



1156 HIGH STREET
SANTA CRUZ, CALIFORNIA 95064

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

April 14, 2023

SUSAN D. COCHRAN, Chair
Academic Council

RE: Proposed Presidential Policy on Anti-Discrimination

Dear Susan,

The Santa Cruz Division of the Academic Senate has completed its review of the proposed Presidential Policy on Anti-Discrimination with the Committees on Affirmative Action and diversity (CAAD), Academic Freedom (CAF), Faculty Welfare (CFW), Privilege and Tenure (CPT), and Rules, Jurisdiction, and Elections (CRJE) providing comments. Five themes emerged amongst the committees' comments, which I will summarize here. All committee responses are included as an enclosure.

Need for A New Policy

All committees questioned the need for this new policy, especially in light of the recent review of the new Abusive Conduct policy. Moreover, they were left to guess as to how this new policy will interact with existing policies, specifically the aforementioned Abusive Conduct policy, the ever-evolving Sexual Violence and Sexual Harassment Policy (SVSH), and the sections of the Academic Personnel Manual (APM) bearing on faculty conduct and discipline (APM 15, APM 16). CAAD recommended that the links to existing and related policies be better articulated, noting that the current iteration is inconsistent in this respect. P&T questioned the need for a new anti-discrimination policy asking, "If the draft policy covers a subset of the activities covered by the policy on abusive conduct, are there meaningful differences between the two that make it impossible to combine them?" This sentiment is shared by CFW, which added, "Overall, it is not clear why a new conduct policy that affects faculty is needed at all when the current APM already covers that conduct." This general observation was also made by CRJE. The last comment on this theme comes from CAF that suggested future reviews would be greatly improved if a statement of intent and need were provided with the policy.

Process and Procedure

An issue related to the perceived redundancy of the proposed policy is how it will be implemented and operate procedurally. Three of the committees had questions regarding the operation, process, and scope of the Local Implementation Officer (LIO) and how any office created to support this position might be administratively structured. CAAD offered that the LIO and their office's organizational structure should be clearly articulated. The committee suggests, as well, that having at least two LIOs on campus would provide a system of checks and balances. CAAD sees this as necessary given the language of Section IIA1 - Harassment, which provides, ". . . the Local Implementation Officer will consider ... The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person..." The committee suggests that this system of checks and balances would prevent any individual from making unilateral decisions.

CRJE noted a lack of due process during the Initial Assessment phase. As the committee wrote in its response, "The Local Implementation Officer is granted powers to assess the harm and to investigate, providing a black-box environment for decision-making. The Committee invites the consideration of an alternative in which both Respondent and Complainant are heard in this phase (and not only the Complainant), as currently written, the policy provides little incentive for a Respondent to enter an Alternative Resolution in which their voice has not been heard, and might more often than necessary inflate conflicts to Formal Investigations. Committee felt strongly that the proposed policy should include the possibility for an appeal process, both by the Respondent and by the Complainant."

CPT suggested that the LIO officer responsible for dealing with violations under this policy be the same as the corresponding officers provided for in the Abusive Conduct policy, and perhaps those responsible for SVSH cases. The committee reasoned that in many instances, the facts of these cases often implicate two or more of these policies. CPT offered that it would be more efficient if there is a single investigating office that complainants know they can go to.

Finally, CAF found issues with the alternative resolution provisions bearing on student complainants and employee respondents. The committee interpreted this provision to be intended to prevent a more powerful person from pressuring a less powerful person into engaging in one of the alternative resolution methods. They suggested that this intent could be foiled, "if a graduate student was alleging discrimination against another graduate student in their lab, whether they could seek mediation would be dependent on if the latter graduate student happens to have a Teaching Assistantship or Graduate Student Researcher position that quarter or not." They suggested that using the language from the policy on Conflict of Interest Related to Consensual Relationships¹ regarding "individual in authority" could prove to be a useful alternative to using *employee* and *student* as the classification for denying access to alternative resolution options.

