University of California, Merced

Interim Implementing Procedures for Abusive Conduct in the Workplace

Responsible Officials:	Executive Vice Chancellor and Provost Associate Chancellor and Chief of Staff to the Chancellor
Responsible Offices:	Academic Personnel Office Human Resources
Issuance Date:	**July 1, 2023**
Effective Date:	**July 1, 2023**
Summary:	Local implementation procedure for the University of California Policy on Abusive Conduct in the Workplace
Scope:	The UC Policy on Abusive Conduct in the Workplace applies to all University employees, including administrators, staff, faculty, other academic appointees, student employees, fellows, visiting scholars, and unpaid interns, as well as non-affiliates. The policy includes but is not limited to conduct that occurs in person or through other means such as electronic media. The UC Policy on Abusive Conduct in the Workplace also applies to students in their capacity as student employees if they are Complainants, Respondents 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.

Policy Contacts	
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I. REFERENCES AND RESOURCES

University of California Policies

- Abusive Conduct in the Workplace
- Statement of Ethical Values and Standards of Ethical Conduct
- Regulations Governing the Conduct of Non-Affiliates in the Buildings and on the Grounds of the University of California
- Personnel Policies for Staff Members (PPSM)
- Academic Personnel Manual (APM)
- Collective Bargaining Agreements
- Whistleblower Policy
- Whistleblower Protection Policy
- Discrimination, Harassment, and Affirmative Action in the Workplace
- Sexual Violence and Sexual Harassment Policy (SVSH)

University of California, Merced Policies

- UC Merced Principles of Community
- UC Merced Academic Personnel Policies & Procedures (MAPP)
- UC Merced Collective Bargaining Agreements

University of California, Merced Resources

- Office of the Ombuds
- Office of Equity, Justice, and Inclusive Excellence
- Behavioral Intervention Team

II. SUMMARY & SCOPE

This procedure is intended to implement and supplement the University of California Policy on Abusive Conduct in the Workplace ("Abusive Conduct Policy" or "Policy"), as well as UC collective bargaining agreements with Abusive Conduct articles; this procedure is intended to be read in conjunction with the Abusive Conduct Policy or collective bargaining agreements. The Abusive Conduct Policy or applicable collective bargaining agreement shall prevail if there is a conflict between this procedure and the Policy or collective bargaining agreement.

UC Merced ("university" or "campus") is committed to promoting and maintaining a healthy working environment in which every individual is treated with respect.

The University encourages anyone who is subjected to or becomes aware of Abusive Conduct to promptly report it. Any individual, including a student, can report 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 the Abusive Conduct Policy. Violations may result in discipline pursuant to applicable university staff and academic personnel policies and collective bargaining agreements. Neither the Abusive Conduct Policy nor this procedure supplants disciplinary processes described in the Academic Personnel Manual ("APM") or Academic Senate Bylaws or Regulations.

This procedure will be implemented in a manner that is consistent with principles of academic freedom and that recognizes rights to freedom of speech and expression.

This procedure applies to all university employees, including student employees, unpaid interns, and third parties.

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.

III. DEFINITIONS

The UC Policy on Abusive Conduct in the Workplace provides the following 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 is objectively intimidating or offensive and unrelated to the University's legitimate educational, employment, and business interests. The conduct shall be evaluated on a case-by-case basis, 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).

IV. PROCEDURES/REPORTING ABUSIVE CONDUCT

Reporting Procedures may vary depending upon the nature of the conduct at issue and/or the classification (e.g., staff, academic, etc.) of the Respondent.

For non-emergencies, Reporters or Complainants who wish to remain anonymous can make their reports to the Whistleblower Hotline at universityofcalifornia.edu/hotline or 800-403-4744. In the case of an emergency, see Section IV. A. below.

