

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

SR 45 (Min)  
Version: March 16, 2022  
Hearing Date: March 29, 2022  
Fiscal: No  
Urgency: No  
AWM

**SUBJECT**

Academic Freedom

**DIGEST**

This resolution recognizes that academic freedom for college and university professors is essential, which allows them to articulate or even advocate positions or concepts within their subject matter that may be controversial in nature without fear of retribution or reprisal; and resolves that policies protecting academic freedom are a necessary requisite for teaching and learning in California's colleges and universities.

**EXECUTIVE SUMMARY**

Current law and regulations require the governing board of a community college district to adopt a policy statement on academic freedom. According to the sponsor of this resolution, the Faculty Association of the California Community Colleges (FACCC), however, because state law does not mandate or define "academic freedom," the academic freedom policies at California's community colleges are not consistent and, in some cases, are insufficient to truly protect academic freedom. This resolution, therefore, recognizes the lack of consistent academic freedom policies across the state, declares that academic freedom is essential for teaching and learning in California's community colleges, and resolves that the Secretary of the Senate shall transmit copies of this resolution to the Board of Governors and the Chancellor of the California Community Colleges.

This resolution is sponsored by the FACCC and supported by the Academic Senate for California Community Colleges. There is no known opposition.

## PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits governments from adopting any law or policy abridging the freedom of speech, or of the press, or of the right of the people to peaceably assemble, and to petition the Government for redress of grievances. (U.S. Const., 1st & 14th Amends.)
- 2) Provides that every person may freely speak, write, and publish their sentiments on all subjects – and is responsible for the abuse of this right – and prohibits any law that restrains or abridges liberty of speech or press. (Cal. Const., art. I, § 2.)
- 3) Requires the governing board of a community college district to adopt rules and regulations relating to the exercise of free expression by students upon the premises of each community college maintained by the district, which shall include reasonable provisions for the time, place, and manner of conducting such activities. (Ed. Code, § 76120.)
- 4) Requires the governing board of a community college district to adopt a policy statement on academic freedom and make the policy statement available to the faculty. (Cal. Code Regs., tit. 5, § 51023(a).)

This resolution:

- 1) Makes the following findings:
  - a) Freedom of thought and expression are necessary for every higher education institution.
  - b) “Academic freedom” means the freedom of teaching faculty to teach, conduct research, and speak as citizens without interference or restraint by the institution, boards of trustees, political figures, or other entities.
  - c) Academic freedom is foundational for the free flow of knowledge, ideas, and governance on college campuses.
  - d) In 1940, the American Association of University Professors issued a statement of principles on academic freedom and tenure, which describes college and university faculty as “citizens, members of a learned profession, and officers of an educational institution.”
  - e) The statement establishes that, when college and university teachers “write as citizens, they should be free from institutional censorship or discipline, but their unique position in the community imposes special obligations,” and that those teachers “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.”
  - f) Many colleges and universities are engaged in Diversity, Equity, and Inclusion work, requiring necessary, valuable, and potentially uncomfortable

- conversations and dialogue, and faculty across the state are engaging in these conversations with students in their classrooms.
- g) Existing state regulations require the governing board of a community college district to adopt a policy statement on academic freedom and make the statement available to the faculty.
  - h) Local community college district academic freedom policies adopted by independent governing boards vary greatly, so the state lacks the uniformity necessary to uphold and ensure the principles of academic freedom across all of California's community colleges.
  - i) Academic freedom policies are in some, but not all, collective bargaining agreements; this inconsistency also contributes to the lack of uniformity and comparability for academic freedom across all of California's community colleges.
- 2) Resolves by the Senate of the State of California:
- a) The Senate recognizes that academic freedom, as defined by the American Association of University Professors (AAUP), entitles teachers to "full freedom in research and in the publication of the results, subject to adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution."
  - b) The Senate recognizes that academic freedom, as defined by the American Association of University Professors, entitles teachers to freedom in the classroom discussing their discipline, and states that teachers should not introduce into their teaching matter that has no relation to their subject.
  - c) Under an academic freedom policy, within their discipline, a faculty member can, within their discipline, articulate or even advocate positions or concepts that may be controversial in nature without fears of retribution or reprisal by the institution.
  - d) The Senate declares that academic freedom is an essential requisite for teaching and learning in California Community Colleges.
  - e) The Secretary of the Senate shall transmit copies of the resolution to the Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges.

