

Faculty Senate Minutes #258

John Jay College of Criminal Justice

March 18, 2004

3:15 PM

Room 630 T

Present (26): Desmond Arias, Marvie Brooks, Orlanda Brugnola, Effie Cochran, Edward Davenport, Peter DeForest, Kirk Dombrowski, Janice Dunham, Michele Galietta, Konstantinos Georgatos, P. J. Gibson, Betsy Gitter, Amy Green, Norman Groner, Judith Hawkins, Karen Kaplowitz, Tom Litwack, John Matteson, Lorraine Moller, Ellen Sexton, Francis Sheehan, Sung Ha Suh, Thalia Vrachopolous, Alisse Waterston, Robin Whitney, Patty Zapf

Absent (12): Luis Barrios, Joshua Freilich, Heath Grant, **Ann** Huse, Max Kadir, Kwando Kinshasa, Gavin Lewis, Evan Mandery, Joseph Napoli, Liliana Soto-Fernandez, Ayeley Sowah, Davidson Umeh

Guests: Professors Ned Benton, Harold Sullivan

1. Announcements from the chair
2. Approval of Minutes #257 of the March 3, 2004, meeting
3. Proposed revisions in the Faculty Senate meeting schedule
4. Proposal that the Senate write to Chancellor Goldstein acknowledging his position regarding faculty members on the Phase II Steering Committee: Executive Committee
5. Proposed Revised Joint Policy of the Council of Chairs and the Faculty Senate on Academic Freedom and Workplace Privacy: Professor Harold Sullivan and Senator Francis Sheehan
6. Update on the Phase II project: Professor Ned Benton, Senators K. Kaplowitz and F. Sheehan
7. Proposal regarding the Science lab fume hoods: Senators Sheehan and Kaplowitz
8. Proposed Resolution on the Hare System of voting: Senator Evan Mandery

1. **Announcements from the chair** [Attachment A]

The finalists for President of John Jay and the date each will be on campus to meet with groups of faculty, students, staff, and administrators have been announced: Jeremy Travis: March 22; Daniel Maier-Katkin: March 24; Frank J. Thompson: March 29; Ronald Goldstock: April 1.

A report about issues relevant to John Jay that were discussed at the March meeting of the Board of Trustees Committee on Facilities was provided [Attachment A].

2. Approval of Minutes #257 of the March 3, 2004, meeting

By a motion made and carried, Minutes #257 of the March 3 meeting were approved.

3. Proposed revisions in the Faculty Senate meeting schedule

The Senate voted to cancel its March 31 meeting because one of the finalists for the presidency of John Jay will be at the College from morning to evening that day and many members of the Senate are on committees that are interviewing the finalists. Because that was the date that the Senate was to meet with Chancellor Matthew Goldstein, a new date for the Senate's meeting with the Chancellor was set for Tuesday, May 11, from 3-5 pm, in Room 630T.

4. Proposal that the Senate write to Chancellor Goldstein to formally acknowledge his position regarding faculty members on the Phase II Steering Committee: Executive Committee

A motion was made that the Senate convey in writing to Chancellor Matthew Goldstein a formal acknowledgment of his position that the two faculty members on the Phase II Steering Committee must be informed about all Phase II meetings, be invited to all Phase II meetings, receive the Minutes of all Phase II meetings, and be treated in the same way as all the other members of the Phase II Steering Committee. The motion was adopted by unanimous vote.

5. Proposed Revised Joint Policy of the Council of Chairs and the Faculty Senate on Academic Freedom and Workplace Privacy: Professor Harold Sullivan and Senator Francis Sheehan [Attachment B-1 & B-2]

Professor Harold Sullivan reported that the proposed policy jointly developed by the Faculty Senate and the Council of Chairs on Academic Freedom and Workplace Privacy had been approved by the Council of Chairs the previous day.

Senator Francis Sheehan reported that Harold Sullivan, Karen Kaplowitz, and he had met with Dean James Levine, in Dean Levine's capacity as chair of the Taskforce on Privacy, two days ago at which time Dean Levine had said he considers the Taskforce's proposed privacy policy to have been withdrawn by the Taskforce and, therefore, off the table, given the virtually universally negative response by faculty to it and given the important issues raised by Faculty Senate members and by other faculty that the Taskforce's proposed policy did not address. Dean Levine had also told them that although he could not speak for the other members of the Taskforce, he believes that the Chairs/Senate proposed policy [Attachment B-1/B-2] is a policy which could be supported by the Taskforce members and by the College administration if certain changes were made.

Senator Sheehan reviewed each provision of the policy and explained the changes that have been made in the Chairs/Senate proposed policy during the two weeks since the Senate and the Chairs each had their previous meetings. He added that the amended version on today's Senate agenda is the one that Dean Levine had spoken positively about. Senator Sheehan noted that the

foundational concept of this version of the policy is that when invasions of privacy or violations of academic freedom take place, the entire College community must be informed of the fact.

Professor Harold Sullivan said that since the last meetings of the Senate and of the Chairs two weeks ago, the proposed privacy policy has been amended through hundreds and hundreds of emails between Francis Sheehan, Karen Kaplowitz, and him, and that it had been amended by the hour **and** often by the minute. He said the deadline the three were working with is the April 8 deadline for College Council agenda items so the proposed policy can be on the agenda of the April 19 College Council meeting; he explained that to wait for the May College Council meeting would be to risk the item being tabled. President Kaplowitz added that by having the policy on the April meeting of the College Council, there would be the possibility of further consideration of the policy at the May meeting of the College Council were the issue to be tabled at the April meeting.

