



Report from the Council of University System Faculty  
Board of Regents  
October 19, 2012

There have been two CUSF meetings since the last report. The first CUSF General Body Meeting of this academic year was held on Friday, September 21, 2012 at the University of Maryland University College. The second CUSF General Body meeting was held on Thursday, October 11, 2012 at Frostburg State University.

In September, CUSF passed a preamble to the Academic Freedom Resolution. The combined document is in the Appendix to this report. It has been sent to the senate chair of each USM institution. The motion passing this document is given below. It passed unanimously.

**Motion # 1214:** Resolution: To accept the preamble to the USM statement on Academic Freedom document passed at the May meeting (Motion #1211).

At the request of the USM, CUSF discussed the BOR smoking policy. The following resolution was passed in the September meeting with one abstention.

**Motion # 1215:** CUSF believes that each member school's establishment, or non-establishment, of designated smoking areas, smoking cessation programs, and implementation of penalties for the violation of a school's smoking policy should be done in a system of shared governance in consultation with faculty, staff and students.

At the end of the September meeting, CUSF passed the following resolution:

**Motion #1216:** Move to authorize the Executive Committee to investigate and inform the General Body regarding MHEC's performance regarding fairness in program approval.

The senate chairs Dr. Theo Stone of UMUC and Dr. Mary Mumper of FSU spoke at the September and October CUSF meetings respectively about shared governance at their institutions. Both speakers were very positive about the state of shared governance at their institutions.

At the October meeting, there was some new business brought forward by the representatives from Bowie State University. The President of Bowie State University has started a new Faculty Advisory Board and there was concern about how this might impact the existing institutions of shared governance. CUSF passed the following motion to address this concern.

**Motion # 1217:** CUSF expresses its concern toward the new Faculty Advisory Council at Bowie State University which appears to undermine shared governance at that institution.

The concern was about the appearance of overlap between the responsibilities of the shared governance bodies and the charge of the new faculty advisory council. In the CUSF discussion, it was stressed that we do not have enough information to know if there is any real overlap or problem.

Dr. Jay Zimmerman, Chair  
Council of University System Faculty  
Towson University  
[jzimmerman@towson.edu](mailto:jzimmerman@towson.edu)

## Appendix

### 1. Academic Freedom Resolution (Passed May 2012 and September 2012)

#### **Preamble** (Passed CUSF September 21, 2012)

Attacks on academic freedom take place regularly and courts often rule that academic freedom belongs to the institution (i.e., to the administration) and not to the faculty. Nor is it clear that faculty handbooks are legally binding documents. (See the AAUP's Guide on Faculty Handbooks (<http://www.aaup.org/AAUP/pubsres/academe/2009/ND/nb/nbfh.htm>) for state-by-state information.) Additional information on the current status of academic freedom nationwide appears on the website of the national AAUP.

“Defending Academic Freedom in the Age of *Garcetti*,” by Joan Del Fattore, published in *Academe* in January/February 2011

(<http://www.aaup.org/AAUP/pubsres/academe/2011/JF/Feat/delf.htm>) states the situation very clearly. The Supreme Court *Garcetti* decision in 2006 concluded that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” According to the court, “[r]estricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have enjoyed as a private citizen.” At the time, Justice Souter expressed concern about academic freedom for employees of public colleges and universities. A series of lower-court decisions soon removed any doubt about whether some courts would apply *Garcetti* to professors in public universities.

Because of the *Garcetti* reservation, it is not obvious whether the First Amendment applies to public universities, and, if it does, what it covers. CUSF felt it was critical to faculty governance and reasonable assumptions of academic freedom, to assert that “speech related to scholarship and teaching” include faculty speech on such matters as faculty appointments and promotions, course staffing, and administrative policies and competence.

In order to protect our first amendment rights CUSF has adapted the attached statement on academic freedom. As templates we used statements from AAUP and the following schools: University of Delaware, University of Maine, University of Michigan, and the USM statement already in place.

#### **Academic Freedom Resolution** (Passed CUSF May 18, 2012)

Academic freedom is the liberty that faculty members must have if they are to practice their scholarly profession in accordance with the norms of that profession. It is based in the institutional structure of this and other universities and is fundamental to their common mission of promoting inquiry and advancing the sum of human knowledge and understanding. It is a condition of employment. Although some aspects of academic freedom are also protected by the First Amendment to the United States Constitution, academic freedom exists, independent of any external protection, as a basic prerequisite for universities to fulfill their mission to our society.

