

GUIDELINES FOR PREVENTING AND RESPONDING TO FACULTY BULLYING AND OTHER DEMEANING & DISRUPTIVE BEHAVIOR

August 1, 2019¹

1 Purpose

The University of California, Berkeley is committed to the proposition that every member of our community has a fundamental right to be treated with respect. Bullying and other demeaning behavior impinge on that right. Additionally, bullying and demeaning behavior undermine morale and lead to stress; such behavior disrupts the functioning of the University by creating a hostile working environment; such behavior can directly and indirectly impair individuals' equitable access to resources; and such behavior interferes with individuals' ability to do their best work, including flourishing as scholars and students. For all those reasons, it is incumbent upon the University to have clear guidelines for preventing and responding to bullying and other demeaning behavior.

The ethical principles of Section 015 of the University's Academic Personnel Manual (APM), which are drawn from the Statement of Professional Ethics adopted by the American Association of University Professors (AAUP), state

Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit ... They avoid any exploitation, harassment, or discriminatory treatment of students.

and

Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others.

Consequently, the University has a compelling obligation to prevent, correct, and – if need be – discipline bullying or other demeaning and disruptive behavior by faculty toward other faculty, staff, and students.

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2 Scope and Relations to Other University of California and Senate Policies

These guidelines apply to all faculty except those represented by a union. The following UC policies and Senate bylaws may be applicable to these guidelines:

- Sections 015, 016, 160, 210, and 220–80 of the APM; hereafter, those and other sections will be referenced as APM *nnn*, where *nnn* is the section number.
- Senate Bylaws 334–337.

3 What is Bullying?

Bullying or demeaning behavior is a pattern of behavior that a reasonable person would find hostile, offensive, and unrelated to the University’s legitimate business or educational interests. Such behavior may take many forms including physical, oral, or written acts or behaviors. Ordinarily, a *single* act or behavior will not constitute prohibited conduct unless especially severe and egregious.

Examples of bullying or demeaning behavior include:

- persistent or egregious use of abusive, insulting, or offensive language directed at staff, students, or other faculty;
- spreading misinformation or malicious rumors about others, orally or in writing, including via electronic means;
- behavior, correspondence, or language that frightens, humiliates, belittles, or degrades;
- criticism or feedback that is delivered with yelling, screaming, threats, or insults;
- making repeated inappropriate comments about a person’s appearance, habits, or interests;
- regularly teasing or making someone the brunt of pranks or practical jokes;

- telling jokes or anecdotes intended to demean others or make them feel unwelcome;
- interfering with a person's personal property or work equipment;
- circulating inappropriate or embarrassing photos or videos via e-mail, social media, or by other means;
- unwanted physical contact;
- purposefully excluding, isolating, or marginalizing a person from normal work or classroom activities;
- encouraging others to act, singly or in a group, to bully or harass other individuals;
- **badgering** people, which entails repeatedly demanding of an individual that the individual do tasks or take actions that are inconsistent with that individual's job, are not that individual's responsibility, for which the faculty member does not have authority to order be done, or repeatedly refusing to take "no" for an answer when another faculty member, staff, or student is within her/his/their right to decline a demand; or
- pressuring an individual to provide information that the individual is not authorized to release (or may not even possess).

Badgering or pressuring can constitute bullying even if unaccompanied by yelling, screaming, or other behavior noted above as unacceptable. Note that bullying or demeaning communications can be oral or written, including via various electronic means.

4 Relationship to Sexual Harassment or Protected-Category Discrimination

Sometimes bullying co-occurs with behaviors that qualify as sexual harassment or protected category discrimination. The University has policies to address these specific concerns: see the UC Policy on Sexual Violence/Sexual Harassment (SVSH) (<https://policy.ucop.edu/doc/4000385/SVSH>) and the UC Policy on Discrimination and Harassment in the Workplace (<https://policy.ucop.edu/doc/4000376/DiscHarassAffirmAction>). Allegations of behavior violating these policies should be reported to the Office for Prevention of Harassment and Discrimination (OPHD). To the extent a faculty member may be engaged in demeaning behavior of others that falls both within and outside the SVSH and Workplace Discrimination policies, the portion outside is addressed by these guidelines.

