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Collective Bargaining for Academic Freedom and Its Enforcement: A Guidebook for AAUP Chapters

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AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS

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About the AAUP

The AAUP is a nonprofit membership association of faculty and other academic professionals. Headquartered in Washington, DC, we have members and chapters based at colleges and universities across the country.

Since our founding in 1915, the AAUP has helped to shape American higher education by developing standards and procedures that maintain quality in education and academic freedom in this country's colleges and universities. We define fundamental professional values for higher education, advance the rights of academics, particularly as those rights pertain to academic freedom and shared governance, and promote the interests of higher education teaching and research.

AAUP chapters at campuses across the country work to advance the mission of the AAUP through advocacy, organizing and, in some cases, collective bargaining. In some states, state conferences support chapters and work on state level issues.

Introduction

This guidebook offers guidelines and examples for strengthening academic freedom and related provisions in collective bargaining agreements (CBAs). Academic freedom is central to the ability of faculty and graduate employees to fully engage in their work and to fulfill the public mission of the university. A recent AAUP research report—*Policies on Academic Freedom, Dismissal for Cause, Financial Exigency, and Program Discontinuance*—presents a statistical analysis of faculty handbooks and CBAs from 198 four-year public and private colleges and universities with a tenure system, of which 19 percent engaged in collective bargaining. A central finding of the report concerns the prevalence of the 1940 *Statement of Principles on Academic Freedom and Tenure*. That statement, jointly formulated by the AAUP and the Association of American Colleges and Universities, has been endorsed by more than 250 educational and scholarly associations. The AAUP research report found that the 1940 *Statement* serves as the basis for institutional academic freedom policies at 73 percent of four-year institutions with a tenure system, with 52 percent explicitly citing it or quoting extensively from it. Thus, the *Statement* serves not only as the central element of the AAUP’s policy on academic freedom and tenure but also as the de facto standard in US higher education. An additional finding of the AAUP report was that all institutions with collective bargaining had academic freedom statements of some kind, with 79 percent incorporating the academic freedom statement into their CBAs.

In this guide, we analyze the content of academic freedom provisions and other CBA provisions closely linked to strong and effective protections of academic freedom. These include provisions concerning protections for the full scope of the bargaining unit and enforcement of academic freedom protections in multiple contexts, such as reappointment, tenure and promotions, and disciplinary cases. Given the importance of academic freedom on all campuses, the analysis and resources in this guidebook should be helpful in developing policies on non-unionized campuses to strengthen academic freedom and its enforcement.

The guidance herein recognizes that there are no “ideal” CBA provisions appropriate for all collective bargaining settings. Collective bargaining outcomes will differ depending on factors such as the history of a college or university, the length and stability of the collective bargaining relationship, the role and extent of shared governance, and the legal parameters for bargaining as established by the governing statute. Appendix A provides examples of strong CBA language that protects a broad scope of academic freedom for all faculty through effective enforcement measures. These examples are provided to illustrate the ways in which collective bargaining can strengthen academic freedom, broaden its coverage, and increase effective enforcement of academic freedom in multiple contexts. Appendix B provides a list of AAUP policy statements

and reports that are useful and relevant in crafting CBA provisions to define and enforce academic freedom protections.

Overview of the Issues

An evaluation of the strength and effectiveness of academic freedom provisions in CBAs entails several components, summarized here and discussed more fully in the next section of this guidebook.

The content of academic freedom provisions in the CBA. Academic freedom provisions may be in the form of CBA clauses that (a) provide detailed language describing academic freedom, (b) refer to or incorporate the 1940 *Statement* (though some also refer to the 1970 *Interpretive Comments*) and other AAUP statements related to academic freedom, or (c) refer to or incorporate university policies that are external to the CBA.

Faculty covered by academic freedom provisions in the CBA. To some extent, coverage of the academic freedom provisions will depend on the scope of the bargaining unit—that is, whether the bargaining unit includes all faculty (tenure-track faculty, non-tenure-track faculty, librarians, and graduate student employees) or whether the bargaining unit contains only certain categories of employees. Most salient in this evaluation of coverage is the question of whether academic freedom is equally protected for all ranks of faculty, librarians, and graduate employees.

Enforceability of academic freedom provisions in the CBA. The strength and effectiveness of academic freedom provisions rely on the ability to enforce those provisions in various contexts, which include (a) internal university processes concerning reappointment/promotions processes at department, college, and university levels; (b) internal university processes for investigations and for hearings and appeals in disciplinary matters; and (c) grievance/arbitration processes related to reappointment/promotions, disciplinary charges, or grievances filed by bargaining unit members or the union itself.

Strengthening, Broadening, and Enforcing Academic Freedom in CBAs

The Content of Academic Freedom Provisions in the CBA

Academic freedom provisions may be in the form of CBA clauses that (a) provide detailed language describing academic freedom, (b) refer to or incorporate the 1940 *Statement* (though some also refer to the 1970 *Interpretive Comments*) and other AAUP policy statements related

to academic freedom, or (c) refer to or incorporate university policies that are external to the CBA.

These three approaches are not mutually exclusive, as the academic freedom provision could include all these elements.

Benefits of academic freedom provisions that are detailed and self-contained in the CBA.

There are significant benefits to having CBA provisions that are detailed and self-contained, rather than referring to or incorporating language from some other external document. There are several bases for these benefits:

- Through collective bargaining, the union can craft the most desirable language to define academic freedom. CBA provisions on academic freedom can incorporate specific language from external documents or policies, including the 1940 *Statement* and 1970 *Interpretive Comments*, other AAUP policy statements or reports, or language from existing university policies. For example, the CBA can be crafted to include elements of academic freedom (from the 1940 *Statement* and 1970 *Interpretive Comments*) and language recommended by the AAUP to protect academic freedom to participate in institutional academic matters and governance (see “Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*,” cited in Appendix B).
- By including all academic freedom provisions in the CBA, all parties can refer to the CBA for all relevant provisions rather than refer to multiple policies located in multiple locations. This creates greater clarity about where to find applicable provisions and makes CBA enforcement more manageable for unions and bargaining unit members.
- Having academic freedom provisions detailed in the CBA helps avoid problems in situations where the union may lack control over changes being made to external documents (particularly other university policies), which may be unfavorable for the content or scope of academic freedom.

