April 10, 2023

Susan Cochran, Chair, Academic Council
1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200

RE: Systemwide Senate Review of Proposed Presidential Policy – Anti-Discrimination

Dear Susan,

The Riverside Executive Council discussed the proposed Presidential Policy on Anti-Discrimination during their April 10, 2023 meeting and had no additional comments to forward along with those attached from local committees that responded to the call to opine.

Sincerely yours,

Sang-Hee Lee
Professor of Anthropology and Chair of the Riverside Division

CC: Monica Lin, Executive Director of the Academic Senate
Cherysa Cortez, Executive Director of UCR Academic Senate Office
FACULTY WELFARE

March 31, 2023

To: Sang-Hee Lee, Chair
Riverside Division

From: Robert Clare, Chair
Committee on Faculty Welfare

RE: [Systemwide Review] Proposed Presidential Policy – Anti-Discrimination

At our March 14, 2023 meeting, the Committee on Faculty Welfare (FW) discussed the Proposed Presidential Policy on Anti-Discrimination. FW appreciates the opportunity to evaluate this systemwide review item and commends the University of California’s commitment to create and maintain a healthy working and learning environment free of discrimination, harassment, and retaliation.

The following captures our questions and concerns with respect to the proposed policy:

- In V.A.3 (“Initial Assessment of a Report / Immediate Health and Safety”) and V.A.4 (“Closure after Initial Assessment”), there is no mention of outreach to the Respondent. There are, however, steps spelled out to address outreach to and consultation with the Complainant. In general, these portions of the proposed policy seem to portray a Respondent as guilty until proven innocent. Furthermore, throughout the reporting/response/investigative phases, confidentiality is often weaponized in favor of the Complainant and at the detriment of the Respondent. There appears to be a multitude of inequitable trends catering to the Complainant with these kinds of policies, to include the UC Policy on Discrimination, Harassment, and Affirmative Action in the Workplace and UC Abusive Conduct Policy.

- Although we understand this proposed policy is intended to differ from the UC Abusive Conduct Policy (by addressing Prohibited Conduct related to state and federally defined Protected Categories) and will likely replace the UC Policy on Discrimination, Harassment, and Affirmative Action in the Workplace, what remains unclear is the full extent of similarities and differences between this proposed policy and the other UC policies that aim to combat discrimination, harassment, and retaliation. How do all these policies overlap? How do they differ?

If UC has already indicated that yet another policy will be created to fill the gap in coverage related to Affirmative Action and pay transparency not addressed in this proposed policy, one wonders whether the proliferation (instead of consolidation) of policies in this regard is optimal.
In IV.F (“Noncompliance with the Policy”), it states that this proposed policy “does not supplant disciplinary processes described in the APM or in the Academic Senate’s Bylaws or regulations.” As this policy also pertains to faculty: if it does not supplant Academic Personnel Manual (APM)-015 (The Faculty Code of Conduct), nor supersede the Academic Senate’s formal charges and/or privilege and tenure adjudication processes, it should be made clear whether or not faculty are protected from a form of double jeopardy, i.e. are faculty protected in the Academic Senate realm from facing investigation and/or punishment for the same alleged offense, after it has been determined by the Local Implementation Officer that there was no discrimination/misconduct?
March 29, 2023

To: Sang-Hee Lee  
   Riverside Division Academic Senate

From: Katherine Stavropoulos, Chair  
   Committee on Diversity, Equity, & Inclusion

Re: [Systemwide Review] Proposed Presidential Policy – Anti-Discrimination

The Committee on Diversity, Equity and Inclusion (CoDEI) discussed the proposed Presidential Policy on Anti-Discrimination. CoDEI appreciates the overall intent of the proposal, but provides some comments for clarification and additional consideration:

Committee members suggested clarification may be needed regarding the proposed language of harassment as it relates to being “based on a protected category”. Members felt it could be difficult to prove, and an undue burden to those experiencing the harassment, if it is based on being in a protected category. It was suggested that the language be changed to redefine harassment to include the possibility of being related to a protected category or not related to a protected category.

