearance, lifestyle, family, or culture.” Why must it be “repeated” and/or “egregious?” That it is abusive and occurs once seems enough. Are there escalation steps for disciplinary action if abuse occurs one time versus multiple times? Additionally, is there a system in place to track abusive behavior by repeat offenders (whether individuals or units)? Further, the committee is concerned that the responsibility to recognize and report abusive conduct/bullying falls primarily (and perhaps only) to Complainants, rather than institutions.

The policy invokes civility, and the committee suggests this policy instead focus on safety. For instance, some of the options for resolution (e.g., “facilitated discussion to obtain agreement between parties”) do not clearly guarantee the safety of the Complainant and may in fact exacerbate already-existing problems and dangerous power dynamics. Similarly, the policy often uses the term “inappropriate” (Section IIIC), but it’s not clear what this term means. Both civility and appropriateness are non-neutral terms. Further, the use of the “reasonable person test” is problematic. Is “the reasonable person in the same or similar circumstances” (Section II) a person who has the same background as the Complainant? Is it a white person? While the “reasonable person test” has some background in judge and jury trials, it is problematic here, as it seems left to an undefined entity (or only the university) to define “reasonableness.”

The policy seeks to define what is not abusive conduct/bullying, but in so doing, includes various sites and interactions where the kinds of activities the policy seeks to cover can, and often do, occur. The “[e]xamples of reasonable actions that do not constitute Abusive Conduct/Bullying” include “performance appraisals,” “ambitious performance goals,” and being “assertive” (among others, see Section IIIC). These are common sites where abusive and bullying behavior occur, meaning that these can then be excused as simply “how the institution

works.” For that reason, we believe that this policy should also address the ways bullying and abuse in the workplace can be *institutional*, and not just problems caused by individual bad actors. The policy also needs more clarity on boundaries between academic freedom/freedom of expression/speech and harassment (Section III E). We would like to see a policy that actively encourages members of the UC community to examine the unspoken norms and behaviors that often create structural conditions for these kinds of abuses to take place.

The committee is glad to see that there is “no time limit” on reporting instances of abusive conduct/bullying (Section VB). At the same time, the reporting line for registering abusive conduct/bullying is unclear. The policy indicates, “Individuals should report conduct believed to constitute Abusive Conduct/Bullying to their manager, any supervisor, or applicable University office” (Section VA.1). While multiple reporting options are desirable, there are so many options as to be confusing, with no clear line of reporting or responsibility. The committee believes that multiple reporting options can be maintained while making the office that is primarily responsible for fielding and resolving these complaints clear. This would also help identify repeat offenses and offenders.

The committee wishes to emphasize that it supports the development of an effective abusive conduct/bullying policy and would very much like to see one implemented. The committee also feels that the current document still has some distance to go.

Sincerely,



Kirsten Silva Gruesz, Chair
Committee on Affirmative Action and Diversity

cc: Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Catherine Jones, Chair, Committee on Teaching

December 21, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

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

Dear David,

On November 15, 2021, the Committee on Academic Freedom (CAF) discussed the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace. The policy is new. It is most likely designed to bring more significant equity between policies covering students, staff, and faculty and procedures covering the protected classes of staff members. The University of California took similar actions last year around standards of proof in disciplinary cases involving allegations implicating the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH), with subsequent guidance provided by the University Committee on Rules and Jurisdiction (UCRJ).¹ CAF understands that the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace brings greater alignment in the disciplinary processes involving staff, students, and faculty. This new bullying policy could further UC's efforts to obtain a better sense of equity to the various disciplinary procedures by creating a unitary policy around this issue.

