

AFUM FLASH UPDATE

www.AFUM.org or www.AFUM.info

3/29/2018

Contract Signed

The contract between the faculty and the Board was executed on March 29. You will see your raise and any retro payment you are due in your April pay.

BOT policy on political speech

The BoT passed the new policy on political speech (Board Policy 214) at the March meeting. This policy is not yet online, so it is reproduced in whole at the end of this AFUM UPDATE.

Faculty were led to believe that the vote on this policy was being delayed until the May meeting. Many of us were informed one business day before the meeting of the final draft and that a vote was set for Monday (3/19/18).

When passing the policy, the BoT expressed a commitment to monitor the administration of this policy. UMS Chief of Staff, Jim Thelen, who had been meeting with various faculty groups throughout the system about this policy, contacted faculty leaders and sought feedback.

He responded to my questions and graciously agreed to allow me to share his answers with AFUM membership. In what follows I quoted a section of the policy followed by a question. Thelen's (JBT) responses are in red.

For the purposes of this policy, "UMS (or System) legislative advocacy" includes interaction with the State Legislature, including individual legislators or legislative committees and their staff, the Governor's office and staff, or any other public official or the general public *when the purpose of the interaction or communication is to advocate for a specific UMS institutional position or outcome.*

1) Is the intent or action of the policy to place any restriction on faculty or staff rights to interact or communicate with anyone to advocate for/against/no position for any specific or general UMS institutional position or outcome?

JBT: No. Generally speaking, faculty have free speech rights to comment on or oppose any university action or institutional position (System or university), but understand there's a legal balance here. An employee can't disrupt university operations in any way, and the Garcetti principles still apply too. But here's an easy example: faculty have the right to appear to testify in Augusta (or Washington) and testify in opposition to a position put forth by the System.

If I understand your question correctly, Policy 212 actually speaks to this:

System faculty and staff have the right to comment as employees on matters related to their professional duties, and the functioning of the University, subject to the need for courteous, professional and dignified interaction between all individuals and the parties' shared expectation that all members of the campus community will work to develop and maintain professional relationships that reflect courtesy and mutual respect, recognizing an employee's responsibility to refrain from interfering with the normal operations of the University and the ability to carry out its mission.

Employees as citizens are entitled to the rights of citizenship in their private roles as citizens, including to comment on matters of public concern outside of their employment. System employees have a responsibility and an obligation to indicate when expressing personal opinions that they are not institutional representatives unless specifically authorized as such.

Institutional interactions with the United States government's Executive Branch and agencies, Congress and congressional staff, and the various federal regulatory bodies having legal jurisdiction over each System university's operation and activities are subject to this policy as well, except in cases where a specific campus or System office has primary responsibility for a function closely tied to the functional responsibility of the governmental office at issue (e.g., Department of Education Title IV officials and campus financial aid offices; Department of Education Office of Civil Rights and System General Counsel, etc.). Further, this policy does not restrict any UMS faculty, employee, department, division, or office from providing information, research, survey data, or policy advice to a local, state, or federal government official or office when required to do so by grant, contract, or legal mandate (e.g., the University of Maine Center for Community Inclusion and Disability Studies (CCIDS), which, by federal law, is required to advise, educate, and disseminate information to state and federal policymakers about individuals with developmental disabilities, or any similarly-purposed office or activities).

2) Is the intent or action of the policy to place any restriction on faculty/staff to interact or communicate with individuals or entities outside of Maine, such as Congress?

JBT: No.

3) Do the carve outs, “except in cases where a specific campus...” and “ Further, this policy does not restrict any UMS faculty, employee, department, division, or office from providing information, research, survey data, or policy advice to a local, state, or federal government official or office when required to do so by grant,...” in any way restrict any faculty or staff member from communicating on any issue with the federal government or its agencies? Does the policy restrict in any way the right of faculty/staff “from providing information, research, survey data, or policy advice to a local, state, or federal government official or office” even when such information is not mandated by law, grant or contract?

