

NEWSLETTER

Colorado State University Chapter

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American Association of University Professors (AAUP)

Academic Freedom for a Free Society

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THE FACULTY MANUAL AND OUR BULLYING POLICY

By CSU AAUP President Tim Gallagher
Finance and Real Estate

Last academic year the Administration instituted a new anti-bullying policy. It did not go into the Academic Faculty and Administrative Professional Manual (the Manual) that would have required approval by Faculty Council and ultimately approval by the Board of Governors. If this is the start of a new trend it is a very scary one for anyone who believes in shared governance.

Take a look at Appendix 1 of the Manual. It deals with “discrimination, harassment, sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, and retaliation.” If ever there were a policy that called for an amendment to this Manual Appendix it would be an anti-bullying policy. Non-sexual harassment is already in the title of this Appendix. Isn’t bullying a form of harassment?

In January of 2016, at an open forum for faculty, President Frank answered my question about why the new anti-bullying policy was written by his Cabinet instead of going into the Manual by saying that it needed to be done that way since the Manual only applies to faculty and APs while the anti-bullying policy applies to all CSU employees. The current Appendix 1 of the Manual applies to “students, faculty, employees, affiliates, visitors, and (where provided by law or contract) agents, contractors, subcontractors and grantees of the University.” This current Manual policy was written by Faculty Council and approved by the Board. The current scope of who Appendix 1 applies to is so broad that surely the anti-bullying policy could have gone into the Manual had the Administration wished it to. It did not and Faculty Council did not object.

YOUR AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AT WORK: GRIEVANCE, BULLYING, AND OTHER MATTERS

By Colorado AAUP
Conference President Steve Mumme
Political Science

More than a few CSU professors, on learning of CSU-AAUP, are quick to challenge the need for a campus faculty advocacy group with some variation of the statement, “We have Faculty Council; shouldn’t that suffice?” Unfortunately, it doesn’t. Faculty Council is certainly essential and necessary, and remains the operational face of shared governance on campus. The national AAUP affirms this in its influential *Statement on Government of Colleges and Universities*, originally issued in 1967.

Yet, as AAUP has also argued consistently, that is not enough. Institutionally established representative bodies suffer several deficiencies that limit their effectiveness. They are captive to the academic calendar. They often suffer considerable turnover from year to year as individuals rotate off and on in accordance with prescribed procedures. Institutional knowledge and memory suffer accordingly.

Department and college representatives in most cases lack any effective mandate to regularly communicate Faculty Council issues or concerns to their colleagues, contributing to limited awareness of faculty business across the university. As for faculty service, departmental valuation of Faculty Council effort varies widely across the campus. This works as a disincentive. When was the last time you heard of department faculty competing to serve on Faculty Council?

Faculty Council has a long and impressive record of holding thoughtful debates on its floor, finding flaws in proposed Manual policy changes, and fixing those flaws with amendments before sending the document to the Board of Governors. Just this past May a proposed change to Section E.9 of the Manual was sent back to committee when sharp-eyed Faculty Council members noticed that the motion on the floor would give department heads discretion to give lower raises to those perceived to be behaving badly and higher raises to those displaying what the department head saw as good behavior. The intent of the proposed policy was benign but the potential for misuse of such a policy was pointed out by thoughtful Faculty Council members. Are you on your department head's good behavior list or on the bad behavior list? Might you think twice before speaking up at a department meeting, with a view different from that of your department head, if you knew your raise could be negatively affected? Should we have to be considered by our department heads to be good boys and girls to get good raises?

The anti-bullying policy passed by the President's Cabinet mandates that a supervisor undertake an inquiry if a complaint is made. If a Grievance were filed (Section K of the Manual) the UGO can refuse to send it forward right there if the complaint is seen as having no merit. At what point does annoying behavior cross over to bullying? This policy started out with good intentions. There is conduct that reasonable people would agree constitutes bullying and such conduct should be sanctioned. The policy prepared by the President's Cabinet unfortunately does a poor job contrasting such conduct from that which may result in discomfort among other parties but which is not bullying. There is a horrible lack of due process in the policy. When a grievance is filed under Section K of the Manual, or when a complaint of improper discrimination is filed with OEO, there are specific steps including specification of the parties allowed to be part of the hearing, order of the proceedings, rules for testimony and the presentation of evidence, and time restrictions that must be followed. The anti-bullying policy now in effect does not have this important structure that is necessary for due process and fairness.

