

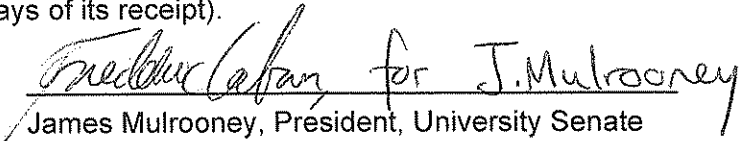
Central Connecticut State University
UNIVERSITY SENATE ACTION

Senate Motion Number FS 12.13.012B

TO: President Jack Miller
FROM: President of the University Senate

1. The attached motion of the University Senate, dealing with: **Committee on Academic Freedom Report** is presented to you for your consideration.
2. This motion was adopted by the University Senate on **12/10/2012**.
3. After considering this motion, please indicate your action on this form, and return it together with the original copy to the President of the University Senate.
4. Under the By-Laws of the University Senate, Section 3.7, the following schedule of action is to be observed.
 - a) By **12/12/2012**, Senate action reported to the President of the University. (Within five school days of the session in which they are adopted).
 - b) By **12/27/2012**, the President of the University to return the motion to the President of the Senate. (Within ten school days of its receipt).

12/12/2012
Date


James Mulrooney, President, University Senate

ENDORSEMENT:

TO: President of the University Senate
FROM: President Jack Miller

1. Motion Approved : _____
2. Motion Disapproved: ✓ (Explanatory statement must be appended).
3. Action "is deferred": _____
4. Resolution Noted: _____
5. Other: _____

2/6/2013
Date


President Jack Miller

Faculty Senate Motion Number FS 12.13.012B

I have disapproved Faculty Senate Motion Number FS 12.13.012B. I think it is important to share a comment from my point of view regarding this motion. I believe the statement from the Committee on Academic Freedom represents a significant misstatement of the intent of the Board with regard to IT-001 and IT-002. While one may argue that the effect of these actions could be interpreted as a violation of academic freedom, I believe that the Board of Regents had nothing like that in mind with the passage. Rather, I take the policies as a reaction to some serious and costly security breaches which have occurred throughout the System (including here at CCSU) over the past year. It is my opinion that there is no intent to invade people's privacy needlessly, nor to "violate core principles of academic freedom".

February 6, 2013

Report approved, action postponed until the Spring 2013 semester.

The Committee on Academic Freedom

Message to the Central Connecticut State University Faculty Senate

10 December 2012

At its meeting of 3 December 2012, the CCSU Faculty Senate referred to its Committee on Academic Freedom (CAF) the two Information Technology Policies passed by the Connecticut Board of Regents for Higher Education (BOR) on 18 October 2012. After consideration of these policies, the CAF voted unanimously to send this Message to the Senate.¹

Academic Freedom is a public good, not simply a private right of faculty members. As such, all members of the CCSU community (faculty members, members of the administration, and students) *and* the BOR have a responsibility to defend Academic Freedom to maintain the quality of education offered by the University. In addition the BOR has a contractual responsibility to defend Academic Freedom.

The CCSU Faculty Senate's CAF has determined that BOR Policy Number IT-001, "Acceptable and Responsible Use of Information Technology and Resources," and BOR Policy Number IT-002, "Electronic Communication," violate core principles of Academic Freedom as commonly understood and as agreed to by the BOR in the current Collective Bargaining Agreement.

The CAF is concerned that this violation of Academic Freedom comes at the same time that the BOR seems eager to dismantle core principles of shared governance. Academic Freedom is an integral aspect of shared governance, and IT-001 and IT-002 could be used as tools to diminish the ability of faculty members to participate in that responsibility.

The CAF urges the Senate, the CSU-AAUP, the entire CCSU community, and the BOR to review IT-001 and IT-002 and to exercise our shared responsibility to defend Academic Freedom.