5 Impact of Bullying

A pattern of behavior can amount to bullying even if there is no conscious, malicious intent. Saying "I didn't mean to hurt you," even if true, does not negate the damage of a severe incident, or pervasive pattern, of bullying. It is important to recognize the effects that one's behavior can have on others, to take seriously any feedback one receives in this regard, and to stop behavior that is

harmful. It is especially important for faculty, who tend to be in positions of relative power and privilege, to be aware of how their behaviors may be perceived.

Like sexual harassment, bullying has a negative effect on the entire community – not only on the target of the bullying, but also on observers. Bullying diminishes an individual’s ability to be successful as a student, as a researcher, as an employee. It erodes confidence and productivity, and can be severely damaging psychologically.

6 What May Not be Bullying?

It is important to recognize that not all interactions that may be unpleasant, such as delivery of constructive criticism, or a negative performance review, or a simple disagreement, are necessarily bullying.

6.1 Bullying or Demeaning Behavior as Opposed to Rudeness, Incivility, Lack of Collegiality, or Assertive Behavior

A few examples of behavior that may not necessarily be bullying or demeaning behavior are given below.

- Rudeness is undesirable and not to be encouraged; nonetheless, if a faculty member is routinely rude, that faculty member is not *necessarily* engaged in bullying or demeaning behavior (although rudeness could be a component of other behaviors that are bullying or demeaning; that otherwise fall under University policy to regulate or remedy; or that may be considered in academic personnel matters).
- Failure to engage in social niceties (*e.g.*, not greeting colleagues) or being unfriendly (*e.g.*, not engaging in small talk with colleagues) is not in itself bullying or demeaning behavior.
- A distinction should be made between *personality* and *behavior*; having a dour, unwelcoming, selfish, narcissistic, and/or cold personality does not by itself constitute bullying or other demeaning behavior.
- Being assertive, strong willed, or failing to give what some might see as due deference is not *per se* engaging in bullying or demeaning behavior.

It is important to be mindful that “incivility” and “lack of collegiality” have sometimes been used to dismiss or even discriminate against those who are being appropriately assertive, especially when such assertiveness is at odds with stereotypes about status or appropriate deference.

At the same time, it is not the intent of these guidelines to claim that incivility or lack of collegiality are *per se* aspects of behavior or performance that fall outside the scope of regulation by the University or outside of consideration in academic personnel reviews; in no sense is this document intended to impinge on or limit

the University's rights and discretion as set forth in *McGill v. Regents of the University of California* (1996) 44 Cal.App.4th 1776 or other court rulings.

6.2 *Bullying or Demeaning Behavior vs. Appraisal and Supervision*

Faculty have an important role in providing frank appraisals of students, staff, and in some circumstances, other faculty. Here are some considerations on providing such feedback.

- **SUPERVISION OF STUDENTS:** Faculty have an important role in supervising students (undergraduate, graduate, and post-doctoral). They must provide frank appraisals of students' work, whether in the classroom, in terms of assessing their course work and research, their service as teaching or research assistants, and with regard to their performance in laboratories and other research facilities. Provided such appraisals are not done in a manner that insults or belittles the students or that a reasonable person would perceive as intended to offend, such appraisals – even if “harsh” – do not constitute bullying. The fact that a student disagrees with an appraisal or considers it unfair or unjust is not *per se* evidence of bullying or demeaning behavior. (This is not to say that appraisals that are truly unfair or unjust should be ignored.)
- **PARTICIPATION IN FACULTY REVIEWS:** Similarly, there are many circumstances in which faculty are expected to evaluate and appraise the teaching, service, and research or other creative endeavors of other faculty. As with students, such evaluations and appraisals do not constitute bullying or demeaning behavior – even if “harsh” – provided they are not delivered in a manner that insults or belittles the colleague being evaluated or appraised nor in a manner that a reasonable person would perceive as intended to offend the colleague being evaluated. The fact that a colleague disagrees with an evaluation or appraisal or considers it unfair or unjust is not *per se* evidence of bullying or demeaning behavior. (This is not to say that evaluations or appraisals that are truly unfair or unjust should be ignored.)
- **SUPERVISING STAFF:** In some circumstances, faculty have a supervisory role to play with regard to staff. As such they have an obligation to evaluate, appraise, and instruct those staff members. The same principles just set forth for students and faculty apply to the evaluation, appraisal, and instruction of staff.

