

Guidance from the President Regarding Staff Abusive Conduct and Bullying **7/26/16**

The University of California is committed to providing a safe, supportive, responsive and equitable environment for all employees. The University strives to be a leader as an employer and to foster a positive working environment.

In furtherance of these goals and the University's anti-harassment and anti-discrimination policies, all UC community members are expected to behave in ways that support UC's [Principles of Community](#) and [Regents Policy 1111](#) (Statement of Ethical Values and Standards of Ethical Conduct), which states that UC is committed to treating each member of the University community with respect and dignity. Abusive conduct and bullying behaviors are inconsistent with the values of the University and should be addressed directly and comprehensively. The University does not tolerate abusive conduct or bullying. Regardless of circumstances or setting, staff at all levels found to be engaging in abusive conduct should be held accountable. No member of the University community will be retaliated against for reporting bullying in good faith. While UC has a number of current policies that could be used to address bullying, there is some confusion among employees about what bullying is and how to address it.

State legislation related to abusive conduct provides a helpful description of bullying. [Assembly Bill 2053](#), which requires training on the prevention of abusive conduct, defines abusive conduct as:

Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests.

Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Examples of abusive conduct may include:

- persistent or egregious use of abusive, insulting, or offensive language directed at an employee
- spreading misinformation or malicious rumors
- behavior or language that frightens, humiliates, belittles, or degrades, including criticism or feedback that is delivered with yelling, screaming, threats, or insults
- making repeated inappropriate comments about a person's appearance, lifestyle, family, or culture
- regularly inappropriately teasing or making someone the brunt of pranks or practical jokes
- inappropriately interfering with a person's personal property or work equipment
- circulating inappropriate or embarrassing photos or videos via e-mail or social media;
- unwarranted physical contact
- purposefully inappropriately excluding, isolating, or marginalizing a person from normal work activities

There is a difference between bullying and appropriate supervision. Examples of reasonable supervisory actions, when carried out in an appropriate manner, include:

- providing performance appraisals
- coaching or providing constructive feedback
- monitoring or restricting access to sensitive information for legitimate business reasons
- scheduling ongoing meetings to address performance issues
- setting aggressive performance goals to help meet departmental goals
- counseling or disciplining an employee for misconduct
- investigating alleged misconduct

Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute workplace bullying. Moreover, this guidance is not intended to interfere

with employees' right to engage in protected, concerted activity under the Higher Education Employer-Employee Relations Act (HEERA).

People, if they experience abusive conduct or bullying, have a variety of resources they can go to, including but not limited to, local Human Resources and Ombuds or similar offices.

For more information on the above policy guidance you may contact your local human resources or Dianna Henderson, Director of HR Policy and Chief of Staff to the VP of HR at Dianna.henderson@ucop.edu.

UNIVERSITY
OF
CALIFORNIA

Report to the President

Abusive Conduct
Working Group

June 6, 2016

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I. EXECUTIVE SUMMARY

Statement

The University of California (UC) is committed to providing a safe, supportive, responsive and equitable environment for all employees. The University strives to be a leader as an employer and to foster a positive working environment. All faculty and staff members are expected to behave in ways that support UC's Principles of Community and Regents Policy 1111 (Statement of Ethical Values and Standards of Ethical Conduct), which states that UC is committed to treating each member of the University community with respect and dignity. Abusive conduct and bullying behaviors are inconsistent with the values of the University and should be addressed directly and comprehensively.

Background

On September 9, 2014, Governor Brown signed Assembly Bill (A.B.) 2053 into law, amending the Fair Employment and Housing Act to require that covered employers include training on the prevention of abusive conduct in their state-mandated sexual harassment prevention curriculum. A.B. 2053 is a training requirement only; it does not prohibit abusive conduct. The University is in compliance with this requirement, which took effect January 1, 2015.

Consistent with the intent of A.B. 2053 to reduce workplace bullying, there is interest across UC in issuing a statement or guidance specifically addressing this issue. Although UC currently has a number of policies that can be used to address abusive conduct when it occurs, there is no systemwide statement or policy prohibiting it, nor is there a consistent definition of what constitutes abusive conduct and how to most effectively address allegations of abusive conduct.

Working Group Process

The UC Abusive Conduct Working Group was established in response to a request from President Napolitano to Executive Vice President Nava in February 2016. The President charged the group with providing information and analysis that would aid in her development of Presidential Guidance on abusive conduct and bullying of staff. She requested that the group include appropriate University representation and engage in a consultative process that spans the ten campuses. Specifically, the President requested information and analysis related to definition of terms, scope, dispute resolution (formal and alternative), functional areas on campus best suited to manage these complaints and a close and thorough review of existing policies, including how they are currently communicated on campuses.