Benefits of incorporating the 1940 Statement and the 1970 Interpretive Comments. There are distinct benefits to incorporating the 1940 *Statement* and the 1970 *Interpretive Comments* into the CBA. Incorporating the 1940 *Statement* into the CBA maintains the academic freedom norms set forth in that document, which has been recognized or adopted in whole or in part by colleges and universities across the United States. If the CBA references the 1940 *Statement*, it is important that the incorporation explicitly includes the 1970 *Interpretive Comments*, given their significance in clarifying the meaning of the 1940 *Statement*. Further, the CBA could reference subsequent AAUP statements or policies that flow from the 1940 *Statement*, such as the statements cited in Appendix B of this guidebook.

Referencing the 1940 *Statement* and the 1970 *Interpretive Comments* also enables the union to argue that the CBA has incorporated the academic freedom "case law" as developed by the AAUP. Thus, in contract enforcement, the union could cite other AAUP policy statements or reports that are not explicitly cited in the CBA but flow from the 1940 *Statement* (for example, in defining the scope of academic freedom as it applies to librarians, graduate employees, contingent faculty, or academic professionals).

Incorporation of university policies on academic freedom external to the CBA. As noted earlier, there are several potential drawbacks to having the CBA reference external university policies, including the union's lack of control over changes to those policies and the difficulties in managing and enforcing a CBA that refers to multiple external policies. There may be situations, though, where the union favors incorporating external university policies (for example, where such policies are well-established, lengthy, and protective of faculty rights). In such situations, it may be advisable for the union to negotiate for a reference to an external university policy as of a certain date as noted in the CBA provision. This will account for the possibility that the union does not have control over changes to that policy. Further, parties can evaluate the need to change the applicability of the external policy in negotiations for successor CBAs.

The strength of the academic freedom provisions in the CBA depends, in part, on avoiding exclusions to the application of the provisions (for example, in certain kinds of grievances). This issue is related to the coverage and enforceability of the academic freedom provisions, discussed in the following sections.

Faculty Covered by Academic Freedom Provisions in the CBA

To some extent, coverage of the academic freedom provisions will depend on the scope of the bargaining unit—that is, whether the bargaining unit includes all faculty (tenure-track faculty, non-tenure-track faculty, librarians, and graduate student employees) or whether the bargaining unit contains only certain categories of employees. Most salient in this evaluation of coverage is the question of whether academic freedom is equally protected for all ranks of faculty, librarians, and graduate employees.

Broad protection of academic freedom for all faculty, librarians, and graduate employees is an essential part of their ability to participate fully in their roles in the college or university. Given the AAUP's position that the job security of tenure is needed to protect academic freedom, collective bargaining for academic freedom is also related to collective bargaining for job security for all faculty, librarians, and graduate employees in all ranks. Protecting academic

freedom is also related to collective bargaining for dispute resolution processes (internal processes and grievance/arbitration) that are fully available to all bargaining unit members.

Enforceability of Academic Freedom Provisions in the CBA

The strength and effectiveness of academic freedom provisions rely on the ability to enforce those provisions in various contexts, which include (a) internal university processes concerning reappointment/promotions processes at department, college, and university levels; (b) internal university processes for investigations and for hearings and appeals in disciplinary matters; and (c) grievance/arbitration processes related to reappointment/promotions, disciplinary charges, or grievances filed by bargaining unit members or the union itself.

Ensuring that academic freedom provisions in the CBA are enforceable in all these contexts is complicated by the unique nature of collective bargaining in colleges and universities. The coexistence of shared governance and collective bargaining entails decisions about the role of the union and faculty governance bodies over matters affecting faculty working conditions. For example, tenure and promotions processes may be addressed in the CBA and in policies and procedures developed through faculty governance. Another complicating factor is found in the historical reliance on university processes to resolve disputes, particularly in tenure and promotions processes, rather than arbitration in front of third-party neutrals. Further, the reliance on internal decision-making processes may be reflected in CBAs that limit the role of an arbitrator (for example, to decide procedural matters). The legal parameters for bargaining, as established by the governing statute, may also affect the scope and content of CBA provisions concerning academic freedom and its enforcement.

Given these historical, legal, and institutional factors, CBAs may differ significantly in ways that reflect the impact of these factors at particular colleges and universities. Even with these differences, however, there are certain important goals for achieving effective enforcement of academic freedom in CBAs.

Clear and detailed academic freedom in CBA provisions should protect all faculty. As discussed, clear and detailed academic freedom provisions lay a substantive foundation for enforcement. Academic freedom provisions should apply equally to all faculty, librarians, and graduate employees, regardless of rank or status.

Academic freedom protections should apply in all relevant contexts. Academic freedom protections should apply to all aspects of teaching, research, extramural speech, governance, and service. It should also apply in all relevant contexts, including performance evaluations,

decisions about merit pay, reappointment processes, tenure and promotions processes, and disciplinary processes. This broad application of academic freedom in all contexts should be made clear in the CBA.

The CBA can also be written in a way that protects academic freedom in settings outside the direct application of the CBA. For example, where an outside body, such as a faculty senate committee, has authority to hear academic freedom complaints, CBA provisions can protect the continued existence and authority of that body and the way it functions. Similarly, the CBA can protect the authority of other existing faculty governance structures (for example, to prevent the administration from revising an existing academic freedom policy over the objection of a faculty senate).

Other provisions in the CBA, such as tenure and promotions, should enhance protections of academic freedom. CBAs can enhance academic freedom through provisions for objective standards, transparency, and written justifications in decision-making. For example, CBA provisions that detail the criteria and processes for reappointment, tenure, and promotions can create a framework to increase clear, fair, and transparent decision-making. Such CBA provisions put the candidate on notice of objective criteria to be used in peer review in departments and colleges and in administrators' review of recommendations by faculty and lower-level administrators. Requiring that the candidate be given a written justification based on objective criteria creates a written record on appeal from a reappointment, tenure, or promotion recommendation by the department or on appeal from a decision by the college or university administration.