A. REPORTING ABUSIVE CONDUCT: ACTS OF VIOLENCE OR THREATS OF VIOLENCE – EMERGENCIES:

1. **Responsibility**: University employees are **required** to report acts of violence witnessed in the Workplace and are encouraged to report threats of violence or other behavior that they reasonably believe has the potential to lead to an act of violence in the Workplace. **It is critical that all university employees take this responsibility seriously.**

2. **How to Report**: Any member of the campus community, including students, employees, and non-affiliates, who *believe that the actions and/or statements of an individual constitute an emergency, create imminent danger, or pose a threat to health and safety*, **shall** immediately **notify 911 (when calling 911 from a phone on campus, you must dial 9+911) or 209-CAT-COPS (209-228-2677).**

3. **Post Emergency:** After an emergency has been addressed, UC Merced Police Department ("UCMPD") shall contact the campus Behavioral Intervention Team ("BIT") for follow-up, depending on the nature of the reported conduct:

    a. Responsibilities of the BIT: The BIT shall review information provided by the UCMPD and determine if interim measures are needed. Interim measures may include but are not limited to involuntary, investigatory, or administrative leave, reassignment of duties (temporary or permanent), or exclusion from university properties -- and will be determined in consultation with: Human Resources (HR), if the report is related to staff; or the Academic Personnel Office (APO), if the report is related to academic appointees; or Office of Student Rights and Responsibilities (OSRR), if the report is related to students (non-student workers).

    b. Responsibilities of Administrators, Managers and Supervisors: Supervisors, managers and administrators will work with BIT as well as HR or APO to implement interim or other measures, as appropriate.

4. **Responsibilities of HR and APO**: After consultation with the BIT, HR (for staff) or APO (for academic appointees) will conduct an initial assessment of the matter and determine whether a formal investigation may be required. Informal resolution options may also be explored. (*See* Abusive Conduct Policy, Early Resolution, Section V.F.1) After completion of the initial assessment, regardless of the outcome, the Complainant shall be notified in writing by HR or APO that the report was reviewed and that appropriate steps were taken to reach resolution in the matter.

5. **Formal Investigation:** See Section IV.H for information regarding Formal Investigation procedures.

B. REPORTING ABUSIVE CONDUCT: NON-EMERGENCY CONDUCT OF A VIOLENT OR THREATENING NATURE

1. **How to Report:** Any member of the UC community, including students, employees, and non-affiliates, *should report Abusive Conduct of a non-emergent violent or threatening nature,* either to their supervisor, manager, or administrator (unless the supervisor, etc. is a party to the alleged violation), **or** directly to HR (if the Respondent is staff) **or** APO (if the Respondent is an academic appointee).

2. **Responsibilities of Administrators, Managers and Supervisors:** Upon receipt of a non-emergency report of violent or threatening behavior, the administrator, manager, or supervisor **shall** immediately contact any member of the Behavioral Intervention Team ("BIT"). Supervisors, managers, and administrators will work with BIT as well as HR or APO to implement appropriate interim or other measures, as discussed below.

3. **Responsibilities of the BIT**: The BIT shall review the report of Abusive Conduct, which may or may not include a formal or informal threat assessment, to determine if interim measures are needed. Interim measures may include but are not limited to involuntary, investigatory, or administrative leave, fitness-for-duty assessment, reassignment of duties (temporary or permanent) or exclusion from university properties -- and will be determined in consultation with Human Resources (HR), if the report is related to staff, or the Academic Personnel Office (APO), if the report is related to academic appointees.

4. **Responsibilities of HR and APO:** After consultation with the BIT, HR (for staff) or APO (for academic appointees) will conduct an initial assessment of the matter as soon as practicable and no more than 30 business days after receiving a report, to determine whether a formal investigation may be required. Informal resolution options may also be explored. (*See* Abusive Conduct Policy, Early Resolution, Section V.F.1). After completion of the initial assessment, regardless of the outcome, the Complainant shall be notified in writing by either HR or APO that the report was reviewed and that appropriate steps were taken to reach resolution in the matter.

5. **Formal Investigation:** See Section IV.H for information regarding Formal Investigation Procedures.

C. REPORTING ABUSIVE CONDUCT: NON-VIOLENT AND NON-THREATENING IN NATURE

1. **How to Report:** Any member of the UC community, including students, employees, and non-affiliates, *should report Abusive Conduct of a non-violent and non-threatening nature* to:

    - their supervisor, manager, or administrator (unless the supervisor, etc. is a party to the alleged violation), **or**
    - HR (if the Respondent is staff; https://hr.ucmerced.edu/hr-units/employeelabor-relations) **or**
    - APO (if the Respondent is an academic appointee https://academicpersonnel.ucmerced.edu/about/contact-us) **or**
    - Office of Student Rights and Responsibilities (OSRR) (for Reports involving students (non-student workers)) https://osrr.ucmerced.edu).