Ambiguous Language

CAAD thought that the language used in the policy lacked clarity due to the overuse of jargon and technical language and provided the following example: "supportive and remedial measures" (page 5, II-B-8) is undefined." Similarly, CAF observed that the document was inconsistent in its use of key terms. CRJE offered a specific example of the problems with clarity noting, "In several places, modal verbs are used in an ambiguous manner (as in "Individuals may engage in prohibited conduct in several ways", bottom of page 6, where "may" means "might for example" and not "are permitted to"). the

¹ Individual in Authority: the individual who has the direct responsibility to supervise, direct, oversee, evaluate, advise, and/or the ability to influence the employment or educational status or opportunities of the other(s); Conflict of Interest Related to Consensual Relationships at <https://policy.ucsc.edu/policies/cep/cep-0001.pdf>

ambiguity would be solved by substituting the verb “may” with expressions such as: “This policy bars prohibited conduct as stated in Section 2A, whether it takes place in person or through other means.”)”

Protected Category

There were a number of comments related to how “Protected Category” is defined in the policy, its perceived limitations, and potential for increased inclusivity. CRJE observed that it is not individuals who are protected but rather identity attributes. As such, the committee was leery of the potential for abuse. To illustrate, they proffered the hypothetical, “that a white-supremacist cis-gendered white male who considered themselves to be discriminated against because of his identity, could, under this policy, file a complaint.” They noted as well, that the examples of protected categories provided includes “medical condition” and a parenthetical list. CRJE was left unsure whether the parentheticals are a limiting factor on the definition, or not. If they are a limiting factor, they questioned their purpose, and if just examples, they questioned why list anything at all?

CPT proposed that if the definition of “protected category” is not constrained by legal requirements, it could be expanded with regard to sexual diversity. Specifically, CPT suggested the following alternate language: “... gender, gender identity, gender expression, gender transition, sexual orientation, sexual identity, sexual minority status, expression of sexual identity diversity, physical or mental disability...” where the language on gender is, “broader than the official state wording.”

Similarly, CAAD noted an active campaign led by South Asian scholars to include “caste” as a protected category. CAAD recognized that they do not “have sufficient information to respond to the unresolved legal question of whether caste is implicitly understood within existing language prohibiting discrimination based on race and ethnicity . . .” They would like to see it addressed explicitly in future iterations of the policy.

Notable Policy Lacunae

CAF and CFW raised concerns about the absence of explicit protections for academic freedom. CAF offered that, “ there could be stronger language protecting academic freedom, including bona fide occupational qualification (BFOQ) exceptions.” CFW similarly recommended that, “ academic freedom be clearly addressed in this policy.” The committee was left unconvinced of the efficacy of the proposed policy in protecting the academic freedom of UC faculty.

Finally, CAF and CFW would like to see language that addresses behavior outside of the campus proper. As CFW observed, “Power dynamics may occur in outside meetings/conferences that are linked to university work.” CFW suggested that conferences should be specifically t in the policy.

On behalf of the Santa Cruz Division, I thank you for the opportunity to provide comments on this significant policy, and I hope that they prove useful in its continued development.

Sincerely,



Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

encl: Senate Committee Responses (Bundled)

cc: Sylvanna Falcón, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Andy Fisher, Chair, Graduate Council (GC)
Matthew Mednick, Director, Academic Senate

March 27, 2023

Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Proposed Presidential Policy - Anti-Discrimination

Dear Patty,

The Committee on Affirmative Action and Diversity (CAAD) has reviewed and discussed the new Systemwide Proposed Presidential Policy - Anti-Discrimination. The committee first notes that they have previously responded to policies that use some of the same language as this proposed presidential policy, and as such, offers the same critiques. We are particularly concerned with the use of “reasonable person,”¹ as well as “severe” and “preponderance of the evidence” (see IIA1; IIB4, and elsewhere). (Please see the enclosed CAAD response to the Abusive Conduct/Bullying in the Workplace policy [12/03/2021]). Furthermore, it is not clear to the committee how this proposed policy will interact with the previously revised Sexual Violence and Sexual Harassment and Abusive Conduct in the Workplace Presidential policies. The proposed policy should be reviewed in conjunction with existing workplace conduct policies to ensure they work together to create a comprehensive and cohesive framework.

