

Phil's Summary of Academic Freedom Policy Issues.

Phil is not a lawyer. Phil is not a historian of the Academic Freedom. Phil has conduct a brief, broad, and shallow research into AF policies and legal history. Based upon this the following is Phil's rationale why the LCC policy on AF should move toward wording similar to the UO's Faculty Senate policy.

1. Existing policy on AF confuses several different rights and is too broad.

It confuses AF with freedom of inquiry, freedom of expression, free speech, and free assembly. It interjects a civility clause. To the extent any of these are required, they should be separate policies.

Freedom of inquiry in an academic environment is covered by academic freedom. Freedom of inquiry is the right to pursue research and have access to knowledge and information. It is most often used to protect libraries, library collections, librarians and library patrons, as well as researchers. Academic freedom is usually seen to cover all these areas in an academic setting.

Freedom of expression, free speech, and freedom of assembly are all protected by the first amendment and are guaranteed in public spaces. As such, there is no need to separately establish policies on these, as they are constitutionally protected in all public spaces and institutions.

What separates AF from these others is that while it is protected by the constitution, it is also broader in some regards (the right to determine course content, methodology, and grading) and narrower in some regards (it applies only to particular roles instructors, students, higher ed institutions) than these other rights due to the academic context. Unlike free speech, etc. , not everyone has the same rights and responsibilities in an academic context. Academic experts (instructors) have nearly exclusive rights to determine course content, teaching methods, grading, and administrators have no rights to intervene unless there is some sort of professional violation (i.e. academic dishonesty, for example). Thus, the need to have an AF policy.

2. U.S. Supreme Court has said that academic freedom is protected speech. However, it has not ruled that AF applies to faculty exclusively. It has said AF means a university can determine for itself on academic grounds:

1. who may teach,
2. what may be taught,
3. how it should be taught, and who may be admitted to study.

Academic freedom involves more than speech rights; for example, it includes the right to determine what is taught in the classroom. In practice, academic freedom is protected by

institutional rules and regulations, letters of appointment, faculty handbooks, collective bargaining agreements, and academic custom.^[28]

In the U.S., the freedom of speech is guaranteed by the First Amendment, which states that "Congress shall make no law... abridging the freedom of speech, or of the press...." By extension, the First Amendment applies to all governmental institutions, including public universities. The U.S. Supreme Court has consistently held that academic freedom is a First Amendment right at *public* institutions.^[29]

3. However, Academic Freedom is unsettled law, as there a number of conflicting legal cases (non-precedent setting) and conflicting interpretations. For example, proponents of "creationism" argue that AF protects the right of educators to teach creationism in the classroom. While opponents argue that AF prohibits creationism from being taught in the classroom as it is a religious belief and not scientifically valid.

Similarly, various groups argue that AF does not protect educators who promote racial supremacy in the classroom under the guise of scholarly inquiry. While libertarian defenders of AF argue that it does protect such speech as a necessary evil of free and open debate and inquiry.

4. The AF policy recently passed by the University of Oregon Faculty Senate is a very good statement because it is simple, open to interpretation, and open to both institutional procedures and legal challenges for clarification. It does not attempt to resolve all of these issues with potentially contradictory or restrictive wording.