

**ACADEMIC AND STUDENT AFFAIRS COMMITTEE
COMPLIANCE AND AUDIT COMMITTEE**

January 24–25, 2024

The Academic and Student Affairs Committee and the Compliance and Audit Committee met on the above dates at the UCSF–Mission Bay Conference Center, San Francisco campus and by teleconference at 1021 O Street and 1430 N Street, Sacramento and Corral del Risco, 63727 Nayarit, Mexico.

Members present: Representing the Academic and Student Affairs Committee: Regents Anguiano, Batchlor, Hernandez, Park, Raznick, Sarris, and Tesfai; Ex officio members Drake and Leib; Chancellors Block, Christ, Muñoz, Wilcox, and Yang; Advisory members Beharry and Steintrager; Staff Advisor Mackness

Representing the Compliance and Audit Committee: Regents Anguiano, Batchlor, Cohen, Elliott, Ellis, Makarechian, Matosantos, Park, Pérez, Sherman, and Sures; Ex officio member Leib; Chancellors Christ, Gillman, Khosla, May, Muñoz, and Yang; Advisory members Beharry and Cheung; Staff Advisor Emiru

In attendance: Regents Chu, Lee, Reilly, and Robinson, Secretary and Chief of Staff Lyall, General Counsel Robinson, Provost Newman, Executive Vice President and Chief Operating Officer Nava, Executive Vice President Rubin, Interim Senior Vice President Reese, Vice President Brown, Chancellors Hawgood and Larive, and Recording Secretary Johns

The meeting convened at 5:15 p.m. with Compliance and Audit Committee Chair Sures presiding.

ADOPTION OF REGENTS POLICY ON USE OF UNIVERSITY ADMINISTRATIVE WEBSITES

The President of the University recommended that the Regents adopt a new Regents Policy on Use of University Administrative Websites, as shown in Attachment 1.

[Background material was provided to Regents in advance of the meeting, and a copy is on file in the Office of the Secretary and Chief of Staff.]

Compliance and Audit Committee Chair Sures reported that he and Regent Park, Chair of the Academic and Student Affairs Committee, convened a group to examine the adoption of a new policy on how University websites are managed. The University establishes administrative websites and other channels of communication to conduct the business of the University. When individual or group viewpoints or opinions on matters not directly related to the official business of the unit are posted on these administrative websites, this creates the potential for these statements and opinions to be mistaken as the position of the institution itself. To avoid the potential for confusion between individual or group viewpoints and the University's views, the

University proposed to adopt a policy regarding the use of administrative websites and other official channels of communication.

General Council Robinson explained that governmental entities like the University of California have a right to regulate the speech of others when they use the entity's resources, as long as the entity does so in a viewpoint-neutral manner. The proposed policy was designed to work within these legal constraints. The intention of the policy was to limit content on the landing pages of department websites and other University units to the official business of the unit. The policy deliberately did not describe what is not permitted, but described what is permitted. What is permitted is information that relates to the official business of the University. The policy provided some examples of official business content, such as course descriptions, personnel changes, official policies, and upcoming events. The policy would exempt from its coverage certain University officials who were already designated to be spokespeople for the University. They would be able to use University resources as they saw fit to address whatever issues that they thought important because they have been designated as the official spokespeople for the University.

Mr. Robinson noted that some changes to the policy language had been suggested, shown in Attachment 1a. Members of the Academic Senate and others felt that the policy language was ambiguous or confusing and suggested that the intent was to restrict the use of all University websites and channels of communication. His understanding was that this was not the intent of the working group that developed the proposed policy. The intent was clearly to limit the use of departmental landing pages. Two alternate possible edits were designed to address this question and state whether to limit this restriction to landing pages or not.

Statement A: "The main landing page of websites, and other pages and other channels of communication designated for official use only by the responsible university administrator, should not be used for purposes of publicly expressing the personal or collective opinions of unit members or of the entity, as other means of publicly conveying such opinions are available."

