

SKETCHING THE LAW ON EDUCATION:  
LOCATING THE TEACHERS IN RELATION TO THE STATE, THE  
SCHOOL AND THE STUDENTS AND THEIR IMPLICATIONS TO  
ACADEMIC FREEDOM

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*A load of books does not equal one good teacher*  
— Anonymous

*In this classroom, I am king*  
— Anonymous teacher

*A teacher is one who makes himself  
progressively unnecessary*  
— Thomas Carruthers<sup>2</sup>

*He who dares to teach must not cease to learn*  
— Anonymous

*"I touch the future. I teach."*<sup>3</sup>

The status and importance of a teacher has been encapsulated in so few words. The impact alone of teachers on future generations reflects their indispensability in society. His actions have the most lasting rippling effect from the present to the future. His good deeds, as well as bad ones, can have enormous effects.

Given this reality, it becomes evident to scrutinize the teacher in his various roles. How should he act? What can he do? What are his limitations? These inquiries can be answered by examining his rights and obligations.

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<sup>2</sup> See [www.teachingheart.net/tquotes.htm](http://www.teachingheart.net/tquotes.htm)

<sup>3</sup> *Ibid.*, citing Christa McAuliffe.

Since a teacher must generally be a Filipino citizen as mandated by the Philippine Teacher's Professionalization Act of 1994, his rights and obligations also stem from law, contract, quasi-contact, contract, delict and quasi-delict.<sup>4</sup> However, there are other rights and obligations particular to him. It is the latter on which this paper focuses its attention.

Focus is made possible by looking at the different interfaces encountered by the teacher on account of his or her role in the educational system. These interfaces involve his relationships with other key players of the said system. As such, the study involves a threefold analysis of the teacher: the teacher in relation to (a) the State, (b) the School or Academic Institution, and (c) the Students.

In relation to the State, regulations of the teaching profession will be discussed along with teachers' rights to be shielded therefrom in proper instances. In relation to the Schools and Academic Institutions, the rights of private enterprises on the one hand, and institutional academic freedom on the other, may connive in its dealings with the teacher. In relation to the students, the moral ascendancy and inherent superiority of teachers necessitate their conformity with engaging in fairness.

Particular attention is given to the right to Academic Freedom, which is the most unique right available to teachers in institutions of higher learning. Article XIV, section 5 (2) of the 1987 Constitution provides simply: "Academic Freedom shall be enjoyed in all institutions of higher learning."

This right has been defined as follows:

Academic Freedom is the right of the teacher to teach the subject of his/her specialization according to his/her best lights; to hold, in other subjects, as such ideas as she believes sincerely to be right; and to express his/her opinions on public questions in a manner that shall not interfere with his/her duties as a member of the faculty or render him/her negative in his/her loyalty to the school, college, or university that employs him/her...<sup>5</sup>

This definition must be contrasted with institutional academic freedom which is the freedom of a college or university to determine for itself, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

Admittedly, the concept of Academic Freedom has no hard and fast rule broad enough to cover all its aspects. The Constitutional Commission which drafted the 1987 Constitution accepted the suggestion that no attempt be made to

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<sup>4</sup> CIVIL CODE, art. 1167.

<sup>5</sup> Faculty Manual of the University of the Philippines (hereinafter *Faculty Manual*), Ch. 2.2, p.23 (2003).

freeze the concept and to leave the development of the concept of dynamic growth that can take place in the context of litigation and experience.<sup>6</sup>

One must note, however, of the Supreme Court ruling in *Isabelo, Jr. vs. Perpetual Help College*,<sup>7</sup> where it was held that academic freedom was never meant to be an unabridged license; it is a privilege that assumes a correlative duty to exercise it responsibly. Given this reality about academic freedom, it is necessary to contextualize it in terms of the threefold analysis. As will be seen, its dynamics differ when applied to the three situations involved.

In the end, it is hoped that the dynamics of the relations between the teacher and other key players will be delineated and found – a determination of where the shade of his rights begins concomitantly with where the shade of his obligations ends, and vice versa.

## I. THE PHILIPPINE EDUCATIONAL SYSTEM: AN OVERVIEW

Before discussing the teacher, it is essential to know the environment in which he operates to enable one to have a complete picture of his relationships with the state, the school administration, and the students.

The present educational system traces its beginnings to 1901 when the Department of Public Instruction was organized under Act No. 74 of the Philippine Commission. Among the first activities of the nascent department was the recruitment of 765 American Teachers to complement 4395 Filipino teachers in the Public Schools. The country's total number of students then was only 150,000.<sup>8</sup>

A century later, the Philippine public elementary and secondary school system had grown to a force of 419,954 teachers, 143 school divisions, and 15.7 million pupils. The school system spans the length and breadth of the archipelago. Indeed, next to the *barangay*, the school is the main presence of the government in the villages, especially in the remote areas.<sup>9</sup> Thus, teachers are the primary means by which the state influences the lives of its constituents.

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<sup>6</sup> BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 1255 (2003).

<sup>7</sup> 227 SCRA 591 [1993].

<sup>8</sup> Senate Committee on Education, Arts, and Culture, *Profile of the Filipino Teacher*, xv (2004).

<sup>9</sup> *Ibid.*

The delivery of higher education in the Philippines is provided either by private or public higher education institutions. Currently, there are 1,605 higher education institutions in the country.<sup>10</sup>

Private higher education institutions are established under the Corporation Code and are governed by special laws and general provisions of this Code. Those classified as “non-sectarian” are duly incorporated, owned and operated by private entities that are not affiliated with any religious organization, while the “sectarian” schools are usually non-stock, non-profit, duly incorporated, owned and operated by a religious organization.<sup>11</sup>

Generally, private higher education institutions are covered by the policies and standards set by the Commission on Higher Education (CHED) in terms of course offerings, curriculum, and administration and faculty academic qualifications, among others. The heads of private higher education institutions usually manage the internal organization of private higher education institutions and implement the policies and standards formulated by the CHED.<sup>12</sup> A number of private higher education institutions are granted autonomy or deregulated status in recognition of their committed service through quality education, research, and extension work.<sup>13</sup>

On the other hand, the State Universities and Colleges (SUCs) are chartered public higher education institutions established by law, administered and financially subsidized by the government. The Local Colleges and Universities (LCUs) are those established by the local government through resolutions or ordinance. They are financially supported by the local government concerned. The CHED Supervised Higher Education Institutions (CSIs) are non-chartered public post-secondary education institutions established by law, administered, supervised and financially supported by the government. Other Government Schools (OGS) are public secondary and post-secondary education institutions usually a technical-vocational education institution that offer higher education programs. Special Higher Education Systems (HEIs) are directly under the government agency stipulated in the law that created them. They provide specialized training in areas such as military science and national defense.<sup>14</sup>

The SUCs have their own charters. The board of regents for state universities and a board of trustees for state colleges formulate and approve policies, rules and standards in these public institutions. The Chairman of the CHED heads these boards. However, CHED Order No. 31 series of 2001 of the Commission en banc has also authorized the CHED Commissioners to head the

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<sup>10</sup> Found at <http://www.ched.gov.ph/aboutus/index.html>

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> See CMO. 32. S. 2001 - Grant of Autonomy and Deregulated Status to Selected Higher Education Institutions with Benefits Accruing Thereto.

<sup>14</sup> *Ibid.*

board of trustees or board of regents of SUCs. Implementation of policies and management are vested on the president, staff, and support units of the public higher education institutions.<sup>15</sup> Special mention should be made of the University of the Philippines as the premiere educational institution in the country with campuses established in Luzon, Visayas, and Mindanao.

It is within these contexts and landscapes that the teacher will be analyzed in relation to the State, the School Administration, and the Students.

## II. TEACHERS AND THE STATE

Considering the high priority given by the Constitution to education and the supervisory and regulatory powers of the state over all educational institutions,<sup>16</sup> teachers and professors are involved in a profession imbued with public interest. As they are the pillars of education, it is necessary to illustrate state interest in education to reflect the importance of teachers and professors.

State interest in education is most obvious in its youth. It's been said that the youth is the hope of the motherland. This recognition of the vital role of the youth is emphasized in the 1987 Constitution as follows:

State recognizes the vital role of youth in nation building and shall promote and protect their physical, moral, spiritual, intellectual well-being.<sup>17</sup> It shall inculcate in the youth patriotism, nationalism, and encourage their involvement in public and civic affairs.

The masthead provision for education is found in Article II, Section 12, the second sentence of which says: "the natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the government."<sup>18</sup>

However, the State's interest in education is not limited to the youth; it extends to everyone. States around the world have expressed, in two international instruments - the Universal Declaration of Human Rights (UDHR)<sup>19</sup> and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)<sup>20</sup> - the

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<sup>15</sup> *Ibid.*

<sup>16</sup> See CONST. art. XIV, sec. 1-2, 4(1); *see also* Non vs. Judge Dames II 185 SCRA 523, 537 (1990), applying the reasoning to students.

<sup>17</sup> CONST. art. II, sec. 13.

<sup>18</sup> BERNAS, CONSTITUTIONAL RIGHTS AND SOCIAL DEMANDS, 1054 (1996).

<sup>19</sup> Adopted and proclaimed on December 10, 1948

<sup>20</sup> ICESCR, art. 13.

recognition of the right of everyone to education directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.<sup>21</sup>

Domestically, the 1987 Constitution mandated that the state shall protect and promote the right of all citizens to quality education at all levels and shall take appropriate steps to make such education accessible to all.<sup>22</sup>

Indeed, the State must promote and protect (1) quality education that is of high academic standards; (2) affordable education, that is, education that is financially within the reach not just of the wealthy; and (3) education that is relevant to the needs of the people and society.<sup>23</sup>

#### A. TEACHERS AND PROFESSORS IN RELATION TO THE STATE'S OBLIGATION TO QUALITY EDUCATION

##### 1. Background

The educational system in the Philippines is divided mainly into three: Primary, Secondary, and Tertiary.

Primary level of education pertains to the first level or elementary education which involves compulsory, formal education primarily concerned with providing basic education, and usually corresponds to a traditional six to seven grades. In addition, there is the pre-school education that normally consists of kindergarten schooling, but may cover other preparatory courses as well.<sup>24</sup>

Secondary level refers to Secondary Education which is primarily concerned with continuing basic education of the elementary level and expanding it to include the learning of employable gainful skills, usually corresponding to four years of high school.<sup>25</sup>

The third level or Tertiary Education, also referred to as higher education, involves post-secondary schooling leading to a specific degree in a specific profession or discipline, such as prescribed courses of study credited towards a bachelor's, master's and doctoral degrees. Any course of study or program of

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<sup>21</sup> UDHR, art. 26, para. 2.

<sup>22</sup> CONST. art. XIV, sec. 1.

<sup>23</sup> BERNAS, *op. cit. supra* note 17 at 1054 (1996).

<sup>24</sup> Manual for the Regulations of Private Schools, (8<sup>th</sup> ed., 1992) (hereinafter *MRPS*), sec. 21.

<sup>25</sup> MRPS, sec. 21.

instruction, whether formal or non-formal and whether for credit or otherwise, but which requires the prerequisite completion of secondary education qualifies as tertiary education.<sup>26</sup>

Before delving into the status of teachers and professors in quality education, the nature and characteristics of the aforementioned general levels of education must first be scrutinized. The primary, secondary, and tertiary levels of education have essential distinctions so as to merit differential treatment by the law.

## 2. Duty-Right-Privilege Trichotomy

Note that the attitude of the law towards education in relation to its citizens varies at each level. There is legal compulsion at the elementary level.<sup>27</sup> Such constitutional compulsion is absent for secondary levels. However, the State is still commanded to maintain a free public education system for high schools.<sup>28</sup> By the tertiary level, the right to education mutates into a mere privilege.<sup>29</sup> As it seems, to put it simply, citizens have the duty to go to elementary school,<sup>30</sup> the right to go to high school, and the privilege to go to college.

This is not to say, however, that the law recognizes such levels of education only to a particular type of learning. The state is mandated to establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs and of the people and society.<sup>31</sup> Furthermore, non-formal, informal and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respect community needs, shall be encouraged.<sup>32</sup>

As regards elementary education, the natural right of parents to rear their children<sup>33</sup> is a recognized limitation to its being compulsory.<sup>34</sup> On the other hand,

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<sup>26</sup> MRPS, sec. 21.

<sup>27</sup> CONST. Art. XIV, sec.2 (2).

<sup>28</sup> CONST. Art. XIV, sec.2 (2).

<sup>29</sup> See *Ateneo de Manila University vs. Capulong* 222 SCRA 647 [1993], reiterating *Garcia vs. Faculty Admission Committee*, 68 SCRA 283 [1975] where the Supreme Court held that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right.

<sup>30</sup> But see *Wisconsin vs. Yoder* 406 U.S. 205 (1972).

<sup>31</sup> CONST. Art. XIV, sec. 2 (1).

<sup>32</sup> CONST. Art. XIV, sec. 2 (4).

