



September 29, 2022

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

FROM: John Kim, Chair 
CHASS Executive Committee

RE: [Systemwide Review] Proposed Policy: 2nd Round Review - Draft Presidential
Policy -- Abusive Conduct in the Workplace

The CHASS Executive Committee (EC) has reviewed the revisions to the Policy on Abusive Conduct in the Workplace at its regular meeting on September 29, 2022, and continues to affirm the spirit and intent of this policy, as it also had in its review of the first version of this policy in its letter to the Senate on December 17, 2021 (attached). Abusive conduct is a serious issue that deeply affects the life of the University and must be addressed. We thank those who are working on this policy for their time and effort in this difficult task. We also thank them for revising the policy to replace the term “bullying” with “abusive conduct” and for eliminating the “reasonable person” standard in defining “abusive conduct.”

However, we continue to have several concerns about the wording of the proposed revision of this policy, especially within the context of how charges are procedurally handled.

Our concerns around this policy are five-fold:

- 1) The replacement of the term “bullying” with “abusive conduct” appears cosmetic and does not address EC’s previous concerns about the scope and definition of “abusive conduct.” Quoting from EC’s review of the previous version of this proposed policy, we continue to note:

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. (EC Letter to the Divisional Senate, December 17, 2020, p. 1)

In this regard, an explicit acknowledgement of the possible subtlety, ineffability or blurriness of “abusive conduct” may be warranted.

- 2) Related to the above is the seemingly opposite but no less justifiable concern that the revised standard of “abusive conduct” is still too vague. The current version of the policy states:

The conduct creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University’s legitimate educational, employment, and business interests. (§II Definitions, p. 3).

The problematic, vague wording is “objectively intimidating or offensive.” What does “objectively” mean here? Given that “intimidating” or “offensive” are necessarily *subjective* evaluations, this revision proposes that the standard for adjudicating an action as “abusive” be “objectively subjective.” “Objectively subjective” is not a standard; it is a deferral of the question.

Moreover, the qualification that the action must be “*unrelated* to the University’s legitimate educational, employment, and business interests” does not take into account “abusive conduct” that takes place within the context of “the University’s legitimate educational, employment, and business interests.” Using the examples provided for in the FAQ, we can imagine a situation in which a chair, dean or other faculty administrator could “yell” or “scream” (§VII.1, p. 14) at staff members for their poor workplace performance and yet not be engaging in “abusive conduct” by this qualification because it is *related* “to the University’s legitimate educational, employment, and business interests.” This is clearly not the intent of this policy; its intent is to protect the staff member in this case.

- 3) The revision in the definition of abusive conduct from “A single act shall not constitute Abusive Conduct unless especially severe or egregious” to “A single act may constitute Abusive Conduct, if especially severe or egregious” (§II, p. 3) seems too permissive. It does not take into account that even the best among us can have momentary (negative) outbursts about workplace matters. A stricter standard – such as “repeated” or “persistent” actions – seems necessary to guard against frivolous charges. At a minimum, the previous wording of this sentence seems more advisable than the newly proposed wording.
- 4) Several concerns were also raised regarding the application of the Code of Conduct, including the previous version of the Abusive Conduct policy, and how it can itself be abused by the Administration to discipline faculty with views critical of the Administration. The EC calls for a system-wide study of the demographics of the Complainants and Respondents by protected category, by employment status and by the category of charges filed. The purpose of such a study would be to understand what types of purported violations there have been over a certain amount of time and if any particular protected category is more severely affected than others.

- 5) Several concerns were also raised regarding the current procedures for adjudicating charges as outlined in Appendix 5. According to Appendix 5, Chancellors – and their delegates, such as VPARs – can and have set aside judgements made by the Committee on Charges and the Committee on Privilege and Tenure. Nothing in Appendix 5 binds Chancellors to the determinations made by these two committees. This has happened in recent memory and resulted in the termination of a tenured full professor contrary to both Senate committees' recommendations. In view of the vagueness of the Abusive Conduct policy, Appendix 5 should be revised to bind Chancellors to these committees' decisions or otherwise to protect faculty from administrative abuse of the Code of Conduct.



December 17, 2021

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

FROM: Peter Graham, Chair *P. Graham*
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.