Statement B: "The main landing page of websites should not be used for purposes of publicly expressing the personal or collective opinions of unit members or of the entity, as other means of publicly conveying such opinions are available."

Committee Chair Sures asked that the language in the Statements be changed from "should not" to "shall not."

Regent Pérez emphasized the need to distinguish a main landing page and other spaces, not landing pages, which are reserved for discourse. If a department wished to have an opinion page on its website, Statement B would preserve that right. It would be appropriate to preserve this right so that faculty, individually or collectively, can express their opinions in a space clearly identifiable as a space for opinions as opposed to the administrative functions of the department. The Regents should not preclude this ability. Mr. Robinson commented that Statement A would not preclude this ability.

Regent Pérez objected that Statement A would presumptively not allow this and would require another process. Mr. Robinson countered that, in fact, under this statement, pages would first have to be restricted and designated as pages for official business; unless so designated, they would be available for people to express their personal opinions.

President Drake opined that straightforward and simple policy language was desirable and would provide clarity.

Committee Chair Sures noted that Chancellor Gillman had played an important role in drafting and editing the proposed policy. He asked Chancellor Gillman how academic freedom and freedom of speech would be protected in this policy. Chancellor Gillman explained that free speech rights are the general rights everyone has, including faculty members, outside of the professional space to express themselves on any matter that they wish. This could take place on personal social media accounts, walking around the campus, in front of City Hall, or in a protest. Free speech rights do not apply in every setting. For example, while faculty have free speech rights, when teaching a class, they do not have the general right to decide that they will not teach calculus that day but instead deliver a diatribe about the presidential election season. This policy addressed the question of whether the University can determine that a certain forum is not a general forum for the expression of private viewpoints. In a classroom setting, the expectation is that this is not a forum for the general expression of whichever viewpoints people want to express. The proposed policy language was designed to communicate that, when the University creates a limited forum of a website for an administrative unit, this forum is created to share certain kinds of information, and the University is not opening up this space for the general expression of people's views, much like a bulletin board outside a department office.

Academic freedom is the freedom of faculty in teaching, research, and communicating their expertise to broader audiences. Academic freedom, as a principle, requires faculty in these spaces to act in accordance with professional ethics and competency. General principles of academic freedom have always included the idea that when one is acting and speaking as a scholar in these professional spaces, when one expresses views on a variety of matters, one should be mindful that the views one is expressing are not the views of the institution itself. Faculty are free to express themselves, but they are supposed to be cautious and not confuse their position with the position of the University. This formulation dated back to 1915 and to the 1940 Statement of Principles on Academic Freedom and Tenure by the American Association of University Professors. This idea was also held by the University of California. To the extent that faculty have academic freedom to express a broad range of views, it is acknowledged that they cannot express those views in a way that confuses people about whether they are speaking for the institution or speaking on their own behalf. Some faculty believed that faculty in a department have the academic freedom to speak on behalf of the department, and to state the department's viewpoints on a variety of issues. Chancellor Gillman noted that he disagreed with this view; nevertheless, some faculty had this point of view, and the Regents' adoption of this policy would not change their view.

Committee Chair Sures observed that, under the proposed policy, a faculty member may issue a political statement, not on the department landing page but on an opinion page that could be linked to the landing page. This would have to be designated as an opinion, signed by the individual, and not speaking on behalf of the University. Chancellor Gillman confirmed that this was correct. He

drew attention to the fact that some faculty members would wish to publish views, on pages other than the landing page, and to characterize these views as an official statement by the department. He noted that the language of the proposed policy also suggested that faculty could not do so, even if these views were not on the main landing page.

Chancellor Khosla believed that the policy could be made stronger by stating emphatically that the University supports free speech and academic freedom. Secondly, this was not an issue of landing pages and adjacent pages but of a resource for University communication. The University should create an opinion page as a resource for faculty. This would be the only place for opinions, and this should be in the policy.

