

# **Academic Freedom Manual**

**Academic Freedom Committee of the  
Academic Senate**

**Borough of Manhattan Community College  
City University of New York**

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# 1: Prologue

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## Definitions of Academic Freedom

Academic freedom is a complex issue. It has been defined in a variety of ways by different groups in varying circumstances. We provide here three working definitions for use at BMCC.

Academic definition: The freedom of teachers and students to express their ideas, thoughts, and opinions without restriction or fear of reprisals.

Legal Definition 1: The right of a teacher or student, especially at the college or university level, to discuss or investigate an issue, or express any opinions on any topic without interference or fear of penalty or reprisal from either the school or the government.

Legal Definition 2: A school's freedom to control its own policies without government interference, penalty, or reprisal. The extent to which academic freedom exists depends upon many facts, including whether the school is a public or private institution, and whether it is a primary or secondary school or a college or university.

The academic definition presented above is a synthesis of many definitions available on-line. The legal definitions are taken from *Webster's New World Law Dictionary 2010* (Wiley Publishing).

## Background - History of Academic Freedom

The American Association of University Professors defined academic freedom in 1940 and in 1970 supplemented this definition with interpretative comments. The AAUP's original definition is as follows, with later interpretative comments in brackets:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter, which has no relation to their subject. [The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry, which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material, which has no relation to their subject.] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment. [Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure.]
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. [This paragraph is the subject of an

interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows]:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 *Statement* should also be interpreted in keeping with the 1964 *Committee A Statement on Extramural Utterances*, which states *inter alia*: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

## **Academic Freedom at CUNY**

According to the Professional Staff Congress of the City University of New York,

Academic freedom is a professional right of the faculty. It is grounded in the faculty member's qualifications for the position as reviewed by his/her peers. It consists in the freedom to teach, research, write, and speak in our capacity as citizens without restraint by the administration.

This right differs from the Constitutional right to freedom of speech and assembly guaranteed by the First Amendment in the sense that it is the necessary condition for a faculty member to fulfill his/her professional obligations and responsibilities as a teacher, researcher, and writer. It is also meant to protect faculty members from reprisal for exercising their free speech rights.

Along with the protection to practice our craft, academic freedom protects the faculty in taking part in the governance of the institution by speaking out on matters of educational policy, even when or especially when opposing the views of the administration.

### **Committee of the Academic Senate**

In 2010, in response to requests from faculty, the Academic Senate established a standing committee on academic freedom at BMCC. The charge of this committee is discussed in the following chapter.

## **2: Charge of the Academic Freedom Committee**

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### **Monitoring**

The Academic Freedom Committee is charged by the Academic Senate to monitor and examine the state of academic freedom at BMCC. The members of the committee will take note of developments that might restrict academic freedom on campus and will report annually to the Senate on the status of academic freedom at the college.

### **Recommendations**

The Academic Freedom Committee is charged by the Academic Senate to make appropriate recommendations to the Academic Senate on those policies and practices that affect academic freedom and, as appropriate, through that body to the University Faculty Senate. Such recommendations may be made in the committee reports at any regularly scheduled Academic Senate meeting and will be filed in writing to become part of the minutes of the meeting. Such recommendations will also be included in the Academic Freedom Committee's annual report to the Academic Senate.

### **Investigations**

The Academic Freedom Committee is charged by the Academic Senate to investigate any infringements on academic freedom at BMCC and to report on its investigations to the Academic Senate. Such investigations may be instigated by individual faculty members, the Academic Senate, or the Academic Freedom Committee itself.

### **Serving the Faculty**

The Academic Freedom Committee is charged by the Academic Senate to serve all members of the faculty by educating them about the nature and importance of academic freedom and about how it affects the faculty generally. It is also charged to hear individual faculty members' complaints about possible infringements of academic freedom at BMCC and to make policy recommendations based on any case that may be brought to the attention of the committee.