The working group met on six occasions between March and May 2016. The group divided into subgroups to examine current UC abusive conduct policies and processes and to identify best practices

and inconsistencies or gaps in these areas. In their analyses, the subgroups used information collected from all locations through surveys of online resources and interviews with Human Resources staff. These analyses are presented in Sections II-IV of this report. Sections V and VI describe best practices and recommendations that arose from subgroup discussions.

Summary and Recommendations

UC locations currently have many policies and other directives that address some forms of abusive conduct, particularly related to workplace violence. The only location with a proposed bullying-specific policy is UC Berkeley; the policy is expected to take effect in the next few weeks. Most locations stated that a clear, systemwide definition of bullying with examples of prohibited conduct would help both employees experiencing bullying and staff responsible for investigating bullying complaints. A few locations stated that existing policies and procedures are adequate for addressing complaints.

Practices to prevent and manage bullying situations vary across locations. Some locations focus on creating positive, collaborative work environments; others offer trainings for employees and managers on dispute resolution and other related topics. Due to differences in how bullying is interpreted and the complexity of some bullying situations, there are many approaches to resolution. Options for informal resolution include working with an Ombuds, HR, or employee assistance office. Depending on the circumstances, formal resolution procedures may include filing a grievance, PPSM-70 complaint, Title IX complaint, discrimination complaint, or harassment complaint. Although multiple avenues to resolution may be appropriate, the resources available to staff and the process for accessing them is often confusing.

As described more fully in Section V, the working group recommends issuing guidance that outlines UC's expectations for respectful behavior and productive work environments. The guidance could include such elements as:

- A statement that the University does not tolerate bullying and that staff found to be engaging in such behavior are expected to be held accountable through existing mechanisms;
- A reference to the definition of abusive conduct in A.B. 2053 and clear examples of abusive conduct;
- Recommendations that locations staff Ombuds offices appropriately, designate bullying "intake offices," create bullying-specific websites, and develop bullying prevention and training communication plans; and
- Descriptions of systemwide efforts to prevent bullying, including training and a systemwide website.

II. EXISTING POLICIES AND PROCEDURES

UC Policies

All campuses have Principles of Community to guide appropriate behavior. Many locations also have policies focused on violence in the workplace or disruptive behavior, but they are not focused on bullying per se; UC Berkeley is the only UC location that has proposed a specific policy fully dedicated to bullying, entitled “Workplace Bullying Prevention.” UC Irvine does not have a specific policy but addresses abusive conduct through its Labor and Employee Relations, Ombuds, Discrimination and Whistleblower offices. Other locations address some bullying behaviors through policies such as, “Disruptive Behavior in the Workplace,” “Violence and Hate Incidents in the Workplace,” “Workplace Violence Prevention,” “Intimidating and Disruptive Behavior,” and “Sustaining Community and Preventing Violence.” Although several locations have policies or other resources that can be referenced when managing bullying, some only have policies that prohibit workplace violence. In most instances, bullying takes the form of offensive and disrespectful behavior rather than physical violence.

The working group focused on staff issues, but it is important to note that there are related policies that apply to faculty and students as well. The Faculty Code of Conduct (APM-015) (as approved by the Assembly of the Academic Senate and by the Regents) establishes the ethical and professional standards which University faculty are expected to observe. Students are expected to comply with the Student Code of Conduct. Faculty, staff and students in the UC community work together every day and abusive behavior can occur across these lines.

Definitions and Scope

Among the UC locations, UC Berkeley’s proposed policy includes the clearest and most comprehensive definition of bullying. The policy provides concrete examples of bullying and defines the difference between bullying and supervision in order to reduce confusion and baseless accusations of misconduct. Other locations’ policies address the broader spectrum of disruption or violence in the workplace and therefore include multiple definitions, such as bullying, domestic violence, intimidation, property damage, stalking, threats and violent behavior. UCLA Medical Center’s Intimidating and Disruptive Behavior policy also includes guidelines that classify the severity of misconduct at Level 1 (physical abuse), Level 2 (verbal abuse), and Level 3 (indirect or at-large verbal abuse).

Some policies include a detailed list to clarify who is covered, such as staff, undergraduate-student workers, patients, visitors, volunteers, contractors, and physicians.

Procedures

All policies state that incidents that are considered an emergency should be immediately reported to campus security or 911. Most locations have multiple reporting options, depending upon the type and severity of the occurrence or on one's role in the organization. UC Berkeley's proposed policy and Davis' policy reference a hotline for anonymous reports. UC Davis also lists contact information for Student Judicial Affairs and Academic Personnel. UCLA established a Behavioral Intervention Team Coordinator who addresses prevention, emergence and resolution of issues. UC Irvine's Medical Center and UCLA Medical Center have committees that assist with the administrative response to incidents.

