

# **Academic Freedom, and Employment Protections for University Employees**

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# SOURCES OF JOB PROTECTIONS FOR PROFESSORS

- **Annual Contracts**
- **University Faculty Staff Handbook**
- **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**

# Faculty Staff Handbook

## Examples Include:

- 3.8 – Dispute Resolution and Employee Grievances
- 3200 – Policy of Nondiscrimination
- 3290 – Protection of Public Employees Reporting of Waste or Violations of the Law
- 3500 – Promotion and Tenure
- 3160 – Academic Freedom, Rights, and Responsibilities



**University  
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# BOE Policy adopted by the Univ. of Idaho

## Governing Policies and Procedures Section III. Postsecondary Affairs

In adopting the following policy statement concerning academic freedom and responsibility, the State Board of Education and Board of Regents of the University of Idaho affirms its belief that **academic freedom should not be abridged or abused**.

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- “Institutions of higher education are operated for the common good and not to further the interests of individual faculty members or the institution as a whole. **Academic freedom is essential** to protect the rights of the faculty member in teaching and the student in learning. Freedom in research and teaching is fundamental to the advancement of truth. Academic freedom carries with it responsibilities as well as rights.”
- **Faculty Staff Handbook Policy 3160** – explains the research and teaching rights and responsibilities.



# 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 <sup>1</sup>

Idaho State Board of Education

## GOVERNING POLICIES AND PROCEDURES

SECTION: III. POSTSECONDARY AFFAIRS

Subsection: B. Academic Freedom and Academic Responsibility

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- *Academic Freedom is a long-standing philosophical, legal, and constitutional principle of freedom of speech that advances the right of postsecondary students, faculty, and institutions to pursue educational opportunities that seek, examine, apply, discuss, and build knowledge, theories, values, concepts, or ideas without fear of censorship, retaliation, or threat to institutional status.*
- *Academic Freedom of Faculty*
  - *In addition to constitutionally protected freedoms of speech, assembly, and religion, faculty have the right to engage in free inquiry, intellectual debate, and freedom of scholarship both on and off campus. Faculty shall not be subject to retaliation or censorship in response to their research, publications, creative activity, pedagogy, participation in institutional governance, and all other official aspects of their job description. When speaking or writing as a citizen, each faculty member should be free from institutional censorship or discipline. Faculty are subject to the responsibilities outlined in paragraph 3.b. of this policy.*

# 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.**



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# First Amendment – Faculty Staff Handbook

“Teachers are citizens, members of learned professions, and representatives of their institutions. When they speak or write as citizens, they should be free from institutional censorship or discipline. However, as members of the academic community and as representatives of their institutions, they should at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they do not officially speak for the institution.” Policy 3160 B-3.b.



# 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).

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- 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).
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# 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
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- A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

# Speech in the Classroom:

*Hardy v. Jefferson Community College*

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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.

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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.

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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.”

- 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.”

## Curricular Assignments

*Axson-Flynn v. Johnson*



- 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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