

# Building Chapter Power with the New Redbook

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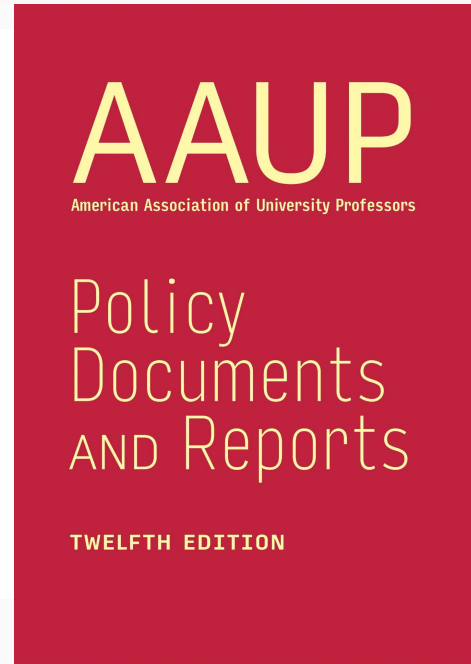
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# The “Redbook”

- Official title: [\*Policy Documents and Reports\*](#)
- Twelfth edition now available [here](#)
- Updated statistical and legal information
- Hardcover, paperback, and e-book versions
- Makes an excellent gift for new administrators
- Discount code for 30% member discount: HWUP



# The Redbook: 12th edition contents

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The Freedom to Teach  
The Assignment of Course Grades and Student Appeals  
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Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos

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Accommodating Faculty Members Who Have Disabilities

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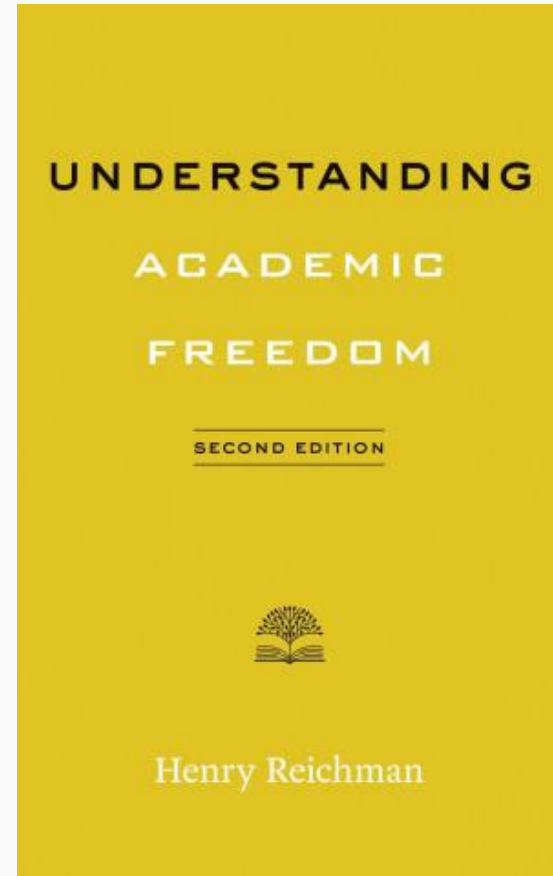
Joint Statement on Rights and Freedoms of Students  
Statement on Graduate Students  
Statement on Intercollegiate Athletics

## Recommended Reading

Hank Reichman's *Understanding Academic Freedom*, now in its second edition, released a month ago today.

This updated version discusses a number of crucial academic freedom crises that have emerged since the first edition appeared in 2021 and how the AAUP policies found in the Redbook apply.

As promised, we are about to drop a link into the chat, and the first ten attendees to complete the form will receive a free copy of this book.



# Chapters and AAUP Policies

“In pursuing its primary mission, the Association has sought throughout its history to induce colleges and universities to incorporate AAUP policies into their regulations. A core responsibility of an AAUP chapter is thrust to strive, in cooperation with the administration and faculty governance bodies, to accomplish such incorporation.”

“Introduction: AAUP Policies and Their Effective Use”

It is advantageous for handbooks and CBAs to include or specifically cite AAUP policy statements for a number of reasons.

- Doing so might incorporate by reference “case law” as it has been developed by the AAUP over the years, for example in censure and sanction cases.
- Specific references to AAUP policy documents supports a claim that the content of *derivative* AAUP policies should be used to interpret a handbook or contract.