In several existing policies, resolution of issues includes corrective action procedures, such as warning, written apology, suspension or termination. The proposed UC Berkeley bullying policy provides a list of options for early resolution, including obtaining agreement between the parties, separating the parties, changing reporting lines, referring to counseling, taking personnel action, conducting training and following up to ensure resolution. In the event of potential danger or particularly disruptive conduct, the policies note that investigatory leave may be initiated so that relevant information can be gathered and an appropriate resolution or disciplinary action can be taken.

Workplace violence policies that integrate bullying as a definition are helpful, but the definitions are not robust and may differ from the definition used in A.B. 2053. In addition, the lack of examples of what is bullying and what is not can be confusing to staff and those who are trying to address the behavior. Procedures for intervention, early resolution, investigation and associated discipline or sanctions may also be lacking in existing workplace violence policies.

III. PREVENTION AND MANAGEMENT

Prevention

Positive, collaborative working environments were cited as a deterrent to abusive conduct. In addition to Principles of Community, several locations have values initiatives that describe the type of climate they expect employees to foster.

Locations also stated that training conducted by Human Resources, outside vendors, or the Ombuds Office helps prevent issues that may lead to bullying. Training for managers focused on good performance management practices and conflict resolution and training for staff focused on policy and process awareness were viewed as very helpful.

The systemwide training module on Sexual Violence and Sexual Harassment (SVSH) Prevention, available to staff on the systemwide Learning and Management System (LMS), includes a full module on bullying (“Avoiding Abusive Behavior”). The module defines abusive conduct, provides examples of it and discusses how it negatively impacts individuals and the organization. The training for supervisors provides additional details on supervisors’ duties to respond to, report and prevent abusive conduct. There is no separate training specifically related to bullying available on LMS.

Dispute Resolution and Complaint Management

Locations’ responses to bullying complaints can take many forms. This is often appropriate, as complaints may range in severity from situations where employees are unhappy with performance management to situations where employees are experiencing severe bullying combined with discrimination or harassment. For this reason, most locations have several entities that respond to abusive conduct complaints, including an employee’s supervisor, Human Resources offices (generally Employee and Labor Relations divisions), Ombuds Offices, Title IX and Nondiscrimination offices, Whistleblower complaint hotlines, Behavioral Intervention Teams, University counsel and occasionally campus police forces.

The primary informal counseling options to address bullying complaints are employee supervisors; Ombuds and equivalent offices, which provide confidential and impartial conflict resolution; Employee and Labor Relations staff; and employee assistance programs, which offer confidential counseling, consultation and referral services for employees and managers.

Formal processes for complaint resolution include grievance procedures for represented employees and PPSM-70 complaints for staff, though some bullying complaints will not meet the eligibility requirements for complaint resolution through these mechanisms. Whistleblower complaints are referred to the appropriate office, generally Employee and Labor Relations, for investigation or intervention. Title IX and Nondiscrimination offices may also be involved in investigating formal complaints where appropriate.

Although there are currently many methods for addressing bullying behavior at UC locations, the resources available to staff are not always apparent; it seems that many employees are either unaware of these resources or unsure how to access them. Employees also may be reluctant to report abusive conduct for fear of retaliation.

In addition, information on whether counseling or discipline has worked to reduce incidents of abusive conduct is not readily available because such issues are normally considered to be confidential personnel matters.

IV. COMMUNICATION

The predominate methods that most locations use to communicate Abusive Conduct-related policies and procedures are email, websites/intranet, and new employee orientation (NEO). For example, UC Berkeley distributes CalMessage emails to applicable staff. The emails may be directed to designated staff, such as managers and supervisors, or distributed to all staff. That communication frequently includes links to websites or intranet sites that provide more detail regarding the policy and specific procedures to address issues. Campuses that conduct NEO use that time to review key policies, including those that are related to abusive conduct. Since NEO is sometimes conducted by the hiring department instead of Human Resources (HR) or another central office, it is difficult to gauge how well these policies are being communicated to new employees.

Ensuring that Abusive Conduct-related policies and procedures are communicated is the charge of the Human Resources departments on many UC campuses. In addition to the methods listed above, HR communicates policies through meeting with Business Partners (UC Riverside), HR Advisory Groups or Committees (UC Davis, UC Davis Medical Center, UCLA) that help to disseminate information to key constituents across campus. A small number of campuses distribute regular newsletters and use them to communicate new or revised policies (UC Davis, UC Davis Medical Center, UC Riverside).

Abusive conduct awareness and prevention have been included in supervisory trainings and webinars; Agriculture and Natural Resources often uses webinars since their employee population is widely-dispersed across the region. UC Berkeley and the Office of the President indicated that policies and procedures are communicated during the recruitment process via the offer letter. The most unique methods that were mentioned included UC San Francisco's compliance-oriented approach of having employees sign a notice that they are aware of the policy and UC Irvine Medical Center's engaging approach of integrating the policy into a values campaign that includes awards and training.

