

MEMORANDUM OF UNDERSTANDING
BETWEEN
CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT
AND
CHABOT-LAS POSITAS FACULTY ASSOCIATION

May 8, 2013

I. Proposed revisions to Article title:

Article 26. Academic Freedom and Free Speech.

II. Proposed revisions to Article 26:

26A. Essential Academic and Free Speech Rights

The District and faculty are dedicated to maintaining a climate of freedom of expression and academic freedom, which encourages the sharing and cultivation of a wide variety of viewpoints. Freedom of expression and academic freedom support the parties' shared belief in inquiry, informed debate and the search for truth.

26A.1 Accreditation

No work related to fulfilling the accreditation requirements of the institution shall impinge upon a unit member's individual Academic Freedom or Free Speech 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 any unlawful activities, commercial purposes not under the auspices of the District, or for personal financial gain. This restriction does not include the following:

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Please note: Article # changed
to Article 23.

- (1) Communications announcing or describing a member's publications, presentations or other activities in his or her fields of study, so long as he or she does not solicit sales or violate any applicable conflicts of interest laws;
- (2) Communications announcing nonprofit fundraising activities so long as they are occasional and non-disruptive of the work environment; and
- (3) De minimis communications related to outside commercial activities, so long as they are occasional, non-disruptive and do not violate any applicable conflicts of interest laws.

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

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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. **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, "Restrictions," 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;

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- (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 example of 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.

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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 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.

26C. Academic Freedom Statement.

(See Appendix: Academic Freedom: Statement)

26D. Faculty Free Speech

26D.1 General Principles of Free Speech

Faculty are entitled to free speech protections both in the performance of their professional duties and as private citizens.

As private citizens, outside the performance of their employment duties, the District's faculty shall enjoy the same Constitutional protections and access to District forums as nonemployees exercising their free speech rights on District property.

Employment by the District does not in any way restrict or limit the Federal First Amendment and California Constitutional right to freedom of expression and political activity that faculty enjoy as members of their communities during non-work time. Faculty understand that the degree of Constitutional protection afforded such speech may depend on the forum in which the speech occurs. As such, when speaking as private citizens, faculty enjoy the same rights and are subject to the same narrowly tailored, content-neutral time, place and manner restrictions, designed to serve a significant public interest, as other members of the community.

In the performance of their duties, faculty have the right to speak and write free from viewpoint censorship and shall be afforded the academic freedom protections, and uphold the academic freedom responsibilities, set forth in Article 26C and the appendix thereto.

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As such, the District shall not place any viewpoint-based restrictions on faculty speech.

Faculty shall not be restricted in:

- a. displaying buttons, clothing, insignias or symbols which convey expressive speech, provided such speech is not ~~is~~ obscene or defamatory according to current legal standards;
- b. displaying posters, photographs, art, comics, or similar material in their offices or private work space, immediately outside their offices or work space, on the outside of their office doors or windows, provided such displays are not obscene or libelous according to current legal standards; violate State or Federal law; or state or imply that the display expresses the views of the District.
- c. their speech and associational rights as provided under the California Educational Employment Relations Act (EERA). EERA Deferral shall be reserved for specific contract disputes, and not this or other general statements of EERA rights in the contract.

26D.2 Limitations on Faculty Speech Made in the Performance of Duties

The performance of duties, as used in this Article, includes those duties and responsibilities as set forth in Article 10 of this Agreement.

It is the policy of the District to maximize the opportunity for free discussion and expression while minimizing the potential for substantial disruption of classroom and college/district/campus activities or operations, and interference with the ability of students to obtain an education.

Faculty speech on District property shall be prohibited that is defamatory or obscene according to current legal standards, or which advocates for the use of force or of law violation where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action, or which causes the substantial disruption of classroom or college/district/campus activities or operations.

Nothing in this Article shall prohibit the regulation of hate violence directed at District employees, members of the public, or students in a manner that denies their full participation in the educational process or of discrimination or harassment in violation of District policies or current legal standards, so long as the regulation conforms to the requirements of the First Amendment to the United States Constitution, and of Section 2 of Article 1 of the California Constitution.

26D.3 Faculty Use of District Public Forums and Designated Public Forums

When faculty speak in the performance of their duties, regardless of the forum, they are entitled to the Constitutional right to be free from content-based retribution and

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censorship, as well as the rights afforded to faculty under the principles of academic freedom as described in this Article and in the Academic Freedom Statement referenced in Article 26.C.

When, outside the performance of their employment duties, faculty utilize District public and designated forums to engage in expressive activities they shall be entitled to the same freedoms, and be subject to the same reasonable time, place and manner restrictions, as other members of the public. Faculty members are free to speak or write publicly on any issue, as long as they do not state or imply they are speaking on behalf of the District.