Senator Tom Litwack, saying that the drafters of this policy have done a fabulous job, suggested a revision to change language proscribing the consideration of the content of professors' views by those who make reappointment, tenure and promotion decisions. He said if someone teaches nonsense in the classroom or demonstrates very poor analytical ability in submitted written materials those would be legitimate considerations when personnel decisions are being made. He proposed language for a revision and his proposed amendment was adopted. Senator Desmond Arias said such concerns can be addressed by referencing the American Association of University Professors [AAUP] Policy on Academic Freedom. Senator Litwack agreed.

A discussion about blocking and monitoring led to a discussion about a range of issues: liability; viruses and worms; protection of the College's computer system. Language was amended in response to issues raised and suggestions made. A question was raised as to why the prefatory statement names IRB [Institutional Review Board] and FERPA [Family Educational Rights and Privacy Act] but does not include HIPPA [Health Insurance Portability and Accountability Act]. President Kaplowitz said that the decision to not name HIPPA was made so as not to draw attention to the fact that psychiatric records are in John Jay office files and on John Jay computers but HIPPA is, in actuality, included because of the language used in this section of the policy. Senators Michele Galietta, Patty Zapf, and Sung Ha Suh agreed that it is advisable to not name HIPPA as long as the privacy of these records is protected through the proposed policy, as is the case.

Senator Janice Dunham asked for an explanation of the section that says the policy shall not be violated except by court order. Professor Sullivan explained that if the proposed Privacy Committee were to refuse an administration request to the Committee to permit a search to be conducted, the administration would then have to obtain a court order to conduct the search. Senator Sheehan said the court would be the neutral party making this decision if such a situation were to arise. Professor Sullivan recalled that his original position was that the administration could obtain access only by a court order, but he has come to realize that such a policy would never pass the muster of the CUNY Central Administration. He added that the reality is that employees, absent a privacy policy, have no privacy rights and the goal of this proposed policy is to ensure that we have the maximum rights and the maximum protection.

Senator Sheehan requested a strong message of support from the Senate that the membership of the proposed Privacy Committee is non-negotiable. He explained that Dean Levine's major complaint about the Chairs/Senate proposed policy is that it does not provide for what Dean Levine considers to be a sufficient number of administrators on the Privacy Committee. Senator Sheehan noted that administrators can invade faculty privacy but faculty can not violate administrators' privacy and so a committee whose membership has a majority of faculty members is necessary.

Senator Sheehan pointed out that the proposed Privacy Committee membership specifies tenured faculty so that the faculty members are protected from pressure and, furthermore, this will ensure that untenured faculty are protected **from** possible coercion to serve on such a committee. Professor Sullivan said that he and Francis Sheehan and Karen Kaplowitz were sensitive to the wishes of untenured faculty to be included in faculty governance and originally did not specify that tenured status be a requirement but they recognized that only tenured faculty could, in fact, serve on such a committee. He added he then consulted with Senator Desmond Arias, the Chair of the Senate's Committee on the Concerns of the Untenured Faculty, who polled his committee members all of whom supported the proposed requirement of tenure for faculty members of this committee.

A motion to adopt the proposed Policy on Academic Freedom and Workplace Policy as further amended at today's meeting and to transmit the document to the College Council for action by that body at its April 19 meeting was made, seconded, and adopted by unanimous vote [Attachment B- 1: the amended document with additions and deletions shown & **B-2**: the amended document with the additions and deletions incorporated into the text].

6. Update on the Phase II project: Professor Benton and Senators Kaplowitz and Sheehan

President Kaplowitz reported that at the March 17 Phase II Steering Committee, Professor Ned Benton and she had conveyed the Faculty Senate's informal request that the inaccurate Skidmore, Owings and Merrill (SOM) minutes be revised. In response to this request, a revision was emailed to the Steering Committee that same evening but the revision is unacceptable to the two faculty members: although the SOM minutes no longer state that Ned Benton and Karen Kaplowitz approved the decision to move the Science labs from the top floor to multiple floors beneath all the other academic departments, the minutes now state that all the members of the Phase II Steering Committee approved the placement of the Science labs on the lower floors; this factually incorrect revision was emailed despite the fact that on March 17 the Steering Committee had agreed that the minutes would be revised to state that it was CUNY that agreed to the placement of the Science labs on the lower floors. And so the two of them will again request a correction of the minutes and they said that if the request does not result in an acceptable correction, they will ask the Senate to formally request the necessary correction.

The Senate's request for a presentation about the revised design for Phase II and the reasons for the change has been agreed to: a presentation is scheduled for 5 PM today in the Theater, as has been announced by email and by phonemail.

President Kaplowitz then explained that as the faculty member on the CUNY Board of Trustees Committee on Facilities she represents all CUNY faculty and it is her responsibility to report concerns and questions reported to her by the faculty governance body of each college that has an item on the Facilities Committee agenda. At this time, the plan is for the Facilities Committee to vote on the Phase II design at its May 3 meeting. Thus, she said, prior to May 3, the John Jay Senate must let her know if it wishes her to comment on any relevant issues when the Phase II design comes before the Committee for a vote. If the Phase II project is not on the May 3 Facilities Committee agenda, it will be on the agenda of the June 7 meeting of the Facilities Committee.

