

**COUNCIL ON FACULTY WELFARE, DIVERSITY, AND ACADEMIC FREEDOM
ANNUAL REPORT
2021–2022**

To the Irvine Divisional Senate Assembly:

The Council on Faculty Welfare, Diversity and Academic Freedom (CFW) respectfully submits its report of activities for the 2021-22 academic year.

I. INTRODUCTION

The Council on Faculty Welfare, Diversity and Academic Freedom (CFW) considers issues relevant to faculty welfare, academic freedom, affirmative action and diversity, and emeriti affairs. Its membership and duties are described in Irvine Bylaw 99. Professor Teresa Dalton chaired CFW during the 2021-22 academic year. The Council Chair served as the Council's representative to the Senate Cabinet, the Irvine Divisional Senate Assembly, and the University Committee on Faculty Welfare (UCFW).

The Council sent representatives to one other UC committee (University Committee on Academic Freedom – Teresa Dalton) and the UCI Committee on Child Care (currently inactive). The Council has four standing subcommittees: Emeriti Affairs, Faculty Welfare, Academic Freedom, and Affirmative Action & Diversity. The Subcommittee for Emeriti Affairs consisted of the three emeriti members of the Council and the Chair of the UCI Emeriti Association (UCIEA). The other faculty members served on one of the other three subcommittees.

CFW met seven times during the 2021-22 academic year, and two times for social occasions. The Council reviewed and discussed a wide range of issues, proposals, policies, and reports as detailed below.

II. COUNCIL ISSUES

A. Climate Change Ad Hoc Committee Update

Meeting date: 10/12/2021

At the June 8th, 2021 meeting, members voted to approve an ad hoc committee on Climate Change under CFW for the 2021-22 academic year. A principal duty for this committee would be to examine a potential long-term task force or committee through the broader Academic Senate.

The Council inquired about the status of the committee and was informed that an Academic Senate Task Force on Climate Change was being created. Its charge included making recommendations on how the campus should move forward on issues related to climate change by the end of May 2022. Senate leadership will discuss the committee's recommendations with the Cabinet and advocate for any Cabinet-endorsed recommendations with the appropriate campus administrators.

B. Systemwide Review of Proposed Revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH)

Meeting date: 10/12/2021

Memo date: 10/19/2021

Systemwide Academic Senate Chair Horwitz forwarded for review proposed revisions to the Presidential Policy on Sexual Violence and Sexual Harassment. The proposed revisions are to: (i) comply with a new state law, Senate Bill (SB) 493, and (ii) better account for prohibited conduct in the clinical setting.

Within the policy, the term “timeframe” has been updated to state, “The Title IX Officer will update parties periodically on the status of the investigation and notify them in writing of the reason for any extension and the projected new timeline.” The Council found the phrase “periodically” to be too vague and would have liked to know what the minimum frequency is for the parties to receive updates, noting that lack of communication is surely a huge source of distress. Members also observed that providing OEOD with the right to file a formal complaint when the aggrieved individual does not desire this is overreach and infantilizes the victim.

All individuals should have a right to decide, once they are informed of the OEOD process, whether they wish to move forward, which may prevent some from seeking help and information. The limitations on UC’s use of no-contact orders that restrict a complainant’s contact with a respondent is an important change to align with state temporary restraining orders which typically are not imposed on both parties. To impose on both parties might be viewed as punitive. The new policies for clinical settings are important and provide needed protection for potentially vulnerable sub-populations.

C. Systemwide Review of Proposed Revisions to the Presidential Policy on Sustainable Practices

Meeting date: 10/12/2021

Memo date: 10/27/2021

Systemwide Academic Senate Chair Horwitz forwarded for review proposed updates to the existing Presidential Policy on Sustainable Practices. Members felt that all of the specific policies and goals pertaining to sustainable practices were laudable. There was little information, however, about how they would be funded. The policy generally aims to make UC a leader in this area. Nonetheless, what defines leadership in some areas is unclear and one might argue for more aggressive targets in others. Some members were glad to see a focus on campus sustainable transportation programs to promote telecommuting opportunities. However, it became apparent during the discussion that members did not feel they had sufficient expertise to review the proposed policy revisions. The CFW members of the upcoming ad hoc Climate Change committee were asked to provide feedback, and it was incorporated into the response from CFW.