V. BEST PRACTICES

Policies, Guidance and Statements

Many locations cited having clear policies that include examples as a best practice. Most requested a systemwide or local policy, guidance, or statement with definitions. Several locations stated that bullying is becoming a "headline issue" for their organizations and noted that there should be alignment between a systemwide policy or statement and local policies. Some also suggested that bullying be included in newly created or existing Codes of Conduct.

There was hesitation about a systemwide policy among some locations – several medical centers and one campus location believe a policy or statement is unnecessary. One location noted that existing policies enable it to respond effectively, especially since situations vary and different resources may need to be used for each investigation. There is a concern that even with a policy, it can be difficult to hold faculty and high-ranking staff accountable; there may need to be another way to address these two groups.

Ombuds

Several locations stated that it is important to have an Ombuds or similar office to conduct training related to bullying and to assist with resolution of issues. UC Irvine’s Ombuds Office was referenced as a good model of the services that Ombuds and similar offices can provide. Neutral, confidential third party assistance and advice was cited as an important option for employees dealing with abusive conduct situations.

Communication, Culture and Training

Three locations described communicating their values and associated behaviors as a best practice for addressing abusive conduct. UC Irvine Medical Center has the ARISE Values initiative, UCLA has the C-I-CARE initiative that promotes upgraded service and the UC Office of the President (UCOP) has its Principles of Community. A cultural commitment to a safe environment free from abusive conduct should be displayed through clear communication of expectations, policies and behaviors.

Several UC campuses have developed effective workshops and tools that describe bullying behaviors and how to manage them, including UC Irvine’s Ombuds Office and UCLA’s Behavior Intervention Team. UC Irvine has conducted trainings on conflict resolution and mediation as well.

Dispute Resolution and Complaint Management

Most locations were comfortable with the abilities of their Employee and Labor Relations offices to investigate complaints and utilize corrective action policies, although several stated that clear definitions to reference would make this process easier. One campus indicated that the structure of their HR office, which is more centralized than most, allows them to see across the whole campus and positions them to conduct early interventions and resolutions.

Locations have found it important to establish processes to monitor incidents of bullying in order to determine whether remedial actions have been effective. In addition, thorough and timely investigations benefit all parties involved in bullying complaints.

Several locations have experienced staff teams that work together effectively to address abusive conduct; UC Berkeley’s Human Resources office works in tandem with the Ombuds Office and the

Office for the Prevention of Harassment and Discrimination, UCLA's Behavioral Intervention Team Coordinator pulls together multiple offices to address concerns and Lawrence Berkeley National Lab uses a Crisis Action Team in situations involving violent verbal or physical behavior.

VI. RECOMMENDED OPTIONS

To address locations' desire for clarity on what constitutes bullying behavior and how it should be addressed, the working group recommends issuing guidance that outlines UC's expectations for respectful behavior and productive work environments. The proposed guidance is not intended to interfere with employees' right to engage in protected, concerted activity. Counsel can assist with preparing and implementing the guidance to be consistent with employee rights under the Higher Education Employer-Employee Relations Act (HEERA). The working group recommends that the completed guidance be sent to the Academic Senate for consideration.

The guidance could include such elements as:

Statements and Definitions

- A statement that the University does not tolerate bullying
- A reference to the definition of abusive conduct in A.B. 2053
 - This definition (See Appendix B) states that abusive conduct is behavior by an employer or employee in the workplace, "with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."
 - The definition also provides specific examples of abusive conduct and notes that a single act is not abusive conduct unless it is especially severe and egregious. UC Berkeley's proposed definition of abusive conduct (See Appendix A) is based upon the A.B. 2053 definition.
- A statement that staff at all levels found to be engaging in abusive conduct are expected to be held accountable through existing mechanisms
- Clear examples of abusive conduct, including a prohibition against retaliation for reporting bullying
- An explanation of the difference between bullying and appropriate supervision similar to the description in UC Berkeley's proposed policy
- An acknowledgement of the importance of Ombuds Offices or equivalent resources for confidential problem-solving and mediation
- A statement noting that there are existing UC policies that address some bullying behaviors, such as workplace violence