<sup>33</sup> See *Wisconsin vs. Yoder* *supra* note 29; where the right of Amish parents to refuse for their children to continue going to school was upheld given the fact that the Amish Community has been a successful social unit of society. Furthermore, the US Supreme Court held:

adult citizens, the disabled, and out-of-school youth shall be provided with civics, vocational efficiency, and other skills.<sup>35</sup>

The duty-right-privilege trichotomy must be seen from the perspective of a citizen choosing for himself the means and mode of how he would be learning and enforcing them. The degree of a person to invoke his right to primary education is so much as to make it compulsory upon him. This level of compulsion and enforceability is lighter but still substantial for secondary education.<sup>36</sup> By the third level of education, the right becomes a privilege. The compulsion becomes lighter and lighter as it progresses to its later stages.

Perhaps, this is recognition of Plato's postulate that men are created differently: some are made of bronze, others silver and quite a few are made of gold.<sup>37</sup> Not all are made to be lawyers, engineers and other professionals. Some have to be artisans, while others soldiers and craftsmen. Noteworthy is the constitution's qualification that education must be relevant to the needs of people and society.<sup>38</sup>

There is no doubt as to the power of the State in line with its high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education.<sup>39</sup> It is submitted however, that the regulations and controls imposed by the State varies and generally diminishes as the level of education progresses. This is evident in the degree of responsibility imposed by the State upon teachers as recognized by the Supreme Court through Justice J.B.L. Reyes:

... the teachers' control is not as plenary as when the student was a minor; but that circumstance can only affect the degree of responsibility but cannot negate the existence thereof. It is only a factor to be appreciated in

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"The Amish alternative to formal secondary school education has enabled them to function effectively in their day-to-day life under self-imposed limitations on relations with the world, and to survive and prosper as a separate, sharply identifiable and highly self-sufficient community..."

<sup>34</sup> CONST. Art. XIV, sec. 2 (2).

<sup>35</sup> CONST. Art. XIV, sec. 2 (5).

<sup>36</sup> See also Rep. Act No. 6655, FREE PUBLIC SECONDARY EDUCATION ACT of 1988 which provides that it is the policy of the State to provide free secondary education to all qualified citizens and to promote quality education at all levels. Notice the qualifier to all citizens. Secondary education is not a right of all but only those who are qualified.

Section 6 of the same act also provides for a limitation. The right of any student to avail of free public high school shall terminate if he fails for two (2) consecutive school years in the majority of the academic subjects in which he is enrolled during the course of his study unless such failure is due to some valid cause.

<sup>37</sup> See Plato's, THE REPUBLIC, available at <http://classics.mit.edu/Plato/republic.html>.

<sup>38</sup> CONST. Art. XIV, sec. 2 (1).

<sup>39</sup> Wisconsin vs. Yoder, *supra* note 29, reiterating Pierce vs. Society of Sisters 262 U.S. 510 (1925).



determining whether or not the defendant (teacher) has exercised due diligence in endeavoring to prevent the injury...<sup>40</sup>

The transformation of the degree of responsibility imposed upon teachers reflects the change of state interest in the education of its citizens – from one of rearing to one of letting go. It is analogous to a rebreeding program for endangered species like the Philippine Eagle. An offspring is hatched, reared and taken care of, keeping a close eye on each development. As the bird develops and grows, it is trained. Ultimately, the Eagle shall be set free to hopefully thrive and flourish.

As pointed out, state interest in the education of its citizens changes as the level of education changes. By necessary implication, the State's relationship with the Teachers and Professors parallels these variations. Thus, the State-Teacher relationship will be dissected according to primary, secondary and tertiary levels of education. Focus will be on the role of teachers in education according to the various levels.

## B. STATE AND BASIC EDUCATION TEACHERS

State control and supervision over basic education is done through the Department of Education, as per the Governance of Basic Education Act of 2001.<sup>41</sup>

It can be said that state supervision and control is greatest at the primary level and succinctly at the secondary level. As such, State supervision over teachers is also greatest at these stages in the sense that it plays a big role in the behavior and actions of teachers. The primary and secondary levels shall be examined concurrently since the rules and regulations imposed upon them are lumped into one group. The difference in treatment of these levels shall be noted.

Teachers at these levels are seen as caretakers of the students. Moral ascendancy is more evident, as students here are children. Therefore, they play a major role in the child's physical, emotional, and moral development. As such, they are given stringent rules and regulations.

The first line of regulation imposed by the State is the necessity of a license as mandated by the Philippine Teacher Professionalization Act of 1994.<sup>42</sup> Thus, it is criminal to practice the teaching profession without being certified as required by

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<sup>40</sup> *Palisoc vs. Brillantes*, G.R. No. L-29025, Oct. 4, 1971, 41 SCRA 548 [1971].

<sup>41</sup> See Rep. Act No. 9155 or Governance of Basic Education Act of 2001.

<sup>42</sup> Rep. Act No. 7836 (1994).

law. Anyone who circumvents or abets the violation of this rule shall also be liable.<sup>43</sup>

License can be acquired through the Licensure Exams for Teachers as administered by the Board of Professional Teachers.<sup>44</sup> All applicants for registration as professional teachers shall be required to undergo a written examination which shall be given at least once a year.

For elementary, the examination for teachers shall consist of 2 parts, namely: professional education and general education. The examination for the secondary levels shall consist of 3 parts, namely: professional education, general education, and the field of specialization. In addition, there is also a periodic merit examination for teachers to encourage a continuing professional growth and development and to provide additional basis for merit promotion, in addition to their performance rating, teachers may take an oral or written examination at least once in five (5) years as basis for merit promotion free of charge.

On the other hand, there are exceptional circumstances which allow for licensure without taking the exam. Upon approval of the application and payment of prescribed fees, the certificate of registration and professional license as a professional licensed teacher shall be issued without examination to a qualified applicant, who at the time of the approval of RA 7836 is :

- (a) A holder of a certificate of eligibility as a teacher issued by the Civil Service Commission and the Department of Education, Culture and Sports; or
- (b) A registered professional teacher with the National Board for Teachers under the Department of Education, Culture and Sports (DECS) pursuant to Presidential Decree No. 1006; or
- (c) Not qualified under paragraphs one and two but with any of the following qualifications, to wit:
  - (1) An elementary or secondary teacher for five (5) years in good standing and a holder of Bachelor of Science in Education or its equivalent; or
  - (2) An elementary or secondary teacher for three (3) years in good standing and a holder of a master's degree in education or its equivalent.

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<sup>43</sup> See Rep. Act. No. 7836, sec. 28 (1994).

<sup>44</sup> See Rep. Act. No. 7836, sec. 5 (1994).

*Provided*, That they shall be given two (2) years from the organization of the Board for professional teachers within which to register and be included in the roster of professional teachers: *Provided, further*, That those incumbent teachers who are not qualified to register without examination under this Act or who, albeit qualified, were unable to register within the two-year period shall be issued a five-year temporary or special permit from the time the Board is organized within which to register after passing the examination and complying with the requirements provided this Act and be included in the roster of professional teachers: *Provided, furthermore*, That those who have failed the licensure examination for professional teachers shall be eligible as para-teachers and as such, shall be issued by the Board a special or temporary permit, and shall be assigned by the Department of Education, Culture and Sports (DECS) to schools as it may determine under the circumstances.

The following are the qualification requirements of applicants:

- (a) A citizen of the Philippines or an alien whose country has reciprocity with the Philippines in the practice of the teaching profession;
- (b) At least eighteen (18) years of age;
- (c) In good health and of good reputation with high moral values;
- (d) Has not been convicted by final judgment by a court for an offense involving moral turpitude;
- (e) A graduate of a school, college or university recognized by the government and possesses the minimum educational qualifications, as follows:
  - (1) For teachers in preschool, a bachelor's degree in early childhood education (BECED) or its equivalent;
  - (2) For teachers in the elementary grades, a bachelor's degree in elementary education (BSEED) or its equivalent;
  - (3) For teachers in the secondary grades, a bachelor's degree in education or its equivalent with a major and minor, or a bachelor's degree in arts and sciences with at least ten (10) units in professional education; and
  - (4) For teachers of vocational and two-year technical courses, a bachelor's degree in the field of specialization or its equivalent, with at least eighteen (18) units in professional education.

Note the difference in the requirement on the educational background between primary and secondary grade teachers. Teachers in the preschool and elementary grades require a specific and specialized field of study - Bachelor's

degree in Early Childhood or its equivalent for preschool and Bachelor's degree in Elementary Education or its equivalent for elementary. On the other hand, a bachelor's degree in education or its equivalent in major or minor, or a bachelor's degree in arts and science with at least 10 units in professional education.

This is indicative of the control that is intended. The teachers for early level must act in a specific manner towards the students, who are presumably in their tender years, thus the necessity of a specified manner of training for these teachers. This is relaxed in the secondary level as other forms of training for teachers are allowed aside from that focusing on education. A degree of control is still present and merely relaxed, rather than eliminated, as 10 units of professional education are still required.

For foreign teachers, registration by reciprocity is allowed as follows:

Registration by Reciprocity. — No teacher of a foreign nationality shall be admitted to the examination, or be given a certificate of registration or be entitled to any of the rights and privileges provided under this Act; unless the country or state of which he is a subject permits Filipino professional teachers to practice within its territorial limits on the same basis as subjects or citizens of said country or state: *Provided*, that the requirements of certification of teachers with said foreign state or country are substantially the same as those required and contemplated under this Act: *Provided, further*, That the laws of such state or country grant the same privilege to Filipino professional teachers on the same basis as the subject or citizens of such foreign country or state.<sup>45</sup>

The professionalization of teachers entailed the establishment of a roster of professional teachers.<sup>46</sup> The teaching profession was integrated into one national organization.<sup>47</sup> Being licensed, however, does not automatically mean one becomes a teacher. It only makes one eligible to look for a teaching position which maybe in public or private schools.

## 1. Public Schools

For public schools, the Guidelines for Recruitment, Evaluation, Selection and Appointment of Teachers in Public Schools were issued by the Department of Education.<sup>48</sup> The guidelines apply to filling up of newly created or natural vacancies

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<sup>45</sup> Rep. Act No. 7836, sec. 24 (1994).

<sup>46</sup> Rep. Act No. 7836, sec.25 (1994).

<sup>47</sup> Rep. Act No. 7836, sec. 22 (1994).

<sup>48</sup> DepEd Order No. 16, s. 2005.

for Teacher I positions as well as locally funded items including the following actions:

- (a) announcement of vacancies and requirements and receipt of applications (recruitment);
- (b) Assessment of documents submitted (evaluation);
- (c) ranking applicants (selection);
- (d) appointment of qualified applicants (appointment).<sup>49</sup>

For these purposes, the appointment of teachers is considered a collective responsibility of the whole School Division including all its schools and district division offices such that the appointment by Superintendent is the act of the whole division. However, the administrative responsibility still lies with the Superintendent. Guiding policies include the following:

- (a) Open and convenient access to applicants;
- (b) Strict evaluation and selection to determine qualified applicants
- (c) Recommendation only of qualified applicants who are bona fide residents of barangays where the school vacancies are located;
- (d) Recommendation only of qualified applicants who are bona fide residents of the municipalities, cities or provinces where the school with unfilled vacancies are located;
- (e) Appointment of qualified applicants recommended by the School Selection Committee
- (f) Monitoring of division practice by the regional office<sup>50</sup>

The flowchart of Recruitment, Evaluation, Selection and Appointment of teachers in public schools as attached to Department of Education Order No.16, Series of 2005 illustrates the entire process. Note the difference in the manner of engaging a teacher for the basic education and the tertiary levels. As seen in the succeeding discussions, there is no one prescribed set of rules for institutions of higher learning. Although there may be minimum standards set,<sup>51</sup> discretion is still left to the institutions of higher learning as discussed in the subsequent section.

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<sup>49</sup> Id. at 2.0.

<sup>50</sup> Id. at 4.0.

<sup>51</sup> See e.g. MRSP, sec. 3.

### C. THE STATE AND PROFESSORS IN COLLEGES AND UNIVERSITIES

Pursuant to the Higher Education Act of 1994,<sup>52</sup> the Commission on Higher Education or CHED is the governing body covering both public and private higher education institutions as well as degree-granting programs in all tertiary educational institutions in the Philippines. As such, it is responsible for formulating and implementing policies, plans and programs for the development and efficient operation of the system of higher education in the country.

The CHED is also mandated to undertake the following tasks:

- (a) Promote quality education
- (b) Take appropriate steps to ensure that education shall be accessible to all
- (c) Ensure and protect academic freedom for the continuing intellectual growth, the advancement of learning and research, the development of responsible and effective leadership, the education of high level professionals, and the enrichment of historical and cultural heritage.<sup>53</sup>

Note that there are SUCs, like the University of the Philippines, which are autonomous from the CHED and governed by their respective boards of regents or boards of trustees. The boards of regents for state universities or boards of trustees for state colleges is, however, headed by the Chairman of the CHED.

#### 1. Academic Freedom in the Context of the Teacher and the State

State regulation as regards who may teach students is relinquished by the State in favor of Academic Institutions. This is a necessary incident of Academic Freedom, expressly granted by the Constitution<sup>54</sup> to institutions of higher learning, which is known as Institutional Academic Freedom.<sup>55</sup>

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<sup>52</sup> Rep. Act No. 7722 (1994).

