

Report of the MPC Academic Senate Committee on Academic Freedom (2007)

The Committee: Chair, David Clemens (English, former Chair of the CCA Tenure and Academic Freedom Committee); Homer Bosserman (Astronomy); Paola Gilbert (Reading); Dr. David Joplin (English); Dr. Todd Weber (Philosophy); Eleanor Morrice (MPC Associated Students Vice President for Representation). The Committee met nine times during spring semester 2007 producing eleven drafts of its recommended policy and three drafts of its final Report. The Committee contacted MPC President Doug Garrison, Vice Presidents John Gonzalez and Carsbia Anderson, Dean Bill Cochran, all Division Chairs (via AAAG), and the Librarians for advice and concerns while preparing this document.

William Roper: So, now you give the Devil the benefit of law!

Sir Thomas More: Yes! What would you do? Cut a great road through the law to get after the Devil?

William Roper: Yes, I'd cut down every law in England to do that!

Sir Thomas More: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!

A Man for All Seasons (1966), Dir. Fred Zinnemann, screenplay Robert Bolt, from his play

Frankie Dunn: You forgot the rule. Now, what is the rule?

Maggie Fitzgerald: Keep my left up?

Frankie Dunn: Is to protect yourself at all times. Now, what is the rule?

Maggie Fitzgerald: Protect myself at all times.

Million Dollar Baby (2004), Dir. Clint Eastwood, screenplay Paul Haggis

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Recommendations:

1. The Committee recommends that the Academic Senate and the Board accept this Academic Freedom Policy wording and explain it at length to the faculty because the recommended wording has been meticulously constructed to resonate with specific court decisions and existing academic freedom policies, statements, and declarations.
2. The Committee recommends that the faculty be educated as to their vulnerability and trained about inserting disclaimers in their syllabi.
3. The Committee recommends that the Academic Senate carefully anticipate how current plans for student email addresses and faculty and student websites may create academic freedom conflicts.
4. The Committee recommends that the Academic Senate and college administration develop comprehensive cyberspace policies and guidelines including a hyperlinks policy as well as a website hosting policy so that personal websites may be disassociated from MPC's network.
5. The Committee recommends that the Academic Senate continuously monitor legal decisions, legislation, developments in cyberspace, and educate and advise faculty about potential vulnerability, as well as advise the Board about academic freedom issues.

Respectfully submitted,

David Clemens, Chair, for

Homer Bosserman
Paola Gilbert
Dr. David Joplin
Dr. Todd Weber
Eleanor Morrice

Explanation of Approach and Wording:

Sir Thomas More: God made the angels to show Him splendor, as He made animals for innocence and plants for their simplicity. But Man He made to serve Him wittily, in the tangle of his mind. If He suffers us to come to such a case that there is no escaping, then we may stand to our tackle as best we can, and, yes, Meg, then we can clamor like champions, if we have the spittle for it. But it's God's part, not our own, to bring ourselves to such a pass. Our natural business lies in escaping.

Our guiding principle is stated by Sir Thomas More—we hoped to craft a definition that by shrewd language would allow MPC faculty, students, administration, and Board to escape dilemmas and confrontations. Other formulations of this principle are Machiavelli's “. . . he who overcomes his enemies by stratagem is as much to be praised as he who overcomes them by force” and Sun-Tzu's “to subjugate the enemy's army without doing battle is the highest of excellence.” Thus, The Committee attempted to build pre-emption into the definition so as to avoid untoward incidents from happening in the first place; other language was chosen to mitigate the effects on the institution and the individuals involved in the event that an untoward incident should ever occur.

In the end, it is problematic how much actual protection even a detailed, robust policy affords considering the indefinite nature of academic freedom's legal status. That said, even if the policy can't provide complete legal protection, it can provide clarity. The Committee's recommended academic freedom definition is best thought of as educative and preventative (for administration, faculty, staff, students, and community) because it describes the college's intent. Describing the college's intent serves as a “Here be dragons” warning for faculty, reassures students, provides embedded strategies for defense, and allays any public fear of the college being employed to convey particular political values or social transformations. Furthermore, intent can be a powerful argument in grievance and litigation. Compliance, however, ultimately must be relegated to persuasion, public opinion, legal action, and/or contract enforcement.

Because the previous MPC policy's wording was largely adopted word-for-word from the 1940 AAUP Statement, the revised wording supplies quotation marks where

needed and fully identifies all sources. The Committee concluded that current issues have made a simple, one-size-fits-all statement of sentiment, such as the previous policy, insufficient.

