

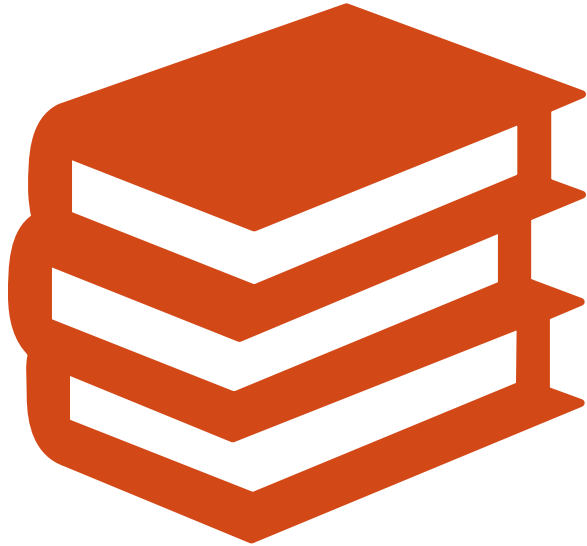


# Academic Freedom

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# Agenda

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- AAUP Definition of Academic Freedom
- MSP Strong Contract Language
- Clarify Limitations to Academic Freedom
- Discuss Threats to Academic Freedom

## AAUP's Academic Freedom Definition

### American Association of University Professors (AAUP)

“Academic freedom is the freedom of a teacher or researcher in higher education to investigate and discuss the issues in his or her academic field, and to teach or publish findings without interference from political figures, boards of trustees, donors, or other entities. Academic freedom also protects the right of a faculty member to speak freely when participating in institutional governance, as well as to speak freely as a citizen.”

# AAUP's FOUR ELEMENTS OF ACADEMIC FREEDOM

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**Teaching:** freedom to discuss all relevant matters in the classroom;

**Research:** freedom to explore all avenues of scholarship, research, and creative expression and to publish the results of such work;

**Intramural speech:** freedom from institutional censorship or discipline when speaking or writing as participants in the governance of an educational institution; and

**Extramural speech:** freedom from institutional censorship or discipline when speaking or writing as citizens.



# MSP Contract – Very Strong Language

## **Article 8. Academic Freedom**

**8.1** The Administration and the Union endorse the principles and spirit of academic freedom as embodied in the 1940 AAUP Statement of Principles as amended and as modified below. The following statement constitutes the provision on academic freedom for the purposes of this Agreement.

**8.2** Bargaining-unit members are entitled to full academic freedom in research and in the publication of the results. They are entitled to full academic freedom in discussing their subjects in the classroom, but they should be careful not to introduce persistently, into their teaching, matter unrelated to their subject.

**8.3** Bargaining-unit members should remember that the public may judge their profession and the University by their utterances. Hence, they should at all times make every effort to indicate whether or not they are speaking officially for the University.

**8.4** Bargaining-unit members are entitled to freedom of political belief and/or affiliation.

**8.5** A bargaining-unit member(s) or department, program, division, center or other comparable administrative unit, as appropriate, shall be entitled to freedom in the selection of textbooks and other materials involved in the performance of teaching responsibilities.

**8.6** Since certain aspects of the information obtained by bargaining-unit members in the course of their work can be considered privileged, no bargaining-unit member shall be required to disclose such information. The Administration shall, within a reasonable time, advise the bargaining-unit member of any effort to secure such information obtained by the bargaining unit member.

**8.7** A bargaining-unit member shall not be disciplined or deprived of any professional advantage for exercising their rights to academic freedom as set forth in this Article or as protected under the First Amendment of the United States Constitution.

**8.8** The parties recognize that there shall be no censorship of library materials.

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# Academic Freedom: Legal Framework





# Academic Freedom and the First Amendment

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“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 redress of grievances.”

*Keyishian v.  
Board of  
Regents, 385  
US. 589 (1967)*

- Law requiring educators to sign an oath that they were not communists was unconstitutional because it violated academic freedom and freedom of association
- “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”



# Academic Freedom in the Courts Post-*Keyishian*: Classroom Speech

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- Courts more likely to consider classroom speech protected if it is **germane to subject matter** of course
  - *Buchan v. Alexander*, 919 F.3d 847 (5<sup>th</sup> Cir. 2019): early childhood education professor's use of profanity and discussion of her sex life with students not protected because it was "not related to the subject matter or purpose of training Pre-K-Third grade teachers."
  - *Hardy v. Jefferson Cmty. Coll.*, 260 F.3d 671 (6<sup>th</sup> Cir. 2001): Termination of professor for using "n-word" in class violated First Amendment because his speech "was germane to the subject matter of his lecture" on social deconstructivism and language, which "explored the social and political impact of certain words."