The proposed policy is related to students, staff, faculty and other academic appointees. However, the committee found that the policy language is not clear and straightforward for everyone to understand due to jargon and technical language. (For example: “supportive and remedial measures” (page 5, II-B-8) is undefined.) We would like to recommend making the language more accessible and providing a simple flow chart that shows the overall procedure, including lines of reporting and responding. Additionally, the committee recommends that articulations with other existing policies should be explained in a more consistent way. In some cases, existing policy is linked with little explanation; in others, new policy is articulated; and in some cases, there is both. For example, in Section IIA2b, “failure to accommodate” is not given sufficient elaboration. The document provides hyperlinks to other policies rather than articulating policy definitions, as the other sections of IIA do.

The committee notes that “the Local Implementation Officer” and its office’s organizational structure should be clearly defined. Having multiple Local Implementation Officers, or a team of such officers, might better facilitate implementation and accountability. Specifically, under Section IIA1 Harassment section, it is stated “... *the Local Implementation Officer will consider ... The effect of the conduct, objectively viewed as intimidating or offensive by a reasonable person....*” We think that having a minimum of two officers working together would provide a system of checks and balances to ensure that decisions are not made unilaterally by one individual. Ultimately, such a system can help ensure that the policy is implemented fairly and effectively. Lacking details about how this implementation structure will be funded, CAAD

¹ As noted in our response to the Abusive Conduct/Bullying in the Workplace policy: “[T]he 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.’”

suggests that the question of the number of officers be considered through later Senate committee review.

Finally, CAAD notes that there is an active campaign, spearheaded by South Asian scholars, to include caste as a protected category in the Anti-Discrimination Policy. While the committee does not have sufficient information to respond to the unresolved legal question of whether caste is implicitly understood within existing language prohibiting discrimination based on race and ethnicity, CAAD recognizes the potential for discrimination at UC and would like to see it addressed explicitly in future versions of the policy.

We appreciate the opportunity to respond and hope for further revision to this policy.

Sincerely,



Kirsten Silva Gruesz, Chair
Committee on Affirmative Action and Diversity

Encl. CAAD to ASC Brundage re Systemwide Review of Draft Presidential Policy Abusive Conduct in the Workplace, 12-03-2021

cc: Sylvanna Falcón, incoming Chair, Committee on Affirmative Action and Diversity
Roger Schoenman, Chair, Committee on Academic Freedom
Alexander Sher, Chair, Committee on Faculty Welfare
Onuttom Narayan, Chair, Committee on Privilege and Tenure
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction and Elections
Senate Executive Committee

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

February 24, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Review: Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

After the Committee on Academic Freedom (CAF) carefully reviewed the new proposed Presidential Policy on Anti-Discrimination, a number of questions emerged. Who will the local implementation officer be at various campuses? Will this be a new admin position or will this responsibility be added to an existing title? How does this policy interact with other existing policies like Title VII and Title IX as well as blanket coverage for those currently not recognized by Federal law as belonging to a "protected class"?

CAF members were in broad agreement that the review process could be greatly improved by providing a brief and broad statement about the intent around or need for certain policies to be considered and implemented. While we have received some subsequent clarification about different groups covered by Anti-Discrimination Policy and the Abusive Conduct Policy, such clarifications could better focus discussions among committee members by providing vital institutional background for policy changes.

Discussants noted that the document is sometimes internally inconsistent in its use of policy links and key terms. There's some ambiguity about what isn't covered by the new policies, perhaps conferences not sponsored by the university, etc. Discussion participants also noted that there could be stronger language protecting academic freedom, including *bona fide* occupational qualification (BFOQ) exceptions.

Additionally, the barring of alternative resolution options in the policy when the complainant is a student and the respondent is an employee appears to be geared towards preventing a more powerful person from pressuring a less powerful person into these alternative resolution methods. This is an admirable goal. However, by grounding that goal of avoiding undue pressure on the basis of employee/student status, rather than on whether the respondent has a position of power over the complainant leads to unintended and arbitrary consequences. For example, if a graduate student was alleging discrimination against another graduate student in their lab, whether they could seek mediation would be dependent on if the latter graduate student happens to have a Teaching Assistantship or Graduate Student Researchship that quarter or not. That seems arbitrary and misaligned with the intentions of the policy. Similarly, a senior faculty member alleging discrimination against a junior faculty member would not be allowed to seek mediation in the event that the senior faculty member happened to be auditing a foreign language course or

computer programming course that quarter (i.e., making them a student). Instead of using employee and student as the classification for denying access to alternative resolution options, we recommend using the language taken from the existing policy on consensual relationships regarding an “individual in authority” (i.e., “Individual in Authority: the individual who has the direct responsibility to supervise, direct, oversee, evaluate, advise, and/or the ability to influence the employment or educational status or opportunities of the other(s))