Above all else, the revised policy seeks to protect the college by establishing its neutrality, thereby insulating it from changes in political fashion. The Committee found ample evidence that if colleges do not establish their neutrality, they can expect public criticism and legislative or other extramural interference. The new wording also seeks to protect the college, faculty, and students from the illiberal exercise of curricular power to coerce moral or political consensus; and, it embraces intellectual pluralism, relies on traditional and legal definitions of academic freedom, and extends academic freedom to cyberspace. The new definition also:

- realizes that MPC is not a research institution involved in the creation of knowledge; MPC's mission is the transmission of knowledge which implies somewhat different obligations;
- adopts the wording used for accreditation purposes, including required statements about the academic freedom and academic responsibility of students, and how academic freedom pertains to curriculum;
- expresses coordination with AAUP statements (where they do not conflict with the collective bargaining agreement);
- acknowledges constitutional obligations;
- resolves the conflict between academic freedom and student learning outcomes;
- preserves the broadest possible definition of academic freedom for fine and performing arts;
- seeks balance between academic freedom and academic responsibility;
- reinforces the contractual nature of the syllabus;
- reaffirms the faculty right to choose textbooks and curricular materials;
- differentiates among the academic freedom needs of different disciplines;
- and, embeds strategy for avoiding complaints and handling them should they occur.

Recommended Wording:

3000 SERIES EDUCATIONAL PROGRAMS AND STANDARDS

B. Educational Standards

3120 Academic Freedom

[Paragraph 1] The purpose of this policy is to define “academic freedom” so as to protect the institutional neutrality of Monterey Peninsula College (MPC) in its practice of intellectual pluralism¹ and to defend faculty, students, and the curriculum from the influence of any current or future political fashion or orthodoxy.² The college is a bastion of competing ideas; unanimity is anathema to academic freedom and intellectual life.

[Paragraph 2] In general, at MPC academic freedom means that “faculty and students are free to examine and test all knowledge appropriate to their discipline or area of major study as judged by the academic/educational community in general. Regardless of institutional affiliation or sponsorship, [MPC] maintains an atmosphere in which intellectual freedom and independence exist.”³

[Paragraph 3] More specifically, MPC defines academic freedom as that aggregate of principles which comport with the American Association of University Professors’ (AAUP) 1940 “Statement of Principles on Academic Freedom and Tenure” and its 1970 “Interpretive Comments” (Appendix #1) except where those documents conflict with the Monterey Peninsula Community College District/Monterey Peninsula College Teachers Association Collective Bargaining Agreement. MPC thereby recognizes the freedom of teachers to teach and students to learn as educationally constitutive and essential to academic life. Further, as a publicly-funded institution of higher learning, MPC embraces its obligation to obey and enforce the rights and principles of the United States Constitution, Bill of Rights, and the U.S. Department of Education Office for Civil Rights (OCR).⁴

¹ “The university is the home and sponsor of critics; it is not itself the critic.” The Kalven Committee: Report on the University’s Role in Political and Social Action (1967).

² “It is a human failing common to us all that we rarely see our own abuses of power, and no one, right, left, or center, is innocent of that failing. Once these abuses are called to consciousness, however, it becomes a moral imperative to restrain ourselves and to grant to others the academic freedom that we would demand for ourselves.” Professor Alan Charles Kors, letter to Dr. Kirk Avery, MPC President and Superintendent, July 19, 2000.

³ WASC Accreditation Reference Handbook, 2006, page 8
<<http://www.accjc.org/documents/Accreditation%20Reference%20Manual%20Rev%20Aug%2031%202006.pdf>>.

⁴ “OCR has consistently maintained that schools in regulating the conduct of students and faculty to prevent or redress discrimination must formulate, interpret, and apply their rules in a manner that respects

[Paragraph 4] Moreover, in order that students may choose from a representative “marketplace of ideas,” MPC promotes robust intellectual pluralism practiced in an atmosphere of objectivity, respect, and civility. MPC agrees that “[s]tudents have a right to courses that accurately reflect the description in the course catalog. Students have a right to courses that are not misused to advance professors' personal social or political agendas. Students have a right to learn in an environment that fosters open inquiry and freedom of expression - without fear of reprisal, ridicule, or hostility.”⁵ Education leads students to independence, not to conversion or conformity. Teachers should be thorough about explaining their teaching methodologies in course syllabi because “[a]n instructor's choice of teaching methods does not rise to the level of protected expression”⁶ Teachers have the right and responsibility to select texts and educational materials for their courses based on their professional training and expertise.

