

USMA Reg 150-4

Academic Freedom at the United States Military Academy

**Department of the Army
United States Military Academy
West Point, NY 10996-5000
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UNCLASSIFIED

Academic Freedom at the United States Military Academy

By Order of the United States Military Academy Superintendent:

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History: This regulation supersedes and rescinds USMA Policy Memorandum 228-01 Academic Freedom and policy-setting provisions of the 2014 USMA Faculty Manual with respect to Academic Freedom.

Summary: This regulation establishes policies and procedures with respect to the exercise of academic freedom at

the United States Military Academy.

Applicability: This regulation applies to all USMA personnel, to include Cadets. Academic Freedom applies in all aspects of the design, delivery, and assessment of Cadet learning experiences, in all engagement in Teaching, Scholarship, Professional Service, Faculty Development, and Cadet academic development by USMA faculty members, and in participation in educational experiences by Cadets. It also applies to USMA librarians who directly participate in the creation of original scholarly and curricular material as well as the acquisition and curation of materials provided by the USMA Library.

Proponent and exception authority: The proponent for this regulation is the Dean, who may supplement it with a Dean's Policy and Operating Memorandum that is consistent with the underlying regulation. The authority to approve exceptions or waivers to this regulation that are

consistent with controlling law and regulations, and do not unnecessarily curtail the exercise of academic freedom is retained by the Superintendent and not further delegated. Activities may request a waiver or exception to this regulation by providing justification that includes a full analysis of the expected benefits and risk. All waiver and exception requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through its higher headquarters. The request must include formal review by the activity's senior legal advisor and a review by the Academic Freedom Advisory Committee.

Suggested

improvements: Users should send comments and suggestions directly to the Chair of the Academic Freedom Advisory Committee.

Distribution: This publication is available in electronic media only. It is intended for all USMA personnel and may be freely distributed to the public.

Expiration date of this Regulation: until superseded or rescinded.

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Chapter 1

Purpose

This document defines academic freedom as it pertains to the United States Military Academy (USMA), explains why academic freedom is essential for the execution of the USMA mission, and outlines principles, policies, and procedures designed to promote and protect academic freedom at USMA. It includes a process of faculty review of alleged violations or abridgment of academic freedom, undertaken on behalf of the USMA community, intended to support the chain of command in discharging its duty to protect and promote academic freedom. This regulation supersedes and rescinds USMA Policy Memorandum 228-01 Academic Freedom.

Chapter 2

Authority

2–1. Title 10 USC 7453(a) authorizes the USMA Superintendent to confer the degree of bachelor of science upon graduates. Further AR 10-87, paragraph 21-2b(3) (dated 11 December 2017) and AR 150-1 paragraphs 2-1 and 11-4 (dated 12 January 2021) require that USMA establish and maintain formal accreditation through the Middle States Commission on Higher Education (MSCHE). *MSCHE Standards for Accreditation & Requirements of Affiliation 13th ed.* (2015), Standard II “Ethics & Integrity,” Criterion 1 requires “a commitment to academic freedom, intellectual freedom, freedom of expression, and respect for intellectual property rights” as a condition of USMA’s mandated accreditation.

2–2. Academic freedom exists to promote the common good in a manner consistent with the capacities and needs of educational communities. While academic freedom protects the individual from retaliation, it is neither an absolute nor a personal right. This regulation is non-punitive.

Chapter 3

References

3–1. Higher Education Documents

a. American Association of University Professors (AAUP), 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments (26 Oct 2006),
<https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>

b. Association of American Colleges and Universities (AACU), Statement of the Board of Directors, “Academic Freedom and Education Responsibilities” (6 Jan 2006),
https://www.aacu.org/about/statements/academic_freedom.cfm

c. Chicago Principles: Report of the Committee on Freedom of Expression at the University of Chicago, <https://freeexpression.uchicago.edu> (retrieved 8 January 2023)

3–2. USMA Documents

a. USMA Local Interpretation Regarding the Relation of USMA Academic Freedom Policy and Public Affairs Policy and Security Reviews (8 January 2016)

b. USMA Regulation 150-2 Civilian Faculty Career Model (1 July 2020)

- c. USMA Regulation 150-3 Procedures for Awarding Academic Titles and Tenure (24 February 2022)
 - d. USMA Regulation 150-5 Broadening Programs (1 July 2020)
 - e. USMA Regulation 150-6 Academy Research (1 July 2020)
 - f. USMA Regulation 70-25 The Human Research Protection Program (HRPP) (4 December 2019)
 - g. USMA Memorandum Policy 360-1 Media Engagement, Official Speech and Manuscript Clearance (20 September 2019)

3–3. Army and Department of Defense Documents and Federal Law

- a. Army Regulation 15-6 Procedures for Administrative Investigations and Boards of Officers (1 April 2016)
 - b. Army Regulation 350-1 Army Training and Leader Development (10 December 2017)
 - c. Army Regulation 360-1 The Army Public Affairs Program (8 November 2020)
 - d. Army Mediation Handbook (2015)
 - e. DoD 5500.7-R Joint Ethics Regulation (30 August 1993)
 - f. DoDI 1344.10 Political Activities by Members of the Armed Forces (19 February 2008)
 - g. DoDI 5230.09 Change 1 Clearance of DoD Information for Public Release (9 February 2022)
 - h. DoDI 5230.27 Change 2 Presentation of DoD-Related Scientific and Technical Papers at Meetings (10/15/2018)
 - i. 5 U.S.C. 7321-7326 Hatch Act

Chapter 4

Definitions

4–1. AFAC: Academic Freedom Advisory Committee

4–2. Business days: For the purpose of administrative timelines in this regulation, business days should be understood to mean weekdays other than federal holidays, official training holidays, or days during Thanksgiving, winter, and spring breaks.

4–3. USMA librarian: USMA librarians are employees of the USMA Library employed in the Office of Personnel Management 1410 Librarian or 1420 Archivist series.

