

December 4, 2025

James B. Milliken
Office of the President
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607

Sent via U.S. Mail and Electronic Mail (president@ucop.edu)

Dear President Milliken:

FIRE, a nonpartisan nonprofit that defends freedom of speech,¹ is concerned by the University of California system's required sexual harassment training for students, which students must pass to enroll in classes. The training and final quiz contain overly broad definitions of harassment at odds with Supreme Court precedent. Additionally, the final test implies overly broad restrictions on "unhealthy behaviors" that violate the First Amendment. We call on the UC system, which is legally bound by the First Amendment,² to rewrite its harassment training language and harassment policy to better protect community members' free speech rights.

On October 30, screenshots of a required UC harassment training for students circulated on the social media platform X. The training text read, in relevant part:³

Hostile Environment may be created when someone demands that others use a particular bathroom that does not correspond to their gender identity or uses the incorrect pronoun. Intentionally calling someone their name used prior to transition, as opposed

¹ For more than 25 years, FIRE has defended free expression on America's college campuses. You can learn more about our mission and activities at thefire.org.

² See *Healy v. James*, 408 U.S. 169, 180 (1972) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.'" (internal citation omitted)).

³ @amyforsandiego, X (Oct. 30, 2025, 9:35 AM PST), <https://x.com/amyforsandiego/status/1983935904730509502> [<https://perma.cc/9ED9-74FJ>] (emphasis in original).

to their lived name, is called **dead-naming**; and may be a form of sexual harassment.

Students must pass a “final quiz” to complete this training.⁴

FIRE obtained the full training from concerned community members, including the required final test. As part of the test, students are asked, “Which of these are UNHEALTHY behaviors?”⁵ Answers coded as correct include “[c]alling a person hunk, doll, babe, or honey” and “[a]sking about a person’s sexual preferences.”⁶ It is unclear from the text of the training whether these “unhealthy behaviors” are prohibited or merely discouraged, and how this category relates to the UC system’s definitions of harassment and discrimination.⁷

Additionally, the final test contains the following question: “Repeated unwanted comments / jokes based on one’s gender identity, or gender expression, is a form of what?”⁸ The correct answer is indicated to be “Hostile Environment.”⁹

UC’s “Sexual Violence and Sexual Harassment” policy, upon which the training is presumably based, defines harassment in part as:¹⁰

unwelcome sexual or other sex-based conduct [that] is sufficiently severe, persistent or pervasive that it unreasonably 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, and creates an environment that a reasonable person would find to be intimidating or offensive.

The training material and underlying policy appear to define harassment—and seemingly related “unhealthy behaviors”—in a way that violates the First Amendment.

As the Supreme Court made clear in *Davis v. Monroe County Board of Education*, student-on-student (or peer) hostile environment discriminatory harassment in the educational setting is conduct that is based on the victim’s membership in a protected class and is “so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims’

⁴ See *Sexual Violence/Sexual Harassment Training Frequently Asked Questions*, UNIV. OF CALIF. BERKELEY (Aug. 2025), <https://svsh.berkeley.edu/svsh-training-faq> [<https://perma.cc/B92Q-F5Z2>].

⁵ *UC Sexual Violence and Harassment, Anti-Discrimination, Prevention and Education Training*, UNIV. OF CALIF. (on file with author) (emphasis in original).

⁶ *Id.*

⁷ Part of the training encourages “healthy behaviors” to ensure that community members are “not creating an environment that encourages harassment and discrimination.” It is unclear, though, whether “unhealthy behaviors” are categorically prohibited. See *id.*

⁸ *UC Sexual Violence and Harassment*, *supra* note 5.

⁹ *Id.*

¹⁰ *Sexual Violence and Sexual Harassment*, UNIV. OF CALIF. (Aug. 29, 2024), <https://policy.ucop.edu/doc/4000385/SVSH> [<https://perma.cc/7TGS-YW83>].

educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.”¹¹

UC’s policy and training, on the other hand, create sufficient ambiguity to give the impression that even a single instance of misgendering, using the wrong pronoun, or calling someone a nickname they intend to be endearing, such as “honey,” could be an actionable offense.

It takes little imagination to picture one of endless scenarios in which this combination of policy and training can imperil students’ free speech rights. If a UC system student were to momentarily slip up and use “he” to describe a classmate who identifies as a female, or simply use male-coded slang (e.g., “dude” or “bro”) to refer to a female, UC policy and training indicate that this single inadvertent misgendering could be enough to warrant investigation and potential punishment.

The pressure on administrators to punish students’ constitutionally protected speech is often overwhelming in the current political environment. Recent history is replete with viral incidents of controversial speech leading to the sanctioning of students and professors as a result of widespread pressure.¹² We are concerned that the UC system’s harassment-related training and policy language opens the door to similarly impulsive—and unconstitutional—punishments and investigations doled out by administrators.

In addition, the UC system considers calling someone a “doll” or “hunk” an “unhealthy behavior,” even if the remark is clearly in jest or between romantic partners. Students in relationships may want to call their significant other a silly—albeit dated—nickname, only to refrain from doing so out of fear of possible administrative sanction. This designation is even more restrictive than the UC system’s harassment policy and runs far afield from the First Amendment.

We appreciate that UC’s phrasing of “[r]epeated unwanted comments / jokes based on one’s gender identity, or gender expression” in the final test appears to be an attempt to incorporate the pervasiveness element of the above-cited *Davis* definition of harassment. However, “unwanted comments / jokes based on one’s gender identity”¹³ could easily encompass protected expression, including remarks assuming (for example) that women tend to like the color pink, or that men tend to like lifting weights more than women. Regardless of the truth or falsity of such statements, there is no tenable legal claim that such remarks alone may rise to the level of creating a hostile environment. Yet the required training video question, combined

¹¹ 526 U.S. 629, 651 (1999).

¹² For example, in a widely discussed October 2024 incident, Pace University law student Houston Porter faced investigation for alleged sex-based harassment based on an unnamed transgender woman’s complaint that Porter “aggressively pointed” and “purposefully referred to her as a man” at an event. FIRE wrote Pace on November 21 urging it to drop the investigation because the alleged “aggressive” pointing and misgendering, which Porter denies, are protected expression. The issue remains unresolved. *See* Jessie Appleby, *FIRE Letter to Pace University*, FIRE (Nov. 21, 2024), <https://www.thefire.org/sites/default/files/2024/11/FIRE%20Letter%20to%20Pace%20University%2C%20November%2021%202024.pdf>; *see also* Aaron Corpora, *Ohio professor’s pronoun-use lawsuit delivers First Amendment victory*, FIRE (Apr. 22, 2022), <https://www.thefire.org/news/ohio-professors-pronoun-use-lawsuit-delivers-first-amendment-victory>.

¹³ *See UC Sexual Violence and Harassment*, *supra* note 5.

with UC's harassment policy, could easily confuse students and create the wrong impression about the legal standard required for harassment.

We call on UC to clarify in its policies and training that, to be considered harassment, expression must be part of a course of conduct that is "severe, pervasive, *and* objectively offensive"—not "or," as UC's policy states. Additionally, we urge UC to make clear that "unhealthy behaviors" are merely discouraged rather than prohibited to avoid infringing on students' freedom of conscience. FIRE would be pleased to assist in UC revising policy or training language, free of charge and in accordance with our charitable mission. We respectfully request a substantive response to this letter no later than close of business on December 18, 2025.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Marchand", written in a cursive style.

Ross Marchand

Program Counsel, Policy Reform and Campus Rights Advocacy