<sup>53</sup> Found at <http://www.ched.gov.ph/aboutus/index.html>

<sup>54</sup> Const. art. XIV, sec. 5(1).

<sup>55</sup> See *Garcia vs. Faculty Admissions*, 68 SCRA 283 [1975] which distinguished institutional academic freedom from individual academic freedom. This will be discussed in detail on the relationship between the school administration and academic freedom.

In *Garcia vs. Faculty Admissions Committee*,<sup>56</sup> the Supreme Court borrowed the wisdom of Justice Frankfurter in *Sweezy vs. New Hampshire*,<sup>57</sup> to wit:

Academic Freedom is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university - to determine for itself on academic grounds what may teach, what may be taught, how it shall be taught, and who maybe admitted to study. (emphasis supplied)

Furthermore, the *de facto* control of function of appointment and tenure of office of the academic staff by the university is an essential internal condition for academic freedom in the university.<sup>58</sup> As Dean Sinco puts it:

It would be a poor prospect for academic freedom if universities had to rely on the literal interpretations of their constitutions in order to acquire for their academic members the control of this function, for in one constitution or another most of these functions are laid on the shoulders of the lay governing body.<sup>59</sup>

In a sense, the interaction between the State and the teacher or professor is intercepted by the academic institution. It must be made clear however, that this situation is present only on the tertiary level of education. The 1987 Constitution is clear: "Academic Freedom shall be enjoyed in all institutions of higher learning."<sup>60</sup>

Academic Freedom was also written into the 1935 and 1973 Philippine Constitutions. In the former, academic freedom was referred only to universities established by the State, not in private institutions of higher learning.<sup>61</sup> The 1973 Philippine Constitution stated that "all institutions of higher learning shall enjoy academic freedom, including private schools."<sup>62</sup>

As can be seen, the 1987 Constitution essentially preserves the provision of the 1973 Constitution. In contrast with the 1935 Constitution, this provision extended the mantle of constitutional protection to private educational institutions rather than to public ones alone. It protected the freedom of private schools *vs. à-à* the regulatory powers of the State. It must also be distinguished from the citizen's political right of expression.<sup>63</sup> In addition to the change of immediate supervision over the teachers from the State to the administration of Universities and Colleges,

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<sup>56</sup> *Ibid.*

<sup>57</sup> 354 U.S. 234, 263 (1957).

<sup>58</sup> See Sinco, Philippine Political, 490-491 (1962) citing Sir Eric Ashby as quoted by the Supreme Court in *Garcia vs. Faculty Admissions* supra note 54.

<sup>59</sup> *Ibid.*

<sup>60</sup> CONST. art. XIV, sec. 5 (2).

<sup>61</sup> CONST. 1935, art. XIII, sec. 5.

<sup>62</sup> See Coquia, Broad Aspects of Academic Freedom, 313 SCRA 428, 431 [1999].

<sup>63</sup> See BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1251 (2003).

the teacher and profession is given individual academic freedom.<sup>64</sup> As borrowed by the Supreme Court, sociologist Robert McIver defines Academic Freedom as:

... a right claimed by the accredited creditor, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution.<sup>65</sup>

To elucidate further, there is Sidney Hook's explanation as further pointed out by the same Supreme Court:

It is a freedom of professionally qualified persons to inquire, discover, publish, and teach the truth as they see it in the field of their competence. It is subject to no control or authority except the control or authority of the rational methods by which truths or conclusions are sought and established in these disciplines.<sup>66</sup>

In *Camacho vs. Coresis*,<sup>67</sup> the Supreme Court defined academic freedom of the teacher as follows:

It is defined as a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalty because these conclusions are unacceptable to some constituted authority within or beyond the institution.

Dean Vicente Sinco also posited his version of individual academic freedom:

It is the right of each university teacher, recognized and effectively guaranteed by society, to seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen.<sup>68</sup>

It appears that the special treatment of teachers of institutions of higher learning is recognition that the students have become mature. The state's interest as regards them has shifted from emotionally and physically nurturing them to letting them free to grow and develop on their own in a conducive environment. At this stage in life, the students have reached a level of development allowing them to strengthen fundamental freedoms by exercising these freedoms themselves.<sup>69</sup> Freedom of thought without state interference and indoctrination is an important aspect and manifestation of democracy.

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<sup>64</sup> See *Garcia vs. Faculty Admissions* supra note 54.

<sup>65</sup> *Supra* note 54 (1975) citing McIver, *ACADEMIC FREEDOM IN OUR TIME* (1955).

<sup>66</sup> *Id.* citing Hook, *ACADEMIC FREEDOM AND ACADEMIC ANARCHY* (1965).

<sup>67</sup> *Camacho vs. Coresis*, [G.R. No. 134372. August 22, 2002.]

<sup>68</sup> *Id.* citing Sinco, *PHILIPPINE POLITICAL LAW*, 489 (1962).

<sup>69</sup> See ICESCR, art. 13 and UDHR, art. 26, para. 2.



In a sense, the primary and secondary education has to a certain extent enabled students of the tertiary level to participate effectively in a free society.<sup>70</sup> This exercise of freedom then becomes the means for progress towards the full development of the human personality.

Given this nature of the State's interest in college students, it becomes indispensable that the teacher must be allowed seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen.<sup>71</sup> By being such, he becomes an instrument for strengthening the foundations of a democratic society by being part of the free society within which the student has room to grow and develop.

As the late Justice Enrique Fernando explains:

The significance of academic freedom to the democratic process cannot be overemphasized. In a polity that rests on the consent of the governed it is essential that there be an informed citizenry. As Justice Cardozo so felicitously phrased it: "we are free only if we know, and so in proportion to our knowledge. There is no freedom without choice, and there is no choice without knowledge, - or none that is illusory." So with Spinoza: "He is the free man, who lives according to the dictates of reason alone."... "free trade in ideas", as noted by Professor Byse, "is indispensable to enlightened community decision and action."<sup>72</sup>

In this light, it becomes indispensable to examine how the teachers are recruited, appointed or taken in by tertiary level institutions. It is best discussed in the analysis of the relationship of the teacher and the academic institution.

## 2. Public School Teachers as Public Officers

Another aspect involving the teacher in relation to the state is his status as a public officer. It is independent of Academic Freedom as being a public officer transcends freedom of the thought and the right to investigate without interference.

Determining that a teacher is a public officer means that prescriptions of conduct, as well as rules and regulations applying to public officers, shall apply to them. Then, they must at all times be accountable to the people, serve them with

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<sup>70</sup>See ICESCR, art. 13 and UDHR, art. 26, para. 2.

<sup>71</sup>*Supra* note 54 citing Sinco, PHILIPPINE POLITICAL LAW, 489 (1962).

<sup>72</sup> Fernando, *Academic Freedom as a Constitutional Right*, 52, PHIL. L. J. 290-291 (1977).

utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.<sup>73</sup>

A public school teacher or a member of the faculty of a state-owned college or university is a civil service employee.<sup>74</sup> The 1987 Constitution provides that the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government owned and controlled corporations with original charters.<sup>75</sup> However, a faculty of a state-owned college or university need not take a civil service exam depending on the provision of their charter or the rules and regulations provided by the competent ruling body in that institution.<sup>76</sup>

A public office is the right, authority, duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the appointing power, an individual is invested with some portion of sovereign functions of the government, to be exercised by him for the benefit of the public.<sup>77</sup> Necessarily, for a teacher to be a public officer, a teaching position must be characterized as a public office. It is therefore necessary to determine whether teaching concurs with the following essential elements of a public office:

- a. It is created by Constitution or By Law or by some body or agency to which the power to create an office has been delegated;
- b. It must be invested with an authority to exercise some portion of the sovereign power of the State to be exercised for Public interest;
- c. Its power and functions are defined by the Constitution, or by law, or through legislative authority;
- d. Duties pertaining thereto are performed independently, without control of superior power other than law, unless they are those of an inferior or subordinate officer, created or authorized by the legislature and place by it under the general control of a superior officer or body;
- e. It is continuing and permanent in nature and not occasional nor intermittent.<sup>78</sup>

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<sup>73</sup> See CONST. art. XI, sec. 1.

<sup>74</sup> See Sales and Martinez, *The Law Governing Teachers and Students*, 54 PHIL. L. J. 449, 451 (1979).

<sup>75</sup> CONST., art IX, sec. 2(1).

<sup>76</sup> See e.g. Faculty Manual, ch.5.1.1 (b).

<sup>77</sup> F. MECHEM, A TREATISE ON THE LAW OF PUBLIC OFFICERS AND OFFICES, 1-2 (1890); see also *Aparri vs. CA*, 127 SCRA 231 [1984].

<sup>78</sup> DE LEON, LAW ON PUBLIC OFFICERS AND ELECTION LAW, 9 (2003).

As can be seen, the job of a teacher is by virtue of constitutional fiat, given the fact that the State has unquestionable interest in the education of its citizens. Various laws, including independent charters of universities, provide for teaching positions in the primary, secondary, and tertiary levels. Teachers employed by the Private Schools are excluded, however, in that they procured their office from the private sector and not the State. There is also no question that a teachers' work is continuing and permanent in nature and not occasional nor intermittent.

The sovereign power exercised by the teacher involves the execution of laws for the instruction and education of the public. Such necessarily involves public interest. Their powers and functions are necessarily recognized by Article XIV of the 1987 Constitution. In addition, there are laws including the Education Act of 1982, Philippines Teachers Professionalization Act of 1994, Governance of the Basic Education Act of 2001, and various Charters of universities, like Act 1370 creating the University of the Philippines, which also deal with the teachers' powers and functions.

As can be seen, with the exception of teachers in private schools, teachers are public officers. As public officers, they are bound by the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>79</sup> They are also subject to possible criminal prosecutions under the anti-graft and corrupt practices act.<sup>80</sup> The status of being public officers extends possible remedies against teachers from mere administrative liability to civil and criminal liability, including prosecution for felonies under Title 7 of the Revised Penal Code.<sup>81</sup> This is qualified, however, by academic freedom as held in the *University of the Philippines and de Torres vs. Civil Service Commission*<sup>82</sup> to wit:

As part of its academic freedom, the University of the Philippines has the prerogative to determine who may teach its students. The Civil Service Commission has no authority to force it to dismiss a member of its faculty even in the guise of enforcing Civil Service Rules.

In that case, de Torres was an associate professor who went on Absence without Leave (AWOL) because his request for extension of his leave of absence was denied by the University Chancellor. The facts were clear that he violated civil service rules and should be considered as automatically separated from service under Section 33 of Rule XVI of the Revised Civil Service. The Supreme Court, setting aside the resolution of the Civil Service Commission held that the discretion as to whether or not to remove de Torres still lied with UP. Since UP did not fire de Torres and it even joined him in the petition to reverse the Civil Service Commission, de Torres cannot be removed as a professor.

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<sup>79</sup> Rep. Act No. 6713 (1989).

<sup>80</sup> Rep. Act No. 3019 (1960) as amended.

<sup>81</sup> Act No. 3815 (1930) as amended.

<sup>82</sup> G.R. No. 132860, April 3, 2001.

*Camacho vs. Ceresis*<sup>83</sup> is another case which modifies the liabilities of teachers as public officials. In that case, petitioner filed a complaint against Dr. Daleon for having “ghost students” in his graduate class. He admitted that he made special arrangements with three students without requiring them to attend classes. In absolving Dr. Daleon from administrative and criminal liabilities, the Supreme Court held:

As applied to the case at bar, academic freedom clothes Dr. Daleon with the widest latitude to innovate and experiment on the method of teaching which is most fitting to his students (graduate students at that), subject only to the rules and policies of the university. Considering that the Board of Regents, whose task is to lay down school rules and policies of the University of Southeastern Philippines, has validated his teaching style, we see no reason for petitioner to complain before us simply because he holds a contrary opinion on the matter.

The danger of the *de Torres* and *Camacho* cases is that an institution of higher learning can condone any misbehavior or dereliction of duty by a professor. However, there is the underlying premise that universities and colleges are institutions of higher learning with inherent self-governing mechanisms given its interest in intellectual integrity and academic excellence. The State is deemed to have trusted institutions of higher learning such that the universities and colleges are left to their own devices to mend their own fences.

However, it is respectfully submitted that the doctrine in *de Torres* and *Camacho* as a protective shield of teachers as public officers must always be qualified by the spirit and intention of academic freedom. Any act of the teacher is protected by academic freedom only insofar as the said act is in the pursuit of knowledge, discovery of the truth, and the production of an informed citizenry. As clearly stated by the Supreme Court, academic freedom of faculty members refers to the freedom of teachers from control of thought or utterance of his academic research, findings or conclusions.<sup>84</sup>

It is accepted that an institution of higher learning may retain its right to continue the employment of the professor regardless of his or her teaching style. However, the said professor is not absolved from any criminal liability if he or she states under oath that he or she has been attending class religiously to draw on his or her salaries, when in truth and in fact, he or she did not hold any classes because he or she was always absent unrelated to her academic endeavors.