7 Obligations to Promote and Maintain a Culture and Environment without Bullying and Demeaning Behavior

Every department and school has an obligation to promote and maintain a departmental/school culture in which it is clear that bullying and demeaning behavior are contrary to its norms and expectations and, thus, cannot be condoned or tolerated. Departments and schools are expected to ensure that all

faculty, staff, and students are aware of these guidelines, other campus and University of California policies regarding bullying and demeaning behavior, and whatever written departmental or school rules they may have pertaining to norms and expectations in this regard.

It is in the University's interest to *prevent* bullying and demeaning behavior. Although, inevitably, situations will arise in which remediation of bullying or demeaning behavior is necessary, with appropriate consequences for those who engage in such behavior, the focus of departments and schools should, nonetheless, be on prevention through communication of standards and expectations and on early intervention when there is evidence of bullying or demeaning behavior by faculty members.

Knowing the risk factors that can contribute to bullying is useful for making preventive changes to a workplace environment that reduce the opportunities for bullying to arise in the future.

Research suggests that workplace bullying is primarily caused by frustrations such as job stress, high-pressure environments, changes in power dynamics, and mismanagement of normal workplace conflict. Bullying is more likely in settings with large power imbalances in which competitive behavior is rewarded or seen as normal. Bullying is exacerbated in workplace environments without clear, enforced expectations regarding respectful behavior.² In combination with gender inequality and lack of gender diversity, these are also risk factors for sexual harassment.³

There is no single magic bullet to prevent bullying. Rather, there are many constructive actions to promote healthy climate, any of which is helpful if implemented. The campus provides many resources to departments and schools to assist in this effort. These include the PATH to Care Center, the Division of Equity and Inclusion, and more.

8 Consequences and Remedial Actions

Consequences and responses to bullying and other demeaning behavior can be divided into three broad categories:

1. Mentorship, remediation, intervention
2. Assessment of performance in personnel reviews

² Magee, Christopher, et al. 2014. [Workplace bullying in Australia](#). Centre for Health Initiatives, University of Wollongong.

³ Johnson, Paula A. et al. 2018. *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. Washington, DC: The National Academies Press. doi:10.17226/24994

3. Discipline

8.1 *Mentorship, Remediation, and Intervention*

Department chairs (or those playing similar roles in Schools) or a faculty mentor should address, early on in a new faculty member's career, the unit and University's expectations about maintaining a respectful environment for all and refraining from engaging in bullying or other demeaning behavior. When there is evidence that a faculty member's behavior may be crossing the line in terms of bullying or other demeaning behavior, the faculty member's unit head (department chair, associate dean, dean) or another faculty member asked to intervene should remind the faculty member in question of expectations. In some instances, matters are best dealt with via counseling, executive coaching, the ombuds processes, or by bringing in an outside third party. The **Associate Vice Provost for the Faculty** can be consulted about appropriate means of remediation, which may include asking the faculty member to work with an executive coach or pursue counseling (typically at the faculty member's expense); arranging for someone to meet with the department or school to facilitate reconciliation and improved means of operation; or arrive at other means to ameliorate the situation (e.g., require the faculty member to make requests of staff through a specific individual such as the departmental MSO or chair).

8.2 *Personnel Reviews: Bullying and Demeaning Behavior as Representing Poor Performance*

Patterns of bullying or other demeaning and disruptive behavior can have bearing on personnel reviews. Specifically, as set forth in APM 210, faculty are evaluated on three dimensions: research, teaching (which encompasses mentoring), and service. Although the merit and promotion process is not intended nor should it be used to discipline behavior, if the behavior has an adverse impact on research, teaching, or service, such that an evaluation of the candidate's performance on any or all those dimensions is lower than it would have been but for the behavior, then the behavior has bearing on how the candidate advances under the University's merit-and-promotion system.

