



# THE HIGHER ED CLASSROOM

...and Academic Freedom.





400 BC



1920



1940



1960



1980



2000



2010



2017

While Classroom and learning spaces look very similar, there are some fundamental changes in the psychology that supports student learning.

Should some of these changes force us to reframe Academic Freedom?

# Academic Freedom

Academic freedom is not the ability for a faculty member to say what they want, how they want.

Extension of the 1<sup>st</sup> amendment. 1<sup>st</sup> amendment does allow for limitations that include time, place and manner.

Best guide is [AAUP's 1940 Statement](#)

- What is Academic Freedom?
- What does academic freedom look like in today's classroom?
- What did academic freedom look like when you were an undergraduate in college?
- If the 1<sup>st</sup> amendment has limitations, does academic freedom have limitations as well?

# Academic Freedom from AAUP 1940

Is academic freedom protected under any other constitutional amendment?

14th Amendment

*1) Forbids States from denying any person "life, liberty, or property without due process of the law."*

- 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.
- 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.



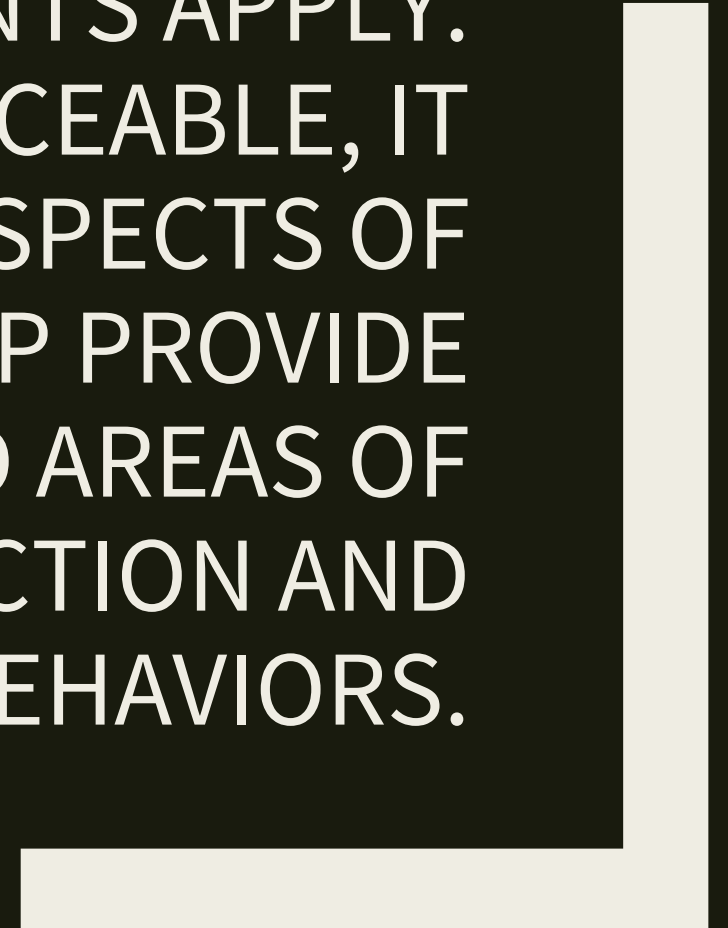
# Academic Freedom from AAUP 1940 (cont.)

Do public employees forfeit their right to freedom of speech by virtue of their public employment?

Should aspects of Academic Freedom should be governed similar to other policy matters?

- College and university teachers are citizens, members of a learned profession, and officers of an 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.

THIS IS AN INTRODUCTION TO ACADEMIC  
FREEDOM AS CONSTRAINTS APPLY.  
REGARDLESS IF LEGALLY ENFORCEABLE, IT  
IS MEANT TO HIGHLIGHT KEY ASPECTS OF  
ACADEMIC FREEDOM AND TO HELP PROVIDE  
CONTEXT FOR PROTECTED AREAS OF  
ACADEMIC INSTRUCTION AND  
PROFESSIONAL BEHAVIORS.



