**Best Practices with Freedom of Speech for Fresno State Faculty and Administration**

***First Amendment to the U.S. Constitution****: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*

**General Principles**

The right to free speech is the cornerstone of freedom of thought and of democratic self-governance. Fresno State faculty, students, and staff stand for these principles because free speech is essential for academic freedom. The University must strive to protect expression of ideas while preserving our learning environment and educational access. Although learning is our top priority, we as a community must NOT condone the creation of intellectual safe spaces where students, faculty or staff retreat from ideas and perspectives at odds from our own or the community’s. In an era when digital (including social) media weaponizes civil discourse, and even the First Amendment protections (Swisher, 2018), it is incumbent upon the University community to ensure that free speech be widely protected. Thus, when confronted with hateful, discriminatory speech, or other ideas with which we disagree, we must strive to provide **more speech** rather than “enforced silence” (Chemerinsky & Gillman, 2017).

In light of accepting greater amounts of speech, we acknowledge that speech from those with whom we disagree must be permitted without censorship or restriction. Campus policies and individuals within this community must not restrict the ideas of individuals nor the content of protests against those ideas.

**Faculty Rights and Responsibilities**

Faculty speech is protected from censorship by the University. **Academic Freedom** (defined by the AAUP, 1940, 1970, 2007 at <https://www.aaup.org/our-work/protecting-academic-freedom>) establishes that Fresno State instructors are: 1) entitled to full freedom in research and in the publication of the results; and 2) entitled to freedom in the classroom in discussing their subject.

Faculty speech should be guided by the AAUP Statement on Professional Ethics (1966, revised in 1987 and 2009), which reads in part:

“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.”

Fresno State faculty should also be guided by our policies, as laid out in the Academic Policy Manual, especially:

* APM 103 – Statement on Academic Freedom

Describes in some detail the breadth of faculty freedom to speak according to the concept of academic freedom, regardless of the medium used for that speech. This comes from the AAUP’s 1940 statement (updated in 1970) on freedom of speech.

* APM 236 – Honor Code of Academic Integrity

Encourages faculty to act in accordance with “a commitment, even in the face of adversity, to five fundamental values: honesty, trust, fairness, respect, and responsibility. From these values flow principles of behavior that enable academic communities to translate ideals to action” (Center for Academic Integrity, Fundamental Values of Academic Integrity) and requiring both administrators and faculty to exhibit the highest professional integrity.

* APM 336 – University Statement on Faculty Rights and Responsibilities

Further defines academic freedom at Fresno State, and makes sure that faculty can be guaranteed a safe and secure work environment. Also emphasizes the importance of professional ethics, as defined by the AAUP, and faculty speaking out on areas in which they are experts as long as it is guided by an effort to seek and speak the truth in a way that fosters mutual respect.

**Obligations of the University**

Under federal law, the University has obligations to protect individuals against harassment as well as to protect freedom of speech, and these apply to faculty, staff, and administrators at Fresno State. The following U.S. statutes collectively require the campus to protect individuals from true threats, discrimination and harassment (enforced by the Office of Civil Rights in the U.S. Department of Education, see <https://www2.ed.gov/about/offices/list/ocr/index.html>):

* **Title VI of the 1964 Civil Rights Act**: Provides protection against discrimination based upon race or race-based harassment at universities receiving federal funding.
* **Title VII of the 1964 Civil Rights Act**: As federal courts have interpreted it, Title VII provides protection for employees against discrimination by employers on the basis of race, color, religion, sex or national origin. Discrimination can include, but not be limited to:
	+ Verbal or physical conduct of a sexual or sex-based nature
	+ Unwelcome conduct
	+ Conduct directed against an individual because of sex
	+ Conduct whose purpose or effect unreasonably interferes with an individual’s work performance or creating intimidating, hostile or offensive working environments
	+ Employer knew (or knows) or should have known of conduct and did not take adequate action to stop or prevent it
* **Title IX of the Education Amendments of 1972**: Provides protection for all people at an educational institution that receives federal funds against unsafe or discriminatory learning (educational) environments. Also provides protections against retaliation, especially based upon gender, including actions that are so severe (pervasive and objectively offensive) that they undermine and detract from the victim’s educational experience, effectively denying the victim equal access to institutional resources and opportunities.

While the default position should be that speech is always protected, several decisions in court cases, arbitrations, and legal settlements provide the University a limited right to restrict speech in educational spaces. Such instances are, but not necessarily limited to:

1. When the speech may constitute “true threats” of physical violence to an individual or individuals1
2. When the speech constitutes harassment of an individual based upon race, sex, religion, or sexual orientation2
3. When the speech leads directly to the destruction of property
4. When the speech disrupts class(es), including the broader educational environment and administrative operations (such as excessively loud speech that disrupts classroom work)
5. When course lectures persistently deviate from the course topic and the faculty member’s area of expertise.[[1]](#endnote-1)3

All restrictions imposed by the University must be content neutral.

It should always be noted that the First Amendment also includes protection for the right to assemble, free press and religious expression.

**References**

Chemerinsky, Erwin, and Howard Gillman. 2017. *Free Speech on Campus.* New Haven: Yale University Press.

Swisher, Kris. 2018. “Rules Won’t Save Twitter. Values Will.” *New York Times* at <https://www.nytimes.com/2018/08/08/opinion/twitter-alex-jones-jack-dorsey.html>

1. 1Watts v United States (1969); Virginia v Black (2003)

2Title VI, Title VII of the Civil Rights Act (1964) and Title IX of the Education Amendments (1972)

3Garcetti c Ceballos (2006) Souther dissenting & Demers v Austin (9th Cir 2014) – Public employee restrictions to speech does not apply to teaching and academic writing that is performed pursuant to official duties of a university professor. Robert C. Post Commentary on these cases: Universities may evaluate professional standards in course of normal review and must ensure rights of students to “think freely and exercise independent judgement”. However, there is no academic norm that prohibits scholarship from communicating definite viewpoints about important nad controversial issues. Per the AAUP’s 1970 comment, seen as note 4 in the 1940 State on Principles on Academic Freedom and Tenure, this should not “discourage what is ‘controversial’” as controversy “is at the heart of free academic inquiry.” [↑](#endnote-ref-1)