Although bullying and other demeaning and disruptive behaviors are not explicitly included in the Criteria for Appointment, Promotion, and Appraisal outlined in APM 210-1d, that omission should not be mistaken as an intent to exclude such matters from academic personnel reviews. APM 210-1d clearly states that the criteria enumerated there are "intended to serve as guides for *minimum standards*" (emphasis added) and, thus, are not intended "to set boundaries to exclude other elements of performance that may be considered" (emphasis added). Moreover, APM 210-1a instructs review committees "to consider professional integrity" as part of academic personnel reviews, directing

reviewers to the AAUP's 1987 Statement on Professional Ethics as a guide. The AAUP Statement, which is printed as an appendix to APM 210-1, condemns harassment and disrespect of students and fellow faculty as being incompatible with ethical professional behavior for university faculty.

The following is a non-exhaustive list of examples of bullying or demeaning or other disruptive behavior that could adversely affect an assessment of a candidate's research, teaching, or service.

- RESEARCH (INCLUDING CREATIVE ACTIVITIES). Bullying or demeaning behavior that leads to dysfunction in a laboratory or other collective research enterprise; dissolution of a research partnership; abandoning of a line of research; a loss of funding; delays in the completing of projects; or outside investigators choosing not to collaborate with UC Berkeley personnel could adversely affect the assessment of research, perhaps leading to a lower evaluation of the research record than would have occurred but for the behavior in question.
- TEACHING AND MENTORING. Bullying or demeaning behavior that adversely affects learning represents poor teaching or mentorship. An atmosphere of bullying or demeaning behavior can inhibit learning by discouraging students from asking questions, attending class, engaging in discussion, going out on a limb, or expressing opinions that differ from those espoused by the professor. Because stress and lack of confidence have been shown to inhibit learning and academic performance, bullying or demeaning behavior that has the effect of adding to students' and advisees' stress or that undermines their confidence constitutes poor teaching and mentorship. Although some instances of bullying or demeaning behavior may well be documented in end-of-term student evaluations and similar student feedback, not all bullying and demeaning behavior will be so captured: for example, if Professor X's bullying and demeaning behavior drives certain groups of students from Professor X's classes, then this is evidence of poor teaching even if the survivors rate Professor X highly.
- SERVICE. There are ways in which bullying or demeaning behavior can be seen to constitute poor service. This is especially true when the behavior adversely affects the functioning of a department or school; hence, the behavior constitutes a negative contribution to the University's mission. Among the ways in which bullying or demeaning behavior can adversely affect a department are:
 - staff demoralization, which can lead to poor staff performance, missed days of work, loss of key staff, difficulty recruiting new staff;
 - misallocation of staff or faculty time;

- unproductive or dysfunctional department or committee meetings;
or
- other impediments to smooth departmental functioning.

Bullying or demeaning behavior can also impede the functioning of college, campus, or Senate committees and, as such, would also represent poor performance with respect to service on those committees.

- FACULTY RECRUITMENT, RETENTION, AND OTHER PERSONNEL MATTERS. In some instances, bullying or demeaning behavior can have adverse effects on faculty recruitment or retention; for example, leading to the failure of a recruitment effort or causing a colleague to leave the department, school, or even the University. Bullying or demeaning behavior can also have adverse effects on how the academic personnel cases of other faculty are conducted. In some circumstances, such effects on recruitment, retention, or personnel matters would constitute violations of the Faculty Code of Conduct (APM 015) and should be dealt with accordingly. Even behavior that is not a violation of the Faculty Code of Conduct may adversely affect the University. Because of the potential difficulty in apportioning this poor performance across the three areas of review, a department chair, dean, or other assessor of performance can make note of such poor performance, without seeking to apportion it among the three areas of review.