# Where do academic freedom governance constraints come from?

## Inside Institutions

- Board Policy
- Department or Academic Policy
- Common Practice or Procedure
- Administrative Action/Mandates

## Outside Institutions

- State Action/Mandates
- Policies from External entities:
  - *SACS*
  - *THECB*
- Federal Policy Interpretations/Applications
- Case Law

# Case Law:

## Garcetti v. Ceballos

- DA wrote memo against supervisors
- “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.”
- The Supreme Court cited that that public employers can and must have the ability to restrict the speech of their employees “in order for public institutions to operate efficiently and effectively.”

## Sheldon v. Dhillon

- Class discussion on homosexuality that was questionably based on scientific principles.
- “a teacher’s instructional speech is protected by the First Amendment, and if the defendants acted in retaliation for her instructional speech, those rights will have been violated unless the defendants’ conduct was reasonably related to a legitimate pedagogical concern.”

# Case Law (Cont.)

## Savage v. Gee

- Reference Librarian published a book that spoke poorly of homosexuality.
- Academic freedom can be limited based on job function.
- "Savage's speech as a committee member commenting on a book recommendation was not related to classroom instruction and was only loosely, if at all, related to academic scholarship."

## Gorum v. Sessoms

- Professor spoke out in support of an athletics employee and was terminated.
- "A public employee's speech could be "part of his official duties if it relates to 'special knowledge' or 'experience' acquired through his job." In this case it was not related to scholarship or teaching. (Modifying Garcetti)

# Case Law (Cont.)

## Parate v. Isibor

- Faculty member asked to change the final grade for a student.
- 6<sup>th</sup> Circuit said, “because the assignment of a letter grade is symbolic communication intended to send a specific message to the student, the individual professor's communicative act is entitled to some measure of First Amendment protection.”
- Interesting side comment cited that the administration could have done it on their own, but the asking constituted a violation.

## Clark v. Holmes

- Faculty member “over emphasized sex” in a health course and coworkers complained.
- The University’s interests as an employer overcame any free speech interests that the teacher may have had.
- 7<sup>th</sup> Circuit said, “we do not conceive academic freedom to be a license for uncontrolled expression at variance with established curricular contents and internally destructive of the proper functioning of the institution.”
  - *The need to maintain discipline or harmony among coworkers*
  - *The need for confidentiality*
  - *The need to curtail conduct which impedes the teacher’s proper and competent performance of his daily duties*
  - *The need to encourage a close and personal relationship between the employer and his supervisors where the relationship calls for loyalty and confidence*

# Case Law (Cont.)

## Lovelace v. Southeastern Massachusetts University

- Contract not renewed because faculty member rejected administrative requests to lower the academic standards of his class.
- Institutions of higher education must have the freedom to set their own standards on “matters such as course content, homework load, and grading policy.”
- Institutions are not required to make faculty members, “sovereign unto himself” under the premise of academic freedom.

## Wirsing v. Board of Regents

- Faculty member refused to administer standardized course evaluation forms.
- A faculty member, “may have a constitutionally protected right under the First Amendment to disagree with the University's policies, she has no right to evidence her disagreement by failing to perform the duty imposed upon her as a condition of employment.”

# Case Law (Cont.)

## County of Renesselar v. Hudson Valley Community College Faculty Association

- Faculty member awarded every student in the class 100% in lieu of an exam that had been scheduled but that he chose not to give.
- Appellate court upheld termination and rejected academic freedom claim, “because the grades in question were not evaluative, this case is not about academic freedom.”

## Martin v. Parrish

- Issue of profanity in the classroom
- 5<sup>th</sup> circuit reasoned that “repeated failure by a member of the educational staff of Midland College to exhibit professionalism degrades his important mission and detracts from the subjects he is trying to teach.”
- Language was “not germane to the subject matter in his class and had no educational function.”