[Paragraph 5] That a college curriculum may be intellectually dynamic and produce discomfort for students of fixed belief does not create a conflict with students' right to a decorous learning environment. Subjective criteria such as discomfort and even offensiveness are impermissible grounds on which to base a complaint; appropriateness of classroom material and discussion can only be determined by disinterested peers applying professional standards appropriate to the discipline. While MPC instructors should make every effort not to be gratuitously invidious or offensive, they have the right to present material which may be considered offensive by some. Students, however, are assured that they will at all times be evaluated only by how well they master the subject matter of a course, not by whether they personally agree with it or reject it. Again, faculty should take great care to make this clear to students in the course syllabus.

[Paragraph 6] Method of evaluation, formulation of objectives or outcomes consistent with the course description, and assignment of a final grade are the right and responsibility of the individual instructor. In order to maintain a climate of free inquiry for students, MPC recognizes that not all knowledge and educational benefit is immediate, concrete, and measurable. Evaluation of student learning may reflect factual knowledge when appropriate; however, in some disciplines, evaluation concerns qualities which are not measurable,⁷ do not represent factual knowledge, and/or cannot be stated in

the legal rights of students and faculty, including those court precedents interpreting the concept of free speech. OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.” Letter from Gerald A. Reynolds, Assistant Secretary, Office for Civil Rights, United States Department of Education, July 28, 2003 <<http://www.thefire.org/index.php/article/5046.html>>

⁵ <<http://www.noindoctrination.org/acadf.shtml#noindoc> >.

⁶ Sixth District Court, *Dembrot vs. Central Michigan University*. 2001 FED App. 0057P (6th Cir.). File Name: 01a0057p.06.

⁷ As stated by Edward Freeman, Oxford's Regius Professor of Modern History in 1887, “[We are told that literature] ‘cultivates the taste, educates the sympathies, enlarges the mind.’ Excellent results against which no one has a word to say. Only we cannot examine in tastes and sympathies,” qtd. in “The Decline and Fall

quantifiable terms. Teachers of these subjects, therefore, should not be forced to measure student learning using quantifiable criteria. Attitudinal, behavioral, and/or values laden evaluations should never be formulated or applied. Similarly, teachers should not be coerced by ideological or dogmatic curricular mandates or standards, and teachers are never required to teach against conscience or expertise.⁸

[Paragraph 7] Teachers in some disciplines (the humanities and the social sciences) must hew to the unsettled, problematic, imponderable, or ambiguous nature of their discipline's knowledge, the teaching of which may entail, as proper pedagogy, the asking of provocative questions (Socratic dialogue) or even expressing opinions which they do not in fact hold (playing devil's advocate).⁹ The nature of knowledge in other disciplines (math and science, business) obliges teachers to concentrate on transmitting established professional ideas, standards, and robust scholarly theories to students. Teachers may rightfully choose not to expend class time refuting tendentious objections or metaphysical speculations. Still other disciplines (art, music, creative writing) require the most liberal conception and exercise of academic freedom as their realms concern the exploration of artistic expression. Within these disciplines, academic freedom must protect the validity of intuitive knowledge and presentational art forms, and the instructor's right to choose programming content within these art forms for classroom or public presentation. Academic freedom includes the recognition and encouragement of the traditional role of the arts to explore content which may be controversial and discomforting. Instructors have the right and obligation to exercise subjective judgment, informed by training and experience, in evaluating student work and choosing the content of public presentations. MPC fully subscribes to the AAUP 1990 Committee A Policy Statement on Academic Freedom and Artistic Expression (Appendix #2).

[Paragraph 8] Outside the classroom, teachers are as free as all other citizens to publish personal opinions but should take care not to officially associate their name with the institution; at the same time, teachers cannot be expected to prevent others from making such an association. Similarly, when maintaining a personal website or blog, teachers should again take care not to officially associate their name with the institution. Inside the classroom, by training and experience, teachers are experts in their disciplines, not advocates. In controversial matters, they should be able to differentiate between fact and interpretation and to summarize salient alternative interpretations of facts while keeping their own sentiments behind a veil of professionalism. When a teacher's personal

of Literature" by Andrew Delbanco, [The New York Review of Books](http://www.nybooks.com/articles/318), Vol. 46, No. 17, November 4, 1999, <<http://www.nybooks.com/articles/318>>.