# Core Redbook Documents

- *1940 Statement of Principles on Academic Freedom and Tenure*
- *Recommended Institutional Regulations on Academic Freedom and Tenure*
- *Statement on Government of Colleges and Universities*

# Recommended Institutional Regulations on Academic Freedom and Tenure

Model policies, nearly cut-and-paste ready:

1. Statement of Terms of Appointment
2. Probationary Appointments
3. Termination of Appointment by Faculty Members
4. Termination of Appointments by the Institution  
(Financial Exigency, Program Discontinuance)

# Recommended Institutional Regulations on Academic Freedom and Tenure

Model policies, nearly cut-and-paste ready:

5. Dismissal Procedures
6. Action by the Governing Board (in dismissals or severe sanctions)
7. Procedures for Imposition of Sanctions other than Dismissal
8. Terminal Salary or Notice
9. Academic Freedom and Protection against Discrimination

# Recommended Institutional Regulations on Academic Freedom and Tenure

Model policies, nearly cut-and-paste ready:

11. Administrative Personnel
12. Political Activities of Faculty Members
13. Part-Time Faculty Appointments
14. Graduate Student Employees
15. Other Academic Staff
16. Grievance Procedure

Principles & Policies

+

People

=

Power

“You are at your most powerful at the beginning of the attacks. Every day you do not fight back, you lose just a little bit more of your rights.”

- Maria Ressa, journalist and Nobel Laureate on resisting the Duterte regime in the Philippines

# Defense of Academic Freedom on the National Stage

## “Principles Upholding Brown’s Academic Freedom”

Open letter from Brown University President Christina H. Paxson:

“... Brown will **always defend academic freedom** and will **continue to provide resources to our international community members** in the face of new challenges.”

## “Open Letter to President Paxson, Provost Doyle, and the Corporation of Brown University”

Letter by Brown University Chapter of the AAUP:

“... We fully support recent statements made by President Paxson, and will stand together with our administration in **defending these values in the face of intimidation and attack**. We can do so only by standing united with other universities facing similar threats.”

## “A Call for Constructive Engagement”

Public statement by the American Association of Colleges and Universities signed by 245 leaders of higher education institutions, and counting:

“... **We speak with one voice against the unprecedented government overreach**... Our colleges and universities share a commitment to serve as centers of open inquiry where, in their pursuit of truth, faculty, students, and staff are **free to exchange ideas and opinions across a full range of viewpoints without fear of retribution, censorship, or deportation**.”

## “Mutual Defense Compact for the Universities of the Big Ten Academic Alliance”

Faculty senate resolutions passed by Rutgers University, University of Nebraska, University of Michigan, Michigan State, University of Washington, and Indiana University:

“... Governmental bodies pose a **significant threat to** the foundational principles of American higher education, **including the autonomy of university governance, the integrity of scientific research, and the protection of free speech**... Under this compact, all participating institutions shall commit meaningful funding to a shared or distributed defense fund. This fund shall be used to **provide immediate and strategic support to any member institution** under direct political or legal infringement.”

# Policy Areas for Discussion

- Academic Freedom and Campus Speech\*
- Dismissal and Suspension\*
- Financial Exigency
- Academic Program Discontinuance
- Nonrenewal of Appointment
- Intellectual Property