CBA provisions that require transparency, objective standards, and a full written record in decision-making can also help guard against the imposition of biased evaluations based on characteristics such as race, gender expression, ethnicity, disability, or political or ideological positions. Such bias often intersects with violations of academic freedom, as faculty from underrepresented groups may be engaged in teaching or research that critiques the status quo, seeks to expand "disciplinary standards," or may be published in journals outside mainstream venues. CBA provisions requiring that candidates be given written explanations and justifications for decisions based on stated objective standards can place constraints on imposing arbitrary or biased judgments. Further, a written record can create a foundation for an appeal on the grounds that a decision was arbitrary or based on improper bias or discrimination.

Grievance/arbitration processes should include academic freedom issues. Expanding options in the CBA for dispute resolution through grievance/arbitration can expand the venues for

enforcing academic freedom provisions. The particular pathway to an arbitration hearing by an external arbitrator may depend on the context. For example, the CBA could provide arbitration as an option after an internal appeals process in reappointment, tenure, promotions, or disciplinary cases. In the context of other sorts of grievances alleging a violation of academic freedom, as in a merit pay decision, the CBA could describe the steps of the grievance process, culminating in the option of arbitration.

Regardless of the context (reappointment, tenure, promotions, or disciplinary cases), grievance/arbitration should be available equally to all bargaining unit members. Although some CBAs limit the arbitrability of issues for certain groups of employees, such as decisions about reappointment of NTT faculty, collective bargaining for subsequent CBAs may seek to expand access to arbitration.

The CBA should make clear that an individual or the union is able to raise issues of academic freedom at any stage. This will ensure that the individual or union is not found to have waived the issue of academic freedom by not raising it at the earliest possible point in the process, whether in a reappointment, a tenure or promotion review, a disciplinary process, or an initial grievance filing.

Although some CBAs may limit the scope of the arbitrator's decision-making power, the arbitrator should not be restricted in considering academic freedom issues. To this end, it is desirable to have the CBA provide for selection of an arbitrator from a pool of those with higher education experience and expertise in cases involving academic freedom. This may be particularly important in reappointment, tenure, and promotions cases that often limit the arbitrator's power to evaluate the judgment of the administration. Even when the CBA limits the scope of the arbitrator's power, the CBA should provide that matters of academic freedom fall within the scope of the arbitrator's authority. In disciplinary cases, the arbitrator's determination of "just cause" or "adequate cause" should include consideration of academic freedom issues that may be raised in arbitration.

Conclusion

Academic freedom is fundamental to the academic profession and the public mission of higher education. Given the potential of collective bargaining to strengthen academic freedom, this guidebook has identified components of CBA provisions that establish a strong foundation for the protection of academic freedom. These include the content of academic freedom provisions in the CBA and related provisions to ensure broad coverage and effective enforcement of academic freedom protections in multiple contexts, such as reappointment,

tenure and promotions, and disciplinary cases. Although collective bargaining outcomes are influenced by differences in historical, legal, and institutional factors among colleges and universities, this guidebook has identified goals that are important for achieving effective enforcement of academic freedom in CBAs. Appendix A provides examples of strong CBA language to illustrate ways a CBA can strengthen and expand protection of academic freedom for all faculty. Appendix B provides a list of AAUP policy statements and reports that are useful and relevant in crafting CBA provisions to define and enforce academic freedom protections.

APPENDIX A:

Strengthening, Broadening, and Enforcing Academic Freedom in CBAs

The Content of Academic Freedom Provisions in the CBA

Examples of Detailed and Self-Contained Academic Freedom Provisions in CBAs

*Wright State University and AAUP-WSU,
Collective Bargaining Agreement
(July 1, 2020 – June 30, 2023)*

Article 5, Academic Freedom and Professional Responsibilities

5.1.3 Academic freedom is the freedom to teach, both in and outside the classroom; to conduct research and to publish, display or perform the results of those investigations; and to address any matter of institutional policy or action whether or not as a member of an agency of institutional governance. Members of the Bargaining Unit should also have the freedom to address the larger community with regard to any matter of social, political, economic, or other interest, without institutional discipline, save in response to fundamental violations of professional ethics, statements that suggest disciplinary incompetence, or violations of the professional responsibilities set forth in Sections 5.2.1 through 5.2.5.

*University of Oregon and United Academics,
American Association of University Professors–
American Federation of Teachers, AFL-CIO, CBA
(July 1, 2018 – June 30, 2021)*

ARTICLE 5. ACADEMIC FREEDOM, FREE SPEECH AND FACULTY RESPONSIBILITY

Preamble. As stated in the University's former Mission Statement, the University of Oregon "strives to enrich the public that sustains it through the conviction that freedom of thought and expression is the bedrock principle on which university activity is based." Academic freedom and freedom of speech are necessary conditions to teaching and research. This policy establishes a robust view of academic freedom and freedom of speech in order to ensure that faculty have the freedom to conduct research, to teach, to engage in internal criticism, and to participate in public debate.

Section 1. The University protects academic freedom and bargaining unit faculty members shall enjoy its benefits and responsibilities:

- a. The freedom to conduct research and creative work and to publish or otherwise disseminate the results of that work. Within the broad standards of accountability established by their profession and their individual disciplines, faculty members must enjoy the fullest possible freedom in their research and in circulating and publishing their results. This freedom follows immediately from the university's basic commitment to advancing knowledge and understanding.
- b. The freedom to teach, both in and outside of the classroom. Faculty members must be able not only to disseminate to their students the results of research by themselves and others in their profession, but also to train students to think about these results for themselves, often in an atmosphere of controversy that, so long as it remains in a broad sense educationally relevant, actively assists students in mastering the subject and appreciating its significance.

