



S99-8

At its meeting of May 3, 1999, the Academic Senate passed the following Policy Recommendation presented by Annette Nellen for the Professional Standards Committee.

**POLICY RECOMMENDATION
MODIFICATION TO S93-12/S94-3
ACADEMIC FREEDOM AND PROFESSIONAL RESPONSIBILITY**

- Whereas: S93-12/S94-3 deals with professional responsibilities of faculty as 1) members of the teaching profession, 2) as teachers, 3) as colleagues, 4) as members of an academic institution, and 5) as members of a community, but not explicitly as researchers.
- Whereas: S93-12/S94-3 makes no reference to related Senate policies governing academic freedom and faculty responsibilities, political expression by faculty, or the role of faculty with respect to campus climate.
- Whereas: Laws governing use of public funds or property for purposes of political advocacy exist, but are not well known on campus; such laws prohibit use of state resources or the "California State University" name to advocate a position regarding a candidate or ballot proposition.
- Whereas: Issues have arisen in the past as to the legality of certain forms and types of political expression on our campus.
- Whereas: SS-F96-6 resolved that consideration be given to adoption of guidelines to clarify the rights and responsibilities of free speech and political participation on campus and the Board of Academic Freedom concluded that the Professional Standards Committee should provide such guidelines.
- Whereas: Faculty members of an academic institution have a role in helping the University meet its commitment to maintaining an environment that respects diversity and that is free from discrimination and harassment and this role is in line with the principles of academic freedom and professional responsibility outlined in S93-12/S94-3.
- Whereas: University policies on conduct in research have generally been issued as separate policies because they typically do not apply only to faculty.
- Resolved: That S93-12/S94-3 be modified as shown in the attached policy, and as modified, be issued as two new policies: 1) Academic Freedom and Professional Responsibility, and 2) Conflict of Interest Policy for Principal Investigators.
- Resolved: That, once assigned, the appropriate policy numbers be inserted into this policy per Senate By-Law 13(b), and that passage of this resolution serve as notice to the Senate of such editorial changes.
- Resolved: That the SJSU and CSU policies and documents referenced in this revised policy be linked at the Senate Web site location for this policy.
- Resolved: That a bold notation be added to SS-F96-6, Free Speech and Political Participation at SJSU, both at the Senate Web site and in Senate archives, to indicate that the attached policy addresses the resolved clause of SS-F96-6; and be it further

Resolved: That this revised policy be distributed to all department chairs by the President with instructions to make faculty aware of its existence and where it can be obtained.

ACTION BY THE UNIVERSITY PRESIDENT: Approved by President Robert Caret on May 4, 1999.

ACADEMIC FREEDOM AND PROFESSIONAL RESPONSIBILITY

I. Statement of Academic Freedom¹

A. In General

The primary mandates of a university—the discovery and dissemination of knowledge and understanding, are absolutely dependent upon academic and intellectual freedom. Freedom in research is fundamental to the advancement of truth. Freedom in teaching is fundamental for the protection of the rights of the student in learning and of the faculty² in teaching.

San José State University has a responsibility to society to defend and to maintain these freedoms, and to ensure that those engaged in academic pursuits can effectively execute their responsibilities. SJSU faculty must remain free of the forces of special interests and political interference if they are to fulfill society's expectations and their educational responsibilities.

B. Academic Freedom as it Relates to Tenure

Tenure constitutes the procedural safeguard of academic freedom and individual responsibility and, as such, is essential for the maintenance of intellectual liberty and high standards in education and in scholarship. It is the means by which university faculty members are protected against personal malice or political coercion, and by which it is ensured that those who, following rigorous evaluation, secure continuing employment, can be dismissed only on professional grounds according to due process.

Historically, the indispensability of academic tenure to academic freedom in universities throughout the world has been proven by events in situations where tenure has not existed. We must not forget the lessons of the past but must work to insure that SJSU continues to fulfill the educational needs of a free society.

II. Statement of Professional Responsibility³

A. Preamble

Professional responsibility is the natural complement of the academic freedom essential to the university's mission. Through their responsible professional conduct, faculty members promote and protect academic freedom. Since faculty members belong to a profession with the rights of self-government, they also have the obligation to establish standards of professional conduct and procedures to enforce them. The following standards provide guidance for many ethical questions which may arise over the course of a faculty member's career, but they are not intended to be an exhaustive list. They are built upon the foundations of academic freedom; they are the ideals to which all faculty members should aspire.

¹ Derived from the *International Statement on Academic Freedom and Tenure*, 1984. Signatories include the American Association of University Professors, the American Federation of Teachers, the National Education Association, and similar groups from the United Kingdom, New Zealand, Canada, Australia, Ireland, and France.