Note that in the *Camacho* case, Daleon was absolved from civil and criminal cases because there was an existing arrangement with the graduate students, wherein

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<sup>83</sup> G.R. No. 134372. August 22, 2002

<sup>84</sup> *St. Jude Catholic vs Salgarino*, G.R. No. 164376, July 31, 2006, citing *Garcia vs. The Faculty of Admission Committee, Loyola School of Technology*, G.R. No. L-40779, 28 November 1975, 68 SCRA 277, 285.

the said students would still participate and learn from his class without having to attend the same. This was allowed by university rules. Supposing he passed the students without any such arrangement? Certainly, there would be clear misbehavior, and academic freedom would not have been available as a defense.

The right of an institution of higher learning to choose who can teach cannot override state interest to suppress criminal acts if the acts of their teachers do not support the aims of academic freedom. Academic freedom cannot be a universal wand of absolution condoning criminal acts. In *Barillo vs. Geruacio*,<sup>85</sup> the defense of academic freedom was not even considered by the Supreme Court in holding the teacher criminally liable under R.A. 3019 for illegal expenditure of fund of the school project.

At any rate, the institutions of higher learning would not allow themselves as shields for criminality given the nature and inherent self-governing mechanisms of universities and colleges.

### 3. Private schools

For private schools, state governance is to a certain extent substituted by the private school administration. Thus, the institution can impose additional requirements and qualifications before admitting teachers. Thus, a religious school can limit its teachers to practitioners of the same belief. Even a non-sectarian school limits its personnel to those who share the same faith and moral values.<sup>86</sup>

There arises an employer-employee relationship in this case plus the added consideration that a school involves public interest.<sup>87</sup> Aside from the operation of Labor laws, the Manual for Regulation of Private Schools also provide for guidelines governing the relationship between the School administration and the teachers. This matter will be discussed more appropriately under the next section on the relationships between Teachers and the School Administration.

## II. TEACHERS AND THE SCHOOL ADMINISTRATION

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<sup>85</sup> G.R. No. 155088. August 31, 2006

<sup>86</sup> See Hiring Policy of PAREF Schools.

<sup>87</sup> See e.g. *St. Scholastica's College vs. Torres and Samahan ng Manggagawang Pangedukasyon sa Sta Eskolastika-NAFTEU*, G.R. No. 100158, June 29, 1992.

To understand the mechanics of the relationship between the Teachers or Professors and the School Administration in the tertiary level better, it is necessary to take a look at the educational system by taking a glance at the interaction between the State and the tertiary level institutions.

Given the status of the institutions of higher education, and its treatment by the State, particularly academic freedom, it is easier to understand the dealings of these institutions with their teachers and professors. It is evident that state regulation over the teachers is intercepted by the academic institution. For the purposes of this paper, the University of the Philippines shall serve as an example.

As mentioned earlier, two situations concerning teachers are best discussed under this topic in so much as the State has relinquished to a certain extent its supervision and control over teachers to the academic institutions. These situations include the teachers in relation to: (a) private schools, and (b) institutions of higher learning, namely colleges and universities.

#### A. TEACHERS AND PRIVATE SCHOOLS

For private schools, control over teachers is delegated by the state to the school administration. It is the private school as an institution, which is regulated by the state through a Manual of Regulations for Private Schools.<sup>88</sup> The policy of the said implementing rules and regulations is as follows:

All private educational institutions shall be established in accordance with law and shall be subject to reasonable supervision and regulation by the Department.<sup>89</sup> No private school shall be established nor shall it operate any educational program whether formal or non-formal, except pursuant to law and in accordance with this manual.<sup>90</sup>

Thus, a recommendation from the Department of Education is necessary before the Securities and Exchange Commission would accept the Articles of Incorporation and By-Laws of a Corporation setting up a private school.<sup>91</sup>

Section 3 of the Manual of Regulations for Private Schools provides:

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<sup>88</sup> MRPS, sec. 2.

<sup>89</sup> Department of Education or DepEd by virtue of Rep. Act. No. 9155.

<sup>90</sup> MRPS, sec. 16.

<sup>91</sup> MRPS, sec. 17.

The standards or criteria provided for in this manual are the minimum required for government recognition, and schools may adopt higher standards or criteria consistent with laws, rules, regulations.

Although it's been said that the foregoing section recognizes Article XIV, Section 5(2) of the 1987 Constitution which expressly provides for Academic Freedom,<sup>92</sup> such must be qualified to pertain only to the Manual insofar as it covers Private Institutions of Higher Learning. Academic Freedom does not include private primary and secondary educational institutions.

The necessity of discussing private schools as school administrations in relation to teachers stems from the recognition of independence accorded to them. However, it must be clarified that this independence does not stem from Academic Freedom (especially for primary and secondary education), but rather from their status as members of the private sector.

Remember that education is also a business enterprise from which individuals earn income. Although some consider themselves non-profit, income still accrues to individuals, including management and teachers in the form of costs. There may be no profits, but there is still income.

Given a democratic setup, private institutions are given leeway and freedom to act in accordance with what they think is proper. They are given the discretion in conducting their affairs and business of running a school. Even if it involves an industry imbued with national interest, a school is still subject to market forces necessitating good management for continuous operations.

Add to this the fact that there is great state interest in providing high standards of education to its constituents; a private school may adopt higher standards or criteria consistent with laws, rules, and regulations, including those for the prerogative to determine who can teach.

Thus for teachers in private schools, the following are the minimum faculty qualifications:

- (a) Pre-School and Elementary: Holder of a bachelor's degree in elementary education, or its equivalent. Preschool teaches shall have at least 6 units of professional subjects relating to pre-primary education.
- (b) Secondary:
  - (1) For Academic Subjects: Holders of a bachelor's degree in secondary education or its equivalent, or a Bachelor of Arts

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<sup>92</sup> SARMIENTO, *MANUAL OF REGULATIONS FOR PRIVATE SCHOOLS, ANNOTATED*, 5 (1995).

degree or its equivalent, with at least 18 units of professional education subjects, to teach largely in the major field.

(2) For vocational subjects

- (a) Holders of any four-year college degree with knowledge and competence of the technical/vocational course he has to teach;
- (b) College undergraduates who, by training experience or both, can teach the subject or subjects assigned; or any vocationally trained or experienced person, engaged in the occupation or trade, who may serve as a resource person in any respect of his expertise.

(c) Tertiary

For undergraduate Courses other than vocational;

- (a) Holder of Master's degree, to teach largely in his major field; or for professional courses, holder of the appropriate professional license required for at least a bachelor's degree. Any deviation from this requirement will be subject to regulation by the department;
- (b) Special technical-vocational courses: Any graduate of the corresponding program or course with successfully demonstrated occupational or trade experience of at least one year.
- (c) For Physical Education: Holder of the degree of Bachelor of Science in Physical Education, or Bachelor of Science in Education, with major or minor in Physical Education, or any other bachelor's degree with certificate in bachelor's degree with certificate in Physical Education.
- (d) For Music Education: Holder of Degree in Bachelor of Music, or Bachelor of Science, with major or minor in music, or any other bachelor's degree with certificate in music.

(1) For Post Graduate Programs or Courses

- (a) Holder of the appropriate professional degree or license, to teach in his field of specialization. In special fields of study which require special and technical training, an instructor without a master's or doctor's degree maybe admitted into the faculty if he possesses exceptional



demonstrated competence and scholarship in his field of study or discipline.

(2) For Graduate Level Programs or Courses

- (a) For Master's Program: Holder of the appropriate earned master's degree, to teach in his field of expertise.
- (b) For Doctoral program: Holder of appropriate earned doctoral degree.

As mentioned, private schools may impose a higher standard or criteria in its policies or treatment of teachers. The aforementioned standards are just the minimal standards. Thus, a school may give preference to applicants who share the faith and beliefs of the institution.<sup>93</sup> Realistically speaking, however, there is the recognition of the lack of desired applicants such that exceptions are made.<sup>94</sup>

## 1. Teachers as Employees

Being part of the private sector, the employment of teachers in the private schools gives rise to an employer-employee relationship. Thus, the laws on labor standards apply with qualifications from the Manual for the Regulations of Private Schools.

Private schools are mandated to promote the improvement of the economic, social, and professional status of its personnel. Given the special employment status and their special role in the advancement of knowledge, the employment of teachers shall be governed by rules promulgated by the Department of Education and the Department of Labor and Employment in coordination with one another.<sup>95</sup> Former Labor Secretary and Senator Blas Ople recognized the need for special treatment of teachers:

There are areas where the clear-cut rules we have evolved in the Department of Labor will have to be recast or reconsidered in view of the status differentials obtaining in the private education sector vis-à-vis other working groups. We may even have to amend the Labor Code to meet peculiar demands of the private education group.

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<sup>93</sup> E.g. Hiring Policy of PAREF Schools.

<sup>94</sup> *Ibid.* "We recognize that in some extreme cases exceptions have to be made for lack of applicants. Such exceptions should be subjected to a diligent study by the Management Staff and an approval of the School Board."

<sup>95</sup> See MRPS, sec. 89.

Thus, the Education Act of 1982 provides as follows:

In private schools, disputes from employment-employee relations shall fall under the jurisdiction of the Ministry (Now Department) of Labor and Employment as provided for by law and regulations: Provided, that in view of the special employment status of the teaching and academic personnel, and their special roles in the advancement of knowledge, standards set or promulgated jointly by the Department of Education Culture and Sports (Now Department of Education), and by the Department of Labor and Employment shall be applied by the Department of Labor and Employment: Provided further, that every private school shall establish and implement an appropriate system within the school for the prompt and orderly settlement of disputes at the school level, subject to the provisions of the Articles 262 and 263 of the Labor Code.<sup>96</sup>

The following rules are specially provided for by the Manual for Regulations of Private Schools. They primarily apply, while the Labor Code applies suppletorily. For teachers, any conflict between the provisions of the Manual and the Labor Code shall be resolved in favor of the Manual. However, the rule that all doubts in the interpretation and implementation of the applicable laws, rules, and regulations shall be made in favor of labor, in accordance with the policy of the State for the protection of Labor.<sup>97</sup>

*a. Hiring of Academic Personnel on a Full-time or Part-time basis*

Teachers are academic personnel who maybe full-time or part-time. Full-time teachers are those who have the following requirements:

- a. Those who possess at least the minimum academic qualifications as prescribed by the Manual;<sup>98</sup>
- b. Those who are paid monthly or hourly, based on regular teaching loads as provided for in the policies, rules, and standards of the Department and of the School;
- c. Those whose total working day of not more than 8 hours a day is devoted to the school;
- d. Those who have no other remunerative occupation elsewhere requiring regular hours of work that will conflict with the working hours in the school;

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<sup>96</sup> B.P. Blg. 232, sec. 32.

<sup>97</sup> SARMIENTO *op. cit. supra* note 86 at 374.

<sup>98</sup> MRPS, art. 44.

- e. Those who are not teaching fulltime in any other educational institution.

All teaching personnel who do not meet the foregoing qualifications are considered part-time.<sup>99</sup>

As a general rule, private schools must employ full-time academic personnel consistent with the levels of instruction.<sup>100</sup> However, they may also employ part-time faculty subject to a prescribed ratio. In the elementary and secondary levels, at least 80% of the subjects offered shall be taught by full-time academic personnel. In the tertiary level, at least 60% of the subjects offered in the Liberal Arts and Education courses of study should be taught by full-time academic personnel. This requirement, although desirable, does not apply for professional course of study, such as in highly technical or professional, or specialized courses or where full-time expertise is not available.<sup>101</sup>

#### *b. Rule on Faculty Classification and Ranking*

At the tertiary level, the academic teaching positions shall be classified in accordance with academic qualifications, training and scholarship preferably into academic ranks of Professors, Associate Professors, Assistant Professors, and Instructors, without prejudice to a simplified or expanded system of faculty ranking, at the option of the school.<sup>102</sup>

Any academic personnel who does not fall under any of the classes or ranks indicated in the preceding paragraph shall be classified preferably as professorial lecturers, guest lecturer, or any other similar academic designation as the basis of his qualifications.<sup>103</sup>

#### *c. Compensation of Teachers*

Every private school is mandated to provide for a compensation policy where compensation ranges should be so graded taking into account performance, merit and differences in the qualifications, and responsibilities of various positions.

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<sup>99</sup> MRPS, sec. 45.

<sup>100</sup> MRPS, sec. 45.

<sup>101</sup> MRPS, sec. 46.

<sup>102</sup> MRPS, sec. 47.

<sup>103</sup> MRPS, sec. 47.

*d. Contracting with Teachers*

Every employment contract of employment shall specify the designation, qualification, salary rate, the period and nature of service and its date of effectivity, and such other terms and conditions of employment as may be consistent with laws and the rules and regulations and standards of the school. A copy of the contract shall be furnished the personnel concerned.

*e. Probationary Period*

Subject in all instances to compliance with the Department and school requirements, the probationary period for academic personnel shall not be more than three (3) consecutive years of satisfactory service for those in the elementary and secondary levels, six (6) consecutive regular semesters of satisfactory service for those in the tertiary level, and nine (9) consecutive trimesters of satisfactory service for those in the tertiary level where collegiate courses are offered on a trimester basis.<sup>104</sup>

Those who have served the probationary period shall be made regular or permanent.<sup>105</sup>

*f. Additional Grounds for Termination*

Aside from those provided in the Labor Code, causes of termination of the faculty include the following:

- (a) Gross inefficiency and incompetence in the performance of his duties such as, but not necessarily limited to habitual and inexcusable absences and tardiness from his classes, willful abandonment of employment or assignment;
- (b) Negligence in keeping school or student records, or tampering with or falsification of the same
- (c) Conviction of a crime, or an attempt on or a criminal act against the life of any school official, personnel, or student, or upon the property or interest of the school;
- (d) Being notoriously undesirable;

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<sup>104</sup> MRPS, sec. 92.

