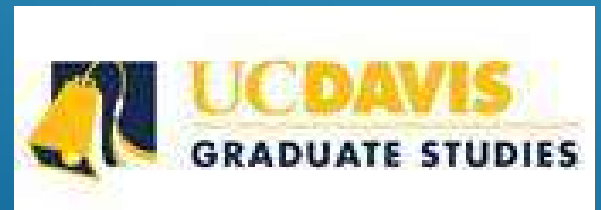


# ABUSIVE CONDUCT: INFORMATION SESSION #2

Presented by  
Academic Affairs  
&  
Graduate Studies  
May 2023



# PRESENTERS:

- ▶ Paul E. Harris, Director – Academic Employee and Labor Relations, Academic Affairs
- ▶ Ellen Hartigan-O'Connor, Associate Dean, Graduate Studies
- ▶ Binnie Singh, Assistant Vice Provost, Academic Affairs

# GOAL FOR THIS SESSION

Our goal for today is to help you understand the Abusive Conduct policy and how to navigate it. Please know that even if something doesn't rise to the level of a policy violation, it doesn't mean some further action shouldn't occur, such as: documented discussions, training, individual coaching, etc.

# BACKGROUND AND SCOPE

- ▶ The University of California is committed to promoting and maintaining a healthy working environment in which every individual is treated with respect.
- ▶ This policy applies to all employees, including faculty, staff, and student employees. The policy also applies to conduct by and against unpaid interns and third parties.
- ▶ Only employees, unpaid interns, and third parties may be Respondents.
- ▶ The policy covers conduct that occurs in person or other means, such as electronic media.
- ▶ The policy became effective on January 1, 2023.

# NONCOMPLIANCE AND RETALIATION

- ▶ Violation of the Abusive Conduct policy may result in remediation, educational efforts, and/or employment consequences, as outlined in University policies relevant to policy-covered faculty and staff.
  - ▶ For policy-covered academic personnel, formal corrective action/discipline is governed by APM - 015, APM - 016, and APM - 150.
  - ▶ For represented employees, formal corrective action/discipline is governed by collective bargaining agreements.
  - ▶ For policy-covered staff, corrective action/discipline is governed by Personnel Policies for Staff Members 62, 63, and 64.
- ▶ Retaliation against any person who reports or assists someone with reporting Abusive Conduct or participates in an investigation is prohibited.

# ABUSIVE CONDUCT

- ▶ **Abusive Conduct is defined as harassing or threatening behavior that is sufficiently severe, persistent, or pervasive conduct in the Workplace that denies, adversely limits, or interferes with a person's participation in or benefit from the education, employment, or other programs or activities of the University.**
- ▶ **The conduct creates an environment, whether intended or not, that a reasonable person would find to be intimidating or offensive.**
- ▶ **Conduct prohibited by the policy must be unrelated to the University's legitimate educational, employment, and business interests.**

# EVALUATING ABUSIVE CONDUCT

- ▶ The conduct shall be evaluated taking into account:
  - ▶ the circumstances of the parties
  - ▶ the relationship between the parties (including power imbalance)
  - ▶ the frequency, nature, and severity of the alleged conduct
  - ▶ whether the conduct was physically threatening
  - ▶ whether the conduct may be protected as academic freedom or free speech
- ▶ A single act may constitute Abusive Conduct if especially severe or egregious.
- ▶ When the alleged conduct involves issues related to academic freedom, the applicable University office will consult with the appropriate academic officer for relevant academic judgment, e.g., Academic Senate office, committee on academic freedom.

# ACADEMIC FREEDOM

- ▶ Faculty and other academic appointees, staff, and students of the University enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section II of the California Constitution.
- ▶ The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.
- ▶ Academic freedom includes the right to express views, even in passionate terms, on matters of public importance. This right extends to curriculum and instruction.
- ▶ Freedom of speech, freedom of expression, and academic freedom are essential to the mission of the University.
- ▶ This policy will be implemented in a manner that recognizes rights to freedom of speech and expression. However, freedom of speech and academic freedom are not limitless and, for example, do not protect speech or expressive conduct that violates federal and state anti-discrimination laws.