Senator Litwack asked how many offices for full-time faculty are being planned for Phase II. Professor Benton said he and Karen have repeatedly asked for that information but they have not yet been given that information. President Kaplowitz added that she and Ned do know that the number

of faculty offices will be insufficient; they just do not know the extent to which there will be an insufficient number.

Professor Benton noted that after spending \$431 million for Phase II, John Jay will have virtually the same number of classrooms we currently have: the difference is that the new classrooms will be larger because of the large size of the tables which are replacing the furniture we currently use and because of code requirements. He said this raises the specter that the administration will want to increase class size, in that the larger classrooms would permit them to do so were they to replace the tables with the traditional chairs with the folding writing surface that we currently have.

Senator Litwack asked what aspect of the Phase II plan, in addition to the number of classrooms, the number of faculty offices, and the placement of the Science labs on the lower floors is seriously problematic. Professor Benton said he thinks the current Phase II design is better than the previous Phase II design, the one shown in the Theater last May, and that he sees no other problems comparable to the scale of the problems Senator Litwack listed.

7. Proposal regarding the Science lab fume hoods: Senators Sheehan and Kaplowitz [Attachment A]

The Senate was directed to a report of a discussion at the March 1 meeting of the Facilities Committee of the Board of Trustees about John Jay's Science lab fume hoods. Senator Sheehan said the fume hoods need to be tested by *CUNY* and those that do not, in fact, work need to be replaced by *CUNY*. A motion by Senator Sheehan that the Senate request that *CUNY* test the fume hoods and replace those that are not working was adopted by unanimous vote.

8. Proposed Resolution to replace the plurality voting method with the Hare System of proportional representation: Senator Evan Mandery.

A motion was to table this item indefinitely was made and carried by unanimous vote.

By a motion made and carried, the meeting was adjourned at 5 pm.

Respectfully submitted,

Edward Davenport
Recording Secretary
&

Desmond Arias
Faculty Senator
&

Amy Green
Executive Committee Member-at-Large

ATTACHMENT A

Board of Trustees Committee on Facilities, Planning, and Management – March 1, 2004

Committee Members present: Trustees Jeffrey Wiesenfeld (Vice Chair), John Bonnici, Wellington Chen, Nilda Soto Ruiz, Faculty Member Karen Kaplowitz, Student Member Dionne McLaughlin.

Also Present: Trustees Agnes Abraham, Susan O'Malley.

Also: Chancellor Matthew Goldstein, Senior Vice Chancellor Allan Dobrin, Vice Chancellor Emma Macari, Vice Chancellor Frederick P. Schaffer, Vice Chancellor Russ Hotzler, Vice Chancellor & Board Secretary Jay Hershenson. Also President G. Williams.

<snip>

III. Information Items: Exploration of Student and Faculty Housing at the College of Staten Island.

Vice Chancellor Macari reported that the possibility of student and faculty housing is being explored for the College of Staten Island. At both CCNY and at Lehman College, a study is already being conducted to assess the demand for such housing. The Graduate Center is also exploring this issue with a developer who has land. The difference is that at CCNY, Lehman, and CSI land is already available. She said perhaps students at John Jay, Hunter, and the Graduate Center could use housing built on campuses that do have land. VC Macari said the greatest demand for student housing is from John Jay and the second highest is from Baruch. Chancellor Goldstein spoke of two considerations: the cost and the need to guarantee student demand.

The Faculty Member, Karen Kaplowitz, said in light of the fact that the State Legislature did not pass a Capital Budget for CUNY last year and has yet to do so this year she would like to ask a question: may a college that is facing immediate and exigent health and safety problems advance the money needed to deal with emergency capital projects from its tax levy operating budget (or from its non-tax levy budget) and then be reimbursed when a capital budget is finally approved and allocated. Vice Chancellor Macari said that is absolutely permitted and it is, in fact, standard operating procedure, and it is regularly done by colleges, which keep records and receipts which are then submitted to **DASNY**.

Senior Vice Chancellor Dobrin said this is true only if the item is a small item. Professor Kaplowitz asked for the definition of small. When asked, in turn, what she had in mind, Professor Kaplowitz said an expenditure between \$20,000 and \$200,000. Senior VC Dobrin said that is, indeed, small. Chancellor Goldstein asked what Professor Kaplowitz had in **mind**. She said it has been a longstanding problem, one of many years, that at John Jay the science laboratory fume hoods do not work; each **fume** hood costs \$20,000 and even though there are **23** fume hoods, it would be possible to run the science labs by replacing 10 of the hoods, according to [consultants].

She explained that last semester, a student twice went into anaphylactic shock from chemical fumes that are not being contained by the **fume** hoods and this student was taken each time to the emergency room and that the faculty at John Jay do not want anyone to die because of non-functioning fume hoods. The Chancellor said that he and the University do not want anyone's health or safety jeopardized and asked VC Macari about the situation. VC Macari said the project to replace the fume hoods at John Jay is a \$3 million project because fume hoods cannot simply be replaced; rather, the duct work has to be redone and a modified project costing \$1 million is being contemplated for John Jay, whereby some of the fume hoods and some of the duct work would be replaced.

