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October 18, 2022

Susan D. Cochran, Chair
Academic Council

**RE: Second Systemwide Review of Draft Presidential Policy -- Abusive Conduct
in the Workplace**

Dear Susan,

The Santa Cruz Academic Senate has reviewed your request for the second systemwide review of the proposed Presidential Policy on Abusive Conduct in the Workplace. The UC Santa Cruz Committees on Affirmative Action and Diversity (CAAD), Academic Freedom (CAF), Career Advising (CCA), Faculty Welfare (CFW), Teaching (COT), and Privilege & Tenure (CPT) have responded.

We broadly support the creation of such a policy, the absence of existing policy to address abusive conduct leads to situations in which faculty members ineffectively grieve such behavior, when the more effective approach would include a charge. For a charge to be effectively leveraged as discipline, however, it requires a violation of the Faculty Code of Conduct, which can include a violation of policy. Therefore, this proposed policy fills a lacuna. Some of our committee members noted that many of the changes in the policy draft document, however, seem administrative rather than substantial. That said, we also find many of the changes to be salutary and responsive to some of the concerns we outlined in our prior comments in January 2022.

We were glad to see that this revision of the previously named “bullying” policy addressed our primary concerns: the protection of academic freedom and clearer procedures for adjudicating the cases. Our committees asked for more clarity around both language and policy procedure.

Language clarifications and recommendations

- The reporting obligation of this policy includes managers and supervisors (which is inclusive of deans and chairs) but does not clarify the term “supervisor”. The policy must clearly specify who is a mandated reporter. Would supervising graduate students, for instance, require a faculty member to be a mandated reporter?

- There is language in the proposed policy that prohibits retaliation against any person who in good faith reports abusive conduct or participates in an investigation or other process under the policy. However, there is no language that states that those who are accused should also be protected until the issue is resolved. Such language should be added to protect those who may be falsely accused. Manager/supervisor responsibilities are not clearly spelled out in the draft. More detail would be helpful.
- The new version has much more to say about academic freedom. While CAAD recognizes academic freedom as an important issue, it is not the subject of this policy, which is about freedom from abuse, not freedom to express certain views. Other systemwide policies focus on academic freedom (including APM 010), and CAAD finds that the new emphasis on academic freedom in this revision undercuts the main intent of the policy.
- While the “reasonable person test” has been removed, it has been replaced with an “objectively offensive” standard, which is not sufficiently defined in the policy (more on this below).
- We find the shift from language of “bullying” to “abusive conduct” to be apt and constructive.

Policy Issues

- Our committees recognize that abusive conduct can happen at various levels and in various relationships. A 30-day timeline for providing an initial assessment in response to a report of abusive conduct (p. 10) has been added, as well as the ability for the Complainant to have an advisor present (instead of having to request permission for an advisor) (p. 12).
- We were pleased that the revised policy has added students to the policy in a way that acknowledges the multiple roles they often play in the university, though there may be additional complexities to be addressed in this regard. Revisions to the free-speech text and the additional statement, “This policy is intended to protect all members of the University community,” has been included, which we interpret as including staff members (though they are still not explicitly mentioned). Many of the concerns we iterated in our past review persist, including unclear lines of reporting and a lack of attention to abusive conduct by institutions. CAAD reiterates the concern expressed in our earlier letter, which suggested removing the list of what is not abusive conduct: “The policy seeks to define what is not abusive conduct/bullying, but in so doing, includes various sites and interactions where the kinds of activities the policy seeks to cover can, and often do, occur.” Our view is that this creates more problems than it solves because there is no way to determine what is objectively offensive. We believe the reasonable person standard, which is an existing legal standard, is the better alternative. A more exhaustive list of the types of conduct that are prohibited and an expanded discussion of the intent of the policy would provide further helpful guidance on what is considered abusive conduct in the workplace. Our committees also felt that just removing “embarrassing” photos does not solve the fundamental problem of the policy potentially being weaponized against consensual sexual minorities in relationships in which the circulating of sexual photos, videos, and information via social media is done consensually. On the research front, this could - mean that scholars who study sexuality might be found in violation of this policy for, say, circulating an email with a suggestive photo in it advertising an upcoming talk about sexuality or pornography. CAF recommends adding “without the consent of the depicted person” to help further clarify this (VII.1, bullet eight). We recommend more specific guidance on “local implementation procedures.”

- Under Section III.B. – Policy Coverage, the new draft states that policy will apply to students who are not employed by the UC if they are Respondents or Reporters. However, the policy does not state what UC policy covers students who are not employed if they are Respondents. Members note that abusive behavior may come from students who are not employed by the University. Therefore, the policy that governs this cohort should be referenced in this policy. If not, what policy and processes are in place to address abuse by a student of any community member, including staff, lecturers, other students, and faculty?

Interface with Current Policy

Some members wondered how this policy will interact with the faculty code of conduct and/or established discipline processes on campus. The revised draft aims to clarify that the proposed policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations. Both CFW and CPT raised concerns that the policy doesn't specify how violation would or would not intersect with the personnel review process. There is inconsistency at the interface of abusive conduct and the personnel process. Say a faculty member violates this policy and is disciplined with a censure or salary cut. Would that count as discipline enough, analogous to "time served," or does the administration imagine that the finding of abusive conduct would additionally be considered in a personnel action? Additionally, would failing to utilize this policy to address abusive conduct effectively nullify concerns raised in a personnel action? We speculate they might hold less water. These are practical considerations that CPTs throughout the system might encounter and deserve consideration.

Implementation and Communication

- Committee members felt the policy should include a training requirement for new and existing employees. This would ensure that all employees have access to similar information about abusive conduct. The employee training should cover the policy itself, general information and protections of pre-existing policies, introduction to workplace culture, and awareness of employee rights, protections and/or awareness of conflict of interest procedures.
- Members signaled concern that this policy is being circulated for implementation prior to the completion of this full Senate review. One of our faculty members was at a divisional meeting where the draft policy was introduced by Labor Relations.

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

Sincerely,



Patty Gallagher, Chair
Academic Senate, Santa Cruz Division

cc: Melissa Caldwell, Vice Chair Academic Senate
Kirsten Silva Gruesz, Chair, Committee on Affirmative Action and Diversity
Roger Schoenman, Chair, Committee on Academic Freedom

Steven Ritz, Chair, Committee on Career Advising
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