These rights and restrictions shall include:

- a. A faculty member in public and designated public forums, may distribute petitions, circulars, leaflets, newspapers and other printed material as long as it does not include expression which is obscene or libelous according to current legal standards or advocates for the use of force or of law violation where such advocacy is directed to inciting or producing imminent lawless action on District property and is likely to incite or produce such action, or the substantial disruption of classroom or college/district/campus activities or operations. The District assumes no responsibility for the accuracy of the material.
- b. Faculty using and/or distributing materials in District campus public forums or designated public forums shall not impede the progress of passersby, nor shall they force any passerby to take material.
- c. No faculty member shall touch, strike or impede the progress of a passerby, except for incidental or accidental contact or contact initiated by a passerby.
- d. A faculty member shall not use any means of amplification that creates noise or diversion that substantially disrupts classroom or college/district/campus activities or operations the orderly conduct of the college/campus, district site, classes or operations.
- e. Regulation of time, place and manner of faculty free speech activities consistent with this Article may be imposed for the purpose of preventing the substantial disruption of the orderly conduct of college classes, college/district/campus programs, or services classroom or college/district/campus activities or operations. Such regulation must be reasonable and not discriminate on the basis of the content of the speech. All restrictions shall be applied consistently to all faculty. Time limits may be imposed when necessary to ensure all interested parties have equal access to use District public forums or designated public forums.

In applying faculty speech rights in the District's public forums and designated forums, it is understood that these terms are used as follows:

a. **District Grounds**

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The grounds of the District, including sidewalks, streets, plazas, quadrangles, patios, knolls, lawns and similar or related open space of the District are public forums, available for the exercise of academic freedom and free expression, except as may be limited by narrowly tailored, content-neutral, time place and manner restrictions designed to serve a significant public interest.

b. Administrative Offices

Administrative offices are non-public forums subject to reasonable, viewpoint-neutral restrictions.

c. Classrooms

While classrooms are intended for educational purposes, the District may designate a classroom as a designated public forum for a particular event or debate, with the classroom otherwise being a nonpublic forum.

d. Cafeterias

District cafeterias are nonpublic forums, subject to reasonable time, place and manner rules, and to the other faculty speech rights and responsibilities set forth in this Article.

e. Other District-Owned Property

Other areas of the District which are enclosed, such as meeting rooms, auditoriums, and similar areas may be intentionally designated by the District as designated public forums, subject to content-neutral time, place and manner restrictions. Unless so designated, such areas are nonpublic forums.

The Forum designation of a classroom or other District-owned property in no way restricts, limits or alters faculty academic freedom as provided by this Article or in the Academic Freedom Statement referenced in Article 26.C

26D.6 Reasonable Time, Place and Manner Restrictions for Faculty for District Public Forums and Designated Public Forums.

a. A faculty member in public and designated public forums may distribute petitions, circulars, leaflets, newspapers and other printed material as long as it does not include expression which is obscene or libelous according to current legal standards or advocates or the use of force or of law violation where such advocacy is directed to inciting or producing imminent lawless action on District property and is likely to incite or produce such action, or the substantial disruption, classroom or college/district/campus activities or operations. The District assumes no responsibility for the accuracy of the material.

b. Faculty using and/or distributing materials in District campus public forums or designated public forums shall not impede the progress of passersby, nor shall they force

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any passerby to take material.

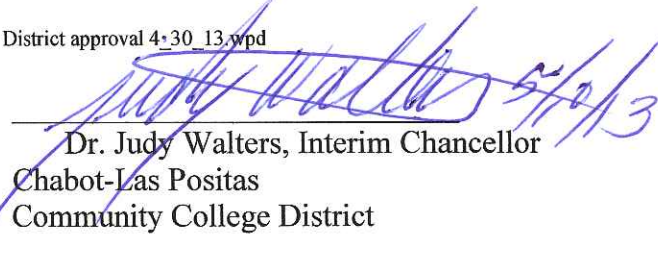
c. No faculty member shall touch, strike or impede the progress of a passerby, except for incidental or accidental contact or contact initiated by a passerby.

d. A faculty member shall not use any means of amplification that creates noise or diversion that substantially disrupts classroom or college/district/campus activities or operations the orderly conduct of the college/campus, district site, classes or operations.

e. Regulation of time, place and manner of faculty free speech activities consistent with this Article may be imposed for the purpose of preventing the substantial disruption of classroom or college/district/campus activities or operations. Such regulation must be reasonable and not discriminate on the basis of the content of the speech. All restrictions shall be applied consistently to all faculty. Time limits may be imposed when necessary to ensure all interested parties have equal access to use District public forums or designated public forums.

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Dr. Charlotte E. Lofft, President
Chabot-Las Positas
Faculty Association


Dr. Judy Walters, Interim Chancellor
Chabot-Las Positas
Community College District