# ACADEMIC FREEDOM POLICIES

- ▶ The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.
- ▶ APM – 010, Academic Freedom:  
<https://www.ucop.edu/academic-personnel-programs/files/apm/apm-010.pdf>
- ▶ APM – 011, Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees:  
<https://www.ucop.edu/academic-personnel-programs/files/apm/apm-011.pdf>

# SCENARIO #1

- ▶ During a patient assessment, a Clinical Professor, Dr. S made a diagnosis for a patient. Another Clinical Professor, Dr. N, who was present during rounds, disagreed with the diagnosis and gave a medically reasonable alternative diagnosis.
- ▶ Dr. S publicly yelled at Dr. N for disagreeing, and said that if they ever did that again, they would block their future advancement and make sure they would never work in medicine again.
- ▶ Dr. N reported the incident to the Department Chair, who then met with Dr. S. During the meeting, Dr. S claimed it was their academic freedom right to make an informed judgment about Dr. N's clinical diagnosis.

# SCENARIO #2

Professor M gave a lecture focusing on US involvement in Vietnam and the Gulf of Tonkin “provocation.” A student, and former Marine, questioned the Professor’s conclusions about “provocation” and a lively discussion ensued.

The next week, Professor M lectured about the US Government’s role in 9/11 and suggested that US policy toward Israel and Palestine may have motivated the attack. The student again argued with Professor M, and ended up storming out of the lecture hall.

The student complains to the Department Chair and alleges that the Professor is targeting material at the student deliberately.

# EXAMPLES OF ABUSIVE CONDUCT

- ▶ Use of abusive and/or insulting language (written, electronic, or verbal)
- ▶ Spreading false information and malicious rumors
- ▶ Behavior, language, or gestures that frighten, humiliate, belittle, or degrade, including criticism or feedback that is delivered with yelling, screaming, threats, implicit threats, or insults
- ▶ Encouraging others to act, singly or in a group, to intimidate or harass other individuals
- ▶ Making repeated or egregious comments about a person's appearance, lifestyle, family, culture, country of origin, visa status, religious/spiritual/philosophical beliefs, or political views in a manner not covered by the University's policies prohibiting discrimination
- ▶ Teasing or making someone the brunt of pranks or practical jokes
- ▶ Interfering with a person's personal property or work equipment without a legitimate business or educational purpose
- ▶ Circulating photos, videos, or information via e-mail, text messages, social media, or other means without a legitimate business or educational purpose

# EXAMPLES OF ABUSIVE CONDUCT

## (CONTINUED)

- ▶ Making unwanted physical contact or encroaching on another individual's personal space, in ways that would cause discomfort and unease, in a manner not covered by the University's Sexual Violence and Sexual Harassment policy:  
<https://policy.ucop.edu/doc/4000385/SVSH>
- ▶ Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate purposes
- ▶ Repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not the individual's responsibility, for which the employee does not have authority, or repeatedly refusing to take "no" for an answer when the individual is within the individual's right to decline a demand; pressuring an individual to provide information that the individual is not authorized to release (or may not even possess)
- ▶ Making threats to block a person's academic or other advancement, opportunities, or continued employment at the University without a legitimate business or educational purpose
- ▶ Sabotaging or undermining a person's work performance

# CONDUCT THAT GENERALLY DOES NOT CONSTITUTE ABUSIVE CONDUCT

- ▶ Providing performance appraisals to employees, including negative appraisals
- ▶ Delivering constructive criticism
- ▶ Grading student performance, including negative assessments
- ▶ Coaching or providing constructive feedback
- ▶ Monitoring or restricting access to sensitive and confidential information for legitimate business reasons
- ▶ Scheduling regular or ongoing meetings to address performance issues
- ▶ Setting ambitious performance goals to align with departmental goals
- ▶ Investigating alleged misconduct or violation of University policy
- ▶ Counseling or disciplining an employee for performance, engaging in misconduct, or violating University policy

# CONDUCT THAT GENERALLY DOES NOT CONSTITUTE ABUSIVE CONDUCT (CONTINUED)

- ▶ Engaging in assertive behavior
- ▶ Having a disagreement
- ▶ Making unpopular statements or articulating positions on controversial issues
- ▶ Participating in debates and expressing differences of opinion about academic decisions
- ▶ Participating in a formal complaint resolution or grievance process
- ▶ Exercising academic freedom, including comments about scholarship, instruction within the classroom, different approaches to curriculum, opposing opinions about policy issues, or academic achievement, even if the content is considered insulting by the recipient and even if delivered passionately

# POWER DYNAMICS

- ▶ Abusive Conduct may occur in situations in which the Respondent has:
  - ▶ more power than the Complainant,
  - ▶ less power than the Complainant, or
  - ▶ equal relative power or authority than the Complainant.