⁸ The United States Supreme Court in *Keyishian v. Board of Regents of the State University of New York* (1967) declared that the First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [which is] peculiarly the marketplace of ideas" <<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=385&invol=589>>.

⁹ As Frederick Crews explains: "Conclusions follow inquiry. Objectivity is achieved by debate. The aprioristic is boring." Keynote address, 2006 Association of Literary Scholars and Critics National Conference, San Francisco, October 13-15. Conference notes.

opinion on a controversial or unsettled matter is offered in a course, it should be clearly identified as personal.

[Paragraph 9] The rights of academic freedom that apply in traditional course settings apply equally to courses offered through electronic media/cyberspace. While MPC does not equate cyberspace with a physical classroom, neither does MPC find any diminution of academic freedom rights implied by virtual space. However, teachers should recognize the volatile and emerging nature of laws and practice pertaining to computer resources and cyberspace, such as copyright, ownership, proceeds from advertising, confidentiality, and so on. They should also realize that some kinds of electronic information that teachers generate may exist in multiple locations permanently, and while other kinds of electronic information may seem evanescent, liability may ensue from either kind. Although teachers are not expected to be experts on the constantly changing field of law involving cyberspace, websites, email, and other computer resources, they should take reasonable steps to comply with legislation, legal decisions, and Board policies which affect their professional lives online. For more detailed information on email, please consult MPC Board Policies 2163 and 2164.

Appendix #1

AAUP 1940 Statement of Principles on Academic Freedom and Tenure With 1970 Interpretive Comments

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher¹ or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.[1]²

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.

Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.[2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.[3]

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.[4]

Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,[5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended

beyond the normal maximum of seven years.[6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.[7]

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]

4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.[9]

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

1940 Interpretations

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7–8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.

2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*.

3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

1970 Interpretive Comments

Following extensive discussions on the 1940 *Statement of Principles on Academic Freedom and Tenure* with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the *Statement* in terms of the experience gained in implementing and applying the *Statement* for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 *Statement*, to formulate the most important of these refinements. Their incorporation here as

Interpretive Comments is based upon the premise that the 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 *Statement*; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), "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."

The numbers refer to the designated portion of the 1940 *Statement* on which interpretive comment is made.

The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted in 1966 as Association policy. (A revision, adopted in 1987, may be found in AAUP, *Policy Documents and Reports*, 9th ed. [Washington, D.C., 2001], 133–34.)

2. 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 intruding material which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 *Statement*, and we do not now endorse such a departure.

4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph (c) of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph (c) of the section on Academic Freedom in the 1940 *Statement* should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances" (Policy Documents and Reports, 32), which states inter alia: "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. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of other 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.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title.* [Back to text](#)

6. In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the *Statement* furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution.**

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 Statement with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Nonreappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

(a) Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

(b) Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

(c) At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors. [Back to text](#)

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 *Statement* is silent.

The 1958 *Statement* provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or

pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

Endnotes

1. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

2. Boldface numbers in brackets refer to Interpretive Comments which follow.

* For a discussion of this question, see the *Report of the Special Committee on Academic Personnel Ineligible for Tenure, Policy Documents and Reports*, 88–91.

** For a more detailed statement on this question, see *On Crediting Prior Service Elsewhere as Part of the Probationary Period*, *ibid.*, 100–101.

Appendix #2

[This is a policy statement from the American Association of University Professors. The statement was endorsed by AAUP's Committee A on Academic Freedom and Tenure and by its Council at their meetings in June 1990. As with all AAUP policy statements, it is in the public domain. For a comprehensive collection of AAUP statements see Policy Documents & Reports by the American Association of University Professors]

Academic Freedom and Artistic Expression

Attempts to curtail artistic presentations at academic institutions on grounds that the works are offensive to some members of the campus community and general public occur with disturbing frequency. Those who support restrictions argue that works presented to the public rather than in the classroom or other entirely intramural settings should conform to their view of the prevailing community standard rather than to standards of academic freedom. We believe that "essential as freedom is for the relation and judgment of facts, it is even more indispensable to the imagination." [1] In our judgment academic freedom in the creation and presentation of works in the visual and performing arts, by ensuring greater opportunity for imaginative exploration and expression, best serves the public and the academy.