D. Research Issues and Travel Restrictions

Meeting date: 10/12/2021

Memo date: 11/10/2021

Members discussed possible research exceptions to the restrictions and the availability of other funds for travel. Members questioned who may sign off on exceptions to the restrictions. It was stated that these restrictions are state laws and UCI has little authority to go against the legislation. Members suggested there should be exceptions for individuals with research in areas such as the social sciences that would benefit from conducting research in the restricted areas in particular. There was a motion to support exceptions for individuals with relevant research to be

approved for funded travel in restricted areas, particularly to study the social phenomena unfolding in these areas. The majority of members voted in favor of the motion and included a recommendation for exceptions in its feedback.

E. Systemwide Review of Proposed Presidential Policy on Integrated Pest Management

Meeting date: 11/9/2021

Memo date: 11/19/2021

Systemwide Senate Chair Robert Horwitz circulated for review a proposed Presidential Policy on Integrated Pest Management (“IPM”). Members strongly recommended that this policy include University Hills public landscaping and perhaps extend to private residences as well. According to the proposed policy, “when the decision to use Pesticides is made, the Pesticide(s) selected should be: 1) effective; 2) target specific; 3) not known to be harmful to non-targets species such as beneficial organisms, wildlife, or aquatic species; 4) not known to contaminate surface or groundwater; and 5) least hazardous to humans.” Under the 1976 Toxic Substances Control Act, toxic substances are generally considered safe until proven dangerous. However, 99% of the chemicals now on the market have not been tested.

It was stated that there are often lower cost methods that use chemicals that may be toxic but haven't been proven toxic, and higher costs (including labor) that are definitely safer. Some members noted that we might, in principle, want to opt for safer and less hazardous options, even if it might increase costs. However, oversight is currently limited because the services are subcontracted. The contractors typically choose a cost-saving option as long as the chemicals have not been proven hazardous. Members raised concern regarding the safety of subcontractors who do landscaping and pest management and called for clearer oversight of these workers. The policy states that, “The IPMC may consider certain sites and situations as special circumstances and develop separate IPM Plans for those settings. Special circumstances may include but are not limited to archival facilities and rare specimens in botanical gardens.” Since within certain sites and with particular research, some faculty have species under study that must be protected and therefore pesticides cannot be used, pest management has been a challenge, and communication and transparency about the plans have been a problem.

F. Draft Presidential Policy on Abusive Conduct and Bullying in the Workplace

Meeting date: 11/9/2021

Memo date: 12/15/2021

Systemwide Senate Chair Robert Horwitz distributed for review a draft presidential policy on abusive conduct/bullying in the workplace. The proposed policy covers abusive conduct/bullying and retaliation by and against members of the university community in the workplace.

The policy states that, "Abusive Conduct/Bullying includes situations where the respondent is a person with relative power or authority and also situations in which there are peer-to-peer interactions." Members asked whether this could also include those who engage in hostile behavior, even if their title does not put them in power or authority over others. The basis for determining whether the conduct at issue rises to the level of abusive conduct/bullying is whether a reasonable person in the same or similar circumstances would find the conduct hostile or offensive in the workplace given the totality of the circumstances. Although the intention of

the person responsible for the conduct may be considered, it is not determinative. Many may disagree as to what is offensive, or it may be based on characteristics of the individual(s) to which the bullying is targeted. This issue may be covered by "totality of the circumstances." However, members noted that a written indication that the totality of the circumstances includes the (likely) known stressors in an individual's life would be helpful.