Submitted by

Karen Kaplowitz, Faculty Member, BoT Committee on Facilities, Planning, and Management

ATTACHMENT B-1

03/15/2004 Proposed Policy - As Amended

1 Jointly Proposed Policy of the Council of Chairs and Faculty Senate on
2 **ACADEMIC FREEDOM AND WORKPLACE PRIVACY**

3 ~~for approval~~ Unanimously Approved by both Bodies ~~————~~ for Transmittal to the College
4 Council for its Action

5 [Original Proponents: Professor Harold Sullivan and Senator Francis Sheehan]
6

7 Freedom of inquiry is essential to an academic institution. Unimpeded pursuit of knowledge and
8 the ability to research and express unorthodox ideas is **an** essential part of academic freedom.
9 For these reasons and others cited below the traditional relationship between employee and
10 employer cannot exist in an academic institution. Faculty must be **free** to express ideas and
11 pursue research without threat of sanction.
12

13 While employers generally have the legal right to access ~~employer-employer-provided~~ forms of
14 communications, offices and computers, in **an** academic setting faculty offices, phone mail,
15 email, files and computers can contain confidential materials, the confidentiality of which are
16 protected by law, such as, but not limited to, raw data concerning **human** subjects of research,
17 preliminary research findings not yet ready for outside review, **as well as** disciplinary hearing
18 records and student records. Confidentiality of faculty records, files and communication is **an**
19 essential prerequisite of academic freedom. There is both explicit and implicit foundation for
20 that confidentiality in law and practice. Institutional Research Board (IRB) requirements, for
21 example, are designed to protect the anonymity of human subjects in research. Student records
22 are protected by the Family Educational Rights and Privacy Act (FERPA), also known **as** the
23 Buckley Amendment.
24

25 Academic freedom has been accorded an extraordinarily **high** level of protection in First
26 Amendment case law. The purpose of the Academic Freedom and Workplace Privacy Policy of
27 John Jay College is **to** ensure the fullest possible protection for these values which are of
28 paramount importance in **an** institution of higher learning.
29

30 **SECTION ONE: Academic Freedom**
31

32 It is the policy of John Jay College fully to respect and safeguard academic freedom in
33 accordance with the American Association of University Professors' (AAUP) 1940 Statement of
34 Principles on Academic Freedom and Tenure. Since it is antithetical to academic freedom to
35 block access to Internet websites based on content, this policy prohibits such blocking even
36 though Internet access is not specifically addressed in the 1940 Statement which predates the
37 creation of the Internet.
38

39 While recognizing that all faculty have a responsibility to teach courses within the scope of the
40 Bulletin course descriptions and consistent with stated course objectives, no member of the
41 College community may be penalized by the College in any way for the political, artistic,
42 religious, or social content of views lawfully expressed in the course of orderly, open debate or
43 discussion on or off campus, or as **part** of his/her published or unpublished research. All
44 decisions respecting the hiring, tenure, promotion, reappointment, and retention of College

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Unanimously Approved by the Council of Chairs on March 17, 2004, and Unanimously Approved by the Faculty Senate on March 18, 2004, for transmittal to the College Council for its action

45 faculty, as well as employment decisions regarding other College personnel, shall be made in
46 keeping with the letter and spirit of this policy, while also recognizing that the quality of a
47 faculty member's teaching, service, and publications are legitimate considerations in
48 employment and promotion decisions.

49
50 Students are free to take orderly and reasoned exception to the data or views offered in any
51 course of study and to reserve judgment about matters of opinion, without penalty, but are
52 responsible for learning the content of and demonstrating standards of academic performance
53 established for each course in which they are enrolled.

54
55 ~~All decisions respecting the hiring, tenure, promotion, reappointment, and retention of College~~
56 ~~faculty, as well as employment decisions regarding other College personnel, shall be made in~~
57 ~~keeping with the letter and spirit of this policy.~~

58
59
60 **SECTION TWO: Workplace Privacy**

61
62 ~~1. It is the policy of John Jay College that all members of the College community must respect~~
63 ~~the personal privacy of all other members of the College community and their~~
64 ~~communications between persons on and off campus.~~

65
66 ~~2. No party to any communication covered by this policy may give consent on behalf of the other~~
67 ~~party or parties to the communication if any party who took part in the communication~~
68 ~~explicitly requested confidentiality. Pursuant to Section 2 Paragraph 9 of this policy, the~~
69 ~~approval of the Committee on Academic Freedom and Workplace Privacy shall not be~~
70 ~~needed for a participant in the communication to ignore the confidentiality request if the~~
71 ~~communication violates The City University policy on sexual harassment or on any other~~
72 ~~workplace anti-discrimination protection, or is otherwise threatening to personal safety.~~

73
74 1. Members of the College community shall have an expectation of privacy pertaining to the
75 contents of physical spaces over which they typically exercise primary or exclusive control,
76 including, but not limited to, desks, file cabinets, cubicles, and personal office space. This
77 expectation shall also extend to portable personal spaces, including, but not limited to, their
78 briefcases, satchels, and pocket books brought onto the campus. No officer of the College
79 may search or cause to be searched any such space in a manner not consistent with this
80 policy without the express consent of the individual(s) whose space is to be searched.