### COMMENTS

#### 1. Author's comment

According to the author:

Academic freedom is the degree to which faculty at an institution are allowed latitude with respect to their discussions with students and the positions they take, serving as a free flow of speech, knowledge, and ideas on college campuses.

Freedom of thought and expression is necessary for every higher education institution in their pursuit of knowledge.

The American Association of University Professors states that when college and university faculty “write as citizens, they should be free from institutional censorship or discipline, but their unique position in the community imposes special obligations.” The Association also declares that faculty should, for that reason, strive to “be accurate...exercise appropriate restraint...show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.”<sup>1</sup>

Currently, there is no official standard for California Community Colleges with regard to the academic freedom of its faculty. It is important to define academic freedom and set a standard so that the California Community Colleges can point to this, enforce it, and utilize it in their curriculum and classrooms.

2. This resolution recognizes the importance of academic freedom and declares it an essential requisite for teaching and learning in California Community Colleges

In 1967, the United States Supreme Court overturned New York laws that disqualified from employment at a state university any professor who was “involved in the distribution of written material ‘containing or advocating, advising or teaching the doctrine’ of forceful overthrow” of the United States government, or who refused to deny being a member of the Communist party.<sup>2</sup> In doing so, the Court explained:

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 vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” [Citation.] The classroom is peculiarly the “marketplace of ideas.” The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth “out of a multitude of tongues, (rather) than through any kind of authoritative selection.”<sup>3</sup>

According to the sponsors of this resolution, the FACCC, although California requires the governing board of a community college district to adopt a policy statement on

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<sup>1</sup> American Association of University Professors, 1940 Statement of Principles on Academic Freedom and Tenure (1940), available at <https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure> (last visited 3/17/22).

<sup>2</sup> *Keyishian v. Board of Regents of State of New York* (1967) 385 U.S. 589.

<sup>3</sup> *Id.* at p. 603.

academic freedom,<sup>4</sup> the statements are not consistent from college to college and, in some cases, fail to adequately protect academic freedom. FACCC reports situations in which professors are unknowingly filmed during lectures then doxxed or subjected to threatening calls and emails after the videos are posted online.<sup>5</sup> In addition to being traumatic to the individual professor, this can create a culture of fear for professors who teach subjects that some students find uncomfortable or challenging.<sup>6</sup>

This resolution recognizes the continuing importance of academic freedom in California colleges and universities, and that academic freedom is essential for teaching and learning in California's community colleges. The resolution further recognizes that local academic freedom policies adopted by the boards of individual community colleges are not necessarily sufficient to ensure the principles of academic freedom across the state. The resolution resolves, therefore, that academic freedom requires professors to freedom in the classroom within their subject discipline and provides that the Secretary of the Senate shall transmit copies of this resolution to the Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges.

### 3. Arguments in support

Bill sponsor FACCC writes in support:

The Faculty Association of California Community Colleges (FACCC) is proud to sponsor SR 45 (Min) which recognizes academic freedom as a necessary requisite for teaching and learning in the California Community Colleges. SR 45 adopts the principles of academic freedom from the American Association of University Professors by defining it as, "the freedom of teaching faculty to teach, conduct

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<sup>4</sup> Cal. Code Regs., tit. 5, § 51023(a).

<sup>5</sup> See, e.g., Kamenetz, *Professors Are Targets In Online Culture Wars; Some Fight Back*, NPR (4/4/2018), available at <https://www.npr.org/sections/ed/2018/04/04/590928008/professor-harassment> (last visited 3/17/22) (Diablo Valley College professor received attacks and threatening voice messages and emails after giving a campus lecture on race and politics in which he criticized the then-president of the United States).

<sup>6</sup> While not directly relevant to academic freedom in the California university setting, it is noteworthy that other states have adopted laws restricting what teachers may say about certain topics in the university and in the primary school setting. (See, e.g., Fla. H.B. 1557 (2022) [prohibiting teachers from instruction on sexual orientation or gender identity in "kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards"]; TX S.B. No. 3 (2021) [prohibiting teachers from instructing various race- and gender-related concepts].) Many of these laws are so vague as to prevent teachers from reasonably knowing what might be banned, suggesting that the real goal of these bills is to silence teachers entirely on certain topics – such as a bill recently passed by the South Dakota Legislature that prohibits teachers from teaching a subject that might make an individual feel they should "feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual's race, color, religion, ethnicity, or national origin." (S.D. H.B. 1012 (2022).) In other words, these bills encourage teachers to self-censor, or face severe consequences.

research, and speak as citizens without interference or restraint by the institution, boards of trustees, political figures, or other entities.”