<sup>105</sup> MRPS, sec. 93.

- (e) Disgraceful or immoral conduct;
- (f) The sale of tickets or the collection of any contributions in any form or for any purpose or project whatsoever, whether voluntary or otherwise, from pupils, students and school personnel, except membership fees of pupils and students in the Red Cross, the Girl Scouts of the Philippines and the Boy Scouts of the Philippines;
- (g) In the event of phasing out, closure, or cessation of the educational program or course or the school itself; and
- (h) Other causes analogous to the foregoing as maybe provided for in the regulation prescribed by the Secretary or in the School rules or in a collective bargaining agreement.<sup>106</sup>

*g. Disciplinary measures*

Suspension may be preventive or punitive. Preventive Suspension not exceeding thirty (30) days maybe imposed on any school personnel including teachers pending investigation of the charges against him if his continued presence poses a serious and imminent threat to the school and its property, and to his life, the life of the pupils, students or school personnel. Punitive suspension is the imposition of a penalty on an erring personnel after conviction for an offense or misconduct committed.<sup>107</sup>

*h. Labor Relations*

Labor organizations are allowed subject to the provisions of the Labor Code, and the regulation and supervision of the Department of Labor and Employment.<sup>108</sup> Every private school shall provide for an amicable internal procedures or remedies, including provisions for voluntary arbitration, as a preferable measure in the settlement of any issue, dispute or grievance arising from employment relations.<sup>109</sup>

At this juncture, please note that labor relations, particularly the Collective Bargaining Agreement (CBA) can embody mutual concessions between institutional and individual academic freedom. In *Holy Cross of Davao College, Inc. vs. Holy Cross*

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<sup>106</sup> MRPS, sec. 94.

<sup>107</sup> MRPS, sec. 95.

<sup>108</sup> MRPS, sec. 96.

<sup>109</sup> MRPS, sec. 97.

*Davao Faculty Union - KAMAPI*<sup>110</sup>, the Supreme Court resolved an issue without delving into any issue of academic freedom by merely interpreting the Collective Bargaining Agreement.

In that case, Jean Legaspi was selected recipient of a scholarship. Consequently, she requested petitioner to allow her to be on study leave with grant-in aid equivalent to her 18 months salary and allowance, pursuant to Section 1, Article XIII of their existing CBA. However, Holy Cross Davao College denied her request. In resolving the case, the Supreme Court merely interpreted the relevant provisions of the CBA existing between the school and her union.

It is evident that the individual academic freedom of Legaspi collided with the school's institutional academic freedom. On one hand, Legaspi as a teacher can pursue studies to aid her "seek and express the truth as he personally sees it, both in her academic work and in her capacity as a private citizen"<sup>111</sup> and academic freedom accords a faculty member the right to pursue his studies in his particular specialty.<sup>112</sup> If the school is allowed to prescribe the course and extent of her studies, it is in effect controlling the teacher's academic freedom. On the other hand, Holy Cross Davao College had the right to determine who could teach in its institution which necessarily includes prescribing the amount of pay and incentives. However, since mutual concessions already exist between institutional and individual academic freedom as embodied in the CBA, academic freedom is no longer an issue and what remains to be resolved is the proper interpretation of said CBA.

## B. TEACHERS/PROFESSORS AND INSTITUTIONS OF HIGHER LEARNING

As mentioned earlier, state regulation over teachers are relinquished to a certain extent to institutions of higher learning, as a necessary incident to institutional academic freedom. Indeed, colleges and universities have the freedom to determine on academic grounds who may teach. This determination is operationalized through the rules and regulations for the appointment, promotion, tenure and separation from service of teachers and professors as prescribed by the board of regents or board of trustees for the respective colleges or universities.

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<sup>110</sup> G.R. No. 156098. June 27, 2005.

<sup>111</sup> Sinco, *supra*

<sup>112</sup> Montemayor vs. Araneta University Foundation et. al, No. L-44251, 77 SCRA 321, 327 (1977), citing Garcia vs. The Faculty Admission Committee, No. L-40779, 68 SCRA 277 (1975).

For the University of the Philippines, the Board of Regents has set up general guidelines on appointments to the faculty,<sup>113</sup> which may be summarized as follows:

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<sup>113</sup> Faculty Manual, Chapter 5.1 provides as follows:

- a. Members of the faculty shall be exempt as such from any civil service examination or regulation as a requisite to appointment.  
However, faculty members assigned to teach subjects for licensure examinations on all professions shall be holders of valid certificates of registration/professional licenses and professional identification cards, or special temporary permits, or a valid certificate of competency for the profession issued by the Professional Regulation Commission.
- c. Every recommendation to the Board of Regents for appointment or promotion shall be accompanied with a complete statement of the qualifications, training, service record, publications, or research of the candidate and such other matters which may be called for by the rules of the University.
- d. Recommendations for appointments and promotions in the faculty shall be made in accordance with such rules of procedure as may be prescribed by the President and shall be strictly in consonance with a plan of standardization of faculty positions. The Board of Regents shall not approve any appointment which shall take effect earlier than thirty (30) days before the meeting of the Board at which the recommendation for promotion is presented.
- e. It is the policy of the University to discourage nepotism \* in appointments to the academic and administrative staff of the University except in cases where the interests of the University require otherwise and the Board of Regents so decides. This policy shall be observed and applied within the individual units of the University, such as the colleges and schools.
- f. No person shall be eligible for appointment or reinstatement as a regular member of the faculty of the University during the term for which s/he has been elected to any political office.
- g. No person who has been defeated as a candidate for any political office in an election shall be eligible for appointment or reinstatement as a regular member of the faculty within a year after the election.
- h. No person shall be appointed member of the faculty without compensation unless, in the opinion of the President/Chancellor of the University, such a person possesses high professional or scholastic competence and the immediate requirements of the University justify the appointment.
- i. No person shall be appointed to the faculty on part- or full-time basis, with or without compensation, if the said person is on the staff of any private university or college in the Philippines; Provided, That when the immediate requirements of the University justify the appointment and no other applicant approximates the needed high professional and scholastic competence, such a person may be appointed on a year-to-year basis until another, who possesses the desired competence and is not connected with other educational institutions, is available and willing to accept such an appointment.
- j. In all appointments to the positions of lecturers, senior lecturers, or professorial lecturers in the University, nominees who are connected with other branches of the Government shall present written permits from the department head concerned, and shall state the total number of hours a week they are teaching in other schools.

1. All appointments to the faculty shall be made strictly on the basis of merit. Neither religious test nor inquiry on religious opinions or affiliations of the instructors will be required by the University.
2. Civil Service Examinations shall not be required except for certain cases.
3. Certain rules on the recommendation and appointment of the faculty are prescribed in consonance with the plan of standardization of faculty positions.
4. Nepotism is discouraged for academic and administrative staff, while it is prohibited for administrative and other non-teaching personnel.
5. Certain persons are not eligible for appointment to the faculty, including:
  - a) those elected to public office;
  - b) defeated candidates for office (within one year from the date of elections).
6. There shall be no faculty appointment without the corresponding compensation except in certain cases.

Rules on the other terms and conditions of appointment include matters on non-renewal of temporary appointments; appointments for a fixed term or on a contractual basis; and those without tenure.<sup>114</sup> Thus, temporary appointees become

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- k. Nepotism is prohibited insofar as administrative and other non-teaching personnel are concerned.

<sup>114</sup> See Faculty Manual, p. 54, to wit:

The precise terms and conditions of every appointment shall be stated in writing. In case of non-renewal of a temporary appointment, the person concerned shall be so informed in writing by the Dean at least sixty (60) days before the expiration date.

Nothing herein provided shall preclude the University from making appointments to the faculty on a contract basis for a fixed term. [Art. 179d, as originally adopted at the 834<sup>th</sup> BOR meeting, June 28, 1973] Appointments to the faculty on a contract basis shall not be governed by the rules on tenure but by the terms of the contract.

The President is granted authority by the BOR to approve temporary appointments to the ranks of Instructor, Assistant Professor, Associate Professor, and Professor beyond the respective maximum number of years of temporary appointment prescribed for these ranks. This authorization shall be exercised only if due to circumstances beyond his/her control, the proposed appointee does not yet qualify for permanent appointment.

The normal rule is that if the appointee qualifies for permanent appointment after serving the maximum probationary period, s/he shall be issued permanent appointment, if the intention is to retain her/him in the service; in other words, her/his appointment cannot be continued any further on temporary basis without violation of the rule.



permanent after a lapse of the probationary period, provided he satisfies by then the conditions necessary for permanent appointment. If he fails, as a general rule, he cannot be issued any further appointment even on a temporary basis except if the President, by virtue of the authority granted by the Board of Regents extends the maximum number of years on account of exceptional circumstances.

In its dealings with the faculty, there exists the Department Academic Personnel Committee (DAPC)<sup>115</sup>, College Academic Personnel Committee,<sup>116</sup> and the University Academic Personnel Committee.<sup>117</sup> Indeed, the university has prescribed for itself the manner for determining who may teach.<sup>118</sup> Aside from the process of appointment, promotion, tenure, and separation from service, the Code of Ethics for Faculty Members<sup>119</sup> also binds the teachers.<sup>120</sup>

From the foregoing, it is clear that the academic institution prescribes the terms and conditions of employment of the teacher or professor. To what extent does the Academic Institution have over the teacher? The answer to the inquiry necessitates the discussion of the institutional and academic freedom and their interplay with one another.

### C. ACADEMIC FREEDOM: INSTITUTIONAL VERSUS INDIVIDUAL

The Constitutional Commission for the 1987 Constitution did not go beyond the concept of Academic Freedom as the freedom of intellectual enquiry. There was an attempt to specify the freedom of students and of teachers, but the proponents eventually professed themselves to be satisfied that freedom "in all institutions of higher learning" do not negate the freedom of students and teachers within the parameters of the Bill of Rights.

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If the incumbent does not yet qualify for permanent appointment even after serving the maximum probationary period, s/he cannot be issued any further appointment even on temporary basis. It is on behalf of the faculty members that fall under this category that the authorization of the President is sought, so that they could be given further chance to qualify and prove their worth. In many cases, the failure of temporary faculty members to acquire the required qualifications within the maximum probation prescribed for their respective ranks is due to some causes not under their complete control.

<sup>115</sup> E.O. no. 6, Office of the President, UP, Aug. 5, 1970; amended at E.O. no. 9, Office of the President, UP, Aug. 31, 1970; 1159<sup>th</sup> BOR Meeting, Mar. 21, 2002. As cited in Faculty Manual p.57 (2003).

<sup>116</sup> *Id.* at 59.

<sup>117</sup> *Ibid.*

<sup>118</sup> See Faculty Manual p. 330 for the process flow of appointments.

<sup>119</sup> Approved at 63<sup>rd</sup> UC meeting, Dec. 8, 1998; noted at 1128<sup>th</sup> BOR meeting, Jan. 28, 1999.

<sup>120</sup> See Faculty Manual, p. 179.

Since academic freedom of the various elements of an institution of learning can conflict and must therefore be reconciled, the Commission accepted the suggestion that no attempt be made to freeze the concept and to leave the development of the concept to the dynamic growth that can take place in the context of litigation and experience.<sup>121</sup>

Jurisprudence recognizes two (2) particular species of Academic Freedom, namely: Individual Academic Freedom, and Institutional Academic Freedom.<sup>122</sup>

### 1. Individual Academic Freedom

Individual Academic Freedom is the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed or contrary to professional ethics,<sup>123</sup> unless his methods are found by a qualified body of his own profession to be clearly incompetent or contrary to professional ethics.<sup>124</sup>

It has also been said to mean that:

- a) The teacher is entitled to full freedom in research and in the publication of results, subject to the adequate performance of his other academic duties...
- b) The teacher is entitled to freedom in the classroom in discussion his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject...
- c) The College or University teacher is a citizen, a member of a learned profession, and an officer in an educational institution. When he speaks or writes as a citizen, he should be free from institutional censorship or discipline, but his special position in the community imposes special obligations. As a man of learning and an educational officer, he should remember that the public may judge his profession and his institution by his utterances. Hence, he should at all times be

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<sup>121</sup> IV RECORD 434-442, as cited in Bernas, *op. cit. supra* at 1254.

<sup>122</sup> Garcia vs. Faculty Admissions Committee, 68 SCRA 283 [1975].

<sup>123</sup> ARTHUR LOVEJOY, ENCYCLOPEDIA OF SOCIAL SCIENCES as cited in BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1247 (2003).

<sup>124</sup> Garcia vs. Faculty Admission Committee, 68 SCRA 283 (1975).

accurate, should exercise appropriate restraint, should show respect for the opinion of others, and should make every effort to indicate that he is not an institutional spokesman.<sup>125</sup>

These definitions refer to individual academic freedom as they focus on the right as pertaining to the teacher as a member of the academe. In the Philippines, individual academic freedom has been recognized by the Supreme Court in several cases.