# POWER DYNAMICS #1

- ▶ Professor F mistreats department staff, who complain that F treats them like F's own personal servants, expecting them to drop everything they are doing to help them immediately with whatever F needs.
- ▶ F recently blamed one of the staff for mistakes made in ordering a new computer for F's office. F sent a long, rage-filled email to the employee, copying the employee's supervisor and calling the employee an "idiot" and "worse than useless."
- ▶ Just today, another staff member tearfully reported that F interrupted them during a presentation to a large group of department faculty and staff, insulting and accusing them of incompetence and wasting everyone's time. The staff member was so distraught at the public humiliation that they were ready to resign.

# POWER DYNAMICS #2

Dr. J is the best-funded researcher in your department. Their prolific research team attracts a large number of employees who are dependent on Dr. J for their funding.

Postdoc F from Dr J's lab asks to meet with you. They allege that Dr. J mistreats their mentees, has an explosive temper, frequently shouts, and accuses the trainees of being stupid or uncommitted to science. F further alleges that Dr. J routinely requires excessive hours of work in the lab, including evenings and weekends. Postdoc F even stated that Dr. J retaliated against them directly for taking a day of absence, accusing F of laziness and rescinding their approved vacation. Dr. J even withheld approval of Postdoc F's publication for months, preventing them from going on the job market.

# POWER DYNAMICS, #3

A student and their professor have been engaged in a discussion over email about an extension for an assignment deadline.

After lengthy emails back and forth, the Professor wrote, “I will not approve an extension and I will not respond further to your emails”.

In reaction, the student went to complain to the Dean of Students about mistreatment from the Professor.

# POWER DYNAMICS #4

- ▶ A Jr. Specialist comes to you complaining that their PI has been engaging in abusive conduct. They cite a recent 1:1 meeting where the PI castigated them for their work. This wasn't the first time they felt targeted by their PI in a 1:1 meeting. The Jr. Specialist claims they no longer feels safe or able to work with this PI due to their abusive behavior.
- ▶ Upon meeting with the PI, the PI informs you that they were upset because the Jr. Specialist was leaving sensitive materials unsecured on multiple occasions. There were also concerns that their data analysis was incomprehensible. The PI admitted the conversation was tense and pointed due to, in their mind, the severity of the concerns that needed to be addressed.

# COMPLAINT RESOLUTION PATHWAYS

- An employee may report Abusive Conduct and/or file a grievance or complaint
- There is no time limit for submitting an abusive conduct report
- No more than 30 business days after receiving a report, the applicable office(s) will make an initial assessment to determine whether an investigation is warranted
- Resolution of alleged Abusive Conduct may take different forms.
  - Early Resolution:
    - May be facilitated by a manager, Employee and/or Labor Relations, Academic Affairs, or Graduate Studies
    - The facilitating manager/University office will initiate the early resolution process within 60-75 business days after initial report assessment
    - The facilitation manager may extend timeline for good cause with written notice of the reason for extension
  - Early Resolution Options may include:
    - Facilitated/documentated discussion or mediation to obtain agreement between the parties
    - Agreement to attend counseling, coaching, educational and/or training programs
    - Negotiating an agreement for corrective action/discipline

**Attempts at early resolution/informal conflict management do not extend the time limit of the applicable formal complaint resolution or grievance process. (Note: Complaints alleging Sexual Harassment/Sexual Violence or illegal forms of Discrimination will be forwarded to HDAPP for review and the timeline will be paused until those assessments are complete.)**

