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?