Regent Sarris commented that a course description could be taken as a political statement and asked about the implications of this. Committee Chair Sures responded that an official course approved by a department, while it might seem political, could be on a landing page. He acknowledged that cases would arise when chancellors would have to make a determination, as for other policy questions. He believed that most UC departments would comply. Some people would not comply and try to test the limits of the policy. This was unavoidable, but not having a policy in place would not be wise for the University.

Regent Anguiano observed that this discussion about use of UC websites pertained to a very specific issue. The Regents were missing a broader issue, which concerned a shared understanding of the rights and responsibilities associated with free speech, while at the same time one wished to guard against harassment, bullying, intimidation, and discrimination which had been increasing at UC and in institutions nationwide. The Regents had not received sufficient information about the fairness, timeliness, accountability, and transparency of investigative and disciplinary processes in this area, including enforcement. She requested a report to the Regents at a future meeting on claims of speech misconduct, how these are reported and reviewed, and the results of these cases.

Regent Raznick suggested that the proposed policy language include the concept of an “opinion page.” Mr. Robinson responded that the policy language intended to ensure that landing pages would not be associated with types of speech that the University would feel uncomfortable with. The policy language could be updated to state that uncomfortable messages may be published on an opinion page aside from or adjacent to the landing page.

Regent Raznick clarified that he was referring to opinions, not uncomfortable messages. Mr. Robinson responded that he understood this but noted that the original motivation for this discussion was concern about speech that appeared to be hate speech and whether the University wished to be associated with this speech. The policy could focus on landing pages and make all other pages available for comment.

Regent Raznick stressed his understanding that the policy was intended to dispel ambiguity about the University’s perspective versus opinions in one or other unit of the University. Mr. Robinson responded that he would need clarification regarding the policy’s objective. If the objective, as described by Chancellor Khosla, was to specify that UC would allow opinions on an opinion page, this would be a different approach. The University could draft a policy stating this.

Regent Pérez suggested that Committee Chair Sures synthesize the current discussion and suggestions raised by Regents, have Mr. Robinson edit the proposed policy based on this synthesis, and have this presented to the Regents for action the following day.

Chancellor Gillman cautioned against creating the implication that the only place one could express personal viewpoints would be an opinion page. Faculty have their own individual web pages. The Regents should not leave the impression that the University would create one small space for the expression of opinions and monitor every other UC website to ferret out any other personal views being expressed there.

Regent-designate Beharry described the proposed policy as restrictive and reactive. The policy's definition of the "official business" of the University was vague. The policy appeared aimed at scholars in the social sciences. Scientists who generate new knowledge in laboratories and share these findings are not expressing personal viewpoints. Similarly, when programs like ethnic studies rely on research, theory, and factual data that highlight systemic racism and sexism or draw comparisons between past and present, these expressions are not rooted in subjective opinion. He raised the question of how this policy would apply to the dissemination of information about the discovery of hazardous chemicals in the water system and a resulting threat to the public. In some parts of the world, an environmental science website with reports or sections on climate change, its impact on the planet, and the imminent dangers of carbon emission rates would be perceived as personal or collective opinion. The proposed policy might impede the dissemination of vital information on issues to the public, hindering the University's role in contributing to informed discourse in society. With this policy, the University might inadvertently endorse restrictive actions.

Committee Chair Sures stated that this policy was intended to protect free speech and academic freedom. There were many avenues for faculty to disseminate their research. He was not certain that this research had to be published on the landing pages of departmental websites.

Regent-designate Beharry expressed support for an opinion page.

Committee Chair Sures emphasized that the University did not wish to somehow silence certain people and not others. The proposed policy was thoughtfully designed to protect everyone's academic freedom and free speech. The policy would give certain designees the right to issue official communications on behalf of the University.

Regent Elliott noted that a page for personal opinions was not mentioned in the policy. This appeared to leave open the ability to use all web pages other than the landing page for personal opinions. He asked if this was the intention of the policy. Mr. Robinson responded that this was a correct interpretation of Statement B. The status quo was that there were no restrictions on any pages. Statement B would make an exception for main, landing pages but leave the status quo in place for all other pages.