CAF seeks clarification of the following two points:

1. CAF finds it difficult to distinguish subtle and less aggressive bullying behavior from what the university administration calls microaggression. CAF understands that the distinction could be fluid, and the actual cases made could be context-dependent. Nevertheless, CAF seeks to clarify the specific circumstances of university faculty, students, and staff members. For example, a superior, such as a department chair, a senior colleague, or even a colleague at an identical rank sabotages someone's professional career without using threats but instead using more subtle tactics. Would this be considered and applied under the current policy language?
2. Some of the prohibited behaviors listed within the policy might also fall under existing guidelines negotiated with union contracts. For example, graduate students could file grievance claims against a faculty member for repeated demands to engage in labor beyond

¹ UCRJ Chair Hankamer to Divisional P&Ts Re: Standards of Proof Involving Allegations of SVSH - August 19, 2021 "This change was prompted by the combination of the 2020 Title IX regulation requiring the use of a consistent evidentiary standard for faculty respondents and student respondents for certain SVSH cases, and state law requiring use of the preponderance of the evidence standard in an overlapping set of SVSH cases with student respondents."

job responsibilities. CAF seeks to clarify that the policy works in parallel with any applicable grievance processes, rather than superseding those processes nor being considered inferior to those policies. Would it be equally applied to office politics among staff members and the hierarchical relationship between faculty members and graduate students? When the abusive conduct/bullying policy overlaps with the Faculty Code of Conduct, which approach will take effect first?

Despite the vague definition of the bullying behaviors and the issues of overlapping areas of different policy coverage, CAF does not find any serious concerns on the academic freedom issues in the draft Presidential Policy on Abusive Conduct/Bullying in the Workplace.

Sincerely,

/s/

Minghui Hu, Chair

Committee on Academic Freedom

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Julie Guthman, Chair, Committee on Privilege and Tenure
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Catherine Jones, Chair, Committee on Teaching

David Brundage, Chair
Academic Senate

Re: Systemwide Senate Review: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace

Dear David,

The Committee on Career Advising (CCA) considered the document, *Systemwide Senate Review: Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace*. At its meeting on January 4, 2021, the CCA discussed the document. Issues related to abusive conduct and bullying have been a focus of the CCA this year, as you know. Any form of intimidation that hinders free and open discourse on sensitive topics, or harms workplace culture, should have no place in academia. However, CCA has identified several concerns about this policy draft:

1. The policy seems to add little that is substantive to existing policy, specifically Part II of the faculty code of conduct, [APM-15](#), and [our student code of conduct](#). The CCA is therefore concerned that the draft policy would actually do more harm (see below) than good. Despite the admirable intentions for the policy, which we very much appreciate, we are concerned it could be received as little more than an empty PR document.
2. The policy does not appear to be based on a foundation of facts. A UC-wide survey on abusive conduct and bullying would be a more productive first step. As you know, we have been discussing such a survey among Senate Faculty, and a fundamental problem has been how to make that survey more effective by including more of the campus. A UC-wide survey would solve many problems and would inform a revised draft policy.
3. The lack of explicit inclusion of staff, who could be among the most abused groups, is a major omission. There is also no discussion of bullying *by* students of other students, of staff, or of faculty.
4. The draft language raises numerous red flags related to freedom of speech and expression. Here are the most concerning we identified:
 - a. Section I. “This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.” That free speech isn’t an absolute right is already well established, so why is “importance of” in this sentence? These rights are not just “important”, and there is no need for a qualification that seems to open the door to a reduction in freedom. The problem occurs again in III.E: “This policy will be implemented in a manner that recognizes the importance of rights to freedom of speech and expression.” In addition to the weakening “importance of” language, there is no clear explanation of how the policy will be implemented to accomplish the stated intention. This gives the impression that the draft policy document is not carefully crafted.

5. Section III D. Retaliation against those who have been accused of bullying is not explicitly addressed. This could be another form of preventable bullying.

Thank you for the opportunity to provide these comments. We hope they will be received as we intended, which is to support the development of the best policy for this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Ritz", with a large, stylized "S" and "R".

Steve Ritz, Chair
The Committee on Career Advising
Owen Arden
Melissa Gwyn
Fernando Leiva
Heather Shearer

cc: Minghui Hu, Chair, Committee on Academic Freedom
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure
Catherine Jones, Chair, Committee on Teaching

November 30, 2021

David Brundage, Chair
Academic Senate

Re: Systemwide Review – Draft Presidential Policy, Abusive Conduct/Bullying

Dear David,

During its meeting of November 4, 2021, the Committee on Faculty Welfare (CFW) reviewed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. CFW welcomes this policy and appreciates the attempt to spell out both what constitutes bullying behavior and what does not. CFW also supports the inclusion of staff as a demographic that can wage a complaint. Members, however, remarked that this policy should mention specifically bullying of faculty members and staff by students, both graduate and undergraduate. CFW members believe that this type of bullying is a persistent problem that should be clearly addressed.