JBT: Not to oversimplify, but again, no to the first, and no to the second. The point of the policy is not to restrict any speech at all, but merely to make clear that a faculty member (or employee) can't represent that they speak for the System or a particular university unless they've been authorized to do so.

Partisan Political Activity

If System and university employees wish to become actively involved in partisan political activities, they must do so on their own time, without using System or University funds or resources of any kind, and in such a way as to not interfere with or impair performing their regular System/university duties. When exercising their rights to participate in the political process as individuals or as otherwise permitted by this Policy, System/university employees should emphasize that their comments or actions are their own, and not those of the System or university unless they have been specifically authorized to speak or act on behalf of a System institution. This disclaimer is especially important if an employee, when speaking or acting as a private citizen or as otherwise permitted by this Policy, is using his or her title or affiliation with the System or a university for identification purposes or to establish his/her competence in a particular field.

4) The University makes space available to groups that may engage in partisan political activities; such as the College Republicans, Democrats or other political parties or groups involved in political issues. Does this policy intend to police the discussions of these groups that occur on campus or to prevent faculty/staff from participating in these groups or these activities?

JBT: Absolutely not. Space will continue to be available all throughout the System for this purpose, and neither the System nor a university will attempt to monitor or restrict speech in these forums. The policy does not apply to these situations.

5) It is a UMS responsibility to educate and inform all that faculty and staff do NOT, in general, speak for the Institution. Will UMS or its Universities discipline faculty/staff who do not indicate that they not speaking for the University?

JBT: If there are complaints or concerns under the policy, they'll be handled on a case by case basis, as you can appreciate, Jim, and faculty would obviously retain all of their AFUM rights and procedural protections before discipline could be imposed if a violation is found to have occurred. There's no absolute answer or standard here; the facts of each situation will determine whether a violation occurred and what level of discipline, if any, is appropriate. As a general matter, there's no automatic violation just for failing to say "I don't speak for the university." Context matters. A faculty member could well make clear that s/he doesn't speak for or represent the university or System by the overall context of his/her speech/writing/testimony. To me, the most obvious concern would be to make some kind of affirmative representation that you *do* speak for the university or are sharing a university position when you haven't been authorized to do so. I've heard questions from a few faculty so far that they may not know if they are speaking on behalf of their universities. In truth, very few people have authority to speak *for* the university -- Presidents, their spokespersons, the Chancellor, the System Exec Dir of Communications, Sam Warren (in the State House), me as General Counsel on legal matters, and that's about it. It's probably not perfect, but I think it's a relatively safe "rule of thumb" to say that, if you don't know if you're authorized to speak for the System or a university, you're not.

6) AFUM has contractual right to use University Mail. Does the University intend to control or limit what AFUM puts in mail?

JBT: Absolutely not.

Faculty Rights

One of the most important things AFUM does is defend faculty rights. When we can't settle an issue informally this means AFUM files grievances on behalf of individual members who have had their rights, such as due process or other rights under the contract, abridged by the University. Due to the highly personal nature of these issues we do not in general discuss these cases.

Sometimes the issues are so broad that they effect all faculty. AFUM recently found out that UMaine Cooperative Extension was interfering with Faculty speech rights by prohibiting placing anything in the signature line of email besides their signature. They sought to restrict what was being said in this space as it was outside their control. The contract, Article 2, clearly states that unit members have the ability "*...to speak or write without any censorship, threat, restraint, or discipline by the University with regard to the pursuit of truth in the performance of their teaching, research, publishing or service obligation.*"

AFUM reached out informally to remove this restriction. The UMaine administration however supported Cooperative Extension's right to censor, threaten and restrain members speech rights. AFUM immediately filed a grievance.

Please join me in condemning UMaine Cooperative Extension Administration for restricting speech and UMaine administration's refusal to defend faculty free speech.

We all know that we do not need to agree on what we say, but we must come together to defend the right of members to speak.