Section 2. Academic responsibility implies the competent and full performance of duties and obligations and the commitment to support the responsible exercise of academic freedom by oneself and others. Each bargaining unit faculty member has the responsibility to:

- a. Observe and uphold the ethical standards of their discipline in the pursuit and communication of scientific and scholarly knowledge;
- b. Treat students, staff, colleagues, and the public fairly and with respect in discharging their duties and in accordance with this Agreement and University Policy No. 01.00.16 (Freedom of Inquiry and Free Speech), approved by the President on December 28, 2010;
- c. Respect the integrity of the evaluation process, evaluating students, staff, and colleagues fairly according to the criteria and procedures specified in the evaluation process;
- d. Represent oneself as speaking for the university only when authorized to do so as part of one's position or professional responsibilities; and
- e. Participate, as appropriate, in the system of shared academic governance, especially at the department or unit level, and seek to contribute to the academic functioning of the bargaining unit faculty member's academic unit (program, department, school, or college) and the university.

Section 3. All bargaining unit faculty members are guaranteed the protections of freedom of speech, as derived from the First Amendment of the Constitution of the United States of America and Section 8 of the Article I of the Constitution of the State of Oregon.

When faculty members speak or write as members of the public, they should make every effort to indicate that they are not speaking for the university. They may identify their university affiliation so long as no university sponsorship or endorsement is stated or implied.

The University encourages and supports open, vigorous, and challenging debate across the full spectrum of human issues as they present themselves to the university community. The University protects free speech through Policy No. 01.00.16 all bargaining unit faculty 16 members have the protections derived from that policy.

***University of Delaware and the University of Delaware Chapter of the AAUP, CBA
(July 1, 2016 – June 30, 2021)***

ARTICLE II. PURPOSE

The purpose of this Agreement is to promote harmonious relationships between the faculty and the administration of the University, to improve the quality of education, and to maintain the high standards of excellence at the University of Delaware, and is the sole and exclusive embodiment of all agreements between the University and the AAUP covering wages, benefits and conditions of employment. It is agreed and understood that the intent and purpose at all times shall be the improvement and maintenance of the education, research and related programs of the University and the welfare of the student body. In the furtherance of the purpose of this Agreement, the parties agree to adhere to the following Statement on Academic Freedom.

Academic freedom is the freedom to teach, both in and outside the classroom, to conduct research and other scholarly or creative activities, and to publish or otherwise disseminate the results. Academic freedom also encompasses the freedom to address any matter of institutional policy or action whether or not as a member of any agency of institutional governance. Faculty have the freedom to address the larger community with regard to any social, political, economic, or other interest. The freedoms enumerated in this policy apply without institutional discipline or restraint save for statements or actions that demonstrate disciplinary incompetence, or that violate the University's Professional Ethics Statement (as edited on February 12, 1999), or the University's standards pertaining to disruptive behavior (as adopted on June 1, 1970). Alterations to these statements made subsequent to the signing of this Agreement do not affect the freedoms enumerated in this Article unless ratified by the UD-

AAUP. Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that, when one is speaking as a citizen on matters of public interest, one is not speaking for the institution.

Examples of CBAs That Incorporate the 1940 *Statement* and Other AAUP Statements or Reports

University of Cincinnati and AAUP University of Cincinnati Chapter, CBA (July 1, 2019 – June 30, 2022)

Article 2 ACADEMIC FREEDOM

2.1 Academic freedom is based upon the premise that scholars are entitled to immunity from coercion in matters of thought and expression...

2.2 Academic freedom applies to freedom of thought and expression in teaching, research, and extramural activities.

2.3 The University shall also continue to recognize that all Faculty Members are citizens and members of learned professions. When they speak or write as citizens, they shall be free from institutional censorship or discipline.

2.4 The above statements in Article 2 take as their source and guide the “1940 Statement on Academic Freedom and Tenure with 1970 Interpretive Comments” found in the *Policy Documents and Reports of the AAUP* (the Redbook). The University of Cincinnati and the AAUP reaffirm their long tradition of, and deep commitment to, academic freedom.

St. John’s University and the St. John’s University Chapter of the AAUP-Faculty Association, CBA (2019 – 2021)

ARTICLE 2 THE UNIVERSITY MISSION AND EDUCATIONAL PHILOSOPHY

....

2.02 Educational Philosophy

a. Academic Freedom

The parties incorporate herein by reference the *1940 Statement of Principles on Academic Freedom and Tenure* of the American Association of University Professors in accordance with the endorsement of the Board of Trustees of the University on January 15, 1968.

In furtherance of the foregoing, the parties incorporate the following text from the *1966 Statement*:

The right of . . . a faculty member . . . to speak on general educational questions or about the administration and operations of his own institution is part of his right as a citizen and should not be abridged by the institution. There exist, of course, legal bounds relating to defamation of character, and there are questions of propriety.

b. Academic Governance

i. The parties hereby incorporate into this Agreement Part V of the *1966 Statement* insofar as it is applicable to the University and to the extent set forth below.

The faculty has primary responsibility for such fundamental areas as curriculum, subject matter, and methods of instruction, research and scholarship, faculty status, and those aspects of student life which relate to the educational process. Faculty status includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise there is the more general competence of experienced faculty personnel committees having a broader charge.

Agencies for faculty participation in the government of the University have been established by the University Statutes and by this Agreement at each level where faculty responsibility is present. The structure and procedures for faculty participation shall be established, modified or abridged only by joint action of the components of the institution. Faculty representatives shall be selected by the faculty, according to procedures determined by the faculty.

***University of Vermont and United Academics, AAUP-AFT, CBA
(May 29, 2018 – June 30, 2020)***

ARTICLE 6 - ACADEMIC FREEDOM AND RESPONSIBILITY

6.1 Institutions of higher education operate for the common good to ensure the preservation and advancement of knowledge through its creation and dissemination and not to further the interest of either the individual faculty member or the institution as a whole. The common good thus depends upon the free search for truth and its free exposition.