The rest of CFW's comments pertain to the vagueness of the implementation procedures. The policy seems to intentionally leave it up to individual campuses to assess how complaints will be raised, investigated and adjudicated. Members do not support this approach. Like in the case of Sexual Violence and Sexual Harassment policies, there should be a clear set of procedures (e.g. an actual flowchart) that specify how a complaint will be handled. Without such specificity, we risk treating complaints in different ways at different UC campuses, a result that conflicts with a just and equal process.

The procedures should also include reference to whether the adjudication procedure will involve the Committee on Privilege and Tenure (for faculty). Members were concerned that "managers" and the "Academic Personnel Office" noted in the proposal are not the appropriate entities to serve in complaint resolutions. Explicit guidelines should also be included for when managers (presumably chairs and deans in the case of faculty) are the offending party.

Thank you for the opportunity to provide feedback.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nico Orlandi', with a stylized, cursive script.

Nico Orlandi, Chair
Committee on Faculty Welfare

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Catherine Jones, Chair, Committee on Teaching
Julie Guthman, Chair, Committee on Privilege and Tenure

January 11, 2022

David Brundage, Chair
Academic Senate, Santa Cruz Division

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

Dear David,

The Committee on Teaching (COT) has reviewed the Systemwide Review of Draft Presidential Policy -- Abusive Conduct/Bullying in the Workplace proposed policy. The committee welcomes the effort to address bullying at UC and supports the broad objectives of the policy. We have some reservations, however, about specific aspects of the policy proposed and see a need for further deliberation and revision before implementation. In many ways our concerns echo those conveyed by our colleagues on other committees, so we will be brief and try to highlight points of agreement.

We appreciate the effort to tackle the challenging matter of defining bullying but believe greater precision is needed to support meaningful implementation. We encourage you to consider the observations shared in the Committee on Affirmative Action and Diversity's (CAAD) letter of December 3, 2020, specifically the limitations of a "reasonable person standard" in relationship to bullying, which is often distinguished by asymmetries of power, and the need to consider safety, not just civility, as an objective of the policy.

We also see a pressing need for clarification of how this policy would be implemented, specifically the need to identify clear reporting paths for the different community members covered by this policy. In addition to the concerns about consistency across UC campuses identified in the Committee on Faculty Welfare's (CFW) letter of November 30, 2021, we are concerned that the absence of clear information regarding reporting paths will impede the ability of the policy to address the needs of those experiencing bullying. Further, as noted in the Committee on Privilege and Tenure's (P&T) letter of November 8, 2021, the current proposal leaves unclear how the process of responding to these reports articulates with existing grievance and disciplinary procedures. Without clarifying these pathways and evaluating whether there is administrative capacity to take on these additional responsibilities, the policy risks being an inadequately supported undertaking, which in turn would undermine the possibility of successful implementation.

Finally, we appreciate the inclusion of staff and faculty in the policy but see a need to clarify how it would apply to students. As CFW notes, bullying can involve students, staff, and faculty, so it is vital to specify how they fit in this policy, particularly in regard to reporting and adjudication.

Thank you for the opportunity to comment on this important policy.

Sincerely,

A handwritten signature in blue ink that reads "Catherine A. Jones". The signature is written in a cursive, flowing style.

Catherine Jones, Chair
Committee on Teaching

cc: Minghui Hu, Chair, Committee on Academic Freedom
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Julie Guthman, Chair, Committee on Privilege and Tenure

November 8, 2021

DAVID BRUNDAGE, Chair
Academic Senate, Santa Cruz Division

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

Dear David,

On November 3, 2021 the committee on Privilege and Tenure (P&T) discussed the proposed Presidential Policy on Abusive Conduct/Bullying in the Workplace. Our comments and concerns largely revolved on two obviously related but still separable issues: one regarding the content of the policy and the other regarding implementation.

