Abusive Conduct in the Workplace

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Scope:	This policy on Abusive Conduct ("policy") applies to all University employees, unpaid interns, and third parties. The policy applies at all University campuses, the Lawrence Berkeley National Laboratory, Medical Centers, the Office of the President, and Agriculture and Natural Resources.

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I. POLICY SUMMARY

The University of California ("University") is committed to promoting and maintaining a healthy working environment in which every individual is treated with respect. This policy addresses the University's responsibilities and procedures related to Abusive Conduct and Retaliation for reporting, or participating in, an investigation or other process provided for in this policy. 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.

Abusive Conduct in violation of this policy is prohibited and will not be tolerated. The University encourages anyone who is subjected to or becomes aware of Abusive Conduct to promptly report it. Managers and supervisors who observe or become aware of Abusive Conduct have response and reporting obligations. Chairs and Deans, among others, are considered managers and supervisors. The University will respond to reports of Abusive Conduct in accordance with timelines set forth in this policy, and will take appropriate action to stop, prevent, correct, and discipline behavior that violates this policy.

II. DEFINITIONS

Abusive Conduct: Abusive Conduct is 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 and unrelated to the University's legitimate educational, employment, and business interests. The conduct shall be evaluated taking into account the circumstances of the parties, relationship between the parties (including power imbalance); the frequency, nature and severity of the alleged conduct; whether the conduct was physically threatening; and 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.

In determining whether the conduct at issue rises to the level of Abusive Conduct, the standard of "reasonable person" should be used. This standard 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. When evaluating the conduct at issue, the parties' perspectives and circumstances should be considered.

Complainant: Any individual, including a student, who alleges and/or has been reported to have been subjected to Abusive Conduct.

Reporter: Any individual, including a student, who makes a report of alleged Abusive Conduct.

Respondent: An individual alleged to have engaged in Abusive Conduct.

Retaliation: An adverse action taken against an individual based on their report of Abusive Conduct or participation in an investigation or other resolution process provided for in this policy. An adverse action is conduct that would discourage reporting Abusive Conduct or participating in a process provided for in this policy, and includes but is not limited to threats, intimidation, or coercion.

Workplace: Any space where University business is conducted or occurs, in connection with University employment and/or in the context of a University program or activity (for example, University-sponsored study abroad, research, health services, or internship programs, as well as the online workplace).

III. POLICY TEXT

A. General

The University of California ("University") is committed to promoting and maintaining a healthy working and learning environment in which every individual is treated with respect. Abusive Conduct, including disruptive behavior, may erode morale and lead to stress; disrupt the functioning of the University community; and interfere with individuals' ability to learn, teach, research, and work. Abusive Conduct may occur in situations in which the Respondent has more, less, or equal relative power or authority than the Complainant. Abusive Conduct in violation of this policy is prohibited.

The University strives to foster an environment in which individuals feel safe making good-faith reports of Abusive Conduct. The University will respond promptly to reports of Abusive Conduct, and will take appropriate action to stop, prevent, correct, and/or discipline individuals who violate this policy. Violations of this policy may result in disciplinary measures pursuant to applicable University staff and academic personnel policies and collective bargaining agreements. This policy does not supplant disciplinary processes described in the Academic Personnel Manual (APM) or Academic Senate Bylaws and regulations.

B. Policy Coverage

This policy is intended to protect all members of the University community. It governs conduct by prohibiting acts of Abusive Conduct and Retaliation in the Workplace, including by and against all University employees, unpaid interns, and third parties. This includes but is not limited to conduct that occurs in person or through other means such as electronic media.

This policy applies to students in their capacity as student employees if they are Complainants, Respondents, or Reporters. It also applies to students who are not student employees if they are Complainants or Reporters. If a student is a Respondent and is not acting in the course of employment, campus student codes of

conduct and procedures apply.

Physical violence or threats of physical violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police department or threat response team. Such incidents may also violate workplace violence policies and criminal laws.

