

ACADEMIC FREEDOM AND THE RESEARCH UNIVERSITY¹

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When we imagine creating the modern research university *de novo*, the first cornerstone to be laid is that of academic freedom. The American idea of academic freedom originated in Europe; it was faculty trained in European universities who brought with them the concept to American universities. About half of the members of the 1915 American Association of University Professors (AAUP) Committee that first articulated a statement of academic freedom in the United States were graduates of German universities.

Academic freedom was critical in enabling faculty first to free themselves from sectarian, religious domination and later to resist secular, political control. The modern research university could not have emerged absent this commitment to academic freedom. However, I believe that the principles upon which academic freedom is founded must be elaborated and modified in ways that are relevant to the responsibilities and circumstances of today's universities.

Earlier this year I proposed that the University of California adopt a new statement on academic freedom, a policy that was approved by the Assembly of the Academic Senate on July 30 by a vote of 45 to 3. This new policy is both traditional and innovative. It respects tradition in that it affirms the three components of academic freedom – freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. It breaks new ground in that it explicitly recognizes the means of maintaining those freedoms. The policy embraces the concept of the faculty as members of a profession with distinctive competencies and responsibilities; this concept is essential for the University to carry out its fundamental mission and essential to our policy on academic freedom.

Course on Palestinian Poetics

The new policy emerged from debates sparked by a recent and heated controversy over a course on Palestinian literature. In Spring 2003, a graduate student instructor at the Berkeley campus posted a description of his freshman composition course on the English Department's Web site. The title of his course was "The Politics and Poetics of Palestinian Resistance." The course description explained that students would examine how Palestinians created literature "under the brutal weight of the Israeli occupation." The instructor's description made it clear that he was a staunch supporter of Palestinians. His course description ended with the suggestion that "conservative thinkers are encouraged to seek other sections" of the course.

¹ An early version of this paper was presented at the Glion Colloquium titled "Reinventing the Research University" held in Glion, Switzerland, June 2003.

On its face, the instructor's course description was outrageous. It raised several immediate concerns: departmental oversight of the course; senior faculty supervision of graduate student instructors; the bases on which an instructor may limit enrollment; student rights and how they are protected. Berkeley Chancellor Robert M. Berdahl, working closely with the Academic Senate, resolved these questions quickly and skillfully. Senior faculty spoke with the instructor to ensure that he understood his obligations and responsibilities as an instructor at the University. The course description was changed. Students taking the course were advised that they had the right to express themselves and have their work evaluated without discrimination or harassment. They were also informed that they could bring concerns to the chair of the English Department. A senior faculty member sat in on all class meetings to ensure that the course was taught consistent with academic norms. In the end, the students who took the class gave outstanding ratings to both the course content and the instructor. (For a full account of the issues the course raised and how they were addressed see the May – June 2003 issue of *Academe*, the bulletin of the American Association of University Professors.)

Sproul Statement on Academic Freedom

The incident, however, revealed a fundamental weakness in the University's policies. When my colleague, Patrick Hayashi, and I examined UC's academic freedom policy, we found that President Robert Gordon Sproul had first articulated it in 1934; it was formally adopted as University policy in 1944. The policy is published in the Academic Personnel Manual and referred to as "APM 010 – Academic Freedom."

APM 010 - Academic Freedom

The following announcement was originally made by the President of the University before the Northern Section of the Academic Senate on August 27, 1934, and is to be regarded as setting forth the principles which guide the President in these matters and accordingly stand as, in a certain sense, the policy of the University.

The function of the university is to seek and transmit knowledge and to train students in the processes whereby truth is to be made known. To convert, or make converts, is alien and hostile to this dispassionate duty. Where it becomes necessary, in performing this function of a university, to consider political, social or sectarian movements, they are dissected and examined – not taught, and the conclusion left, with no tipping of the scales, to the logic of the facts.

The University is founded upon faith in intelligence and knowledge and it must defend their free operation. It must rely upon truth to combat error. Its obligation is to see that the conditions upon which questions are examined are those which give play to intellect rather than to passion. Essentially the freedom of a university is the freedom of competent persons in the classroom. In order to protect this freedom, the University assumes the right to prevent exploitation of its prestige by unqualified persons or by those who would use it as a platform for

propaganda. It therefore takes great care in the appointment of its teachers; it must take corresponding care with respect to others who wish to speak in its name.

The University respects personal belief as the private concern of the individual. It equally respects the constitutional rights of the citizen. It insists only that its members, as individuals and as citizens, shall likewise always respect – and not exploit, their University connections.

