

A PRIMER ON ACADEMIC FREEDOM



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This primer offers a general overview of academic freedom in American higher education. It is designed to present basic concepts, including the application of academic freedom to faculty members and institutions of higher education. Each American college or university applies principles of academic freedom in the context of its own mission. The primer is not a definitive discussion or legal analysis. For further information, readers may wish to explore the additional resources listed on page 9.

What Is Academic Freedom?

American higher education relies on the fundamental value of academic freedom. Academic freedom protects college and university faculty members from unreasonable constraints on their professional activities. It is a broad doctrine giving faculty great leeway in addressing their academic subjects, allowing them even to challenge conventional wisdom. Under principles of academic freedom, a faculty member may research any topic. He or she may raise difficult subjects in a classroom discussion or may publish a controversial research paper. The excellence of America's higher education system rests on academic freedom.

What Is the Purpose of Academic Freedom?

Academic freedom serves to advance the two core values of higher education.

#1. *Advancing knowledge through research and creativity.* Colleges and university faculty members work to advance knowledge and the arts. They conduct research and write scholarly papers and books. They create stories, plays, music, and works of visual art. Peers who are experts in the same field, or a similar area, scrutinize the work of faculty members. A chemist's research paper is most appropriately evaluated by other chemists, not by the legislature or the general public. Even a university president relies heavily on other chemists to evaluate a chemistry professor's scholarship.

The college professor and the student both need leeway to explore controversial ideas.

Good research and creative activities need breathing space. People may be inhibited from doing their best work if they fear offending outside forces, such as politicians or donors, or inside authorities, such as trustees or senior administrators. Without academic freedom, our society would lose professors' best inventions, scholarship, and creative products.

#2. Educating students to develop their own independence of mind. Higher education exposes students to new ideas, new conceptual approaches, and new forms of argument and creativity. In high school, students learn facts, apply processes, and master material given to them. The college experience is broader and deeper. Professors challenge students to seek out facts, test those facts, and develop their own frameworks of knowledge and truth. The college professor and the student both need leeway to explore controversial ideas. Academic freedom provides room to do this without inappropriate interference.

To support these two core values, colleges and universities also need freedom from unreasonable governmental interference.

What is the Scope of Academic Freedom?

Academic freedom embraces both rights and responsibilities. Upon being assigned a course to teach, the professor has the responsibility to teach the subject in a professional manner. He or she has the right to select the course material, provided it is appropriate to the topic. The professor can decide how best to present the material, choosing from methods accepted in the discipline. On behalf of the college, the professor has the right to grade the students. This right comes with corresponding responsibilities to follow institutional grading standards and to assign grades without discrimination or arbitrariness.

The scope of academic freedom is broad but not unlimited. Academic freedom does not protect false statements or unprofessional conduct, as defined under relevant professional standards. A professor could be disciplined, for example, for chronically ineffective teaching or for refusing a reasonable request to meet with a dean.

What Materials Can Help Explain or Refine Academic Freedom?

Three useful sources on academic freedom are campus policies, accreditation standards, and national policy recommendations.

1. *Campus Policies.* Most colleges and universities have policies protecting academic freedom. A typical policy affirms freedom in teaching and also freedom in research. Campus academic freedom policies appear in places such as handbooks, contracts, websites, faculty collective bargaining agreements, trustee-approved policies, and institutional charters and bylaws. Campus tradition and past practice also help define academic freedom rights and responsibilities within an institution. In addition to describing academic freedom rights and responsibilities, a typical policy also includes a set of internal procedures. These procedures are sometimes called “academic due process.” They allow a professor to test whether a disciplinary action is based on a legitimate reason or on a reason violating his or her academic freedom. Campus academic freedom policies and procedures merit careful reading, to understand their nuances in the context of the institution’s mission.