Chancellor May suggested that it would be useful to define a landing page, perhaps in a footnote. Some campuses have existing policies, and so this policy should state that it supersedes all existing policies.

Faculty Representative Steintrager expressed astonishment at the lack of clarity in the proposed policy. The Regents and other discussants did not seem to know what the intent of this policy was. There was not sufficient clarity. A push to approve a policy on this topic today or the following day would be ill-advised. Attachment 1a was an edited text with two options after another option had been eliminated because it was not considered clear. There had been arguments about the two options, Statement A and Statement B, and their meanings. This did not seem like the appropriate way to go about making policy. One had to know what the intent of the policy was before one could speak about it.

Regent Pérez countered that, in his view, this was an appropriate way to develop policy. A working group had consulted with experts and put forward a recommendation that the Regents were taking as a starting point for conversation. He had asked Mr. Robinson to review today's discussion and bring back a synthesis that would capture the collective input of the Board. The Regents could then vote to approve or not approve the proposed policy. The Regents are a deliberative body. The current deliberation was at the core of what the Regents should be doing, having discussions about key issues and the future of the University, and trying to reach collective consensus. The Regents might not reach consensus and in that case should reject the idea before them, but this iterative discussion of the Regents might improve on the idea that the working group developed.

Regent Ellis expressed support for designated opinion pages and a definition of a landing page. He shared his misgivings about the policy's designated spokespersons for the University who may use the official channels of communication to comment on matters of University or public import, and who would be deemed to be conducting official University business. These were the Chair of the Board, the President, the chancellors, and the leadership of the Academic Senate. In his opinion, two constituencies were missing—student governments and the alumni associations. These entities existed to represent their constituencies and to develop positions on issues as part of the shared governance of the University.

Committee Chair Park noted that events were occurring in the world that were upsetting, and expressing one's opinions was part of life in a democracy. The tripartite mission of the University—teaching, research, and public service—were its guiding principles. It was reasonable for the Regents to remind the University community that there were guardrails and a professional context. Regents Policy 4400, Policy on University of California Diversity Statement, was relevant to the current moment. Committee Chair Park quoted the following statement from the policy: "Diversity aims to broaden and deepen both the educational experience and the scholarly environment, as students and faculty learn to interact effectively with each other, preparing them to participate in an increasingly complex and pluralistic society." In developing a policy for University websites, the Regents should remember that this was the core mission of the University, as outraged as one might feel about events taking place in the world.

Regent Tesfai stated that the policy should make it clear that people have the ability, on some other University-owned website or web page, to express their opinions or make statements that are not considered to be the official position of the University.

Regent Makarechian asked why the policy language did not specify that personal opinions should be published on an opinion page, which would make very clear that this was not related to

University business. Committee Chair Sures responded that the working group considered a number of different options and decided that the current language would address this concern. Chancellor Gillman reflected that the intention of the policy was not to emphasize what is prohibited but to underscore the purpose of a web page for UC business and the kind of information that would constitute the official business of an administrative unit of the University, such as course descriptions, information about the faculty, upcoming workshops, and faculty publications. For websites of UC hospitals and clinics, official business would include hours of operation and information on getting appointments. In spite of this distinction being made in policy, Chancellor Gillman anticipated that it would still not always be easy to distinguish personal viewpoints from the official business of an administrative unit, and that this would be an area of dispute and debate.

Committee Chair Sures expressed agreement with Chancellor Gillman. The University would have to walk a fine line to avoid being restrictive in a way that would impede free speech and academic freedom.

Regent Makarechian recalled the reasons for bringing this policy forward. Political statements related to the war between Hamas and Israel had appeared on a department web page. Committee Chair Sures responded that, in his view, somewhat of an abuse of a UC website had taken place, and the University did not have a defined policy in place. In light of world events and comments made by Regents at this meeting, UC needed a policy. The proposed policy attempted to set some guardrails on the use of websites for University business.

