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SANTA CRUZ DIVISION  
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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 polices. 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.

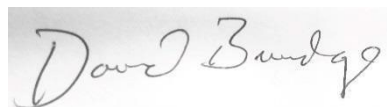
## Implementation

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).<sup>1</sup> 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

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<sup>1</sup> 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 flourish at the end.

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', written in a cursive style.

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,



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