4–4. Personnel with standing: Credentialed USMA faculty members, as defined in USMA Regulation 150-3, and USMA librarians have standing to petition the AFAC for redress for alleged abridgement or violation of their academic freedom. While Cadets have academic freedom, they do not have standing to petition the AFAC for redress.

Chapter 5

Vision for Academic Freedom at USMA

5–1. Academic freedom is more than merely a professional courtesy. The Academy is a critical source of intellectual capital within the U.S. Army and the Nation. National leaders and members of the broader security community routinely turn to USMA for bold and innovative thinking

on the complex, dynamic security, ethical, cultural, and other challenges we face. Faculty members and Cadets have an obligation to engage in the study and public discussion of contentious subjects and to challenge conventional wisdom. USMA expects its faculty members to serve as thought-leaders within the Army and the Nation, and academic freedom ensures that they are intellectually and professionally equipped to fill this vital role. Critical thinking and creativity can depend on the willingness to challenge convention and engage in the study and discussion of potentially controversial subject matter. Freedom in teaching, research, and publication is essential if our faculty are to demonstrate the value of these goals to our Cadets and inspire them to pursue these goals in their own careers.

5–2. USMA subscribes to the principles of academic freedom as outlined in the AAUP 1940 Statement of Principles on Academic Freedom and Tenure, inclusive of the 1970 interpretive comments.¹ The preamble to the AAUP 1940 Statement says in part:

The purpose of this statement is to promote public understanding and support of academic freedom and tenure, and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.

5–3. Scope of Academic Freedom: The academic community recognizes that some limitations on "[academic] freedom are necessary to the functioning of the [institution]."² Examples of such normal functions include departmental leaders offering feedback, ensuring teaching is aligned with course objectives, and providing evaluations of faculty based on their observations. As such, academic freedom does not invalidate established processes by which USMA defines and refines its curriculum, selects and supervises its faculty members, or administers its courses. Rather, academic freedom ensures that these processes are not used as a pretext for censorship or the suppression of the free and open discussion of ideas.

5–4. The following statements clarify the scope of academic freedom as it applies at USMA.³

- a. Academic freedom means that both faculty members and Cadets can engage in intellectual debate without fear of censorship or retaliation.
- b. Academic freedom protects faculty members' rights to remain true to their pedagogical philosophy.

¹ American Association of University Professors (AAUP), 1940 Statement of Principles on Academic Freedom and Tenure with 1970 Interpretive Comments (26 Oct 2006)

² Chicago Principles: Report of the Committee on Freedom of Expression at the University of Chicago, (<https://freeexpression.uchicago.edu/>), retrieved 8 January 2023

³ These statements were adapted from the article Defining Academic Freedom by Cary Nelson (<https://www.insidehighered.com/views/2010/12/21/defining-academic-freedom>)

c. Academic freedom protects the rights of faculty members and Cadets to express their views—in speech, writing, and through electronic communication, both on and off post—without fear of institutional sanction, unless the manner of expression violates the UCMJ, the Hatch Act, other federal laws, or applicable Army, Department of Defense, or federal regulations, including those referenced in Chapter 3. However, it does not protect faculty from consequences if those views demonstrate that they are professionally ignorant, incompetent, or dishonest with regard to their discipline or fields of expertise.

d. Academic freedom gives both Cadets and faculty the right to study and do research and to draw what conclusions they find consistent with their research, though it does not prevent others from judging whether their work is valuable and their conclusions sound.

e. Academic freedom protects the content of courses from influence by politicians, administrators, and members of the public on the basis of their political or religious beliefs.

f. Academic freedom gives faculty members and Cadets the right to seek remedy if they believe their academic freedom has been violated.

g. Academic freedom gives faculty members and Cadets the right to challenge one another's views in class and in academic assignments, but not to penalize each other for holding those views.

h. Academic freedom protects a faculty member's authority to grade Cadet work, so long as the grades are not capricious, unjustly punitive, or inflated. Nonetheless, in order to maintain institutional academic standards, Heads of Departments of Instruction approve and may adjust final grades.

i. Academic freedom gives faculty members latitude in deciding how to teach the courses for which they are responsible, subject to alignment of content with course descriptions, higher program objectives, and curricular goals. Faculty teaching multi-instructor courses at USMA may be further limited by the course documents.

j. Academic freedom does not mean faculty members and Cadets can harass, threaten, intimidate, ridicule, or impose their views on each other.

k. Academic freedom does not protect anyone if they break the law, nor does it give anyone the right to ignore applicable regulations.

l. Academic freedom allows faculty members to present criticism of the content or material included in the classes they have been assigned to teach.

m. Academic freedom does not protect gift-funded or reimbursable-funded faculty members from consequences if they refuse to conduct sponsored research that funds their positions.

n. USMA restricts the public release of scholarly works produced by members of the USMA faculty or USMA librarians to the minimum extent permitted under federal law and regulation. When security or policy reviews are required, clearance approval is delegated to the lowest possible level. Academic freedom does not allow faculty members to publicly publish works containing official Department of Defense information or works directed by the Department of Defense or the Army until the works have been cleared for public release.

o. Academic freedom does not allow faculty members to violate the terms of written agreements with external project sponsors or external collaborators.

p. Academic freedom does not protect a faculty member from sanctions for poor performance or misconduct.

q. Libraries provide resources that scholars use to craft arguments and to exercise their academic freedom. Academic freedom protects USMA librarians' efforts to provide scholarly

resources from attempts to censor content, either through removal of existing holdings or the prevention of new acquisitions.

Chapter 6

Principles of Academic Freedom at USMA

6–1. USMA Commitment: USMA’s senior leaders are committed to maintaining an environment that promotes and protects the freedom to inquire, express professional views, teach, and learn. USMA leadership does not permit retaliation against individuals for exercising academic freedom. The Superintendent demonstrates USMA’s commitment to academic freedom and secures USMA’s standing as an accredited institution of higher education through publication of this regulation. All USMA personnel have an obligation to discharge their duties in a manner that avoids abridgement or violation of academic freedom.