Regent Makarechian expressed support for an opinion page.

Committee Chair Sures stated that he and Committee Chair Park would work with Mr. Robinson, taking into consideration comments made in this discussion, and present a new draft of this policy for the Committees the following day.

Regent Leib emphasized that the policy would apply to political statements in general, regardless of party or which side of an issue was represented.

The Committees recessed at 6:10 p.m.

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The Committees reconvened on January 25, 2024 at 9:40 a.m. with Compliance and Audit Committee Chair Sures presiding.

Regent Pérez made a motion to table the item discussed by the Committees the previous day. He was asked about the rationale for this and stated that issues of First Amendment protection are crucial to the University. He was in support of the concept that was being developed, but the work product provided to the Regents was not sufficient for meaningful action and in a way that would be defensible in light of the core mission of the University. The item would benefit from more input, work, and analysis.

Following a disruption to the meeting, Regent Pérez made a substitute motion to table the item until the next regularly scheduled Regents meeting in March.

Upon motion duly made and seconded, the substitute motion was approved with the following vote.

Vote by the Academic and Student Affairs Committee: Regents Batchlor, Drake, Hernandez, Leib, Sarris, and Tesfai voting “aye,” Regents Park and Raznick voting “no,” and Regent Anguiano abstaining.

Vote by the Compliance and Audit Committee: Regents Batchlor, Ellis, Leib, Pérez, and Sherman voting “aye,” Regents Cohen, Elliott, Park, and Sures voting “no,” and Regents Anguiano, Makarechian, and Matosantos abstaining.

Faculty Representative Steintrager strongly urged that a policy that touches on a key principle of the University, namely academic freedom, and a key value of the University, namely free expression, be distributed for systemwide Academic Senate review.

The meeting adjourned at 10:25 a.m.

Attest:

Secretary and Chief of Staff

Regents Policy on Use of University Administrative Websites

POLICY TEXT

Upholding the values of freedom of speech and inquiry are core to the University of California's mission. Under the First Amendment and principles of academic freedom, faculty members, individually and collectively, have the right to express their views. While individual members of the University community are free to express constitutionally protected viewpoints through all non-official channels of communication, they may not associate the official administrative units of the University with their personal viewpoints. Long-standing principles of academic freedom have recognized that when faculty members speak or write as citizens, they should make every effort to indicate that they are not speaking for the institution.

The University of California establishes websites and other official channels of communication maintained by the schools, departments, centers, units, and other entities for purposes of conducting the official business of the University and these entities. Examples of an entity's official business may include delivering informational resources about the unit, such as course descriptions, and communicating personnel changes, dates of upcoming events, the release of new publications, the issuance of new policies, and similar activities. The official channels of communication, including the main landing pages of websites, of schools, departments, centers, units, and other entities should not be used for purposes of publicly expressing the personal or collective opinions of unit members or of the entity, as other means of publicly conveying such opinions are available.

Notwithstanding the above, the Chair of the Board of Regents, the President, the Chancellors, and the leadership of the Academic Senate, may use the official channels of communication to comment on matters of University or public import, and such use by these spokespersons shall be deemed to be conducting official University business for purposes of this policy.

Nothing in this policy shall limit the use of any privately-maintained resource or other non-University media by any member of the University community for any purpose. This policy shall be construed in a manner consistent with the First Amendment and other applicable laws.

COMPLIANCE/DELEGATION

Any questions concerning the application of this policy shall be referred to the administrator responsible for maintaining the website and such administrator shall be responsible for assuring compliance with this policy.

NO RIGHT OF ACTION

This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the University of California or its Board of Regents, individual Regents, officers, employees, or agents.

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Possible Edits:

- The main landing page of websites, and other pages and other channels of communication designated for official use only by the responsible university administrator, should not be used for purposes of publicly expressing the personal or collective opinions of unit members or of the entity, as other means of publicly conveying such opinions are available.

OR

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