2. *Accreditation Requirements.* Colleges and universities undergo formal accreditation by external groups. The accreditation process tests the effectiveness of higher education institutions. The federal government regulates the accreditation process. The government approves accrediting organizations, and only colleges and universities accredited by approved organizations may participate in federal student loan programs. The six major accrediting groups are located in different parts of the country, and each oversees the academic institutions in its region. Most of the accreditors require institutions to protect academic freedom. The academic freedom statement from one regional accrediting group appears as an appendix below. Professional schools, such as schools of law, engineering, or business, may receive separate accreditation from professional organizations. The American Bar Association, for example, accredits law schools. Professional organizations generally also include academic freedom among their accreditation requirements.

2. *Policies of National Academic Organizations.* Since 1915, the American Association of University Professors (AAUP) has sought to defend faculty academic freedom in American higher education. It has issued model policy statements, sometimes in collaboration with other higher education associations. The model policies define academic freedom rights and responsibilities. They also recommend academic due process to protect academic freedom. More than 200 learned societies and higher education associations have endorsed the 1940 Statement of Principles on Academic Freedom and Tenure. This policy statement provides:

All faculty members are entitled to freedom in teaching and research.

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties....
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject....

Colleges and universities may include the model policy recommendations in their internal policies, adapt them to fit the campus's own circumstances, or ignore them.

Other groups also address academic freedom from a broad perspective. National organizations such as the American Council on Education, the Association of American Colleges and Universities, and the Association of Governing Boards of Colleges and Universities work to advance academic freedom through means such as reports, policies, and legal briefs. The National Education Association and the American Federation of Teachers both have higher education divisions that support academic freedom.

Do Part-Time and Adjunct Professors Also Have Academic Freedom?

Yes. All faculty members are entitled to freedom in teaching and research. As a practical matter, though, tenured faculty enjoy the greatest protection from arbitrary dismissal and, accordingly, the greatest academic freedom. Tenured faculty should help protect the rights of all faculty and instructors. Institutional policies may address the rights and responsibilities of part-time and adjunct professors.

Do Several Professors Teaching the Same Course Have Academic Freedom?

Yes, but their rights may be somewhat narrower than if they were teaching entirely different courses. Faculty members teaching multiple sections of a course often collaborate on designing the course. The faculty members as a group may decide on the general topics they will cover in each class session. All the professors may need to use the same textbook. Reasonable requirements for teaching multi-section courses, especially requirements designed *by* faculty *for* faculty, do not violate academic freedom. Colleges and universities have a legitimate interest in the content of their courses and course sections.

Do Students Have Academic Freedom?

Students need freedom to explore controversial ideas and engage in creative work. The courts have spoken about a student's "freedom to learn." Is this the same as academic freedom? Scholarly experts disagree on whether students technically have academic freedom or a different type of freedom. In either case, students need room to explore, learn, and grow.

Like professors, students have both rights and responsibilities. A student has, for example, the right to disagree with a professor in class. With the right to disagree comes the responsibility to maintain appropriate behavior in class. The student may not steer the conversation off to an unrelated topic. The student may not monopolize the discussion to the point that others cannot participate. Student freedoms and responsibilities apply in the on-line learning environment as well as in the classroom. Whatever his or her personal views may be, the student remains responsible for learning the course material. Institutions explain student rights and responsibilities in their handbooks and policies.

How Do Religiously-Affiliated Institutions Address Academic Freedom?

Some private institutions have religious goals and define academic freedom in the context of their doctrinal responsibilities. As a matter of good practice, a religiously-affiliated college gives faculty members advance notice of restrictions it may place on customary understandings of academic freedom. Eligibility for receipt of federal funds requires a religiously-affiliated institution to respect academic freedom.

How Does Academic Freedom Relate to Free Speech?

The term "free speech" generally refers to rights under the First Amendment to the United States Constitution. The Constitution protects people from the actions of *government*. Taxpayer-funded public colleges and universities are governmental entities. Their actions must respect the First Amendment rights of students, faculty, and others. Colleges and universities themselves also have First Amendment rights protecting them from intrusions such as undue government regulation of institutional speech.

Some federal court decisions involving public institutions suggest the First Amendment protects academic freedom, at least partially. Speech protected by the First Amendment may, or may not, also be protected by academic freedom. The two categories overlap but they are not identical.