# Case Law Summary:

## The Institution:

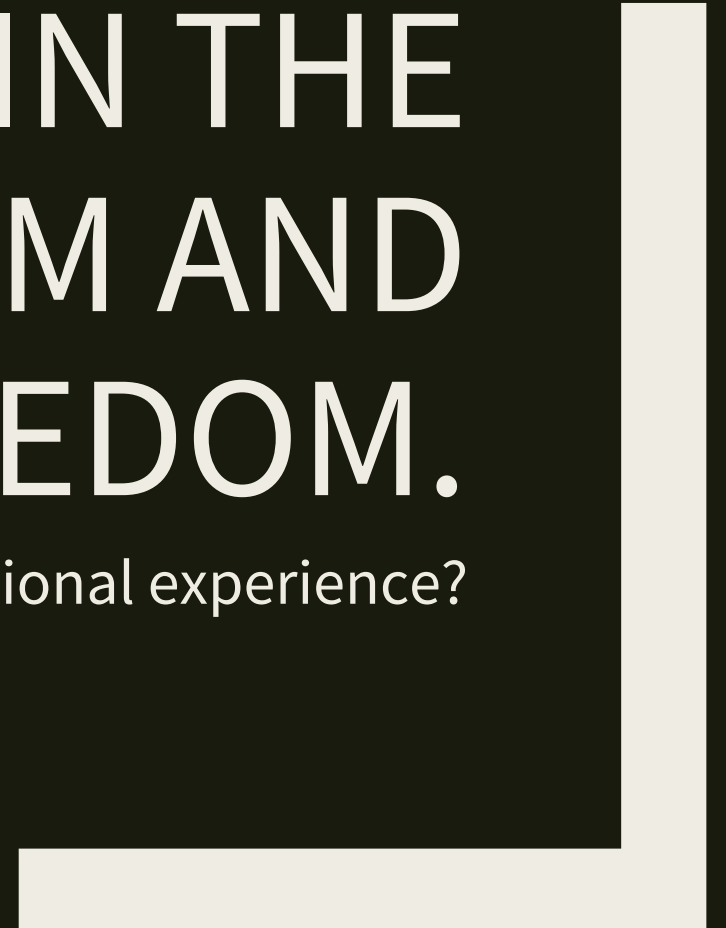
- Can set guidelines to preserve a student's right to hear.
- Can set standards to protect certain employee interests.
- Has the right to set own standards about meeting requirements, course content, homework load, and grading policy.
- Can enforce institutional guidelines by protecting against professional degradation.
- Has access to some of the class

## Content:

- Should be reasonably related to legitimate classroom pedagogical concern.
- Germane to subject matter.
- Pickering Test: In absence of proof of the teacher knowingly or recklessly making false statements the teacher has a right to speak on issues of public importance without being dismissed from his/her position.

# PROFANITY IN THE CLASSROOM AND ACADEMIC FREEDOM.

Does it help or hurt the educational experience?



# Profanity in the Classroom

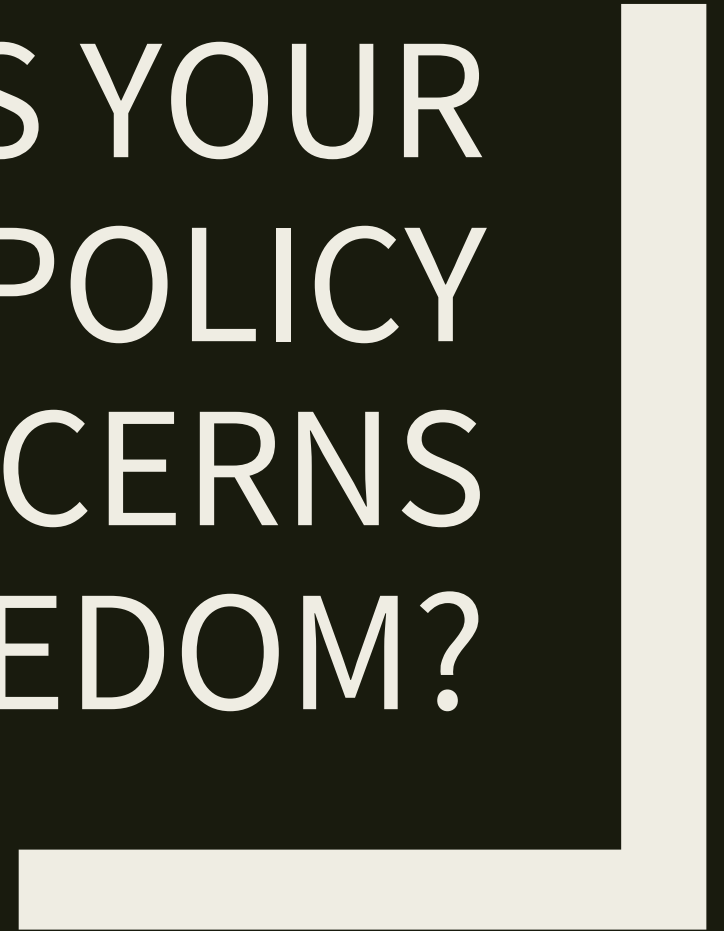
Academic Freedom does not always cover obscene, offensive, or vulgar language or images.