Recommendations to Locations

- Recommendation that locations staff Ombuds and equivalent offices appropriately and ensure that their services are easily accessible
- Recommendation that locations designate bullying “intake offices” to provide clear information on how to mediate disputes and report complaints related to abusive conduct
 - These offices should be knowledgeable about how the location is organized and should be able to refer employees to appropriate resources, such as the Ombuds Office if the employee prefers confidential assistance.
 - Existing resources such as bullying or whistleblower hotlines should direct employees to these offices.
 - Some locations may dedicate new resources to the creation of these offices, but in most cases it will not be necessary – current approaches to addressing bullying can be streamlined and centralized.
- Recommendation that locations create bullying-specific websites that:
 - Are clear and easy to understand
 - Link to a systemwide website
 - Include consistent information such as:
 - Contact information for the location’s bullying intake office
 - Resources available at the location, such as trainings on conflict mediation or dispute resolution services
 - Information about how to report bullying and possible resolution options
- Recommendation that locations develop bullying prevention and training communication plans

Description of Systemwide Efforts

- Description of training
 - Guidance could point to bullying training module in the required SVSH training
 - UCOP could develop separate bullying-specific trainings for employees and managers that would be offered through the systemwide LMS or presented live
- Description of systemwide bullying website that links to bullying-specific websites at each location

VII. APPENDICES

Appendix A: UC Berkeley Proposed Bullying Policy

University of California, Berkeley

Policy Issued: TBD

Effective Date: TBD

Supersedes: None, New Policy

Next Review Date: TBD



Workplace Bullying Prevention

Responsible Executive: Vice Chancellor – Administration & Finance

Responsible Office: Central Human Resources

Contact: Jeannine Raymond, Assistant Vice Chancellor, Human Resources
510-642-9022
askeru@berkeley.edu (non-represented staff)
labrel@berkeley.edu (represented staff)

I. POLICY SUMMARY

The University of California, Berkeley is committed to promoting and maintaining a healthy working, learning, and social environment where every individual is treated with civility and respect. Bullying behavior will not be tolerated in the University of California, Berkeley workplace. The University strongly encourages anyone who is a victim of bullying behavior, or anyone who observes such behavior, to promptly report it to any manager or supervisor or Central Human Resources. Retaliation against individuals who report bullying also is prohibited.

The University will respond promptly and effectively to reports of bullying and will take appropriate action to prevent, correct, and discipline behavior that violates this policy.

II. POLICY SCOPE

This policy applies to non-represented staff, including undergraduate student-employees, and represented staff in the Clerical Unit, Health Care Professional Unit, Registered Nurses Unit, Patient Care Technical Unit, Printing Trades Unit, Research Support Professional Unit, Service Unit, Skilled Crafts Unit, Student Health Physicians' Unit, and Technical Unit are responsible for complying with this policy in the workplace, at University-sponsored events, and in connection with work-related travel.

III. POLICY STATEMENT

A. Prohibited Conduct

Bullying is a pattern of **repeated behavior** that a **reasonable person** would find hostile, offensive, and unrelated to the University's legitimate business interests. Bullying behavior may take many forms including physical, verbal, or written acts or behaviors. Workplace bullying often involves an abuse or misuse of power. A single physical, verbal, or written act or behavior generally will *not* constitute bullying unless especially severe and egregious.

Examples of bullying may include:

- persistent or egregious use of abusive, insulting, or offensive language directed at an employee;
- spreading misinformation or malicious rumors;
- behavior or language that frightens, humiliates, belittles, or degrades, including criticism or feedback that is delivered with yelling, screaming, threats, or insults;
- making repeated inappropriate comments about a person's appearance, lifestyle, family, or culture;
- regularly teasing or making someone the brunt of pranks or practical jokes;
- interfering with a person's personal property or work equipment;
- circulating inappropriate or embarrassing photos or videos via e-mail or social media;
- unwarranted physical contact; or
- purposefully excluding, isolating, or marginalizing a person from normal work activities.

B. Bullying vs. Supervision

It is important to distinguish between bullying behavior and appropriate workplace supervision. Reasonable supervisory actions, when carried out in an appropriate manner, include:

- providing performance appraisals;
- coaching or providing constructive feedback;
- monitoring or restricting access to sensitive information for legitimate business reasons;
- scheduling ongoing meetings to address performance issues;
- setting aggressive performance goals to help meet departmental goals;
- counseling or disciplining an employee for misconduct; and
- investigating alleged misconduct.

Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute workplace bullying.

C. Retaliation

This policy prohibits retaliation (*e.g.*, threats, intimidation, reprisals, and adverse actions related to employment) against any person who reports bullying, assists someone with a report of bullying, or participates in an investigation or resolution of a bullying complaint. Reports of such retaliation will be addressed under the procedures described below.

D. Dissemination of this Policy

As part of the University's commitment to providing a working and learning environment free from bullying, this policy will be disseminated widely to the University community upon onboarding and through publications, websites, new employee orientations, and other appropriate channels of communication.

IV. PROCEDURES FOR REPORTING AND RESPONDING TO REPORTS OF BULLYING

A. Reporting Incidents of Bullying

All members of the University community are strongly encouraged to report conduct believed to constitute bullying under this policy to a manager, supervisor, or Central Human Resources. Managers and supervisors who observe bullying behavior or receive a report of bullying are required to address such behavior immediately and notify their HR Partner/Representative.