    Reporters who wish to remain anonymous can make their reports to the Whistleblower Hotline at universityofcalifornia.edu/hotline or 800-403-4744. Anonymous reports that do not involve allegations of improper governmental activities will be referred to HR or APO.

2. **Responsibilities of Administrators, Managers and Supervisors:** Upon receipt of a report of Abusive Conduct of a non-violent and non-threatening nature, the administrator, manager, or supervisor shall immediately contact HR, if the report is related to staff, or APO, if the report is related to academic appointees. The administrator, manager or supervisor shall work with HR or APO regarding the matter, including the implementation of interim or other measures, as appropriate.

3. **Responsibilities of HR and APO:** HR (for staff) or APO (for academic appointees) will conduct an initial assessment of the matter as soon as practicable and no more than 30 business days after receiving a report, to determine whether a formal investigation may be required. Informal resolution options may also be explored as appropriate. (See Abusive Conduct Policy, Early Resolution, Section V.F.1) After completion of the initial assessment, regardless of the case outcome, the Complainant shall be notified in writing by HR or APO that the report was reviewed and that appropriate steps were taken to reach resolution in the matter.

4. **Formal Investigation:** See Section IV.H for information regarding Formal Investigation Procedures.

D. IDENTIFICATION OF RESPONSIBLE OFFICES FOR REPORTING AND INVESTIGATION

- **Reports Regarding Staff:** Human Resources
- **Reports Regarding Academic Appointees:** Academic Personnel
- **Reports Regarding Students (non-student workers):** Office of Student Rights & Responsibilities (OSRR)
- **Emergencies:** UC Merced Police Department (UCMPD)

E. INITIAL ASSESSMENTS

An initial assessment by the responsible office (either HR or APO) may include a limited factual inquiry to determine how to proceed and whether a formal investigation is warranted. An initial assessment should include certain essential information, such as: all known complainant(s) and respondent(s), their relationships and job titles; conduct frequency and timeline of occurrences; and context and setting of the alleged conduct.

An initial assessment shall be conducted no more than 30 business days after the responsible office's receipt of a report. However, appropriate campus administrators may extend this timeline for good cause, upon written request for an extension submitted by either HR or APO to the relevant administrator prior to the expiration of the 30-day deadline.

If an individual's health and safety is threatened, an immediate response is required. Physical violence or threats of violence are extreme forms of Abusive Conduct and should be reported to the UCMPD and BIT immediately. *See* Section IV. A.

F. REPORTS OF IMPROPER GOVERNMENTAL ACTIVITIES

If the conduct reported under this procedure involves allegations of suspected improper governmental activity, the University's Whistleblower policy will apply. If the conduct reported under this procedure involves allegations of retaliation as a result of having made a Protected Disclosure or refusal to obey an Illegal Order, the University's Whistleblower Protection policy will apply. Either APO or HR shall forward such reports to the campus Locally Designated Official (LDO) for review and investigation in accordance with that office's processes.

G. REPORTS OF SEXUAL VIOLENCE/SEXUAL HARASSMENT AND/OR DISCRIMINATION

If the conduct reported under this procedure 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. Either APO or HR shall forward such reports to the campus's Office for the Prevention of Harassment and Discrimination (OPHD) for review and investigation in accordance with that office's processes.

If the conduct reported under this procedure 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. Either APO or HR shall forward such reports to OPHD for review and investigation in accordance with that office's processes.

H. FORMAL INVESTIGATIONS

For specific information regarding the requirements of a formal investigation into reports of Abusive Conduct, *see* Abusive Conduct Policy, Formal Investigations, Section IV.F.2a & 2b – General and Formal Investigation Requirements. Among other requirements, the investigator is expected to complete the formal investigation promptly, typically within 120 business days of the campus's notification of the Complainant and Respondent in writing that a formal investigation of the allegations will be conducted. However, upon receipt of a written request for an extension submitted by either HR or APO (including on behalf of the investigator) and delivered prior to the expiration of the 120-day deadline, the appropriate campus administrator may extend this timeline for good cause. A written notice of the extension will be provided to the Complainant and Respondent, including the reason for the extension.

