

ACADEMIC FREEDOM

Freedom of inquiry and the open exchange of ideas are fundamental to the vitality of our academic institutions. The current notion that freedom and national security are opposed denies the basic premise of a free democratic society where open exchange of information, public access to vital information and ability to openly challenge governmental decisions without fear of reprisals, increases rather than hinders national security.

The principles of academic freedom are critical to ensure higher education's important contribution to the common good. Basic academic freedom includes the ability to research and publish, the freedom to teach and the freedom to communicate extramurally. These freedoms have not been so challenged since The McCarthyism era of the 1950's. The essence of academic liberty is profoundly threatened by background investigations, the monitoring of classrooms, the surveillance of library research and monitoring of e-mail communications.

The authority for academic freedom is broad based. The most recognized authoritative definition is traced to the American Association of University Professors 1940 Statement of Principles on Academic Freedom, with the 1970 and later Interpretive Comments (www.AAUP.org). This statement has been endorsed by most institutions of higher education. The U.S Constitution's First Amendment is an additional primary source cited for academic freedom. The concept that constitutional law's primary focus is to control the exercise of excessive governmental power highlights consistent judicial interpretations that apply the principles of the First Amendment free speech protections to academic freedom (Regents of Univ. of California v Bakke (1978); Widmar v Vincent (1981)). Other authority for academic freedom is found in Federal legislative enactments, state constitutions and statutes, contractual rights and recognized academic custom and usage (an academic freedom common law).

In California, the Higher Educational Employer-Employee Relations Act (HEERA), section 3561(b), provides: "The legislature recognizes that joint decision-making and consultation between administration and faculty or academic employees is the long accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of such institutions, and declares that it is the purpose

of this act to both preserve and encourage that process”. In a recent California case, Moosa v. State Personnel Board (2002), the Court of Appeals, 3rd District, found that academic freedom rights are often contained in institutional rules, letters of appointments, faculty handbooks, and collective bargaining agreements. Thus, academic freedoms can derive from many sources in addition to those provided by the Constitution.

The court will generally respect the academic decision making process and the professional judgment of faculty, giving deference to the special knowledge and expertise of faculty in matters concerning academic quality. This includes retention, promotion and tenure decisions and student assessment. (University of Michigan v Irving (1985) 474 US 214).

Faculty must be diligent in defending the right to exercise control over their teaching methods, course content, grading practices and policies, inquiry and research, and extramural communication. Each of these areas has been the subject of recent litigation. Faculty who have maintained germaneness to the subject matter and accuracy, and acted within established professional norms, have prevailed. Inaccurate statements not related to the subject matter that fall outside professional norms, such as sexually or racially degrading comments, will not be protected academic speech, in or outside the classroom (Bonell v Lorenzo (2001) 241 F3d 800).