Our discussion regarding content was robust, and we did not reach consensus. Most members agreed on the need for such a policy, given the prevalence of bullying within the university, and felt that the contemplated behaviors named in the policy sufficiently articulated the range of concerning behaviors. Recognizing that any adjudication of this policy would require judgement on very difficult issues, they also felt that the examples of reasonable actions that do not constitute Abusive Conduct/Bullying were important to include and would provide adequate guidance to whatever bodies investigate and hear these cases. Dissenting members expressed concern about further university overreach and bureaucracy, and squelching of freedom of speech (about which all members agreed), and felt that existing policies were probably sufficient to cover the most egregious bullying behaviors. They also questioned whether any investigative or regulatory body could judge these behaviors fairly or consistently. In addition, they questioned whether this policy would actually protect those whose minority voices are often squelched by bullying.

Regarding implementation, the committee was completely in agreement that the policy was insufficient in articulating or even contemplating appropriate investigatory bodies and adjudication processes to ensure due process and safeguards. The committee specifically noted that in trying to address bullying and abusive behaviors across all campus constituencies, the policy did not adequately incorporate existing policies and procedures for faculty grievances and discipline, nor did it address how complaints across different campus constituencies would be handled. (E.g., how would a staff member or student make a complaint about the conduct of a faculty member?)

Based on our discussions, P&T recommends the following at the very least:

- That the policy be prefaced with a clear and unequivocal statement that academic freedom, and the speech that this principle allows, is the lifeblood of the university, and that the free exchange of ideas is necessary for the discovery and dissemination of knowledge.
- That the policy be amended to include or refer to a clear chain of action, and a flowchart akin to the SVSH adjudication framework. This should clarify who the investigatory and deliberative bodies are or will be, and it should absolutely reference that cases involving faculty grievants and respondents will be handled by P&T.
- That if new organizations are required to handle complaints under the new policy, funding for those organizations needs to be provided from the center as part of the policy implementation.
- That the policy be amended to specify the analogues for “supervisors and managers” for faculty (probably chair and deans) while also recognizing and addressing that many complaints of bullying are directed towards one’s superiors, such as chairs and deans. The normal faculty grievance process should also be explicitly included here as a logical recourse.

Sincerely,

/s/

Julie Guthman, Chair

Committee on Privilege and Tenure

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Minghui Hu, Chair, Committee on Academic Freedom
Steven Ritz, Chair, Committee on Career Advising
Nico Orlandi, Chair, Committee on Faculty Welfare
Catherine Jones, Chair, Committee on Teaching



UNIVERSITY COMMITTEE ON PRIVILEGE AND TENURE

Luca Ferrero, Chair
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January 18, 2022

ROBERT HORWITZ, ACADEMIC COUNCIL CHAIR

Dear Chair Horwitz,

This report is based on the discussion of the draft policy on Abusive Conduct/Bullying (AC/B hereafter) that took place at the UCPT meeting on November 19, 2021.

Two preliminary remarks:

1. The following comments and concerns are complementary to the reports of each divisional P&T committee, which were sent to the respective Divisional Academic Senate.
2. No objections were raised at the UCPT meeting about the very necessity of the policy but it was reported that this issue was the topic of a robust discussion at least one of the divisional P&T committees.

There was a consensus at UCPT about all of the following matters. They are presented following the order of the relevant sections in the draft policy.

Sec. II Definition of Abusive Conduct/Bullying:

The definition of whether a single act might constitute AC/B should be re-framed to be less 'exonerative.' The emphasis should be put on the fact that a single act is sufficient to constitute AC/B when severe or egregious, rather than starting with the claim that single acts do *not* constitute prohibited conduct *unless* particularly severe or egregious.

