

Higher Education in Transition: Educating Governing Boards

A Sample Background Paper on Academic Freedom
for a Governing Board

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Academic freedom is a core value, or perhaps even *the* core value, at virtually all American colleges and universities. Yet according to a recent study by the Association of Governing Boards of Universities and Colleges, only 39% of higher education institutions provide orientation on academic freedom to new members of their governing boards.¹ This paper is a sample briefing document on academic freedom that could, with adaptations, be distributed to new or continuing board members. It endeavors to explain key elements of academic freedom in ways that will be most relevant to trustees. Trustees with backgrounds in business, financial services, law, politics, and other areas outside of higher education may benefit particularly from occasional briefings on academic freedom.

¹ “Faculty, Governing Boards, and Institutional Governance,” Association of Governing Boards of Universities and Colleges, 2010. Full text available at http://agb.org/sites/agb.org/files/u16/FacultyGoverning%20BoardsandInstitutionalGovernance_final.pdf

What Is Academic Freedom?

The American higher education system is generally regarded as the world's best and most diverse. A fundamental value on which the system is based is *academic freedom*. Academic freedom protects faculty members and students from unreasonable constraints on their teaching, learning, and research. It is a broad privilege giving faculty and students great leeway in addressing their academic subjects. Under principles of academic freedom, a faculty member may publish a controversial research paper; a speaker invited to campus may endorse unpopular views; and a student may disagree with the professor during a class discussion. These are but a few examples of principles of academic freedom.

What Is the Point of Academic Freedom?

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

- (1) Educating students to develop their own independence of mind. Colleges and universities expose students to new ideas, new conceptual approaches, and new forms of arguments and creativity. Each academic discipline offers its own framework for these issues. Creativity in art differs, for example, from creativity in history or accounting. In high school students learn facts, apply processes, and master material given to them. In college students seek out facts, test them, and seek to develop their own frameworks of knowledge and truth. A college education also differs fundamentally from vocational or technical training. The college professor and student both need leeway to explore controversial ideas, and academic freedom gives them room to do so without unnecessary supervision by others.

(2) Advancing knowledge through research and creativity. In colleges and universities, faculty work to advance knowledge. They conduct research, author creative writings, create paintings, write music, and create art in other forms. Students may also engage in research and creative activity. As with teaching, close supervision could stifle research and creative activities.

Someone who is looking over his or her shoulder all the time will be constrained in exploring, teaching, and learning.

How Broad is Academic Freedom?

Academic freedom involves both rights and responsibilities. While the rights may be broad, the companion responsibilities help define their limits. Take, for example, the student who chooses to disagree with the professor during a class discussion. With this right comes the responsibility to maintain appropriate classroom behavior. The student may not monopolize the discussion to the point that others become unable to participate. The student may not redirect the conversation to an unrelated topic. Whatever his or her personal views may be, the student remains responsible for learning the course material.

Academic freedom rights of professors, while broader than those of students, also come with a set of corresponding professorial responsibilities. The professor must, for example, use pedagogical methods appropriate to the discipline. He or she must abide by institutional grading standards and assign grades without discrimination or arbitrariness.

What Resources Help Define or Explain Academic Freedom?

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

- (i) **Institutional Policies.** Most college and university policies address academic freedom. A typical policy would affirm both freedom in teaching and freedom in research. It would also provide procedural protections, or so-called “academic due process,” to guard against adverse actions motivated by an inappropriate desire to suppress academic freedom. The policies might be found in a faculty handbook or institutional policy compendium. A particular department might elaborate on institutional policy and apply the concepts to academic freedom to its own academic discipline.

[Our policies on academic freedom include – insert relevant policies from the institution.]

Appendix A includes a sample academic freedom policy.

- (ii) **Accreditation Standards.** Colleges and universities undergo formal accreditation by external groups. The accreditation process, which the federal government regulates, validates the effectiveness of higher education institutions. Accreditation is a necessary precondition to receipt of certain federal funds. Many, although not all, accrediting bodies promote the value of academic freedom for the institutions they accredit. See Appendix B for a sample academic freedom statement from an accrediting body.
- (iii) **National Policy Recommendations**
- Since 1915, the American Association of University Professors has sought to define and defend faculty academic freedom in American higher education. It has

promulgated model policy statements, sometimes in collaboration with other higher education associations. These model policies define academic freedom rights and responsibilities. One key document provides:²

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; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
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. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment....

Note the distinction between “*full* freedom in research” and “freedom in the classroom,” indicating that research has fewer constraints than teaching. Institutions may incorporate the model policy recommendations into their handbooks and policies, adapt them to fit their own circumstances, or ignore them.

