

9-2010

Resolution on Academic Freedom

Whereas, academic freedom is fundamental to the University's goal of advancing and transmitting knowledge; and

Whereas, academic credentials and quality are evaluated by scholarly peer review; and

Whereas, academic freedom also encourages "best-interest" decision making and the creation of a safe and open learning environment by enabling faculty – who are on the frontline of a variety of academic and community issues and are therefore critical players in making decisions that are in the best interest of both the institution and the community – to be fully involved in institutional decision-making; and

Whereas, faculty involvement in institutional decision-making and implementation is essential to ensuring the success of institutional initiatives; and

Whereas, students, faculty, and administration are all best served if faculty are free to express themselves on institutional and other matters without institutional control or intrusion; and

Whereas, section 600 of *The CODE of the University of North Carolina* has long expressed institutional support for academic freedom by stating that academic freedom is "essential" to "the transmission and advancement of knowledge and understanding;" and

Whereas, it is the policy of the University (section 601 of *The CODE*) "to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institution;" and

Whereas, there is a perception that federal courts (*Garcetti v. Ceballos* 2005) are currently abridging the constitutional protection of faculty so that a heightened degree of institutional protection is now required, not as a matter of law, but as a principle vital to the effective functioning of institutions of higher learning; now therefore

Be it Resolved that, on behalf of faculty in the University of North Carolina system, and in light of recent threats to academic freedom, the UNC Faculty Assembly reaffirms the *UNC CODE* statements regarding academic freedom, and adopts the definition and standards of academic freedom outlined in the following "Statement on Academic Freedom."

Be it Further Resolved that the Board of Governors, the General Administration, and the constituent institutions of the UNC System are requested to incorporate an understanding of the "Statement on Academic Freedom" into the *UNC CODE* and other relevant policies and practice of the institution.

Statement on Academic Freedom

Academic freedom is the liberty that faculty members must have if they are to practice their scholarship in accordance with the norms of that profession. Although some aspects of academic freedom are also protected by the First Amendment to the United States Constitution, academic freedom exists, independent of any external protection, as a basic prerequisite for universities to fulfill their mission to our society. Academic freedom is most commonly applied to individual faculty members, but remains first and foremost a professional prerequisite of faculty members as a group.

Academic freedom includes the following specific freedoms:

- *Freedom of Research and Publication.* Within the broad standards of accountability established by their profession and their individual disciplines, faculty members must enjoy the fullest possible freedom in their research and in circulating and publishing their results. This freedom follows immediately from the university's basic commitment to advancing and transmitting knowledge and understanding. Restrictions on research and publication should be minimal and unobtrusive.
- *Freedom of Teaching.* This freedom is an outgrowth of the previous one. Faculty members must be able not only to disseminate to their students the results of research by themselves and others in their profession, but also to train students to think about these results for themselves, often in an atmosphere of controversy that, so long as it remains in a broad sense educationally relevant, actively assists students in mastering the subject and appreciating its significance.
- *Freedom of Internal Criticism.* Universities promote the common good not through individual decision or bureaucratic calculation, but through broad-based engagement in the scholarly endeavor. Faculty members, because of their education and their institutional knowledge, play an indispensable role as independent participants in university decision making. By virtue of this role, they are entitled to comment on or criticize University policies or decisions, either individually or through institutions of faculty governance. Academic freedom should not be used as a means to subvert normal professional evaluations.
- *Freedom of Participation in Public Debate.* Both within and beyond their areas of expertise, faculty members are entitled to participate in public forums and debates, with all of the same rights and privileges accorded to all other residents of the state of NC and without fear of institutional discipline or restraint, so long as they are not acting or speaking for the University – as specified in section 601(1) of *The UNC Code*.

Because academic freedom derives from the institutional structure of American universities, it may be qualified in various respects. However, when academic freedom is so qualified, it is of critical importance that restrictions be drawn up and implemented with substantial faculty input, in such a way as to minimize infringement of academic freedom. In large part, this goal should be accomplished by ensuring that institutional discipline of faculty members is in proportion to the severity and persistence of misconduct, and by insisting that alleged offenses be handled with appropriate standards of due process, including the judgment of competent peers. For the rest, however, it must be recognized that contemporary threats to academic freedom are constantly evolving. This University — its faculty, administration, and students alike — must exercise constant vigilance in resisting such threats, whether they arise within the university or from outside.