In *Camacho vs. Coresis*,<sup>126</sup> Dr. Daleon was subject of a complaint for giving grades to graduate “ghost-students” who did not attend classes. There was, however special arrangement between Dr. Daleon and said students wherein he gave them a special program of self-study with reading materials, once a week tutorial meetings, quizzes, and term papers. This was allowed by Rule 140 of the University Code of the University of Southern Philippines. In absolving Dr. Daleon from administrative and criminal liabilities for gross incompetence, insubordination and violation of R.A. 6770, the Supreme Court held:

Academic freedom also accords a faculty member the right to pursue his studies in his particular specialty. It is defined as a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalty because these conclusions are unacceptable to some constituted authority within or beyond the institution. As applied to the case at bar, academic freedom clothes Dr. Daleon with the widest latitude to innovate and experiment on the method of teaching which is most fitting to his students (graduate students at that), subject only to the rules and policies of the university. Considering that the Board of Regents, whose task is to lay down school rules and policies of the University of Southeastern Philippines, has validated his teaching style, we see no reason for petitioner to complain before us simply because he holds a contrary opinion on the matter.

However, in *St. Jude Catholic School vs. Salgarino*<sup>127</sup> citing *Garcia v. The Faculty Admission Committee, Loyola School of Theology*,<sup>128</sup> the Supreme Court explicitly held:

Academic freedom of faculty members refers to the freedom of teachers from control of thought or utterance of his academic research, findings or conclusions, and has nothing to do with the discretion of teachers to pass or fail any or all her students according to his discretion.

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<sup>125</sup> 1940 Statement of Principles of the American Association of University Professors (AAUP).

<sup>126</sup> G.R. No. 134372. August 22, 2002.

<sup>127</sup> G.R. No. 164376. July 31, 2006

<sup>128</sup> G.R. No. L-40779, 28 November 1975, 68 SCRA 277, 285

## 2. Institutional Academic Freedom

According to Justice Frankfurter, academic freedom consists of the right of the institution to decide on academic grounds (1) what should be taught, (2) how it should be taught, (3) who may teach, (4) who maybe taught.<sup>129</sup> This is referred to as institutional academic freedom.

It is the right of a school or college, as an institution of higher learning, to decide for itself its aims and objectives and how best to attain them, free from outside coercion or interference save possibly when overriding public welfare calls for some restraint, and with a wide sphere of autonomy certainly extending to the choice of students.<sup>130</sup> It has been invoked as a defense by schools and institutions in dismissing students or refusing admission thereto.<sup>131</sup>

Philippine jurisprudence is replete with decisions illustrating institutional academic freedom.

In *University of San Carlos vs. Court of Appeals*,<sup>132</sup> the Court held that it is within the sound discretion of the university to determine whether a student may be conferred graduation honors, considering that the student had incurred a failing grade in an earlier course she took in school. Schools of learning are given ample discretion to formulate rules and guidelines in granting honors for purposes of graduation.

In *Lupangco vs. Court of Appeals*,<sup>133</sup> Resolution No. 105 of the Professional Regulation Commission prohibiting examinees for the accountancy licensure examinations from attending "any review class, briefing, conference or the like" or to "receive any hand-out, review material or any tip" from any school, college or university, or any review center infringes on the examinees' right to liberty guaranteed by the Constitution. It violated the academic freedom of the schools concerned.

In *Reyes vs. Court of Appeals*,<sup>134</sup> the Supreme Court ruled that under the U.P. Charter, the power to fix admission requirements is vested in the University Council of the autonomous campus, which is composed of the President of the University of the Philippines and of all instructors holding the rank of professor, associate

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<sup>129</sup> *Sweezy vs. New Hampshire* 354 U.S. 234 [1957].

<sup>130</sup> *Garcia vs. Faculty Admission Committee*, 68 SCRA 283 (1975).

<sup>131</sup> See e.g. *Tan vs. CA* 199 SCRA 212; *Reyes vs. CA* 194 SCRA 402 [1991].

<sup>132</sup> 166 SCRA 570 [1988].

<sup>133</sup> 160 SCRA 848 [1988].

<sup>134</sup> 194 SCRA 402 [1991].

professor or assistant professor. Consequently, the University Council alone has the right to protest against any unauthorized exercise of its power. Petitioners cannot impugn the directives of the Board of Regents on the ground of academic freedom inasmuch as their rights as university teachers remain unaffected.

In *Cagayan Capitol College vs. NLRC*,<sup>135</sup> it was held that while DECS regulations prescribe a maximum of three years probation period for teachers, the termination of the three-year period does not result in the automatic permanent status for the teacher. It must be conditioned on a showing that the teacher's services during the probationary period was satisfactory in accordance with the employer's standards. The prerogative of the school to provide standards for its teachers and to determine whether or not these standards have been met is in accordance with academic freedom and constitutional autonomy which give educational institutions the right to choose who should teach.

In *UP Board of Regents vs. CA*,<sup>136</sup> the Supreme Court held that if an institution of higher learning can decide who can and who cannot study in it, it certainly can also determine on whom it can confer the honor and distinction of being its graduates. As a matter of fact, where it is shown that the conferment of an honor or distinction was obtained through fraud, a university has the right to revoke or withdraw the honor or distinction it has thus conferred. This freedom of a university does not terminate upon the "graduation" of a student because it is precisely the "graduation" of such a student that is in question. The Supreme Court further discussed as follows:

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Under the U.P. Charter, the Board of Regents is the highest governing body of the University of the Philippines. It has the power to confer degrees upon the recommendation of the University Council. It follows that if the conferment of a degree is founded on error or fraud, the Board of Regents is also empowered, subject to the observance of due process, to withdraw what it has granted without violating a student's rights. An institution of higher learning cannot be powerless if it discovers that an academic degree it has conferred is not rightfully deserved. Nothing can be more objectionable than bestowing a university's highest academic degree upon an individual who has obtained the same through fraud or deceit. The pursuit of academic excellence is the university's concern. It should be empowered, as an act of self-defense, to take measures to protect itself from serious threats to its integrity.

While it is true that the students are entitled to the right to pursue their education, the USC as an educational institution is also entitled to pursue its academic freedom and in the process has the concomitant right to see to it that this freedom is not jeopardized.

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<sup>135</sup> 189 SCRA. 658 [1990].

<sup>136</sup> G.R. 134625, August 31, 1999

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In *Miriam College Foundation vs. CA*,<sup>137</sup> the Supreme Court stated that the right of the school to discipline its students is at once apparent in the third freedom, i.e., "how it shall be taught." A school certainly cannot function in an atmosphere of anarchy. Thus, there can be no doubt that the establishment of an educational institution requires rules and regulations necessary for the maintenance of an orderly educational program and the creation of an educational environment conducive to learning. Such rules and regulations are equally necessary for the protection of the students, faculty, and property. The Supreme Court further elucidated as follows:

Moreover, the school has an interest in teaching the student discipline, a necessary, if not indispensable, value in any field of learning. By instilling discipline, the school teaches discipline. Accordingly, the right to discipline the student likewise finds basis in the freedom "what to teach."

Incidentally, the school not only has the right but the duty to develop discipline in its students. The Constitution no less imposes such duty.

[All educational institutions] shall inculcate patriotism and nationalism, foster love of humanity, respect for human rights, appreciation of the role of national heroes in the historical development of the country, teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline, encourage critical and creative thinking, broaden scientific and technological knowledge, and promote vocational efficiency.

In *Nadine R. Morales vs. Board of Regents*,<sup>138</sup> the Supreme Court reiterated the doctrine in *University of San Carlos v. Court of Appeals*,<sup>139</sup> recognizing the right of the school to determine who must be granted honors, to wit:

"It is an accepted principle that schools of learning are given ample discretion to formulate rules and guidelines in the granting of honors for purposes of graduation. This is part of academic freedom. Within the parameters of these rules, it is within the competence of universities and colleges to determine who are entitled to the grant of honors among the graduating students. Its discretion on this academic matter may not be disturbed much less controlled by the courts unless there is grave abuse of discretion in its exercise."

In that case, petitioner was not granted *cum laude* honors because her grades of 1.0 in the subjects German 10 and 11, which she took when her minor was still German, were excluded in the computation of her GWA, thus bringing her

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<sup>137</sup> G.R. No. 127930. December 15, 2000.

<sup>138</sup> G.R. No. 161172, December 13, 2004.

<sup>139</sup> G.R. No. L-79237, 18 October 1988, 166 SCRA 570, 574.

GWA to 1.760, which is lower than the minimum weighted average grade required for the conferment of cum laude honors. The issue was the determination of which grades should be considered in computing the grades of the petitioner.

The resolution of the Morales Case involved the interpretation of university rules by the University of the Philippines which was accorded great respect by the Supreme Court since UP, like other universities, has been likened to an administrative agency whose findings must be accorded respect within its areas of competence. Well-settled is the principle that by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts.<sup>140</sup>

For purposes of institutional academic freedom, it is also important to note the case of *Ateneo de Naga vs. Manalo*,<sup>141</sup> where academic freedom was sufficient cause to relax the technical rules of procedure in the interest of substantial justice. The Supreme Court remanded the case and allowed Ateneo de Naga to litigate and protect its interests of academic freedom before the Court of Appeals even with a defective verification and certification against non-forum shopping.

These decisions pertain to institutional academic freedom as they concentrate on the right of the institutions of higher learning against the impositions of the state, and even the courts. Given the third element of Justice Frankfurter's formulation giving discretion of determining who may teach to institutions of higher learning, these doctrines are relevant to teachers. As can be seen, Academic Freedom can be seen in termination cases of teachers by employers which are institutions of higher learning.<sup>142</sup>

### 3. The Conflict

It is clear that institutions of higher learning and teachers or faculty members are both entitled to lay claim to academic freedom as a constitutional right may be in a collision course. This happens when rightly or wrongly a professor's tenure is endangered by the threatened move of the university or college where he may bet teaching to terminate his services.

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<sup>140</sup> *University of the Philippines v. Ayson* G.R. No. 88386, 17 August 1989, 176 SCRA 571.

<sup>141</sup> G.R. No. 160455. May 9, 2005.

<sup>142</sup> *Montemayor vs. Araneta University*, G.R. No. L-44251, May 31, 1977, 77 SCRA 321 [1977].

On one hand, the institution is invoking its right to decide on academic grounds as to who may teach.<sup>143</sup> On the other, the teacher or professor invokes his right to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without any interference, including that by the administrative officials of the institution in which he is employed.<sup>144</sup>

Resolving the conflict necessarily entails focus on the spirit and reason behind Academic Freedom: the essentiality of an informed citizenry in a democratic society,<sup>145</sup> and as a means for the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.<sup>146</sup> This is the compass in determining whether the institution has violated the academic freedom of the individual, or vice versa, i.e. which right must be given accord.

In the termination of the teacher in accordance with the right of the institution to determine who may teach, the institution must observe due process – both substantive and procedural. There must be justification for the termination. He must be given the opportunity to defend himself. Only thus may a right recognized in the constitution be prevented from being nullified by what could, at times, amount to arbitrary action on the part of the university or college administration, lacking sympathy with, if not possessed of views, contrary to the teaching of the professor concerned. Besides, academic freedom is to foster an education that strengthens respect for human rights and fundamental freedoms. How can this be carried out by an institution which itself does not respect the tenure of the teacher, nor his right to due process?

On the other hand, the freedom granted to teachers and professors is to pave the way for an informed citizenry essential to a democratic society, and neither for a misinformed nor an uninformed citizenry. He must live up to the exacting requirements imposed by membership in the academic community. His methods must be competent and in accordance with professional ethics, which should pass the muster and standards of a qualified body.<sup>147</sup> The goal is to discover and make known the truth and not the false truths; to inform and not to misinform nor uninform.

For example, a teacher cannot interpose his individual academic freedom for absenteeism on the ground of his discretion to determine the manner of teaching. Firstly, his method does not entail a free flow of ideas which is the reason for academic freedom. Secondly, the path towards an informed citizenry involves informed students who require the guidance and wisdom of the teacher which

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<sup>143</sup> See *Sweezy vs. New Hampshire* 354 U.S. 234 [1957].

<sup>144</sup> See Arthur Lovejoy, op. cit. supra note 115.

<sup>145</sup> See Fernando, *Academic Freedom as a Constitutional Right*, 52 PHIL. L. J. 290-291 (1977).

<sup>146</sup> See ICESCR, art. 13 and UDHR, art. 26, para. 2.

<sup>147</sup> See *Garcia vs. Faculty Admission Committee*, 68 SCRA 283 (1975).



cannot be provided by an absentee teacher. Lastly, but certainly not the least, the situation constitutes unjust enrichment. The teacher or professor would receive compensation without rendering services of equal value.

