



Davis Division Academic Senate

Request for Consultation Responses

Proposed PPM 400-01 Freedom of Expression

April 21, 2014

The campus has proposed establishing Policy and Procedure Manual (PPM) section 400-01, Freedom of Expression. The new section describes the policy and procedures for the protection and encouragement of free and open expression, association, discussion, and debate on campus.

Academic Freedom & Responsibility

April 21, 2014 3:57 PM

Please see the attached file for our response.

Response continued on next page.

The Committee on Academic Freedom and Responsibility wishes to make the following comments on the revised draft policy:

Policy

A. 4 and B. 2. J

In our earlier comment on the draft proposal, we had proposed an addition to this section of the policy. We wish to repeat the comment:

UC Davis 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.

Explanation

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 wanted a guarantee in the policy ensuring that rules of engagement would be respected and that such unwarranted use of force would not be repeated. They expressed 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 since disproportional responses could have a chilling effect on freedom of expression and civil disobedience.

A. 6

In our earlier comment on the draft proposal, we had proposed an addition to this section of the policy. We wish to repeat the comment:

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.

We see that a reference to APM 015 has been added to the References and related policies. We recommend adding the sentence in italics to the body of the policy itself.

m. a. S. S.

Moradewun Adejunmobi, Chair
Committee on Academic Freedom and Responsibility

Affirmative Action & Diversity

April 14, 2014 10:37 AM

AA&D response regarding "Freedom of Expression"

Please find committee comments regarding the proposed PPM 400-01 Freedom of Expression:

Although we all agree with the statement, "the content of the views expressed is not an appropriate basis for restriction on expression, assembly, or demonstration," when it is our own views being expressed. However, it is difficult to uphold this tenet when offensive hate speech is being expressed. However, what is important about this document is its emphasis on the UCD Principles of Community that insists upon decency and civility, which can mitigate potential speech that is offensive to a majority.

I wonder if "hate speech" can be explicitly mentioned as an unprotected category along with discrimination and harassment?

Actually I would STRONGLY prefer something to the effect that all public speech and assembly is highly valued at UC Davis, the more the better, because it stimulates thought, education, civic responsibility, and engagement and the university MUST impose the very most minimal restrictions that are critically necessary in order to be consistent with vital public safety. In fact it could be argued (and will be by me) that seeing a protest may at times be more educational than hearing a lecture about history or chemistry or whatever.

Council of School & College Faculty Chairs (LS: SOC SCI)

April 7, 2014 5:46 PM

At today's meeting of the L&S Executive Committee, we discussed the latest version of the document. (a) We thought that the first paragraph was poorly written, and even if its English were improved, it still has this objectionable form: 'We value freedom of expression, but we are intent on suppressing it or at least corraling it.' (b) In IV.B.2.j, a link was provided to a UCD Police Department Policy Manual, but when clicked, no connection to content was made. (c) There was some criticism of the term "civility" in the proposal, because it made it seem like civility places limits on freedom of expression. This, of course, depends on the definition of "civility." (d) One member mentioned that recent court decisions have made clear that the 9th Circuit Court's Garcetti decision does not apply to faculty members, who have especially wide latitude in expressing opinions regarding any issues of public importance.

Faculty Welfare

March 17, 2014 10:59 AM

The Faculty Welfare Committee has no issues with this document.

Undergraduate Council

April 14, 2014 8:27 AM

PPM 400-01:

Item j in this policy description, 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 an 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.

Finally, please note that the link to the Davis Police Department is defective, and a search of their site did not yield the policy to which the statement refers.