Over the summer I became aware of four cases that were filed against faculty members alleging violation of the new anti-bullying policy. All four of the

And then there is bias. Council committees are often swayed by ex-officio presence of administrators whose very presence may staunch needed dialogue on particular issues.

AAUP on campus is a partial and needed corrective to these various pathologies of formal shared governance. As an advocacy group, AAUP has an institutional memory not driven by the academic calendar. It can spot and prioritize problems independently of administrative attention. It works to bridge departments through its campus-wide advocacy services and communications. And it has the facility to network colleges and universities across the state, placing CSU's issues in state and national context.

So what has your campus chapter done for you lately? Well, let's think grievance. Just a year and a half back, AAUP-CSU, drawing on more than nine years of attention to the faculty grievance process as described in the Manual's Section K, unloaded on Faculty Council with a sharp rebuke of prevailing administrative practice, proposing ten needed reforms to the current system. Our letter to Mary Stromberger concluded with this statement, "It is fair to say that at the present time faculty have no reliable mechanisms to hold administrative officials accountable for abuses that infringe on academic freedom, shared governance, and faculty rights."

The administration, to its credit, took notice. This past academic year Stromberger, with the Provost's cooperation, convened a Working Group (WG) on Section K reform to address most of AAUP's concerns and those of others that had accrued over time. To date, no decisions have been made, but the University Grievance Officer (UGO), Richard Eykholt, has indicated he will bring forward to Faculty Council a suite of proposed reforms to Section K based on the Working Group's discussion and his further assessment.

It is fair to say that the CSU-AAUP does not agree with certain of the observations of the Working Group in which Provost's Office and the Office of General Counsel participated. Some of the WG's sentiments, such as resisting the delegation

accused were female. This is surprising since only 37% of tenure-track faculty members are female. (Source: CSU Fact Book) Administrators became aware of the use of this policy against female faculty members and subsequently there may have been bullying complaints made against male faculty members but if this is so I am not aware of them. At the very least it is clear that when this policy was first implemented the accused were disproportionately female in light of the faculty gender demographics. There is nothing in the anti-bullying policy approved by the Cabinet that requires a bullying allegation to contain a reasonable degree of specificity. Therefore, when the accused in one of the four cases was said to be “demanding” in matters of department concern and that “she refuses to take no for an answer” is this bullying under the policy? Are we confident that the same standard would be applied to a male faculty member? She was also accused of “talking shit” in the formal complaint that gets investigated. There were other issues of concern by AAUP related to this case that I am not going into here. Talking shit is not mentioned in the anti-bullying policy. Are these examples of what you’d expect to see in a good faith bullying complaint? It is unlikely that a bullying accusation against a male faculty member would be based on an accusation that he is demanding and refuses to take no for an answer.

If a faculty member or administrator has a grudge against another faculty member this new anti-bullying policy is a very effective tool for striking out at that person. No specifics are needed. The complaint could be completely spurious but the harmful inquiry against the political enemy would move forward. It is ironic that the anti-bullying policy can be used as an effective bullying tool against the accused. I do not believe that the Administration in any way sought to write an anti-bullying policy to be used in this way and disproportionately against female faculty members who are assertive. Unfortunately the policy in place is doing that. I believe that a document written by faculty, including CoRSAF and Faculty Council members, could come up with a policy without these serious flaws. Experienced faculty members understand how vigorous academic exchanges work.

Faculty Council has a chance to stand up and demand that policies with far-reaching effects on the faculty go into the Manual after approval by Faculty Council

of greater authority to the Grievance Hearing Committee, are far too limited for our tastes. But others have promise, including clarifying the role of the Office of General Counsel in grievance hearings, clarifying the role of the Provost’s Office, strengthening the mediation process, lengthening the time frames for submitting grievance claims, and providing faculty with a comprehensive procedural guide to the process to better enable grievants to make their case; these can only improve a situation that all too frequently works against faculty grievants.