81
82
83 the interception, reading, copying, taking or listening to, any material contained in or on
84 papers, faxes, files, computers, portable or fixed electronic data (including diskettes, hard
85 drives, PDAs, and other data storage devices) or audio or video recordings owned by or
86 assigned for the use of individual members of the College community without the consent of
87 the individual who owns or has been assigned such papers, files, media or equipment.

88

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- 89 | ~~4. Members of the College community shall have an expectation of privacy pertaining to the~~
90 | ~~contents of physical spaces over which they typically exercise primary or exclusive control,~~
91 | ~~including, but not limited to, desks, file cabinets, cubicles, and personal office space. This~~
92 | ~~expectation shall also extend to portable personal spaces, including, but not limited to, their~~
93 | ~~briefcases, satchels, and pocket books brought onto the campus. No officer of the College~~
94 | ~~may search or cause to be searched any such space in a manner not consistent with this~~
95 | ~~policy without the express consent of the individual(s) whose space is to be searched.~~
96 |
- 97 | 5.3. The expectations of privacy affirmed by this policy shall extend not only to items related to
98 | interpersonal communication, but also to physical items within the lawful possession of
99 | College community members, including, but not limited to, books, personal notes, personal
100 | electronic devices, laptop computers, photographs, drawings, and prescription medications.
101 |
- 102 | 6.4. Unless approved by the Committee on Academic Freedom and Workplace Privacy, the
103 | privacy protections of this policy shall not be violated except by Court Order. Unless
104 | specifically forbidden by law, any member of the College community who participates in
105 | providing access pursuant to a Court Order shall inform members of the College community
106 | who are the targets of such Court Order as soon as practicable after such court ordered access
107 | is provided. If access is provided pursuant to the Committee's approval, it shall be the
108 | Committee Chair's responsibility to provide such notification as soon as practicable after the
109 | Committee-authorized access has been provided.
110 |
- 111 | 7.5. The Committee may not authorize an exception to the privacy protections established by this
112 | policy in a specific case unless an absolute majority makes a specific finding that there are
113 | reasonable grounds to believe that possibly illegal conduct is taking place that could
114 | jeopardize the rights or safety of other members of the College community, the community at
115 | large or that there is conduct that could subject the College to legal liability if the College
116 | were to fail to act. The finding shall be reported in writing and kept in the file maintained by
117 | the Committee Chair.
118 |
- 119 | 6. Nothing in this policy shall interfere with the proctoring of exams and the College's and
120 | University's policies against using prohibited materials during exams.
121 |
- 122 | 7. Nothing in this policy shall prevent searches of persons or personal property in areas where
123 | posted signs indicate such searches may be conducted.
124 |
- 125 | 8. Except in exigent circumstances, one or more members of the Committee, selected by the
126 | Committee membership, shall be given the opportunity to be present when there is a breach
127 | of the privacy protections of this policy to verify the intrusion is the minimum necessary to
128 | accomplish the stated purpose of the breach.
129 |

Amended Proposed Academic Freedom and Workplace Privacy Policy
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- 130 9. Nothing in this policy is intended to interfere with the responsibility of the College to provide
131 for the immediate safety of the College community. Members of the College community
132 affected by the implementation of this provision and the Committee Membership shall be
133 notified in as timely a manner as is practicable after the immediate threat to safety has
134 subsided.
135
- 136 10. If there is no immediate threat to the safety of the College community, but the President or a
137 Vice-president feels a breach of the privacy protections of this policy is necessary to protect
138 public safety or to protect the College from legal liability and it is not practicable to convene
139 the Committee, approval of the Committee membership may be obtained by phone, ~~fax~~
140 and/or email.
141
- 142 11. The person requesting a breach of the protections provided by this policy must, **as** soon as
143 practicable, provide the Committee, in writing, with the alleged justification for the breach.
144 Following the breach, a written report, prepared by the person who requested the breach or
145 his/ her designated agent, shall be filed with the Committee detailing the extent of the breach
146 and the findings. The Committee may also request others involved in the breach to prepare a
147 report.
148
- 149 12. Nothing in this policy is intended to nullify or abridge provisions mandated by local, state or
150 federal law, **CUNY** bylaws or policies, or by any applicable collective bargaining agreement.
151 Should a member of the College community seek to violate provisions of this policy,
152 asserting a contradictory superseding provision, the College member shall so notify the
153 College community of the applicable superseding provision and the planned action, in
154 advance, via College-wide email and phone mail announcements.
155
- 156 13. Nothing in this policy shall relieve members of the College community of their obligation to
157 provide to legally responsible officers of the College access to student attendance and grade
158 reports, to provide to a Grade Appeals Committee all data requested reasonably to decide a
159 filed appeal, to provide to the Judicial Committee all materials needed for a hearing, and to
160 provide to any other legally established College or City University body materials needed
161 according to College or University policies.
162
- 163 14. Nothing in this policy shall interfere with the responsibility of DoIT and other designated
164 network administrators to scan for and protect against computer viruses or other threats to the
165 integrity of information systems. Except as provided for by Court Order or Committee
166 approval, ~~DoIT-network administrators~~ **may** not intentionally seek out **the** contents or
167 transactional information of communications where not germane to the foregoing purposes,
168 or disclose or otherwise use what **has** been unintentionally observed.
169
- 170 15. Nothing in this policy shall interfere with the maintenance of the physical plant.
171
172