6–2. Academic Freedom: In consonance with the AAUP 1940 Statement of Principles on Academic Freedom and Tenure, USMA establishes the following principles:

a. Faculty Research. Faculty are entitled to freedom in academic research and in the publication of the results, but not to the extent that the pursuit of scholarship precludes adequate performance of their other academic duties and requirements. Research for pecuniary return must comply with federal law, the Joint Ethics Regulation, and USMA’s outside employment policies.

b. Faculty Teaching. Faculty are entitled to freedom in the classroom in the discussion of their disciplines and other relevant topics. USMA faculty are accredited professionals in specific fields of expertise (English, History, Math, etc.), but all faculty share in the responsibility to develop leaders of character for the Army officer corps. At USMA, therefore, academic freedom in the classroom includes freedom in discussion of character development topics.

c. Faculty Development. As outlined in USMA Regulation 150-3, Faculty Development is the contribution—formal and informal—to the academic growth of the USMA faculty. Professional mentoring provides the foundation for Faculty Development. Faculty members have the academic freedom to provide developmental feedback. Academic freedom does not prevent faculty members from receiving developmental feedback or professional criticism.

d. Multi-Instructor Courses and Multi-Course Programs. Within multi-instructor courses, the course director is responsible for writing the syllabus and establishing lesson objectives. Course directors are afforded latitude to develop course content that meets course objectives, which are nested within higher program goals. Individual instructors are afforded latitude consistent with teaching that aligns with established course documents, ensuring a consistent experience for cadets in these courses. Instructors also have the academic freedom to propose course revisions. In a similar fashion, Program Directors are responsible for coordinating courses within an academic sequence and aligning courses with program, departmental, and institutional goals. Further, significant changes that require revisions to the Red Book must be approved by the Department Head and follow Curriculum Committee processes.

e. Faculty as Citizens. Faculty are members of a learned profession and are both citizens and representatives of our educational institution. When they communicate as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As educators and scholars, our faculty members should remember that others may judge their profession and our institution by their utterances. They

are also servants of the Nation, whether military or civilian. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, must make every effort to indicate that they are not speaking for the institution, and must comply with federal laws and policies that apply to federal employees.

f. Faculty with Multiple Appointments. USMA faculty members with a concurrent appointment to the faculty of another institution of higher education are responsible for understanding and complying with the academic freedom and other policies of both institutions. USMA respects the exercise of academic freedom by its faculty members in non-USMA contexts; however, USMA's relationship with its faculty members is not bound by the academic freedom policies of other institutions. Faculty members are responsible for complying with USMA's outside employment policies when accepting faculty appointments from other schools.

g. Individuals Beyond the USMA Community. This regulation does not apply to the abridgement or violation of academic freedom by individuals other than those under the authority of the USMA Superintendent and those identified in USMA's institutional accreditation documents as directly responsible for USMA's academic governance.

h. Faculty Views on Policies and Priorities. Faculty have the right to express views on the educational policies and institutional priorities of USMA, subject to their duties to respect colleagues and to avoid misrepresenting the institution.

i. Academic Freedom for Cadets

(1) While the principles of academic freedom apply to Cadets, academic freedom protections afforded by the institution are limited in scope to ensuring them the opportunity to fully participate in the educational aspects of their development.

(2) USMA's broad and well-rounded educational program exposes Cadets, at times, to controversial ideas and images, challenges strongly held beliefs or value systems, or touches on sensitive topics. Instructors should be candid about the existence of differing views on a subject and the limitations of any particular analysis.

(3) It is the purpose of an education to expand one's knowledge and to explore ideas that may be unfamiliar or unusual. Learning is not always comfortable. In the course of their time at USMA, Cadets are likely to encounter ideas, images, or behaviors they do not like or approve of, with which they disagree, or which they find personally offensive. Cadets are expected to approach education with open minds. Academic freedom does not afford Cadets the option to opt out of confronting the undesirable, the unpleasant, or the unfamiliar. However, Cadets should not be compelled to engage with offensive material that serves no legitimate educational purpose.

(4) Academic freedom for Cadets includes the freedom from being subjected to harassment, ridicule, shame, retaliation, or the like for holding beliefs that differ from the instructor or their classmates. Nonetheless, Cadets must recognize that personal beliefs do not justify misconduct or infringement of the academic freedom of others, and that academic freedom does not change practical or legal limitations on the expression of extremist beliefs imposed by their voluntary military service.

(5) Cadets are free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled. A Cadet may be required to apply the methods and assumptions of an academic discipline to present an argument for a conclusion with which the Cadet fundamentally disagrees. However, a Cadet may not be penalized academically or disciplined for respectfully objecting to the assumptions or disagreeing

with the conclusions that follow from them.

j. Execution of Training. There is no expectation of academic freedom while actively engaged in leading Cadet military training experiences. See the definition of education in AR 350-1 Army Training and Leader Development for clarification on how training differs from education.

k. Faculty Details and Staff Assignment. There is no expectation of academic freedom while actively engaged in a detail to work that is outside of the scope of Teaching, Scholarship, Cadet Development, Faculty Development, or Professional Service. Faculty members formally assigned to staff roles do not have an expectation of academic freedom in their staff work. When formally detailed to outside organizations, USMA personnel should coordinate expectations with respect to academic freedom with the gaining organization at the beginning of the detail.

l. USMA Librarians. When USMA librarians directly participate in the creation of original scholarly or curricular material, they have academic freedom within the scope of their scholarly or curricular duties. Additionally, within the scope of available financial resources and the USMA Library's broad collection development parameters, USMA librarians have the academic freedom to assist Cadets, faculty, and staff in gaining access to the scholarly resources they seek.

m. Appointments Split Between Faculty or Librarian and Other Duties. There is no expectation of academic freedom in non-faculty or non-librarian duties for USMA faculty members or USMA librarians who have less than full time faculty or librarian appointments. When non-faculty or non-librarian duties include the conduct of research, any limitations on academic freedom with respect to the research activities must be established at the inception of each research project.

n. Non-Faculty Researchers. Non-faculty USMA personnel who have duties as researchers and are assigned to particular projects are not entitled to the same broad latitude as USMA faculty in determining the scope and direction of their projects. Expectations of non-faculty researchers to be free of institutional interference and to freely publish or openly discuss the results of research should be established at the inception of each research project. Requirements of external sponsors and protection of the integrity of research conducted by non-faculty researchers should be taken into account when establishing these expectations.

