

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

July 17, 2024

The Academic and Student Affairs Committee and the Compliance and Audit Committee met on the above date at the UCSF–Mission Bay Conference Center, San Francisco campus and by teleconference meeting conducted in accordance with California Government Code §§ 11133.

Members present: Representing the Academic and Student Affairs Committee: Regents Batchlor, Beharry, Hernandez, Leib, Pack, Robinson, Salazar, and Sarris; Ex officio members Drake and Reilly; Chancellors Gillman, Khosla, Lyons, Muñoz, Wilcox, and Yang; Advisory member Steintrager; Staff Advisor Emiru

Representing the Compliance and Audit Committee: Regents Batchlor, Beharry, Elliott, Leib, Makarechian, Sherman, and Sures; Ex officio member Reilly; Chancellors Gillman, Hawgood, Khosla, Larive, and Yang; Advisory member Cheung; Staff Advisor Frias

In attendance: Regents-designate Brooks, Komoto, and Wang, Secretary and Chief of Staff Lyall, General Counsel Robinson, Provost Newman, Executive Vice President and Chief Financial Officer Brostrom, Executive Vice President and Chief Operating Officer Nava, Executive Vice President Rubin, Interim Senior Vice President Turner, Vice Presidents Brown and Lloyd, Chancellors Block and May, and Recording Secretary Johns

The meeting convened at 10:15 a.m. with Compliance and Audit Committee Chair Sures presiding.

1. APPROVAL OF MINUTES OF PREVIOUS MEETING

Upon motion duly made and seconded, the minutes of the meeting of March 20, 2024 were approved with the following vote.

Vote by the Academic and Student Affairs Committee: Regents Batchlor, Beharry, Hernandez, Leib, Reilly, Robinson, and Sarris voting “aye.”

Vote by the Compliance and Audit Committee: Regents Batchlor, Beharry, Elliott, Leib, Makarechian, Reilly, Sherman, and Sures voting “aye.”

2. ADOPTION OF REGENTS POLICY ON PUBLIC AND DISCRETIONARY STATEMENTS BY ACADEMIC UNITS

The Chair of the Compliance and Audit Committee recommended that the Academic and Student Affairs Committee and the Compliance and Audit Committee recommend to the Regents adoption of a Regents Policy on Public and Discretionary Statements by Academic Units, 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 recalled that in January 2024, the Academic and Student Affairs Committee and the Compliance and Audit Committee discussed adoption of a Regents policy regarding the use administrative websites. Following that discussion, the policy was reviewed by the Academic Senate. A second version was developed incorporating changes suggested by the Academic Senate and drawing on a UCLA policy document. The second version was sent to the Academic Senate for further review. Following that review and comments by the Academic Senate, the third and current version was produced and was now being presented to the Regents. The Committees had discussed the policy and deferred action at the March meeting.

The Academic Senate's comments on the second version indicated that the Senate appreciated the balanced approach, the respect for unit autonomy while providing consistent University standards and measures to protect minority opinions as well as the fact that the proposed policy reflects essentially the Academic Senate's 2022 guidance on the subject. The changes between the second, March version and the version being considered at this meeting included adding to the definition of public statements and discretionary statements to clarify that statements about scholarly endeavors do not fall within the definition of discretionary statements. The latest version deleted a sentence in the definition of discretionary statements that might have created a misimpression that any statement that could be viewed by some as controversial might be prohibited from appearing on a unit's home page, even if it is relevant to the unit's operation. For example, commentary on the value of vaccines by a school of public health would be allowed under this policy. The latest version also clarified that links on an academic unit's homepage to discretionary statements on University web pages are permissible. Committee Chair Sures expressed the Regents' appreciation for the Academic Senate's thoughtful comments in their review of numerous drafts. He believed that the current document was a better policy which reflected the fact that the University values academic freedom. This policy would provide for an inclusive environment for individual departments to issue statements and where minority opinions within individual departments would also be reflected.

Regent Sherman asked who would have the authority to make determinations and develop standards about discretionary statements. If an individual in a unit wanted to make a discretionary statement that fell outside the principles of this policy, he asked if the department chair or head of the unit would be the deciding authority. General Counsel Robinson responded that, as for any University policy, authority rested with the campus. Ultimately, authority would rest with the chancellor, but chancellors would likely delegate this authority to the schools and departments.