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173 **SECTION THREE: Committee on Academic Freedom and Workplace Privacy**

174

175 1. Membership

176 a. Four tenured faculty, who are not serving in appointed administrative positions, elected
177 as follows:

178 i. Two tenured faculty elected by the Faculty Senate by secret ballot

179 ii. Two tenured faculty elected by the Council of Chairs by secret ballot

180 b. One HEO elected by the HEOs by secret ballot

181 c. One administrator selected by the President

182

183 2. Term of office

184 Members first elected after the establishment of the Committee shall take office immediately
185 upon election and serve through the next academic year. Thereafter, the term of office shall
186 be one academic year. The unexpired term of a member who resigns midyear shall be filled
187 by the entity which elected or selected the resigned member.

188

189 3. Chair

190 A tenured full-time faculty member elected each academic year by the Committee ~~from~~
191 among the Committee membership.

192

193 4. Mandate

194 a. Recommend to the Council of Chairs, Faculty Senate, College Council, and entire
195 College community measures to safeguard the freedom of inquiry and debate essential for
196 academic freedom.

197

198 b. Monitor ~~administrative~~ activities on campus which affect academic freedom and
199 workplace privacy.

200

201 ~~e. Disseminate over the Intranet and publish in "The Week Of" justification for any approved~~
202 ~~monitoring of Internet sites accessed or campus communications or for any authorization~~
203 ~~for blocking access to Internet sites to which members of the College community might~~
204 ~~seek access.~~

205

206 &Receive written complaints of alleged infringements of academic freedom or workplace
207 privacy and **bring** the nature of those complaints to the attention of the College
208 community, Faculty Senate, Council of Chairs, and/or the College Council for discussion
209 and resolution.

210

211 ~~and~~ Receive and act in a timely way on signed written requests to deviate from the privacy
212 protections of this policy and implement procedures confidentially to act on those
213 requests.

214

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215 | §e. Maintain a file of all documents pertaining to the Committee's work. It shall be the
216 | Committee Chair's responsibility to ensure the completeness of the file and to transfer it
217 | to the next elected Chair. Any member of the Committee may review the file upon
218 | request.

219 |
220 | **5. Implementation**

221 |
222 | a. Effective immediately upon approval by the College Council of the establishment of the
223 | Committee on Academic Freedom and Workplace Privacy:

224 | i. the administration must obtain prior approval by the Committee of the purchase or
225 | installation of any software and electronic equipment capable of monitoring campus
226 | communications and computer use

227 |
228 | ii. elections shall be scheduled by the Faculty Senate, the Council of Chairs, and the
229 | HEOs to elect the Committee's membership in a timely manner

230 |
231 | iii. the President shall select a representative to serve on the Committee in a timely
232 | manner

233 |
234 | b. Within 60 days following approval of the establishment of the Committee, the
235 | administration must:

236 |
237 | i. provide the Committee with a complete inventory of all software and electronic
238 | equipment capable of monitoring campus communications and computer use

239 |
240 | ii. provide the Committee in writing a comprehensive report of current and past uses
241 | of communications monitoring equipment and software

242 |
243 | c. Effective 60 days following approval by the Committee, the administration must obtain
244 | approval by the Committee of any continuing use of existing or newly acquired
245 | equipment or software to monitor communications or Internet sites accessed or to block
246 | any Internet sites visited by members of the College community.

247 |
248 | **6. Sanctions**

249 | Any member of the College community who violates the Academic Freedom and Workplace
250 | Privacy Policy shall be liable to reasonable sanction(s) ~~deemed appropriate~~ by the President,
251 | administered in accordance with the requirements of due process as provided in the Bylaws
252 | of the City University of New York and any applicable collective bargaining agreement. The
253 | President shall seek a recommendation from the Committee on Academic Freedom and
254 | Workplace Privacy before rendering a decision and shall thereafter inform the Committee of
255 | the action taken.

1 **Jointly Proposed Policy of the Council of Chairs and Faculty Senate on**
2 **ACADEMIC FREEDOM AND WORKPLACE PRIVACY**

3 **Unanimously Approved by Both Bodies for Transmittal to the College Council for its Action**

4 [Original Proponents: Professor Harold Sullivan and Senator Francis Sheehan]
5

6 Freedom of inquiry is essential to an academic institution. Unimpeded pursuit of knowledge and
7 the ability to research and express unorthodox ideas is an essential part of academic freedom.
8 For these reasons and others cited below the traditional relationship between employee and
9 employer cannot exist in an academic institution. Faculty must be free to express ideas and
10 pursue research without threat of sanction.
11

12 While employers generally have the legal right to access employer-provided forms of
13 communications, offices and computers, in an academic setting faculty offices, phone mail,
14 email, files and computers can contain confidential materials, the confidentiality of which are
15 protected by law, such as, but not limited to, raw data concerning human subjects of research,
16 preliminary research findings not yet ready for outside review, as well as disciplinary hearing
17 records and student records. Confidentiality of faculty records, files and communication is an
18 essential prerequisite of academic freedom. There is both explicit and implicit foundation for
19 that confidentiality in law and practice. Institutional Research Board (IRB) requirements, for
20 example, are designed to protect the anonymity of human subjects in research. Student records
21 are protected by the Family Educational Rights and Privacy Act (FERPA), also **known** as the
22 Buckley Amendment.
23