6–3. Protection of academic freedom is essential for USMA to achieve its mission to educate, train, and inspire Cadets. All members of USMA have a stake in promoting and protecting academic freedom. Although the chain of command is primarily responsible for upholding the principles of academic freedom, all members of the USMA community are responsible for maintaining an environment in which academic freedom can flourish.

Chapter 7

Faculty Appointments and Academic Promotions

7–1. The terms of civilian faculty appointments and continued service on the faculty are described in USMA Regulation 150-2 and references therein. The terms of military faculty appointments and continued service on the faculty are described in DA PAM 600-3, AR 150-1, and other relevant laws and regulations. The standards for appointment and promotion for the various academic ranks for both civilian and military faculty members are described in USMA

Regulation 150-3.

7–2. Non-renewal at the end of a term-nonrenewing appointment may not be used as a basis for a petition to the Academic Freedom Advisory Committee under the provisions of this policy.

7–3. A faculty member who is entitled to a hearing under USMA Reg 150-2 Civilian Faculty Career Model is not entitled to a separate or subsequent hearing under this regulation. If a faculty member who is subject to such a proceeding also has an active academic freedom petition or brings an academic freedom petition before the AFAC, the hearing panel established under USMA Reg 150-2 will make a recommendation to the deciding authority identified under USMA Reg 150-2 as to whether to suspend the termination or non-renewal proceeding and allow the consideration of the petition by the AFAC. The deciding authority will make the final determination. If necessary, the proceeding under USMA Regulation 150-2 may resume at the conclusion of the consideration of the petition by the AFAC.

7–4. Academic promotion recommendations at USMA beyond the rank of Assistant Professor are only made by the Credentials and Promotions Committee. The committee makes these recommendations on the basis of achievement over a period of years in the faculty domains as defined in USMA Reg 150-3. It is incumbent on faculty members pursuing academic promotion to identify and address academic freedom issues that they believe are adversely affecting their progress towards academic promotion as soon as the issues become apparent.

7–5. Faculty members who believe that their prospects for timely academic promotion have been harmed by an abridgement or violation of academic freedom should submit their promotion application according to the normal timelines established in USMA Reg 150-3. Processes for the protection of academic freedom and the academic promotion process may run concurrently, with the exception of the academic promotion appeals process in the case that the appellant claims the denial of academic promotion was a result of an abridgement or violation of academic freedom. In this case, the academic freedom processes will occur prior to consideration of the academic promotion appeal.

Chapter 8

The Academic Freedom Advisory Committee

8–1. The AFAC is an elected, representative governance body chartered by the Academic Board and charged with promoting academic freedom at USMA, educating the community about USMA's institutional academic freedom standards, and reviewing petitions relating to academic freedom. The AFAC is composed of regular, voting representatives (members) from the directorate of the Dean (one from each of the thirteen Academic Departments and one from the USMA Library) and from the United States Corps of Cadets (one from the Department of Military Instruction, one from the Department of Physical Education, and one from the Simon Center for the Professional Military Ethic). The AFAC may choose to elect non-voting, at-large representatives from constituencies detailed in the AFAC Charter.

8–2. Members of the AFAC are elected by a vote of the faculty or USMA librarians from their respective organizations for terms of three years. All organization faculty and USMA librarians

are eligible to vote. Faculty members assigned to organizations without formal AFAC representation, such as those assigned to the Character Integration Advisory Group, may vote with the department in which they are appointed. Selection procedures for the AFAC will encourage a diversity of backgrounds and experience among AFAC members. At least six members should be drawn from each of the military and civilian components of the faculty. Except for the representative from the library, members will be Associate Professors or Professors of Discipline; exceptions may be granted to faculty from organizations having no Associate Professors or Professors of Discipline. The AFAC member representing the USMA Library will be a full-time librarian in the grade of GS-11 or higher. Members of the General Committee are not eligible for election to the AFAC as voting members. The chair of the AFAC is elected by the members of the AFAC and serves for three years. The chair rotates between civilian and military faculty members.

8–3. If a regular election results in the AFAC being composed of fewer than the minimum six civilians or the minimum six military members, then the AFAC chair will coordinate with the Dean and the Heads of the Departments from which the elections occurred to identify one or more departments that should execute a second round of elections in order to identify one or more different representatives so as to ensure the AFAC's minimum composition levels are sustained. For example, consider a situation where the current AFAC composition consists of seventeen members, six of whom are civilian and eleven of whom are military, and the terms for six of the seventeen members are set to expire in the current calendar year. The affected departments hold elections, and as a result of the elections the composition of the AFAC would change to four civilians and thirteen military. Then the AFAC chair will coordinate with the Dean and the heads of the six affected departments to identify at least two department to re-execute an internal election while restricting internal candidates to civilians so as to ensure that the minimum composition requirements of the AFAC are sustained. The AFAC will report annually to the Academic Board on its composition and the expiration dates of the terms of current members.