Regent Sherman asked if the dean of a school would have to have delegated authority from the chancellor to be the arbiter of discretionary statements. Mr. Robinson responded that these delegations were currently in place. As was the case with any other University policy, the chancellors and deans expected the policy to be implemented by the chairs in accordance with ordinary rules. Committee Chair Sures added that the policy was clear

about how discretionary statements can be made, where they can be posted, votes that need to be taken, and disclaimers which clarify that statements are being made on behalf of individuals, not the University. The policy provided leeway and flexibility for each academic unit.

Regent Sarris asked what constituted a unit, and which individuals this would include, for example, adjunct and affiliated faculty. Committee Chair Sures responded that tenured professors, adjunct faculty, and graduate students were part of the unit, per the policy.

Regent Sarris asked if units would vote on whether statements can be posted, or whether this would be decided by the department chair. He asked if there would be a process by which review would move up the chain of command if a statement is contested. Mr. Robinson responded that the policy expected that each unit would develop its own processes and procedures for discretionary statements, and that these processes and procedures would be published. As with other University policies, there was the expectation that each unit head would be responsible for implementation. Each unit head, of course, reports up the chain of command. The expectation was that unit heads and the leadership at UC locations carry out the policies that have been established by the University.

Regent Leib stressed the importance of the policy. One would not expect public university or public agency websites to contain incendiary statements. In the interest of transparency, the policy provided for disclaimers making it clear that discretionary statements were the statements of an individual or a group, but not a statement by the University. It was important that discretionary statements not appear on the homepage of a department or unit. The policy was content-neutral.

Committee Chair Sures stated that the development of this policy was guided by the need to ensure academic freedom and freedom of speech. The policy essentially mirrored the Academic Senate's 2022 guidelines.

Regent Sarris asked about the difference between this policy and the Academic Senate document. Mr. Robinson explained that the document issued by the Academic Senate was intended to be guidelines therefore not mandatory. If the Regents adopted the proposed policy, it would be mandatory.

Regent Sarris asked if the policy was essentially an enforcement of the Academic Senate guidelines. Mr. Robinson responded that, in addition to being a mandatory policy rather than guidelines, an important difference was a prohibition on discretionary statements on the landing page or homepage of an academic unit. In response to a comment by Committee Chair Sures, Mr. Robinson and Faculty Representative Steintrager clarified that the Academic Senate guidelines issued in 2022 were issued by the Senate as a whole. The UCLA document referred to earlier was developed in consultation with the Academic Senate but was not a Senate policy document and had not been finalized.

Regent Hernandez asked about the policy statement according to which the policy requires that “Academic Campus Units that intend to produce and disseminate Discretionary Statements develop and publish procedures that comply with the rules outlined below.” Committee Chair Sures responded that individual units would develop procedures. There was nothing in the policy that would prevent someone from publishing a discretionary statement on the appropriate page of an academic unit and with a disclaimer. In the event that an individual unit wished to speak as a whole, the unit would develop a procedure for how that unit can do so.

Regent Hernandez stated his understanding that there was no limiting of freedom of speech under the proposed policy. Committee Chair Sures confirmed that this was the case.

Regent Sarris observed that there would be oversight over discretionary statements by the units. It would not be possible to post any statement whatsoever. Mr. Robinson confirmed this and reiterated that a unit’s processes and procedures for discretionary statements would be published.

Regent Reilly expressed support for the proposed policy, which had been developed thoughtfully and in collaboration with the Academic Senate with consideration and respect for academic freedom and freedom of speech.

Regent-designate Wang referred to the development of procedures by individual units. She asked if there was any consideration of how units would receive feedback about their procedures or measure the impact of their procedures over time, or if there was any requirement that units receive feedback on their procedures. Committee Chair Sures responded that this was not included in the policy. The intention was to provide flexibility to the units to create procedures as they saw fit, subject to this policy. The policy would not dictate this or require procedures to be the same for every unit.

Regent-designate Wang asked if there might be value in units evaluating their own procedures. Committee Chair Sures responded that this would be up to individual units to decide.