The investigator of the Abusive Conduct report will gather evidence and make factual findings to assist the appropriate campus office in determining whether other policies or standards of the university may have been violated. If, during the investigation, the investigator gathers evidence or makes factual findings regarding the violation of SVSH or the University's Discrimination, Harassment and Affirmative Action in the Workplace policy, OPHD shall be notified.

Investigative reports made pursuant to this policy may be used as evidence in subsequent complaint or grievance resolution processes or disciplinary proceedings, consistent with UC and campus policies, campus procedures, and applicable collective bargaining agreements.

The Complainant(s) and Respondent(s) will be informed when the formal investigation is completed and whether or not a violation of the Abusive Conduct 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 with Respondent's consent. (See Policy, Section V.F.2.b.9)

I. FILING A GRIEVANCE OR COMPLAINT

Instead of, or in addition to, reporting Abusive Conduct in violation of the Abusive Conduct Policy, an employee may file a grievance or complaint under other university processes. 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 and MAPP 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 appropriate campus office responsible for reviewing and investigating violations of this Policy, and the grievance or complaint procedures will be held in abeyance pending resolution under this Policy, unless: (a) the applicable collective bargaining agreement provides otherwise; or (b) APM 016/MAPP 016 procedures for Senate faculty apply, in which case APM 016/MAPP 016 procedures shall govern. After completion of the process under this Policy, the grievance or complaint may be reactivated under the applicable grievance or complaint procedures.

J. TRAINING

The campus is committed to providing awareness of both the UC Policy on Abusive Conduct in the Workplace and the campus's implementing procedures through workshops and educational seminars.

V. CONTACTS

Reports Regarding Staff	Human Resources (HR) Email: laborrelations@ucmerced.edu Website: https://hr.ucmerced.edu/hr-units/employeelabor-relations
Reports Regarding Academic Appointees	Academic Personnel Office (APO) Email: academicpersonnel@ucmerced.edu Website: https://academicpersonnel.ucmerced.edu/
Anonymous Reports	Locally Designated Official (LDO) Online: universityofcalifornia.edu/hotline Phone: 800-403-4744
Emergencies	UC Merced Police Department (UCMPD) Phone: 911 or 209-CAT-COPS (209-228-2677) When calling 911 from a phone on campus, you must dial 9+911

VI. FREQUENTLY ASKED QUESTIONS

Please refer to "FREQUENTLY ASKED QUESTIONS," (Section VII, in the UC Abusive Conduct in the Workplace Policy). Below are additional questions and answers, provided by the campus for guidance.

Q. IS BULLYING A FORM OF ABUSIVE CONDUCT?

A. Yes, bullying is a form of Abusive Conduct by an individual or individuals collectively. This behavior is generally directed at specific individuals and is repeated, persistent and systematic, often with the intent of intimidating or undermining the target individuals. This type of conduct typically involves an abuse of power, such as with the relationships of a supervisor and subordinate, or faculty and student, but also can include Abusive Conduct by peer-level individuals or coworkers.

Q. DOES THE REASONABLE PERSON TEST HAVE ANY RELEVANCE HERE?

A. Yes, the Abusive Conduct Policy states that Abusive Conduct is conduct that creates an environment, whether intended or not, that is objectively intimidating or offensive and unrelated to the University's legitimate educational, employment and business interests. The "reasonable person test" is an objective standard. The basis for determining whether the conduct at issue rises to the level of Abusive Conduct is whether a reasonable person in the same or similar circumstances would find the conduct, hostile, offensive and unrelated to the University's legitimate educational, employment or business interests. Although the intention of the person responsible for the conduct may be considered, it is not determinative of whether Abusive Conduct has occurred.

VII. PROCEDURE REVISION HISTORY

Date	Action/Summary of Changes
July 1, 2023	Interim Procedure Issued for Local Implementation of the UC Policy on Abusive Conduct in the Workplace
January 1, 2023	Rescission of UC Merced Policy on Prohibition of Abusive Conduct and Acts of Violence by University Employees and Non-Affiliates
December 14, 2016	Issuance of UC Merced Policy on Prohibition of Abusive Conduct and Acts of Violence by University Employees and Non-Affiliates