Members observed that this policy should be useful for department chairs. Even in the absence of status or power differentials, bullying does occur. For example, one thinks that tenure is a shield against bullying, but tenure may embolden others to think they may not be held responsible for unacceptable behavior. This policy attempts to clarify a form of misbehavior that is sometimes overlooked because there is no obvious status difference between the parties, because sexual or racial and ethnic abuse has been more salient, or when the misbehavior is dismissed as "faculty politics."

The Council noted that this is a good first attempt at a necessary building block for helping make UC a positive work environment for as many people as possible. Anonymous reports and allegations from third-party reporters not directly involved in the complaint will be reviewed and may be investigated. The response to such reports may be limited if the complainant does not wish to pursue the complaint or if the University is unable to collect sufficient information to determine whether the alleged conduct occurred or constitutes a violation of this policy. Members felt that the complainant should have complete agency in this matter and the University should not be able to pursue the complaint in the absence of an expressed desire. There is a tension between the complainant's right to privacy and independence, but if the institution sees a larger pattern, it may nonetheless want to intervene. Members also questioned whether allegations of bullying rise to the level of a "duty to report."

G. Review of Draft Revised APM-025 and APM-671

Meeting date: discussed electronically

Memo date: 12/17/2022

Systemwide Senate Chair Robert Horwitz distributed for comment proposed revisions to APM-025: Conflict of Commitment and Outside Activities of Faculty Members, and APM-671: Conflict of Commitment and Outside Activities of Health Sciences Compensation Plan Participants. The proposed revisions are responsive to recommendations from the systemwide Office of Ethics, Compliance and Audit Services (ECAS) following a systemwide audit of foreign influence and subsequent working group.

Members described the proposed changes as troubling and xenophobic, and felt they had significant potential to limit academic freedom. They noted that the undue reporting burden could limit international opportunities that could be a great benefit to UC, and that if there is real need for better reporting and tracking of these activities, a more salient argument should be made. They also suggested that a better, faster, and more streamlined process for obtaining approval to engage in these activities should be implemented. Some members felt that the requirement for prior approval was a bad idea that would have deleterious consequences for faculty at UC. Such approvals are usually lengthy and riddled with administrative delays, which could mean that faculty would be unable to perform any consulting work for 60-90 days after the company seeks to hire; this would be unacceptable to most companies. This could result in faculty from other institutions being preferentially selected for these useful and important roles.

Members also noted that the proposed creation of category II.B activities may mean that faculty will no longer be able to participate in industry-sponsored user workshops abroad without prior authorization. Reporting and disclosure requirements regarding such activities are already burdensome, and this would make it even harder to participate, share the latest research and developments, and educate users in applying them. Similarly, the restrictions on participating on a board of directors will mean some faculty would lose influence and may eventually have to cease participating in any governance activities abroad. This policy could result in UC losing out to competing institutions that are much more friendly and open to commercialization of fundamental research and supportive of faculty who engage in such activities beyond national borders.

Apart from the immediate chilling impact on research and service, members were also deeply concerned about the broader implications for academic freedom and First Amendment rights. Even if the prior authorization requirement would "only" apply to foreign lawsuits and other activities, it could do great damage to the ability of UC faculty to serve the public and make their expertise and knowledge available without concerns of institutional loyalty or retributions.

Finally, members recognized the need for oversight of outside activities as understandable but felt the policy revisions constituted administrative overreach. They noted that without concrete examples of proven or potential abuses and transgressions (a working group report was cited but not provided), it was hard to assess the merits of the proposed changes. They felt that this lack of clarity, plus the timing, created the appearance of an ill-advised response to external political pressure.

H. Proposed Revised APM - 759, Leaves of Absence/Other Leaves Without Pay

Meeting date: discussed electronically

Memo date: 12/17/2021

Systemwide Senate Chair Robert Horwitz distributed for comment proposed revisions to Section 759 of the Academic Personnel Manual. In May 2021, the Regents Working Group on Innovation Transfer and Entrepreneurship recommended in its final report that APM - 759 be revised to explicitly state that a leave without pay can be used for innovation and entrepreneurship pursuits. The proposed revisions to APM - 759 are responsive to the Regents Working Group recommendation.