With conservative states waging battles against critical race theory, anti-racism, and even the word “gay,” it’s imperative California protect the classroom as a space for the robust exchange of ideas. This is especially true for part-time faculty whose positions are not protected by the privilege of tenure and are far underrepresented in shared governance processes. Acknowledging the importance of academic freedom will enable faculty to continue working to decolonize curriculum and advance DEIA principles by having challenging but necessary dialogues in their classrooms.

According to the Executive Committee of the Academic Senate for California Community Colleges (ASCCC), writing in support:

Academic freedom is a core value of any faculty organization, and it has been a priority and a concern for the ASCCC since our beginnings in 1969. It is a fundamental concept that exists to ensure that institutions of higher education function for the public good and assures that colleges are constructed on the foundation of genuine trust and integrity, but unfortunately it is not codified in [the] California Education Code. The ASCCC therefore adopted the AAUP 1940 Statement of Principles on Academic Freedom...

SR 45 rightly recognizes that “Freedom of thought and expression are necessary for every higher education institution” and that “Local academic freedom policies required by Title 5 vary greatly, and the state therefore lacks the uniformity necessary to uphold the principles of academic freedom across all of California’s community colleges.” The resolution is thus both timely and important, and the ASCCC appreciates and endorses its accurate explanation of the significance and issues surrounding academic freedom as well as its strong statement of support for the concept.

### **SUPPORT**

Academic Senate for California Community Colleges

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

AB 2290 (Kiley, 2020) would have established the Free Speech on Campus Act, which would have required the campuses of the California Community Colleges and California State Universities, and requested the campuses of the University of California, to make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression, including assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression. AB 2290 died in the Assembly Committee on Higher Education.

AB 1358 (Melendez, 2019) would have established the Campus Free Speech Act, which would, among other things, required the appropriate governing board or body of each higher education institution, as defined, to develop and adopt a policy on free expression that contains specified components, and made certain funding sources for higher education institutions contingent on compliance with the Act. AB 1358 died in the Assembly Committee on Higher Education.

AB 1571 (Kiley, 2019) would have established the Free Speech on Campus Act, which would have required the campuses of the California Community Colleges and California State Universities, and requested the campuses of the University of California, to make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression, including assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression. AB 1571 failed passage in the Assembly Committee on Higher Education.

AB 2374 (Kiley, 2018) would have established the Free Speech on Campus Act of 2018, which would have required the campuses of the California Community Colleges and California State Universities, and requested the campuses of the University of California, to make and disseminate a free speech statement that affirms the importance of, and the campus's commitment to promoting, freedom of expression, including assurances that students and controversial speakers will be protected from exclusionary behavior that violates freedom of expression; and to supplement the statement with educational programming related to freedom of expression. AB 2374 died in the Assembly Appropriations Committee.

SB 1388 (Anderson, 2018) would have established the Forming Open and Robust University Minds Act, which would have, among other things, required the Board of Governors of the California Community Colleges and the Trustees of the California State University to, and encouraged the Regents of the University of California to, develop and adopt a policy on free expression that contains specified statements, and created a cause of action for a violation of the act. SB 1388 died in the Senate Committee on Education.

ACR 21 (Kiley, Ch. 103, Stats 2017) urged all private and public universities in California, to the extent that they had not adopted free speech statements consistent with the principles articulated by the Chancellor of the University of California at Irvine, and the Free Expression Statement formally adopted by the University of Chicago, to consider such statements as a model for developing and adopting free speech statements.

ACA 14 (Melendez, 2017) would have established the Campus Free Speech Act, which would, among other things, required the appropriate governing board or body of each higher education institution, as defined, to develop and adopt a policy on free expression that contains specified components, and created a cause of action for the infringement of the right to expressive activity on campus. ACA 14 died in the Assembly Committee on Higher Education.

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