# Academic Freedom and Campus Speech

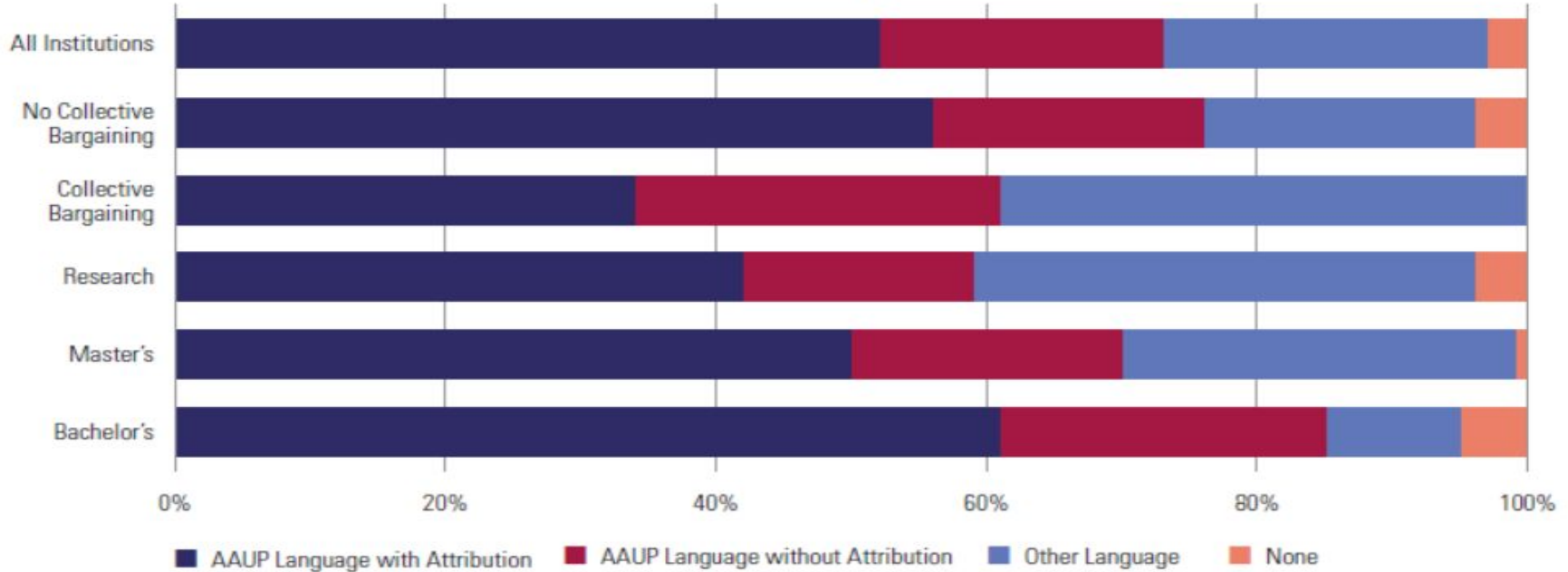
# *1940 Statement of Principles on Academic Freedom and Tenure*

- The AAUP's most significant policy document
- Joint formulation of the AAUP and the American Association of Colleges and Universities (AAC&U)
- Endorsed by more than 280 scholarly societies and higher-education organizations
- Represents a consensus in American higher education about the meaning and purpose of academic freedom and tenure
- Incorporated in hundreds of faculty handbooks and collective bargaining agreements

FIGURE 3

**The 1940 *Statement* is the Primary Source of Academic Freedom Language**

Provenance of Academic Freedom Statements, by Institution Type



# Academic Freedom

- The AAUP's conception of academic freedom is tied not to the First Amendment but to the **special professional role** of instructors and scholars in higher education.
- Some speech **may be** the basis for adverse action, even if it falls short of the usual free speech exemptions: e.g., speech demonstrating disciplinary incompetence or violating standards of professional ethics.
- Academic freedom covers some speech that might not otherwise be protected under the First Amendment (e.g., speech at private institutions, intramural speech at public institutions).

# What is Academic Freedom?

- Freedom in research and publication
- Freedom in the classroom
- Freedom of “intramural” utterances
- Freedom of “extramural” utterances\*

# Redbook Statements on Freedom in Research and Publication

*Statement on Plagiarism*

*Statement on Intellectual Property*

*Statement on Copyright*

*Statement on Multiple Authorship*

*Statement on Conflicts of Interest*

*On Preventing Conflicts of Interest in Government-Sponsored Research at Universities*

*Statement on Corporate Funding of Academic Research*

*Recommended Principles for Faculty Handbooks and Collective Bargaining Agreements to  
Guide Academy-Industry Relationships*

# Redbook Statements on the Freedom to Teach

*Freedom in the Classroom*

*The Freedom to Teach*

*The Assignment of Course Grades and Student Appeals*

*Academic Freedom and Electronic Communications*

# Redbook Statements on Intramural Speech

*On the Relationship of Faculty Governance to Academic Freedom*

*Protecting an Independent Faculty Voice: Academic Freedom after Garcetti v. Ceballos*

*Academic Freedom and Electronic Communications*

# Freedom of Extramural Utterances

- The freedom “to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline or restraint.”
- Unique to the United States.
- This freedom was central to the founders of the AAUP because of the many dismissals that occurred due to extramural utterances.
- It is also the most controversial aspect of academic freedom, as it is not necessarily related to professional expertise.

## Committee *A Statement on Extramural Utterances*

“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.”

## *Joint Statement on Rights and Freedoms of Students*

“Students and student organizations should be free to examine and discuss all questions of interest to them and to express opinions publicly and privately. They should always be free to support causes by orderly means that do not disrupt the regular and essential operations of the institution.”

## “Academic Freedom in Times of War”

“It is in tumultuous times that colleges’ and universities’ stated commitments to protect academic freedom are most put to the test. As the Israel-Hamas war rages and campus protests proliferate, institutional authorities must refrain from sanctioning faculty members for expressing politically controversial views and should instead defend their right, under principles of academic freedom, to do so.”

*Committee A Statement on Extramural Utterances*

*Ensuring Academic Freedom in Politically Controversial Academic Personnel Decisions*

*Academic Freedom and Electronic Communications*

# Academic Freedom in Your Union Contract and Faculty Handbook

Whenever possible, copy and paste the 1940 *Statement of Principles on Academic Freedom and Tenure*, or adapt the language while maintaining the touchstones of the statement. An example:

- A. Academic freedom means freedom of teaching, research, intramural and extramural speech. Faculty members are entitled to the academic freedom to speak out about the governance of their institution as well as the freedom to speak out as a citizen about important issues.
- B. Faculty members are entitled to freedom in research and in the publication of results.
- C. Faculty members are entitled to freedom in the classroom in presenting and discussing their subject. Faculty and instructional staff members must have primary responsibility for selecting instructional materials, defining course content and determining the methods of evaluating student performance in their classes. They must work in concert with their colleagues to ensure coherence of the curriculum and consistency in applying it, subject to academic standards accepted within the community of scholars and accreditation requirements. They should be careful, however, in their teaching not to introduce and to dwell upon matter, particularly controversial matter, which has no relation to their subject. Free inquiry includes pertinent controversy.
- D. Faculty members are members of a learned profession and representatives of an educational institution. They should be aware that when they speak or write as citizens, their special post in the community imposes special obligations particularly since they are free from institutional censorship of, or discipline for, their role as citizens. As persons of learning and as educators they must recognize that the public may judge their profession and their institution by their utterances. They should avoid creating the impression that they speak for the University.
- E. No arbitrary, capricious, or discriminatory restriction or reprisal shall be imposed on any faculty member for participation (or for non-participation) in a non-University activity, whether as a service to the general public or for private remuneration. Any alleged violation of this provision may be subject to the grievance provision herein provided.

## Academic Freedom, Job Security, and Strong Disciplinary Policy

Freedom to speak, teach, and research is strongest when it lives alongside good policies for job security and just cause discipline.

Obviously adjunct appointments complicate this relationship and can weaken even the strongest academic freedom provision. Linked below are examples of strong academic freedom articles in adjunct or part-time faculty union contracts, which tend to be the same as those for full-timers because of the centrality of the 1940 statement, and examples of provisions for increased job security.

Examples from AAUP locals:

[https://docs.google.com/document/d/18-ioSekHMQdK\\_9ymygBj1ZT\\_bEU0hO5jHLNp6\\_72\\_uA/edit?tab=t.0](https://docs.google.com/document/d/18-ioSekHMQdK_9ymygBj1ZT_bEU0hO5jHLNp6_72_uA/edit?tab=t.0)

# Dismissal and Suspension

# Academic Due Process: Terminology

- Probationary faculty members are sometimes *nonreappointed* (their appointments expire and are nonrenewed).
- Faculty members sometimes have an ongoing appointment terminated.
- Faculty appointments may be terminated only for cause or because of financial exigency or program discontinuance.

# Dismissal for Cause

The protections discussed here apply to *all* faculty members prior to the expiration of their appointments (tenured appointments do not expire).

# Dismissal for Cause

The AAUP does not define “adequate cause.”

Instead, the *Statement on Procedural Standards in Faculty Dismissal Proceedings* assumes that institutions will establish their own definitions “bearing in mind the 1940 *Statement* and standards that have developed in the experience of academic institutions.”

# Dismissal for Cause

But Regulation 5 of the *Recommended Institutional Regulations* constrains what may count as adequate cause.

“Adequate cause for dismissal will be related, directly and substantially, to the fitness of faculty members in their professional capacities as teachers or researchers.”

# Dismissal for Cause

In 1973, the AAUP-AAC&U Commission on Academic Tenure in Higher Education observed that “Adequate cause should be restricted to

- demonstrated incompetence or dishonesty in teaching or research,
- substantial and manifest neglect of duty, or
- personal conduct which substantially impairs the individual’s fulfillment of institutional responsibilities.”

# Dismissal for Cause (Regulations 5 and 6)

The essential elements of a dismissal proceeding:

- written statement of charges;
- **opportunity for a prior hearing before an elected body of peers;**
- **burden of proof resting with the administration;**
- the right to present evidence and cross-examine witnesses;
- a decision based on the record of the hearing, with an evidentiary standard of clear and convincing evidence;
- the right to appeal to the governing board.

# Suspensions

AAUP policies distinguish between

- a suspension imposed pending a dismissal hearing
- a suspension imposed as a sanction

## Pre-Dismissal Suspensions (Regulation 5c[1])

- may only be imposed if immediate physical harm is threatened
- should involve prior consultation with an appropriate faculty committee
- should be paid
- must be treated as a dismissal if it is intended to be final.

## Sanctions (Regulation 7)

**Major sanctions** (including any suspension from core faculty duties) require the same procedural protections as dismissal for cause.

**Minor sanctions** (such as a letter of reprimand) may be imposed by the administration without a hearing, but the faculty member must be able to ask an elected faculty committee for review.

# Student Due Process Rights

## *Joint Statement on Rights and Freedoms of Students*

Students facing severe institutional sanctions should be afforded a hearing before a faculty/student committee, in which the administration bears the burden of proof.

# Elements of Strong Discipline in Your Union Contract and Faculty Handbook

- All discipline, including suspension and termination, only for “adequate cause” or “just cause” --as opposed to “at will,” which does not require a legitimate and verifiable reason for dismissal.
- Notification of union officers about all disciplinary meetings.
- Progressive discipline following clear steps.
- Hearing before a panel of colleagues.
- Except in cases of egregious actions, such as theft, assault, or other severe misconduct, first and second steps of progressive discipline should precede a disciplinary suspension
- Arbitration provision.

Examples from AAUP locals:

[https://docs.google.com/document/d/18-ioSekHMQdK\\_9ymygBj1ZT\\_bEU0hO5jHLNp6\\_72\\_uA/edit?tab=t.0](https://docs.google.com/document/d/18-ioSekHMQdK_9ymygBj1ZT_bEU0hO5jHLNp6_72_uA/edit?tab=t.0)

# What are the standards of just cause in arbitration?

If your handbook or union contract has the phrase “just cause” or “adequate cause,” the employer must meet the following seven standards when applying discipline:

1. Fair Notice
2. Prior Enforcement
3. Due Process
4. Substantial Evidence
5. Equal Treatment
6. Progressive Discipline
7. Mitigating and Extenuating Circumstances

More here: <https://labornotes.org/2019/01/using-just-cause-defend-against-unfair-discipline>

Financial Exigency

## Financial Exigency (Recommended Institutional Regulation 4c)

**Definition:** “A **severe financial crisis** that fundamentally compromises the academic integrity of the institution **as a whole** and that cannot be alleviated by less drastic means” than terminating appointments.

4c contains a list of representative “less drastic means.”

## 4C: Faculty Involvement

Regulation 4c requires **informed** faculty participation in every phase of decision-making related to the declaration of financial exigency, the reduction or closing of programs, and the resulting terminations.

## *4c: Procedural Constraints*

- Affected faculty members will promptly be informed in writing and provided at least thirty days to respond.
- A tenured faculty appointment should not be terminated before an untenured appointment except in extraordinary circumstances.
- New appointments should not be made except in extraordinary circumstances.

## Regulation 4c: Individual Faculty Rights

- The institution will make “every effort” to find a faculty member another suitable position within the institution
- Affected faculty members have the right to a hearing before a faculty body:
  - Previous **faculty** judgments in the matter are “presumptively valid”
  - But the burden of proof on other issues rests with the administration.
- Severance salary or notice, and recall rights.

# “Force Majeure” Clauses: Bad!

“[H]andbook or CBA provisions allowing an administration to invoke force majeure (or catastrophic conditions, act of God, extraordinary circumstances, and the like) to nullify existing policies, unilaterally shutter programs, and terminate tenure are inimical to principles and standards of academic freedom and governance. Faculty should therefore steadfastly oppose their inclusion in CBAs, faculty contracts and letters of appointment, and faculty handbooks.”

—*Special Report: COVID-19 and Academic Governance* (2021)

## Core Elements of Financial Exigency Language

- Faculty must be notified of the financial exigency
- At least five years of the institution's audited financial statements must be released to the faculty
- Detailed program, department, administrative, and non-academic unit budgets must be released to the faculty
- Faculty will produce written findings about the financial status of the institution and recommendations for changes, if needed
- Language to detail the process, order of, and severance provided for faculty reductions
- Call-back provision

Search “financial exigency” in the [Contract Database](#) to find examples that incorporate these key elements. Email [mowens@aaup.org](mailto:mowens@aaup.org) for access.

# Program Discontinuance

## Regulation 4d, “Discontinuance of Program or Department for Educational Reasons”

Contains the same two basic kinds of standards among its specific provisions:

- Those that ensure that the collective faculty plays a meaningful role in all decision-making (governance)
- Those that ensure that the laid off faculty members have the opportunity to contest the decision with an elected faculty hearing body (due process)

## Regulation 4d, “Discontinuance of Program or Department for Educational Reasons”

Key specific language:

“The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, **as determined primarily by the faculty** as a whole or an appropriate committee thereof.

“‘Educational considerations’ **do not include cyclical or temporary variations in enrollment**. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.”

## Sample CBA Language for Curriculum Changes

### ARTICLE. Curriculum Changes.

According to the AAUP's *Statement on Government of Colleges and Universities* the faculty has primary responsibility for curriculum, subject matter, and methods of instruction. If the institution believes that a change in curriculum must take place for any reason, the faculty will first receive in writing the stated problem and the employer's proposed changes to the curriculum intended to solve the problem. The faculty union will then review the curriculum and make their own recommendations for curriculum changes, if any, and solutions to the problem. Faculty will have access to all information necessary to complete the review and formulate recommendations. Once complete, the faculty will present their recommendations in an open session of a Board of Trustees meeting and the Board will vote on the recommendations.

Nonrenewal

## *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*

- Applies to all faculty on full-time renewable term appointments
- Elaborates procedural rights set out in Regulations 2 and 10 of the *RIR*
- Purpose is to protect the academic freedom of full-time faculty members without tenure

## *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*

### Key procedural rights:

1. A written statement of the reasons for the nonrenewal
2. Timely notice of nonrenewal, based on length of service
3. Opportunity to contest the decision with a faculty body if alleging inadequate consideration, academic freedom violations, or discrimination

## *Statement on Procedural Standards in the Renewal or Nonrenewal of Faculty Appointments*

What to incorporate, in rank order:

1. The entire statement verbatim.
2. The basic standards on the previous slide, reasons, timely notice, and review, applied to all full-time faculty members
3. The basic standards on the previous slide, reasons, timely notice, and review, applied to all tenure-track faculty members

# Intellectual Property

# Normative Principles of Academic Intellectual Property

## *Statement on Intellectual Property:*

“Course syllabi at many institutions are considered public documents; indeed, they may be posted on universally accessible websites. It is thus to be expected that teachers everywhere will learn from one another’s syllabi and that syllabi will be disseminated as part of the free exchange of academic knowledge.”

# Normative Principles of Academic Intellectual Property

“Faculty lectures or original audiovisual materials . . . **unless** specifically and voluntarily created as **works made for hire**, constitute **faculty intellectual property**. As components of faculty-designed online courses, they cannot be revised, edited, supplemented, or incorporated into courses taught by others without the consent of the original creator. Nor can an online course as a whole be assigned to another instructor without the consent of the faculty member who created the course, unless, once again, the faculty member agreed to treat the course as a work made for hire with such ownership rights residing in the institution.”

# Normative Principles of Academic Intellectual Property

“Faculty governing bodies have a special—and increasing—responsibility to ensure that faculty members are not pressured to sign work-for-hire agreements against their will.”

# Sample Language on Intellectual Property & Course Shells

## **NEW ARTICLE: COPYRIGHT OWNERSHIP AND INTELLECTUAL PROPERTY**

**Section 1. Course Delivery and Copyright.** Courses and course delivery shall not be recorded (audio- or video-taped or digitally captured) without prior knowledge and consent of the faculty member. Such recordings are not to be re-used without the written consent of the faculty member. Copyright of all course material, including but not limited to recordings of courses, course presentations, computer-assisted instructional content, course content developed, and other digital or physical materials created by the faculty member(s), shall be owned by the faculty member(s).

**Section 2. Intellectual Property.** The faculty member (or an appropriate faculty body) who develops course content for use in the classroom or through online delivery through the University learning management system shall exercise control over the future use, modification, and distribution of instructional material and intellectual property, and shall determine whether the material should be revised or withdrawn from use.

**Section 3. Permissions.** If the Administration assigns a faculty member to teach a course through the learning management system that contains another University faculty member's material, the Administration must obtain written permission from said University faculty member(s), who retains the rights set forth in the Agreement. The request for permission shall state that refusal to grant permission for use of the material has no penalty, financial or otherwise.

# THANK YOU!

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