C. Retaliation

This policy prohibits Retaliation (*e.g.,* threats, intimidation, reprisals, or other adverse actions) against any person who reports Abusive Conduct, assists someone with a report of Abusive Conduct, or participates, in good faith, in an investigation or other process under this policy. Any such Retaliation is a violation of this policy, independent of whether the report of Abusive Conduct is substantiated. Reports of Retaliation will be addressed under the procedures outlined below.

D. Free Speech and Academic Freedom

The 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. This policy is intended to protect members of the University community from Abusive Conduct, not to regulate protected speech. This policy will be implemented in a manner that recognizes rights to freedom of speech and expression.

The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy will be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member, other academic appointee, or the educational, political, artistic, or literary expression of students in classrooms and public forums. Academic freedom, as described in APM - 010, APM - 011, and APM - 015, includes the right to express views, even in passionate terms, on matters of public importance. This right extends to curriculum and instruction within the classroom, which includes, but is not limited to, discussions, perspectives, information, and challenges to conventional beliefs.

Freedom of speech, freedom of expression, and academic freedom are essential to the mission of the University; the free exchange of ideas is necessary for the discovery and dissemination of knowledge. 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.

IV. COMPLIANCE / RESPONSIBILITIES

A. Implementation of the Policy

Executive Officers (the University President, Chancellors, Lawrence Berkeley National Laboratory Director, or Vice President of Agriculture and Natural

Resources) and their designees will develop procedures and supplementary information to support implementation of this policy. Responsible Officers (Vice Provost – Academic Personnel and Programs and Vice President – Systemwide Human Resources) may interpret and clarify the policy. All substantive policy changes are made through the standard process for Presidential policies.

Exceptions to local implementing procedures required by the policy must be approved by the Executive Officer or designee.

B. Revisions to the Policy

The President approves this policy and any revisions upon recommendation by the Responsible Officers. The Vice Provost, Academic Personnel and Programs and the Vice President–Human Resources have the authority to initiate revisions to the policy, consistent with approval authorities and applicable Bylaws and Standing Orders of the Regents.

The UC Provost and Executive Vice President for Academic Affairs and the Executive Vice President–Chief Operating Officer have the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

C. Approval of Actions

Actions within this policy must be approved according to local procedures. Actions related to Senior Management Group employees must be approved by the President.

D. Compliance with the Policy

The Executive Officer at each location will designate the local management office that is responsible for monitoring, enforcing, and reporting policy compliance. The Senior Vice President and Chief Compliance and Audit Officer will periodically audit and monitor compliance with the policy.

E. Noncompliance with the Policy

Noncompliance with this policy may result in remediation, educational efforts, and/or employment consequences up to and including informal counseling, adverse performance evaluations, corrective action/discipline, and termination.

For policy-covered staff employees, corrective action/discipline is governed by Personnel Policies for Staff Members 62 (Corrective Action), 63 (Investigatory Leave), and 64 (Termination and Job Abandonment); Personnel Policies for Staff Members-II 64 (Termination of Appointment), which applies to Senior Management Group (SMG) employees; and as applicable, other policies and procedures.

For academic appointees, formal corrective action/discipline is governed by 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), and as applicable, other policies and

procedures. This policy does not supplant disciplinary processes described in the APM or Academic Senate Bylaws or regulations.

For represented employees, formal corrective action/discipline is governed by collective bargaining agreements.

V. PROCEDURES

The University will respond promptly to allegations of Abusive Conduct. Allegations of Abusive Conduct will be given the serious attention they warrant and will be addressed in accordance with applicable University policies and procedures.

Locations are responsible for developing implementing procedures that include the identification of responsible offices for reporting and investigation, details of resolution options, tracking of reports, training, and communication. Each location's Divisional Senate or equivalent body should be involved in the development of local implementing procedures for this policy. The specific procedures for investigating and resolving complaints of Abusive Conduct depend on the Respondent's position in or relationship to the University. The Complainant and Respondent are sometimes referred to together in this section as "the parties."