6.2 Academic freedom is essential to these purposes and applies to both research and teaching. Freedom in research is fundamental to the search for truth, and academic freedom, in its teaching aspects, is fundamental for the protection of the rights of the faculty member in teaching and of the student to freedom in learning.

6.3 Academic freedom carries with it the equally demanding concept of academic responsibility. Faculty are expected to carry out their teaching and research responsibilities faithfully, in a manner consistent with the traditions of academic freedom and professional excellence.

6.4 The 1940 AAUP Statement of Principles on Academic Freedom provides:

- a. Faculty 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 University.
- b. Faculty 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.
- c. Faculty are citizens, members of a learned profession, and officers of the University. 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 University.

6.5 Full freedom in research and in the publication of the results applies to the use of electronic media for the conduct of research and the dissemination of findings and results, as it applies to the use of more traditional media.

Teaching may occur in any location, real or virtual, in which instruction occurs. In all these different types of classroom locations, the protections of academic freedom shall apply.

6.6 In their capacity as citizens, faculty should be free to engage in political activity so far as they are able to do so consistently with their University obligations. Certain kinds of political activity (such as campaigning for elective office, serving in the State Legislature, or holding a limited-term appointment in a full-time governmental position) may require a unit member to seek a leave of absence from the University. Such leave requests will be addressed pursuant to the provisions of Article 20, Benefits.

The parties agree that social media and other electronic media pose novel issues for faculty speech and media use, specifically regarding the flow of digital information and efforts to maintain the distinction between private speech acts and statements made as a representative of the University. The University commits to seek a review of the current University of Vermont Faculty Senate Statement on Academic Freedom through the normal protocols of the Faculty Senate. Following the review and within a year of the ratification of this Agreement, the University and the Union will agree to new language that shall be incorporated into this Agreement. In doing so, and in considering possible revisions, the University requests that the Faculty Senate consider best practices at peer institutions and those articulated in the national AAUP in its 2014 report on “Academic Freedom and Electronic Communications.”

***University of Toledo and the AAUP of Toledo Chapter, CBA
(tenured/tenure-track)
(July 1, 2021 – June 30, 2022)***

ARTICLE 5. FACULTY RIGHTS AND RESPONSIBILITIES

5.1 ACADEMIC FREEDOM

5.1.1 Members are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties. Research for pecuniary

return shall not compromise the intellectual integrity or reputation of the University and shall be based upon prior understanding with the Member's College Dean.

5.1.2 Members are entitled to full freedom in both the physical or virtual classroom in discussing their subject, but they shall be careful not to introduce into their teaching controversial matter which has no relation to their subject.

5.1.3 Members are citizens, members of a learned profession, and faculty of the University. When they speak or write as citizens, they shall be free from University censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they must remember that the public may judge their profession and the University by their utterances. Hence they must at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the University.

5.1.4 Librarians shall be free to choose resources and to provide services for the interest, information and enlightenment of all members of the academic community. In no case shall resources be excluded from University libraries because of their author(s) or their scientific, economic, social, political, or religious views. No library resources shall be proscribed or removed from the libraries because of partisan or doctrinal disapproval.

Example of Incorporation of University Policies on Academic Freedom External to the CBA

Hofstra University and The Hofstra Chapter of the American Association of University Professors

(September 1, 2021 – August 31, 2026)

ARTICLE 3: FACULTY STATUTES AND FACULTY POLICY SERIES

3.1 Role of FS and FPS. The parties hereby acknowledge that the Faculty Statutes (hereinafter "FS") and the Faculty Policy Series (hereinafter "FPS") constitute the fundamental documents which govern the rights and responsibilities of the Faculty of Hofstra University, subject to the provisions of this Agreement.

3.2 Parties Bound by FS and FPS. The provisions of the FS and FPS are binding upon the parties unless modified by or in conflict with this Agreement, in which case this Agreement will control, and the FS and FPS are hereby incorporated by reference into this Agreement.

3.3 Amendments to FS or FPS. During the term of this Agreement, no amendments to the FS or FPS or any University practice which would void, alter or in any way modify any provision of this Agreement will be enacted or effectuated without the consent of the AAUP.

* * *

THE FACULTY STATUTES OF HOFSTRA UNIVERSITY

II. ACADEMIC FREEDOM

The Board of Trustees has adopted the 1940 *Statement of Principles [on Academic Freedom and Tenure]* which [was] formulated by representatives of the American Association of University Professors and the Association of American Colleges:

1. "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."
2. "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. 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."

Faculty Covered by Academic Freedom Provisions in the CBA Examples of Broad Bargaining Unit Coverage

Wright State University and AAUP-WSU, CBA (July 1, 2020 – June 30, 2023)

2.3 The Bargaining Unit consists of (1) all full-time tenured and tenure-track faculty employed by Wright State University, hereafter referred to as Tenure-Eligible and Tenured (TET) Faculty, and (2) all Senior Lecturers, Lecturers, Instructors, Clinical Assistant Professors, Clinical Instructors, and Visiting faculty employed full-time by Wright State University, hereafter referred to as Non-Tenure Eligible (NTE) Faculty.

University of Cincinnati and AAUP University of Cincinnati Chapter, CBA (July 1, 2019 – June 30, 2022)

1.1.1 All Faculty who hold the titles of Instructor, Assistant Professor, Associate Professor, Professor, Beginning Librarian, Assistant Librarian, Associate Librarian, Associate Senior Librarian and Senior Librarian;

1.1.2 All Faculty appointed full-time on an academic year or annual basis who hold the titles of Instructor, Assistant Professor, Associate Professor, or Professor, followed by one of the following descriptors: Clinical, Educator, Field Service, Practice, or Research;

1.1.3 All Faculty appointed on an academic year or annual basis who hold Adjunct or other part-time titles whose position is 65% or more of a full-time Faculty position;

1.1.4 Assistants to the Dean who meet the 65% or more of a full-time Faculty position requirement; Heads, Directors, Chairpersons and Coordinators of Departments, and Division Heads.