Mr. Steintrager observed that, contrary to claims made by some speakers during the public comment period, this policy was not a ban on discretionary political statements. The proposed policy in its current form safeguarded the ability of units such as departments to make statements and imposed certain requirements and guardrails. An important requirement, already mentioned, was that discretionary statements must be accompanied by an indication that they do not represent the official views of the University. The guardrails were mainly intended to ensure that any such statements do not impose on faculty who might hold different views. The Academic Senate in its recommendations had already done as much. As a systemwide Academic Senate review and Academic Council assessment confirmed, the Senate considered the current draft a marked improvement over previous drafts and generally consonant with free expression and academic freedom. An important addition to the current draft was that statements that are not considered discretionary included individual or collective scholarly endeavors. The Academic Senate

continued to have concerns about implementation and enforcement. The Senate saw a tension between the claims that Regental policy should provide high-level guidelines and the more detailed regulations in the current policy document. The restriction on landing pages or homepages seemed more a best practice than a principled regulation per se. The Senate had concerns about other areas as well, such as the detailed guidance on the development of the departmental rules around formulating statements.

Committee Chair Sures noted that he had communicated with representatives of other universities, who reviewed this policy document and responded positively. This policy, if adopted, might become a model for other universities.

President Drake expressed appreciation for the collaboration between the Regents and the Academic Senate on this policy over the last several months. The policy had been improved and would provide appropriate guidance to UC units.

Regent Sarris stated that, while he still had concerns about how this policy would be implemented and overseen by units, and how it might be perceived, he supported the policy.

Upon motion duly made and seconded, the Committees approved the Chair of the Compliance and Audit Committee's recommendation and voted to present it to the Board with the following vote.

Vote by the Academic and Student Affairs Committee: Regents Drake, Hernandez, Leib, Pack, Reilly, Robinson, Salazar, and Sarris voting "aye," Regent Batchlor abstaining, and Regent Beharry voting "no."

Vote by the Compliance and Audit Committee: Regents Elliott, Leib, Makarechian, Reilly, Sherman, and Sures voting "aye," Regent Batchlor abstaining, and Regent Beharry voting "no."

The meeting adjourned at 10:35 a.m.

Attest:

Secretary and Chief of Staff

Regents Policy on Public and Discretionary Statements by Academic Units May 2024

POLICY SUMMARY/BACKGROUND

Upholding the values of freedom of speech and inquiry are core values of the University of California. 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, long-standing principles of academic freedom have recognized that when faculty members speak or write as individuals, they should make every effort to indicate that they are not speaking for the institution. This Policy sets forth the responsibilities of and procedures for Academic Campus Units when issuing public statements.

POLICY TEXT

A. **DEFINITIONS.** For the purposes of this Policy, these terms are defined as follows:

Academic Campus Units refer to officially recognized University academic departments or divisions as well as other official academic University entities, including schools, centers, laboratories, institutes, campus divisions of the Academic Senate, and campus University Extension units.

Homepage refers to the page typically first encountered on a website that usually contains links to the other pages of the site, serving as a table of contents for the site; the main page of a website.

Public Statements refer to communications by an Academic Campus Unit or its lead administrator purporting to be made on behalf of the Academic Campus Unit and distributed, disseminated, posted online or otherwise shared via mass distribution with University constituencies or the public. This term includes an Academic Campus Unit's messages sent to University constituencies or the public regarding its curricular offerings, its traditional mission statements, or strategic plans; administrative activities, operations or resources; news announcing University or campus activities, programs or initiatives; or news and events related to faculty research, teaching, and individual or collective scholarly endeavors. This term also encompasses Discretionary Statements.

Discretionary Statements refer to communications by an Academic Campus Unit purporting to be made on behalf of the Academic Campus Unit and distributed, disseminated, posted online, or otherwise shared via mass distribution with University constituencies or the public, that are not part of the day-to-day, term-to-term operations of the unit, and that comment on institutional, local, regional, global or national events, activities or issues. Discretionary Statements do not include an Academic Campus Unit's messages sent to University constituencies or the public regarding its curricular offerings, traditional mission statements or strategic plans; administrative activities, operations or resources; news announcing University or campus activities, programs or initiatives; or news and events related to faculty research, teaching, and individual or collective scholarly endeavors.

B. POLICY STATEMENT

This Policy sets forth the responsibilities and procedures for Academic Campus Units issuing Public Statements, including Discretionary Statements. In particular, the Policy requires the following:

- That all Public Statements (including Discretionary Statements) be consistent with applicable law and University policy;
- That Discretionary Statements be accompanied by a disclaimer expressly stating that the statement should not be taken as a position of the University, or the campus, as a whole;
- That Academic Campus Units that intend to produce and disseminate Discretionary Statements develop and publish procedures that comply with the rules outlined below; and
- That Discretionary Statements should not appear on the main homepage of a website of an academic Unit, and instead should be posted on a separate page identified for such statements.