¹ "CCSU Faculty Senate Minutes – Draft," 3 December 2012, accessed 6 December 2012, <http://www.ccsu.edu/page.cfm?p=15416>; CAF Minutes, Meeting of 8 December 2012. The CAF is a Standing Committee of the CCSU Faculty Senate. Its mission is to "[R]eview and report to the Senate all matters involving academic freedom within the University, advise and consult with the faculty and administration on issues of academic freedom and promote an awareness of these issues throughout the University community." Accessed 6 December 2012, <http://www.ccsu.edu/page.cfm?p=7799>. All future Internet citations were accessed on 6 December 2012.

ACADEMIC FREEDOM

At its most basic, **Academic Freedom** is the right of faculty members and students to engage and free and open discussions of the subject of the classroom, and the full freedom of faculty members to engage in research and creative activity and to have those efforts disseminated via publication or performance.² Without Academic Freedom, the university ceases to function as institution of higher learning.

Academic Freedom is a public good. Academic Freedom enables professors and students to conduct research and explore ideas without fear of retribution. It is the core principle that allows members of the academy to pursue truth wherever it leads, even if it leads to claims that there is no such thing as truth. The ideas that emerge from these explorations then are made public as expressions of scholarship and creative activity which must persist or whither as others review, test, experiment, experience, refute or otherwise respond to those artifacts, findings, claims, or arguments. As with all freedoms, it comes with a set of responsibilities. But as with all freedoms, it must be guarded and fostered not only from direct assaults, but also from the efforts of those who willingly or unknowingly would create an environment hostile to those freedoms.

Academic Freedom is a core element in the current Collective Bargaining Agreement (CBA) between the Connecticut State University American Association of University Professors and the BOR as the successor to the Board of Trustees for the Connecticut State University System.³

4.1 It is recognized by the parties to this Agreement that the essential excellence of the universities is dependent upon maintaining an atmosphere of academic freedom and professional responsibility.

4.1.1.1 Professors, guided by deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. . . . As teachers, professors encourage the free pursuit of learning in their students. . . . **They respect the confidential nature of the relationship between professor and student.** . . . They protect the students' academic freedom.

² The widely recognized foundational document on Academic Freedom is the 1940 "Statement on Principles on Academic Freedom and Tenure," issued by the American Association of University Professors, referenced in the current Collective Bargaining Agreement in place at CCSU, and endorsed by "more than 200 national scholarly and educational associations."
<http://www.aaup.org/aaup/issues/af/>.

³ "Collective Bargaining Agreement between Connecticut State University American Association of University Professors and Board of Trustees for Connecticut State University System, August 25, 2007 – August 25, 2011," which was extended until 25 August 2016 by a Memorandum of Understanding between the parties on 27 May 2011. The relevant sections of the Collective Bargaining Agreement (hereafter referred to as CBA) are available at <http://www.csuaaup.org/wp-content/uploads/2010/07/AAUP2007-2011FINALContract200711.pdf>. Italics and bolding added.

. . . As members of their institution, professors seek above all to be effective teachers and scholars. Although they observe the stated regulations of the institution, **provided they do not contravene academic freedom**, they maintain their right to criticize and seek revision.

4.2 Academic Freedom

The parties to this Agreement subscribe to the following principles of academic freedom:⁴

4.2.1 All members of the bargaining unit are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties. Freedom in research is fundamental to the advancement of truth. Members are also entitled to freedom in the classroom in discussing their assigned subjects.

IT-001

On 18 October 2012, the BOR unanimously passed IT-001 “Acceptable and Responsible Use of Information Technology and Resources.”⁵

IT-001 has two specific sections that raise Academic Freedom issues. The first is that the BOR “reserves the right to monitor and/or log all activities of all users.” While that right is claimed in a section that also mentions laws related to discovery of electronic information, the BOR does not limit itself to claiming the right to monitor activity in order to comply with law enforcement or court orders.

“Pursuant to Communications Assistance for Law Enforcement Act (CALEA), Public Act 98-142, and the State of Connecticut’s “Electronic Monitoring Notice”, (sic) the Board of Regents reserves the right to monitor and/or log all activities of all users using ConnSCU IT systems without notice. This includes, but is not limited to, files, data, programs and electronic communications records without the consent of the holder of such records.”

