



Frequently Asked Questions for Faculty in the Wake of the 2016 Election

American Association of University Professors and American Federation of Teachers

Recently, the United States has experienced an unprecedented spike in hate crimes and threats, both physical and verbal, on college and university campuses. These have been directed against African Americans, immigrants, members of the LGBTQ community, religious minorities, women, people with disabilities, and others. In addition, many on campus have been targeted and harassed for statements that they have made both inside and outside of the classroom. It is the strongly shared position of the [American Association of University Professors \(AAUP\)](#) and the [American Federation of Teachers \(AFT\)](#) that violence, threats of violence, and harassment have no place on campus.

The following FAQs describe AAUP and AFT policies relating to these issues and give practical advice on how faculty can respond to such threats. We use the term *faculty* (or *teacher*) in this document to describe all individuals involved in the academic profession—tenured, tenure-track, and non-tenure-track faculty members as well as academic professionals, graduate students, postdoctoral fellows, and others engaged in teaching and research in higher education. We recognize that at many institutions, contingent faculty are not treated as full citizens of the academy. We jointly take the position that, as the AFT has stated, “all faculty and instructional staff are entitled to freedom in their institution to participate in governance, whether they are tenured or nontenured, without fear of intimidation or retaliation” ([Academic Freedom in the 21st-Century College and University](#)).

In addition to the information provided here, faculty should consider the laws, rules and regulations, and collective bargaining agreements that apply in their specific circumstances.

1. What can we do if the administration instructs us not to talk about the election in the classroom?

According to the AAUP’s [Statement on Government of Colleges and Universities](#), “the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of

instruction, research, faculty status, and those aspects of student life which relate to the educational process.” The AAUP’s 1940 [Statement of Principles on Academic Freedom and Tenure](#) affirms that, moreover, “teachers are entitled to freedom in the classroom in discussing their subject,” adding that they should be careful “not to introduce into their teaching controversial matter which has no relation to their subject.” Similarly, the AFT believes that “within the classroom, all faculty and instructional staff are entitled full freedom to discuss the subject matter of the course, in accordance with prevailing academic standards established within and among the academic community” and that “faculty and instructional staff are entitled to exercise their professional judgement in presenting and discussing, frankly and forthrightly, controversial material relevant to their teaching subjects and methods” ([Academic Freedom in the 21st-Century College and University](#)). For faculty in public-sector institutions, courts have recognized that classroom speech that is germane to the subject matter can be protected by the First Amendment. The AAUP has emphasized that the definition of germane speech is an expansive and deferential one: “How an instructor approaches the material in classroom exposition is, absent breach of professional ethics, a matter of personal style, influenced, as it must be, by the pedagogical goals and classroom dynamics of a particular course, as well as by the larger educational objective of instilling in students the capacity for critical and independent thought” ([Freedom in the Classroom](#)). Faculty members must participate in the furtherance of principles of academic freedom and shared governance. Faculty members have a duty, with the support of their unions, their faculty senates, and other available organizations, to oppose administrative demands to curtail or eliminate classroom content or speech that is critical to achieving educational objectives.

2. How can we discuss the election without appearing partisan? How can election-related topics be built into course material without violating professional duties and responsibilities of the faculty?

Faculty have the same free speech rights and responsibilities as do all persons in the United States; they also have unique power that should be used judiciously. The AAUP’s 1940 [Statement of Principles on Academic Freedom and Tenure](#) provides that teachers “should be careful not to introduce into their teaching controversial matter which has no relation to their subject.” A subsequent interpretive comment clarifies this provision: “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 introducing material which has no relation to their subject.” On the question of how to determine whether material is “irrelevant” to classroom discussion, the AAUP’s statement [Freedom in the Classroom](#) concludes that “so long as an instructor’s allusions provoke genuine debate and learning that is germane to the subject matter of a course, they are protected by ‘freedom in the classroom.’” In other words, if a faculty member’s remarks are not simply ruminations on current events but are in fact about relevant political issues—for example, controversies about creationism that the faculty member links to the study of biology—they would be protected by academic freedom.