University of Oregon and United Academics, American Association of University Professors - American Federation of Teachers, AFL-CIO, CBA (July 1, 2018 – June 30, 2021)

ARTICLE 1. RECOGNITION

. . . the University recognizes the Union as the sole and exclusive representative of all members of the bargaining unit described as: all full-time and part-time research and instructional faculty employed by the University of Oregon, which includes tenure-related faculty, non-tenure-track

faculty, or emeritus faculty, library faculty, and officers of research, including research assistants, research associates, and postdoctoral scholars, but excluding (1) all supervisors, including but not limited to the President, the Provost, Vice Presidents, Vice Provosts, Associate Vice Provosts, Assistant Vice Provosts, Deans, Associate Deans, Assistant Deans and Department Heads; (2) all Law School faculty; (3) all EC Cares faculty; and (4) all confidential employees.

Enforceability of Academic Freedom Provisions in the CBA

Examples of Academic Freedom and “Just Cause” or “Adequate Cause” Requirements for Discipline in CBAs

Wright State University and AAUP-WSU, CBA (July 1, 2020 – June 30, 2023)

14.1 The University has and retains the right to apply discipline up to and including termination of a Bargaining Unit Faculty Member pursuant to Articles 14, T15, and N15. The University subscribes to the principles of progressive discipline except when summary action is necessary and appropriate. In determining whether or not to impose discipline and the severity of such discipline the University shall consider the severity of the Bargaining Unit Faculty Member’s conduct and his or her disciplinary record, and the provisions in Article 5, “Academic Freedom and Professional Responsibilities.”

14.2 The University will not impose discipline except for just cause.

University of Cincinnati and AAUP University of Cincinnati Chapter, CBA (July 1, 2019 – June 30, 2022)

9.1 Discipline Standards and Investigation Procedures

The University shall not impose discipline except for adequate cause. The University subscribes to the principles of progressive discipline except when other action is necessary and appropriate.

Any disciplinary action shall be predicated upon a violation of this Agreement or of the University's rules, policies or standards of professional conduct including consistent failure to fulfill responsibilities in the Academic Unit...

Examples of Increased Job Security for NTT Faculty

Wright State University and AAUP-WSU, CBA (July 1, 2020 – June 30, 2023)

N13.2 Fixed-term Faculty Appointments

N13.2.1 For faculty who sign an initial offer letter on or before April 1, 2019, appointments for Instructors are for one year (or, if hired as a Member within an academic year, the appointment may include that partial year and the following academic year). Instructor appointments may not be extended beyond a total of six years of service. Instructor positions carry no expectation of continuing employment. Before the Member's sixth year as an Instructor begins, the University will (a) notify the faculty member that the appointment will not be continued or (b) offer a continuing appointment as a Lecturer with no identified date of termination. That is, if the university fails to notify that Member that the appointment will not be continued, then the Member will be given a continuing appointment as a Lecturer with no identified date of termination.

For faculty who sign an initial offer letter after April 1, 2019, appointments for Instructors are for one year (or, if hired as a Member within an academic year, the appointment may include that partial year and the following academic year). Instructor appointments may not be extended beyond a total of seven years of service. Instructor positions carry no expectation of continuing employment. Before the Member's seventh year as an Instructor begins, the University will (a) notify the faculty member that the appointment will not be continued or (b) offer a continuing appointment as a Lecturer with no identified date of termination. That is, if the university fails to notify that Member that the appointment will not be continued, then the Member will be given a continuing appointment as a Lecturer with no identified date of termination.

Examples of Tenure and Promotions Criteria and Procedures That Enhance Academic Freedom

Wright State University and AAUP-WSU, CBA (July 1, 2020 – June 30, 2023)

Article 13. Promotion and Tenure

T13.1 Promotion and tenure are milestones in the continual process of faculty development. Bargaining Unit Faculty have the responsibility to help in the development of their colleagues. The University and AAUP-WSU affirm that faculty promotion and tenure are indispensable for the proper functioning of the University. Tenure ensures the retention of talented permanent faculty, secures faculty autonomy and forms the basis for the development of an intellectual community. Above all, tenure protects the academic freedom of faculty to conduct their teaching and research without constraint by interests both inside and outside the University or economic pressures.

T13.3 Promotion and Tenure Records

T13.4 Letters of Appointment

T13.4.1 At the time of initial appointment, a Bargaining Unit Faculty Member beginning a period of probationary tenure-track service shall be provided with a written statement outlining for the Member:

- initial teaching responsibilities;
- any special equipment or other special resources (including initial access to lab space)
- necessary for the Member's research to be provided by the University;
- reporting structure;
- applicable departmental criteria for promotion and tenure;
- maximum length of the probationary period.

[Detailed provisions under headings:]

T13.5 Probationary Periods

T13.6 Termination of Untenured Bargaining Unit Faculty Members

T13.7 Reports on Progress toward Tenure and Promotion

- T13.8 Criteria for Tenure and for Promotion
- T13.9 Participants in the Promotion and Tenure Process
- T13.10 P&T Document
- T13.11 Requirements for Publications
- T13.12 Promotion and Tenure File
- T13.13 Procedures for Granting Promotion and Tenure
- T13.14 Promotion and Tenure Appeals
- T13.15 Promotion and Tenure Grievances

***University of Cincinnati and AAUP University of Cincinnati Chapter, CBA
(July 1, 2019 – June 30, 2022)***

ARTICLE 7. REAPPOINTMENT, PROMOTION, AND TENURE ("RPT")

7.5 Review Process

7.5.6 The recommendation from the Academic Unit RPT Committee shall be given serious consideration, and no committee or administrator shall make a different recommendation except for substantial reasons stated in writing. 7.5.7 A copy of each review level's recommendation letter shall be transmitted to the candidate at the time the letter is added to the dossier. Any negative recommendation must be accompanied by a written statement of reasons, except for certain Dean recommendations as set forth in Article 7.6.7 and Article 7.6.9.3. 7.5.8 A candidate shall be guaranteed the right to reconsideration at the first level at which a negative recommendation occurs. Within fourteen (14) days after receiving notice of the negative recommendation, the candidate has the right to request reconsideration and may submit supporting substantive or procedural information. The candidate shall be informed of the result of the reconsideration within twenty (20) days following submission of the request. When a candidate exercises this right to reconsideration, the review process shall remain at the level at which reconsideration is being requested. No further evaluation of or recommendations concerning the individual's candidacy shall be made until the requested reconsideration process has been completed. This restriction shall not prevent administrative action to meet the appropriate notice requirements of Article 7.5.12 herein. In the event that the reviewer's reconsideration results in a second negative recommendation, or a subsequent reviewer also provides a negative recommendation, the candidate may request reconsideration, but the granting of the request is at the discretion of the reviewer and not subject to a grievance.