Members strongly recommend the addition of caste discrimination (or other forms of socioeconomic classicism) be added as a protected category.
COMMITTEE ON ACADEMIC FREEDOM

March 6, 2023

To: Sang-Hee Lee, Chair
Riverside Division Academic Senate

From: Ivy Zhang, Chair
Committee on Academic Freedom

Re: Proposed Presidential Policy for Anti-Discrimination

The Committee on Academic Freedom reviewed the proposed Presidential policy for anti-discrimination and found that academic freedom is given significant consideration in the proposed policy. The Committee noted concern regarding Section V. Procedures as while academic freedom is specifically considered in the process of formal investigation, it was not explicitly discussed for the initial assessment. Given the significance of academic freedom in potential cases related to faculty members, the Committee recommends that relevant academic experts be consulted in the process of initial assessment to evaluate whether protection of academic freedom should be involved.
In its March 6, 2023 meeting, CAP discussed the proposed Presidential Policy on Anti-Discrimination. The committee commends the effort toward more effectively promoting an inclusive campus atmosphere through a unified, comprehensive and clear central policy on anti-discrimination. Below are our comments and suggestions.

• CAP is pleased to note recognition of the difficulty in disambiguating perceived discrimination from potentially legitimate academic freedom expression, and the associated efforts to balance the two. However, it is not clear when the implication of academic freedom will be assessed during the resolution process, and whether there could be temporary repercussions to a faculty member for cases that are eventually assessed to implicate academic freedom since this assessment appears to be undertaken after a formal investigation is opened. As a result, we are concerned that the proposed policy may still exert a chilling effect on academic freedom.

• In cases of harassment, discrimination by unfavorable action, or retaliation, there is an inappropriate action taken by the respondent. Conversely, in the case of discrimination through “failure to accommodate”, it is not clear who has the responsibility for the accommodation. In particular, it should be clarified whether the University is always the respondent in these cases since the proposed policy states “… Failure of the University to provide reasonable accommodations to individuals when required by law” (page 3); if not, then how the responsibility is assessed in the case of a complaint needs to be clearly laid out. Moreover, we believe it is worthwhile to emphasize/clarify whether accommodations for other protected categories not required by law (e.g., not accommodating religious holidays) also constitute discrimination.
COMMITTEE ON CHARGES

March 6, 2023

To: Sang-Hee Lee, Chair
    Riverside Division

Fr: Evangelos Christidis
    Chair, Committee on Charges


The UCR Academic Senate Committee on Charges reviewed the Proposed Presidential Policy on Anti-Discrimination and had no comments.
March 17, 2023

TO: Sang-Hee Lee, Chair  
Riverside Division of the Academic Senate

FROM: John Kim, Chair  
CHASS Executive Committee

RE: Proposed Presidential Policy on Anti-Discrimination

CHASS Executive Committee has reviewed the draft of the proposed UC Anti-Discrimination Policy. We note with some satisfaction that this is a system-wide policy. While different campuses have had largely congruent anti-discrimination statements, they do not all seem to have had the standing of an actual policy and lacked uniform procedures for overseeing and ensuring compliance with them. We are glad to see this effort to create a uniform policy and procedures that will be pursued on all campuses and units of the UC system. We also note that it does not seek to replace or displace the distinct policies on Sexual Violence and Sexual Harassment, which remain in force. The Anti-Discrimination Policy (which also includes policy on Harassment and Retaliation) importantly recognizes other forms of discrimination based on protected categories and also the fact that discrimination can take place through an aggregation of discrete acts by more than one actor and not only as a single egregious act or sequence of acts performed by a single individual.

We have a number of comments, both local and general, and of varying degrees of importance.

General points:

1. In light of the fact that discrimination can take the form of an accumulation of discrete acts or “microaggressions”, it would be important to include explicitly in the policy the opportunity for a Complainant to file a claim of discrimination or harassment (and potentially retaliation) against a unit or department, and not only against named individuals. Often discrimination is endemic to a group, giving rise to a hostile climate that can be even more deleterious to full participation in the life of an academic workplace than individual harassment. In this connection, it should be noted that often retaliation is not a matter of retaliating against a Complainant after the fact, but of harassing individuals who raise questions in public—at meetings or otherwise—about the
intellectual or collegial patterns of discrimination that may be habitual in a department or unit, thus leading to antagonism or resentment on the part of colleagues. The current draft policy does not explicitly allow for this fact.

2. We recommend replacement of the term “community” throughout with the more accurate “workplace”. Recent retaliation by the university against UAW members and against faculty who supported them, as well as retaliation within units on our campuses, has only confirmed the fact that the UC is a corporation and our campuses are workplaces with hierarchies and opposed interests. They are not communities in any meaningful sense, which would entail shared values, interests, and commitments. The policy should be designed to protect campus workers from discrimination that most often results from power differentials, of which Protected Categories are one historically based manifestation.