AFUM can defend our speech rights, and so many other rights, because of your membership in AFUM. Your membership provides the needed resources to see grievances through and to take cases to arbitration or seek other legal remedy as appropriate.

Updates on this grievance will be provided in future AFUM UPDATES.

Rise-Up Level 1 and Wellness (Reminder)

UMS recently sent out reminders to faculty who have not yet satisfied Level 1. If your partner is covered under the UMS plan, both of you must satisfy Level 1 in order to avoid the higher premium

Deadline to complete Level 1 is **April 30** (you can always satisfy Level 1 later and your rates will go down in subsequent months). New faculty or those returning from leave have 90 days to complete Level 1.

The Provant Website now clearly shows if you have achieved Level 1 or not. Level 1 requires a wellness visit (no co-pay is a sign that it was coded correctly) from

April 1, 2017 through April 30, 2018 OR a coaching session with Trestle Tree (1-855-580-2797 to schedule your Health Coaching appointment).

Only if your wellness visit is going to take place close to the April 30, 2018 deadline should you utilize the preventive care form. Questions and concerns may be directed to Provant customer Service at 855-2RiseUp or 274-7387.

Details on the UMS Wellness Guide http://staticweb.maine.edu/wp-content/uploads/2017/12/2018_Wellness_Guide-120717-FINAL.pdf?ca0c38

Board Policy:214

Institutional Authority on Political Matters

Introduction

The University of Maine System is a public institution and instrumentality of the State of Maine, consisting of the University of Maine, including its regional campus the University of Maine at Machias; the University of Maine at Augusta, including its campus in Bangor and University College centers around the state; the University of Maine at Farmington; the University of Maine at Fort Kent; the University of Maine at Presque Isle; and the University of Southern Maine, including its campuses in Gorham and Lewiston-Auburn. UMS's public mission is to advance higher education in Maine through teaching, research, and public service; the System and its campuses receive significant state and federal taxpayer support to do so in ways that best serve all Maine citizens.

This policy is subject to Board Policy 212, *Free Speech, Academic Freedom, and Civility*, so as to best respect all UMS community members' constitutionally protected free speech rights, individual rights as citizens, and faculty academic freedom. The Board recognizes its faculty as subject matter experts in their areas of teaching and research and encourages them to responsibly disseminate their research and knowledge. This policy does not restrict any UMS faculty, staff, or student from speaking on political matters, including testifying before or speaking with legislators or policy makers, about the subjects of their teaching or research expertise or personal experience, provided they do not represent that they speak for their campus or the System unless specifically authorized to do so.

UMS and its constituent universities fully embrace the First Amendment rights of all citizens, including all students and employees, to hold and express political, social, or religious views of any kind. Because UMS is funded in significant part by all Maine taxpayers and student tuition revenue sourced from federal financial aid programs, and because UMS must also maintain its federal 501(c)(3) tax-exempt status, the System and its universities, and individuals speaking or acting on their behalf, must at all times remain impartial as to such viewpoints except as provided elsewhere in this or other System policies.

UMS Legislative Advocacy

The UMS Charter authorizes and directs the UMS Chancellor to develop and implement an effective statewide legislative program for the System. All UMS legislative advocacy without exception will therefore be managed through the Chancellor's office, specifically the Office of Community and Government Relations. System legislative advocacy, including university-specific advocacy, may only be pursued by individuals authorized by UMS for that purpose.

For the purposes of this policy, "UMS (or System) legislative advocacy" includes interaction with the State Legislature, including individual legislators or legislative committees and their staff, the Governor's office and staff, or any other public official or the general public *when the purpose of the interaction or communication is to advocate for a specific UMS institutional position or outcome.*

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Restrictions on Partisan Political Activity

UMS and its universities cannot participate or intervene in any partisan political campaign on behalf of, or in opposition to, any candidate for public office, which, for the purposes of this section, is referred to as "partisan political activity."

