

May 6, 2014

MOLLY THEODOSSY, POLICY COORDINATOR

Campus Compliance

RE: UC Davis Policy and Procedure Manual Chapter 400, Campus Climate; Section 01, Freedom of Expression

The draft Policy and Procedure Manual (PPM) section 400-01 was forwarded to all Davis Division of the Academic Senate standing committees and Faculty Executive Committees from the Schools and Colleges. Responses were received from the Committees on Academic Freedom and Responsibility (CAFR), Affirmative Action and Diversity (AA&D), and Faculty Welfare, as well as from Graduate Council and the Faculty Executive Committee from the College of Letters and Science.

The committees support the spirit of the proposed policy. Several committees noted that the link to the Davis Police Department in items IV.B.2.j is defective, and a search of the site does not yield the policy to which the statement refers. This will need to be corrected and clarified. Committees also offer the following suggestions and revisions:

1. Undergraduate Council notes Item B.2.J in the policy document, concerning civil disobedience, causes concern and needs revision. The language of this code suggests that one can simply distinguish between “protected speech” and “civil disobedience,” the latter being unprotected and illegal. This presents at least two problems. One is that “civil disobedience” generally implies intent to contravene a law so as to get arrested toward a political point. However, this should not cover activities that may or may not result in arrest but have an entirely different intent: to declare a position, to defend an individual or group, or etc. Unless civil disobedience is further clarified herein as involving the intent to be arrested and thus provides a standard of measurement, it grants a self-fulfilling and untrammelled discretion to the enforcement officer.

Moreover, civil disobedience, given that it cannot be generally imputed as an intentionally illegal act, cannot by itself alone be a basis for legal sanction. There must be the violation of some other actual and enforceable code: “Indirect civil disobedience involves violating a law which is not, itself, the object of protest, whereas direct civil disobedience involves protesting the existence of a particular law by breaking that law” U.S. v. Schoon, 939 F2d 826 (July 29, 1991). Thus a code proposing that the standard of “civil disobedience” itself determines whether an activity is protected does not accord with the present legal standard.

Similarly, CAFR wishes to emphasize a previously proposed addition to items III.A.4 and IV.B.2.J of the policy. The proposed addition is added in italics:

The University shall at all times attempt to ensure that, at any meeting, event, or demonstration, constitutionally protected free expression is not infringed, and shall take necessary steps to attempt to ensure the continuing openness and effectiveness of channels of communication among members of the University community. *These necessary steps include but are not limited to a guarantee of proportionality in responding to non-violent civil disobedience.*

In connection with the clause on civil disobedience, some members of the committee expressed concern regarding the recent history on our campus of police brutality and unwarranted use of force. Against this background, concerned members of CAFR want a guarantee in the policy ensuring that rules of engagement will be respected and that such unwarranted of force would not be repeated. The committee expresses a desire for the policy to make clear that UC Davis’ response to civil disobedience, both in terms of force and punishment, would be proportional to the actual scope of the action of civil disobedience.

2. Similarly, the Faculty Executive Committee (FEC) from the College of Letters and Science expressed concern over the term “civility.” As written, use of the term “civility” in the proposal suggests that civility

might place limits on freedom of expression. The FEC is concerned that the policy's implicit message remains, "We value freedom of expression, but we are intent on suppressing it or at least corraling it."

3. CAFR wishes to emphasize another previously proposed change to item III.A.6 of the policy:

As members of a public university, faculty, staff, and students of the University enjoy free expression rights guaranteed by the First Amendment of the U.S. Constitution and Article I, Section I of the California Constitution *and granted in the relevant University of California provisions for conduct of faculty, staff, and students such as for example, in APM 010 and APM 015 among others.* Expression guaranteed by the federal and state constitution does not protect speech or expressive conduct that violates federal or state anti-discrimination and other laws.

The committee notes that a reference to APM 015 has been added to the References and related policies and recommends adding the above sentence in italics to the body of the policy itself.

4. Although AA&D committee members generally agree with the statement, "the content of the views expressed is not an appropriate basis for restriction on expression, assembly, or demonstration," it is difficult to uphold this tenet when offensive hate speech is being expressed. It is important that the policy does emphasize the UCD Principles of Community, which insist upon decency and civility. This emphasis can mitigate potential speech that is offensive to a majority, but the committee requests that "hate speech" also be explicitly mentioned as an unprotected category, along with discrimination and harassment. The committee would strongly prefer language emphasizing that all public speech and assembly are highly valued at UC Davis, because they stimulate thought, education, civic responsibility, and engagement, but the university must impose restrictions that are critically necessary for public safety.

The Davis Division of the Academic Senate urges the Office of the Chancellor to consider the above recommendations and concerns before adopting the draft PPM section 400-01.

Sincerely,



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