

## **Promoting Intellectual Diversity While Preserving Academic Freedom**

This document contains information and advice on the following topics:

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### **What's in the law concerning intellectual diversity and institutional neutrality?:**

The law requires the University and each class it offers to “*ensure the fullest degree of intellectual diversity*” (see ORC 3345.0217.B.3). “Intellectual diversity” is defined in the law as “*multiple, divergent, and varied perspectives on an extensive range of public policy issues*” (see ORC 3345.0217.A.2).

The law also requires the University to “[*d*]emonstrate intellectual diversity for course approval, approval of courses to satisfy general education requirements, student course evaluations, common reading programs, annual reviews, strategic goals for each department, and student learning outcomes” (see ORC 3345.0217.B.5).

Additionally, it requires the University to:

“[*a*]ffirm and declare that faculty and staff shall allow and encourage students to reach their own conclusions about all controversial beliefs or policies and shall not seek to indoctrinate any social, political, or religious point of view” (see ORC 3345.0217.B.4.) and

“[*d*]eclare that it will not endorse or oppose, as an institution, any controversial belief or policy, except on matters that directly impact the institution's funding or mission of discovery, improvement, and dissemination of knowledge” (see ORC 3345.0217.B.6; emphasis added).

The law defines “Controversial beliefs or policies” as:

“any belief or policy that is the subject of political controversy, including issues such as climate policies, electoral politics, foreign policy, diversity, equity, and inclusion programs, immigration policy, marriage, or abortion” (see ORC 3345.0217.A.1).

### **How does the law impact academic freedom?:**

Academic freedom is the freedom of an individual who is an expert in a specific academic discipline and employed in that capacity by an academic institution to use their substantive academic judgment as a disciplinary expert in determining what to research and how to teach their classes.

The gold standard authority on academic freedom is the [American Association of University Professor's 1940 Statement on Academic Freedom and Tenure](#). The Collective Bargaining Agreements of both the TT and FTNTT bargaining units incorporate that Statement allowing KSUFA to defend the academic freedom of faculty represented by KSUFA through the contractual grievance process. Additionally, a series of court cases has established a relationship between academic freedom and the First Amendment freedom of expression. See especially, *Sweezy v. New Hampshire*, 354 U.S. 234 (1957) and *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

It is worth noting that AAUP's 1940 Statement includes the following (emphasis added):

*“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.”*

A comment on the Statement formally added by AAUP in 1970 clarifies that:

*“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.”*

Perhaps in recognition of the relationship between academic freedom and the First Amendment freedom of expression, the law contains a few provisions that seem to acknowledge faculty members' academic freedom in the classroom.

Although the law places restrictions on the University's freedom of expression as an institution, the law explicitly states that those provisions:

*“do not apply to the exercise of professional judgment about whether to endorse the consensus or foundational beliefs of an academic discipline, unless that exercise is misused to take an action prohibited in division (B)(6) of this section”* (see ORC 3345.0217.B.7).

[Division (B)(6) is the provision prohibiting the University as an institution from taking positions on “controversial beliefs or policies.”]

It also explicitly states that the provisions requiring the University as an institution to ensure the fullest degree of intellectual diversity:

*“do not apply to the exercise of professional judgment about how to accomplish intellectual diversity within an academic discipline, unless that exercise is misused to constrict intellectual diversity”* (see ORC 3345.0217.B.5);

and states that:

*“Nothing in this section prohibits faculty or students from classroom instruction, discussion, or debate, so long as faculty members allow students to express intellectual diversity”* (see ORC 3345.0217.D.1).

Although these provisions are somewhat difficult to interpret, the sponsors of the bill that ultimately was signed into law repeatedly testified that the law would not abridge academic freedom.

However, while faculty retain their academic freedom under the law, it will inevitably become more challenging for faculty teaching in areas deemed “controversial” by the law to exercise

their academic freedom. Indeed, various provisions of the law seem designed to encourage faculty to self-censor.