3. While we welcome the respect offered to academic freedom and constitutionally-protected rights of freedom of expression, there may be cases in which research, teaching, writings and oral presentations are discriminatory in their findings and expression, sometimes with intent, sometimes in effect. Does such academic work enjoy the protections of academic freedom despite its discriminatory impact? In such cases, those who suffer discrimination may not be identifiable individuals, but groups. Should the policy not make explicit pathways open to group claims of discrimination? Its current form seems to imagine the Complainant only as a single aggrieved individual, or, in the case of repeated discrimination by an individual, a series of such aggrieved individuals.

4. Also with regard to Academic Freedom, who is authorized to stand as the “appropriate academic officer” at UCR or any campus? What qualifies them to pronounce on academic freedom issues? Will the appropriate body be the Senate standing committee on Academic Freedom? If not, why not?

5. What safeguards does the draft policy offer against abuse of Anti-Discrimination procedures? It is common knowledge that in recent years spurious charges of discrimination have been brought, both by individuals and by organizations, as a politicized means to challenge colleagues or students who seek to realize the goals of social justice on campus. Such charges are in fact designed to harass and to waste the time of the accused under the cover of claims to have been discriminated against. They abuse the language of diversity, equity and inclusion, while inclusivity is no protection against such abuse, since it does not acknowledge the need to transform the university rather than merely “include” the previously excluded within the structures that historically ensured their exclusion. While it is always possible, but by no means certain, that any Local Implementation Officer may recognize and dismiss such abuse, that can only take place under current policies after an investigation, which ensures that the goal of harassment and time-wasting is achieved, no matter the outcome. The policy at the very least needs strong language and preferably severe sanctions against the abuse of anti-discrimination procedures.

6. Does the term “staff” include administrators, senior or mid-level? This is nowhere made clear, so some ambiguity remains as to whether administrators are subject to the Anti-Discrimination policy. This should be made explicit. If administrators are not subject to the policy, why not?
7. The list of protected categories should be expanded throughout to include discrimination on the basis of caste. Such discrimination is quite widespread and damaging in its effects on colleagues, students and staff members alike. To cite a recent petition circulated by colleagues, with which we are in accord:

Caste-oppressed students and faculty are subjected to discrimination, bullying, and humiliation. According to the preliminary findings of the 2022 Caste in Higher Education Survey administered by the National Academic Coalition for Caste Equity (NACCE) and Equality Labs, 4 in 5 caste-oppressed students, staff, and faculty reported experiencing caste-discrimination at the hands of their dominant caste peers. Further, 75% of them did not report caste-based discrimination in their universities or colleges because caste was not added as a protected category and/or their Diversity, Equity, and Inclusion departments lacked caste competency due to a lack of provisions and training.

**Specific points:**

8. p. 4, II.B.5: The Protected Categories listing for age discrimination, i.e. “age (over 40),” must be amended in order to conform to Federal law. Federal law stipulates that its age discrimination applies to affected parties “who are at least 40 years of age” (see, https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967). The current wording only applies to persons who are at least 41 years of age.

9. p. 6, III.C.: There is a significant linguistic ambiguity in the following two uses of the modal verb “may”:
"Individuals may engage in Prohibited Conduct in person or through other means"
and
"In addition, Prohibited Conduct may occur between individuals with the same Protected Category or different Protected Categories"

The ambiguity is that "may" can mean "is possible" or "is permissible." Clearly, the policy means "is possible" in using the word "may," given the larger context of the passages in which this verb is cited. Nevertheless it is still ambiguous. We suggest that the verb "may" in these two instances should be changed to "can" in order to disambiguate the two distinct senses of “may.”

10. p. 3: Definitions, 2.a: what is the meaning of “unless required or authorized by law”?

11. p. 3: 2.b (note): why does the policy not address “disparate impact”, which often goes to our query in #3 above?

12. At several points, including Introductory text, p. 2, Policy, bottom of page 5, p. 6, IV A, B, D: the policy uses the auxiliary “will” where it might be proper to use “shall”, where the latter signifies an obligation or commitment rather than a procedure that is followed over time.