How Do Religiously-Affiliated Institutions Address Academic Freedom?

AAUP acknowledges that some institutions with religious goals may wish to condition academic freedom on doctrinal responsibilities. Its model policies suggest that constraints on academic freedom be stated, in writing, at the time that a faculty member is appointed. The faculty member thus should receive advance notice of any restrictions the institution seeks to place on the usual understandings of academic freedom.

² 1940 *Statement of Principles on Academic Freedom and Tenure*, available at www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm.

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*. A private college or university is not a governmental entity, so the First Amendment not apply to the actions it might take against professors. Public colleges and universities are, in contrast, governmental entities. Their actions against faculty must satisfy First Amendment requirements.

Some federal court decisions involving public institutions interpret the First Amendment as including *some* protection for academic freedom. Note that we say “some decisions” and “some protection.” As the law has developed, most higher education attorneys view academic freedom as a broader concept than speech protected by the First Amendment.

Do Adjunct Professors 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 need to help protect the rights of their untenured colleagues.

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

Well-run colleges and universities need and want the candid views of their faculty. Faculty advice is critical in matters of academic affairs such as selecting new faculty or establishing degree requirements. It is important in other areas such as budgeting, athletics, and student life. Faculty opinions can help, for example, identify areas of potential improvement. One research university president, engaged in conversation with a community business leader, mentioned that the university was seeking experienced consultants who could help improve its operations. The

business leader replied that the president might look to his own faculty, explaining that the business community regularly turned to the faculty for consulting projects. Perhaps the faculty could assist the institution as well? The president took this advice and began involving faculty more deeply in a range of campus projects.

Many observers of academic freedom conclude that faculty freedom to participate in institutional governance is a subsidiary of academic freedom. Faculty should remain free, they argue, to express their professional opinions on issues affecting the lives 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 operations.

Does the President Have Academic Freedom? How about Board Members?

No. A college president represents the institution and is accountable to its governing board. The president is not generally considered to have academic freedom rights. If a president also engages in teaching or research, the president would have academic freedom just in those activities.

Governing board members owe their best, unbiased advice to the institutions they govern. Their responsibility always to act in the institution's best interest often calls for restraint, especially in public settings. Academic freedom does not apply to governing board members, although the institution benefits from board members' candid opinions.

Does the Institution Have Academic Freedom?

Institutions often seek freedom from excessive external regulation. Government rules can, for example, prove intrusive and burdensome to a college or university. Institutions often argue that they are entitled to “institutional autonomy,” a term designed to differentiate institutional rights from individual academic freedom. The goals of institutional autonomy and academic freedom are similar, to advance the education of students and the pursuit of knowledge. An institution seeks autonomy so that it can, in turn, accord freedom to its faculty and students.

Do Topics Do Academic Freedom Controversies Involve?

The subjects that generate academic freedom controversies tend to reflect the social and political concerns of the day. In 1901, for example, Stanford University dismissed noted economist Edward Ross because Mrs. Leland Stanford, Jr., disliked his views on the gold standard. In the McCarthy era, advocating communism was a dismissible offense. Today our social “hot buttons” include Middle East policy, war, terrorism, sexuality, and race.

Interest groups within an institution or external to it may seize upon a seemingly minor matter, such as the wording on a tee shirt, to fuel a controversy. They may claim that, by wearing the shirt, a faculty member created an inappropriate classroom environment. The message on the shirt would, today, likely involve one of our collective “hot button” topics. The episode might be used as a vehicle for an internal or external interest group to advance its social agenda. Media coverage can further enflame a controversy, and a president may be flooded with angry emails calling for suppression of campus speech.

Does Protecting Academic Freedom Ever Conflict With an Institution's Legal Obligations?

Yes. Here is an example. Citizens in Nassau County, New York, filed a request under the New York open records law for a teaching film used in a course on human sexuality at the local community college. The film was intended only for educational purposes and was not available to the general public. The college fought against disclosure of the film, arguing that its release could chill teaching and learning. The courts eventually resolved the dispute against the college's position. The college president, however, was applauded for his efforts to defend academic freedom. In another example, a researcher sought to study the effects of alcohol consumption on late adolescents. The state liquor law prohibited drinking by those under age 21 and provided no exception for legitimate scholarly research.

How Can Trustees Work to Protect Academic Freedom?