The University of California is a creature of the State and its loyalty to the State will never waver. It will not aid nor will it condone actions contrary to the laws of the State. Its high function – and its high privilege, the University will steadily continue to fulfill, serving the people by providing facilities for investigation and teaching free from domination by parties, sects, or selfish interests. The University expects the State, in return, to its own great gain, to protect this indispensable freedom, a freedom like the freedom of the press, that is the heritage and the right of a free people.

When President Sproul made this statement, California and the University were in turmoil. America was struggling with the great depression. There was tremendous labor unrest, often leading to large-scale demonstrations and strikes that ended in violence. A “Red scare” over a possible Communist takeover of the nation alarmed citizens and public officials alike. At that time the traditional view of collegiate life reflected a belief that students, faculty, and administration were all part of a collegial family. However, some professors and students had a different view. They openly questioned the nature and purpose of American universities, arguing that, far from being the agents of advancement and democracy, they assisted in maintaining an oppressive status quo.

University of California faculty and students spoke out against the many problems facing the nation – poverty, corporate greed, racism, imperialism and militarism. This activism offended powerful State politicians and civic leaders and, consequently, threatened the University’s political and budgetary support. That was the context in which President Sproul issued his directive on academic freedom. Faculty would limit themselves to the “dispassionate” task of dissecting “the logic of the facts.” In return, the State would “protect” the “indispensable freedom” of the University to “transmit knowledge.” Political neutrality was the *quid pro quo* for political support – a bargain that enabled President Sproul to navigate the turbulent political waters of his time.

But the Sproul policy is not simply a relic of another generation’s political wars. It also contains statements about academic freedom that few would disagree with, for example, the condemnation of using the classroom to make converts to a particular political view or to use the University as “a platform for propaganda.” Yet when we looked to it for guidance on resolving the conflict over the Palestinian poetry class, the Sproul statement was unsatisfactory in important respects. “Neutrality,” the principle that undergirds the Sproul policy, does not constitute a sufficient criterion on which to decide cases of academic freedom. “The logic of the facts” can and does lead different

people to dramatically different conclusions. Who decides what is partisan and what is not? Without criteria to make such distinctions, judgment must be made on other grounds. History has shown that those judgments are often based on whether or not the content of a faculty member's writings or remarks offend specific groups.

Furthermore, there is no necessary correlation between effective scholarship and "neutrality," however the concept of neutrality may be defined. Faculty frequently hold strong viewpoints, many of which challenge prevailing orthodoxies. They routinely contribute to public discourse on a wide range of politically controversial subjects ranging from environmental hazards, welfare economics and abortion policies to human cloning, religious doctrine and affirmative action. Academic norms require that faculty stand ready to revise their conclusions in the light of new evidence. And experience has shown that faculty members can and do combine strong commitments to a particular point of view with the highest professional standards of teaching and research.

Academic freedom is concerned with protecting the conditions that lead to the creation of sound scholarship and good teaching, not with maintaining political neutrality. Indeed, the Sproul policy's effort to spell out a single criterion that would apply in all disputes over academic freedom was one of its weaknesses. Further, by formulating the issue in political terms, the policy suggested that the university's administration or the governing board should judge whether neutrality had been violated. Such an approach would not be consistent with our current understanding of shared governance, the role of peer review in judging research and teaching, or the division of authority among faculty, administration and the governing board.

In sum, the Sproul policy is outdated because of its political agenda and because it is insufficiently helpful as a guide for resolving cases of academic freedom. For these reasons, we concluded it should be replaced.

Other Policies on Academic Freedom

We began by considering other policies on academic freedom put forth by the AAUP and a number of American universities. Many of these policies conceive of academic freedom, in part, as an extension of First Amendment rights expressed in the U.S. Constitution. However, this conception does not provide a sufficient basis for defining academic freedom. First Amendment rights are about individual freedoms relative to the State. The State cannot tell individual faculty members --or anyone else -- that their ideas are wrong or inadequate. However, while the State may not pass judgment on the content of the speech of individual faculty members, universities judge the speech of faculty all the time. Universities award tenure, promotions, and salaries based upon an evaluation of the academic quality of faculty expression. A professor cannot rely on the First Amendment to protect him/her from the judgment of colleagues that his/her research or teaching is professionally inadequate.

The various policies that we reviewed tended to focus on the rights and privileges of a faculty member. Invariably, they inserted a reference to the special obligations and

responsibilities of the faculty member. But there was neither clarity about the standard for defining responsibilities nor a procedure for judging whether or not a faculty member met that standard. This matter concerned us, because we believe that a standard of judgment should exist before a crisis or controversy arises.