Generally, members did not have any major concerns with these revisions and agreed that such pursuits should be encouraged at UC. It was encouraging that the working group report supported the proposed changes as part of a cohesive strategy for unshackling UC's ability for translating basic research into applied tools and technologies.

I. Systemwide Recommendations for Department Political Statements

Meeting date: 1/11/2022

Memo date: 2/14/2022

Systemwide Senate Chair Robert Horwitz distributed for review recommendations from the University Committee on Academic Freedom (UCAAF) addressing the freedom of campus academic departments to issue or endorse statements on political issues in the name of the department. CFW members discussed this issue previously on October 12, 2021, and agreed that

it was a balanced, well-written policy proposal and hoped that it would make its way to departments for department level discussions.

A majority of members agreed that this policy seemed fair and balanced and made a strong case for the University's position on the matter. Members agreed that disclaimers can have a deflating or chilling effect on political statements. Further, they agreed that a disclaimer on statements on diversity, equity, and inclusion is unnecessary since these are not political issues but are central values of the university. Members expressed concern that, in some circumstances, department statements could suppress minority viewpoints of individuals and groups and create a power differential issue.

J. Systemwide Draft Presidential Policy – Supplement to Military Pay

Meeting date: 2/8/2022

Memo date: 3/14/2022

Systemwide Senate Chair Robert Horwitz distributed for systemwide Senate review proposed revisions to the presidential policy on supplement to military pay.

Members generally agreed that the policy and proposed changes seemed clear and straightforward. The majority of members voted in favor of removing all references to the four-year review provision.

K. Sustainable Transportation to Orange County School of the Arts (OCSA)

Meeting date: 2/8/2022

A faculty member expressed concern regarding the transportation of children in University Hills who attend OCSA.

Members sympathized with this parent but were not persuaded that the concerns described were distinctive or especially deserving compared to those of other groups. It was stated that other University Hills parents whose children ride yellow school buses to Irvine public schools do so on a self-organized, private subscription basis. Part of a larger initiative could be to expand transportation options to Santa Ana for all university community members and there may be tax implications for a perk of this sort. Even if the university wanted to provide transportation of children to faculty, the IRS and Franchise Tax Board might consider it taxable income and it might be viewed negatively by the public, who do not have the same options. On the whole, members were not inclined to privilege one school above others and would support a broader initiative to survey the community and consider a benefit to subsidize use of environmentally friendly transportation options for children's schooling. The Council planned to invite Transportation and Distribution Services to a future meeting to discuss sustainable public transportation options from University Hills.

L. Parental Leave at UC

Meeting date: 2/8/2022

Memo date: 2/24/2022

A faculty member expressed concern regarding a potential disparity between parental leaves for “moms” as opposed to those available for “dads.”

There has been some literature that a non-childbearing parent may produce more research when they are on a parental leave because their roles are different. This can create inequities for research productivity. There is an apparent inequity between childbearing and non-childbearing parents. One additional quarter teaching release for the childbearing parent seems potentially appropriate, but allowing only one quarter for a non-childbearing parent is very restrictive. There should be a distinction between "teaching release" and "leave," as they are fundamentally different. Members determined that this issue should be reviewed in depth.

M. Revisions to Bylaw 99: Faculty Welfare, Diversity, and Academic Freedom, Council on
Meeting dates: 4/12/2022, 5/10/2022

In 2021, a CFW member suggested that the CFW bylaws be reviewed and revised, particularly since the last date of revision was June 2009. A proposed revision eliminated CFW subcommittees. It was suggested that further revisions could be made to better reflect the current needs and welfare of active and retired faculty members.

Members generally agreed that the revisions helped align the bylaws to current Council practices and voted unanimously to approve the revisions.

