

ATTACHMENT B – COMPANION DOCUMENT – FACULTY DISCIPLINARY SANCTIONS GUIDELINES RE EXPRESSIVE ACTIVITY

UC Academic Personnel Manual (APM), Presidential, and Campus Policies Related to Expressive Activity

If a formal investigation of allegations of faculty misconduct results in the assessment that a policy violation has occurred, the accompanying **Faculty Respondent Disciplinary Sanctions Guidelines for Misconduct Related to Expressive Activity** are intended to support calibration of disciplinary responses under APM - 016. The following UC policies could be implicated in allegations of faculty misconduct in the realm of expressive activity. As systemwide calibration guidance already exists for the Sexual Violence and Sexual Harassment (SVSH) Policy, SVSH provisions from the Faculty Code of Conduct will not be addressed in this document. While the calibration guidance for the SVSH Policy informed the accompanying disciplinary sanction guidelines, the two guidance documents differ insofar as the accompanying disciplinary sanction guidelines distinguish between misconduct that has minor versus major severity of impact. The guidelines do not quantify the extent of damage to UC property, but reviewers may wish to do so in their assessments. As an example, in California, property damage of less than \$400 constitutes a misdemeanor, whereas damage in the amount of \$400 or more represents a felony. Assessing minor versus major severity of impact on or harm to UC community members and their families is far less easily tangibly quantifiable, as, in addition to interfering with University operations or access to educational opportunities, the impact or harm may be physical and/or by “other means,” such as psychological. Quantification alone may be insufficient in reviewers’ assessment, as a single incident that results in physical or psychological harm to one individual may be so egregious as to constitute major impact or harm. As in cases of SVSH policy violations, reviewers will need to assess the frequency, nature, and severity of the APM - 015 violation(s), including whether the misconduct resulted in economic damage, or was threatening, impactful, and/or harmful in a physical or psychological manner.

APM - 015, The Faculty Code of Conduct

The policy recognizes the University’s obligation to preserve conditions that are hospitable to the University’s central functions and to protect the faculty in its missions of teaching, learning, research, and service: “The faculty’s privileges and protections, including that of tenure, rest on the mutually supportive relationships between the faculty’s special professional competence, its academic freedom, and the central functions of the University. These relationships are also the source of the professional responsibilities of faculty members.” Part I of the policy sets forth the responsibility of the University to maintain conditions and rights supportive of the faculty’s pursuit of the University’s central functions. Part II elaborates standards of professional conduct and identifies types of conduct that represent unacceptable behavior and, as a result, a violation of the Faculty Code of Conduct.

Part II, Paragraph A, covers specific situations that provide for protecting safety and protecting access to educational opportunities. Part II, Paragraph A contains the following provisions surrounding failure to meet the responsibilities of instruction:

A.1.a, regarding arbitrary denial of access to instruction;

A.1.b, regarding significant intrusion of material unrelated to the course;

A.1.c, regarding significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;

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A.2, regarding discrimination, including harassment, against a student on political grounds or for protected categories;

A.5, regarding the use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons; and

A.6, regarding participating in or deliberately abetting disruption, interference, or intimidation in the classroom.

Part II, Paragraph C, identifies the following types of unacceptable conduct, engagement in which would constitute a violation of the Faculty Code of Conduct:

1. Intentional disruption of functions or activities sponsored or authorized by the University.
2. Incitement of others to disobey University rules when such incitement constitutes a clear and present danger that violence or abuse against persons or property will occur or that the University's central functions will be significantly impaired.
3. Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person's performance of University activities.
5. Discrimination, including harassment, against University employees or individuals...engaged in...training program leading to employment on political grounds, or for reasons of race, color, religion...
7. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against employees on the basis of disability....
8. Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.

Part II, Paragraph E, item 2 covers situations involving the "commission of a criminal act which has led to conviction in a court of law and which clearly demonstrates unfitness to continue as a member of the faculty."

APM - 010, Academic Freedom

APM - 010 provides in relevant part, "The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These freedoms enable the University to advance knowledge and to transmit it effectively to its students and to the public."

"Academic freedom requires that teaching and scholarship be assessed by reference to the professional standards that sustain the University's pursuit and achievement of knowledge. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body. The competence of the faculty to apply these standards of assessment is recognized in the Standing Orders of The Regents, which establish a system of shared governance between the Administration and the Academic Senate. Academic

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freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to appropriate review by the Administration, and that the Academic Senate exercise its responsibility in full compliance with applicable standards of professional care.”

“The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty.”

The academic freedom protections of APM-010 are distinct from the legal right to freedom of speech, to which all University employees are entitled.