New UC Policy on Academic Freedom

After concluding that existing policies did not provide an adequate basis for defining academic freedom, we enlisted Professor Robert Post to undertake the responsibility of formulating a new policy for the University. Professor Post is one of the nation's foremost experts on academic freedom, has served as general counsel for the AAUP, and is now a member of the AAUP's Committee on Academic Freedom and Tenure. I asked him, in consultation with Professor Gayle Binion, Chair of the UC faculty senate and James Holst, UC general counsel and his associates David Birnbaum and Steven Rosen, to draft a new policy for consideration.

In a letter dated March 12, 2003, Professor Post conveyed a draft of a three-paragraph academic freedom policy. That draft has been reviewed and modified by various faculty committees and our general counsel, but its substance is fundamentally unchanged. The revised statement follows:

The University of California is committed to upholding and preserving principles of academic freedom. These principles reflect the University's fundamental mission, which is to discover knowledge and to disseminate it to its students and to society at large. The principles of academic freedom protect freedom of inquiry and research, freedom of teaching, and freedom of expression and publication. These freedoms enable the University to advance knowledge and its faculty to transmit it effectively to their students and to the public. The University also seeks to foster in its students a mature independence of mind, and this purpose cannot be achieved unless students and faculty are free within the classroom to express the widest range of viewpoints in accord with the standards of scholarly inquiry and professional ethics. The exercise of academic freedom entails correlative duties of professional care when teaching, conducting research, or otherwise acting as a member of the faculty. These duties are set forth in The Faculty Code of Conduct (APM 015).

Academic freedom requires that teaching and scholarship be assessed only by reference to the professional standards that sustain the University's pursuit and achievement of knowledge. The substance and nature of these standards properly lie within the expertise and authority of the faculty as a body. The competence of the faculty to apply these standards of assessment is recognized in the Standing Orders of the Regents, which establish a system of shared governance between the Administration and the Academic Senate. Academic freedom requires that the Academic Senate be given primary responsibility for applying academic standards, subject to appropriate review by the Administration, and that the

Academic Senate exercise its responsibility in full compliance with applicable standards of professional care

Members of the faculty are entitled as University employees to the full protections of the Constitution of the United States and of the Constitution of the State of California. These protections are in addition to whatever rights, privileges and responsibilities attach to the academic freedom of university faculty.

The first and third paragraphs of the new policy substantially reflect current understandings of academic freedom expressed most fully in principles proposed by the AAUP. Paragraph two, however, proposes a procedure for assessing the obligations and responsibilities of a faculty member, a procedure that has not been advanced in any of the other policies we have examined.

Explanation of the New Policy

The first paragraph begins with the traditional definition of the mission of the university, that of “discovering and disseminating knowledge to our students and to the public.” It follows the AAUP statement and refers to the tripartite division of academic freedom derived from this mission: “freedom of inquiry and research, freedom of teaching, and freedom of expression and publication.” These freedoms for individual faculty members are part of the AAUP’s “General Report of the Committee on Academic Freedom and Tenure” (1915), and are also referenced in the AAUP’s 1940 “Statement of Principles on Academic Freedom and Tenure”; they have been widely accepted and endorsed. The right to freedom of expression and publication refers both to the right to speak in public as a scholar and a citizen, and also to speak as a participant in the university’s affairs.

In one respect, however, the first paragraph goes beyond the AAUP principles by addressing the relationship between academic freedom and teaching. It states that one essential aspect of faculty teaching is to instill independence of mind in their students. Post, in his letter of transmittal, explained:

Academic freedom in teaching is sometimes justified solely in terms of the need to disseminate to students the fruits of scholarly research; ... But in my view academic freedom in teaching also depends on the need to attain the distinct educational objective, characteristic of universities, of fostering in our students the ability to think for themselves as mature adults.

To fulfill this objective, faculty members themselves must have the freedom to model intellectual independence in the classroom. Further, they must create a classroom environment in which students have freedom to express their own perspectives and question those of others without fear of negative consequences for their grades or academic standing.

The third paragraph of the revision makes clear that University faculty enjoy constitutional rights under the Constitution of the United States and the Constitution of the State of California, just as other citizens enjoy such rights.

The second paragraph is where the policy departs from more traditional statements. It addresses the relationship between academic freedom and the professional autonomy of the professoriate. Post explained:

The historical roots of academic freedom lie in this autonomy. The basic idea is that what counts as knowledge, scholarship, and teaching, turns on the application of professional standards of judgment. This idea has many implications. The most important is that the quality of faculty work is to be judged only by reference to professional standards of academic judgment. It is not to be determined by reference to the political decisions of the electorate, the priorities of financial donors, or the managerial priorities of the administration. Academic freedom historically developed in this country precisely because of the need to insulate faculty from these inappropriate bases of judgment.