Whether or not one teaches topics deemed “controversial” by this law, we all have a duty to educate our students and members of the public that:

- Academic freedom exists precisely to allow faculty the freedom to exercise their disciplinary expertise in the classroom without fear of being censored merely because some element of their academic discipline is politically or religiously controversial.
- The fact that there is political or religious controversy around a given matter does not mean that the matter is regarded as at all controversial by the scientists and other academic disciplinary experts in a position to obtain and understand relevant empirical evidence and develop robust arguments, theories, proofs, and conclusions concerning the matter.
- Institutions of higher education and the faculty they employ have a duty to follow the empirical evidence and to offer classes that cover theories supported by scientific inquiry and conclusions drawn from disciplinary consensus regardless of whether a particular theory has gotten entangled in the “culture wars” of the day.

When academic freedom is abridged, the faculty member as disciplinary expert is essentially taken out of the classroom and the quality of the education an institution of higher education can provide is radically degraded. When academic freedom is eliminated or restricted, it is students who suffer.

### **Promoting intellectual diversity in the classroom:**

All faculty will want to be prepared to articulate how, in your professional judgment and in a manner appropriate for your discipline, your class fosters intellectual diversity. In some cases, that can be as simple as highlighting the fact that your course covers multiple, competing theories held or conclusions drawn by experts in your academic discipline or otherwise highlighting areas in which there is no expert consensus. In such cases, you will want to emphasize the fact that students are encouraged to reach their own conclusions about which theories are best supported by the evidence.

In the few academic disciplines in which there are few (if any) live disputes among experts, intellectual diversity may come into play with respect to strategies for solving problems, gathering new evidence, or otherwise engaging in research. In some courses (especially, but not exclusively literature courses), intellectual diversity may be promoted by offering students options for which texts to read. In fields where it is the consensus of disciplinary experts that racism, sexism, homophobia, etc. persist in our society, intellectual diversity may be fostered by encouraging conversations about how those aspects of our society (or at least the consensus belief that such aspects exist) affect our lives in different ways.

During class discussions, it will be helpful to ask questions such as:

- What questions are disciplinary experts in this field (e.g. historians, philosophers, biologists, etc.) most interested in?

What data do disciplinary experts appeal to in answering these questions?  
What conclusions have disciplinary experts reached when evaluating this data?  
What do these data suggest to you?

Consider framing existing essay prompts, exam questions, and other assignments as follows:

According to author X, what is Y?  
As presented in this class, what is Y?

Consider including questions such as:

What methodologies do experts in this field (e.g. historians, philosophers, biologists, etc.) use to analyze, evaluate, create new knowledge, and/or add to conceptual frameworks?  
What is the disciplinary consensus on topic X and how did disciplinary experts arrive at the consensus?  
What role does theory play in supporting the disciplinary consensus in this field?  
What empirical evidence supports the disciplinary consensus in this field?  
What additional empirical research might be conducted that would expand upon or evolve the disciplinary consensus in this field?

Faculty, especially but not exclusively those teaching topics deemed “controversial,” are more likely to encounter situations in which they are questioned or challenged by students who do not accept the consensus of disciplinary experts. You may be able to minimize the likelihood that the disciplinary consensus will be challenged by beginning the course with a discussion of the differences between ideology, opinions, and biases on the one hand and empirical evidence in support of a claim on the other.

When and if you are challenged, the first line of defense in such situations will be to review (or introduce if you have not already done so) the empirical evidence that supports the disciplinary consensus. However, that may not be sufficient in all cases. If there are disciplinary experts who similarly reject the consensus, you can mention that and provide references for further reading while noting that your course will maintain its focus on the consensus view. You might also consider responding:

“Thank you for providing this alternative viewpoint. I’d like to learn more about the methods used to produce this viewpoint. If those methods are used in this discipline, we can evaluate the approach. If not, then that is actually outside the scope of this class.”

In such situations, keep in mind that Ohio is a “one party consent” recording state and that students can legally record the interaction without the knowledge or consent of you and their fellow students. You will need to keep your cool and avoid belittling or dismissing out of hand students who issue such challenges. Above all, remember that such challenges provide a learning opportunity for all students in the class.

[If you have additional suggestions for how to promote intellectual diversity in the classroom, please share them with us at [office@ksufa.org](mailto:office@ksufa.org).]

### **Handling student classroom disruptions:**

While effectively responding to students who question or challenge the consensus of disciplinary experts in your class is an important aspect of promoting intellectual diversity, there may be occasions in which such questioning or challenging evolves into behavior that unduly impacts the learning experience of other students.

It is important to keep in mind that the intellectual diversity and free speech rights afforded by the law do not entail that students have a right to engage in classroom speech that interferes with other students' right to learn.