As is true of all assessments contained in academic personnel cases, assessments of poor performance arising from the candidate's bullying or demeaning behavior towards others should be properly documented (cite, *e.g.*, negative student narrative statements, complaints from colleagues and staff, documentation of lost staff time, warnings issued but ignored, etc.) such that the candidate (i) understands the basis for the assessment and (ii) can offer a rebuttal, explanation, or provide context as the candidate deems appropriate. Specifically, assessments of poor performance for which bullying or demeaning behavior are the proximate cause or deemed *per se* to constitute the poor performance must comply with the fairness guarantees contained in APM 160, 210, and 220-80 – see <http://apo.berkeley.edu/crights.1.html> for a summary.

While it is recognized that negative assessments of colleagues can be fraught, it is nonetheless the obligation of department chairs and deans to make such assessments. The role of a department chair or dean is not to be an advocate for the department's (school's, college's) faculty members, but rather to provide thoughtful and honest assessment of them.

8.3 Discipline

Behavior that is particularly egregious or that exhibits a documented pattern can be a violation of the Faculty Code of Conduct (APM 015). Behavior that can be

considered a violation of APM 015 must be handled under the provisions of APM 016 and Senate Bylaws 334–337.

The Appendix to these guidelines lists potential violations of the Faculty Code of Conduct in the context of bullying and other demeaning behavior.

Allegations of bullying or demeaning behavior that represents a violation of the faculty code of conduct (APM 015) should be sent to the **Vice Provost for the Faculty** (VPF). Those allegations that involve discrimination on the basis of gender, race, or other protected status, as well as any allegations that involve sexual harassment or sexual violence, should be sent to the **Office for the Prevention of Harassment and Discrimination** (OPHD). Allegations sent to the VPF or OPHD will be investigated as set forth in campus policy: see policies linked at <https://vpf.berkeley.edu/faculty-conduct> and <https://ophd.berkeley.edu/policies-and-procedures/faculty>.

Appendix: When Bullying and Other Demeaning Behavior Constitute Potential Violations of the Faculty Code of Conduct (APM 015)

Part II of Section 015 of the Academic Personnel Manual stipulates a code of conduct to which faculty are expected to adhere and lists specific examples of conduct considered a violation of that code. Both in terms of the general principles articulated in APM 015 and with respect to the specific examples set forth there, bullying and demeaning behavior can represent violations of the Faculty Code of Conduct. Although the following is *not* intended as an exhaustive list of ways in which bullying or other demeaning behavior can constitute a violation of the Faculty Code of Conduct, attention is nevertheless called to the following prohibited behaviors under APM 015:

- Section II.A.1(a): bullying or demeaning behavior that has the effect of being an arbitrary denial of access to instruction.
- Section II.A.2: bullying or demeaning behavior that represents harassment against a student on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition, genetic information, service in the uniformed services, because of age or citizenship or for other arbitrary or personal reasons.
- Section II.A.4: bullying or demeaning behavior that can reasonably be construed as use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.
- Section II.A.5: bullying or demeaning behavior that can be reasonably construed as intimidation in the classroom.

- Section II.C.1: bullying or demeaning behavior that intentionally disrupts the functions or activities of the University.
- Section II.C.4: bullying or demeaning behavior that can reasonably be construed to represent forcible detention, threats of physical harm to, or harassment of another member of the University community that interferes with that person's performance of University activities.
- Section II.C.5 and II.D.2: bullying or demeaning behavior that constitutes discrimination, including harassment, against University employees or individuals seeking employment; providing services pursuant to a contract; or applying for or engaged in an unpaid internship, volunteer capacity, or training program leading to employment on political grounds, or for reasons of race, color, religion, sex, sexual orientation, gender, gender expression, gender identity, ethnic origin, national origin, ancestry, marital status, pregnancy, physical or mental disability, medical condition, service in the uniformed services, because of age or citizenship, or for other arbitrary or personal reasons.
- Section II.C.7 and Section II.D.4: bullying or demeaning behavior that can reasonably be construed to violate University policy against discrimination against employees on the basis of disability.
- Section II.C.8: bullying or demeaning behavior that constitutes a serious violation of University policies governing the professional conduct of faculty, including but not limited to violence in the workplace.
- Section II.D.1: "Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance."