



Academic Freedom and Institutional Neutrality: What You Can Say (and What the University Can't)

April 29, 2025

Jesh Humphrey, Vice Chancellor for Institutional Integrity and General Counsel

Sarah Edwards, Associate Vice Chancellor for Legal Affairs and Deputy General Counsel



Free Speech Basics

- UNC Charlotte's website on free speech is available at <https://freespeech.charlotte.edu/>
- The First Amendment protects most speech/expression, including what some might call hateful or offensive speech.
- A public university may still place reasonable parameters on when, where, and how the speech happens ("time, place, and manner restrictions").
 - Traditional public forum (see [University Policy 601.6, Use of University Space](#))
 - Remember that limited public forums (university website, public meetings) or nonpublic forums (classes, department meetings) have different rules

Free Speech Basics: Government Employees

- If an employee speaks within job duties, the employer (university) may exercise control of the speech and/or discipline the speech (*Garcetti*)
 - **Exception** = faculty speech in classroom and scholarship
- If an employee speaks outside job duties, there's a balancing test (*Pickering/Connick*)
 - Is the subject of the speech a matter of public concern?
 - If not, the employee's speech is not protected from employer discipline
 - If so, the employee's right to free speech is balanced against the employer's interests in an efficient, disruption-free workplace

Academic Freedom Basics

Soft Law vs. Hard Law

Components of Academic Freedom:

- University insulation from state interference in making academic decisions
 - [T]he four essential freedoms' of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”- *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) (Justice Felix Frankfurter, concurring).
- Faculty protection from administrative or political interference
 - Freedom of inquiry and research
 - Freedom of teaching
 - Freedom of extramural utterance and action
- Student freedom to receive and express competing ideas in academic environment

Institutional Neutrality

- Kalven Report
- Intersection with Academic Freedom
 - Institutional
 - Faculty
 - Student
- UNC Charlotte resolutions, UNC System Policy, and North Carolina law
- The sticky wickets
 - Who is the “institution”?
 - What is a “political controversy”?
 - What about political controversies that impact the institution?

Compelled Speech

- The First Amendment also prevents the government from compelling certain speech
 - *E.g.* students in school cannot be compelled to stand for, say, or salute the flag for the pledge of allegiance
- In 2023, a state law and UNC System policy were adopted to prohibit compelling speech on matters of contemporary political debate or social action
 - Academic freedom (including academic scholarship, classroom instruction, and research pursuits) is not affected

Equality Policy

- More detailed information on the UNC Board of Governors Equality Policy is available on the [Legal Affairs website](#).
- The policy generally takes three existing legal/policy obligations and applies them to offices and roles within the university:
 - Institutional Neutrality: The university and its units must remain neutral on contemporary political debates or social actions, avoiding endorsements of specific viewpoints.
 - Prohibition of Compelled Speech: Employees and students cannot be required to endorse or opine on beliefs or principles related to contemporary political debates or social actions.
 - Prohibition on Promoting Specific Concepts: The university cannot promote certain concepts through training or by requiring employees to affirm them.

Equality Policy

- Academic freedom is still protected under the policy.
 - “The Board of Governors reaffirms that academic freedom is a prerequisite to maintaining and strengthening a world-class university. The University of North Carolina shall therefore take no action that would limit the right of academic freedom in its faculty’s pursuit of teaching, research, and service, subject only to the institutional tenure policies as contemplated in Section 602 of The Code, as well as applicable law.”
- UNC System guidance provides specific examples of activities not affected by the policy.
 - “Generally, the more administratively directed a given act of service by university employees is, the higher the expectation of neutrality must be.”

Current Issues: DEI-related matters

- Federal Government
 - Executive orders
 - Federally sponsored research
- North Carolina Legislature
 - Reminder: Not all bills are created equal
 - Senate Bill 558
- UNC System
 - Foundations in American Democracy
 - February 5th Memorandum Regarding Federal Contracting Compliance

Current Issues: Harvard University

“No government – regardless of which party is in power – should dictate what private universities can teach, whom they can admit and hire, and which areas of study and inquiry they can pursue.”

- Alan Garber, Harvard President

“FIRE staunchly opposes any governmental attempt to coerce educational institutions into ideological conformity. But the stakes here extend far beyond campus. Trump’s threat to revoke Harvard’s 501(c)(3) status doesn’t just endanger academic freedom — it sets a dangerous precedent for all nonprofits whose speech may fall out of favor with those in power.”

- Foundation for Individual Rights in Education (FIRE)

Current Issues: Immigration

- Generally, non-citizens (if legally in the country) enjoy First Amendment protections.
- There are currently some high profile cases like Mahmoud Khalil (Columbia) and Rümeyssa Öztürk (Tufts) relating to potential deportation following speech activity.
- At UNC Charlotte, all student records that were terminated have been reinstated, and to the university's knowledge, none of the original terminations were speech-related.

**Thank you for your time and
feedback!**