A second important implication of the idea that the mission of the university depends upon the application of professional standards is that faculty have the responsibility both to assess the work of their peers and also to submit to the assessment of their peers. This responsibility is what underlies decisions concerning hiring, promotion, awarding tenure, approval of course descriptions, evaluations of teaching, and so forth. A third implication is that faculty must undertake to comply with professional standards in the performance of their duties. In the realm of teaching, for example, professional standards require that faculty accord students the right to think freely and to exercise independent judgment; that they evaluate students solely on the merits of their work; and that they not penalize students merely because of their political, ethical, or religious perspectives. If academic freedom implies professional autonomy, it also implies professional responsibility. Academic freedom does not shield faculty from judgment or evaluation if they act in ways that are professionally unethical or incompetent. We specify the nature of the professional responsibility of faculty in § 015 of the APM (Faculty Code of Conduct).

This new policy makes clear that academic freedom does not rest principally on the First Amendment rights of individual faculty, nor is it contingent on the sufferance of the state. Rather, academic freedom is rooted in notions of the faculty as members of an academic profession that has distinctive competencies essential for the functioning of the modern university. The faculty, as members of this academic profession, set their own standards governing how knowledge is created, assessed, and advanced.

Implications of the New Policy

This new policy does not seek to change in any way the authority of the Board of Regents to govern the University of California, or the responsibility of the Administration

to perform its appropriate role in governance. It *is* intended to clarify something that has not been explicitly stated in any of the other policies we have examined; namely, that primary responsibility for issues involving academic freedom rests with the faculty. If a faculty member is working on a question germane to his/her discipline and addresses that question in an academically responsible way (adhering to the standards of his/her discipline), the institution has no basis for sanctioning the individual, no matter how controversial that person's viewpoint may be. Still, while the prerogatives of the university are limited, faculty are bound by professional standards and are subject to professional review and sanction. Faculty cannot violate professional standards and defend their conduct on the basis of academic freedom.

The reliance on peer review is fundamentally important. Without peer evaluation, the modern university could not function. Without the freedom to explore within the parameters of academic competence and professional norms, the university could not achieve its mission of advancing knowledge. That is why academic freedom is afforded special protection in American universities. At the same time, the new policy describes how the rights of the faculty are accompanied by broad responsibilities regarding the conduct of teaching and research, the assessment of evidence, and the regard that must be given to alternative viewpoints. Because of their professional expertise and their wide experience with the daily realities of teaching, research, and public service, the faculty have distinctive competencies that make them the most qualified members of the university community to judge on issues of academic freedom.

The new policy has disappointed some people who prefer to see a codification of what behavior is permitted and what is prohibited. I understand this desire. However, we already have a statement governing faculty behavior in APM 015 – the Faculty Code of Conduct. The Code, for example, forbids discrimination against a student on political grounds; it states:

As teachers, the professors encourage the free pursuit of learning of their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure their evaluations of students reflect each student's true merit. ... They avoid any exploitation, harassment, or discriminatory treatment of students. ... They protect their academic freedom. (APM 015, Section II.A., pg. 4.)

The Code sets forth ethical principles and provides examples of unacceptable faculty behaviors that are subject to University discipline. No such list of examples can ever be complete; the Code simply illustrates the types of unacceptable conduct that can be derived from the ethical principles.

Our new policy on academic freedom affirms the principle that faculty conduct will be assessed in reference to academic values and professional norms, an inherently broad and flexible standard that is properly left to the determination of the faculty. This

articulation of academic freedom implies that the key to proper governance and responsible faculty conduct lies in the careful recruitment and advancement of faculty based on academic values, reliance on faculty to govern themselves wisely, and the expectation that they will fulfill their responsibility to discipline faculty members who violate the norms of the academic profession.

Faculty governance, peer review, and academic freedom gave rise to the research university as we know it today. We would be wise to anticipate that boundaries will change between disciplines, and between the university and other institutions. How research is conducted and how education takes place will change. Sources of support will become more volatile and varied. Professional and political relationships will become more complex. The challenges facing the research university will only expand.

If we wish to meet these challenges wisely and responsibly, we must reaffirm the importance of academic freedom and the accompanying responsibilities of the faculty. This requires that universities rely, not on increasingly elaborate rules and regulations constraining faculty behavior, but rather on the values and norms that must govern faculty professional conduct. This, in turn, requires reaffirmation that modern universities can flourish only when there is a system of shared governance in which faculty are given primary authority, with accompanying freedom and responsibility, over academic matters.