² The faculty of the university include all those who engage in scholarly activities and/or those who directly or indirectly participate in instructional activity. Thus faculty members include professors, lecturers, teaching assistants, research assistants, coaches, counselors, librarians, and all those faculty employees under Unit 3.

³ Derived in part, from the Academic Senate of California State University proposed policy AS-2080-92/FA-I, May 7-8, 1992. Also consulted were the original sources on which AS-2080-92/FA-I was based, including earlier AAUP documents: primarily the *Statement of Principles on Academic Freedom and Tenure* (1940), the *Statement on Professional Ethics* (1966, revised 1987), the *Statement of the Association's Council: Freedom and Responsibility* (1970, revised 1990).

B. Faculty Responsibilities

The responsibilities of faculty members may be considered from five related, but somewhat conceptually distinct, perspectives: (1) as members of an academic profession; (2) as teachers;⁴ (3) as colleagues; (4) as members of an academic institution; (5) as members of a community.

1. As members of an academic profession, faculty members:

a. serve as intellectual leaders; they

- seek and state the truth as they see it.
- develop and improve their instructional and scholarly competence.
- exercise critical self-discipline and judgment in applying, extending, and transmitting knowledge.
- practice, foster, and defend intellectual honesty, freedom of inquiry and instruction, and free expression on and off the campus.
- promote the free and open exchange of ideas in the classroom as related to the subject matter.
- strive to foster a campus environment that i) supports a robust discussion of issues (including political and societal issues), ii) promotes respect for the opinions of others, and iii) encourages sensitivity to the possibility of multiple interpretations of speech and actions.
- do not allow their subsidiary interests to compromise their freedom of inquiry.

b. engage in research and other professional and creative activities; they

- perform their research with honesty and integrity.
- respect the ethical and legal considerations⁵ that underlie their work and output, as consistent with the ethical principles and guidelines of their discipline.
- comply with guidelines governing any grant or other funds related to a research or creative project.
- strive to contribute to the body of knowledge in their discipline and to disseminate such knowledge appropriately.
- critically evaluate their work prior to dissemination.
- use university and other resources with integrity and consideration of the mission of the university.

2. As teachers, faculty members:

a. treat students fairly and respectfully; they

- assure that their evaluations of students reflect only matters relevant to the students' academic performance.
- guard against improper disclosure of confidential information regarding students.⁶
- insure that their professional contacts with students are free from any exploitation, harassment, or discrimination.

⁴ Teaching is meant in an inclusive sense. All those who directly or indirectly contribute to instructional activity are teachers. For example, librarians and other academically related faculty contribute to instructional activity, even in those cases where they do not engage in direct classroom instruction.

⁵ Such ethical and legal considerations include compliance with copyright laws and not plagiarizing.

⁶ The confidentiality of student records and information is also governed by law and SJSU policy. See the federal Family Educational Rights and Privacy Act (often referred to as the Buckley Amendment), information available from either the SJSU Division of Student Affairs or the SJSU Office of Faculty Affairs, and University Policies S66-20 and S90-5 (and any related updates or modifications) available at the Senate Web site.

- acknowledge significant academic or scholarly collaboration with or assistance from their students.
 - adhere to published descriptions of course content and grading practices, such as those contained in syllabi and course catalogs.
 - maintain awareness of and adhere to University policies governing student rights and responsibilities.
- b. encourage the free pursuit of learning; they
- encourage students to make their own judgments and to express them when appropriate.
 - allow students to take reasoned exception to or to reserve judgment about the data or views offered in a course of study.
 - refuse to tolerate exploitation, harassment, or discrimination by students in an instructional setting.
- c. exhibit and uphold the highest scholarly and ethical standards of their disciplines; they
- foster honest academic conduct.
 - do not instruct, advise, or supervise students with whom they have personal or professional conflicts of interest.⁷
- d. serve as intellectual guides and advisors; they
- are available during reasonable, posted hours to assist students who request their intellectual and academic help.
 - utilize instructional time to help students learn course materials.
3. As colleagues and co-workers, faculty members:
- a. respect and defend free inquiry.
 - b. show due consideration for diverse opinions.
 - c. acknowledge the contributions of others to their academic work.
 - d. seek objectivity in their professional evaluations.
 - e. do not evaluate or supervise those with whom they have personal or professional conflicts of interest.⁸
 - f. avoid exploitive, harassing, or discriminatory behavior.
 - g. hold themselves and colleagues to high ethical standards and address ethical abuses when they become known.
4. As members of an academic institution, faculty members:
- a. observe the stated regulations of the institution that are consistent with the statement of academic freedom in this document, and with their contractual and legal obligations.
 - b. maintain the right to criticize regulations and seek their revision.
 - c. assure that their outside interests do not compromise the obligations of their primary appointment.
 - d. request a leave of absence or resign when the claims of outside interests preclude the fulfillment of substantial academic obligations.