The University has distinct procedures for the investigation and resolution of complaints against staff, students, and faculty. Central Human Resources will refer reports of alleged bullying by faculty, academic appointees, and sworn members of the University of California Police Department to the appropriate office or grievance procedure for processing. Whether a complaint made against an undergraduate student-employee is processed under this policy depends on whether the conduct at issue arises out of their employment status or student status.

B. Resolution Options

Individuals making reports of bullying will be informed about options for resolving potential violations of this policy. These options may include facilitated early resolution or formal investigation.

The University will respond to reports of bullying brought anonymously or by third parties not directly involved in the complaint. However, the response to such reports may be limited if the report's allegations cannot be verified by independent facts. Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-4744.

C. Facilitated Early Resolution

The goal of early resolution is to resolve concerns at the earliest stage possible with the cooperation of all of the parties involved. The University encourages early resolution and will assist the parties in reaching a mutually agreeable resolution when the parties wish to resolve the situation collaboratively.

Early resolution may include a review of the facts, but typically does not include a formal investigation. Means for early resolution will be flexible and encompass a full range of possible appropriate outcomes.

Options for early resolution may include:

- obtaining an agreement between the parties;
- physically separating the parties;
- changing reporting lines;
- referring the parties to counseling and coaching programs;
- negotiating an agreement for personnel action;
- conducting targeted educational and training programs; and/or
- following up with the parties after a period of time to assure that the resolution has been implemented effectively.

While the University encourages early resolution, the University does not require that parties participate in early resolution prior to the University's decision to initiate a formal investigation. In some cases, Central Human Resources may determine that early resolution is inappropriate and may initiate a formal investigation instead.

D. Formal Investigation

In response to reports of bullying where early resolution is unsuccessful or inappropriate, the complainant may request a formal investigation. Central Human Resources may initiate a formal investigation after a preliminary review of the facts even in cases where the complainant has not requested one.

Formal investigation of reports of bullying will incorporate the following procedures:

1. The respondent will be advised of the relevant allegations in the complaint.
2. The investigation generally will include interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents or other evidence as appropriate.
3. Disclosure of facts to parties and witnesses will be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation may be advised to maintaining confidentiality when essential to protect the integrity of the investigation.
4. Upon request, the complainant and the respondent may each have a representative present when he or she is interviewed. Other witnesses may have a representative

present at the discretion of the investigator or as required by the applicable University policy or collective bargaining agreement.

5. At any time during the investigation, the investigator may recommend that the University provide interim protections or remedies for the complainant or witnesses. These protections or remedies may include separating the parties, placing limitations on contact between the parties, or making alternative work arrangements. Failure to comply with the terms of interim protections may be considered a separate violation of this policy.
6. Central Human Resources will make every effort to complete the investigation as quickly as possible. Generally, the investigation will be completed within 90 calendar days from the date the request for formal investigation was submitted.
7. Following the completion of the investigation, the investigator will prepare a written report that, at a minimum, includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether the conduct at issue violated this policy. Central Human Resources will submit the report to the appropriate University official, and, in consultation with the appropriate manager or supervisor, determine and implement the actions necessary to resolve the complaint.
8. The complainant and the respondent will be informed when the investigation is completed and whether the complaint was substantiated. Actions taken to resolve the complaint, if any, that are directly related to the complainant, such as an order that the respondent not contact the complainant will be shared with the complainant. In accordance with University policies protecting individuals' privacy, the complainant may be notified generally that the matter has been referred for disciplinary action, but will not be informed of the details of the recommended disciplinary action without the respondent's consent.
9. The complainant and the respondent may request a copy of the investigative report pursuant to University policies governing privacy and access to personal information. In accordance with University policy, the report will be redacted to protect the privacy of personal and confidential information regarding all individuals other than the individual requesting the report.

E. Remedies

Findings of violations of this policy may be considered in determining remedies for individuals harmed by the bullying and will be referred to the appropriate manager. Violations may include engaging in bullying, retaliating against a complainant reporting bullying, or violating interim protections. Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings.

V. OTHER CAMPUS RESOURCES

Ombuds Offices: These offices provide informal, impartial conflict resolution and problem-solving services regarding academic or work-related concerns. The Ombuds Offices are strictly confidential resources. Unless there is an imminent risk of serious harm, they will not disclose the identity of individuals who have used their services or information provided without express permission. In addition, these offices are not offices of record and are not offices for filing complaints. Communications with the Ombuds offices do not place the University on notice and individuals seeking to file complaints will be informed of appropriate University resources. In the interest of maintaining confidentiality, the Ombuds offices request that anyone seeking assistance contact the office by telephone only.