3. How should we respond to students who share racist, xenophobic, homophobic, or misogynist views in the classroom?

As the AAUP maintains in its 1994 statement [On Freedom of Expression and Campus Speech Codes](#), “On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.” Faculty members must insist, however, that due respect for others be paid in the expression of those views in the academic setting. If a topic raised by a student is not relevant or germane to the class, the faculty member may ask that discussion on the topic cease. (See FAQs 1, 2, and 4.) Further, if the student addresses the class in an unduly disruptive manner, such as by yelling, the faculty member may ask the student to cease this conduct, and if the conduct does not cease the professor may use the techniques normally available to address a disruptive student. Hostility or intolerance to persons who differ from the majority must be strenuously condemned: “Members of the faculty have a major role in dealing with incivility, intolerance, offensive speech, and harassing behavior. They must condemn intolerance, and ensure that their actions set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women” ([On Freedom of Expression and Campus Speech Codes](#)). Faculty who are employed on a term-by-term or fixed-term basis are much more vulnerable to administrative retaliation for even entirely reasonable measures toward classroom management. All faculty must support their contingent colleagues who are addressing disrespectful, irrelevant, hostile, or disruptive behavior in their classrooms.

4. A student in a physics class, which is taught by a contingent faculty member, has complained to the department chair that the faculty member is interfering with her freedom to learn by commenting during the class on national political controversies. The faculty member has made such comments, but doesn't her academic freedom allow her to do so?

Academic freedom rights, according to the AAUP and the AFT, apply equally to all college instructors, including those on contingent or part-time appointments and those teaching as graduate students or research assistants while pursuing their studies. The freedom to teach and the freedom to learn are inseparable facets of academic freedom, and the student is therefore right to see that her freedom to learn depends on the faculty member's teaching the content of the course for which she enrolled. As to what the faculty member's academic freedom permits, if her comments are related to what she teaches, she should be free to expound on these matters as she thinks reasonable. A notion of teaching that discourages a faculty member from discussing controversial questions in the classroom does not serve academic freedom. (See FAQs 1 and 2 for topics addressed and FAQ 9 for protections available.) Most experienced faculty members realize that it is not possible or desirable to exclude rigidly all controversial subjects, or all topics beyond the teacher's areas of expertise. However, the fact that a student has complained suggests that the faculty member may want to consider several questions. Are her comments persistent? Does she spend some portion of each class talking about national political issues not related to physics? How much class time does she actually spend doing so?

5. A colleague blogged and tweeted critically about the role of racism in national affairs. The president of her college has admonished her for speaking out publicly on this issue. He has also warned her of possible disciplinary action should she continue to blog and tweet about controversial issues. Does academic freedom protect her extramural speech?

The AFT believes that "members of the academic community—including all faculty, instructional staff and indeed all workers at the institution—are free to join or form associations or organizations; to organize and work with unions; and to state their views on any topic, subject only to the understanding that they do not speak on behalf of their institutions." The AAUP, similarly, has long been opposed to punishing academics for their expressions as citizens. It also finds "no basis upon which an institution might properly discipline a faculty member for extramural speech unless that speech implicates

professional fitness.” The AAUP recommends in its statement [Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions](#) that institutions “be especially careful in bringing charges shortly after controversial extramural expression and that, should disciplinary hearings be found necessary, the administration, board, and faculty all take special care to ensure full, fair, and equitable proceedings and judgments,” and the AFT concurs with this recommendation. At the institutional level, protections for faculty to engage in such speech are often incorporated into collective bargaining agreements, faculty handbooks, and other institutional policies. In addition, the First Amendment can provide protection when faculty members at public institutions speak out against racism or other matters of public concern, so long as such speech is not a part of the faculty member’s job duties and is not unduly disruptive or hostile.

6. What is the line between protected speech and unprotected threats or conduct?

To fulfill their missions, colleges and universities must ensure that all members of their communities may seek knowledge freely, which includes both the freedom to express controversial views and the freedom from conduct that interferes with the educational mission. The AAUP’s statement [On Freedom of Expression and Campus Speech Codes](#) declares: “On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.” Moreover, under the First Amendment, speech cannot be restricted simply because it is offensive or even intentionally inflammatory. But threats and conduct differ from expressions of ideas that some or even most may find repulsive. Accordingly, “[i]nstitutions should adopt and invoke a range of measures that penalize conduct and behavior, rather than speech—such as rules against defacing property, physical intimidation or harassment, or disruption of campus activities.”

Conduct that can be restricted includes criminal conduct (such as physical assault on a person or destruction or defacement of property), unlawful discriminatory conduct (such as excluding a student from employment because of race), and threats to commit acts of violence. Under federal, state, or local antidiscrimination statutes, certain “unlawful harassment” can be restricted, but the focus again is on conduct, not speech content. The Department of Education has explained this distinction with respect to sex discrimination as follows: “Title IX is intended to protect students from

sex discrimination, not to regulate the content of speech. . . . [O]ffensiveness of particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX. In order to establish a violation of Title IX, the harassment must be sufficiently severe, persistent, or pervasive to limit a student’s ability to participate in or benefit from the education program or to create a hostile or abusive educational environment” (Office for Civil Rights, [Sexual Harassment Guidance](#), 1997).

