

Academic Freedom, and Employment Protections for University Employees

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Sources of Job Protections for Professors

- **Annual Contracts**
- **University Policy/Faculty Constitution**
- **Idaho State Board of Education Policy**
- **Tenure Protections– policy and constitutional**
- **Whistleblower Protection – IPPEA**
- **First Amendment Outside of Work**
- **Academic Freedom and Free Speech in the Classroom**
- **Equal Protection/Anti-Discrimination**

Policy Manual



BOISE STATE UNIVERSITY

Examples Include:

- **Faculty Grievance Policy 4480**
- **Whistleblowing Policy 7030**
- **Non-discrimination and Anti-harassment Policy 1060**
- **Tenure and Promotion Policy 4340**
- **Periodic Review Policy 4380**

Faculty Constitution

Boise State University

Faculty Senate Constitution

Amended: December 2018

Effective Date: February 2019

In adopting this constitution the President and Faculty of Boise State University affirm **our belief in academic freedom** and responsibility as specified in the Idaho State Board of Education policy (Section III.B, April 2002) and the American Association of University Professors 1940 Statement of Principles on Academic Freedom and Tenure.

Whereas, institutions of higher education are established for the common good and not to further the interest of either the individual teacher or the institution as a whole, and the common good depends upon the free search for truth and its free exposition through scholarship. Academic freedom is essential to these purposes and applies to teaching, research, and service. Academic freedom in teaching is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. Academic freedom in research is fundamental to the advancement of truth. Academic freedom in service is fundamental to the advancement of the common good and the development of educational programs and policies. Academic freedom should not be abridged or abused. Academic freedom carries with it duties correlative with rights. Faculty 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.



1940 Statement of Principles on Academic Freedom and Tenure

with 1970 Interpretive Comments

Academic Freedom and the First Amendment (2007)

Presentation to the AAUP Summer Institute

By Rachel Levinson, AAUP Senior Counsel

July 2007 ¹

Policy 2181: Academic Freedom

Status: ADOPTED

Original Adopted Date: 06/01/1998 | **Last Revised Date:** 08/11/2003 | **Last Reviewed Date:** 10/03/2018

Academic Freedom

The Board supports the exercise of academic freedom when it includes:

- Consideration of the rights of others.
- Maintenance of the educational process.
- Concern for the welfare, growth and development of others.
- Objective scholarship.
- Compliance with District curriculum, policy, procedures, values, mission statement and strategic plan.
- Compliance with state and federal laws, court decisions and regulations.

Definition

Academic Freedom: freedom of school personnel or students to investigate or discuss controversial social, economic and political issues and problems without arbitrary interference or loss of standing.

IPPEA

- 6-2104. REPORTING OF GOVERNMENTAL WASTE OR VIOLATION OF LAW — EMPLOYER ACTION.
- (1)(a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property or manpower, or a violation or suspected violation of a law, rule or regulation adopted under the law of this state, a political subdivision of this state or the United States. Such communication shall be made at a time and in a manner that gives the employer reasonable opportunity to correct the waste or violation.
- (b) For purposes of paragraph (a) of this subsection, an employee communicates in good faith if there is a reasonable basis in fact for the communication. Good faith is lacking where the employee knew or reasonably ought to have known that the report is malicious, false or frivolous.
- (2)(a) An employer may not take adverse action against an employee because an employee in good faith participates or communicates information in good faith in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review concerning the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or the United States.
- (b) For purposes of paragraph (a) of this subsection, an employee participates or gives information in good faith if there is a reasonable basis in fact for the participation or the provision of the information. Good faith is lacking where the employee knew or reasonably ought to have known that the employee's participation or the information provided by the employee is malicious, false or frivolous.
- (3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law or a rule or regulation adopted under the authority of the laws of this state, political subdivision of this state or the United States.
- (4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property or manpower, or a violation or suspected violation of any laws, rules or regulations.