Furthermore, in a subsequent section, IT-001 claims a right to invoke disciplinary measures under various laws and a vague description of “general rules of conduct for all colleges and university employees.” **The CAF is very concerned that the BOR is claiming the right to selectively and secretly monitor and/or log the activities of any faculty member at any time, for any reason, and then to mete**

⁴ The footnote in the CBA references the 1940 AAUP Statement.

⁵ http://www.ctregents.org/images/uploads/VOTES_BOR_101812a.pdf. It is the hope of the CAF that the Faculty Senate will post electronic versions of IT-001 and IT-002 on the Senate web page. The policies can also be accessed here, beginning with Packet Page #21: http://www.ctregents.org/images/uploads/BOR_Agenda_Packet_101812.pdf.

out punishment as it sees fit. The chilling effect this would have on Academic Freedom and on the ability of faculty members to participate in shared governance is extremely disturbing. IT-001 would replace the current policy on electronic monitoring at CCSU, which states that it is “not the practice to actively monitor employees and students,” but informs users that the information is subject to court orders or Freedom of Information requests.⁶

The second concern is that IT-001 acknowledges exceptions only for “technical or business reasons.” The BOR apparently does not consider that exceptions might need to be made for reasons of Academic Freedom or to safeguard the security of certain student records that are confidential and protected under the Family Educational Rights and Privacy Act.

IT-002

On 18 October 2012, the BOR unanimously passed IT-002, “Electronic Communication.”⁷

The CAF has the same Academic Freedom concerns with IT-002 as it has with IT-001, with one additional provision. For all intents and purposes, the “classroom” as defined in the 1940 AAUP statement is no longer bounded by four walls and a chalkboard. It now exists not only in the physical space of academic buildings, but on web sites, podcasts, text messages, and email messages. If the classroom is defined as the location in which professors and students engage in a mutual effort to extend knowledge, then we at CCSU teach almost all the time and everywhere within the digital world. It is the position of the CAF that IT-002 has a chilling effect on Academic Freedom in the “classrooms” of today, to the detriment of the quality of education that we will be able to provide.

ACADEMIC FREEDOM PROTECTIONS

The duty of the BOR to protect and defend Academic Freedom is not only the result of its membership in the higher education community and its contractual obligations as a signatory to the current CBA, but also reflect the state of opinion by the courts.

The BOR claims the right to investigate the electronic actions of members of the CCSU community, but it fails to acknowledge the limits of that right as defined by the First Amendment and settled case law. In a landmark Academic Freedom case in 1957, the Supreme Court declared that:

⁶ “Electronic Monitoring Within the CSU System,” <http://www.ccsu.edu/page.cfm?p=1775>.

⁷ http://www.ctregents.org/images/uploads/VOTES_BOR_101812a.pdf.

“There is no doubt that legislative investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals. It is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, **and freedom of communication of ideas, particularly in the academic community.**”

The court continued:

“**The essentiality of freedom in the community of American universities is almost self-evident.** No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”⁸

In a 1967 case, the Supreme Court held that “Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom.”⁹ While this case involved teacher loyalty laws, it is the position of the CAF the principles of Academic Freedom that might be investigated under the overly broad and encompassing policies as outlined in IT-001 and IT-002 are a significant danger to Academic Freedom.

REMEDIES

Should the CCSU Faculty Senate agree with some or all of the findings of the CAF, we would like to propose a menu of possible actions:

- An urgent request to the Provost, who in his role as Chief Academic Officer has a special responsibility to protect Academic Freedom, to join in any response to the BOR.
- Informing the BOR of the findings of the Senate with regard to IT-001 and IT-002 along with an appropriate effort to redress the situation.
- Communicating to the AAUP the sense of the Senate with a view toward filing an Academic Freedom grievance under the terms of the CBA.

⁸ *SWEETZ v. NEW HAMPSHIRE*, 354 U.S. 234 (1957), <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=354&invol=234>. Emphasis added.

⁹ *KEYISHIAN v. BOARD OF REGENTS*, 385 U.S. 589 (1967), <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=385&invol=589>.

- Informing the CCSU community of these new policies and the position of the Senate on their threats to Academic Freedom.
- Calling on the CCSU IT community to refuse implementation of these policies.
- Other resolutions or actions the Senate sees fit to institute.