Generally, academic freedom is the freedom to teach, both in and outside the classroom, to conduct research and to engage in other scholarly or creative activities, to publish or otherwise disseminate the results, and to control promotion and tenure standards. Academic freedom also encompasses the freedom to address, or not address, any matter of institutional policy or action whether or not one is a member of any agency of institutional governance. Faculty have the freedom to address the larger community with regard to any social, political, economic, or other interest. Administrations should not place impediments – technical or otherwise – between faculty; all faculty should have the freedom to connect with their peers.

Academic freedom is most commonly exercised by individual faculty members, but remains a professional prerequisite of faculty members as a group. Academic freedom extends to all faculty whether full time or part time, tenured or non-tenured, adjunct or contingent. Faculty must be free from any censorship, threat, restraint, retaliation, or discipline by the University with regard to the pursuit of truth in the performance of their teaching, research, publishing or service obligation. Faculty also have the right to review and be reviewed by peers and thereby to control the standards and expectations for promotion and tenure.

The policy on shared governance in the University System of Maryland concurs, stating that “[f]aculty and staff who do not hold administrative appointments, and all students, may express their opinions freely on all shared governance matters without retaliation.”

Academic freedom includes the following specific freedoms:

- *freedom of research and publication.* Within the broad standards of accountability established by their profession and their individual disciplines, faculty members must enjoy the fullest possible freedom in their research and in circulating and publishing their results. This freedom follows immediately from the university’s basic commitment to advancing knowledge and understanding. Faculty must control their own scholarship and must be able to determine the content, format, wording, methodology, tone, et cetera, of their own work.
- *freedom to determine standards* Faculty are uniquely qualified to determine the directions and standards of their profession. Such expectations are determined by colleagues in the disciplines, including both faculty working in creative fields and faculty performing traditional research.
- *freedom of teaching.* This freedom is an outgrowth of the previous one. Faculty members must be able not only to disseminate to their students the results of research by themselves and others in their profession, but also to train students to think about these results for themselves, often in an atmosphere of controversy that, so long as it remains in a broad sense educationally relevant, actively assists students in mastering the subject and appreciating its significance.
- *freedom of internal criticism.* Universities promote the common good not through individual decision or bureaucratic calculation, but through broad-based engagement in the scholarly endeavor. Faculty members, because of their education and their institutional knowledge, play an indispensable role as independent participants in university decision making. By virtue of this role, they are entitled to comment on or criticize University policies or decisions, either individually or through institutions of faculty governance.

- *freedom of participation in public debate.* Both within and beyond their areas of expertise, faculty members are generally entitled to participate as citizens in public forums and debates without fear of institutional discipline or restraint, so long as it is clear that they are not acting or speaking for the University. Faculty are not institutional representatives unless specifically authorized as such.

Numerous positive outcomes flow from these freedoms. The historical model for education in the U.S. has been one of shared governance where the faculty are major contributors to the operation of the institution. When faculty play a major role in ensuring quality of education the competitive advantage necessary for freedom of thought and creativity is assured. Faculty spend much time and effort bringing their disciplinary perspectives and institutional experience to bear on curricular and other decisions within the academy, and must be allowed to speak freely on these issues. Conversely faculty cannot be made to speak when they do not wish to. (One effect of this – implicitly and explicitly – is that faculty advocate for effective use of taxpayer funding within the institution and system.) They must be assured the ability to function in these roles without fear of retaliation for the expression of their views, whatever they might be.

This policy does not protect plagiarism, abuse, or any illegal activities or speech.

Academic freedom is essential to the fulfillment of the purposes of the University. The parties acknowledge and encourage the continuation of an atmosphere of confidence and freedom while recognizing that the concept of academic freedom is accompanied by a corresponding concept of responsibility to the University and its students. It is of critical importance that any restrictions to academic freedom required – such as those delineated in a particular professional ethics statement or any university standards pertaining to disruptive behavior – be drawn up and implemented with substantial faculty input, in such a way as to minimize infringement of academic freedom. In large part, this goal should be accomplished by ensuring that institutional discipline of faculty members is in proportion to the severity and persistence of misconduct, and by insisting that alleged offenses be handled with appropriate standards of due process, including, wherever possible, the judgment of competent peers. For the rest, however, it must be recognized that contemporary threats to academic freedom are constantly evolving. This University — its faculty, administration, and students alike — must exercise constant vigilance in resisting such threats, whether they arise within the university or from outside.