The following proposed policies are designed to assist institutions to respond to the issues that may arise from the presentation of artistic works to the public in a manner which preserves academic freedom:

1) Academic Freedom in Artistic Expression. Faculty and students engaged in the creation and presentation of works of the visual and the performing arts are engaged in pursuing the mission of the university as much as are those who write, teach, and study in other academic disciplines. Works of the visual and performing arts are important both in their own right and because they can enhance our experience and understanding of social institutions and the human condition. Artistic expression in the classroom, studio, and workshop therefore merits the same assurance of academic freedom that is accorded to other scholarly and teaching activities. Since faculty and student artistic presentations to the public are integral to their teaching, learning, and scholarship, these presentations no less merit protection. Educational and artistic criteria should be used by all who participate in the selection and presentation of artistic works. Reasonable content-neutral regulation of the "time, place, and manner" of presentations should be developed and maintained. Academic institutions are obliged to ensure that regulations and procedures

do not impair freedom of expression or discourage creativity by subjecting work to tests of propriety or ideology.

2) Accountability. Academic institutions provide artistic performances and exhibits to encourage artistic creativity, expression, learning, and appreciation. The institutions do not thereby endorse the specific artistic presentations nor do the presentations necessarily represent the institution. This principle of institutional neutrality does not relieve institutions of general responsibility for maintaining professional and educational standards, but it does mean that institutions are not responsible for the views or attitudes expressed in specific artistic works any more than they would be for the content of other instruction, publication, or invited speeches. Correspondingly, those who present artistic work should not represent themselves or their work as speaking for the institution and should otherwise fulfill their educational and professional responsibilities.

3) The Audience. When academic institutions offer exhibitions or performances to the public, they should ensure that the rights of the presenters and the audience are not impaired by a "heckler's veto" from those who may be offended by the presentation. Academic institutions should ensure that those who choose to view or attend may do so without interference. Mere presentation in a public place does not create a "captive audience." Institutions may reasonably designate specific places as generally available or unavailable for exhibitions or performances.

4) Public Funding. Public funding for artistic presentations and for academic institutions does not diminish (and indeed may heighten) the responsibility of the university community to ensure academic freedom and of the public to respect the integrity of academic institutions. Government imposition on artistic expression of a test of propriety, ideology, or religion is an act of censorship which impermissibly denies the academic freedom to explore, teach, and learn.

[1] Helen C. White, "Our Most Urgent Professional Task," AAUP Bulletin 45 (March 1959), 282.

http://www.eff.org/Censorship/Academic_edu/CAF/academic/?f=artistic.freedom.aaup

Detailed Rationale for Wording:

Wording	Rationale
<p>[Paragraph 1] The purpose of this policy is to define “academic freedom” so as to protect the institutional neutrality of Monterey Peninsula College (MPC) in its practice of intellectual pluralism and to defend faculty, students, and the curriculum from the influence of any current or future political fashion or orthodoxy. The college is a bastion of competing ideas; unanimity is anathema to academic freedom and intellectual life.</p>	<p>[Paragraph 1] states the purpose of the section which seeks to make teaching and learning immune from political fashion and disassociates the College as an entity from the opinions espoused by its employees. We believe that it is imperative for the policy to establish the college as the host of ideas, not the originator of them.</p>
<p>[Paragraph 2] In general, at MPC academic freedom means that “faculty and students are free to examine and test all knowledge appropriate to their discipline or area of major study as judged by the academic/educational community in general. Regardless of institutional affiliation or sponsorship, [MPC] maintains an atmosphere in which intellectual freedom and independence exist.”</p>	<p>[Paragraph 2] reproduces the wording of the WASC academic freedom accreditation standard to insure conformance in future accreditations.</p>
<p>[Paragraph 3] More specifically, MPC defines academic freedom as that aggregate of principles which comport</p>	<p>[Paragraph 3] provides an expanded definition of the term “academic freedom” and ties MPC’s definition</p>