8–4. As USMA's standing faculty body responsible for advising the chain of command in discharging its duties to promote and protect academic freedom at USMA, the AFAC is charged with a major role in ensuring that the institutional leadership is sensitive to academic freedom when revising policies. Staffing of all revisions to USMA policies and regulations related to academic freedom will include the AFAC, which will provide the Vice Dean for Academic Affairs (VDAA) with an assessment of any language that threatens academic freedom and will advocate for revision or removal of any such language.

Chapter 9

Processes for the Protection of Academic Freedom

9–1. USMA personnel and their chains of command must make good-faith efforts to resolve academic freedom disputes at the lowest possible level.

9–2. USMA personnel with questions about the nature of academic freedom as it relates to a potential course of action (e.g., publication, presentation, etc.) may request an advisory opinion from the AFAC.

9–3. USMA personnel who believe their academic freedom has been abridged or violated may seek assistance from the Vice Dean for Academic Affairs.

9–4. Cadets who believe their academic freedom has been abridged or violated should first address the matter with their instructor. If they are unable to resolve their concerns at the instructor level, they may raise the issue with their Cadet chain of command, their tactical officer, their instructor's chain of command, or the Vice Dean for Academic Affairs.

9–5. For personnel with standing, a formal process to petition the AFAC seeking redress for an abridgement or violation of academic freedom is described below in sections 10 through 13.

9–6. Utilization of any of the academic freedom protection processes in no way limits the availability of the official grievance procedures available to government employees. The official grievance procedures available to government employees include, but are not limited to, Equal Opportunity, Equal Employment Opportunity, and Inspector General grievance procedures. The processes outlined herein are distinct and separate from those procedures.

Chapter 10

Petitioning for Redress

10–1. Petition Submission:

a. USMA faculty members and USMA librarians who believe that they have been harmed by an unjust abridgement or violation of academic freedom may petition for redress in accordance with the template in Appendix A. The petition is submitted in writing, via email or in hard copy, to the AFAC Chair through the VDAA.

b. The VDAA shall transmit the petition to the AFAC chair within three business days. Within one business day of receiving the petition, the AFAC chair shall acknowledge receipt of the petition to the petitioner, and ensure that a courtesy copy of the petition has been provided to any respondent named in the petition. Should the petition contain information subject to mandatory reporting, the VDAA is responsible for making the required reports. If the respondent is an organization, any required notifications will be made to the organization's senior member, who may respond personally or designate a subordinate to respond on behalf of the organization.

c. This regulation provides for the following series of formal processes for adjudicating an academic freedom petition for redress: the verification of petition sufficiency, the fact-finding inquiry, the mediation process, the hearing process, the decision, and the appeal. If at any point during these processes the requested redress is granted, a resolution agreement is reached, the petitioner withdraws, or the request for redress becomes moot the matter is closed to further formal adjudication. When a matter is closed in one of these ways, the VDAA will prepare a memorandum for record summarizing the outcome. The closing of the matter does not preclude the AFAC from studying the issues raised and making subsequent recommendations through normal governance procedures.

d. Should the petitioner or respondent leave federal service, the AFAC will consult with SJA about the appropriateness of continuing the adjudication of the petition. When the petition has been filed in a timely manner and doing so is in the interest of promoting a culture of academic freedom and not otherwise prohibited by law or regulation, the Dean or Super-

intendent may extend the not-to-exceed date of a term employee to allow sufficient time for adjudication of the petition for redress.

e. In the event that personnel with responsibilities for adjudicating a petition for redress under this regulation are unavailable, acting officials may be designated to expedite the processes.

10–2. Petition Sufficiency: Within five business days of the receipt of a petition, the AFAC shall verify whether the petition is sufficient for further consideration. AFAC members with a conflict of interest are recused from participating in the petition sufficiency verification process. Verification is decided by a majority vote of the participating AFAC members. A verification of sufficiency of a petition is not an endorsement or validation of the merits of the allegation. Petitions must meet the following requirements in order to be considered sufficient:

a. The petitioner has standing as a member of the USMA faculty or as a USMA librarian alleging an abridgement or violation of academic freedom. The burden of establishing standing is on the petitioner.

b. The petition presents a prima facie explanation of why the petitioner believes an abridgement or violation of academic freedom has occurred.

c. The petition identifies a respondent whom the petitioner asserts is responsible for the abridgement or violation of academic freedom. The respondent may be a person, persons or organization within USMA or West Point.

d. The petition makes a credible claim of personal harm arising from the alleged abridgement or violation of academic freedom. The harm may include retaliation through adverse personnel action, denial of professional opportunity, or the like. A claim of harm is credible when it is supported by logical chain of causal reasoning that connects the alleged abridgement or violation of academic freedom to the claimed harm.

e. The petition explains what steps the petitioner has taken to resolve the issue at the lowest possible level.

f. The petition requests specific redress such as a change in or exception to policy, reversal of an administrative action, or a change in culture or pattern of treatment. While a petition may ask for USMA to seek an exception to policy from an external authority, a petitioner may not seek redress that is not within USMA's authority to grant. Petitioners may not seek redress in the form of adverse administrative or disciplinary action or award of damages.

g. Any allegation of misconduct by the respondent raised in the petition has been reported through appropriate administrative or judicial procedures.

10–3. Within one business day of the verification, petitions found to be insufficient by the AFAC are returned to the petitioner with a written explanation of the insufficiency. This explanation will specifically address the verification of the petitioner's standing and any other insufficiency. Courtesy copies of the written explanation are provided to the respondent and VDAA. The petitioner may file a new petition on the same matter to rectify any insufficiency identified by the AFAC.

10–4. If the petition is found to be sufficient by the AFAC, written notification is made to the petitioner, the respondent and the VDAA within one business day of the verification.

10–5. If allegations of misconduct have been raised in the petition, academic freedom proceedings may be delayed when doing so is necessary to allow any misconduct proceedings the opportunity to run their courses or to protect the right to due process.