Sincerely

/s/

Roger Schoenman, Chair

Committee on Academic Freedom

cc: Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Senate Executive Committee

April 10, 2023

Patty Gallagher, Chair
Academic Senate

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

During its meeting of February 9, 2023, the Committee on Faculty Welfare (CFW) considered the proposed Presidential Policy on Anti-Discrimination. Members questioned how this new policy would interact with existing policies, noted ambiguity in terms of where an event has to occur to be covered, and raised concerns about the lack of mention of academic freedom in the draft text.

There is no reference to the just-adopted Abusive Conduct policy. Faculty Code of Conduct (APM 015) is mentioned, and it is stated that the proposed policy does not seek to supplant any of the existing ones. APM 015 already covers discriminatory conduct covered in the proposed new policy. As such, it is not at all clear how this new policy would work tangentially, and/or supersede existing policies or current processes such as faculty misconduct investigations. Members questioned what the difference is between this proposed policy and the Abusive Conduct policy (some cases might be covered by both), and how to determine what process should be followed. Overall, it is not clear why a new conduct policy that affects faculty is needed at all when the current APM already covers that conduct.

In terms of where incidents may occur, members noted that anti-discrimination is not limited to campus situations. Power dynamics may occur in outside meetings/conferences that are linked to university work. Conferences in particular are a grey area, and should be called out specifically in this policy. Conferences are required of faculty for research, but are not structured the same as remote research sites. The same may be said for editorial boards. CFW contends that a UC policy on anti-discrimination should cover any professional activities connected with work that the individual is doing for the University. The policy should speak to more situations where anti-discrimination “in the workplace” may occur, particularly for those that may be unique to faculty.

Additionally, and in the current political climate, CFW recommends that academic freedom be clearly addressed in this policy. Members were not convinced that what is currently stated in the policy draft is enough to protect the academic freedom of UC faculty.

Thank you for the opportunity to provide feedback.

Sincerely,



Alexander Sher, Chair
Committee on Faculty Welfare

cc: Roger Schoenman, Chair, Committee on Academic Freedom
Onuttom Narayan, Chair, Committee on Privilege and Tenure
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Senate Executive Committee

February 16, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Systemwide Review of Proposed Presidential Policy – Anti-Discrimination

Dear Patty,

The Committee on Privilege and Tenure (P&T) has the following comments on this draft policy:

Beyond its specific wording, we are concerned about the overlap with the existing policy on abusive conduct. As we understand it, the draft policy is intended to align with laws that cover protected classes, but the abusive conduct policy casts a broader net. If the draft policy covers a subset of the activities covered by the policy on abusive conduct, are there meaningful differences between the two that make it impossible to combine them? There are differences that may be deliberate, e.g. only managers and supervisors have to report abusive conduct, whereas all Responsible Employees (including all faculty) have to report potential violations of the anti-discrimination policy. There are other differences which must be unintended, such as the “objectively viewed as intimidating or offensive” criterion that is only in the draft policy. And then there are differences that are just confusing, such as the fact that confidential resources are listed in the definitions in the draft policy but come later in the text in the abusive conduct policy.

At a minimum, the two policies should be reviewed together and aligned as much as possible. The next version of the anti-discrimination policy should be accompanied by a letter explaining why two separate policies are needed. For example, are the penalties more severe for violations of the anti-discrimination policy, are students included as respondents in one policy and not in the other, or does the University offer more resources to people who have suffered injury under the anti-discrimination policy? Why are these differences necessary? If it is possible to merge the two policies into one (acknowledging that the protections for protected classes are legally required but the general policy is voluntary) that would be even better.

P&T also wondered about the context of the creation of the draft policy. Have the existing policies been found inadequate, or is there a desire to unify different policies aimed at different groups, or is the purpose to create the Local Implementation Officer (LIO) office? Understanding the motivation would help us understand the policy better.