Or, consider the regulation on bullying that was drafted and passed by the President’s cabinet [<http://policylibrary.colostate.edu/policy.aspx?id=729>]. I mentioned this policy in our chapter’s last newsletter in my piece, “*The Federal Academic Complex: Proceed with Caution*” (Spring 2016, Issue 2). The administration’s decision in October 2015 to bypass Faculty Council and adopt this unrefined policy practically by fiat has already had adverse unintended consequences, harming careers and generating needless antagonisms in the absence of well thought procedural rules and protections that guide administrators and faculty alike through this behavioral and regulatory minefield.

The CSU-AAUP sounded the alarm early on and labored over the summer to advise faculty of its concerns and encourage the administration to rethink its posture on bullying. While no official commitments have yet been made, we hope the Oval will reconsider and enlist Faculty Council in the process of better defining the procedures and protections that are essential if a policy on bullying is to be more than an anvil for crushing free speech and counter-bullying one’s colleagues. As CSU-AAUP President and former Faculty Council Chair Tim Gallagher (this issue) suggests, Faculty Council should push hard to bring bullying under the mantle of the Manual’s discrimination and harassment procedures in Appendix 1 [http://facultycouncil.colostate.edu/faculty-manual-appendices/#Appendix_1]. These procedures afford faculty appropriate due process protections in dealing with allegations of professional misconduct.

and the Board. When is the last time you recall a policy like this going directly to the website of the Office of Policy and Compliance after being written unilaterally by the President’s Cabinet? Is that website becoming the new Manual? Yes, there was discussion with faculty as the anti-bullying policy was being written, but this is far removed from placing the proposal on the floor of Faculty Council where a vigorous debate can be held along with a vote on the specific wording of the policy proposed for inclusion in the Manual.

I hope that the members of Faculty Council will assert themselves and insist that the current anti-bullying policy be torn up and that CoRSAF be charged with writing a new policy to be approved by Faculty Council and the Board of Governors, and upon approval placed in Appendix 1 of the Manual where it belongs. If we don’t stand up here, we will get what we deserve. The President’s Cabinet will likely continue to implement new policies that significantly impact the faculty of this campus, and to place such policies directly on the website of the Office of Policy and Compliance, bypassing Faculty Council and the Board.

GUNS ON COLLEGE CAMPUSES AGAIN – AND HOW TO DEAL WITH THE PROBLEM

By Ray Hogler, Management

On August 1, 1966, Charles Whitman, a Marine veteran who suffered from severe headaches and depression, shot 47 people from a bell tower on the University of Texas campus. Before beginning his attack, Whitman killed his mother and his wife. The massacre ended when police officer Ramiro “Ray” Martinez made his way into the tower with his revolver and fired six shots into Whitman. Martinez went on to become a Texas Ranger, retiring after 18 years of service.

Fifty years later, on the precise anniversary of the tower shooting, Texas law authorized the concealed carrying of guns on public university and college campuses. Texas joins eight other states, including Colorado, to allow individuals to bring guns into most areas of higher education institutions. Student groups at the University of Texas organized protests against

Your CSU-AAUP chapter has also been busy supporting adjunct faculty improvements, studying up on intellectual property rights related to online and web-based course delivery (after organizing a well-attended panel on this topic last spring), assisting individual faculty with matters related to Institutional Review Board overreach and bullying, and planning future events focused on understanding the challenge to academic freedom and shared governance on campus. It continues to collaborate with the Colorado Conference of the AAUP, our state-level organization, and its ongoing work defending faculty in Colorado’s many colleges and universities.

CSU-AAUP chapter members are individually contributing scholarship and pedagogy that advance faculty interests. The new Center for the Study of Academic Labor is a case in point [<http://csal.colostate.edu/>] as is a new suite of graduate level courses in the School of Education (EDUC 628, 629, 635) aimed at professional development on teaching and learning and available free to adjunct professors exercising their campus study privilege [http://www.online.colostate.edu/courses/credit/?subject_cat=39725#courselistings].