<p>with the American Association of University Professors' (AAUP) 1940 "Statement of Principles on Academic Freedom and Tenure" and its 1970</p> <p>"Interpretive Comments" (Appendix #1) except where those documents conflict with the Monterey Peninsula Community College District/Monterey Peninsula College Teachers Association Collective Bargaining Agreement. MPC thereby recognizes the freedom of teachers to teach and students to learn as educationally constitutive and essential to academic life. Further, as a publicly-funded institution of higher learning, MPC embraces its obligation to obey and enforce the rights and principles of the United States Constitution, Bill of Rights, and the U.S. Department of Education Office for Civil Rights (OCR).</p> <p>[Paragraph 4] Moreover, in order that students may choose from a representative "marketplace of ideas," MPC promotes robust intellectual pluralism practiced in an atmosphere of objectivity, respect, and civility. MPC agrees that "[s]tudents have a right to courses that accurately reflect the description in the course catalog. Students have a right to courses that are not misused to advance professors' personal social or political agendas. Students have a right to learn in an environment that fosters open inquiry and freedom of expression - without fear of reprisal, ridicule, or hostility." Education leads students to independence, not to conversion or conformity. Teachers should be thorough about explaining their teaching methodologies in course</p>	<p>to the applicable parts of the 1940 AAUP Statement of Principles. This paragraph goes beyond the 1940</p> <p>AAUP statement to include students, as required by WASC, and acknowledges MPC's constitutional obligations as a publicly-funded institution.</p> <p>[Paragraph 4] echoes important Supreme Court language in <i>Keyishian v. Board of Regents of the State University of New York</i> (1967), stating that the First Amendment ". . . does not tolerate laws that cast a pall of orthodoxy over the classroom . . . [which is] peculiarly the marketplace of ideas." This paragraph provides a useful definition of what academic freedom means for students. [Paragraph 4] states the students' right to not be hectorated by a teacher's irrelevant personal beliefs. It also makes cautionary reference to the fact that a teacher's methodology has not been considered protected expression. The Sixth District Court decision in</p>
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<p>yllabi because “[a]n instructor's choice of teaching methods does not rise to the level of protected expression” Teachers have the right and responsibility to select texts and educational materials for their courses based on their professional training and expertise.</p>	<p><i>Dembrot v. Central Michigan University</i> (2001) <i>et al.</i> suggests that because a college class is a captive audience, standards of propriety and the obligation to avoid vitriol and gratuitous vulgarity are properly enforced by college administrations. However, grounds for complaint about methodology are eroded if methodology has been initially explained in the course syllabus which acts as a disclaimer and can be interpreted as agreement to a contract if the student remains in the class. This paragraph also affirms the right of faculty to decide appropriate educational materials and echoes the AAUP Statement of Professional Ethics (1987), “Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors.”</p>
<p>[Paragraph 5] That a college curriculum may be intellectually dynamic and produce discomfort for students of fixed belief does not create a conflict with students’ right to a decorous learning environment. Subjective criteria such as discomfort and even offensiveness are impermissible grounds on which to base a complaint; appropriateness of classroom material and discussion can only be determined by disinterested peers applying professional standards appropriate to the discipline. While MPC instructors should make every effort not to be gratuitously invidious or offensive, they have the right to present</p>	<p>[Paragraph 5] attempts to balance between the use of provocative materials and the responsibility to maintain a climate of academic distance and rectitude. Discomfort, perceived offensivity, and personal taste are established as irrational criteria for complaint. Whether material is appropriate or not must be adjudged by peers employing accepted professional disciplinary standards. We wished to establish that what is appropriate in the classroom cannot be determined by</p>

<p>material which may be considered offensive by some. Students, however, are assured that they will at all times be</p> <p>evaluated only by how well they master the subject matter of a course, not by whether they personally agree with it or reject it. Again, faculty should take great care to make this clear to students in the course syllabus.</p> <p>[Paragraph 6] In order to maintain a climate of free inquiry for students, MPC further recognizes that not all knowledge and educational benefit is immediate, concrete, and measurable.¹⁰ Hence, student learning outcomes should only reflect the factual knowledge available for mastery in a course. In some disciplines, such as the fine and performing arts, outcomes based on this factual knowledge will represent the achievement of intermediate steps in attaining higher goals which cannot themselves be stated in behavioral or quantifiable terms. For these disciplines, learning outcomes may be an imperfect method for the evaluation of course organization or instructional efficacy. Attitudinal, behavioral, or values-laden outcomes should neither be formulated nor applied, nor should teachers or students ever be coerced by ideological or dogmatic curricular mandates. Teachers are never required to teach against conscience or expertise.</p>	<p>extramural individuals, panels, committees, or task forces (save in vocational areas). Although</p> <p>controversial material may be presented, students are reassured that they will be evaluated objectively based on their comprehension, not on their opinion.</p> <p>[Paragraph 6] resolves the conflict between academic freedom and learning outcomes, and uses wording supplied by the Creative Arts Division. This paragraph also uses wording harkening back to the Supreme Court wording regarding conscience and coercion in <i>West Virginia Board of Education v. Barnette</i> (1943), “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith [in it].”</p> <p>[Paragraph 7] distinguishes among</p>
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[Paragraph 7] Teachers in some disciplines (the humanities and the social sciences) must hew to the unsettled, problematic, imponderable, or ambiguous nature of their discipline's knowledge, the teaching of