There are many ways that trustees and governing boards can protect academic freedom. Here are some examples:

- Be ready to explain academic freedom and its importance to the institution and society.
- Support the president, provost, and other senior administrators as they work to protect academic freedom.
- Ensure that institutional policies substantively protect academic freedom for faculty and students. Confirm the existence of internal appeal procedures to guard against violations.
- Confirm institutional compliance with any accrediting standards on academic freedom.
- Offer moral support to trustees from other institutions who may be embroiled in academic freedom controversies.

- Attend controversial plays, art exhibits, films, and similar events. Show that your mind is open to new ideas.
- Regularly discuss the value of academic freedom with fellow board members, public groups, and other audiences.

SELECTED RESOURCES FOR MORE INFORMATION

American Association of University Professors.

Visit www.aaup.org

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 Universities and Colleges

www.agb.org

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/

APPENDIX A
SAMPLE ACADEMIC FREEDOM POLICY

I. ACADEMIC FREEDOM

The right of faculty members to academic freedom is of fundamental importance to an academic institution. That right shall be protected at _____[name of institution]_____.

Academic freedom is the particular freedom of scholars, teachers, and students within the University to pursue knowledge, speak, write, and follow the life of the mind without unreasonable restriction. It is that freedom to be judged as scholar, teacher, or student, when such judgment is necessary, on the basis of legitimate intellectual and professional criteria, not personal beliefs, political views, religious or other individual preferences, except as these may demonstrably affect intellectual and professional achievement.

Procedures for arriving at professional, personnel, and academic decisions affecting faculty members shall assure fair consideration of the substance of the decision. Procedures of each decision-making body in the University that are consistent with this policy statement need not be uniform. Maximum departmental autonomy and wide intellectual and procedural latitude are too important to be unnecessarily restricted. What is required of such procedures is that they be basically fair. Academic freedom may be violated if it can be shown that unfair procedures have contributed significantly to a substantial professional, personnel, or academic decision adverse to the person complaining.

II. RESPONSIBILITIES OF FACULTY MEMBERS

A. Teaching and Research.

The faculty member has an obligation to fulfill his/her teaching and research responsibilities. The faculty member's primary responsibility to his/her subject is to seek and to state the truth as he/she sees it. To this end the faculty member devotes his/her energies to developing and improving his/her scholarly competence. The faculty member accepts the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. The faculty member practices academic honesty. As a member of this University, the faculty member seeks above all to be an effective teacher and scholar. Although the faculty member may follow subsidiary interests, these interests must not seriously hamper or compromise his/her scholarly pursuits. The faculty member determines the amount and character of his/her activities outside the University with due regard to his/her paramount responsibilities within it.

Because academic freedom traditionally has included the faculty member's full freedom as a citizen, most faculty members face no insoluble conflicts between the claims of politics, social action, and conscience, on the one hand, and the claims and expectations of their students, colleagues, and the institution, on the other. If such conflicts become acute, and the faculty member's attention to

his/her obligations as a citizen and moral agent precludes the fulfillment of his/her academic obligations, the faculty member cannot escape the responsibility of that choice, but should either request a leave of absence or resign his/her academic position.

Since faculty members are free to engage in political activities, they may request leaves of absence for the duration of an election campaign or other political activity when such activity might interfere with full-time duties and responsibilities to the University. The terms of such leaves of absence shall be set forth in writing, and the leave shall not affect unfavorably the tenure status of a faculty member, except that time spent on such leave shall not count as probationary period service unless otherwise agreed to.

B. Students.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Faculty members may not refuse to enroll or teach students on the grounds of students' beliefs or the possible uses to which they may put the knowledge to be gained in a course. A faculty member may not use the authority inherent in the instructional role to sexually harass, to discriminate against by reason of sex, sexual orientation, color, race, handicap, religion, or national origin, or to compel the student to make particular personal choices as to political action or his/her own role in society. Evaluation of students and award of credit must be based on academic performance professionally judged and not on matters irrelevant to that performance, such as personality, race, religion, politics, sex, sexual orientation, or personal beliefs.

C. Courses.

It is a faculty member's position, based on mastery of his/her subject and his/her own scholarship, which entitles the faculty member to freedom in the presentation of his/her subject. Thus, it is improper for a faculty member persistently to intrude material which has no relation to his/her subject, or to fail to present the subject matter of his/her course as approved generally by the faculty in its collective responsibility for the curriculum. This is not to be narrowly construed as a restriction on the free presentation of his/her subject.

Policy of Washington University (St. Louis). www.wustl.edu/policies/tenure.html

APPENDIX B ACCREDITATION AND ACADEMIC FREEDOM

The excerpt below is drawn from the accrediting standards of the Middle-States Association on Colleges and Schools. It illustrates the interest that many accrediting bodies 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