# COMPLAINT RESOLUTION PATHWAYS

## (CONTINUED)

- Formal Investigations

- The Respondent will be advised of relevant allegations
- The investigation will include interviews with parties and witnesses, as well as a review of relevant documents
- Disclosure will be limited. The University must balance the privacy interests of people involved in a report of Abusive Conduct against the need to gather information, ensure a fair process, and stop, prevent, and remedy the alleged conduct. In this context, the University protects people's privacy to the extent permitted by law and University policies.
- Complainant and Respondent may have advisor present
- Interim protections/measures may be necessary
- Investigation typically completed within 120 business days
- This timeline may be extended for good cause with written notice of reason for extension (as noted, if SVSH or discrimination allegations present)
- Investigator prepares written report and submits it to applicable University office and/or response team, which will recommend next steps
- Complainant and Respondent informed when investigation is completed and whether or not a violation of this policy has occurred

# THERE WAS NO FINDING OF AN ABUSIVE CONDUCT POLICY VIOLATION. WHAT NOW?

- ▶ **The lack of a policy violation, does not eliminate the University's responsibility to resolve the issues giving rise to the abusive conduct complaint where appropriate.** Further action may still be appropriate and necessary to address the misconduct. In the absence of other policy violations, depending on the nature of the case, responsive steps could include:
  - **issuing a counseling memo**
  - **providing coaching by the supervisor, department chair, or dean**
  - **other type of informal or formal intervention by the University to resolve the underlying issues**
- ▶ **If problematic behavior remains unaddressed, it could negatively impact the working or learning environment or escalate into a policy violation.**
- ▶ **Some situations, even when not involving misconduct, represent communication or interpersonal challenges. These challenges may be accompanied by power dynamics or other issues.** Mediation, training, or other interventions may be appropriate to help improve the work environment for everyone involved.
- ▶ **Responsible Offices should work with campus resources, such as their Ombuds Office, APO and Human Resources, to find appropriate solutions as needed.**

# REMINDER ABOUT MANDATORY TRAINING

- ▶ **Mandatory Training** – for current employees, completion required within 90 days of issuance (which was on April 17) by Monday, July 17<sup>th</sup>
- ▶ Employees hired after April 17 need to complete the training within 45 days, and will be assigned to them through the Learning Management System (LMS).
- ▶ When you log into the LMS system, it should show up as one of your required trainings.
- ▶ Total time of the training is approximately 20 minutes.



# HOW COMPLAINTS GET FILED & PROCESSED

- ▶ One webpage for filing of all complaints, hosted by central Human Resources – Employee and Labor Relations, here: <https://hr.ucdavis.edu/departments/elr/policies/abusive-conduct> .
- ▶ One form for Davis campus and one form for Health campus, once completed gets forwarded to [abusiveconduct@ucdavis.edu](mailto:abusiveconduct@ucdavis.edu).
- ▶ HR will manage cases where staff are respondents and send any with academics as respondents to Academic Affairs or Graduate Studies, depending on the title.
- ▶ The responsible office (Academic Affairs or Graduate Studies) will assess the case for resolution or formal investigation, consulting as needed.

# RELATED INFORMATION

- ▶ **APM - 010 (Academic Freedom)**
- ▶ **APM - 011 (Academic Freedom, Protection of Professional Standards, and Responsibilities of Non-Faculty Academic Appointees)**
- ▶ **APM - 015 (The Faculty Code of Conduct)**
- ▶ **APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline)**
- ▶ **APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal)**
- ▶ **UC Academic Senate Bylaws 335, 336, and 337**
- ▶ **UC Regents Policy 1111: Statement of Ethical Values and Standards of Ethical Conduct**
- ▶ **Sexual Violence and Sexual Harassment**
- ▶ **Discrimination, Harassment, and Affirmative Action in the Workplace**
- ▶ **Collective Bargaining Agreements**

# RELATED INFORMATION (CONTINUED)

- ▶ **Personnel Policies for Staff Members 62, 63, and 64**
- ▶ **Personnel Policies for Staff Members-II 64 (Termination of Appointment)**
- ▶ **Policy on Student Conduct and Discipline**
- ▶ **Whistleblower Policy**
- ▶ **Whistleblower Protection Policy**

# QUESTIONS