# Academic Freedom in the Courts Post-Keyishian: Teaching Methods and Curricular Choices

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- Courts generally uphold restrictions on faculty's choice of teaching methods and curriculum
- *Hetrick v. Martin*, 480 F.2d 705 (6<sup>th</sup> Cir. 1973): Termination of nontenured professor's contract because her teaching methods and educational philosophy did not conform to those approved by university did not violate First Amendment
- *Edwards v. California University of Pennsylvania*, 156 F.3d 488 (3<sup>rd</sup> Cir 1998.): professor had no "constitutional right to choose curriculum materials in contravention of University's dictates."
- **BUT SEE** *Meriweather v. Hartop*, 992, F.3d 492 (6<sup>th</sup> Cir. 2021): College's discipline of philosophy professor for refusing to refer to students by their preferred pronouns while using Socratic method violated his right to academic freedom

# Academic Freedom in the Courts Post-Keyishian: Professors' Authority Over Grading

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- **Courts generally uphold restrictions on faculty's authority over grading**
- *Lovelace v. Southeastern Mass. Univ.*, 793 F.2d 419 (1<sup>st</sup> Cir. 1986): nonrenewal of nontenured teacher for refusing to lower his grading standards upheld
  - “To accept plaintiff's contention that an untenured teacher's grading policy is constitutionally protected and insulates him from discharge when his standards conflict with those of the university would be to constrict the university in defining and performing its educational mission. The first amendment does not require that each nontenured professor be made a sovereign unto himself.”
- *Parate v. Isibor*, 868 F.2d 821 (6<sup>th</sup> Cir. 1989): University violated professor's right to academic freedom when it ordered him to personally change student's grade, but there would have been no violation had it *administratively* changed student's grade

# Free Speech of Public Employees: *Pickering-Connick* Test

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- Balancing test to determine whether speech is protected.
- Court considers (1) whether the employee uttered the speech in the course of the employee's job responsibilities or as a private citizen, and (2) whether the speech addressed a "matter of public concern."
- If the employee spoke as a private citizen on a matter of public concern, their interest in speaking is balanced against the employer's interest in the overall efficient functioning of the workplace.
- If employee's interest outweighs employer's interest, the speech is protected.

# Labor Laws

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- M.G.L. c. 150E, Section 2 grants public employees the right to engage in “lawful, concerted activities for the purpose of . . . mutual aid or protection, free from interference, restraint, or coercion.”
- Concerted activities for the purpose of “mutual aid and protection” includes political and social justice advocacy when the subject matter has a direct nexus to employees’ “interests as employees.” *See Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978).
- E.g., wearing Black Lives Matter insignia on work apron where action was “logical outgrowth” of prior group complaints regarding racial discrimination in the workplace. *Home Depot USA, Inc.*, 373 NLRB No. 25 (2024).

# MA Whistleblower Protection Law

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- M.G.L. c. 149, Sec. 185 prohibits public employers from retaliating against employees who report, testify about, or refuse to participate in an activity, policy or practice of the employer that the employee **reasonably** believes
  - is in violation of a law, or
  - poses a risk to public health, safety or the environment
- Must bring complaint to supervisor and give employer an opportunity to correct the issue before disclosing to a public body, with some exceptions



# Limits to Free Speech/Academic Freedom

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Discrimination/Harassment

Violations of university  
policies/codes of conduct

Disruptive Speech (e.g.,  
provokes protests, causes  
students to miss class)

Threats and Incitements to  
Violence

Slander/Defamation

# Limits to Academic Freedom/Free Speech: Time, Place and Manner Restrictions

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- Government can place restrictions on speech that are
  - (1) Content neutral;
  - (2) Narrowly tailored;
  - (3) Serve a significant governmental interest; and
  - (4) Leave open other means of communication

E.g., limits on noise, limits on the number of protesters allowed in a public space, or prohibitions on protests in the middle of the night

# Limits to Academic Freedom/Free Speech: MA Conflict of Interest Law

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- **G.L. c. 268A, Sec. 23(b)(2)(ii)**: public employees may not knowingly (or with reason to know) use or attempt to use their official positions to secure for themselves or others unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals
- Public employees may **NOT** engage in political activity
  - On their public work time;
  - While acting in their official capacity;
  - In a public building (except where equal access for such political activity is allowed to all similarly situated persons); or
  - With use of public resources (e.g., public office equipment such as computers, copiers, and communications equipment, or public office supplies such as official stationary)