

Off-Campus Conduct and Speech: Academic Freedom vs. Academic Responsibility

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Remote teaching and learning has become the norm in colleges and universities across the country and faculty and students are spending more of their academic life off campus. No longer does a professor need to be on campus to teach her introductory accounting course. A college sophomore can now attend a lecture on macroeconomics from home equipped with a laptop and an internet connection. While this new normal offers an incredible amount of flexibility as both faculty and students alike can perform their duties and responsibilities from any number of remote locations, it raises a number of issues related to whether off-campus conduct and speech can be cause for discipline.

Last month, a law professor from Chapman University, a private university located in California, spoke at a rally for the former president, just hours before the infamous Capitol siege on January 6, 2021. The professor's speech included references to "fraud," that "dead people voted," and a "secret folder of ballots." The speech led to outrage within the University community and over one hundred faculty members signed a statement and published a letter to the editor of the *Los Angeles Times* calling for the University to take action against him for his participation. In response, the University President issued three separate statements: the first statement highlighted the importance of the policies outlined in the University's Faculty Manual and the follow-up statement listed the reasons that faculty members can be terminated, along with the processes that must be followed. The third and final statement announced the professor's retirement and referenced an agreement reached between the two parties.

The University Faculty Manual includes a Policy for Freedom of Expression and a commitment to the principle of the widest scope for freedom of expression. The Manual also expressly recognizes an interrelated principle of responsibility. Disciplinary action, including dismissal, can occur only for specified reasons such as a conviction of a crime, disbarment from law practice, disruptive behavior, or a violation of University rules and policies. The policy does not expressly address whether a professor's participation at a rally constitutes a violation of its rules and policies, yet the professor's faculty colleagues demanded his removal. The matter raises the question of whether a policy that contains a commitment to a faculty member's freedom of expression may be cause for disciplinary action, including dismissal, when the freedom is abused.

There is a balance that must be struck between principles of academic freedom/speech and academic responsibility as it relates to the on-campus and off-campus conduct of faculty. The incident at Chapman highlights this tension. While the conduct at issue may not be consistent with the principle of academic responsibility, the grounds for disciplinary conduct did not list it as a reason for disciplinary action. Private institutions typically have more avenues available in instituting disciplinary proceedings against faculty members but the Faculty Handbook, which is typically viewed as a contract, must specify or incorporate the reason at issue in order to institute disciplinary action. At public colleges and universities, administrators may be more limited in the actions they take, not just by their policies and procedures, but also by the protections offered by the First Amendment.

In addition to faculty-related issues, colleges and universities, both public and private, are also grappling with the development that while most of their students are not on campus, their presence and participation on social media has expectedly increased dramatically, especially in the age of a pandemic. Administrators should be cautious about uncoordinated responses to public sentiment and instead, take a thoughtful and measured approach when they receive reports of inappropriate speech or social media posts to investigate. In preparation for the inevitable, institutions of higher education should review and revise their codes of conduct,

rules and policies addressing faculty and student off-campus conduct, and when appropriate, ensure that they are consistently applied and enforced.

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