## **3: Types of Situations That May Arise**

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The following are examples of the types of situations that might be brought to the Academic Freedom Committee of BMCC's Academic Senate. They address the degree of freedom faculty have as they conduct themselves within and beyond the classroom. Some of these cases are hypothetical, and some have occurred at BMCC or elsewhere. While they are not all necessarily examples of breaches of academic freedom, all of them are situations that might be brought before the committee. If a given case has been ruled in court, we indicate that fact. Otherwise, we express the committee's current agreement as to whether the case involves academic freedom or not. If we regard the case as unclear or complex, we express that as well.

### **Case Studies**

#### **Curricular Decisions**

Instructors make curricular decisions as they select materials for class work, such as books or videos. They develop learning activities, grade students, and raise topics for discussion. The following examples raise questions of academic freedom based on the choices professors make as they teach.

### **Choice of materials**

An instructor had his class watch the first half of Michael Moore's Fahrenheit 911, a controversial film that raised questions about the September 11 attack. A day or so later, the instructor was told that a complaint had been made and that the college president's legal assistant had asked that he justify the showing of the film. Knowing he had done nothing inappropriate, the instructor ignored this request, as well as a similar request from the associate dean of academic affairs. It later emerged that someone on the staff of a conservative newspaper had called the college president's office, claiming (without evidence) that he had overheard students complaining about being asked to watch the film.

Based on the AAUP definition, this is an example of an academic freedom violation.

Although there is an assigned text for a particular course, an instructor wants to use a textbook of her own choosing. Her department chairperson says she must use the assigned textbook.

Based on the AAUP definition and court ruling, this is not a clear example of an academic freedom violation.

A reference librarian served on a committee choosing a book to assign to all incoming students. His suggestion, *The Marketing of Evil* – a book that his state's federal district court found contained "a chapter discussing homosexuality as aberrant human behavior that has gained general acceptance under the guise of political correctness" – led to considerable controversy among campus faculty. Several gay faculty members filed sexual harassment complaints against the librarian with the university, and he filed his own complaints of harassment against several faculty members.

Based on the AAUP definition and a court ruling, this conflict is not a clear example of an academic freedom violation.

### **Use of Technology**

An instructor in a writing intensive class asks all of her students to create blogs on a blogging site that is open to the public and not sponsored by the College. A student complains that he does not want to create an account (required to create a blog), nor does he want to publish writing that is publicly viewable.

This situation is not a clear example of academic freedom.

An alternate version: An instructor in a writing intensive class asks all of her students to create blogs on a blogging site that is open to the public and not sponsored by the College. The students all do so and some of their blogs are read by the general public. An administrator/parent finds out about this and asks the professor to stop the blogs.

This is not a clear example of academic freedom.

An instructor in a business class requires students to use a collaborative document editing software that is not owned or authorized by the College. The use of the software is part of a graded assignment. Use of the software also requires students to sign up for an account on a web site. A student objects on the grounds that she does not want to sign up for an account, or, in an alternate version, an administrator says that the professor cannot require use of unauthorized technology in a class. Because the accounts are free to sign up and students can use fake information on creating the account, the professor sees no problem with the required software and does not change the assignment.

This is not a clear example of academic freedom.

### **Choice of Learning Activities**

A writing instructor encourages his students to be more visible in class, thinking that would help them be more expressive on paper. To this end, he asks them to respond to some basic questions about themselves. In one class, a student felt uncomfortable about revealing anything about himself and went to the vice president for student affairs, asking for a transfer to another class. The vice president asked the student to write a formal complaint stating that the instructor had asked inappropriate questions. The academic dean interviewed the instructor, refused to accept his word that no inappropriate questions had been asked, and placed a memo about the incident in the instructor's file. Because the two administrators avoided normal channels (the department chair) and withheld professional respect from the instructor, the instructor felt intimidated. Fearing another such incident, he later modified his pedagogy.

We think this interference with sound pedagogy infringed on the instructor's academic freedom.

### **Determining Grades**

An instructor has an unusually strong class and wants to give all A's and B's at the end of the semester; another professor has an unusually unprepared class and feels she can give no grade higher than a C+. Both feel that there is pressure from the administration to give a wider range of grades.