A. Confidential Resources

The University provides confidential resources to individuals who witness or experience Abusive Conduct. They may consult with these confidential resources before making a report or at any point. Meeting with any confidential resource is not considered making a formal report and will not lead to an investigation.

Faculty & Staff Assistance Programs, also known as Employee Assistance Programs, are confidential resources that provide assessment, consultation, counseling and referrals regarding work and personal stress or emotional concerns that are interfering with an individual's ability to work in their professional Workplace or academic setting.

Ombuds offices also provide confidential, impartial, independent, and informal conflict resolution and problem-solving services. Ombuds services include conflict analysis, strategies to resolve and prevent disputes, identification of options and information, effective communication coaching, mediation, group facilitation, and resource referrals. Individuals experiencing Abusive Conduct may seek confidential assistance from Ombuds offices to discuss strategies and options for moving forward based on the conduct they are experiencing. Ombuds may help identify options when the individual is determining which resolution route is best for the situation.

Although Ombuds offices are independent from and do not share information with formal compliance and complaint processes, Ombuds may assist individuals with identifying the applicable offices identified by local procedures and additional location support resources.

B. Privacy and Confidentiality

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.

C. Reporting Incidents of Abusive Conduct

1. General

Individuals should report conduct believed to constitute Abusive Conduct to their manager, any supervisor, or directly to the applicable University office. Chairs and Deans, among others, are considered managers and supervisors. Local implementing procedures should specify the applicable office and/or teams for handling such reports. Applicable offices include, but are not limited to, Employee and/or Labor Relations, Academic Personnel, Offices of Student Support and Judicial Affairs, and threat response teams. Complaints may be handled by multiple offices in accordance with local implementing procedures. Reports may also be made to the UC Whistleblower hotline.

2. Manager and Supervisor Reports

Managers and supervisors (including, among others, Chairs and Deans) who observe conduct that may constitute Abusive Conduct have a responsibility to address such conduct immediately. Managers and supervisors should consult the applicable office regarding appropriate next steps, even if the incident(s) appear(s) to be resolved. This consultation will help support the manager or supervisor in responding to the report and may result in the matter being escalated or referred to another office or process, such as for investigation. Consultation will also ensure that the incident is tracked appropriately.

Managers and supervisors who receive a report of Abusive Conduct must immediately submit the report to the applicable office.

3. Anonymous, Third-Party, and Aggregate Reports

Anonymous reports and allegations from Reporters who are not Complainants will be reviewed and may be investigated. Such reports will be tracked, even if they are not 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.

The University recognizes its responsibility to address all concerns of Abusive Conduct, even when they involve individuals who are not employees. When the Respondent is a third party, the applicable office will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process. The University's ability to take responsive action depends on its relationship and level of control over the third party, if any. The extent of the inquiry and responsive steps will depend on the specific circumstances.

Such an inquiry may also be appropriate when there is no identifiable, individual Respondent (such as where the Complainant alleges Abusive Conduct by an organization or a Respondent whose identity is unknown, or conduct by multiple people that rises to the level of Abusive Conduct only when considered in the aggregate).

4. **Reports of Sexual Violence/Sexual Harassment and/or Discrimination**

   If the conduct is sex-based, including conduct that is sexual in nature or based on gender, gender identity, gender expression, sex- or gender-stereotyping, or sexual orientation, the University's Sexual Violence and Sexual Harassment (SVSH) Policy will apply. Reports shall be made or forwarded to the location's Title IX Office, as required by and described in the SVSH policy.

   If the conduct is based on one or more protected categories outlined in the University's Discrimination, Harassment, and Affirmative Action in the Workplace policy, that policy will apply. Reports should be made or forwarded to local Equal Employment Opportunity/Affirmative Action offices.

   The local office responsible for investigating Abusive Conduct oversees the reporting and response processes outlined in local implementing procedures. That office may identify violations of other policies arising from the same set of alleged facts that led to the Abusive Conduct report (such as Sexual Violence and Sexual Harassment and/or Discrimination, Harassment, and Affirmative Action in the Workplace).