24 Academic freedom has been accorded an extraordinarily high level of protection in First
25 Amendment case law. The purpose of the Academic Freedom and Workplace Privacy Policy of
26 John Jay College is to ensure the fullest possible protection for these values which are of
27 paramount importance in an institution of higher learning.
28

29 **SECTION ONE: Academic Freedom**
30

31 It is the policy of John Jay College fully to respect and safeguard academic freedom in
32 accordance with the American Association of University Professors' (AAUP) 1940 Statement of
33 Principles on Academic Freedom and Tenure. Since it is antithetical to academic freedom to
34 block access to Internet websites based on content, this policy prohibits such blocking even
35 though Internet access is not specifically addressed in the 1940 Statement which predates the
36 creation of the Internet.
37

38 While recognizing that all faculty have a responsibility to teach courses within the scope of the
39 Bulletin course descriptions and consistent with stated course objectives, no member of the
40 College community may be penalized by the College in any way for the political, artistic,
41 religious, or social content of views lawfully expressed in the course of orderly, open debate or
42 discussion on or off campus, or as part of his/her published or unpublished research. All
43 decisions respecting the hiring, tenure, promotion, reappointment, and retention of College
44 faculty, as well as employment decisions regarding other College personnel, shall be made in

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45 keeping with the letter and spirit of this policy, while also recognizing that the quality of a
46 faculty member's teaching, service, and publications are legitimate considerations in
47 employment and promotion decisions.

48
49 Students are free to take orderly and reasoned exception to the data or views offered in any
50 course of study and to reserve judgment about matters of opinion, without penalty, but are
51 responsible for learning the content of and demonstrating standards of academic performance
52 established for each course in which they are enrolled.

53
54

SECTION TWO: Workplace Privacy

55
56

57 1. Members of the College community shall have **an** expectation of privacy pertaining to the
58 contents of physical spaces over which they typically exercise primary or exclusive control,
59 including, but not limited to, desks, file cabinets, cubicles, and personal office space. This
60 expectation shall also extend to portable personal spaces, including, but not limited to, their
61 briefcases, satchels, and pocket books brought onto the campus. No officer of the College
62 may search or cause to be searched any such space in a manner not consistent with this
63 policy without the express consent of the individual(s) whose space is to be searched.

64

65 2. No member of the College community shall intercept, read, copy, take or listen to, or cause
66 the interception, reading, copying, taking or listening to, any material contained in or on
67 papers, faxes, files, computers, portable or fixed electronic data (including diskettes, hard
68 drives, PDAs, and other data storage devices) or audio or video recordings owned by or
69 assigned for the use of individual members of the College community without the consent of
70 the individual who owns or has been assigned such papers, files, media or equipment.

71

72 3. The expectations of privacy affirmed by this policy shall extend not only to items related to
73 interpersonal communication, but also to physical items within the lawful possession of
74 College community members, including, but not limited to, books, personal notes, personal
75 electronic devices, laptop computers, photographs, drawings, **and** prescription medications.

76

77 4. Unless approved by the Committee on Academic Freedom and Workplace Privacy, the
78 privacy protections of this policy shall not be violated except by Court Order. Unless
79 specifically forbidden by law, any member of the College community who participates in
80 providing access pursuant to a **Court** Order shall inform members of the College community
81 who are the targets of such Court Order as soon as practicable after such court ordered access
82 is provided. If access is provided pursuant to the Committee's approval, it shall be the
83 Committee Chair's responsibility to provide such notification as soon as practicable after the
84 Committee-authorized access has been provided.

85

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- 86 5. The Committee may not authorize an exception to the privacy protections established by this
87 policy in a specific case unless an absolute majority makes a specific finding that there are
88 reasonable grounds to believe that possibly illegal conduct is taking place that could
89 jeopardize the rights or safety of other members of the College community, the community at
90 large or that there is conduct that could subject the College to legal liability if the College
91 were to fail to act. The finding shall be reported in writing and kept in the file maintained by
92 the Committee Chair.
93
- 94 6. Nothing in this policy shall interfere with the proctoring of exams and the College's and
95 University's policies against using prohibited materials during exams.
96
- 97 7. Nothing in this policy shall prevent searches of persons or personal property in areas where
98 posted signs indicate such searches may be conducted.
99
- 100 8. Except in exigent circumstances, one or more members of the Committee, selected by the
101 Committee membership, shall be given the opportunity to be present when there is a breach
102 of the privacy protections of this policy to verify the intrusion is the minimum necessary to
103 accomplish the stated purpose of the breach.
104
- 105 9. Nothing in this policy is intended to interfere with the responsibility of the College to provide
106 for the immediate safety of the College community. Members of the College community
107 affected by the implementation of this provision and the Committee Membership shall be
108 notified in as timely a manner as is practicable after the immediate threat to safety has
109 subsided.
110
- 111 10. If there is no immediate threat to the safety of the College community, but the President or a
112 Vice-president feels a breach of the privacy protections of this policy is necessary to protect
113 public safety or to protect the College from legal liability and it is not practicable to convene
114 the Committee, approval of the Committee membership may be obtained by phone, fax
115 and/or email.
116
- 117 11. The person requesting a breach of the protections provided by this policy must, as soon as
118 practicable, provide the Committee, in writing, with the alleged justification for the breach.
119 Following the breach, a written report, prepared by the person who requested the breach or
120 his/ her designated agent, shall be filed with the Committee detailing the extent of the breach
121 and the findings. The Committee may also request others involved in the breach to prepare a
122 report.
123
- 124 12. Nothing in this policy is intended to nullify or abridge provisions mandated by local, state or
125 federal law, CUNY bylaws or policies, or by any applicable collective bargaining agreement.
126 Should a member of the College community seek to violate provisions of this policy,
127 asserting a contradictory superseding provision, the College member shall so notify the
128 College community of the applicable superseding provision and the planned action, in
129 advance, via College-wide email and phone mail announcements.
30