Staff Ombuds Office: 510-642-7823

Student Ombuds Office: 510-642-5754

Office for the Prevention of Harassment and Discrimination (OPHD): OPHD is responsible for ensuring the University provides an environment for faculty, staff and students that is free from discrimination and harassment on the basis of categories including race, color national origin, gender, age and sexual orientation/identity. OPHD also has the specific responsibility for providing prompt and effective responses to all complaints of sex discrimination or harassment for faculty, staff and students. In addition to serving as an investigation officer when a formal complaint of sexual harassment is filed, OPHD provides consultation to faculty administrators, directors, managers and supervisors, and graduate and undergraduate students for resolution strategies at the earliest possible levels.

OPHD: 685 University Hall; 510-643-7985; ask_ophd@berkeley.edu

University Health Services (UHS): The two departments below provide assessment, consultation, and counseling in a confidential setting, and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in his or her professional or academic setting.

UHS: Tang Center, 2222 Bancroft Way

- *Employee Assistance for Faculty and Staff:* 510-643-7754
- *Social Services for Graduate and Undergraduate Students:* 510-642-6074

Staff Diversity Initiatives, Division of Equity & Inclusion: Staff Diversity Initiatives (SDI) is a unit of the Division of Equity & Inclusion that is charged with engaging staff and management to ensure staff diversity throughout the campus at all levels of employment and to foster an inclusive workplace environment with a welcoming climate.

SDI: 104 California Hall, #1508; (510) 642-5973; staffdiversity@berkeley.edu

Whistleblower Investigations, Office of Ethics, Risk and Compliance Services (OERCS): The University of California has a responsibility to conduct its affairs ethically and in compliance with the law. Whistleblower investigations are conducted in response to reports of known or suspected improper governmental activity or retaliation against an employee for reporting suspected wrongdoing.

Whistleblower Investigations: Anonymous reports may be made online or by calling the Ethics Point hotline at (800) 403-4744.

VI. POLICY WEB ADDRESS

<http://campuspol.berkeley.edu/policies/bullying.pdf>

VII. GLOSSARY

Complainant: An individual who alleges they have been subjected to bullying.

Exclusively Represented Staff Member: A staff employee represented by a union.

Exclusively Represented Academic Appointee: An employee holding an academic title that is also represented by a union.

Legitimate Business Interests: An action that supports or is related to the University of California's missions of education, research, and public service.

Reasonable Person Test: The basis for determining whether the conduct at issue rises to the level of bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile, offensive, and unrelated to the University's legitimate business interests. Though the intention of the person responsible for the conduct may be considered, it is not determinative.

Respondent: An individual alleged to have violated this policy.

Workplace: For purposes of this policy, any location owned, leased, or rented by the Regents of the University of California on behalf of the University of California, Berkeley, or any location where a University employee is acting in the course and scope of employment. This includes, but is not limited to, buildings, grounds, and surrounding perimeters, including parking lots, field locations, classrooms, and residence halls. It also includes vehicles when those vehicles are used for University business.

VIII. RELATED DOCUMENTS AND POLICIES

- [University of California Statement of Ethical Values and Standards of Ethical Conduct](#)
- [University of California, Berkeley Principles of Community](#)
- [University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#)
- [University of California Policy on Sexual Harassment and Sexual Violence](#)
- [University of California Whistleblower Policy \(Policy on Reporting and Investigating Allegations of Suspected Improper Governmental Activities\)](#)
- [University of California Whistleblower Protection Policy](#)
- [University of California Personnel Policies for Staff Members](#)
- [University of California Collective Bargaining Agreements](#)

Assembly Bill No. 2053

CHAPTER 306

An act to amend Section 12950.1 of the Government Code, relating to employment.

[Approved by Governor September 9, 2014. Filed with Secretary of State September 9, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2053, Gonzalez. Employment discrimination or harassment: education and training: abusive conduct.

Existing law makes specified employment practices unlawful, including the harassment of an employee directly by the employer or indirectly by agents of the employer with the employer's knowledge. Existing law further requires every employer to act to ensure a workplace free of sexual harassment by implementing certain minimum requirements, including posting sexual harassment information posters at the workplace and obtaining and making available an information sheet on sexual harassment.

Existing law also requires employers, as defined, with 50 or more employees to provide at least 2 hours of training and education regarding sexual harassment to all supervisory employees, as specified. Existing law requires each employer to provide that training and education to each supervisory employee once every 2 years.

This bill would additionally require that the above-described training and education include, as a component of the training and education, prevention of abusive conduct, as defined.

The people of the State of California do enact as follows:

SECTION 1.

Section 12950.1 of the *Government Code* is amended to read:

12950.1.