In sum, CSU shared governance works better with an active faculty advocacy body on campus. Don’t you agree?

AAUP COLORADO CONFERENCE UPDATE

- Colorado Conference is pleased to report that former Adams State University adjunct professor Danny LeDonne who received a “persona non-grata” order from Adams State officials for his persistent questioning of the university's treatment of adjunct faculty in 2015, prevailed in his first amendment lawsuit against Adams State with the help of the ACLU and AAUP Colorado Conference. Adams State was ordered to rescind its PNG order and pay LeDonne \$100,000 in damages (see Denver Post, July 25, 2016).

the law, and several faculty departed for other institutions because they declined to teach in an environment where expressing controversial ideas might lead to a shooting. Reflecting on the new law, Ray Martinez, the office who stopped Whitman, said that while he supports the Second Amendment, legalizing concealed campus carry is a “bad idea.”

According to the National Conference of State Legislatures, 18 states prohibit concealed carry in public educational institutions, while another group of 23 states allows individual colleges and universities to decide on the issue of guns. Legislatures continue to discuss the question; in 2014, five states came forward with legislation to ban guns in public higher education, but none of the bills passed.

Gun advocates incessantly promote a single meme to support the proliferation of guns. They argue that the best way to deal with a Bad Guy with a Gun (BGWG) is the presence of a Good Guy with a Gun (GGWG). The position was articulated in a highly publicized book by John Lott, *More Guns, Less Crime*, which continues to provide the intellectual ammunition for gun proponents.

The *More Guns* thesis was devastatingly critiqued in a 2012 paper by Aneja, Donohue, and Zhang, who concluded that “aggravated assault rises when [right to carry] laws are adopted. For every other crime category, there is little or no indication of any consistent [right to carry] impact on crime.” Of course, factual evidence has little significance for gun enthusiasts, who ascribe paramount importance to their constitutional rights.

Until the 2008 decision in *District of Columbia v. Heller*, it was settled constitutional law that the Second Amendment did not confer a right on individuals to bear arms for the purpose of self-defense. The deceased Antonin Scalia, writing for a five-justice majority, jettisoned decades of precedent to find that it did. Circuit Court Judge Richard Posner said of Scalia’s reasoning, “It is questionable in both method and result, and it is evidence that the Supreme Court, in deciding constitutional cases, exercises a freewheeling discretion strongly flavored with ideology.” No matter. Scalia gave license to the Second Amendment right theory of gun possession, which has now expanded far beyond the scope of the *Heller* decision, and, in Colorado at least, appears to

- Colorado Conference has written four “letters of concern” seeking reconsideration of various disciplinary or personnel decisions at Colorado colleges and universities, including Adams State University, University of Colorado at Boulder, Colorado School of Mines, and Red Rocks Community College.
- Colorado Conference sponsored the Dammit Summit at the Denver Press Club in May 2016, celebrating another semester of impressive activism by adjunct faculty at Colorado community colleges.
- Ross McConnell, Associate Professor of Computer Science and Co-President of the CSU-AAUP, represented the Colorado Conference at the AAUP Summer Institute in Portland Oregon this past July.
- Colorado Conference leaders met with Rep. Crisanta Duran, Rep. Dominick Moreno, and Sen. John Kefalas over the summer exploring opportunities to advance legislation to strengthen compensation and professional working conditions for adjunct faculty in the Colorado Community College System.
- Upcoming events:
 - 1) Colorado Conference Executive Committee meets September 23, 2016 at Denver University.
 - 2) Colorado Conference Annual Meeting will be held on October 15 (Saturday) at the University of Colorado, Boulder. Keynote speaker is Risa Lieberwitz, AAUP chief counsel and professor of law at Cornell University. She will address recent challenges to academic freedom on American university campuses.

JOIN THE AAUP

To join AAUP, go to the national website at AAUP.org and click on “Membership.”