An institution has the right to limit free speech in the classroom because all citizenry has a “right to hear.”

*Language should be specifically germane to the topic.*

- Is a faculty member able to say whatever they want in a classroom?
- Examples, are they okay or not?
  - *Saying that the “Jim Crowe laws are “Shi##y” verbally in a classroom.*
  - *Saying that a founding father was “patriotic AF” on a PowerPoint lecture.*
  - *Telling students that they “don’t know Sh##” about a subject in a 1-on-1 conversation.*
  - *Telling a student to “get the hell out” of a classroom in front of other students.*
- Does attribution of the language make inon-offensive language offensive?
- Do the FCC’s Consumer Guidelines apply to classrooms?  
<https://www.fcc.gov/consumers/guides/obscene-indec-ent-and-profane-broadcasts>
- What makes speech offensive?

WHERE DOES YOUR  
COLLEGE PUBLISH POLICY  
THAT CONCERNS  
ACADEMIC FREEDOM?



# Limiting Speech TASB

EJA(Local)-X

Adopted 2017

Issued 7/20/1987

TASB NCTC Board Policy

Institutions of higher education are conducted for the common good. The following statements rest upon the belief that the common good depends upon a free search for truth and its free expression without intent to do personal harm.

Each faculty member is entitled to full freedom in the classroom in discussing the subject which he/she teaches. Limitations to this basic statement exist only within the bounds of common decency and good taste. Each faculty member is also entitled to speak or write as a citizen of the nation, state and community without fear of institutional censorship or discipline.

The concept of academic freedom must be accompanied by an equally demanding concept of responsibility shared by the Board, administration, and faculty members.

The fundamental responsibilities of faculty members as teachers and scholars include a maintenance of competence in their field of specialization and the exhibition of such competence in lectures and discussions. Although publishing is not a fundamental responsibility of a faculty member, it is encouraged by the College.

# EJA(Local) (Cont.)

Do you see where the institution can limit academic freedom?

Is your Academic Freedom Statement sufficient for your college?

Exercise of professional integrity by a faculty member includes recognition that the public will judge the profession and the institution by his/her statements both in public and in private life. Therefore, he/she should strive to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to avoid creating the impression that he/she speaks or acts for his/her College when he/she speaks or acts as a private person.

A faculty member should be selective in the use of controversial material in the classroom and should introduce such material only as it has clear relationship to the subject field.

# Faculty Code of Ethics

Where does your Faculty Code of Ethics come from?

*TCCTA?*

*Institutionally Derived?*

Professional Educators affirm the inherent worth and dignity of all persons and the right of all persons to learn. Learning best occurs in an environment devoted to the pursuit of truth, excellence, and liberty. These flourish where both freedom and responsibility are esteemed.

(13.) The Professional Educator shall support the right of all colleagues to academic freedom and due process and defend and assist a professional colleague accused of wrongdoing, incompetence, or other serious offense so long as the colleague's innocence may reasonably be maintained.