(a) An employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees in California within six months of their assumption of a supervisory position. An employer covered by this section shall provide sexual harassment training and education to each supervisory employee in California once every two years. The training and education required by this section shall include information and practical guidance regarding the federal and state statutory provisions concerning the

prohibition against and the prevention and correction of sexual harassment and the remedies available to victims of sexual harassment in employment. The training and education shall also include practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation, and shall be presented by trainers or educators with knowledge and expertise in the prevention of harassment, discrimination, and retaliation.

(b) An employer shall also include prevention of abusive conduct as a component of the training and education specified in subdivision (a).

(c) The state shall incorporate the training required by subdivision (a) into the 80 hours of training provided to all new supervisory employees pursuant to subdivision (b) of Section 19995.4, using existing resources.

(d) Notwithstanding subdivisions (j) and (k) of Section 12940, a claim that the training and education required by this section did not reach a particular individual or individuals shall not in and of itself result in the liability of any employer to any present or former employee or applicant in any action alleging sexual harassment. Conversely, an employer's compliance with this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(e) If an employer violates this section, the department may seek an order requiring the employer to comply with these requirements.

(f) The training and education required by this section is intended to establish a minimum threshold and should not discourage or relieve any employer from providing for longer, more frequent, or more elaborate training and education regarding workplace harassment or other forms of unlawful discrimination in order to meet its obligations to take all reasonable steps necessary to prevent and correct harassment and discrimination.

(g) (1) For purposes of this section only, "employer" means any person regularly employing 50 or more persons or regularly receiving the services of 50 or more persons providing services pursuant to a contract, or any person acting as an agent of an employer, directly or indirectly, the state, or any political or civil subdivision of the state, and cities.

(2) For purposes of this section, "abusive conduct" means conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Appendix C: Existing UC Policies

Location	Policy
UC Berkeley	Workplace Bullying Prevention (Proposed) Workplace Violence Prevention
UC Davis	Disruptive Behavior in the Workplace
UC Davis Medical Center	Disruptive Behavior in the Workplace Violence and Hate Incidents in the Workplace (P&P 1616)
UC Irvine	No policy
UC Irvine Medical Center	Workplace Violence Prevention & Response
UCLA	Workplace Violence Prevention
UCLA Medical Center	Workplace Violence Prevention Intimidating and Disruptive Behavior (Medical Staff) Disruptive Behavior Among Employees (Health System Staff) Code of Conduct (Health System, School of Medicine) Work Rules (School of Medicine)
UC Merced	Workplace Violence, Bias Incidents, Hate Crimes and Disruptive Behaviors Prohibition of Abusive Conduct and Acts of Violence (Draft)
UC Riverside	Violence and Threats in the Workplace – Zero Tolerance
UC San Diego	Violence or Threat of Violence (Draft) Workplace Violence Employee Handbook
UC San Diego Medical Center	Code of Conduct – Disruptive Physicians and Staff Workplace Violence Employee Handbook
UC San Francisco	Violence in the Work Place
UC Santa Barbara	Sustaining Community and Preventing Violence
UC Santa Cruz	Violence in the Workplace Policy and Handbook
Agriculture and Natural Resources	Disruptive Behavior in the Workplace (UC Davis)
Lawrence Berkeley National Lab	Violence in the Workplace
UC Office of the President (Local HR)	Workplace Violence Prevention
Systemwide	APM-015: Faculty Code of Conduct Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment PPSM 12: Nondiscrimination in Employment PPSM 62: Corrective Action PPSM 70: Complaint Resolution Principles of Community Regents Policy 1111: Policy on Statement of Ethical Values and Standards of Ethical Conduct Sexual Violence and Sexual Harassment Statement of Ethical Values Student Conduct and Discipline

Appendix D: Working Group Members

Working Group Members	
De Acker	Director of Campus Climate, Staff Advisor to the Regents – Merced
Tanya Akel	Southern California Regional Director, Teamsters
Dianna Henderson	Director of HR Policy and Chief of Staff to the Vice President
Bernie Jones	Deputy Chief of Staff to the President
Janna Le Blanc	Assistant Director of HR and CUCSA Delegate – Riverside
David Lane	Systemwide Deputy Compliance Officer
Amy Lee	Diversity, Labor & Employee Relations Director, Academic Personnel and Programs
Lubbe Levin	Associate Vice Chancellor – UCLA
Trina Mastro	Counsel, Labor and Employment
Rejeana Mathis	Management Development Manager for Campus HR and CUCSA Chair Elect – UCLA
Abby Norris	HR Policy Specialist
Cathy O’Sullivan	Chief of Staff to the Chief Operating Officer
Anita Raman	Director, HR Policy and Practice – Berkeley
Anke Schennink	President, UAW Local 5810
John Steele	Programmer-Analyst 3 and CUCSA Delegate – UCSC