10–6. At any time after a petition is found to be sufficient, the Dean or VDAA, the petitioner, and the respondent may meet by mutual consent to discuss potential resolutions of the academic freedom dispute.

Chapter 11

Fact-Finding Inquiry

11–1. On notification of a petition for redress that has been found to be sufficient by the AFAC, the VDAA coordinates with the Dean to initiate a fact-finding inquiry. As provided for in section 1-1 of Army Regulation 15-6 Procedures for Administrative Investigations and Boards of Officers, the fact-finding inquiry uses the preliminary inquiry, described in AR 15-6 Chapter 4, as a general guide for the investigation, along with the following considerations:

a. The purpose of the inquiry is for an impartial investigating officer to establish a body of facts surrounding the petitioner's claims. The fact-finding inquiry does not address whether or not the facts of the case constitute an abridgement or violation of academic freedom, nor does the investigating officer make recommendations with respect to the requested redress.

b. The respondent identified by the petitioner is not to be understood as the subject of the inquiry, and the term *respondent* used in AR 15-6 is not to be understood as synonymous with the same term used in this regulation.

c. Evidence that a member of the USMA community unjustly abridged or violated academic freedom does not, in and of itself, constitute reportable adverse information under AR 15-6.

d. The Dean is normally the appointing and approval authority for the fact-finding inquiry, even if the Dean would be formally disqualified under AR 15-6. If the Dean believes it is necessary, the Dean may delegate appointing and approval authority responsibility for the inquiry to a disinterested Head of a Department of Instruction.

e. The investigating officer should be a disinterested faculty member in the grade of O5 or higher, or a civilian faculty member in the academic rank of Associate Professor or higher. The investigating officer need not be senior to everyone involved in the case. The investigating officer may not subsequently serve as a mediator or hearing panel member for the matter in question.

f. The investigating officer will interview both the petitioner and the respondent, and should take their recommendations into consideration when deciding who else to interview.

g. The primary purpose of the inquiry report is to facilitate the mediation and hearing process. As such, the approving authority may request additional information or recommend corrections, but may not make or direct material changes to the body of the inquiry report.

h. The SJA will conduct a legal review of the draft inquiry report. SJA will minimally redact confidential information for which the parties do not have a need to know and provide guidance on proper protection and handling of any sensitive information that remains unredacted. The draft inquiry report is then provided to the petitioner, respondent, the VDAA and the AFAC chair.

i. Within five business days of receiving the draft inquiry report, the petitioner, the respondent, the VDAA and the AFAC chair may raise concerns about any factual errors in the draft. These concerns will be noted in the final report and the investigating officer may make corrections to the body of the report where appropriate. The final report is then released to the petitioner, respondent, and all parties responsible for administering the mediation and hearing processes.

j. Diligent effort shall be made by all parties to complete the inquiry within twenty business days of notification of a sufficient petition by the AFAC.

11–2. Any suspicion of actionable misconduct brought to light by the fact-finding inquiry may be referred to the appropriate authorities for separate adjudication. Academic freedom processes are not an appropriate forum for adjudication of allegations of misconduct.

11–3. Should the academic freedom dispute proceed to mediation or a hearing, the investigating officer may be called upon to elaborate on the contents of the report. In adjudicating the dispute, the fact-finding inquiry report will be considered in conjunction with any other witness statements introduced by the petitioner and respondent.

Chapter 12

Mandatory, Non-binding Mediation

12–1. If the petitioner wishes to continue the process following the fact-finding inquiry, the petitioner and respondent shall participate in a mandatory, non-binding mediation to seek a mutually agreeable resolution of the academic freedom dispute. Where otherwise consistent with this regulation, the mediation process will be guided by the Army Mediation Handbook. During the mediation, at a minimum, the petitioner will explain the allegation and requested redress, and will listen to the respondent's response, if any. If the respondent is unwilling to respond, the mediators may declare an impasse.

12–2. The mediation will be conducted by a team of two trained mediators who are appointed by the person acting as the approving authority for the preliminary inquiry. When practical, one of the mediators should be selected from appropriately trained members of the AFAC. The mediators may not subsequently serve as hearing panel members for the matter in question.

12–3. Mediator training will be at the level of the U.S. Army Dispute Resolution Program's Basic Mediation Course or equivalent. Mediators act in an official capacity as federal employees. Any necessary mediator travel expenses will be paid from the Dean's operating budget.

12–4. Both petitioner and respondent are permitted to select an advisor from the personnel with standing who accompanies them in the mediation session. These advisors cannot act as attorney to either party.

12–5. All parties will endeavor to complete the mediation process within fifteen business days of the completion of the fact-finding inquiry.

12–6. When a solution is discovered, the mediators will immediately write a brief memorandum for record, wherein the petitioner and respondent agree to the memorandum language and indicate agreement via signature. This signed, private memorandum will be kept by the mediators for a period of at least one year, and digital copies will be shared with the petitioner, the respondent, the AFAC chair, and the Dean. When the mediation results in an impasse, the petitioner may drop the case or move to the hearing process described in the next section of this regulation.

Chapter 13

The Hearing Process

13–1. The Hearing Panel:

a. The hearing panel is an ad hoc administrative body that reports to the Dean. It consists of all members of the AFAC who are not recused due to a conflict of interest, service as an investigating officer or mediator, or the need to appear as a witness. Additionally, an SJA advisor shall sit as a non-voting member of the panel.

b. The panel will select a hearing chair, who need not be the AFAC Chair. The hearing chair is responsible for ensuring that the hearing is conducted in an efficient and professional manner, in accord with this regulation, and with the rights of all parties respected and acknowledged.

c. Prior to the start of the hearing, if the petitioner or respondent shows reasonable cause for removal of a panel member from the proceedings, by a majority vote the panel may exclude that member from deliberating and voting on the petition.

d. All panel members shall be entitled to hear the petition, receive any evidence, be present and ask questions at the hearing, and vote on opinions. A quorum shall consist of no fewer than six and at least half of the voting members of the hearing panel. The hearing chair will write the panel's final report or designate that task to a panel member. Panel members may dissent, and/or otherwise attach their own opinions as appendices to the report.