Sec. III. A The value of Cohesiveness

UCPT is concerned about the interpretation of the value of the "cohesiveness of the University community," which is supposed to be preserved by the policy. But in our view, a University is a locus for healthy intellectual contentions, disputes, and debates. As such, the University should not be valuing "cohesion" or uniformity, if this is supposed to affect intellectual matters. Although the policy is explicitly presented as respecting freedom of speech and academic freedom, the worry is that too broad an interpretation of the idea of "cohesiveness" might interfere with the very respect of these freedoms. Given the ambiguity of the term "cohesiveness," we recommend that any mention of it be dropped from the policy. In our view, if so amended, the relevant portion of the policy statement would still capture the core nature of AC/B.

Sec. III.B Policy Coverage

There is a lack of clarity on the exact extension of the policy coverage. The draft states that the policy covers “acts by and against members of the University community *in the Workplace*” (our emphasis).

This committee is unclear about the status of students as potential responders to a complaint. Does the policy cover students when they are engaged in some activity that would make the University a “workplace” for them? What about the conduct of students when they are not working on campus? Is there any similar policy concerning AC/B for students?

We also note that by comparison to such policies as the one dealing with SHSV, the present draft only mentions two kinds of third parties (namely, volunteers and independent contractors). Is there a principled reason to exclude other third parties (such as Regents, vendors, visitors, guests, and patients) which are instead covered by other policies such as SHSV?

Sec. III.C Prohibited Conduct

Several members of the committee pointed out various ambiguities in the description of AC/B. For instance, it is unclear how “embarrassing” material relates to the general definition of AC/B in Section II. The terms “sabotaging” and “undermining” a work performance seem problematic for opposite reasons. “Sabotaging” seems too strong, whereas “undermining” seems too weak. Most cases of alleged AC/B seem to fall somewhere between sabotaging and undermining.

It is also worth remarking that none of the examples listed in the draft are instances of omissive conduct. But it seems that some instances of AC/B can take an omissive form (for instance, systematic failures to properly acknowledge or give credit for the contributions of a co-worker).

Sec. V.A.2 Anonymous and Third-Party Reports

The reference to anonymous and third-party reports and allegations is unclear. As presented in the draft policy, it seems to refer only to cases in which a complaint has already been filed, since there is mention both of a complaint and a Complainant. Is the suggestion that anonymous or third-party reports cannot be used to initiate an investigation into AC/B in the absence of a formal complaint by the purported victim of the abusive conduct? If this is so, this must be made explicit. If not, then this section needs to be rephrased to avoid any confusion.

Sec V.A.4 Reports of SVSH or Discrimination

This section addresses cases where AC/B conduct might be sex-based or discriminatory. The draft indicates that the SVSH policy will *typically* apply, and in the case of Discrimination it *will* apply.

We have serious concerns about the coordination between the implementation of AC/B policy and other university policies, including SVSH and Discrimination. The various policies have different investigation, adjudication, timeline, and confidentiality requirements; they are handled by different offices. It is easy to envisage situations in which the same conduct might be subjected to separate investigations and adjudications under different policies. The overlap between the different implementation frameworks is likely to be confusing to all the parties. In addition, based on our experiences serving on P&T and hearing committees, the overlap is very likely to give rise to implementation grievances by both Complainants and Respondents.

The current draft is too vague about the handling of the overlap between the implementation of different policies. For instance, what does it mean that the Discrimination policy *will apply*? Does this mean that the AC/B policy won't apply until the investigation of the alleged discrimination is completed and adjudicated? Or that the AC/B is not to be applied if a violation of the Discrimination policy has been established? Similar questions arise for the possible overlap with SVSH policy.

Additionally, why the draft only says that SVSH policy will *typically* apply? Who is to make such a determination?

Our recommendation is that a clear hierarchy be established about which policy violations should be investigated and adjudicated first, to avoid unnecessary duplication and confusion. Likewise, there is also likely to be a lack of clarity and some confusion about the proper reporting routes of possible violations, when these violations might fall under multiple policies.

Sec. V.D.2.C Confidentiality

The confidentiality requirement under section V.D.2.C appears to be weaker than the confidentiality expected of other investigations. The relevant passage reads "Participants in an investigation *may* be advised to maintain confidentiality to protect the integrity of the investigation." (Our emphasis).