This policy is the Faculty Code of Conduct as approved by the Assembly of the Academic Senate on June 15, 1971, and amended by the Assembly on May 30, 1974, and with amendments approved by the Assembly on March 9, 1983, May 6, 1986, May 7, 1992, October 31, 2001, and May 28, 2003, and by The Regents on July 18, 1986, May 15, 1987, June 19, 1992, November 15, 2001, and July 17, 2003. In addition, technical changes were made September 1, 1988.

Additional policies regarding the scope and application of the Faculty Code of Conduct and the University's policies on faculty conduct and the administration of discipline are set forth in APM - 016, the University Policy on Faculty Conduct and the Administration of Discipline.

The Faculty Code of Conduct as Approved by the Assembly of the Academic Senate
(Code of Professional Rights, Responsibilities, and Conduct of University Faculty,
and University Disciplinary Procedures)

Preamble

The University seeks to provide and sustain an environment conducive to sharing, extending, and critically examining knowledge and values, and to furthering the search for wisdom. Effective performance of these central functions requires that faculty members be free within their respective fields of competence to pursue and teach the truth in accord with appropriate standards of scholarly inquiry.

The faculty's privileges and protections, including that of tenure, rest on the mutually supportive relationships between the faculty's special professional competence, its academic freedom, and the central functions of the University. These relationships are also the source of the professional responsibilities of faculty members.

It is the intent of the Faculty Code of Conduct to protect academic freedom, to help preserve the highest standards of teaching and scholarship, and to advance the mission of the University as an institution of higher learning.

Part I of this Code sets forth the responsibility of the University to maintain conditions and rights supportive of the faculty's pursuit of the University's central functions.

Part II of this Code elaborates standards of professional conduct, derived from general professional consensus about the existence of certain precepts as basic to acceptable faculty behavior. Conduct which departs from these precepts is viewed by faculty as unacceptable because it is inconsistent with the mission of the University. The articulation of types of unacceptable faculty conduct is appropriate both to verify that a consensus about minimally acceptable standards in fact does exist and to give fair notice to all that departures from these minimal standards may give rise to disciplinary proceedings.

In Part II a clear distinction is made between statements of (1) ethical principles and (2) types of unacceptable behavior.

1. **Ethical Principles**

These are drawn primarily from the 1966 *Statement on Professional Ethics* and subsequent revisions of June, 1987, issued by the American Association of University Professors. They comprise ethical prescriptions affirming the highest professional ideals. They are aspirational in character, and represent objectives toward which faculty members should strive. Behavior in accordance with these principles clearly precludes the application of a disciplinary sanction. These Ethical Principles are to be distinguished from *Types of Unacceptable Faculty Conduct* referred to in the following paragraph. The *Types of Unacceptable Faculty Conduct*, unlike the Ethical Principles, are mandatory in character, and state minimum levels of conduct below which a faculty member cannot fall without being subject to University discipline.

2. **Types of Unacceptable Faculty Conduct**

Derived from the Ethical Principles, these statements specify examples of types of unacceptable faculty behavior which are subject to University discipline because, as stated in the introductory section to Part II, they are “not justified by the Ethical Principles” and they “significantly impair the University’s central functions as set forth in the Preamble.”

The Ethical Principles encompass major concerns traditionally and currently important to the profession. The examples of types of unacceptable faculty conduct set forth below are not exhaustive. It is expected that case adjudication, the lessons of experience and evolving standards of the profession will promote reasoned adaptation and change of this Code. Faculty may be subjected to disciplinary action under this Code for any type of conduct which, although not specifically enumerated herein, meets the standard for unacceptable faculty behavior set forth above. It should be noted, however, that no provision of the Code shall be construed as providing the basis for judging the propriety or impropriety of collective withholding of services by faculty. Rules and sanctions that presently exist to cover such actions derive from sources external to this Code.

Part III of this Code deals with the enforcement process applicable to unacceptable faculty behavior. That process must meet basic standards of fairness and must reflect significant faculty involvement. In order to guide each campus in the development of disciplinary procedures that comply with this policy and Senate Bylaws, Part III provides an outline of mandatory principles to which each Division must adhere and discretionary principles which are strongly recommended.