which may entail, as proper pedagogy, the asking of provocative questions (Socratic dialogue) or even expressing opinions which they do not in fact hold (playing devil's advocate). The nature of knowledge in other disciplines (math and science, business) obliges teachers to concentrate on transmitting established professional ideas, standards, and robust scholarly theories to students. Teachers may rightfully choose not to expend class time refuting tendentious objections or metaphysical speculations. Still other disciplines (art, music, creative writing) require the most liberal conception and exercise of academic freedom as their realms concern the exploration of artistic expression. Within these disciplines, academic freedom must protect the validity of intuitive knowledge and presentational art forms, and the instructor's right to choose programming content within these art forms for classroom or public presentation. Academic freedom includes the recognition and encouragement of the traditional role of the arts to explore content which may be controversial and discomfiting. Instructors have the right and obligation to exercise subjective judgment, informed by training and experience, in evaluating student work and choosing the content of public presentations. MPC fully subscribes to the AAUP 1990 Committee A Policy Statement on Academic Freedom and Artistic Expression (Appendix #2).

different disciplines in a way that protects teachers from having to allot class time to dubious or falsified theories while preserving other disciplines' necessary reliance on

adventurous or dramatic methods and content. This paragraph ends with wording supplied by the Creative Arts Division.

[Paragraph 8] Outside the classroom, teachers are as free as all other citizens free to publish personal opinions but should take care not to officially associate their name with the institution; at the same time, teachers cannot be expected to prevent others from making such an association. Similarly, when maintaining a personal website or blog, teachers should again take care not to officially associate their name with the institution. Inside the classroom, by training and experience, teachers are experts in their disciplines, not advocates. In controversial matters, they should be able to differentiate between fact and interpretation and to summarize salient alternative interpretations of facts while keeping their own sentiments behind a veil of professionalism. When a teacher's personal opinion on a controversial or unsettled matter is offered in a course, it should be clearly identified as personal.

[Paragraph 8] reaffirms that teachers enjoy equal right to speak their minds in extramural circumstances. It also reminds teachers not to present their personal opinion as the official opinion of the college and removes the instructor's concern that someone might associate him/her with MPC in such a way against his/her intention. This paragraph establishes the teacher's obligation to objectively summarize salient alternative theories. Teachers are free to take a position but should clearly identify their position as personal. This paragraph is footnoted with wording from the 1915 AAUP Declaration of Principles, "The teacher ought also to be especially on his guard against taking unfair advantage of the students' immaturity by indoctrinating him with the teacher's own opinions before the student has had an opportunity fairly to examine other opinions upon the matters of question, and before he has sufficient knowledge and ripeness in judgment to be entitled to form any definitive opinion of his own. It is not the least service which a college or university may render to those under its instruction, to habituate them to looking not only patiently but

[Paragraph 9] The rights of academic freedom that apply in traditional course settings apply equally to courses offered through electronic media/cyberspace. While MPC does not equate cyberspace with a physical classroom, neither does MPC find any diminution of academic freedom rights implied by virtual space. However, teachers should recognize the volatile and emerging nature of laws and practice pertaining to computer resources and cyberspace, such as copyright, ownership, proceeds from advertising, confidentiality, and so on. They should also realize that some kinds of electronic information that teachers generate may exist in multiple locations permanently, and while other kinds of electronic information may seem evanescent, liability may ensue from either kind. Although teachers are not expected to be experts on the constantly changing field of law involving cyberspace, websites, email, and other computer resources, they should take reasonable steps to comply with legislation, legal decisions, and Board policies which affect their professional lives online. For more detailed information on email, please consult MPC Board Policies 2163 and 2164.

methodically on both sides, before adopting any conclusion upon controverted issues.”

[Paragraph 9] addresses problems and questions arising from cyberspace, with suggestions and cautions about hosting, linking, advertising, and disclaimers. It attempts to warn faculty in the strongest terms about their vulnerability in an online environment wherein electronically generated material is increasingly used as evidence. Faculty have put in email to students vitriolic and abusive statements they never would have made in a letter. For their own safety, faculty must try to be aware of everything from sock-puppetry and cell phone cameras to keystroke loggers and Godwin’s Law. Faculty are further advised in the strongest terms to consider electronic material they generate as widely-archived in space and eternally-archived in time.

