

CALIFORNIA STATE UNIVERSITY, BAKERSFIELD
ACADEMIC SENATE
ACADEMIC FREEDOM
RES 202118

FAC

RESOLVED: that the Academic Senate recommend to the President that Section 303.5 of the *University Handbook* be amended to incorporate the following statement on academic freedom (deletions in ~~striketrough~~, additions in **bold underline**):

303.5 Professional Responsibilities of Faculty Members

Faculty members are expected to be guided by the Statement of Professional Responsibility as approved by the CSU Academic Senate and Trustees. The professional responsibilities of a faculty member may be considered from five major perspectives: 1) as a member of the teaching profession; 2) as a teacher; 3) as a colleague; 4) as a part of an institution; and 5) as a member of a community. (See Appendix F for details of the Statement of Professional Responsibilities for Faculty from these five perspectives.)

The Academic Senate affirms that course content, and what content is considered to be essential versus discretionary, is solely in the hands of the faculty. The Senate also sees consultation with the instructor of record and the appropriate academic unit as a necessary step before any determination can be made regarding academic accommodations for students. The American Association of University Professors 1940 Statement of Principles on Academic Freedom, the US. Constitution's First Amendment, and numerous court cases provide support for the practice of academic freedom. While we recognize the importance of consultation with university attorneys, they shall not make determinations about course content and accommodations. (See Appendix H: Academic Freedom for more about Academic Freedom.)

RATIONALE: The *University Handbook* currently contains no explicit assertion of faculty right to academic freedom regarding course content. This revision remedies that omission.

Attachments:

Appendix H: Academic Freedom

Academic Freedom – Senate Letter Frye

Distribution List:

President

Provost

Interim AVP FA

Interim AVP AA and Dean of Academic Programs

School Deans

Interim Dean Antelope Valley

Interim Dean Library

Department Chairs

General Faculty

Approved by the Academic Senate March 4, 2021

Sent to the President March 12, 2021

Approved by the President March 12, 2021

APPENDIX H: ACADEMIC FREEDOM

(Approved by the CSU Academic Senate January 20-21, 2005)

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 US 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).

APPENDIX H: ACADEMIC FREEDOM

(Approved by the CSU Academic Senate January 20-21, 2005)

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 US 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).

To: Dr. Aaron Hegde, Chair, CSUB Academic Senate
Dr. David Gove, California Faculty Association

From: Dr. Steven Frye, Chair, English Department
(On Behalf of the Faculty in the English Department and the A&H Department Chairs)

Re: Religious Accommodation Requirement in Course Readings and Assignments

I write this letter to express concern over a decision made by university counsel. An English professor was required to make a religious accommodation for a student who objected to course content, specifically, a reading and an assignment. It is the unanimous view of the tenured and tenure track members of the department, as well as the Arts and Humanities department chairs, that this determination was a violation of the faculty member's academic freedom as defined in university policy, Appendix H of the University Handbook, and in the policy statements of the American Association of University professors (AAUP). It constitutes a precedent with far-reaching implications for university faculty, and it compromises the AAUP's "Freedom to Teach" statement as well as the integrity of curriculum, which is the sole province of the faculty.

The incident occurred with a first-year tenure-track professor who is currently teaching English 4400, Children's Literature for K-8 Teachers. This course is an elective in the English major and a requirement for the Liberal Studies Program. The syllabus and reading list distributed in the first week of the semester identified all readings and assignments. Late in the term, a student objected to being required to read one of the novels in the Harry Potter series. The student requested that the professor provide an alternate assignment since her religion prohibited her from reading works that involved sorcery and witchcraft. The professor referred the issue to me, and I encouraged him to contact the AVP of Faculty Affairs, Bruce Hartsell. Mr. Hartsell in turn referred the situation to Marcus Brown and, much to our surprise, the faculty member received an email message requiring that the student's accommodation be granted. The professor agreed to the accommodation reluctantly and in protest.

However, this decision establishes a potentially momentous precedent for all academic disciplines and for that reason I immediately contacted Bruce Hartsell and had a phone conversation with Marcus Brown. My purpose was to clarify the decision-making process. I was told that the accommodation was required based upon religious freedom and that in this English course the reading was discretionary and therefore an accommodation must be granted. I objected to the decision for reasons I will outline below and agreed to a meeting with a larger constituency of administrators and counsel from the Chancellor's Office. I met first with the English Department faculty and the A&H department chairs to determine their position on the issue. All agreed the decision was a violation of academic freedom that has potentially severe implications for the university in the long term.