The revisions were sent to the Committee on Rules and Jurisdiction (CRJ) in Summer 2022, which made further recommendations for revisions. These recommendations will be reviewed and resubmitted to CRJ for approval in Fall 2022.

N. Systemwide Presidential Policy on Affiliations with Certain Healthcare Organizations
Meeting dates: 4/12/2022
Memo date: 5/11/2022

Systemwide Senate Chair Robert Horwitz distributed for review a Proposed Presidential Policy on Affiliations with Certain Healthcare Organizations.

Members agreed that this issue was very complex. Opinions varied, and members had questions regarding the levels and types of care provided by these organizations. Members expressed concern regarding certain religious health organizations that may refuse to perform medically necessary procedures because the patient is transgender, for example. There was no compelling evidence or arguments to continue partnerships with organizations that may discriminate against these individuals. Members felt it was especially important that all members of the UC community as well as vulnerable populations should be able to access quality medical care. The policy stated that hospitals do not deny critical care, but that patients would be referred to other hospitals when they cannot provide a procedure. There are many hospitals that cannot do certain procedures and many physicians who should not be made to go against their own beliefs by being mandated to perform procedures with which they are uncomfortable.

O. Otter. Ai Recording and Academic Freedom
Meeting date: 4/12/2022
Memo date: 4/8/2021

Members of UCAF expressed concern about mandatory audio recording of classes on a case-by-case basis for disability accommodation purposes, including informed consent for recordings and data privacy risks. CFW members had many concerns and comments.

Members discussed whether the classroom is a public or a protected place, acknowledging that academics are not of a single mind about this. If indeed, the classroom is public, then by definition the university's privacy threshold is low, and perhaps we should be less concerned. Otter.ai itself says that, given that it shares data with third parties, including advertisers and "relevant state agencies," all users should secure the "informed consent" of the person being recorded. Given that, members noted that it feels like there's a conflict between our requirement to comply with disability services requests, and the sense that we should be allowed to individually and autonomously consent (or not) to the use of our data, and this may set a very dangerous precedent.

Members observed that instructors who teach "controversial" courses that discuss hard topics may be limited out of fear of being recorded. Similarly, this may lead to instructors being suspicious of students with accommodations because they may record them rather than being open and welcoming to students with different learning needs. Members agreed there should be more secure transcription software available. OEOD will bring this issue to the Campus Privacy Officer, and it will be revisited by the Council at a later date.

P. Systemwide Review of Proposed Revisions to APM-715 & APM-760

Meeting date: 5/10/2022

Memo date: 6/7/2022

Systemwide Senate Chair Robert Horwitz distributed for review proposed revisions to APM-715: Leaves of Absence/Family and Medical Leave, and APM-760: Family Accommodations for Childbearing and Childrearing. The proposed revisions reflect the increase in the paid family leave benefit from 70% to 100% of eligible earnings, with a proposed effective date of January 1, 2023. All other aspects of the policies remain the same.

Members agreed that the proposed revisions seemed straightforward and positive, and voted unanimously to endorse them.

Q. UCI Website Issues and Concerns

Meeting date: 5/10/2022

Guest: Peter Krapp, Professor, Film and Media Studies

The Council was presented with issues and concerns regarding the UCI website and discussed possible remedies and recommendations the Council could provide to the administration.

Members expressed many concerns about the UCI website and privacy. A Blacklight Inspection Result found various trackers, key loggers, third party cookies, and notifications that data is sent to Facebook and Google Analytics. Information on privacy issues with other UC websites was provided and there were major variations between campus websites. The following issues and questions were posed: 1) is there a way around a robust Google Analytics presence on uci.edu as the standard ad-tech solution despite the Google services utilized by UCI?; 2) Should UCI sell its students and their friends and family to Facebook?; 3) How is the collected data used and

who has access to it? And do these practices align with our privacy policies and UC data policies, which state that, “University contracts with outside vendors for electronic communications services shall explicitly reflect and be consistent with this Policy and other University policies related to privacy?”