This Policy applies only to Academic Campus Units and does not address statements made by individual university community members or groups of University community members. The University affirms the rights of individual university members, and of groups of University members, to author and publish statements and circulate them in their own private networks or on an individual University community member's page on a unit's website.

The rules outlined below for Discretionary Statements aim to ensure that the viewpoints of Academic Campus Units are not understood to reflect the views of the University. The rules also aim to ensure that members of the community associated with the Academic Campus Unit enjoy the freedom to speak or not to speak, to deliberate or not deliberate about issues, where such speech is not a required element of their job description, and that their decision whether and how to speak through Discretionary Statements compliant with this policy is insulated from repercussions on and off campus. These procedures also aim to protect members of an Academic Campus Unit from being misrepresented or misunderstood to endorse a position that they have not chosen to endorse and to insulate them from pressure to endorse a position when they hold a minority viewpoint.

This Policy shall be construed in a manner consistent with the First Amendment and other applicable laws.

C. REQUIREMENTS FOR PUBLIC STATEMENTS

All Public Statements made by Academic Campus Units (including Discretionary Statements) must comply with applicable laws and University policies, including but not limited to University and campus policies governing:

- Conflicts of interest.
- Anti-violence, anti-discrimination, and anti-harassment.

- Use of University technology.
- Privacy and personal information, including the University’s policies regarding FERPA (Family Educational Rights and Privacy Act) and HIPAA (Health Insurance Portability and Accountability Act).
- Intellectual property, including policies on copyright and use of the University’s names and assets.
- University codes of conduct, including the Faculty Code of Conduct.

Public Statements may not promote, endorse, or oppose political campaigns or candidates for elected or appointed government office, or comment in support of, or in opposition to, specific ballot measures.

D. REQUIREMENTS FOR DISCRETIONARY STATEMENTS

In addition to the above requirements for Public Statements, Academic Campus Units that seek to make and disseminate Discretionary Statements must create, publicize, and follow procedures that articulate the process by which such statements will be produced, posted, and archived. Academic Campus Units have substantial discretion about the details of these procedures. The guidance in the Academic Senate recommendations for department political statements released in June 2022 outline the recommendations below. The procedures must incorporate these recommendations (including parallel procedures for statements made by subgroups of the Unit on behalf of the subgroup if permitted by the Unit):

- Discretionary Statements must be accompanied by a clear disclaimer that the Unit is not speaking for the University, all members of a Unit (unless unanimous), or the campus, as a whole.
- Units should develop standards governing the practice of issuing Discretionary Statements, and then memorialize these standards in written bylaws or policies that govern departmental practice and are publicly available. These bylaws or policies should be flexible enough to take into account the varied contexts within which the desire to issue a statement might arise.
- As part of this process, Units should decide who is included in the Unit when the Unit makes a statement. Units ought to include in their deliberations all those for whom they claim to speak when issuing discretionary statements. Units must collect the vote anonymously to minimize pressure on members of the Unit who hold minority views.
- Any Unit Discretionary Statement should be accompanied by some explanation of whose views it represents. Such an explanation can take a number of forms. For example, Units could:
 - a. accompany all statements with a disclaimer that the statements do not necessarily reflect the views of every member of the Unit;
 - b. accompany all statements with a report that the statements reflect “unanimity,” “a supermajority,” (at least two-thirds), or a “simple majority” of the Unit members (at least 51 percent);
 - c. issue all statements in the name of the dean or chair of the Unit;
 - d. list the results of a Unit vote on whether to issue the statement.

In addition, Discretionary Statements must not appear on the main homepage of a website of an academic unit, and instead should be posted on a separate page identified for such statements. Links to discretionary statements may be placed on an Academic Campus Unit's homepage.

COMPLIANCE/DELEGATION

Campuses or Academic Campus Units may adopt additional policies on the use of Unit electronic resources provided that any such policies must not reduce or eliminate the requirements contained in this policy. Per Bylaw 31, the Chancellors serve as the executive heads of their respective campuses and implement the policies and objectives of the Board and the President of the University, and apprise the Board and the President of significant developments affecting their campuses and the University.

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.