Joining the AAUP says that you’re concerned about academic freedom, and about the way that

have no implicit limitations as far as state educational institutions are concerned.

There is a solution that could be adopted by administrators at our public colleges and universities. It consists of two simple steps that would help to allay concerns of faculty, students, and employees who justifiably fear that the proliferation of guns increases the likelihood that guns will be used sooner or later, and not necessarily to the benefit of shooters or bystanders.

First, the university should require that all employees and all students at the institution complete a simple electronic form that asks one question: "Do you currently possess a valid permit to carry a concealed weapon in the state of Colorado?" Failure to answer the question would lead to termination or expulsion from the university.

The responses would be compiled in a database searchable by various parameters, including name, course enrollment, or department. Colorado statutes prohibit sheriffs from developing lists of concealed carry holders, but the statute says nothing about voluntary compliance to gain enrollment or employment at public educational institutions. The process does not interfere with anyone's right to get a permit or to carry a weapon. In any event, the rationale underlying the GGWG theory is that killers attack groups that are unlikely to have guns. Publicizing the number of permits would therefore discourage rogue shooters.

Second, students, faculty, and employees would have access to the list to determine whether they are in contact with a CC holder. If a student enrolled in a course had a permit, either another student or a faculty member could request an armed guard to attend all classes. Ideally, the security officer would wear body armor, carry a serious weapon such as an AR-15, and be trained to shoot to kill anyone brandishing a weapon.

Faculty would be permitted to meet with CC holders only in a public area, such as the library, where guns would not be allowed and where the rule would be strictly enforced by metal detectors, scanners, and armed guards. Anyone violating the security standards would be subject to immediate expulsion or termination.

basic freedom protects your teaching and research. It says that participating in faculty governance is important to you, and that you are concerned about career issues, tenure, and the overuse and exploitation of contingent faculty. By joining, tenure and non-tenure track faculty members, academic professionals, and graduate students help to shape the future of our profession and proclaim their dedication to the education community. In addition, there are many practical benefits--discounts, insurance programs, financial incentives--available to AAUP members. Join your colleagues today to promote and protect your profession.

CSU CHAPTER OF THE AAUP

Tim Gallagher, President

Tim.Gallagher@colostate.edu

491-5637

Ross McConnell, Co-President

rmm@cs.colostate.edu

491-7524

Natalie Barnes, Vice-President for Non-Tenure-Track Faculty Affairs

Natalie.Barnes@colostate.edu

491-6774

Dimitris Stevis, Secretary and Treasurer

Dimitris.Stevis@colostate.edu

491-6082

Steve Mumme, Colorado Conference Co-President

Stephen.Mumme@ColoState.EDU

491-7428

AAUP state conference news:

<http://aaupcolorado.org>

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The database procedure protects the right to carry concealed weapons while simultaneously protecting the First Amendment rights of students and teachers. Constitutional rights are not absolute, as even the Scalia sometimes admitted. The best illustration of that point is the way legislators attempt to circumvent a woman's constitutional right to have an abortion, which is an obsession of some lawmakers nearly as fervent as their dedication to guns.

In terms of expenditures, the system could be put into place with only minor expense compared with tuition increases to pay for a new football stadium, more administrative support staff, and other measures designed for the care and comfort of university citizens. Since an IT infrastructure already exists, preparing a list involves minimal expense. Hiring guards could be done by contract with a security service. Screening devices at the entry to "no gun" zones would be cost effective for many reasons, not least of which would be the peace of mind for persons who oppose the proliferation of weapons at a university.

A final reason to implement the database system is that the decision could be made unilaterally by the administration, without interference from Faculty Council or student groups. The promulgation of the university's "bullying" policy, which is examined in another section of this newsletter, demonstrates that where a perceived need exists, action quickly happens.

What typically occurs after a mass shooting is a period of lamentation, followed by inaction. The National Rifle Association owns a gaggle of cowardly politicians who prefer another term in office to meaningful change. Fortunately, the presidents of universities are not elected and have no immediate accountability to the general public. If one of them made swift, certain, and effective changes, others might learn the lesson.
