

Free Speech & Academic Freedom

September 9, 2020

Office of Academic Affairs



Academic Freedom & Responsibility



University Rule 3335-5-01 (available [here](#))

(Board approval dates: 9/14/1965, 5/2/1975, 3/1/1985, 6/7/2013)

- (A) The Ohio state university endorses full academic freedom as essential to attain the goal of the free search for truth and its free exposition. Academic freedom and academic responsibility are twin guardians of the integrity of institutions of higher learning. This integrity is essential to the preservation of a free society and explains the willingness of society historically to accept the concept of academic freedom and, in addition, to protect it through the institution of academic tenure.



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(B) The principal elements of academic freedom include the freedom of faculty to:

- Teach, conduct research, and publish research findings;
- Discuss in classrooms, in their own manner, any material that is relevant to the subject matter as defined in the course syllabus;
- Exercise their constitutional rights as citizens without institutional censorship or discipline;
- Seek changes in academic and institutional policies through lawful and peaceful means.



University Rule 3335-5-01 (available [here](#))

(C) Academic freedom carries with it correlative academic responsibilities. The principal elements include the responsibility of faculty to:

- Meet their defined teaching, research, and service obligations;
- Pursue excellence, intellectual honesty, and objectivity in teaching, in conducting research, and in publishing research findings;
- Encourage students and colleagues to engage in free discussion and inquiry;
- Evaluate student and colleague performance on a scholarly basis;
- Refrain from persistently introducing matters that have no bearing on the subject matter of the course;
- Work with appropriate individuals and bodies to provide optimal conditions conducive to the attainment of the free search for truth and its free exposition;
- Differentiate carefully between official activities as faculty and personal activities as citizens, and to act accordingly.



Committee on Academic Freedom and Responsibility ([CAFR](#))

- This committee works to ensure that the role of the faculty is kept independent and free from undue influence or restriction.
- This committee considers faculty grievances about the conditions of faculty employment and serves as a recourse for other faculty concerns.



Free Speech



Quid pro Quo

- Public employees do not relinquish their First Amendment rights to comment on matters of public interest as a condition of their employment (*Pickering v. Board of Education*, 1968).
- But the State, as an employer, has legitimate interests in regulating the speech of its employees that differ significantly from its interests in regulating the speech of its citizenry as a whole.



Protected Speech (examples)

- Symbolic Expression
 - Sit-Ins
 - Flag waving or burning/standing/taking a knee
 - Demonstrations
 - Wearing buttons/hats
 - Signs in windows (so long as no prohibition)
- Indecent but not obscene speech
- Incivility/Offensive Speech
 - Under our Constitution, the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their listeners. *Street v. New York*, 394 U.S. 576 (1969)



Speech Not Protected

- **Obscene Materials**

- Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;
- Whether the work depicts or describes, in an offensive way, sexual conduct or excretory functions, specifically defined by applicable state law; and
- Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

-Miller v. California, 413 U.S. 15 (1973)



And More ...

- Inciting Others to Imminent Lawless Action
 - “Nobody doubts that, when the leader of a mob already ripe for riot gives the word to start, his utterance is not protected by the First Amendment.” US v. Dennis, 183 F.2d 201 (2nd Cir. 1950); aff’d 341 U.S. 494 (1951)
 - Clear and Present Danger (probable, apprehension of disturbance, undifferentiated fear not enough).



What else?

- Fighting Words (but lip service only)
 - Words have a direct tendency to cause acts of violence by the person to whom, individually the remark is addressed
- Defamation
- Restrictions on Employees



Resources

- Committee on Academic Freedom and Responsibility
 - <https://senate.osu.edu/committees/academic-freedom-responsibility>
- University Rules
 - <https://trustees.osu.edu/bylaws-and-rules/university-faculty-rules>
- Academic Rights and Responsibilities
 - <https://oaa.osu.edu/academic-rights-and-responsibilities>
- Political Activity Guidelines
 - <https://legal.osu.edu/topics/political-activity-guidelines>