If System and university employees wish to become actively involved in partisan political activities, they must do so on their own time, without using System or University funds or resources of any kind, and in such a way as to not interfere with or impair performing their regular System/university duties. When exercising their rights to participate in the political process as individuals or as otherwise permitted by this Policy, System/university employees should emphasize that their comments or actions are their own, and not those of the System or university unless they have been specifically authorized to speak or act on behalf of a System institution. This disclaimer is especially important if an employee, when speaking or acting as a private citizen or as otherwise permitted by this Policy, is using his or her title or affiliation with the System or a university for identification purposes or to establish his/her competence in a particular field.

Employees Seeking Elective Office

See Board Policy 403 (<http://www.maine.edu/about-the-system/board-of-trustees/policy-manual/section403/>)

Chancellor and Presidential Authority to Make Institutional Statements

Because public statements made and actions taken by the UMS Chancellor and System University Presidents may be ascribed to or perceived as the institutional position of UMS and/or its universities, respectively, this section applies only to the Chancellor and Presidents, who:

- Have authority to speak or issue statements, or designate official spokespersons to speak or issue statements, on behalf of their institutions on issues core to the System/university mission (green/mission critical issues);
- Should review in advance with the rapid response advisory team described below, when time permits, issues related to but not directly mission central (yellow/mission indirectly related issues); and
- Are not authorized to speak, including through official spokespersons, on issues beyond or only tangentially related to core institutional mission (red/mission unrelated issues).

Issues are not static in relevance, but may vary in public or political salience over time; the Board will review and update the mission issue examples below for relevance at least every three years. Issues may shift from one concentric circle to another, or overlap, depending on context. The Chancellor and System University Presidents must at all times strive to maintain impartiality on political, social, or religious matters, subject to their duties to advance the missions of their institutions and the System as a whole.

Issues that involve legislative matters or advocacy must be coordinated as provided in “UMS Legislative Advocacy” above.

A standing rapid response advisory committee of six members, including two Trustees, two Presidents, and two senior UMS staff (one of whom should be the System General Counsel or his/her legal designee) should be available to review, when time permits, the reasonableness of making statements on issues brought forth by the Chancellor/Presidents that appear to fall in the yellow zone.

GREEN/Mission Critical: Academic administration, curriculum, institutional finances and planning, health and safety of students and employees, and general issues critical to the financial or functional stability and wellbeing of the institution and its students, e.g., Pell grant funding, guns on campus, defunding TRIO programs, marijuana dispensaries near campus.

YELLOW/Mission Indirectly Related: Issues important or relevant to society at large that may impact an institution or its students or employees, but not in such a way as to undermine the institution’s educational mission or prevent the institution from carrying it out, e.g., climate change, labor standards, immigration policy.

RED/Mission Unrelated: Issues of local, state or national import, but not relevant to educational mission or institutional financial or functional stability, e.g., abortion policy, tax reform, global trade policy.

The Board retains the right at all times to issue statements, including through the Chair or Chancellor, on behalf of the University of Maine System that cover all System universities.

Discussed:

BOT Drafting Task Force 5/2/17, 8/7/17, 10/17/17, 3/6/18, 3/9/18, 3/12/18, and 3/13/18
Presidents' Council (earlier 2/8/17, 4/12/17, 5/10/17, 6/14/17 (update only), 7/14/17 (update only), 8/9/17 (update only), 9/13/17, 10/11/17, 11/8/17, 12/12/17, 1/10/18, 2/14/18, 3/14/18
UMS BOT Student Reps 11/20/17; 3/2/18 and 3/15/18 (via email); 3/18/18 (scheduled)
UMS BOT Faculty Reps 11/19/17 (and via email and in-person meetings through December 2017 to present); 3/15/18 (via email); 3/18/18 (expected to be scheduled)
UMaine Faculty Senate Executive Board 1/12/18 (in Orono)
USM Faculty Senate 2/2/18; USM Faculty 2/13/18 (in Portland)
UMA Faculty Senate 2/16/18 (in Bangor)
UMM Faculty 2/21/18 (in Machias)
UMF Faculty 2/22/18 (in Farmington)