Part I – Professional Rights of Faculty

In support of the University's central functions as an institution of higher learning, a major responsibility of the administration is to protect and encourage the faculty in its teaching, learning, research, and public service. The authority to discipline faculty members in appropriate cases derives from the shared recognition by the faculty and the administration that the purpose of discipline is to preserve conditions hospitable to these pursuits. Such conditions, as they relate to the faculty, include, for example:

1. free inquiry, and exchange of ideas;
2. the right to present controversial material relevant to a course of instruction;
3. enjoyment of constitutionally protected freedom of expression;
4. participation in the governance of the University, as provided in the Bylaws and Standing Orders of The Regents and the regulations of the University, including
 - (a) approval of course content and manner of instruction,
 - (b) establishment of requirements for matriculation and for degrees,
 - (c) appointment and promotion of faculty,
 - (d) selection of chairs of departments and certain academic administrators,
 - (e) discipline of members of the faculty, and the formulation of rules and procedures for discipline of students,
 - (f) establishment of norms for teaching responsibilities and for evaluation of both faculty and student achievement, and
 - (g) determination of the forms of departmental governance;

5. the right to be judged by one's colleagues, in accordance with fair procedures and due process, in matters of promotion, tenure, and discipline, solely on the basis of the faculty members' professional qualifications and professional conduct.

Part II – Professional Responsibilities, Ethical Principles, and Unacceptable Faculty Conduct

This listing of faculty responsibilities, ethical principles, and types of unacceptable behavior is organized around the individual faculty member's relation to teaching and students, to scholarship, to the University, to colleagues, and to the community. Since University discipline, as distinguished from other forms of reproof or administrative actions, should be reserved for faculty misconduct that is either serious in itself or is made serious through its repetition, or its consequences, the following general principle is intended to govern all instances of its application:

University discipline under this Code may be imposed on a faculty member only for conduct which is not justified by the ethical principles and which significantly impairs the University's central functions as set forth in the Preamble. To the extent that violations of University policies mentioned in the examples below are not also inconsistent with the ethical principles, these policy violations may not be independent grounds for imposing discipline as defined herein. The *Types of Unacceptable Conduct* listed below in Sections A through E are examples of types of conduct which meet the preceding standards and hence are presumptively subject to University discipline. Other types of serious misconduct, not specifically enumerated herein, may nonetheless be the basis for disciplinary action if they also meet the preceding standards.

A. Teaching and Students

Ethical Principles. "As teachers, the professors encourage the free pursuit of learning of their students. They hold before them the best scholarly standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom." (AAUP Statement, 1966; Revised, 1987)

The integrity of the faculty-student relationship is the foundation of the University's educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator. The unequal institutional power inherent in this relationship heightens the vulnerability of the student and the potential for coercion. The pedagogical relationship between faculty member and student must be protected from influences or activities that can interfere with learning consistent with the goals and ideals of the University. Whenever a faculty member is responsible for academic supervision of a student, a personal relationship between them of a romantic or sexual nature, even if consensual, is inappropriate. Any such relationship jeopardizes the integrity of the educational process.

In this section, the term student refers to all individuals under the academic supervision of faculty.

Types of unacceptable conduct:

1. Failure to meet the responsibilities of instruction, including:
 - (a) arbitrary denial of access to instruction;
 - (b) significant intrusion of material unrelated to the course;
 - (c) significant failure to adhere, without legitimate reason, to the rules of the faculty in the conduct of courses, to meet class, to keep office hours, or to hold examinations as scheduled;
 - (d) evaluation of student work by criteria not directly reflective of course performance;
 - (e) undue and unexcused delay in evaluating student work.
2. Discrimination, including harassment, against a student on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.
3. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against students on the basis of disability.

4. Use of the position or powers of a faculty member to coerce the judgment or conscience of a student or to cause harm to a student for arbitrary or personal reasons.
5. Participating in or deliberately abetting disruption, interference, or intimidation in the classroom.
6. Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future¹, academic responsibility (instructional, evaluative, or supervisory).
7. Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.

B. Scholarship

Ethical Principles. “Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry.” (AAUP Statement, 1966; Revised, 1987)

Types of unacceptable conduct:

Violation of canons of intellectual honesty, such as research misconduct and/or intentional misappropriation of the writings, research, and findings of others.

¹ A faculty member should reasonably expect to have in the future academic responsibility (instructional, evaluative, or supervisory) for (1) students whose academic program will require them to enroll in a course taught by the faculty member, (2) students known to the faculty member to have an interest in an academic area within the faculty member’s academic expertise, or (3) any student for whom a faculty member must have academic responsibility (instructional, evaluative, or supervisory) in the pursuit of a degree.