Like professors, students have both rights and responsibilities.

Professional opinions may include criticism.

In one respect, academic freedom provides *less* protection than the First Amendment. Consider this example. A citizen could lawfully proclaim in the town square that the moon is made of green cheese. The government could not punish the person for making that statement. What if an astronomy professor from a public university, in all seriousness, made the same statement in the town square? Her peers and her university could decide that the statement cast serious doubt on her competence to teach astronomy. The university could discipline the professor for making the statement, provided the university met its obligations to provide academic due process.

Does the First Amendment Apply in Private College Settings?

As a general matter, no. Private colleges and universities are not governmental entities, so the First Amendment does not cover their dealings with faculty members. The main source of legal protection for academic freedom at private colleges and universities is their own handbooks, policies, and faculty contracts, rather than the First Amendment.

Some exceptions exist. In California, for example, a state law known as the “Leonard Law” requires private institutions to respect principles tracking the First Amendment. Another exception is the “state action” legal doctrine. Occasionally the ties between a private university and a government entity may be so strong that a court will find that the university has, in effect, engaged in governmental action. In this unusual situation, the private university might have First Amendment responsibilities like those of a state-supported university.

Does Academic Freedom Give Professors the Right to Criticize the Institution?

Most institutions operate with a shared governance model that gives faculty important – though not exclusive – authority over academic matters. At well-run colleges and universities, faculty exercise significant influence over areas including research, the curriculum, subjects and methods of instruction, and faculty status such as hiring, promotion, and discipline. Boards and administrators rely on faculty advice in making academic decisions.

Close observers of academic freedom tend to agree that the faculty’s participation in guiding the college on academic matters is a component of academic freedom. Faculty should remain free, they argue, to express their professional opinions on issues affecting the academic dimensions of their institutions.

Professional opinions may include criticism. The right to offer candid, critical views comes with companion obligations. These include obligations to respect the opinions of others and not to disrupt campus operations.

Does a College President Have Academic Freedom?

Not in his or her presidential role. A college president represents the institution and is accountable to its governing board. If a president, while leading the institution, also engages in teaching or research, the president would enjoy academic freedom as a faculty member in those activities. The same concept applies to other academic administrators such as provosts and deans.

Do Trustees or Regents Have Academic Freedom?

Members of campus governing boards owe their best, unbiased advice to the institutions they serve. (Some institutions call their governing board members trustees; other institutions use the term regents.) Governing board members must always act in the institution's best interest. Academic freedom does not apply to board members, although other sources such as state law or institutional policy may protect trustees in certain situations. If a professor also serves as a trustee, he or she does not lose academic freedom for faculty functions.

Does a University Have Academic Freedom?

Outside requirements imposed on higher education institutions may be unduly intrusive. Institutions can, and should, resist outside pressures that threaten their mission and the freedoms of their faculty and students. A college might argue, for example, that a court should not enforce a subpoena seeking disclosure of a faculty member's research on local gangs.

Institutions have the right to "institutional autonomy." Rooted in the First Amendment, this concept means that outside rules and requirements should not unduly constrain the university itself. The phrase institutional autonomy maintains a distinction between institutional rights and individual academic freedom.

Institutional autonomy and academic freedom have similar goals – to advance the pursuit of knowledge and the education of students. Yet the concepts are not identical. Consider the example of a public university seeking to adopt a policy for its investments. It might resist external interference on the basis of its institutional autonomy. A campus investment policy would not, however, raise an academic freedom issue. Both institutional autonomy and academic freedom serve the public good of America as a nation, rather than serving the narrower interests of institutions or faculty members. Some experts prefer to say that colleges and universities have their own academic freedom rather than institutional autonomy.

Governing board members must always act in the institution's best interest.

How Do Academic Freedom Disputes Typically Arise?

The subjects that spark academic freedom controversies tend to reflect the social and political concerns of the era. In 1901, for example, Stanford University dismissed economist Edward Ross because Mrs. Leland Stanford, Jr., disliked the professor's views on the gold standard. In the 1950's, colleges fired faculty members for discussing communism. Today our social "hot buttons" include terrorism, sexuality, religion, and race.