⁷For a discussion of the concept of "conflicts of interest" in the context of this Statement of Faculty Responsibility, see Section C of this policy. A separate University policy (S99-11) exists dealing with conflicts of interest for principal investigators; see the Senate Web page.

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- e. give appropriate notice of their intent to interrupt or terminate their services to the university.
- f. share in the responsibilities for governing the university.
- g. share in periodic review and improvement of curriculum.
- h. cooperate in the pursuit of stated goals of one's program, department, college, or university.
- i. help ensure that the university meets its commitment to maintain an environment that values diversity and that is free from discrimination and harassment.

5. As members of a community, faculty members:

- a. publicly distinguish when they speak or act as private citizens from when they do so as an official representative of the university so as not to lead others to mistake them as a spokesperson for San José State University or the California State University system.⁹
- b. recognize that breaking legal and civil codes for academic gain is also an infringement of professional ethics.¹⁰
- c. promote conditions of free inquiry.
- d. further public understanding of academic freedom.

C. Conflicts of Interest

Definition: In the context of professional responsibility, a conflict of interest is an agreement, relationship, or other arrangement, be it personal or professional, formal or informal, that undermines the faculty's disinterested performance of its professional duties and obligations.

Importance: Students have a just expectation that they will be instructed, evaluated and supervised by a disinterested faculty. Faculty members have a similar expectation that their professional and academic evaluations and supervision are free from the self-interest of their peers. Maintaining disinterestedness is one of the faculty's central ethical responsibilities. The disinterestedness of the faculty assures both the academic integrity of the University and the faculty's academic freedom.

Conflicts of interest between faculty and students: In addition to the legal contracts existing between students and the University, there is an equally important "social contract" between them and the faculty, in which each fulfills its duties and obligations to the other. Many of the faculty's responsibilities under this "contract" are found in Section II.B.2. of this document. Interests that conflict with those obligations include actions or requirements of the faculty that appear to be grounded in private interest or gain, not in professional responsibility. Examples of conflicting interests are: requiring the purchase of course materials from which an instructor makes a profit (texts and other materials professionally reviewed, published, and distributed are excluded); and giving academic credit for student research which the instructor puts to use for private gain or profit.

Other conflicts of interest may arise in view of the disproportion of influence and power between faculty and students. Instructors, thus, ought not engage students in their classes or under their supervision in relationships that are so personal that the presumption of professional disinterest is difficult to maintain. Faculty members, for example, ought not instruct or supervise students who are obligated to them financially; and faculty ought not supervise or instruct students with whom they have relationships grounded in interests inconsistent with their professional responsibility and the mission of the University. These conflicts of interest include but are not restricted to sexual relationships.

A similar caveat applies, of course, to the instruction and evaluation of students who are family members, since faculty disinterestedness is problematic in this case as well.

Exceptions to these injunctions may be made after consultation with an instructor's department chair or other appropriate party, such as a supervisor or a dean. The grounds for exception must be compelling (e.g., curricular or staffing restrictions in a student's chosen academic program).

⁹ Also see California Education Code Section 89005.5.

¹⁰ Also see California Government Code Section 8314 on unlawful use of state resources by state employees.

While acknowledging that the propriety of a personal relationship between a student and an instructor is indeed a sensitive issue for all involved, the faculty holds that the rights of faculty and students to free association must be honored and protected in instances when professional disinterestedness is not expected or required. The faculty also acknowledges that disinterestedness thrives best in an atmosphere free from suspicions of favoritism, nepotism, coercion and harassment.

Conflicts of interest in professional relationships: Faculty members rightfully expect unbiased evaluations of their academic and professional performance. The responsibilities of the faculty in this regard are detailed in Section II.B.3. of this document. Examples of conflicts of interest here include evaluating or supervising faculty who are family members or parties in relationships grounded in interests (e.g., personal, professional or financial interests) that preclude disinterestedness.

Beyond questions of peer evaluation, the faculty must ensure that its research or comparable activities are consistent with the mission of the University and with professional standards. The faculty must maintain a disinterested pursuit of truth in their professional activities, one uncompromised, for example, by the pursuit of fees, royalties, and other forms of compensation. Disinterestedness comes into question when subsidiary concerns or private gain makes one's intellectual honesty and freedom of inquiry problematic.