State law enacted prior to SB 1 explicitly allows some restrictions on student free speech including “[c]ontent restrictions on speech that are reasonably related to a legitimate pedagogical purpose, such as classroom rules enacted by teachers” (see ORC 3345.0215.E.5). If you haven’t already outlined such classroom rules in your syllabus or other course document, you will want to lay them down clearly in writing and share them with the students as soon as it becomes clear that you will need to enforce such rules going forward.

Note in this context that:

*“Failure to comply with a reasonable request of an official(s) carrying out assigned duties and responsibilities, including but not limited to a person instructing a class, a librarian or designee in a library, a law enforcement officer, or a university housing staff member”*

is among the prohibited conduct explicitly listed in [University Policy 4-02.101](#), Operational definitions and information regarding regulations for student behavior and administration of student conduct (see section B.18).

In some cases, a student may attempt to prevent you from delivering specific content entirely by (incorrectly) asserting that the law prohibits you from presenting the consensus of disciplinary experts in your field when that consensus meets the definition of “controversial belief or policy,” or that doing so violates their intellectual diversity rights or otherwise amounts to unlawful “indoctrination.” In such cases, consider responding by educating the class about the academic freedom rights afforded to you under the law (and discussed above).

[University Policy 4-02.2 regarding class disruptions](#) outlines the steps that faculty should take in situations where articulating classroom rules or invoking your academic freedom rights is insufficient and the student speech or other behavior becomes genuinely disruptive.

[If you have additional suggestions for how to handle student classroom disruptions, please share them with us at [office@ksufa.org](mailto:office@ksufa.org).]

### **Advice for faculty facing allegations of violating intellectual diversity rights:**

Engaging in good faith efforts to foster intellectual diversity and respond effectively to students who question or challenge the consensus of disciplinary experts in your class will minimize the

likelihood that you will be accused of violating a student's intellectual diversity rights. However, nothing can completely shield you from facing such allegations.

Not every verbal allegation will result in a formal complaint. If a student complains directly to you outside of class about something you did in class, you may be able to informally resolve the situation by taking steps similar to those you would have taken were the complaint to have been made during class (see above). If a student complains to you about something a colleague did in class, you may similarly be able to help defuse the situation. You might consider asking the student about what they have learned in the course about the consensus of disciplinary experts in the field and gently explore whether the student's concern is really about your colleague or about that disciplinary consensus. In the latter case, consider informing the student about the academic freedom rights afforded to instructors under the law.

[If you have additional suggestions for how to resolve such informal allegations, please share them with us at [office@ksufa.org](mailto:office@ksufa.org).]

If you have been informed that there has been a formal allegation against you or have good reason to believe that such a formal allegation is likely forthcoming, contact KSUFA immediately. It is our duty to represent any member of the TT or FTNTT bargaining unit (whether or not you are a dues paying member of KSUFA) who may be facing potential disciplinary actions for any reason. Even if you aren't a member of our bargaining unit (e.g. you are a graduate student instructor, adjunct, staff member, or faculty member in the College of Podiatric Medicine), we may be able to help.

Keep in mind that there is a difference between an allegation—even one formalized in a written complaint—and a finding of fault. You have due process rights that must be upheld before there is any finding of fault or disciplinary action taken. In many cases, exercise of your academic freedom may be a satisfactory defense against a formal allegation. In this context, it is worth noting that the provision of the law permitting “for cause” post tenure reviews (see ORC 3345.453.E) explicitly states: “*for cause shall not be based on a faculty member's allowable expression of academic freedom as defined by the state institution of higher education or Ohio law.*”

If you are a member of either the TT or FTNTT bargaining unit, you have Weingarten rights to union representation during “investigative interviews.” An investigative interview is any meeting at which an administrator asks questions of a faculty member to obtain information that could be used as a basis for a disciplinary action (a sanction) against the faculty member or asks the faculty member to defend or explain his or her conduct.

You have contractual rights under either TT CBA Article VIII or FTNTT CBA Article VIII if you are facing disciplinary action by the University.

KSUFA's Grievance Officers have experience assisting faculty who are facing such investigative interviews and/or who face disciplinary action. If necessary to enforce the provisions of our CBAs in this regard, we will involve KSUFA's attorney.