A student or community group might, for example, complain about a paragraph in a professor's published article. The group may claim that, by publishing the article, the faculty member showed disrespect for the group's beliefs. Media coverage can heighten a controversy, and the university may be flooded with angry emails calling for the professor to retract the article and for the university president to dismiss the professor.

Who Protects Academic Freedom?

We all do. Here are some steps you can take:

- Within the community, be ready to explain academic freedom and its importance to society. Academic freedom contributes to advances in fields including medicine, electronic technologies, food safety, agriculture, and the humanities.
- Keep your mind open to new ideas. This does not necessarily mean agreeing with new ideas, but rather hearing and considering them fairly.
- Support controversial plays, art exhibits, films, and similar events.
- Resist efforts to ban books or otherwise restrict speech.
- Exercise your own right to express your opinions. Answer speech you don't like with more speech, rather than with calls for suppression.
- Offer moral support to everyone working to protect academic freedom.
- Discuss the value of academic freedom with friends, neighbors, co-workers, educators, and students. Link the value of academic freedom to the mission of a university.
- Resist overly-expansive claims of academic freedom rights. Academic freedom comes with responsibilities and does not protect every convenience of a faculty member's professional life.
- Within a college or university, find and read the policies for faculty academic freedom. Read the procedures a professor can use to complain about potential academic freedom violations. Also find and read the policies on student rights. Volunteer to serve on a committee, lead a workshop, or teach about academic freedom. Talk to faculty, students, and administrators about their views on academic freedom.

For More Information

American Association of University Professors

www.aaup.org

American Council on Education

www.acenet.edu

Association of American Colleges and Universities

“Statement on Academic Freedom and Educational Responsibility”

www.aacu.org/About/statements/academic_freedom.cfm

Association of Governing Boards of Colleges and Universities

“Statement on Board Responsibility for Institutional Governance”

www.agb.org/statement-board-responsibility-institutional-governance

Chronicle of Higher Education

www.chronicle.com

Finkin, Matthew W., and Robert C. Post, *For the Common Good: Principles of American Academic Freedom* (Yale University Press, 2009)

Frederic Ewen Academic Freedom Center

New York University

www.nyu.edu/library/bobst/research/tam/ewen/

Inside Higher Education

www.insidehighered.com

University World News

International academic freedom newsletter available

www.universityworldnews.com

As an additional resource on institutional rights, see the brief *amicus curiae* filed in 2003 on behalf of Columbia University and a group of other private universities in the United States Supreme Court in *Grutter v. Bollinger*. The brief is available, along with all others in the case, on the University of Michigan’s website. www.vpcomm.umich.edu/admissions/legal/gru_amicus-ussc/um/Columbia-both.pdf

Accreditation Standard on Academic Freedom

The excerpt below comes from the higher education accrediting standards of the Middle-States Association of Colleges and Schools. The Association accredits over 500 colleges and universities. The excerpt illustrates the interest that many accrediting groups take in academic freedom.

Academic freedom, intellectual freedom, and freedom of expression are central to the academic enterprise. These special privileges, characteristic of the academic environment, should be extended to all members of the institution's community (i.e., full-time faculty, adjunct, visiting or part time faculty, staff, students instructed on the campus, and those students associated with the institution via distance learning programs).

Academic and intellectual freedom gives one the right and obligation as a scholar to examine data and to question assumptions. It also obliges instructors to present all information objectively because it asserts the student's right to know all pertinent facts and information. A particular point of view may be advanced, based upon complete access to the facts or opinions that underlie the argument, as long as the right to further inquiry and consideration remains unabridged.

www.msche.org/publications/CHX06060320124919.pdf

This accrediting standard applies the protection of academic freedom not only to faculty but also to students, staff (which would include the college president), and probably the governing board. The standard expands the traditional understanding of academic freedom, which is presented in the primer above.

About The Difficult Dialogues Initiative

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An electronic version of this report is available from the Association of Governing Boards of Universities and Colleges at www.agb.org.