First Amendment - Faculty Constitution cont.



College and university teachers are citizens, members of a learned profession, and officers of the educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

RELATIONSHIP BETWEEN LAWS

Federal Constitution

⇒ Idaho Constitution

⇒ Idaho State Law
HB377

First Amendment Academic Freedom

- “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”
- The classroom is peculiarly the ‘marketplace of ideas.’ The Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, (rather) than through any kind of authoritative selection.’

Keyishian v. Board of Regents, 385 U.S. 589, 603 (1967).

- It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion.” *Wieman v. Updegraff*, 344 U.S. 183, 196 (1952) (Frankfurter, J., concurring).
- “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853, 868 (1982).

What is covered?

- Protected for full-time, part-time, tenure and tenure-track and contingent professors and lecturers, graduate student instructors, and research assistants.
- Includes the liberty to conduct research and draw conclusions rooted in evidence.
- Includes the right to select course materials and content, pedagogy, make assignments, and assess student performance. These should be germane to the subject matter.
- Certain limits: e.g. University grading policy, protections against a hostile education environment

Speech in the Classroom:

Hardy v. Jefferson Community College

- An African-American student alleged that professor Hardy used offensive language in a lecture on language and social constructivism. Hardy was not offered a class to teach the following semester.
- In Hardy's course, students were asked to examine how language "is used to marginalize minorities and other oppressed groups in society," and the discussion included examples of derogatory, sexist, and racist language.
- The Court ruled in favor of Hardy, finding that the topic of the class—"race, gender, and power conflicts in our society"—was a matter of public concern and held that "a teacher's in-class speech deserves constitutional protection."

Speech in the Classroom:

Bonnell v. Lorenzo

- A female student filed a sexual harassment complaint alleging Bonnell repeatedly used lewd and graphic language in his English class. The college terminated Bonnell.
- “While a professor’s rights to academic freedom and freedom of expression are paramount in the academic setting, they are not absolute to the point of compromising a student’s right to learn in a hostile-free environment.”
- Bonnell’s use of vulgar language was “not germane to the subject matter” of the course, and therefore unprotected.

Curricular Assignments

Yacovelli v. Moeser

- At the beginning of the school year, UNC scheduled a school-wide discussion for all new students based on the book *Approaching the Qur'an: The Early Revelations*. Lawsuit alleged this violated separation of church and state.
- “There is obviously a secular purpose with regard to developing critical thinking, [and] enhancing the intellectual atmosphere of a school for incoming students.”

Curricular Assignments

Axson-Flynn v. Johnson

- Axson-Flynn, a college theater student, changed some words in assigned scripts for in-class performances so as to avoid using words she found offensive based on her religious beliefs. Her professors warned her that she would not be able to change scripts in future assignments. Axson-Flynn left the program and sued.
- Court: the school could compel speech from Axson-Flynn if doing so was “reasonably related to legitimate pedagogical concerns.”

- Courts should not to override a faculty member's professional judgment “unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.” *Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 (1985).
- [W]e may override an educator's judgment where the proffered goal or methodology was a sham pretext for an impermissible ulterior motive.
- So long as the teacher limits speech or grades speech in the classroom in the name of learning and not as a pretext for punishing the student for her race, gender, economic class, religion or political persuasion, the federal courts should not interfere.” *Settle*, 53 F.3d at 155–56

Axson-Flynn, continued

Sweezy v. State of N.H. by Wyman

- NH legislature authorized a commission to investigate subversive activities.
- Sweezy was called before the commission and asked about a lecture he gave at the University of New Hampshire.
 - ‘Didn't you tell the class at the University of New Hampshire on Monday, March 22, 1954, that Socialism was inevitable in this country?’
 - ‘Did you advocate Marxism at that time?’
 - ‘Did you express the opinion, or did you make the statement at that time that Socialism was inevitable in America?’

Sweezy, continued

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.

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