Regents Policy 4403: Statement of Principles Against Intolerance

Paragraph A of this policy states that, “The University therefore strives to foster an environment in which all are included, all are given an equal opportunity to learn and explore, in which differences as well as commonalities are celebrated, and in which dissenting viewpoints are not only tolerated but encouraged. Acts of hatred and other intolerant conduct, as well as acts of discrimination that demean our differences, are antithetical to the values of the University and serve to undermine its purpose.”

Paragraph B acknowledges that the University’s mission “is best served when members of the University community collaborate to foster an equal learning environment for all, in which all members of the community are welcomed and confident of their physical safety.”

Paragraph C states that, “In a community of learners, teachers, and knowledge-seekers, the University is best served when its leaders challenge speech and action reflecting bias, stereotypes, and/or intolerance.”

Paragraph D states that, “Freedom of expression and freedom of inquiry are paramount in a public research University and form the bedrock on which our mission of discovery is founded. The University will vigorously defend the principles of the First Amendment and academic freedom against any efforts to subvert or abridge them.”

Under Paragraph E, “Each member of the University community is entitled to speak, to be heard, and to be engaged based on the merits of their views, and unburdened by historical biases, stereotypes and prejudices. Discourse that reflects such biases, stereotypes or prejudice can undermine the equal and welcoming learning environment that the University of California strives to foster.”

Paragraph H states that, “Actions that physically or otherwise interfere with the ability of an individual or group to assemble, speak, and share or hear the opinions of others (within time place and manner restrictions adopted by the University) impair the mission and intellectual life of the University and will not be tolerated.”

Finally, Paragraph I affirms that, “Harassment, threats, assaults, vandalism, and destruction of property, as defined by University policy, will not be tolerated within the University community.”

Anti-Discrimination Policy and the Abusive Conduct in the Workplace Policy

These Presidential Policies affirm the University’s commitment to maintaining a working and learning environment and the institution’s intolerance of behavior that is discriminatory or that disrupts the functioning of the University community and interferes with individuals’ ability to learn, teach, work, and conduct research.

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Campus TPM Policies

In addition to APM, Regental, and Presidential Policies, each UC campus has a Time, Place, and Manner policy that protects the right to freedom of expression, provides for non-interference with University functions and access to University activities and facilities, and ensures compliance with pertinent laws and other applicable University policies. Local TPM policies include:

UC Berkeley: [Berkeley Campus Regulations Implementing University Policies](#)

UC Davis: [Time, Place, and Manner Regulations in Freedom of Expression Policy \(PPM 400-01\)](#)

UC Irvine: [Time, Place, and Manner Policy](#)

UCLA: [UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties](#)

UC Merced: [Expressive Activities and Assembly: Protests, Demonstrations, Non-University Speakers and Signage on Campus and in University Facilities -- Interim Policy](#)

UC Riverside: [Policy 700-70, Time Place Manner Regulations](#)

UC San Diego: [Interim Policy on Expressive Activity Time, Place, and Manner](#)

UCSF: 600-27: [Interim: Expressive Activities Held on UCSF Property](#)

UC Santa Barbara: [Time, Place, and Manner Regulations -- Chapter 3: Campus Activities - Speech and Advocacy in Campus Regulations and UC Santa Barbara Campus Guidance](#)

UC Santa Cruz: [Interim Conduct Regulations \(Time, Place, and Manner\)](#)

Interplay of the Above Policies and Extramural Speech

Faculty members are entitled to the academic freedom protections described in APM - 010 as well as the constitutional right to free expression, which all University employees enjoy. However, this does not mean that expressive conduct by faculty can never be subject to discipline. APM - 015 identifies certain expressive conduct as misconduct, including: incitement that creates clear and present danger of violence or abuse of persons or property; threats of physical harm to another member of the University community that interferes with their performance of University activities; intentional misrepresentation of personal views as a statement of position of the University or any of its agencies; and harassment, which can be verbal.

The same is true for faculty extramural speech, which may be protected under APM - 010 only insofar as it is consistent with the standards of professional conduct set forth in APM - 015. The standard provided in APM - 015 allows for discipline only for conduct which is not justified by the faculty's ethical principles stated in APM - 015 and which significantly impairs the University's central functions, as defined in APM - 015's preamble. This analysis must recognize the particular context of the University as an environment that encourages free inquiry and the exchange of ideas and, as described in APM - 015, "seeks to provide and sustain an environment conducive to sharing, extending, and critically examining knowledge and values, and furthering the search for wisdom."

Faculty, like all University employees, are also entitled to First Amendment protection for speech on matters of public concern, but only insofar as the employee's expressive interests outweigh the University's interests in fulfilling its public service mission.