C. The University

Ethical Principles. “As a member of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of the work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.” (AAUP Statement, 1966; Revised, 1987)

Types of unacceptable conduct:

1. Intentional disruption of functions or activities sponsored or authorized by the University.
2. Incitement of others to disobey University rules when such incitement constitutes a clear and present danger that violence or abuse against persons or property will occur or that the University’s central functions will be significantly impaired.
3. Unauthorized use of University resources or facilities on a significant scale for personal, commercial, political, or religious purposes.
4. Forcible detention, threats of physical harm to, or harassment of another member of the University community, that interferes with that person’s performance of University activities.
5. Discrimination, including harassment, against University employees on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran or, within the limits imposed by law or University regulations, because of age or citizenship, or for other arbitrary or personal reasons.
6. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against employees on the basis of disability.
7. Serious violation of University policies governing the professional conduct of faculty, including but not limited to policies applying to research, outside professional activities, conflicts of commitment, clinical practices, violence in the workplace, and whistleblower protections.

D. Colleagues

Ethical Principles. “As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debts and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.” (AAUP Statement, 1966; Revised, 1987)

Types of unacceptable conduct:

1. Making evaluations of the professional competence of faculty members by criteria not directly reflective of professional performance.
2. Discrimination, including harassment, against faculty on political grounds, or for reasons of race, religion, sex, sexual orientation, ethnic origin, national origin, ancestry, marital status, medical condition, status as a covered veteran, or, within the limits imposed by law or University regulations, because of age or citizenship or for other arbitrary or personal reasons.
3. Violation of the University policy, including the pertinent guidelines, applying to nondiscrimination against faculty on the basis of disability.
4. Breach of established rules governing confidentiality in personnel procedures.

E. The Community

Ethical Principles. “Faculty members have the same rights and obligations as all citizens. They are as free as other citizens to express their views and to participate in the political processes of the community. When they act or speak in their personal and private capacities, they should avoid deliberately creating the impression that they represent the University.” (U.C. Academic Council Statement, 1971)

Types of unacceptable conduct:

1. Intentional misrepresentation of personal views as a statement of position of the University or any of its agencies. (An institutional affiliation appended to a faculty member’s name in a public statement or appearance is permissible, if used solely for purposes of identification.)

2. Commission of a criminal act which has led to conviction in a court of law and which clearly demonstrates unfitness to continue as a member of the faculty.

Part III – Enforcement and Sanctions

The Assembly of the Academic Senate recommends that each Division, in cooperation with the campus administration, develop and periodically re-examine procedures dealing with the investigation of allegations of faculty misconduct and the conduct of disciplinary proceedings.

Procedures shall be consistent with the Bylaws of the Academic Senate. Each Division should duly notify the University Committee on Rules and Jurisdiction and the University Committee on Privilege and Tenure of the procedures it has adopted and any subsequent changes therein. These Committees in turn are directed to report periodically to the Assembly of the Academic Senate on procedures adopted by the Divisions and to recommend to the Assembly such action as they deem appropriate for assuring compliance with the Bylaws of the Academic Senate or the promotion of uniformity among Divisions to the extent to which it appears necessary and desirable.

- A. In the development of disciplinary procedures, each Division must adhere to the following principles:
 1. No disciplinary sanction for professional misconduct shall be imposed by the administration except in accordance with specified campus procedures adopted after appropriate consultation with agencies of the Academic Senate, as prescribed in the introduction to this part of the Code. Systemwide procedures for the conduct of disciplinary hearings are set forth in Academic Senate Bylaw 336.
 2. No disciplinary sanction shall be imposed until after the faculty member has had an opportunity for a hearing before the Divisional Committee on Privilege and Tenure, subsequent to a filing of a charge by the appropriate administrative officer, as described in Academic Senate Bylaw 336.
 3. No disciplinary action may commence if more than three years have passed between the time when the Chancellor knew or should have known about the alleged violation of the Faculty Code of Conduct and the delivery of the notice of proposed disciplinary action.

4. The Chancellor may not initiate notice of proposed disciplinary action unless there has been a finding of *probable cause*. The *probable cause* standard means that the facts as alleged in the complaint, if true, justify the imposition of discipline for a violation of the Faculty Code of Conduct and that the Chancellor is satisfied that the University can produce credible evidence to support the claim. In cases where the Chancellor wants a disciplinary action to proceed, the Divisional hearing committee must hold a hearing and make findings on the evidence presented unless the accused faculty member settles the matter with the Chancellor prior to the hearing or explicitly waives his or her right to a hearing.
 5. The procedures adopted shall include designation of the following disciplinary sanctions authorized in the University Policy on Faculty Conduct and the Administration of Discipline, of which this Faculty Code of Conduct is an integral part: written censure, reduction in salary, demotion, suspension, denial or curtailment of emeritus status, and dismissal from the employ of the University. The Divisional Committee on Privilege and Tenure shall not recommend the imposition of a sanction more severe than that in the notice of proposed disciplinary action. More than one disciplinary sanction may be imposed for a single act of misconduct, e.g. a letter of censure and a suspension.
- B. In the development of disciplinary procedures, it is recommended that each Division adhere to the following principles:
1. In order to facilitate the efficient and timely handling of disciplinary matters, it is recommended that procedures be developed that allow each Divisional Committee on Privilege and Tenure to sit in hearing panels smaller than the full committee.
 2. There should be an appropriate mechanism for consideration and investigation of allegations of misconduct received from members of the faculty, staff, students, the administration, and other members of the University community. Procedures should be developed which encourage a single formal investigation of the allegations leading to the proposed disciplinary action.
 3. Because it is desirable that the faculty meaningfully participate in its own self-discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed. Divisions are encouraged to develop procedures to