   The investigator of the Abusive Conduct report will gather evidence and make factual findings to assist the appropriate offices in determining whether other policies or standards were violated. If evidence or factual findings that may constitute SVSH are found, such potential allegations should be submitted to the Title IX office immediately.

D. Timelines for Making Reports

There is no time limit for a Complainant to submit a report, and Complainants should report incidents even if significant time has passed. However, the sooner the University receives a report, the better able it is to respond, investigate, remedy, and impose discipline, if appropriate.

E. Initial Assessment of a Report / Immediate Health and Safety

As soon as practicable, and no more than 30 business days, after receiving a report, the applicable office(s) will make an initial assessment, including a limited factual inquiry when appropriate, to determine how to proceed and whether an investigation is warranted. The facilitating manager or University office may extend this timeline for good cause.

If an individual's health and safety are threatened, an immediate response is required. Physical violence or threats of violence are extreme forms of Abusive Conduct and should be reported to the applicable location's campus police

department or threat response team.

F. Resolution Options

Resolution of alleged Abusive Conduct may take different forms, including early resolution and/or a violation investigation. Regardless of the outcome, the Complainant shall be notified in writing that the complaint was reviewed and appropriate steps were taken to reach resolution in the matter.

Instead of, or in addition to, reporting Abusive Conduct in violation of this policy, an employee may file a grievance or complaint. That grievance or complaint must meet all of the requirements, including time limits for filing, under the applicable complaint resolution or grievance procedure (PPSM-70 (Complaint Resolution), APM-015 (The Faculty Code of Conduct), APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), APM - 140 (Non-Senate Academic Appointees/Grievances), APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal), or applicable collective bargaining agreements). Any such grievance or complaint will be forwarded to the investigator for violations of this policy, and the grievance or complaint procedure will be held in abeyance pending resolution under this policy, unless the applicable collective bargaining agreement provides otherwise. After completion of the process under this policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedure.

1. Early Resolution

The University encourages early resolution when possible. The goal of early resolution is to settle differences fairly, at an early stage, and in an open manner, without Retaliation.

Resolution may be facilitated by a manager, Employee and/or Labor Relations, Academic Personnel, or another appropriate office. The facilitating manager or University office will initiate the early resolution process promptly, typically within 60 to 75 business days after the applicable office has made an initial assessment of a report. The facilitating manager or University office may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline. Options for early resolution may include, but are not limited to:

- Facilitated discussion or mediation to obtain an agreement between the parties
- Agreement to counseling, coaching, educational, and/or training programs
- Negotiating an agreement for corrective action/discipline

The parties should contact the applicable University office if the resolution measure is no longer effective in addressing the reported conduct.

The University encourages early resolution, but it does not require that the parties participate in early resolution prior to the University's decision to initiate a

formal investigation. In some cases, early resolution may not be the best approach and the applicable University office may initiate a formal investigation instead.

Attempts at early resolution and informal conflict management do not extend the time limit established by the employee's applicable formal complaint resolution or grievance process.

2. Formal Investigations

a. General

The Executive Officer at each location will designate the local personnel or management office responsible for conducting investigations and will develop local implementing procedures for the conduct of investigations. Investigations and consideration of disciplinary actions involving academic appointees will be handled in accordance with the University policies applicable to this population.

The applicable University office may initiate a formal investigation after a preliminary review of the allegations even in cases where the Complainant does not wish to pursue the complaint. This may occur if the applicable office determines that an investigation is necessary to mitigate risk to the campus community.

Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with local implementation procedures.

b. Formal Investigation Requirements

Formal investigation of reports of Abusive Conduct will incorporate the following procedures:

1. The Respondent will be advised of the relevant allegations in the complaint and will be reminded that Retaliation is prohibited by this policy.
2. The investigation generally will include interviews with the parties, 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, consistent with University policy. Participants in an investigation may be advised to maintain confidentiality when essential to protect the integrity of the investigation.
4. The Complainant and the Respondent may have an advisor present when they are interviewed and at meetings. They may have other support persons present under other policies. Other witnesses may have an advisor present at the discretion of the applicable University office or as required by University policy or a collective bargaining agreement.