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The Committee Found:

- The Committee found much thinking about academic freedom to be muddled, illusory, and dangerous, instilling in faculty a perilous confidence that some edifice called “academic freedom” shields them from harm causing many faculty members to be unaware of their professional vulnerability and to mistakenly equate or conflate academic freedom with methodological license and unbridled First Amendment speech rights.
- The Committee found “academic freedom” to be a mutable, fragile, and quasi-legal concept whose contours only take shape in a mosaic of sentiment, tradition, policy, legislation, litigation, and public opinion.
- The Committee found that academic freedom for students must be guaranteed as an element of accreditation, and that to do so is not novel but a return to the intentions articulated in the 1915 AAUP Declaration of Principles. Arguments against including students are thus moot.
- The Committee found that threats to academic freedom are often specifically devised and narrowly targeted in such a way that a general purpose statement is no longer viable.
- The Committee found that public trust in higher education to convey knowledge impartially has eroded due in part to a relatively small but not insignificant number of faculty, students, departments, programs, and administrations.
- The Committee found a fundamental conflict between academic freedom and “learning outcomes.”
- The Committee found that new communication technologies bring with them myriad unanticipated academic freedom issues.
- The Committee found that the business model employed by many colleges wherein the student is considered a customer conflicts with academic

freedom and encourages consumerist lawsuits which the college should wish to avoid.

- The Committee found that the existing policy failed to protect faculty and the curriculum from coercion in the past and has also proved difficult to interpret in certain cases of faculty complaint and dismissal.
- Therefore, the Committee holds that the Academic Senate correctly perceives that the current Board Policy on academic freedom must be revised so as to address new challenges from an increasingly technologized, polarized, distrustful, litigious society.

In the preparation of this Policy, the Committee examined or consulted, among others:

- MPC's existing Board Policy 3120;
- MPC's existing Board Policies 2163 and 2164 on E-Mail;
- the Western Association of Schools and Colleges (WASC) Accreditation Reference Handbook;
- The American Association of University Professors (AAUP) 1940 "Statement of Principles on Academic Freedom and Tenure" and its 1970 "Interpretive Comments";
- the AAUP 2004 statement "Academic Freedom and Electronic Communications";
- the AAUP 1915 "Declaration of Principles";
- the AAUP statement "Academic Freedom and Artistic Expression";
- the AAUP "Statement of Professional Ethics" (1966);
- the Academic Senate of the California Community Colleges (ASCCC) "Academic Freedom, Privacy, Copyright and Fair Use";
- definitions of academic freedom from several dozen institutions;
- The Foundation for Individual Rights in Education (FIRE) Director, Greg Lukianoff, and FIRE's case archive;
- The American Council on Education (ACE) Statement on Academic Rights and Responsibilities;
- NoIndoctrination.org's administrator, Luann Wright and its archive of academic freedom policies;
- The California Association of Scholars (CAS);
- "The Kalven Committee: Report on the University's Role in Political and Social Action" (1967);
- "The Academic Bill of Rights";
- "The Students' Bill of Rights";
- "The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education";
- "Why Outside Input Is Important: Academic Freedom in the 21st Century" by Dr. Anne Neal, American Council of Trustees and Alumni (ACTA);
- Academic Rights, Academic Responsibilities: A New Approach (A Publication of the Israel on Campus Coalition);
- "Academic Freedom and Responsibility" by Geoffrey Stone;
- "Academic Freedom Beyond the Faculty: Students, the Institution, and the First Amendment" by Aaron Barlow

- “Cardozo Lecture on Academic Freedom” by Dr. Lee Bollinger;
- “Politics by Any Other Name” by Stanley Fish;
- “Conspiracy Theory 101” by Stanley Fish;
- Statement of the Committee for Academic Freedom and Rights, University of Wisconsin (re: the Kaplan case);
- The Electronic Frontier Foundation archive on academic freedom;
- Debate on Academic Freedom between David Horowitz and Cary Nelson, President of the AAUP, March 4, 2007 (C-SPAN DVD)
- Dr. Eugene Volokh, UCLA School of Law, specializing in Constitutional and First Amendment law;
- FIRE’s Guide to Free Speech on Campus;
- Dr. William Van Alstyne, College of William and Mary Law School, Civil Rights, Constitutional, and First Amendment law;
- Dr. Hank Brown, President, University of Colorado;
- Dr. Doug Garrison, President of Monterey Peninsula College;
- John Anderson, Chair of the MPC Creative Arts Division;
- Gerald Reynolds, former Assistant Secretary, Office for Civil Rights, United States Department of Education and current Chairman, United States Commission on Civil Rights.