13–2. Hearing Preparations:

a. When the mediation process has resulted in an impasse and the petitioner has elected to proceed to a hearing, the petitioner and respondent shall have five business days to gather final written witness statements relevant to the impending hearing. Final statements may be used to clarify and organize information in support of the parties' hearing presentations, but may not be used to introduce new evidence or lines of inquiry. In case of a dispute, the investigating officer who conducted the preliminary inquiry will decide whether final witness statements introduce new evidence or lines of inquiry.

b. The petitioner and respondent shall provide these statements (together with a comprehensive list of witnesses) to the hearing chair by the end of this five-day period.

c. The hearing chair shall disseminate the report of the fact-finding inquiry and the additional statements and evidence so that all parties and the hearing panel have at least five business days to review them before the hearing begins.

13–3. Hearing Scheduling: The hearing panel will be flexible in scheduling so as to ensure that the petitioner and respondent can attend the hearing. If the petitioner subsequently refuses to participate in or refuses to attend the hearing, the petition will be dismissed and the

hearing will be closed. If the respondent or potential witnesses refuse to participate in or attend the hearing, the hearing panel shall proceed at its discretion. Whenever a hearing is closed prior to deliberations by the panel, the hearing chair will prepare a memorandum for record summarizing the reasons and provide it to the parties and the VDAA.

13–4. Hearing Attendance: Attendance at the hearing shall be open to the members of the panel, the petitioner and respondent, those called to assist the petitioner, respondent or hearing panel, and, with the exception of potential witnesses, all personnel with standing as defined in section 4d, including the Dean and members of the General Committee. Others may attend at the discretion of the hearing chair and with the consent of the respondent.

13–5. Recordings and Transcripts: The hearing chair will coordinate for both an audio recording and a written transcript of the proceedings taken by a stenographer in attendance at the hearing. The sole purpose of the recording is to assist in settling disputes about the accuracy of the transcript. The recording will be destroyed when the parties have accepted the transcript without dispute. Expenses associated with the production of recordings or transcripts will be paid from the Dean's operating budget.

13–6. Standard of Evidence: The goal of the hearing is to bring the best information before the panel to help it formulate its opinion. The work of the panel may have to proceed on the basis of incomplete or disputed evidence. Once the hearing has begun, it is incumbent upon both the petitioner and the respondent to present evidence in support of their respective positions concerning the alleged academic freedom violation. The panel shall consider disputed statements of fact on the basis of a preponderance of the evidence. For purposes of the hearing, undisputed statements will generally be taken as fact, though the panel may take the credibility of the statements into account.

13–7. Representation: The petitioner and the respondent have the right to solicit expert legal advice, but persons acting as attorney to either party do not have standing to address the panel. During the hearing, the petitioner and respondent each may be assisted by one advisor. The advisor may not act as attorney to the assisted party.

13–8. Opening Statements: Before any witnesses are called, the petitioner and the respondent shall each have up to thirty uninterrupted minutes to make oral or written presentations. The petitioner presents first. Presentations may include reference to written witness statements or other evidence previously submitted to the AFAC chair and distributed to all parties. Unless permitted by the chair, both parties shall refrain from introducing substantive materials not submitted at least five business days prior to the start of the hearing. The petitioner and the respondent may be in attendance at the hearing during the other's presentation.

13–9. Questioning the Petitioner and Respondent: After the petitioner and the respondent present their opening statements, they may ask questions of one another at the hearing. Panel members may also question the petitioner and respondent.

13–10. Witnesses: The petitioner and respondent may request that witnesses appear before the panel; however, the panel will determine the need for any particular witness. Witnesses,

if any, will respond, one at a time, to inquiries by the petitioner, the respondent, or the panel. Witnesses will be present at the hearing only while being questioned. The panel may request witnesses previously heard to return for further inquiry.

13–11. Deliberations and Opinions:

a. Opinions of the panel are limited in scope to the alleged abridgement or violation of academic freedom and resulting harm. The panel does not make recommendations with respect to the requested redress. Upon the close of the question and answer period, the panel shall immediately meet in closed session. Anytime after all members of the hearing panel have had the opportunity to speak, any panel member may move that discussion continue or that a vote be taken as to whether clear and convincing evidence shows that an abridgement or violation of academic freedom occurred. If a majority of the hearing panel votes that an abridgement or violation of academic freedom occurred, the hearing panel will subsequently discuss and vote on the question of whether clear and convincing evidence demonstrates that the alleged harm was significantly a result of the academic freedom abridgement or violation. Each vote, "yes" or "no" shall be cast anonymously and recorded by the hearing chair. All hearing panel members in attendance at the deliberations must vote. Any response other than a "yes" vote by a panel member (such as "abstain") will be recorded as a "no" vote. Opinions of the panel that substantiate the claims of the petitioner must be supported by a majority vote of the members.

b. The result and tally of the anonymous votes of the hearing panel shall be represented in the hearing report. The report shall be transmitted via e-mail to the petitioner, respondent, Dean, and the General Committee Secretary along with copies of all materials submitted by the petitioner and respondent within five business days from the conclusion of the hearing.