Turning to the wording of the draft policy:

- We recommend that the LIO dealing with possible violations of this policy be the same as the corresponding officers for the recently enacted presidential policy on abusive conduct, and perhaps also the policy on sexual violence and sexual harassment. Violations of these policies can be overlapping, and it will be both economical and efficient if there is a single investigating office that complainants know they should go to.

- If the definition of “protected category” is not constrained by legal requirements, we recommend that broader forms of sexual diversity be included: “... gender, gender identity, gender expression, gender transition, sexual orientation, sexual identity, sexual minority status, expression of sexual identity diversity, physical or mental disability...”. (Underlined text added.) The wording about gender is broader than the official state wording, and we encourage a similar breadth when it comes to sexual diversity.
- We were unsure whether the notification requirement for Responsible Employees would be satisfied by, for example, an email to the LIO with the name of the University affiliate who had potentially experienced prohibited conduct. We believe that this should be sufficient, and the policy should confirm this.

Sincerely

/s/

Onuttom Narayan, Chair

Committee on Privilege and Tenure

cc: Kirsten Silva Guesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Eleonora Pasotti, Chair, Committee on Rules, Jurisdiction, and Elections (CRJE)
Senate Executive Committee

March 20, 2023

PATTY GALLAGHER, Chair
Academic Senate, Santa Cruz Division

Re: Review: Proposed Presidential Policy on Anti-Discrimination

Dear Patty,

During its meeting of February 21, 2023, the Committee on Rules, Jurisdiction, and Elections (CRJE) reviewed the proposed Presidential Policy on Anti-Discrimination; it wishes to raise a few questions.

The Committee is concerned by the lack of due process with regard to both Respondent and Complainant in the Initial Assessment. The Local Implementation Officer is granted powers to assess the harm and to investigate, providing a black-box environment for decision-making. The Committee invites the consideration of an alternative in which both Respondent and Complainant are heard in this phase (and not only the Complainant). This more inclusive approach might aid in clarifying the context of the harm and better assess its impact. The Committee finds that as currently written, the policy provides little incentive for a Respondent to enter an Alternative Resolution in which their voice has not been heard, and might more often than necessary inflate conflicts to Formal Investigations.

In the same spirit of increasing due process for the Respondent, the Committee recommends reference to Senate Bylaws 335 and 336. Staff lacks such spaces for representation, and therefore are even more impacted by the current lack of transparency and concentration of both investigative and adjudicating powers in the Local Implementation Officer. Further, the Committee felt strongly that proposed policy should include the possibility for an appeal process, both by the Respondent and by the Complainant.

The Committee would like to raise a question with regard to the definition of Protected Category (p.4). It is not individuals who are protected but rather identity attributes. This raises the possibility that a white-supremacist cis-gendered white male who considered themselves to be discriminated against because of his identity, could, under this policy, file a complaint. Without any reference to historical injustices and marginalization, the policy can be misused.

Further, the definition of Protected Category lists what seem to be examples for some but not all attributes. For instance, the policy lists “medical condition” as a protected identity category and then provides “cancer” in parentheses. Does this mean that cancer has special protections? Or is it representative of the kind of medical conditions that are protected? If so, what is that category of protected medical conditions? In short, it is unclear whether the items in parenthesis limit the definition (in which case, why?) or are simply examples (in which case, why include them?).

In several places, modal verbs are used in an ambiguous manner (as in “Individuals *may* engage in prohibited conduct in several ways”, bottom of page 6, where “may” means “might for example” and not “are permitted to”). The Committee asks for more clarity in such instances (for example, in the instance mentioned above, the ambiguity would be solved by substituting the verb “may” with

expressions such as: “This policy bars prohibited conduct as stated in Section 2A, whether it takes place in person or through other means.”)

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

Sincerely

/s/

Eleonora Pasotti, Chair

Committee on Rules, Jurisdiction, and Elections

cc: Kirsten Silva Guesz, Chair, Committee on Affirmative Action and Diversity (CAAD)
Roger Schoenman, Chair, Committee on Academic Freedom (CAF)
Alexander Sher, Chair, Committee on Faculty Welfare (CFW)
Onuttom Narayan, Chair, Committee on Privilege and Tenure (CPT)