# Texas Education Code 51.354

INSTITUTIONAL RESPONSIBILITY. In addition to specific responsibilities imposed by this code or other law, each institution of higher education has the general responsibility to serve the public and, within the institution's role and mission, to:

- (1) transmit culture through general education;
- (2) extend knowledge;
- (3) teach and train students for professions;
- (4) provide for scientific, engineering, medical, and other academic research;
- (5) protect intellectual exploration and academic freedom;
- (6) strive for intellectual excellence;
- (7) provide educational opportunity for all who can benefit from postsecondary education and training; and
- (8) provide continuing education opportunities.

- According to the State of Texas, who is responsible for assuring academic freedoms?
- Is there anything constraining to the responsibility?
- What happens when an institution does not protect academic freedom?
- How would the THECB know and how would they investigate?



# SACS 3.7.4 (Now 6.1.4)

The institution ensures adequate procedures for safeguarding and protecting academic freedom. (The institution publishes and implements appropriate policies and procedures for preserving and protecting academic freedom.)

- According to SACS, who is responsible for ensuring Academic Freedoms?
- How would they know?
- On what criteria would they decide that there are “adequate procedures?”
- What would happen if they decide that an institution didn’t have adequate procedures?

# SACS – COC Principles of Accreditation (Now 6.1.4)

- 3.7.4. - The institution ensures adequate procedures for safeguarding and protecting academic freedom. (The institution publishes and implements appropriate policies and procedures for preserving and protecting academic freedom)
- Rationale and Notes
  - *The essential role of institutions of higher education is the pursuit and dissemination of knowledge. Academic freedom respects the dignity and rights of others while fostering intellectual freedom of faculty to teach, research, and publish. Responsible academic freedom enriches the contributions of higher education to society.*
- Relevant Questions for Consideration
  - *How does the institution define academic freedom?*
  - *What are the institutional policies and procedures for safeguarding and protecting academic freedom of faculty?*
  - *How does the institution publicize its policies on academic freedom for faculty?*
  - *If there have been any instances in which issues involving academic freedom have emerged, how have these issues been resolved?*
- Required Documentation:
  - *Publications that include the institution's academic freedom policies*
- Examples of other Types of Documentation
  - *Any evidence regarding institutional academic freedom issues.*

WHO IS RESPONSIBLE FOR THE  
PROTECTION AND THE  
ENFORCEMENT OF ACADEMIC  
FREEDOM IN THE CLASSROOM  
AT YOUR COLLEGE?



# Who is responsible?

<u>Entity</u>	<u>Who and How</u>
SACS	Institution - publishes and implement policies
THECB/State	Institution - protect
TCCTA	Unclear - protect right
Case Law	Institution - protect, limit and govern various aspects
<i>Your College?</i>	<i>Board, Administration, and Faculty?</i>

# Giving Away or Taking Away Academic Freedom?

Institutions are in the public trust and have a right and a responsibility to limit what some may call academic freedoms for the common benefit and good of the public trust.

- What do you think an institution might do to go too far in constraining in their limitations of academic freedom?
- Do you feel like your institution limits academic freedoms in your classroom?
  - *In what ways or manners?*
- Do you think that faculty members are giving away their academic freedoms?
  - *In what ways or manners?*
  - *Does a faculty member giving away academic freedom have a different impact on the discipline than an institution constraining academic freedom?*

# Is there a discernible difference in the trajectory of classroom instruction and college culture?

- Free Speech on Campus: Students are becoming less and less accepting of fringe conversation and actions on college campuses and in classrooms because they can be offensive or challenging.
- NCORE: Faculty are becoming more and more systematically active in the fringe spaces and in institutional advocacy.
- Some are managing this space through trigger warnings (51%)
- *Impressions: Students seem to have desire to choose the diversity of their environments, colleges seem to be moving towards uniformity.*
- *Is this yet another instance where colleges don't understand their consumers?*

What trends in Academic Freedom do you see?