



Davis Division Academic Senate

Request for Consultation Responses

Proposed Policy Changes to Address Hate Crimes

December 8, 2010

UC is proposing policy updates to address hate crimes. The original request sought response by November 9, 2010. The Davis Division has been given until December 10, 2010 to respond. There are two versions of the proposed update. One is a final draft version. The other version includes tracked changes.

Administrative Partners (DANN TRASK)

December 8, 2010 3:11 PM

Dear Professor Powell,

The L&S Executive Committee has discussed the proposed revisions to the UC Policy on Student Conduct and Discipline. While the committee generally supports the overall intent of the revised policy, some concern was expressed that the occasional use of overly broadly worded passages could unintentionally be used to suppress free speech. For example, the following language is already in the Student Code of Conduct:

“102.08 Assault, Threats of Violence, or Conduct Threatening Health or Safety. Physical assault including but not limited to rape and other sexual assault; threats of violence; or other conduct that threatens the health or safety of any person.

102.11 Other Harassment. Harassment by a student of any person by a) using, displaying, or making other demonstrations of words, gestures, imagery, or physical materials, or engaging in any form of bodily conduct, on the basis of race, color, national or ethnic origin, alienage, sex, religion, age, sexual orientation, or physical or mental disability, that has the effect of creating a hostile and intimidating environment sufficiently severe or pervasive to substantially impair a reasonable person's participation in University programs or activities, or use of University facilities. The conduct must target a specific person(s) and must be addressed directly to that person(s). Before applying this policy, the campus must consult with the Office of General Counsel regarding its interpretation and application in light of the specific circumstances.”

The revised proposal adds the following:

“[The following is prohibited:] Conduct, where the actor means to communicate a serious expression of intent to terrorize, or acts in reckless disregard of the risk of terrorizing, one or more University students, faculty, or staff. ‘Terrorize’ means to cause a reasonable person to fear bodily harm or death, perpetrated by the actor or his/her confederates. ‘Reckless disregard’ means consciously disregarding a substantial risk.”

Some committee members found it difficult to see what the proposed text above adds to the existing code and found the word "terrorize" inflammatory. Concerns were raised about the possibility that this could infringe on students' legitimate rights to freedom of expression.

Sincerely,

Patricia C. Boeshaar, Chair
Executive Committee
College of Letters and Science

Affirmative Action & Diversity

November 30, 2010 11:57 AM

2. Sanction Enhancement for Violations Motivated by Hate

Re: “[medical] condition (cancer related or genetic characteristics)

The clause, "medical condition (cancer related or genetic characteristics)" is not clear whether those are examples or whether they comprise the only factors that can be considered. Are there reasons to isolate these two types of medical conditions as especially pertinent? Is it partly because hate-crimes against cancer patients are targeted at the physical changes introduced by the chemotherapy and other treatments on cancer victims?

A preference would be something like, “chronic, life-threatening or terminal medical condition with or without any external symptomatic signs, such as neurological illness, genetic disease, cancer or AIDS.” Theoretically of course discriminating a person because of any disease should be included in this category, but in real life perhaps those illnesses that are “serious” enough to be either a part of one’s identity (like diabetes), life-threatening (leukemia) or both (Alzheimers) might take precedent?

1. Terrorizing Conduct

"Terrorizing conduct" appears to be limited to acts that might lead a person to fear physical harm. This would seem to exclude people who may fear psychological harm. So, a student may believe that particular threatening acts (e.g., a racial slur) isn't going to lead to physical harm (perhaps the context makes physical harm unlikely) but does fear the psychological harm that can come from prolonged exposure to harassment or verbal bullying. Is that form of terrorizing conduct not subject to disciplinary action? Or is covered elsewhere?

Council of School & College Faculty Chairs (BIOLOGICAL SCIENCES)

December 6, 2010 3:22 PM

No response at this time.

Council of School & College Faculty Chairs (MANAGEMENT)

November 20, 2010 2:07 PM

No response at this time.

Graduate Council

November 29, 2010 3:45 PM

No response at this time.

Undergraduate Council

November 22, 2010 1:13 PM

The Undergraduate Council had considerable problems with the wording of this document. We suggest the following modifications:

1. Terrorizing Conduct

The following new language would be added to the Policy on Student Conduct and Discipline (section 102.00 Grounds for Discipline):

“[The following is prohibited:] Conduct that is meant to communicate a serious expression of intent to terrorize one or more University students, faculty, or staff, or involves action in reckless disregard of the risk of having this effect. ‘Terrorize’ means to cause a reasonable person to fear bodily harm or death. ‘Reckless disregard’ means consciously disregarding a substantial risk. This section applies without regard to whether the conduct is motivated by race, ethnicity, personal animosity, or other reasons. This section does not apply to conduct that constitutes the lawful defense of one’s self, of another, or of property.”

2. Sanction Enhancement for Violations Motivated by Hate

The following new language would be added to the Policy on Student Conduct and Discipline (section 104.00 Administration of Student Discipline):

“Sanctions [for any violations of the Grounds for Discipline] may be enhanced where the victim was selected based on attributions concerning race, color, national or ethnic origin, citizenship, sex, religion, age, sexual orientation, gender identity, pregnancy, marital status, ancestry, service in the uniformed services, physical or mental disability, or medical condition.”

3. Discipline for criminal convictions

The following new language would be added to the Policy on Student Conduct and Discipline (section 102.00 Grounds for Discipline):

“[Students may be subject to discipline, i.e., discipline is possible, not mandatory, on the basis of] A conviction under any California state or federal criminal law, when the conviction constitutes reasonable cause to believe that the student poses a threat to the health or safety of any person or to the security of any property, on University premises or at official University functions, or poses a threat to the orderly operation of the campus.”