7. What actions should we take when we are witness to acts of intimidation, threats, or violence on campus?

We should not be silent bystanders in the face of such acts. As noted elsewhere, “[m]embers of the faculty have a major role in dealing with incivility, intolerance, offensive speech, and harassing behavior. They must condemn intolerance, and ensure that their actions set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women” ([On Freedom of Expression and Campus Speech Codes](#)). (See FAQs 3 and 10.) If the threats involve potential violence or damage to persons or property, faculty should immediately report them to the appropriate law-enforcement authorities. Threats, harassment, discrimination, or violations of institutional codes of conduct can be reported to the office of student affairs or the office of diversity. Finally, if the college or university knowingly fails to protect students from unlawful harassment it may violate federal, state, and local statutes and a complaint may be filed with a federal, state, or local office of equal opportunity; there may also be the potential to sue the institution.

8. A colleague has been placed on the “Professor Watchlist” and has started receiving harassing e-mails from students and activists off campus. What can we do about this?

Faculty should be free to express their views, both in class and publicly, without fear of threats or intimidation. Of course, many of these views are the subject of free and often vigorous debate. However, faculty members are not obligated to endure threats or harassment, and they can take the same actions to protect themselves as they would take to protect their students. (See FAQ 7.) If the harassers are students or other college or university employees, conduct can be reported to the office of student affairs or another appropriate office. If the harassment is illegal and interferes with the

educational environment, the college or university may be obligated to take reasonable actions to prevent the harassment. However, harassment by third parties is often difficult to address. Individuals who are harassed could seek to take individual action, such as suing the harassers for defamation or for other torts, but such suits can be difficult to win. Individuals can more quickly counter such actions by banding together, with the support of any available unions and professional organizations, to combat intimidation.

Contingent faculty members may be especially vulnerable in a highly politicized environment. All faculty must commit to ensuring that nontenured colleagues are supported and protected through enforcement of collective bargaining agreements, faculty handbooks, and other actions from political and popular pressures that lead to arbitrary dismissals or nonrenewal of contracts.

9. What protections do we have if we want to voice concerns about potential threats or conduct or if our positions are threatened because of statements that we have made?

The institution should have in place sound and fair disciplinary procedures consistent with AAUP-recommended standards. AFT standards require that faculty must be provided full due process, including the right to union representation and a hearing before a neutral decision maker; that the administration must prove just cause for any discipline that is imposed; and that discipline should be progressive. Disciplinary processes and procedures may be included in campus collective bargaining agreements, faculty handbooks, or institutional rules and regulations. Faculty members and administrators should be familiar with these procedures and understand the need to safeguard academic freedom ([Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions](#)). In addition, antidiscrimination laws often provide protection for those engaging in public opposition to, or filing a complaint about, unlawful discrimination or harassment. As noted in FAQ 5, the First Amendment can also protect such faculty speech in some situations.

10. What are the limits of academic freedom and speech in conversations or situations that one believes threaten the security or well-being of oneself or others?

As discussed above, faculty have an obligation to condemn intolerance and should report threats to the appropriate law-enforcement authorities. (See FAQs 7 and 8.) Of course, as the AAUP states in

[*Freedom in the Classroom*](#), “an instructor may not harass a student nor act on an invidiously discriminatory ground toward a student, in class or elsewhere.” However, as that report also observes, it “is neither harassment nor discriminatory treatment of a student to hold up to close criticism an idea or viewpoint the student has posited or advanced.” Finally, faculty should be mindful not to disclose confidential student information in an improper forum.

11. What role can we play in establishing our campus as a sanctuary campus?

According to the AAUP’s [*Statement on Government of Colleges and Universities*](#) and the AFT’s [*Academic Freedom in the 21st-Century College and University*](#), the faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life that relate to the educational process. Clearly, students whose lives may be disrupted by threats of intimidation, violence, or even deportation cannot pursue their educational goals with equanimity. Faculty members have a legitimate interest in ensuring the maintenance of an academic environment conducive to student learning. Faculty can act through their campus governance structures and through their unions and professional associations to advocate for sanctuary campuses. Faculty can also individually advocate establishing a sanctuary campus by engaging in extramural speech. (See FAQ 5.) For more on the academic’s obligations to his or her profession, students, and campus, see the following proposed “academic code of conduct”:
<http://dailynous.com/2016/11/29/anti-authoritarian-academic-code-conduct/>.