Note however, that the interplay between academic freedom of the individual and the academic institution can be modified by the freedom of religion in a sectarian institution. It is to be assumed that his services therein may be ascribed to his belief and acceptance of the creed espoused. Or, at the very least, even if such be not the case, he would not use the classroom for teaching what runs counter to it. The concept of religious freedom is broad enough to cover the case of the termination of the services of a teacher, when it is shown that he manifests hostility to the tenets of a particular religion for the propagation of which a college or university is established.<sup>148</sup>

To conclude this discussion, Dr. Agabin propounds the following:

There is no doubt that Institutional Academic Freedom and Individual Academic Freedom can be reconciled. This happens where the university administration realizes that it is the business of the university to protect individual academic freedom of its scholars and researchers. As Justice Frankfurter declared in his concurring opinion in *Sweezy*:

In a university, knowledge is its own end, not merely a means to an end... A university is characterized by the spirit of free inquiry, its ideal being of Socrates – “to follow the argument where it leads.” This implies the right to examine, question, modify, or reject traditional ideas and beliefs... it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation.

It is only when the administration of a university is enlightened enough to realize the proper role of a university in society that individual academic freedom can be amply protected and given meaning and substance, so that scholars and researchers (including teachers) can fulfill their function for the nation.<sup>149</sup>

It is necessary to add that scholars, and researchers, especially teachers must also be enlightened enough to know their functions for the nation: to discover and make known the truth and not the false truths; to inform and not to misinform nor uninform.

### III. TEACHERS AND STUDENTS

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<sup>148</sup> See Fernando, *supra* note 145.

<sup>149</sup> Agabin, *Comparative Developments in the Law of Academic Freedom* 139 PHIL. L. J. 139, 147 (1989).

The teacher-students relationship can be traced as far back as the ancient times during the times of Plato and Aristotle. Teachers and students engage each other to quench the thirst for knowledge searching for enlightenment.

Several thousand years later, the principles governing teaching and learning between the teachers and students remain essentially the same. However, the complexity of the modern times means a more complex web of interaction. This section will hope to untangle this web and examine who the teacher is to the student and vice versa.

To facilitate discussion, the relationship between the teacher and student must be distinguished from the relationship between the academic institution and the student. Although the rights, duties and obligations of the academic institutions are primarily exercised through the teachers given the proximate interaction between the two, the dynamics of student-teacher interaction are different from that of the school-student interaction.

Firstly, the teachers or professors are not at all times agents and instrumentalities of the school or academic institution. This fact is most prevalent in institutions of higher institutions given the realities of academic freedom. Secondly, theories about student rights cannot allow the merging of the character of the teacher and academic institution.

Since admittedly the legal status of a student cannot be circumscribed or delineated satisfactorily by specific legal designations,<sup>150</sup> the focus of this paper lies in his relationship with the teacher or professor as the educator; and neither as an administrator of the school nor as an agent thereof. Therefore, the teacher's hand in admissions of students will not be tackled; nor in their suspension and dismissal. In such a situation, the teacher acts as an administrator of the school determining who on academic grounds can study, which is an aspect of institutional academic freedom. Such topic is more appropriately discussed in the relationship of the student and the school, which is not part of this paper.

### A. TEACHERS

The teacher is a person in authority as conferred by the provisions of article 148 and 151 of the Revised Penal Code. Thus, any attack, including that by a student upon their person shall be considered as the felony of Direct Assault.

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<sup>150</sup> Martinez and Sales, *The Law Governing the Relationship Between Teachers and Students*, 54 PHIL. L. J. 449, 452 (1979).

Under the New Civil Code, a teacher is considered a substitute parent or one who stands *in loco parentis* and as such, shall exercise substitute parental authority over the students.<sup>151</sup> In view of this status, a teacher or professor is legally obliged to exercise reasonable supervision over the conduct of the student and to cultivate the best potentialities of the heart and mind of the pupil or student.<sup>152</sup> It is from this status that the teacher derives his authority to discipline his students. Such disciplining authority is limited to the immediate necessity of maintaining order in the classroom and the observance of school or government regulations relating to conduct and discipline. Enforcement of discipline has its own pedagogical value to students.

The teacher as an employee of the private school or as a public officer has the duty to teach students as part of his duties and responsibilities. Failure to do so may result in his termination for neglect of duty<sup>153</sup> or dereliction of duty.<sup>154</sup> As public officer, he can be liable for criminal acts under Title 7 of Book II of the Revised Penal Code.<sup>155</sup>

## B. STUDENTS

As the reason for being of the educational system, students have the right to learn. In all levels of the educational system, students enjoy the following rights: (1) right to guidance, reasonable supervision, and protection; (2) the right to receive the best instruction; (3) the right to live in an atmosphere conducive to one's moral and intellectual development.<sup>156</sup>

Concomitantly, students have the following duties: (1) duty to respect; (2) duty to observe honesty and good faith; (3) duty to observe personal discipline; (4) Duty to exert one's utmost for one's education and training.<sup>157</sup>

## C. STUDENT, TEACHERS, AND ACADEMIC FREEDOM

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<sup>151</sup> CIVIL CODE, art. 349, para. 2.

<sup>152</sup> CIVIL CODE, art. 349, para. 2; 350 and 352.

<sup>153</sup> See MRPS, sec. 94.

<sup>154</sup> See DE LEON, LAW ON PUBLIC OFFICERS AND ELECTION LAW 328 (2003).

<sup>155</sup> Act 3815 (1930) as amended.

<sup>156</sup> Martinez and Sales, *op. cit. supra* note 133 at 469 (1979).

<sup>157</sup> *Id.* at 471-472.

An interesting aspect of the Student-Teacher relationship relates to Academic Freedom of teachers and students in institutions of higher learning. The discussion on the academic freedom of teachers traditionally refers to teachers in the exercise of their individual academic freedom. Does Academic Freedom extend to students?

Father Bernas, one of the drafters of the 1987 Constitution, points out that repeated attempts to extend the guarantee of academic freedom to students failed as the position taken by the majority of the members of the 1987 Constitutional Commission was that while students enjoy freedom of expression, they do not enjoy academic freedom, a right proper only to scholars. Conceivably, however, Delegate F.J. Ledesma conceded, students may qualify as scholars.<sup>158</sup>

On the other hand, Dr. Agabin posits another view, as follows:

Our 1987 Constitution now provides that 'academic freedom shall be enjoyed in all institutions of higher learning.' We should disabuse our minds from thinking that this is the same provision contained in the 1973 Constitution. The 1973 Constitution provided that 'all institutions of higher learning shall enjoy academic freedom'...

The difference between the old and new provisions lies in the coverage of the guarantee. It is said that under the 1973 Constitution, the grant of academic freedom was given only to the institutions of higher learning; in other words, the freedom guaranteed was institutional in character, and it did not include the freedom of professors and that of students. In the present Constitution, the grant was given to all three entities: to the universities and colleges, to the teachers and researchers, and to the students. Thus, Delegate Adolf Azcuna, sponsoring the amendment, declared before the body:

Mr. Azcuna: in the 1973 Constitution, this freedom is given to the institution itself. All institutions of higher learning shall enjoy academic freedom. So with this proposal we will provide academic freedom in institutions – enjoyed by students, by the teachers, by the researchers and we will not freeze the meaning and the limits of this freedom.<sup>159</sup>

The current and prevailing view endorsed by modern educators as well as the courts, is that, students have and do enjoy academic freedom. The supporting reasons of said view maybe summed up as follows:

- (1) The academe itself exists for the student.
- (2) The student has the right to demand the best instruction because he supports the school through the fee which he

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<sup>158</sup> BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, 1250 (2003).

<sup>159</sup> Agabin, *op. cit supra* note 132 at 139.

pays if enrolled in a private educational institution or through the taxes his parents pay if in a state supported or government owned institution.

- (3) The nation stands to benefit from the recognition of academic freedom inasmuch as the school or any institution of higher learning is the source of nation's leaders.<sup>160</sup>

Academic Freedom is primarily the freedom to learn, and freedom to learn is freedom to ascertain the truth. No acquisition of knowledge can take place if learners were unfree, or if they were free, but only in assimilating what is untrue. The freedom to teach is therefore a derivative of the learner's freedom. Freedom to teach seeks to secure freedom to learn.<sup>161</sup>

Rights of students which proceed from academic freedom are, in addition, derived from their indispensable role as members of the academic community.<sup>162</sup> Academic freedom protects a collective interest: the free pursuit of knowledge by all members of the academe. Each sector of the academic community claims that freedom as exclusively his own.<sup>163</sup>

For the purposes of this paper, Academic freedom shall extend to students.

#### D. INDIVIDUAL ACADEMIC FREEDOM OF TEACHERS AND STUDENTS

In relation to the State, the individual academic freedom of teacher and students jive with one another. They are complementary with each other in that students and teachers are protected in their pursuit for the truth and to inquire, discover, learn, publish, and teach the truth as they see it in the field of their competence. In this sense, teachers and students are subject to no control or authority except the control or authority of the rational methods by which truths or conclusions are sought and established in these disciplines.<sup>164</sup>

In their pursuit of the truth, the teacher and the student must be free from any undue influence and obstruction even from each other. Thus, a teacher must not hesitate to give the appropriate ranking or grade to a student for his effort and

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<sup>160</sup> DIZON, LAW ON SCHOOLS AND STUDENTS 50 (1976).

<sup>161</sup> Lotilla, *Student Academic Freedom in Institutions of Higher Learning* 57 PHIL. L. J. 552, 553 (1983).

<sup>162</sup> *Ibid.*

<sup>163</sup> *Id.* at 557.

<sup>164</sup> See HOOK, ACADEMIC FREEDOM AND ACADEMIC ANARCHY (1965).

performance. On the other hand, a student must not shy away from asking questions and positing his point of view for fear of retribution via a low grade, which can be given by the teacher. Both individuals must not lose sight of their common or collective function as seekers of the truth and knowledge.

The subject of further inquiry must be made when their individual academic freedoms are related to one another. This is best seen in their interaction with one another – with the teacher teaching, and the students learning. The most tangible form of interaction can be seen in the ratings or grade given by the teachers to the students. It is in this aspect that the two individual freedoms may conflict.

### E. GRADES

Grades are the main indicator of a student's performance in school. Giving out of grades is to a certain extent adjudicative on the part of the teacher. Analogously, the issue or controversy is the performance of the student. The applicable law is the grading policy or standards set forth. The facts in this so-called controversy includes the actual performance as indicated by the scores of the student in exams, projects, recitations, papers and other requirements given. Thus, application of the set of standards to student performance results in the grade or rating in that subject. Such process is considered an academic decision.

In *UE vs. Jader*<sup>165</sup>, the Supreme Court touches upon the nature of grades as follows:

When a student is enrolled in any educational or learning institution, a contract of education is entered into between said institution and the student. The professors, teachers or instructors hired by the school are considered merely as agents and administrators tasked to perform the school's commitment under the contract. Since the contracting parties are the school and the student, the latter is not duty-bound to deal with the former's agents, such as the professors with respect to the status or result of his grades, although nothing prevents either professors or students from sharing with each other such information. The Court takes judicial notice of the traditional practice in educational institutions wherein the professor directly furnishes his/her students their grades. It is the contractual obligation of the school to timely inform and furnish sufficient notice and information to each and every student as to whether he or she had already complied with all the requirements for the conferment of a degree or whether they would be included among those who will graduate. Although commencement exercises are but a formal ceremony, it nonetheless is not an ordinary occasion, since such ceremony is the educational institution's way of announcing to the whole world that the students included in the list of those

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<sup>165</sup> G.R. No. 132344. February 17, 2000

who will be conferred a degree during the baccalaureate ceremony have satisfied all the requirements for such degree. Prior or subsequent to the ceremony, the school has the obligation to promptly inform the student of any problem involving the latter's grades and performance and also most importantly, of the procedures for remedying the same.

## 1. Grades are subject to Due Process

Grades can be considered as a property right that come within the protection of Article III, Section 1 of the 1987 Constitution, which states:

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be deprived the equal protection of the laws.

It is submitted that grades are a property right since it is generally a basis for opening or closing future opportunities. It is used to determine admission for further studies as well as getting one's first job. Higher grades mean better jobs with higher pay. To a student, grades can be a basis for losing a grant or a discount in the matriculation paid by the student – he or she could be kicked out for failing to maintain the academic standards expected of him or her. Thus, arbitrariness of a teacher may deprive a student of a brighter future.

There is no question that there should be fair play or due process in giving students their grades. But as the saying goes: "once it is determined that due process applies, the question remains what process is due?"<sup>166</sup>

Determining what process is due in a given setting requires a court to take into account the individual's stake in the decision at issue, as well as the state's interest in the particular procedure for making the decision.

First of all, it must be considered that a student's right to a fair grade is only a property right. Furthermore, it is not a property right in the strictest sense as the person's benefit comes only from its derivation. Further education is a privilege, whereas better jobs with higher pay can be attained even with failing marks. Prominent geniuses, like Albert Einstein have proved to be poor in school and yet have been able to make a mark in history.

Moreover, the grade a teacher gives is limited to only one subject. The consideration for admissions to further studies, or for job applications includes the entire academic career. Thus, a bad grade can be made up by grades in other

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<sup>166</sup> *Morrissey vs. Brewer* 408 US 471 (1972).

subjects. In a sense, it is a group of teachers which would rate the over-all capability of a student.