Background and Discussion

Bibliography. The conception of academic freedom articulated in this document derives chiefly from two statements issued by the American Association of University Professors (AAUP): the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure* and the 1940 *Statement of Principles on Academic Freedom and Tenure*, with the 1970 Interpretive Comments on this statement. These fundamental statements are now supplemented by "Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*," *Academe* 95 (Nov./Dec. 2009) 67-88. (All three documents are available on-line at the AAUP website.) The formulations of this conception as presented here were crafted by faculty at the University of Michigan and much of the wording in this resolution was taken from their resolution. Their work was heavily influenced by Matthew W. Finkin and Robert C. Post, *For the Common Good: Principles of American Academic*

Freedom (Yale Univ. Press, 2009), which also discusses at length cases arising under the AAUP principles. For contemporary sources of pressure on academic freedom, the authors of this document relied primarily on Robert O'Neil, *Academic Freedom in the Wired World: Political Extremism, Corporate Power, and the University* (Harvard Univ. Press, 2008). Stephen H. Aby and James C. Kuhn IV, *Academic Freedom: A Guide to the Literature* (Greenwood Press, 2000), contains an extensive, fully annotated bibliography. A much longer (but unannotated) bibliography is Terrance Karran, *Academic Freedom: A Research Bibliography* (2009), available at <http://eprints.lincoln.ac.uk/1763/>.

Scope of statement. For purposes of this statement, faculty members are the members of the University of North Carolina System represented by the UNC Faculty Assembly, as defined in the *Charter of the University of North Carolina Faculty Assembly*. Although the AAUP's 1940 statement associates academic freedom with tenure, it needs stress that academic freedom applies equally to all faculty members, regardless of rank or tenure. However, those faculty who serve the University as senior officers or administrators, or who are on their immediate staffs, are normally expected to support publicly the University's policies, procedures, goals, and programs; therefore they have more limited freedom to speak about these matters without institutional restraint or discipline. Nevertheless it is critical that even such persons are protected when speaking the truth in matters that require whistle blower protection.

Other non-faculty claims to academic freedom. The present statement, although applicable only to those faculty and professional staff represented by the UNC Faculty Assembly, does not preclude other claims. Above all, the University of North Carolina itself, as a system of institutions of higher learning, has an independent claim, long recognized both in national and state law, to institutional academic freedom and autonomy, the freedom to budget, hire, select students, determine curriculum, set salaries, and so on. Further, by virtue of their participation in the process of education, members of the University community who are not represented by the Faculty Assembly, such as part-time lecturers, adjunct teachers, clinicians, researchers, and students, also have legitimate claims to academic freedom, by analogy with the present statement.

Academic freedom and free speech. This statement adopts the stance of the 1915 AAUP *Declaration*, which describes academic freedom not as an individual protection from any and all constraints, but rather as the freedom to pursue a scholarly profession in accord with the standards of that profession. As the *Declaration* states, academic freedom is meant to defend "not the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion and of teaching, of the academic profession." See Finkin and Post, 38-39. In this respect, academic freedom is distinct from the constitutional right to free speech as guaranteed by the First Amendment to the Constitution. However, in some instances modern courts have construed the right to free speech as protecting aspects of academic freedom, particularly within public universities. The present statement is occasioned, in part, by a perception that federal courts are currently abridging the constitutional protection of faculty, so that a heightened degree of institutional protection is now required. See O'Neil, 43-77, and also the AAUP's 2009 article cited above, which makes the point that, because of a number of recent judicial decisions permitting university administrators to treat faculty members on the model of ordinary employees, "the case for academic freedom at both public and private institutions [should now be made], not as a matter of law, but as a principle vital to the effective functioning of institutions of higher learning."

Professional standards of accountability. As has often been observed, the AAUP's conception of academic freedom accords with normal practice at American universities, where faculty members are, for instance, hired and promoted in large part based on evaluations by their peers, including faculty members at other institutions.

Qualifications on academic freedom. Assertions of academic freedom can come into conflict with other basic institutional values of a modern university. Academic freedom is not a defense against allegations of professional misconduct in research or teaching, nor does it provide protection against illegal or otherwise justifiably prohibited conduct or speech, particularly if it significantly

disrupts teaching, research, administration, or other authorized activities on the campus. Academic freedom would not, for example, provide a defense to harassment of a student, nor would it in itself justify offensive speech in a classroom that is irrelevant to the subject matter being taught. Further, although academic freedom entails a high degree of faculty autonomy in organizing and teaching courses, it may also be limited by the requirements of curricula and of responsible teaching and collegiality, within an environment of tolerance and mutual respect. For example, as the AAUP acknowledged in its 1940 *Statement*, faculty members "should be careful not to introduce into their teaching controversial matter which has no relation to their subject." Finally, academic freedom is not inconsistent with reasonable institutional regulation of such areas as the performance of externally sponsored research, the conduct of research on human subjects, the use of the University's logo and trademarks, the deposit of faculty research in computer archives, and so on; but such regulations must be tightly defined so as to ensure that they are justified by important university policies, that they do not reflect hostility to particular viewpoints, and that they restrain academic freedom no more than is necessary.