13–12. Post-Hearing Procedures: From the conclusion of the hearing until final disposition of the request for redress, the petitioner and the respondent, personally or through intermediaries, shall refrain from ex parte communications with the members of the hearing panel, members of the General Committee, the Dean, or the Superintendent concerning the academic freedom dispute. During this time, the following will occur:

a. The Dean will convene and chair an ad hoc decision board consisting of all members of the General Committee who are not recused from considering the academic freedom case. Decision board members who are not available to participate will not be replaced with alternate board members. The decision board will review the materials provided by the hearing panel, may meet with hearing chair, and within fifteen business days of receipt of the hearing materials decide whether to accept the opinions of the hearing panel as to whether an abridgement or violation of academic freedom occurred and, if so, whether the alleged harm was significantly a result of the academic freedom abridgement or violation. The board's decisions will be by majority vote on motions offered by the Dean and will be communicated in writing to all parties within one business day.

b. *Remedy.* Within ten business days and taking into consideration the hearing materials, the hearing panel opinion, and results of the decision board, the Dean will determine the remedy to address any substantiated harm to the petitioner arising from an abridgement or violation of academic freedom. In reaching a determination, the Dean may meet with the hearing chair, and may seek advice from the office of the SJA, the Dean's senior staff, members of the decision board, and the leader of any affected USMA directorate. The Dean's determi-

nation will be provided in writing to the petitioner, respondent, the hearing chair, the General Committee Secretary, and affected directorates.

c. Appeal.

(1) Within five business days of receipt of the Dean's determination, the petitioner, the respondent, or the leader of any affected directorate may appeal the decision to the Superintendent by submitting a memorandum through the Dean, with copies furnished to all parties to the dispute and heads of affected directorates. Within five business days of receipt of the appeal, any recipient may submit a written rebuttal through the Dean with copies to the appellant and other recipients of the appeal.

(2) Following the five-day rebuttal period, the Dean will provide the case materials, the appeal, and the rebuttals to the Superintendent. Barring extraordinary circumstances, the Superintendent will rule on the appeal within ten business days. The Superintendent's decision on the appeal is final.

(3) The Superintendent's ruling will be recorded in an MFR with copies provided to the petitioner, respondent, the hearing chair, the leader of any affected USMA directorate, and the Dean.

d. Record Keeping.

(1) Within ten business days of the Dean's determination, or in case of appeal the Superintendent's ruling, the hearing chair will transmit a copy of the petition, hearing materials, opinions, decisions, determinations, and rulings on any appeal to the USMA Archives for preservation.

(2) USMA shall retain all hearing records as active agency records of the Academic Freedom Advisory Committee, available for release via Freedom of Information Act (FOIA) request, for a period of five years. Individuals wishing to review these records should contact the Freedom of Information/Privacy Act Officer at usarmy.westpoint.id-training.mbx.foia-pa@mail.mil for assistance. Should these materials become the subject of a FOIA request, any Personally Identifiable Information, Controlled Unclassified Information, or other protected information must be redacted prior to public release.

(3) After five years, the hearing records will be transferred to the National Archives and Records Administration. The USMA Archives is responsible for establishing the necessary Records Retention Schedule.

13–13. Unforeseen Circumstances and Contingencies: Insofar as it is not possible to foresee every contingency that might arise in the course of the hearing, the hearing panel shall determine a course of action by a simple majority.

13–14. Recusal of the Superintendent, Dean, or Vice Dean for Academic Affairs from the Hearing, Decision, or Appeal Processes:

a. Promotion of a culture of academic freedom at USMA is ultimately the responsibility of the Superintendent. As such, recusal of the Superintendent, Dean, or Vice Dean for Academic Affairs from any of the responsibilities in this regulation is at the sole discretion of the Superintendent even when one of these individuals is otherwise involved in the dispute. Barring extraordinary circumstances, as determined by the Superintendent, the responsibilities of recused individuals will be assigned to USMA personnel.

b. In the case of a recusal of the Dean or Superintendent, the Superintendent will determine who assumes the responsibility and delegate any authorities necessary to fill the role.

In the case of a recusal of the Vice Dean for Academic Affairs, the Dean will determine who assumes the responsibility and delegate any authorities necessary to fill the role.

Chapter 14

Assessment: The AFAC is responsible for periodic assessment of Academic Freedom and Academic Freedom Policy at USMA.



DEPARTMENT OF THE ARMY
UNITED STATES MILITARY ACADEMY
WEST POINT, NEW YORK 10996-1726

MADN-XXXX

15 March 2021

MEMORANDUM THRU Vice Dean for Academic Affairs, USMA

FOR Chair of Academic Freedom Advisory Committee

SUBJECT: Petition to the Academic Freedom Advisory Committee regarding an Alleged Violation of Academic Freedom

1. The purpose of this memorandum is to alert the Academic Freedom Advisory Committee (AFAC) regarding an alleged violation or abridgment to Academic Freedom and to allow the AFAC to verify the petition sufficiency in accordance with the criteria set forth in USMA Regulation 150-4 (Academic Freedom at the United States Military Academy).
2. In this section, describe your standing to petition. The burden is on the petitioner to demonstrate standing to petition under USMA Reg 150-4. Petitions that fail to demonstrate that the petitioner has standing will not be further reviewed.
3. In this section, present a prima facia explanation of why you believe an abridgment or violation of academic freedom has occurred.
4. In this section, identify the respondent whom you assert is responsible for the abridgement or violation of academic freedom. The respondent may be a person or organization within USMA or West Point.
5. In this section, outline the credible claim of personal or institutional harm arising from the alleged abridgement or violation of academic freedom.
6. In this section explain your good-faith effort to resolve the dispute at the lowest possible level.
7. In this section, address what you are requesting as specific, non-punitive redress (i.e., a change in or exception to policy, reversal of an administrative action, a specific action to promote the culture of academic freedom, or a change in culture or pattern of treatment).
8. The petition may not allege misconduct that has not already been reported through appropriate administrative or judicial procedures. If misconduct proceedings are underway, explain it in this section. If not, then this section may be deleted.

MADN-XXXX

SUBJECT: Petition to the Academic Freedom Advisory Committee regarding an Alleged Violation of Academic Freedom

9. POC for this memorandum is the undersigned at **XXXXXXXXXXXXXX**.

YOUR NAME

YOUR SIGNATURE BLOCK INFO