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131 13. Nothing in this policy shall relieve members of the College community of their obligation to
132 provide to legally responsible officers of the College access to student attendance and grade
133 reports, to provide to a Grade Appeals Committee all data requested reasonably to decide a
134 filed appeal, to provide to the Judicial Committee all materials needed for a hearing, and to
135 provide to any other legally established College or City University body materials needed
136 according to College or University policies.

137
138 14. Nothing in this policy shall interfere with the responsibility of DoIT and other designated
139 network administrators to scan for and protect against computer viruses or other threats to the
140 integrity of information systems. Except as provided for by Court Order or Committee
141 approval, network administrators may not intentionally seek out the contents or transactional
142 information of communications where not germane to the foregoing purposes, or disclose or
143 otherwise use what has been unintentionally observed.

144
145 15. Nothing in this policy shall interfere with the maintenance of the physical plant.

146
147
148 **SECTION THREE: Committee on Academic Freedom and Workplace Privacy**

149
150 1. Membership

151 a. Four tenured faculty, who are not serving in appointed administrative positions, elected
152 as follows:

- 153 i. Two tenured faculty elected by the Faculty Senate by secret ballot
- 154 ii. Two tenured faculty elected by the Council of Chairs by secret ballot

155 b. One HEO elected by the HEOs by secret ballot

156 c. One administrator selected by the President

157
158 2. Term of office

159 Members first elected after the establishment of the Committee shall take office immediately
160 upon election and serve through the next academic year. Thereafter, the term of office shall
161 be one academic year. The unexpired term of a member who resigns midyear shall be filled
162 by the entity which elected or selected the resigned member.

163
164 3. Chair

165 A tenured full-time faculty member elected each academic year by the Committee from
166 among the Committee membership.

167
168 4. Mandate

169 a. Recommend to the Council of Chairs, Faculty Senate, College Council, and entire
170 College community measures to safeguard the freedom of inquiry and debate essential for
171 academic freedom.

172
173 b. Monitor activities on campus which affect academic freedom and workplace privacy.

174

175

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- 76 c. Receive written complaints of alleged infringements of academic freedom or workplace
177 privacy and bring the nature of those complaints to the attention of the College
178 community, Faculty Senate, Council of Chairs, and/or the College Council for discussion
179 and resolution.
180
- 181 d. Receive and act in a timely way on signed written requests to deviate from the privacy
182 protections of this policy and implement procedures confidentially to act on those
183 requests.
184
- 185 e. Maintain a file of all documents pertaining to the Committee's work. It shall be the
186 Committee Chair's responsibility to ensure the completeness of the file and to transfer it
187 to the next elected Chair. Any member of the Committee may review the file upon
188 request.
189

190 **5. Implementation**
191

- 192 a. Effective immediately upon approval by the College Council of the establishment of the
193 Committee on Academic Freedom and Workplace Privacy:
194 i. the administration must obtain prior approval by the Committee of the purchase or
195 installation of any software and electronic equipment capable of monitoring campus
196 communications and computer use
197
198 ii. elections shall be scheduled by the Faculty Senate, the Council of Chairs, and the
199 HEOs to elect the Committee's membership in a timely manner
200
201 iii. the President shall select a representative to serve on the Committee in a timely
202 manner
203
- 204 b. Within 60 days following approval of the establishment of the Committee, the
205 administration must:
206
207 i. provide the Committee with a complete inventory of all software and electronic
208 equipment capable of monitoring campus communications and computer use
209
210 ii. provide the Committee in writing a comprehensive report of current and past uses
211 of communications monitoring equipment and software
212
- 213 c. Effective 60 days following approval by the Committee, the administration must obtain
214 approval by the Committee of any continuing use of existing or newly acquired
215 equipment or software to monitor communications or Internet sites accessed or to block
216 any Internet sites visited by members of the College community.
217

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- 218 6. Sanctions
219 Any member of the College community who violates the Academic Freedom and Workplace
220 Privacy Policy shall be liable to reasonable sanction(s) by the President, administered in
221 accordance ~~with~~ the requirements of due process as provided in the Bylaws of the City
222 University of New York and any applicable collective bargaining agreement. The President
223 shall seek a recommendation ~~from~~ the Committee on Academic Freedom and Workplace
224 Privacy before rendering a decision and shall thereafter inform the Committee of the action
225 taken.

N.B. Attachment B-1 is the amended document with the additions and deletions shown. Attachment B-2 is the amended document with the additions and deletions incorporated into the text.