It was suggested that UCI conduct a privacy audit. A member asked if OIT was aware of these issues, and it was explained that Strategic Communications maintains the website, not OIT. The Council will ask for an update regarding this issue in 2022-23.

R. Report of the Negotiated Salary Trial Program Phase 2 Taskforce

Meeting date: 5/10/2022

Memo date: 6/7/2022

The Negotiated Salary Trial Program (NSTP) was launched on three campuses, including UCI, as a five-year trial program from July 1, 2013 through June 30, 2018. A joint Senate-Administration taskforce reviewed the program, and in its June 2017 report recommended continuation of the program under certain conditions. Following systemwide review of the taskforce’s report and additional consultation with Academic Senate leaders and campus administration, Provost Brown extended the program for another four years, with a review after the third year and adding a fifth year of “wind-down” should the program not be continued after four years. The Phase 2 Taskforce was appointed in October 2021 and included membership appointed by both the Academic Senate and Provosts/Executive Vice Chancellors.

Members agreed that, overall, the data did not suggest any positive impacts. Due to funding agency limitations, even faculty in very similar research areas have disparate access to this funding. Additionally, some fields don’t need significant funding to do high quality research and hence have no access to this benefit, which creates salary inequities. Since only a small fraction of faculty can benefit from NSTP, it is not clear that it will significantly reduce pressure for retention offers and could increase them given the salary inequities generated by NSTP. Extending the trial to collect more information seems inconsistent with the statement that ending it would be too disruptive, as it will be more disruptive in a few years. Members expressed concern that the NSTP requirements do not include any prohibition against using grant funding to pay PI salary rather than to support students. A stated benefit of the NSTP is increased funding to participants. No comparison was given to non-participants, whose grant funding has also likely increased. It seems as if, by providing additional salary only in the form of "soft money," the university may be failing to keep up with fair salary rates for the units/programs that use this mechanism. This seems like a stop-gap measure at best and not a good long-term solution. The apparent lack of transparency is another issue that could lead to biases and pay inequality.

VI. NEW AND/OR CONTINUING BUSINESS FOR 2022-2023

- Revisions to Senate Bylaw 99: Council on Faculty Welfare, Diversity, and Academic Freedom
- Academic Freedom
- Systemwide Review of Proposed Revisions to the Presidential Policy on Sexual Violence and Sexual Harassment (SVSH)
- ADA Compliance on UCI Campus and Medical Facilities
- Climate Change Committee

- Retirement Issues for Emeriti
- Emeriti Engagement
- UCIPD-UCI Community Relations and the Public Safety Advisory Committee
- University Hills/ICHA and Affordable Housing for Faculty
- Childcare and Dependent Care

VIII. COUNCIL MEMBERSHIP

Faculty Members:

Teresa Dalton, Chair, Social Ecology
Nadine Abi-Jaoudeh, Medicine (clinical science)
Monica Daley, Biological Sciences
Yingying Dong, Social Sciences
Luohua Jiang, Medicine
David Kisailus, Engineering
Annie McClanahan, Humanities
Kenneth Murphy, Business
James Nowick, Physical Sciences
Thorsten Ritz, Physical Sciences
Katie Salen, ICS
Kelli Sharp, Arts
Beatrice Tice, Law
Elizabeth Van Es, Education

Emeritus Members (voting)

Kenneth Chew, Social Ecology
Bonnie Nardi, ICS
William Molzon, Physical Sciences

Consultants (non-voting)

Gwen Kuhns Black, Office of Equal Opportunity and Diversity
Jeri Frederick, Human Resources
Marianne Beckett, Academic Personnel

Representatives (non-voting)

Neil Nory Kaplan-Kelly, AGS
Michelle Joemon, ASUCI
Oliver Lu, ASUCI
Shu Liu, LAUC-I

Ex Officio

George Miller, UCIEA

Council Analyst

Julie Kennedy