The position that counsel adopted was centered on the notion of discretionary or "non-essential" subject matter and readings. Hypothetically, if material cannot be reasonably substituted then no accommodation would be required. It should be emphasized that counsel met with the student and heard the objection and made the decision about the "non-essential" reading without consulting the faculty member in question. In the department meeting when the issue was

considered that faculty member clarified that the reading and assignment were not discretionary, since the history of children's literature as built into the structure of his course cannot be taught without addressing the topic of enchantment. Thus, the objectionable material of sorcery and witchcraft found in the Harry Potter series must necessarily be present in any material offered as an alternative. There is simply no way to teach the course without works that would be objectionable. The student had every opportunity to decide whether to take the class but chose to proceed, instead asking much later that material central to the content and structure be avoided to mollify her religious objection.

The meeting with a larger group took place on December 14th and included the following: Provost Vernon Harper; Interim AVP of Faculty Affairs Bruce Hartsell; Dean of Arts and Humanities Bob Frakes, university attorneys Claudia Catota and Marcus Brown, as well as Chancellor's Office counsel Kelly Bendel. Marcus Brown rightfully acknowledged that the professor in question should have been consulted before the decision, but he could not assure me that given consultation the outcome would have been different. The argument was again made that state law required an accommodation for discretionary and "non-essential" material. I argued that the content the professor assigned was in fact essential, but I received no acknowledgment that my argument was valid, and that the faculty member had the right to determine the content and readings in the course. Kelly Bendel emphasized the need to follow state law, but she was clear that a case of this sort has yet to be adjudicated. There was some question as to whether Marcus Brown's recommendation was binding on the professor. But given that the university remains liable, it is unclear whether that flexibility is permitted at this time. Kelly Bendel also stated that religious accommodations may be requested by students at any point in the term. She did stipulate that a university policy could be written requiring that students declare their objection early in the semester. Claudia Catota also said that a broader religious accommodation policy is currently being developed and will involve the faculty senate. I requested to participate in any capacity appropriate.

The implications of this decision and the subsequent discussions should be clear. Religion is a broad category and the potential for religious objection on the grounds of belief are equally broad. The university and the English Department readily and consistently make accommodations for religious "practice," including holidays and necessary worship activities. Although state law does not explicitly make the distinction, accommodating "practice" and "belief" are substantially different things. In literary study, virtually any text assigned might contain content that extends beyond or contradicts a student's belief system. On the face of it, the three witches in Shakespeare's *Macbeth* comes to mind, not to mention the entire tradition of "magical realism" in Latin American literature or works that may contain LGBTQ themes and content. In other disciplines, students may object to the teaching of Darwinian evolution, the age of the earth, or a whole range of topics central to the university curriculum.

Again, counsels' argument is that the material in the course was discretionary and "non-essential" and could be replaced. We firmly maintain that the content is not discretionary. The legally informed AAUP policy statements on academic freedom are clear. They are articulated in the document entitled, "Academic Freedom of Students and Professors, and Political Discrimination." Professors in universities have the right and obligation to select materials that are germane to the course, and that selection must be made based upon expertise. Students

certainly should have the opportunity to choose away from the class or the institution, but course content must not be subject to the students' discretion. In effect, this decision makes every syllabus at the university negotiable and subject to the unilateral discretion of the university counsel. We understand that administration has a role in matters of legality, but decisions should not be made without thorough consultation with the faculty member and the department chair. If that consultation occurred in this case, we would have had the opportunity to clarify the essential nature of the required material. Still, it remains unclear if our explanations would have been considered valid.

This is an issue of the utmost importance to the epistemic integrity of all academic disciplines at CSUB. Its implications are far-reaching for the university and for the academic mission our institution has articulated and serves. For this reason, the English Department and the chairs of Arts and Humanities request that you give this issue the attention it deserves. We are confident you will act accordingly.

I would be pleased to discuss this matter with any constituency that would benefit from further explanation.