It is not clear whether or not this is an academic freedom issue.

### **Choices Related to Classroom Discourse**

A professor wants students to ponder the idea that the Universe is shaped by mathematical formulas and asks the class, "Do you think God knew mathematics when He/She created the Universe?" A student complained to the administration that teachers should not mention religion in class.

This is an academic freedom issue.

In an introductory psychology course at Brandeis University, Abraham Maslow acquainted his freshmen students with various psychoanalytic ideas, including how the unconscious works and the nature of repression. Distressed by his many direct references to sex, one of his students complained to the college administration.

Had the college administration demanded that Maslow modify the content or style of his teaching, which it did not, his academic freedom would have been violated.

A student in a Human Heredity course complained about a class discussion regarding homosexuality. After investigating the complaint, the community college's administration withdrew the professor's offer to teach the following spring on the grounds that she was teaching misinformation as science.

According to the AAUP definition and a court's ruling, this is a case of a violation of academic freedom.

An adjunct professor at a Christian college suggested, as part of a discussion of classical drama, that the old Greek myths were no more implausible than many of the stories in the Christian Bible. Several students said they were offended by this assertion and complained to the college dean.

The dean told the professor that he had the right to present his own viewpoint but should do so in a way that was sensitive to his students' and the university's religious affiliation. We think the dean should have been



more supportive of the instructor's academic freedom. Although instructors should always try to be sensitive to students' feelings, unexpected, dramatic assertions are sometimes pedagogically effective.

In a discussion of current events and, in particular, the role of Islamic extremism, a social science instructor noted that the Taliban were not very different from the ancient Maccabees. A Jewish student complained to the college dean that the instructor was anti-Semitic. The dean asked the instructor to apologize to his class and say he had misspoken.

The dean violated the instructor's academic freedom. The instructor had raised a potentially illuminating point, had not been insulting, and had not prevented disagreement.

An expert on the Middle East, and a Ph.D. student, was hired to teach a course in his field as an adjunct at a CUNY college, after being approved by the department and the administration. A week before the course began, a student researched the instructor and concluded that he would not be even-handed in his approach to the subject matter. She expressed her concern to a state legislator, who contacted the college president and insisted that the instructor be fired; the president acquiesced, and the appointment was canceled. Following an outcry from experts in his field, at CUNY and elsewhere, and by the Professional Staff Congress, the instructor was reinstated.

We think that this case is related to Academic Freedom. Academic Freedom protects higher education from political pressure.

### **Conduct beyond the Classroom**

As chairperson, a professor relayed the sexual harassment complaint of another faculty member to administration officials and discussed her accusations with lawyers and police investigating the complaints. When he was removed as department chair and from various academic committees, he claimed that these actions were retaliation for his speech about the sexual harassment.

This was adjudicated as not being a violation of academic freedom.

A tenured professor criticized a number of decisions about hiring, promotions, and staffing at the college. He was denied a merit raise.

This was adjudicated as not being a violation of academic freedom.

A department chairperson was dissuaded from publishing an article in a faculty magazine about his experiences as a gay man. His colleagues told him that such an article would be bad publicity for their department.

Although he was not forced to withhold his article, the social pressure his colleagues exerted on him limited the chairperson's academic freedom.

Another tenured professor became embroiled in a dispute with his dean over the administration of a National Science Foundation grant. The university finally returned the funding; the professor argued that he had been retaliated against for criticizing the university's use of grant funds.

It was adjudicated that this was not a violation of academic freedom.

A professor published a letter to faculty and administrators criticizing his university's plan to merge two colleges. Several years later, he spoke to a state newspaper about



the plan. He claimed that in retaliation for his comments, he did not receive faculty evaluations, was not appointed to a chair position, was defamed in an email, and received the lowest possible salary increase.

This was adjudicated as not being a violation of academic freedom.

