

ARTICLE 26. ACADEMIC FREEDOM

26A. Essential Academic Freedom Rights

The District will not violate the State or Federal Constitutional rights of bargaining unit members as a condition of employment with the District. This prohibition against violation of Constitutional rights shall be equally applicable to private lives of unit members, the public lives of unit members, and the professional lives of unit members.

26A.1 Accreditation.

No work related to fulfilling the accreditation requirements of the institution shall impinge upon a unit member's individual Academic Freedom rights.

26B. Communications Media

The District provides various electronic media, including telephones and laptop and/or desktop computers for use by faculty. Faculty members are encouraged to use these media in their work to communicate with students, with each other and with the administration, and to improve their access to research and instructional tools. It is understood that the District may, through Shared Governance, enact policies to regulate use of such devices, including the development and maintenance of web sites that support, or otherwise pertain to, District services and instructional programs. It is not the purpose of this Agreement to dictate how such policies are enacted; however, insofar as such policies apply to members of this bargaining unit, the District and Faculty Association agree to the following:

26B.1 General Operating Parameters

- a. **Restrictions.** District email or computer services may not be used for unlawful activities, commercial purposes not under the auspices of the District, or for personal financial gain.
- b. **Intellectual Property.** Faculty intellectual property rights are contained in [Article 30](#).
- c. **Copyright observance.** Computer software that is protected by copyright is not to be copied from, into, or through the use District computers, except in the case of copies (e.g., backup copies) as permitted by law, or by the contract with the owner of the copyright.

- d. **Personal use.** Unit members may use District telephones, email, and other electronic resources for incidental personal purposes provided that, in addition to following the provisions herein, such use does not directly interfere with the normal performance of duties, or with the normal operation of District facilities.
- e. **Privacy.** District shall afford privacy protections in email and computer use that are comparable to those traditionally observed for paper mail as well as in-person and telephone communications. Except as noted in [Section 26B.3](#) below, the District shall not inspect, monitor, or disclose email or other computer files without the holder's consent.
 - (1) Notwithstanding, users should be advised that electronic communications may be less private than they anticipate. The District cannot routinely protect users confidentiality in some situations.
 - (2) Some email or computer use, when created or stored on District equipment, may constitute a District record subject to disclosure under the California Public Records Act or other laws, or as a result of litigation. Users of District computer resources should be aware that such situations or laws may not permit the confidentiality of email in some circumstances. For example, an Academic Senate may be considered a "governmental body," and as such certain documents created by a senator may be subject to disclosure under the California Public Records Act, and that might include information included within or attached to email.

26B.2 Academic Freedom With Regard to Communications

The District cannot and does not wish to be the arbiter of contents of documents in any physical or electronic media; nor shall the District protect users from receiving transmitted or physically conveyed language or images which they may find offensive or objectionable in nature or content, regardless of whether such documents originated within the District, or without. Unit members are strongly encouraged to use the same personal and professional courtesies and considerations in such communications as they would with regards to face-to-face conversation.

- a. **Implications of Academic Freedom and the Internet.** The following affirmations of Academic Freedom rights are suggested by the ever increasing use of web sites and the Internet in the professional activities of unit members. It is understood that Academic Freedom rights apply in many ways that are not exemplified herein:

- (1) **Presentation of Web Sites.** In principle, District policy, including regulation of web-site performance parameters such as appearance, organization, and navigability, should not infringe upon a unit member's professional judgment and Academic Freedom rights as he or she seeks to develop and/or update web pages that deliver course or program-specific content in a manner that most efficaciously satisfies the needs of the course or program.
 - (2) **Controversial Content.** The District and faculty recognize that the Internet offers exceptional access to a wide range of materials, and that some of these materials may be offensive, controversial, even obscene or pornographic. Further, it is understood that access to such materials may be related to a legitimate pedagogical inquiry or course of instruction. The District and the faculty should employ common sense in accessing any such materials, and satisfy themselves that access is appropriate for the situation. Unit members are encouraged to use a disclaimer such as, "For illustrative academic purposes only" where appropriate.
 - (3) **Web Material Housed Outside of District Facilities.** Pursuant to the principles of Academic Freedom, unit members should retain the right to utilize web-based materials that are housed off-site, that students, colleagues and others may access as they progress through, or seek information pertaining to, the unit member's course or program. Web sites that fall under this provision are not subject to regulation or other standards imposed by the colleges or District, except for those listed in Section 26B.2b below.
- b. **Restrictions.** Unit members should not intentionally incorporate the following into materials that support District services and instructional programs:
- (1) copyrighted or licensed materials for which the necessary permissions for use have not been obtained;
 - (2) material for commercial gain unrelated to the college or District;
 - (3) material or speech that is unlawful or illegal, unless it carries the disclaimer, "For illustrative academic purposes only";
 - (4) material that is intended to damage, to interfere with, or place an excessive load on a computer system or network.
- c. **Appearance of Representing the District.** In principle, unit members should not deliberately represent their statements or opinions as being those of the District, or otherwise imply that they are speaking on behalf of the District, unless appropriately authorized (explicitly or

implicitly) to do so. Where appropriate, an explicit disclaimer should be included, unless it is clear from context that the user is not representing the District. An appropriate disclaimer is, “These statements are my own, and not those of the Chabot-Las Positas Community College District.”

26B.3 District Access Without Consent

- a. Definition of Circumstance.** The District shall only permit the inspection, monitoring or disclosure of email or computer usage without the consent of the holder of such email or user of such equipment (1) when required by and consistent with the law; (2) when there is a substantiated reason to believe that violations of law or provisions herein have taken place and the holder or user is the subject of suspicion; or (3) under time-dependent emergency circumstances or critical compelling circumstances.
- b. Substantiated reason** means that reliable evidence indicates the probability that violation of law or provisions herein has occurred, as distinguished from rumor, gossip, speculation or other unreliable evidence.
- c. Time-dependent, emergency circumstances** means where time is of the essence and where there is a high probability that delaying action would almost certainly result in critical compelling circumstances.
- d. Critical compelling circumstances** means that a failure to act may result in significant bodily harm, significant property damage or loss, loss of significant evidence of the violation of law or provisions herein, significant liability to the District or District employees or students.
- e. Authorization and Notification.** Except in emergency circumstances as defined above, such actions as described above must be authorized in advance and in writing by the responsible District official, which shall be the Chancellor or a College President. This authority shall not be further delegated. The District shall make a full and complete written record of the rationale for such access, which shall be provided to the affected unit member and to the Faculty Association within two work days of obtaining access.
- f. Limitation on Scope.** Authorization shall be limited to the least perusal of contents and the least action necessary to resolve the situation. All inspection and/or monitoring pursuant to this Section is limited to the specific computer hardware which the District has a substantiated reason to believe were used in the violations as alleged and described in the written authorization. All inspection and/or monitoring shall be limited to the investigation of the violations as alleged and described.
- g. Timeline.** Monitoring shall be limited to the least amount of time necessary to resolve the situation.
- h. Routine Maintenance Disclaimer.** Users should be aware that during the performance of their duties, Information Technology Services personnel occasionally need to observe certain transactional addressing information to ensure proper functioning of the District’s computer services, including email. Except as provided in this Section, they are not permitted to

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intentionally read the contents of email or other electronically transmitted documents, or to read transactional information where not germane to the foregoing purpose, or to disclose or otherwise use what they have seen.

26D. Academic Freedom Statement.

(See Appendix: [Academic Freedom: Statement](#))