



Berkeley Divisional Council Statement on the Release of Individualized Incident Data

The Berkeley Division of the Academic Senate was deeply troubled to learn about the recent release of incident reports containing individualized data from UC Berkeley's OPHD and UCPD to the Department of Education's Office of Civil Rights. Sharing such information violates privacy and procedural fairness. Such actions should presumptively meet a very high burden of justification. We commend our campus leaders' efforts to uphold this expectation and their decision to notify individuals whose names were divulged through this action.

We would also like to highlight a particular concern we have about the implications of this data release for academic freedom. The principles expressed in APM-010 protect the ability of instructors to address topics in the classroom in accordance with their scholarly and pedagogical judgment, free from administrative or political pressure or interference. This freedom is not absolute, of course, and it does not grant instructors license to misuse the classroom for partisan or ideological purposes, as Regent's Policy 2301 explains. Nor does it protect discrimination and targeted harassment in the classroom on the basis of race, color, or national origin, which is prohibited under Title VI of the 1964 Civil Rights Act. Further, we note that classroom instruction is framed within the context of Berkeley's guiding principles of community.

Complaints about classroom speech that allegedly violates university policies and federal laws need to be taken seriously, but also handled with discretion and care. There should be a presumption that students may be exposed to a wide range of challenging ideas in the classroom that are germane to the subject matter of a course, including relevant matters of contemporary controversy. As such, determining when classroom speech counts as a violation of Regent's Policy 2301 or Title VI involves academic judgment and the Berkeley Division is working closely with the EVCP to develop standard procedures for consultation with Senate faculty when complaints about classroom speech are referred to university officials, including OPHD.

Against this background, we were alarmed to learn that the data released to the Department of Education likely included individualized, personally identifiable information about complaints referred to OPHD regarding classroom speech. Taken out of context, information about isolated complaints can easily be misused to create a misleading impression about the classroom

activities of Berkeley instructors. This contributes to an environment that could chill the free exchange of academic ideas in the classroom, create a closed or exclusionary classroom climate, and potentially unfairly target instructors for the exercise of their academic rights.

The Berkeley Division calls on the University to make the following commitments:

- Based on the need to protect the academic freedom that is essential to a healthy culture of scholarship and learning, requests from the federal government for release of individualized (non aggregated) information about complaints regarding classroom speech should only be approved when external legal demands make such a release an unavoidable necessity. Further, the Academic Senate should be consulted when such requests are received, and if they are deemed unwarranted, the university should exhaust all legal remedies before releasing the requested data.
- The same concern to protect academic freedom should lead the university to deny future requests for individual student evaluations for courses taken at Berkeley, should they be received.
- Individual instructors who have been named in the OPHD data that has already been released to the DOE should receive all due support from the university as they attempt to deal with the personal, professional, and legal consequences attributable to this release.

Additionally, the Berkeley Division urges the systemwide Academic Senate to take up these issues with UCOP in order to protect the privacy and academic freedom of university instructors on all UC campuses.

Finally, at the campus level, the Berkeley Division urges campus leadership to affirm the University's commitment to the privacy of its faculty, staff, and students, to assess the risks that the accumulation of institutional data poses to that privacy, and to consider, proactively, what policies and practices might be adopted to affirm individual privacy as both a constituent element of academic freedom and an assumption that should be afforded to all members of the University.

Approved by the Divisional Council (DIVCO), with the collaboration of the Chair of the Committee on Academic Freedom (ACFR) 9/11/2025.