Academic freedom and disciplining faculty members. The primary thrust of the AAUP's statements on academic freedom is that faculty members are not ordinary employees subject to the usual discipline of the American workplace. Rather, because of the nature of the educational enterprise, they are more accurately described as "appointees" (1915 *Declaration*) or "officers" (1940 *Statement*) of the institutions they serve; therefore administrative retaliation for the exercise of academic freedom is impermissible. In accord with this view, faculty members play a large role in disciplinary procedures at the University; they provide the sole membership of grievance and hearing panels and they also comprise the primary evaluators in tenure and/or promotion decisions and in cases involving removal of tenure, demotion, and dismissal of faculty members (*UNC Code* sections 603, 604, 605, and 607). In fulfilling this function, faculty members, when hearing and deciding cases, are expected to know and implement the present statement; and the institutions of faculty governance should also periodically review and update this statement so as to provide it with currency. In addition, the issue of whether faculty disciplinary proceedings across the University adequately protect academic freedom should be the subject of thorough consideration as current grievance and disciplinary procedures are revamped.

Threats to academic freedom. These threats, which are described and documented at length in O'Neil's (2008) book, are constantly evolving as universities respond to a changing world. For instance, over the past several decades various universities have experienced an internal drift toward political orthodoxy and intolerance of dissent; this drift should be stoutly resisted, even as the bounds of orthodoxy themselves shift. Recurrent as well are the conflicts between a university's claims to autonomy and authority on the basis of its academic freedom, and faculty claims to independence on the basis of their own freedom. However, larger long-term dangers to academic freedom are now emerging, and they are often less easy to recognize and diagnose. These dangers include, for instance, increasing intrusions (judicial, administrative, and legislative) on independent faculty research; controversies stemming from the ubiquity of modern media, in particular the internet; the attempts of corporate sponsors to control university-based research; the efforts of self-appointed watchdogs to harass individual teachers through websites and blogs; and demands that universities demonstrate political "balance" when appointing faculty. A great deal will depend on precisely how this and other universities adapt to their changing environment without losing basic institutional values such as academic freedom. When these values are confronted by fresh challenges, all members of our educational community must take care not only to understand but to defend them vigorously.

Suggested Revisions to *The CODE of the University of North Carolina*

- Incorporate the definition and standards of academic freedom outlined in the "Statement on Academic Freedom" into *The CODE* 601 "Academic Freedom and Responsibility of Faculty".
- Revise *The CODE* 604 section B.(a), as well of the quote of this statement in UNC Policy 101.3.1 section II.A, to read as follows:

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, **or by the principles articulated in the Statement on Academic Freedom, found in The CODE 601.**

- Revise *The CODE* 605 section 4 to read as follows:

A reconsideration procedure shall be provided that affords the faculty member whose employment is to be terminated a fair hearing on the termination if the faculty member alleges that the decision to terminate was arbitrary or capricious **or based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North Carolina Constitution, or by the principles articulated in the Statement on Academic Freedom, found in The CODE 601, or (b) the faculty member's race, color, sex, religion, creed, national origin, age, disability, veteran's status, or other forms of discrimination prohibited under policies adopted by campus Boards of Trustees, or (c) personal malice. For purposes of this section, the term "personal malice" means dislike, animosity, ill-will, or hatred based on personal characteristics, traits or circumstances of an individual. See Policy 101.3.1 II.B. for details.**

- Revise *The CODE* 607 section 3 to read as follows:

"Grievances" within the province of the committee's power shall include matters directly related to a faculty member's **academic freedom**, employment status and institutional relationships within the constituent institution, including matters related to post-tenure review. However, no grievance that grows out of or involves matters related to a formal proceeding for the suspension, discharge or termination of a faculty member, or that is within the jurisdiction of another standing faculty committee, may be considered by the committee.

- Revise UNC Policy 101.3.2 section I to read as follows:

The Purpose of the Grievance Procedure

Section 607 of *The Code* provides a process for faculty members to seek redress concerning **academic freedom and** employment related grievances. The function of the grievance procedure is to attempt to reach a consensual resolution of the dispute and, if that fails, to determine whether the contested decision was materially flawed, in violation of applicable policies, standards or procedures. The grievance process is not intended to second-guess the professional judgment of officers and colleagues responsible for making administrative decisions.