13. p. 13, 5a: last bullet point: what are the limits to confidentiality in the case of an Alternative Resolution? Who may the information be shared with and within what limits? Is this based on a determination of a “need to know”? Is confidential information to be shared only with designated
appointees? This needs clarification to protect both the Complainant[s] and the Respondent[s] who may be found not to have acted in a discriminatory fashion.

14. p. 18: 5B.d: Should the LIO not also be responsible for following up to ensure no retaliation has taken place and that appropriate responsible parties are informed of the outcome of the investigation and advised to protect the complainant against retaliation by Respondent or others?
COMMITTEE ON PRIVILEGE & TENURE

March 6, 2023

To: Sang-Hee Lee, Chair
    Riverside Division

Fr: Y. Peter Chung, Chair
    Committee on Privilege & Tenure


The UCR Academic Senate Committee on Privilege and Tenure reviewed the Proposed Presidential Policy on Anti-Discrimination. Some member felt that the policy was well written, others put forth the following questions and critiques for consideration:

- Will the described policy be duplicated on campuses?
- When the complainant is a student, why isn’t alternative resolution an option?
- Member questions: Is the described policy office going to be duplicated on campuses?
- Why is there no time limit for reporting violations of this policy? This leaves an eternal window for a claim to be made after many years.

Thank you for the opportunity to comment on this proposal.
To: Sang-Hee Lee, Division Chair of the UCR Division of the Academic Senate & Cherysa Cortez, Executive Director of the UCR Academic Senate

From: Raquel M. Rall, Ph.D., Faculty Chair of the School of Education Executive Committee


The members of the SOE Executive Committee reviewed the [Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination. Comments were provided at our monthly meeting and via email. Our feedback is below.

The definitions at the beginning of the policy are helpful. We especially appreciate the part of the policy that makes it clear there’s no time limit for reporting. The time frame aspect of the policy is also useful so that any victims will have a sense of when they will hear back regarding their complaints. What is not clear from this policy is if (depending on the severity and proximity of those involved) there is any guidance regarding whether the victim and the accused will be permitted to work during the investigation or whether a leave of absence is possible during the leave of absence. We know these facets may be on a case-by-case basis but it would be helpful to have some general sense of possible approaches written in the policy. If not, various scenarios might be open to interpretation and could perpetuate additional forms of discrimination.

Maybe in the appendices or the frequently asked questions, there can be mention of support resources for individuals who have been victims of discrimination, harassment, or retaliation. While not an explicit part of the policy, it might be useful to have links to resources that can offer physical, mental, or emotional support in tandem with the formal process. We do not want to lose sight of the people in these situations because we are centering the processes.

Thank you for the opportunity to provide feedback.

Sincerely,

Raquel M. Rall, Ph.D.
Faculty Executive Committee Chair 2022-2025
School of Education
University of California, Riverside
March 13, 2023

TO: Sang-Hee Lee, Ph.D., Chair, Academic Senate, UCR Division

FROM: Marcus Kaul, Ph.D., Chair, Faculty Executive Committee, UCR School of Medicine


Dear Sang-Hee,

The SOM Faculty Executive Committee has reviewed the proposed Presidential Policy – Anti-Discrimination. The Committee noted that the proposed policy is similar to the misconduct and harassment policy. Dr. Kaul explained that this policy includes students, faculty, staff, contractors, and casts a wider net.

The Committee noted that the proposed policy covers academic freedom and states that it is not regulating freedom of speech, but freedom of speech is not unlimited.

This proposed policy is trying to setup clear standards of consequences for noncompliance and how consequences will be carried out.

Overall the Committee is in agreement with the proposed policy and has no major points to bring forward or no suggestions for major changes. and we have no comments other than agreeing with the purpose of this policy.

Yours sincerely,

Marcus Kaul, Ph.D.
Chair, Faculty Executive Committee School of Medicine
TO: Sang-Hee Lee, Chair  
Riverside Division  

FR: Richard M. Carpiano, Chair  
Executive Committee, School of Public Policy  


Date: March 27, 2023

The Executive Committee of the School of Public Policy reviewed the documentation for “[Systemwide Review] Proposed Policy: Proposed Presidential Policy – Anti-Discrimination.”  

We have no edits to suggest nor concerns to raise with the document.

Sincerely,

[Signature]  

Richard M. Carpiano, Ph.D., M.P.H.  
Professor of Public Policy