provide faculty investigators with training, consultation, or legal counsel to assist with the investigation of faculty disciplinary cases.

4. There should be provision for informal disposition of allegations of faculty misconduct before formal disciplinary proceedings are instituted. Procedures should be developed for mediation of cases where mediation is viewed as acceptable by the Chancellor and the faculty member accused of misconduct. Mediators should be trained in mediation, be regarded as neutral third parties and have experience in the University environment. In cases where a settlement resolving disciplinary charges is entered into after a matter has been referred to an Academic Senate committee, the Chancellor is encouraged to consult with the Chair of the Divisional Committee on Privilege and Tenure prior to finalizing the settlement.
5. Appropriate precautions should be taken to safeguard the confidentiality of investigative and disciplinary proceedings. Procedures should be developed that allow information about an ongoing disciplinary proceeding, including information about the outcome, to be shared with complainant(s), to the extent allowable by State law and University policy.
6. There should be provision, to the maximum feasible extent, for separating investigative and judicial functions. A faculty member who has participated in investigating an allegation of misconduct or in recommending that a charge should be filed should thereafter not participate, as a member of the Committee on Privilege and Tenure, in the hearing of that charge.
7. In the implementation of all procedures, specific provisions should be made for the time span within which certain actions may or must be taken. Every effort should be made to conform to reasonable, specified time frames. Ideally, a hearing should commence within 90 days of the date on which the accused faculty member has been notified of the intention to initiate a disciplinary proceeding. A faculty member who is entitled to a hearing should not be permitted thereafter to delay imposition of discipline by refusing to cooperate or being unavailable for a scheduled hearing. A hearing shall not be postponed because the faculty member is on leave or fails to appear.
8. There should be consideration of provision for the availability of removal or termination of a sanction, either automatically or by administrative discretion, in individual cases. The nature and circumstances of the offense should determine the severity and type of discipline.

9. Procedures should be developed for keeping records of disciplinary matters in a confidential manner and sharing such records with Senate and administrative officers with a need to know in accordance with State law and University policy.

REGENTS' POLICY ON ACADEMIC FREEDOM

Approved June 19, 1970

Students who enroll on the campuses of the University of California are parties to a moral and contractual relationship in which the University, on its side, is obligated to provide quality education, to recognize student achievement with grades and degrees which have an accepted meaning for transfer to other institutions, for graduate work, and for careers. The Regents are responsible to the people, to the faculty, and to the students to see that the University is faithful to this contract. They have the responsibility to see that the value of the diploma is not diluted, that it maintain its meaning to graduates and to future employers. They are responsible to ensure that public confidence in the University is justified. And they are responsible to see that the University remain aloof from politics and never function as an instrument for the advance of partisan interest. Misuse of the classroom by, for example, allowing it to be used for political indoctrination, for purposes other than those for which the course was constituted, or for providing grades without commensurate and appropriate student effort, constitutes misuse of the University as an institution.

It should be understood that the Board of Regents has always recognized the importance of an "open forum policy" on the campuses, of a free exchange of ideas, and of pursuit of the truth wherever it may lead--popular or unpopular though that may be. There are many hours available during the daily activities of students and faculty for free discourse on matters of concern to them as citizens. It cannot be argued successfully that it is necessary to interrupt progress of an academic course or to modify grading procedures to provide for such discussion. It is the Regents' responsibility to the very concept of a University to protect the institution from the misuse of the classroom and to ensure the rights of all to teaching and learning.

Therefore, it is the Regents' policy that no campus, no academic college, no department, and no instructor distort the instructional process in a manner which deviates from the responsibilities inherent in academic freedom. This includes introducing subject matter foreign to the regular course content, using classroom facilities and supplies, or other nonfree speech areas for political purposes. The right of students to have their classes held on the regularly scheduled basis and to be taught by the instructor whose responsibility it is to teach the course in question is to be upheld.