The draft policy appears to be concerned with confidentiality only in relation to the integrity of the investigation but not to the possible reputational effects on both the Complainant and the Respondent. There is no indication, for instance, that the very existence of an ongoing investigation should be kept confidential except to the parties and officers involved. In the absence of stronger protection of confidentiality of the investigation, it is easy to envisage situations in which public knowledge of the existence of formal complaints still under investigation might make early resolution more difficult (not to mention the possibility that allegations of AC/B might themselves be used in an abusive way, especially when they can inflict reputational damage prior to any adjudication).

Thank you for inviting UCPT to opine on this matter. If you have any questions, please do not hesitate to ask me.

Sincerely,



Luca Ferrero
UCPT Chair

- c: Susan Cochran, Academic Council Vice Chair
UCPT
Hilary Baxter, Academic Senate Executive Director
Michael LaBriola, Academic Senate Assistant Director



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January 14, 2022

**ROBERT HORWITZ, CHAIR
ACADEMIC COUNCIL**

RE: DRAFT PRESIDENTIAL POLICY-ABUSIVE CONDUCT/BULLYING IN THE WORKPLACE.

Dear Robert,

UCEP has reviewed the Draft Presidential Policy-Abusive Conduct/Bullying in the Workplace and we have concerns regarding whether this Policy addresses faculty and staff versus students. The committee offers the following comments:

This Policy is similar/boilerplate to many other workplace documents that address supporting workplace environments that are equitable and free of abusive conduct and this may be logical for this document if it were solely addressing faculty and staff. In comparison to anti-bullying documents described for California <https://www.stopbullying.gov/resources/laws/california>, this document has limited/no detail regarding consequences of abusive/bullying behaviors, how this policy will be communicated, and preventive education to limit the risk of abusive conduct/bullying in the workplace.

The expectation that this document also incorporates protections for students is a fallacy. There are substantial differences regarding gender, age and power between faculty and students that require a higher level of protection against abusive conduct and bullying for students. It would be logical that given the history of allegations made against faculty regarding abusive and bullying behaviors towards students that this document would either be separate from a document that addresses University employees or that calls out additional protections for students.

In summary, this draft Presidential Policy may be sufficient for University employees, however this document is greatly deficient in supporting the potentially vulnerable student population who require increased protections and guidance if they experience abusive/bullying behaviors from their peers or any University employee.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary Lynch".

Mary Lynch, Chair
UCEP



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January 19, 2022

**ROBERT HORWITZ, CHAIR
ACADEMIC COUNCIL**

RE: Proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace

Dear Robert,

The University Committee on Faculty Welfare (UCFW) has reviewed the proposed Presidential Policy on Abusive Conduct and Bullying in the Workplace, and we have several comments. First, we applaud the administration for addressing this important issue. However, we have several concerns that should be addressed before we can support the proposal. First, we note that the proposal is silent and/or inconsistent in addressing students and staff. Sometimes the text includes “employees” and in other places “the University community” and the like. Similarly, use of “workplace” to define the locus and requirements of abusive conduct or bullying could exclude student clubs or activities where no “employees” are present. Consistent and specific verbiage is needed.

Second, we have concerns about reporting protocols, investigation, and enforcement. In many cases, supervisors are the bullies, so alternate reporting lines must be available. We note that staff are rarely if ever consulted when promotions are considered, often making it easy for (latent) bullies to advance. Mentor/mentee relationships might require special consideration since they do not follow the typical “workplace” structure. The ability and availability of ombuds offices to help is unknown. We also suggest systemwide consistency regarding definitions and protocols, perhaps following the anti-sexual violence and sexual harassment policy process.

Finally, there are several instances where “wordsmithing” is needed. For example, “and” should be replaced with “or” in section 2, and “but is not limited to” should be added to section 3, paragraph 1. Overall, a careful review of mandatory and contingent verbs and qualifiers is needed.

Thank you for your consideration.

Sincerely,

Jill Hollenbach, UCFW Chair

Copy: UCFW
Hilary Baxter, Executive Director, Academic Senate
Susan Cochran, Academic Council Vice Chair