7.7 Procedures in Cases of Program Need or Budget Restraint

7.7.2 Budget restraint or program need in an Academic Unit may, of necessity, have an adverse impact on an individual Faculty Member; however, the determination of a budget restraint or program need shall be independent of the review of the Faculty Member's request for reappointment or tenure.

Examples of Broad Coverage in Grievance/Arbitration Clauses

University of Toledo and the AAUP of Toledo Chapter, CBA (July 1, 2021 – June 30, 2022)

ARTICLE 5. FACULTY RIGHTS AND RESPONSIBILITIES

5.1 ACADEMIC FREEDOM

5.1.1 Members are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties. Research for pecuniary return shall not compromise the intellectual integrity or reputation of the University and shall be based upon prior understanding with the Member's College Dean.

5.1.2 Members are entitled to full freedom in both the physical or virtual classroom in discussing their subject, but they shall be careful not to introduce into their teaching controversial matter which has no relation to their subject.

5.1.3 Members are citizens, members of a learned profession, and faculty of the University. When they speak or write as citizens, they shall be free from University censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they must remember that the public may judge their profession and the University by their utterances. Hence they must at all times be accurate, exercise appropriate restraint, show respect for the opinions of others, and make every effort to indicate that they are not speaking for the University.

5.1.4 Librarians shall be free to choose resources and to provide services for the interest, information and enlightenment of all members of the academic community. In no case

shall resources be excluded from University libraries because of their author(s) or their scientific, economic, social, political, or religious views. No library resources shall be proscribed or removed from the libraries because of partisan or doctrinal disapproval.

University of New Hampshire and UNH Chapter of AAUP

(tenured/tenure-track)

(July 1, 2015 – June 30, 2020)

Article 2. ACADEMIC FREEDOM

2.1 The Board of Trustees and the AAUP recognize the essential importance of academic freedom to an institution of higher education and affirm their continuing commitment to the principles of academic freedom and its protections as provided in the *AAUP Statement of Principles on Academic Freedom*.

2.2 When making public statements, members of the bargaining unit should take care to avoid the impression that they are representing the University.

2.3 Members of the bargaining unit will carry out their responsibilities faithfully and in a manner consistent with the traditions of academic freedom and professional excellence.

2.4 The parties agree that grievances involving alleged violations of this Article that are pursued to arbitration will only be heard by arbitrators who are from an academic community of higher education.

Article 9. GRIEVANCE PROCEDURE

9.1 Preamble

9.1.1 In agreeing to this Article, Grievance Procedure, it is the intent of the parties to encourage and facilitate, in an expeditious manner, the resolution of an alleged violation of this Agreement and to attempt to do so at the earliest stages of this Procedure. The parties further agree that no member of the bargaining unit shall be subject to reprisal for using the Grievance Procedure or for participating in the resolution of a grievance. A member of the bargaining unit

may neither file nor attempt to pursue a grievance under this Article if a request for relief has been filed under any other process or in any other forum.

9.2 Definition

9.2.1 A grievance is defined as a written complaint alleging a misinterpretation, misapplication or violation of a provision(s) of this Agreement or any policy incorporated by reference into this Agreement. A grievance may be initiated by a member or a group of members of the bargaining unit or by the AAUP.

***Wright State University and AAUP-WSU, CBA
(July 1, 2020 – June 30, 2023)***

16.2.1 Grievance: A grievance is an alleged violation of (1) a specific provision(s) of this Agreement, (2) procedures set forth in college bylaws or department bylaws, or (3) a signed agreement between AAUP-WSU and the University unless that agreement specifically precludes a grievance or specifies an alternative procedure for resolving disputes.

***University of Cincinnati and AAUP University of Cincinnati Chapter, CBA
(July 1, 2019 – June 30, 2022)***

ARTICLE 8. GRIEVANCE PROCEDURE

8.1 Grievances.

8.1.1 Definition. A “grievance” is a complaint or allegation by a Faculty Member(s), or by the AAUP, of a violation, misinterpretation or improper application of the provisions of this Agreement.

8.2.1 All grievances shall be resolved through the following procedures, except for those relating to Reappointment, Promotion and Tenure (see Article 7) and Discipline and Dismissal (see Article 9).

[Elaborate and well-defined procedures including the provision for an impartial grievance committee if mediation fails.]

8.3.1 Election of faculty pool

8.5 Grievance Panel Procedures

9.1 Discipline Standards and Investigation Procedures

ARTICLE 9. DISCIPLINARY PROCEDURES

9.1.8 Deferral to Grievance Panel Hearing. No University official may impose any disciplinary action before the Faculty Member's right to a Grievance Panel hearing has expired or been waived. (Opportunities to grieve discipline: 9.3)

Examples of Grievance Panels or Arbitration Over Promotions Decisions

Wright State University and AAUP-WSU, CBA (July 1, 2020 – June 30, 2023)

N13.7 Promotion Grievances

N13.7.1 A promotion case not resolved by appeal (Section N13.6) may be grieved and go directly to arbitration if the AAUP-WSU concurs with the candidate that (a) an error in the described procedures materially affected the outcome, (b) the decision was not based upon the criteria in Section N13.8, or (c) the outcome was arbitrary, discriminatory or capricious. If the AAUP submits a promotion case to arbitration it must do so within thirty (30) working days of receiving the President's disposition of the case (Section N13.6.7). The arbitrator will be selected by the procedure specified in Section 16.6.1.