A tenured associate professor is a self-described conservative Christian. His political discussions with faculty and his public commentary – including a column on Townhall.com that criticized the university as religiously intolerant, as well as a related political book – sparked several incidents at the college. He applied for a promotion to full professor, listing his Townhall.com column and the related book in his promotion application. When he was denied the promotion, he claimed this denial was due to his political speech and his criticism of the college.

This was adjudicated as not being a violation of academic freedom; however, the case is on appeal.

Two faculty members criticized their department chairperson, claiming she was bypassing faculty committee processes and was biased in her handling of faculty evaluations. The faculty members alleged that the department chair retaliated against them for these complaints.

This was adjudicated as not being a violation of academic freedom.

## 4: Privacy and Confidentiality

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The privacy of the party/parties bringing a complaint of a breach of Academic Freedom must be respected, and information obtained in connection with the submission of the complaint and any subsequent investigation or resolution of the complaint must be handled with utmost confidentiality.

## 5: Form of Complaints

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### **Initial Inquiries:**

Initial inquiries may be made for educational purposes about Academic Freedom by sending an email to [bmccafc@gmail.com](mailto:bmccafc@gmail.com). Such an inquiry does not constitute a complaint and is only intended to inform the author of the inquiry about the issue. All inquiries will receive a response from the committee.

### **Informal complaint:**

If a complaint is made informally and the complainant is unwilling to submit a written, signed complaint, then the Chair of the Academic Freedom Committee, respecting the complainant's right to anonymity, will report the complaint to the committee and initiate an informal "fact-finding" inquiry. The committee will determine if the complaint falls within the purview of Academic Freedom and the complainant will be notified of this determination. Further action will be taken only if the complainant chooses to file a formal complaint

### **Formal complaint:**

A formal investigation of a breach of Academic Freedom rights will be initiated after a written, signed complaint is submitted by the complainant to the Chair of the Committee. Every written, signed complaint will receive a response as described below.

# 6: Procedures

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Any member of the instructional staff (faculty) can bring a complaint to the Academic Freedom Committee, including full-time and part-time members of the faculty and College Laboratory Technicians (CLTs). In addition, anyone with a complaint is urged to follow union and college procedures with the appropriate grievance counselor and/or with Human Resources. Complaints may be made orally or via a written mechanism (including email). Complaints may be received directly from the aggrieved party or from a third party who believes that he/she has observed a breach of an individual's or group's academic freedom rights. Any member of the Academic Freedom Committee may accept a complaint, after which it shall be passed to the Chair of the Committee.

## **Hearing a Complaint**

The Academic Freedom Committee will hear complaints from any member of the BMCC community. Complaints are best lodged with the AFC in writing either on paper or electronically. The committee will also hear complaints orally if a complainant wishes to appear at a regularly scheduled meeting (the first Wednesday of each month during the academic year), as long as he/she notifies the committee chair in time to secure a spot on the agenda.

## **Gathering Information**

Once a complaint has been filed, the committee will investigate the charges. Such an investigation will likely include interviews with the complainant, the alleged offender, and any other members of the academic community who may have information relevant to the case.

## **Making a Determination**

After it has gathered information, the committee will discuss the case at its next regularly scheduled meeting and make a determination as to whether or not an infringement of academic freedom has occurred.

## **Report of the Committee**

A written report on the determination of the committee will be made and saved in the records of the Academic Freedom Committee. A copy of the report will be given to all parties involved. If applicable, the committee will determine policies and practices to recommend to the Academic Senate to protect Academic Freedom.

## **Adopted by the Academic Senate on May 25, 2011**

### **Members of the Academic Freedom Committee 2010-2012**

Marcos Zyman, chair.

Alicia Perdomo, secretary. 2010-2011

Christine Jacknick, secretary. 2011-2012

Jody Culkin, Margaret Dean (volunteer), Anne Friedman, Helen Huff, Cynthia Karasek, Leonid Khazanov, David Krauss, Robert Lapidés, Kenneth Levin, Jorge Maciel, Shirley Rausher, Rachel Theilheimer