The faculty holds that the right of a faculty member to freely associate with colleagues must be honored and protected in instances when professional conflicts of interest are not at issue. Following the principle of disinterestedness, the faculty also recognizes that non-academic relationships between faculty members may become sensitive issues when placed in the context of professional evaluation and supervision (e.g., the recruitment, retention, tenure or promotion of faculty). A faculty member should be excused from these duties when a potential conflict of interest exists. If it is not possible to excuse a faculty member in such circumstances, the faculty member who conducts the evaluation or supervision should advise his/her chair or other appropriate party (e.g., a supervisor or dean) of the situation.

Importance of ethical conduct in fact and appearance: Recognizing a conflict of interest in the area of faculty responsibility is often a matter of common sense; at other times it is a matter of law. But beyond the ethical minimums of law and common sense, there exists a higher standard toward which the faculty should strive. That is, a faculty member ought to avoid actual conflicts of interest as well as the appearance of such conflicts whenever possible. This ethical standard is not born of scrupulosity. Rather, it arises from the faculty's full awareness of the wide scope of thought and expression it enjoys under the protection of academic freedom.

D. Applicable Laws and Regulations Governing Conduct

Various federal and state laws and regulations apply to the university and its employees. Faculty members must take responsibility for awareness of such rules and to comply with them. Many of these laws and regulations are noted in this and other University policies related to faculty responsibilities (a partial list is included at Section E below).

Examples of laws and regulations applicable to the university and its employees include:

- a. California law prohibits use of state resources or the "California State University" name to advocate a position regarding a candidate or ballot proposition.¹¹
- b. As a recipient of federal and state funds, and other grants, the university and its faculty involved in research projects or programs may be governed by certain laws, regulations, and guidelines.
- c. Federal and California laws dealing with non-discrimination, equal employment opportunity, and affirmative action govern employment practices at SJSU and are relevant to faculty members involved in retention, tenure, promotion, and similar employment decisions.

¹¹ See California Government Code Section 8314, California Education Code Section 89005.5, and *Stanson v. Mott*, 17 Cal.3d 206, 210 (1976). The CSU Office of General Counsel's *Handbook of Election Issues*, dated February 1997, provides general guidance to the legal background on the use of state resources in elections. This handbook is available at the Web site for this policy on academic freedom and professional responsibility. It is also available from the SJSU President's Office.

- d. In order to protect the privacy of students, federal and California laws prohibit certain disclosures of student records.

Faculty members may obtain assistance in gaining awareness and understanding of laws and regulations that may govern their conduct from their department chair (or equivalent unit head) and the Office of Faculty Affairs.

E. Additional References

University policies that relate to academic freedom and faculty responsibilities include:¹²

1. S92-12, Statement on Academic Freedom and Artistic Expression.
2. [insert policy number], Policy and Procedures for Responding to Allegations of Scientific or Other Misconduct in Funded Research.
3. [insert policy number], Conflict of Interest Policy For Principal Investigators.
4. F97-6, Policy and Assurance for Humane Care and Use of Animals at San José State University
5. F90-4, Policy for Protection of Human Research Subjects; Ethics; Institutional Review Board (IRB).
6. S94-8, Policy on Research, Scholarship and Creative Activity; Grants; Academic Freedom.
7. [S94-5, F95-1 (insert new policy number)], Board of Academic Freedom and Professional Responsibility (BFR)—provides an implementing mechanism for some of the policies described or referenced in this document.
8. S90-5, Student Rights and Responsibilities.

History

S93-12, Academic Freedom and Professional Responsibility, superseded F67-17, Academic Freedom and The Common Good (approved February 5, 1968), and S88-9, AAUP Statement on Professional Ethics (approved May 6, 1988). S88-9 superseded S67-10, Professional Ethics (approved May 11, 1967). S94-3 added the explanation on conflicts of interest to S93-12 (originally added as Appendix A) and made slight changes to two footnotes. S95-9 added Appendix B on conflicts of interest for principal investigators. S93-12 was approved as University Policy on May 13, 1993, S94-3 was approved on April 12, 1994, and S95-9 was approved on April 6, 1995.

¹² Faculty are encouraged to review University Policies (which are available at <http://www.sjsu.edu/senate/senatpol.htm> as well as in the Academic Senate Office) to be sure they are fully aware of the most current policies pertaining to their activities as teachers, researchers, mentors, and employees and members of the SJSU/CSU community. Any questions about these policies or matters covered by this policy on academic freedom and professional responsibility, or relevant federal and state laws, should be directed to the department chair, college dean, Office of Faculty Affairs, or Academic Senate Office, as appropriate.