N13.7.2 The arbitrator may remand the promotion decision being grieved with directions as to which of the existing procedures in this Agreement are to be followed.

N13.7.2.1 The arbitrator may advise on altering procedures and time limits to expedite the remand process.

N13.7.2.2 The arbitrator does not have authority to award promotion to a Bargaining Unit Faculty Member.

N13.7.3 Individuals and committees to whom a promotion case is remanded will duly consider all advice and recommendations of the arbitrator.

University of Cincinnati and AAUP University of Cincinnati Chapter, CBA (July 1, 2019 – June 30, 2022)

7.8 RPT Grievance

7.8.1 If a Faculty Member is denied reappointment, promotion or tenure, she/he may file a grievance only if she/he alleges that:

(a) Academic freedom violations are significantly connected with the decision; or

(b) Procedures used in reaching the decision leading to the grievance were applied in an improper or discriminatory manner, and had a substantive impact on the decision (the term “procedures” as used in this Section includes the requirements of Article 7, as they apply to the candidate); or

(c) A negative recommendation by the Provost: (1) has followed positive recommendations by the Academic Unit RPT Committee, the Academic Unit Head, the college or library jurisdiction, and the Dean, and (2) is arbitrary and capricious.

The grievance must state which of these three grounds is being alleged and, for (a) and (b) above, the specific academic freedom or procedural violation(s) that constitutes the basis for the grievance.

7.8.4 Authority of the Grievance Panel. Except as provided below (7.8.5), in RPT cases in which the Grievance Panel finds procedural error, violation of academic freedom, or arbitrary or capricious decision by the Provost, it may only remand to the appropriate level of review. The Panel may not award reappointment, promotion or tenure.

7.8.5 Ad Hoc Committee Review

7.8.5.1 Solely in tenure cases involving alleged error(s) by the Provost, if after a review of the evidence the Grievance Panel has substantial reasons to believe that a remand of the dossier to the Provost will not result in a correction of the (1) academic freedom violation, (2) substantive procedural error, or (3) the arbitrary and capricious decision, it may direct that an Ad Hoc Committee be appointed to conduct a substantive dossier review. In such rare cases, the Grievance Panel must notify all parties in writing of its findings and of the substantial reasons for invoking the Ad Hoc Committee procedure.

***University of Oregon and United Academics, American Association of University Professors -
American Federation of Teachers, AFL-CIO, CBA
(July 1, 2018 – June 30, 2021)***

ARTICLE 21. APPEAL FROM THE DENIAL OF TENURE OR PROMOTION

Section 1. Scope of Article. This Article provides the only process through which a bargaining unit faculty member may appeal a decision of the Provost to deny tenure or promotion. No other grievance or appeal process shall apply, except for alleged procedural violations, which shall be governed by Articles 22 and 23 of this Agreement.

Section 2. Grounds for Appeal. A decision of the Provost to deny tenure or promotion may be appealed only on the following grounds: (1) whether the Provost was presented with errors of fact that materially affected his or her decision; (2) whether the Provost disregarded or overlooked material evidence that was provided to them; (3) whether material information was unavailable to reviewers through no fault of the candidate; and (4) whether the Provost's decision was arbitrary or capricious.

Section 8. Informal Process: Review of Written Materials by the PTRAC [University Promotion and Tenure Review Appeal 21 Committee]. The PTRAC will consider the appeal solely on the basis of the written materials, consisting of the complete and unredacted tenure file, the bargaining unit faculty member's statement of appeal, and the written response from the Provost. The PTRAC will prepare a written report based upon the evidence and submit it to the Provost and the bargaining unit faculty member within 30 days of the receipt of the appeal, or within 30 days of the start of Fall term classes, if the appeal is received by the PTRAC between May 1 and the start of Fall term. Should the PTRAC conclude that any of the grounds for appeal set forth in Section 2 of this Article are present, it shall so advise the Provost.

Section 9. Formal Process: Review by and Hearing before the PTRAC. In addition to a review of the written materials as described in Section 7, the PTRAC shall conduct a hearing, the purpose of which is for members of the PTRAC to ask questions of the Provost or designee, the bargaining unit faculty member, and any witnesses called by the PTRAC.***

....

The bargaining unit faculty member has the right to have the hearing open to the public. Should the bargaining unit faculty member choose to have a closed hearing, the hearing shall be closed

to all except the PTRAC, the bargaining unit faculty member, the bargaining unit faculty member's union representative and/or legal counsel, the Provost or designee and his or her representative, the University's legal counsel, staff to the PTRAC, and any witnesses called by the PTRAC.

APPENDIX B:

Relevant AAUP Redbook Statements¹

Definition of Academic Freedom

1. 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments
2. On the Relationship of Faculty Governance to Academic Freedom
3. Protecting an Independent Faculty Voice: Academic Freedom after *Garcetti v. Ceballos*

Faculty Status

1. Contingent Appointments and the Academic Profession
2. Joint Statement on Faculty Status of College and University Librarians
3. Statement on Graduate Students

Dismissal for Cause

1. Recommended Institutional Regulations on Academic Freedom and Tenure
2. Statement on Procedural Standards in Faculty Dismissal Proceedings

Financial Exigency and Program Discontinuation

1. Recommended Institutional Regulations on Academic Freedom and Tenure
2. The Role of the Faculty in Conditions of Financial Exigency

Arbitration and Other Topics Related to Collective Bargaining

1. Arbitration of Faculty Grievances
2. Arbitration in Cases of Dismissal
3. Dismissal Proceedings in a Collective Bargaining Setting Where Arbitration Substitutes for a Faculty Hearing
4. Statement on Collective Bargaining

¹ *Policy Documents and Reports*, 11th Edition (Johns Hopkins University Press, 2015)

<https://www.aaup.org/reports-publications/publications/redbook>