5. Interim protections or measures may be necessary prior to or during the investigation. These interim protections or measures should be implemented in accordance with local procedures.
6. The applicable University office and/or response team conducting the investigation will complete the investigation promptly, typically within 120 business days of notifying the parties in writing that a formal investigation of the complaint will be conducted. The applicable University office and/or response team may extend this timeline for good cause, with written notice to the Complainant and the Respondent of the reason for the extension and the projected new timeline.
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. In determining whether this policy was violated, the investigator will apply the preponderance of evidence standard.
8. The applicable University office and/or response team conducting the investigation will submit the report to the appropriate University official, who will recommend next steps, in accordance with local procedures.
9. The Complainant and the Respondent will be informed when the investigation is completed and whether or not a violation of this policy has occurred. 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 appropriate administrative action, but will not be informed of the details of the recommended action without the Respondent's consent.

VI. RELATED INFORMATION

- Sexual Violence and Sexual Harassment (referenced in Sections III.A and V.A.4 of this policy)
- Discrimination, Harassment, and Affirmative Action in the Workplace (referenced in Sections III.A and V.A.4 of this policy)
- Collective bargaining agreements (referenced in Section III.A of this policy)
- Personnel Policies for Staff Members 62, 63, and 64 (referenced in Section IV.E of this policy)
- Personnel Policies for Staff Members-II 64 (Termination of Appointment) (referenced in Section IV.E of this policy)

- APM - 015 (The Faculty Code of Conduct), APM - 016 (University Policy on Faculty Conduct and the Administration of Discipline), and APM - 150 (Non-Senate Academic Appointees/Corrective Action and Dismissal) (referenced in Section IV.E and Section V.F of this policy)
- Personnel Policies for Staff Members-70 (Complaint Resolution) (referenced in Section V.F of this policy)
- UC Academic Senate Bylaws 335, 336, and 337
- Policy on Student Conduct and Discipline
- UC Regents Policy 1111: Statement of Ethical Values and Standards of Ethical Conduct
- Whistleblower Policy
- Whistleblower Protection Policy
- California State Assembly Bill 2053: Employment discrimination or harassment: education and training: abusive conduct

VII. FREQUENTLY ASKED QUESTIONS

1. What are examples of Abusive Conduct?

Abusive Conduct may take many forms, including but not limited to conduct involving physical actions and/or verbal, non-verbal, electronic, or written communication.

Abusive Conduct may include but is not limited to the following types of conduct that otherwise satisfy the definition in Section II of this policy:

- Use of abusive and/or insulting language (written, electronic or verbal)
- Spreading false information or 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

- 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
- Purposefully excluding, isolating, or marginalizing a person from normal work activities for non-legitimate business purposes
- 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 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

Abusive Conduct does not include exercising appropriate supervision of employees or carrying out instruction, grading, assessment, and evaluation. It does not include performance management or providing appropriate feedback.

2. What are examples of conduct that generally do not constitute Abusive Conduct as defined in Section II of this policy?

Examples include but are not limited to:

- 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
- 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

It is important to recognize that not all interactions that may be unpleasant are necessarily Abusive Conduct. Differences of opinion, miscommunication, differences in work styles, business disagreements handled professionally, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute Abusive Conduct, as defined in Section II.

3. Is cyberbullying addressed in this policy?

Yes. Abusive Conduct can occur in many different settings, from a physical workplace (e.g., an office building) to an online workplace (e.g., an online meeting or an e-mail). Any type of Abusive Conduct, regardless of the format in which it occurs, is prohibited by this policy.

VIII. REVISION HISTORY

January 1, 2023: This is the first issuance of this policy.

This Policy is also reformatted to meet Web Content Accessibility Guidelines (WCAG) 2.0.