In addition, the status of the teacher has to be considered. The teacher or professor is a person in authority. He or she has been entrusted the important function of educating the citizenry. Having qualified as a teacher or professor means that his or her discretion must have been accorded faith and respect. As a public officer, he or she may be presumed to have done his regular duties. As a private school teacher, the school has put its credibility behind the faith and hope it has accorded to him or her.

Given this qualifications, it is submitted that the process due is less stringent than those found in criminal, civil, and even administrative procedures. However, one must not lose sight of the fact that fair play and due process is still indispensable. The following principles are suggested:

- a. *Every institution should have written policies regarding grading procedures, including the significant issues of academic honesty, and the rights and responsibilities of students, faculty and administration.*<sup>167</sup>

Institutions generally have guidelines and policies concerning grading procedures.<sup>168</sup> This is generally self-regulatory and is likely considered fair and non-problematic for the following reasons:

First of all, these are formulated by members of the academe themselves who collectively realize the necessity of recognizing talent. The collective nature of grading policies as regards those who make them and those who are affected negate any possibility of arbitrariness and unreasonability.

For private schools, parents would generally not enroll their children in schools which do not recognize the talent of their children. Neither would they want for their children to go through school without learning anything. A fair grading system reflective of good standards is necessary for private schools to withstand market forces.

For tertiary levels, academic freedom allows the adoption of grading policies which by such schools' standards are fair and reasonable. This stems from their discretion to determine who on academic grounds can learn in their

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<sup>167</sup> Hollander, LEGAL HANDBOOK FOR EDUCATORS, 89(1978).

<sup>168</sup> E.g., the grading policy of the University of the Philippines as provided for by Chapter 11.15 of the Faculty Manual.



institution.<sup>169</sup> Thus, they can have high standards to reflect the prestige of their institution.

Being subject to the rules and regulations of the institution, the teacher is expected to follow these grading policies.

- b. *They should know what criteria are used by the faculty member to judge student work and assign grades.*

Grading policies must be distinguished from the grading actually made by the teacher. The teacher is given discretion in the manner of his or her grading so long as it conforms to the policies given by the school. As such, the teacher must give notice to the students of his rules and regulations during classes.

Students should be made aware of their responsibilities regarding attending class, completing work schedule, taking exams and so forth. They should also know what sanctions maybe levied against them if they are found to have cheated or plagiarized material. Having been notified, the student can then be expected to act accordingly.

- c. *The student, like any other member of the class, must be given the same opportunity to perform well in class.*

This has equal protection implications. It is true that there are teachers who are “soft-graders” or “hard-graders”. The former are those who give high grades to students on the average, while the latter is the complete opposite. As to what a professor should be, he or she has the discretion. However, the teacher or professor must be consistent – a soft or hard grader to each and every member of his class. He or she must apply the same standards to everyone, strict or otherwise.

Furthermore, every opportunity to perform well in class given by the teacher must also be available to each of the students. Note that it is the opportunity that must be given, such that the student may not take that chance and still flunk the class. No preference must be given.

If a faculty member at a public institution were found to have discriminated in grading, by being influenced by the race, sex, age, or national origin

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<sup>169</sup> See *Sweezy vs. New Hampshire* 354 U.S. 234 [1957] for Frankfurter’s formulation of Institutional Academic Freedom.

of the student, the faculty member could be liable personally for damages in a civil rights action.<sup>170</sup>

- d. *A feedback must be present as to their performance in every exam, recitation, project, or paper.*

As mentioned earlier, grades are derived from the application of a set of standards to the performance of the student. Preferably, the student must be apprised of how he is doing in class so that he may be able to adjust his actions accordingly. As regards the requirements, it is the teacher who is in the best position to determine what they should be. The discretion of the teacher must, therefore be recognized in rating each of the requirements.

However, it should have some relation to the subject matter to be of pedagogical value. It must also be reasonable considering the nature and status of the students.

- e. *These feedbacks must be applied indiscriminately to the standards set forth, such that any clerical error maybe seen or corrected.*

Mechanical mathematical application of grades and ratings give the students a sense that the faculty has been fair in his rating. Furthermore, this is one of the best indicators whether or not there has been a grave abuse of discretion or arbitrariness on his or her part.

- f. *Giving of grades must be prompt.*

Grading policies set forth also should specify the duty of faculty to prepare grades and submit them to the administration on a timely basis for posting on student records. If grades are not completed and turned in, and if a student can show actual damage as a result (not graduating, not getting into graduate school, not getting a particular job), it is possible that the student can sue the teacher for breach of contract action. The faculty might also be subject to discipline or termination by the institution.<sup>171</sup>

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<sup>170</sup> Hollander, *op. cit supra* note 167.

<sup>171</sup> *Ibid.*

In *UE vs. Jader*,<sup>172</sup> The Supreme Court was definite in stating that the “school has the obligation to promptly inform the student of any problem involving the latter’s grades and performance and also most importantly, of the procedures for remedying the same.”<sup>173</sup>

g. *Process of appeal*

A review and appeal procedure regarding grades should permit students to have their complaints regarding grades handled in a clearly specified way. In the University of the Philippines, the Faculty Manual provides for the following:

No faculty member shall change any grade after the Report of Grades has been filed with the Secretary of the College or with the University Registrar. In exceptional cases, as where an error has been committed, the faculty member may request authority from the faculty of his/her college to make the necessary change. If the request is granted, a copy of the resolution of the faculty authorizing the change shall be forwarded to the Office of the University Registrar for recording and filing.

Notwithstanding the foregoing provision and to avoid any injustice, the grade on a final examination paper may be revised by a committee of the Dean of the College if it should clearly appear, on the basis of the quality of the scholastic record of the student, that such grade is the result of an erroneous appreciation of the answers or of an arbitrary or careless decision by the faculty member concerned. Should the change of the grade on said paper affect the final grade of the student, the committee may request authority from the faculty of the college to make the necessary change in the final grade. The request for reconsideration shall be made within 30 days after the receipt of the final grade by the student concerned.

No student of the University shall directly or indirectly ask any person to recommend him/her to a professor for any grade in the class record, examination paper, or final Report of Grades. Any student violating this rule shall lose credit in the subject(s) regarding which such recommendation is made. The fact that a student is thus recommended shall be *prima facie* evidence that the recommendation is made at the request of the student concerned.

Students who have received a passing grade in a given subject are not allowed re-examination for the purpose of improving their grade.

Note that the process principally concerns the teachers. The first paragraph concerns a change of grade initiated by the teacher himself. The second paragraph involves an initiation by the student. The Dean who is also a teacher has

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<sup>172</sup> *Supra* note 64.

<sup>173</sup> *Ibid.*

the discretion to determine whether there clearly appears, on the basis of the scholastic record of the student, that such grade is the result of an erroneous appreciation of the answers or of an arbitrary or careless decision by the faculty member concerned.

There is no objective basis, and the Dean who himself is also a teacher has a wide discretion whether to constitute a committee or not. Perhaps, this stems from the fact that the University of the Philippines is a public school such that the property right to grades as assumed lesser significance because the student's attendance in school is a privilege to study for such low matriculation. Besides, low grades may have pedagogical value in itself.

## 2. Court Action

By virtue of the principle of *Ubi jus ibi remedium*,<sup>174</sup> a dissatisfied student can pursue remedies outside the school or institution, albeit civil action (for private schools)<sup>175</sup> or judicial review (for public schools).<sup>176</sup> In such cases, students must have exhausted the administrative remedies available within the institution before going outside to the courts for redress.<sup>177</sup>

In a decision in the United States, a non-tenured professor's right to academic freedom was deemed violated when university officials ordered the professor to change student's grade; however, the professor had no constitutional interest in the grade which student ultimately received, and thus, if university officials had administratively changed student's grade, professor's rights would not have been at issue.<sup>178</sup>

When a student challenges academic decisions made by educational officials such as grades, the general rule is that a court may not substitute its judgment for that of educators in academic matters. However, it will determine whether a student has received equitable treatment under academic regulations reasonably drawn and fairly administered.<sup>179</sup>

It is submitted that for these kinds of cases the threshold of when an academic decision becomes a grave abuse of discretion for being so arbitrary,

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<sup>174</sup> Latin for "where there is a right, there is a remedy."

<sup>175</sup> Hollander, *op. cit. supra* note 167.

<sup>176</sup> See CONST. ART. VIII, SEC. 1.

<sup>177</sup> *Schwartz vs. Bank Street College of Education*, 51 AD2d 947, 381 NYS.2d 282 (1<sup>st</sup> Dept 1976).

<sup>178</sup> *Parate v. Isibor*, 868 F.2d 821CA.6.Tenn.,1989

<sup>179</sup> Hollander, *op. cit. supra* note 167 at 86.

capricious, and whimsical is high given the nature of the property right involved and the discretion and independence available to academic institutions and teachers.

Note, however, that in *Isabelo, Jr. vs. Perpetual Help College of Rizal, (PHCR)*,<sup>180</sup> the Supreme Court held that academic freedom was never meant to be an unabridged license; it is a privilege that assumes a correlative duty to exercise it responsibly. Thus, where the student's expulsion was disproportionate to his having unit deficiencies in his Civilian Military Training (CMT) course, there is reason to believe the petitioner's claim that the school's action was strongly influenced by the student's participation in questioning PHCR's application for tuition fee increase.

Furthermore, in *University of the East vs. Jader*<sup>181</sup>, the Supreme Court ordered the school to pay damages to a law student who was not able to take the bar. The award of damages was based on Articles 19<sup>182</sup> and 20<sup>183</sup> of the Civil Code which embodied the principle of good dealings. The Supreme Court held that the school acted in bad faith in belatedly informing said law student of the result of the removal examination, particularly at a time when he had already commenced preparing for the bar exams.

## V. CONCLUSION

The voyage of discovering the many faces of the teacher has come to an end. As can be seen, several aspects have become known about the teacher in examining his role in relation to the State, the School or Academic Institution, and the Student. The paper has sketched the law governing teachers.

As a general rule, the State governs the status and role of the teachers given its interest in education. Regulation is first done through the licensure exams, and then through the Department of Education as the main government agency.

This rule is then affected by the proposed trichotomy existing in the educational system. The different treatment of the primary, secondary, and tertiary levels by the State reflects the transformation of state interest in education – from one of nurturing to one of letting free.

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<sup>180</sup> 227 SCRA 591 [1993].

<sup>181</sup> G.R. No. 132344. February 17, 2000.

<sup>182</sup> ARTICLE 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

<sup>183</sup> ARTICLE 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Further modifications affecting the teacher are made by private schools and institutions of higher learning. To a certain extent, State supervision and control is relinquished to these entities.

For private schools, the fact that they are business enterprises conducted by private entities merit them sufficient leeway and discretion in conducting their affairs. Their freedom is tempered by the market forces, and the minimum standards set by law.

Institutions of Higher Learning, both private and public, have a special constitutional status, as it is expressly granted Academic Freedom. It is the right uniquely its own. As such, the College or University has the right on academic grounds to determine for itself who may teach; what may be taught; how it shall be taught and who may be admitted to study. Thus, the Institution is given freedom to determine whom it could hire or retain as teachers.

Note however that Academic Freedom extends to all members of the institutions of higher learning as mandated by the 1987 Constitution itself: "Academic Freedom shall be enjoyed in all institutions of higher learning."

By necessary implication, as elucidated by the Supreme Court, two strands of Academic Freedom arise: institutional academic freedom pertaining to that of the college or university, and individual academic freedom pertaining to that of the teacher. Given their own interests, these two forms of freedom may come into conflict.

The compass suggested to find the resolution of the conflict is the rationale for academic freedom – truth and knowledge. Does the action of the University give rise to an atmosphere which is most conducive to speculation, experiment and creation? Does the teacher impart the truth and knowledge? Does he inform and not misinform or uninform? The party approximating the reason for being must be accorded the protection of academic freedom.

Note that the 1987 Constitution does not specify by whom academic freedom shall be enjoyed. As such, it is not exclusive to both the teachers and the institution. It extends to the students. This fact adds yet another dynamic aspect to the teacher.

Having contended with institutional academic freedom, the teachers have to deal with the individual academic freedom of the students. The interface chosen for study is the point of contact which is exclusively for teachers and students. Although there is an interaction between the teacher and the student, the teacher does so in his capacity as agent for the institution or school. In this situation, what ultimately comes to play is the institutional academic freedom and the individual academic freedom of the student. Thus, disciplining and admissions of students were not included in the focus.

It has been determined that the intercourse between the individual academic freedoms of the teacher and the student is in the classroom, i.e. attending classes and giving of grades. The nature of grades as a property right was posited – considering the stakes and interests of the student, teacher, and the academic institution.

As a property right, the due process clause applies. The next question is what process is due? Several guiding principles have been suggested keeping in mind the nature and interests involved in giving of grades. In the end, it is accepted that great respect is given to academic decisions, and that there is a very high threshold of when an academic decision becomes a grave abuse of discretion.

As can be seen, this paper has sketched education law locating the status and role of the teachers in relation to the State, the School or Academic Institution, and the Students. It is hoped that this will lead to a better understanding of the teacher, and for the teacher to act accordingly enforcing his or her rights and complying with his or her obligations.

After all, the route to a perfect educational system is knowing the business of each and every one of the key players. The teacher can take the first step.