

## QUESTIONS COMMONLY ASKED BY FACULTY

The following is an overview of legal issues that may arise during your employment with the District, and is not intended to be an exhaustive discussion. As your situation may involve facts or circumstances rendering the general advice provided below inapplicable, please contact your supervising administrator if you have specific questions.

### LAWSUITS

1. ***What should I do if I am served with a subpoena or lawsuit related to my District employment?***

Don't ignore the materials. If the subject matter is connected with your employment at the District, please inform your College President's Office to contact the Office of General Counsel immediately, as there are strict time limits by which opposing paperwork must be filed.

2. ***If I am sued, do I have to pay for an attorney or for a damages award?***

If you are sued for acts or omissions committed within the course and scope of your employment (related to performing your official duties). In such cases, the District is obligated, without cost to you, to defend (provide you with an attorney either from the District's Office of General Counsel or a law firm hired by the District), and indemnify you (i.e., pay for any monetary damages, excluding punitive damages, that are awarded against you as a result of the lawsuit).

You should not speak to other people about an ongoing litigation matter, except with the attorneys who have been assigned to represent you. If an attorney representing an opposing party attempts to contact you, refer him/her to the Office of General Counsel.

If it is determined that you acted outside the course and scope of your employment (e.g., you had committed unlawful acts), the District will not have an obligation to defend and indemnify you. In such cases, you will be responsible, at your own expense, for obtaining your own attorney and paying for any monetary damages that are awarded against you.

### CLASSROOM ISSUES

3. ***How do I deal with students who are disruptive in class?***

Students are expected to follow the District's Code of Conduct (LACCD Board Rules, Chapter 9, Article 8). The District's student discipline process is in Chapter 9, Article 11. Under the Board Rules, an instructor may exclude a disruptive student from class the day of a disruptive incident and from the next class session. While no formal action is necessary to exclude a student for one class session, you must notify your chairperson in writing if you are seeking to exclude a student for two class sessions.

For any harsher sanction, such as a suspension for the remainder of the term, you must contact the Office of Student Services, and/or the designated campus disciplinarian. The Office of Student Services is responsible for ensuring the student receives appropriate due process, by issuing a formal written notice of charges, and arranging for a student disciplinary hearing in front of a hearing committee, if one is requested by the student.

**4. *How do I deal with students who pose a threat to themselves or others?***

Contact the Sheriff's Department and the Office of Student Services. You do not have to keep to yourself your personal observations or interactions regarding students you believe pose a threat to themselves or others. (As a faculty member, you do not stand in a confidential relationship with your students.) The Office of Student Services can involve other appropriate parties on campus (such as referring the student to psychological services through the Student Health Center) or notify other interested parties, such as the student's parents.

If a student poses an imminent threat of harm, he/she may be immediately suspended. If a suspended or expelled student appears on campus, he/she may be detained by the Sheriff's Department. Depending on the circumstances, the Office of General Counsel may also apply to the Superior Court for a civil harassment restraining order. However, none of these options can be acted on unless campus administration is made aware of such problems.

**5. *What are my students' free speech rights in class?***

Institutions of higher education are intended to be marketplaces of ideas, and as such, college students enjoy First Amendment rights with respect to their class activities. Students' free speech rights cover in-class speech, as well as writing assignments and clothing (i.e., with written slogans) worn in class. As a general principle, students should not be disciplined for the substantive content of their speech, even if such speech incorporates unpopular viewpoints. The fact that someone else may be offended at the content of speech is not, by itself, a sufficient justification for prohibiting it.

As compared with the K-12 context, colleges have much less leeway to regulate the speech of students, but can nevertheless regulate conduct or speech which creates substantial and material disruption to college operations. For example, the college can discipline a student for standing up in a lecture hall and screaming expletives at others around him. (See also the discussion above in Question 3 regarding the student discipline process.) Furthermore, certain forms of speech are unprotected under the First Amendment, such as defamation and speech which creates a clear and present danger (e.g., yelling "fire" in a crowded theater).

**6. *What are my free speech rights when I am conducting a class?***

Instructors enjoy academic freedom and have much latitude in what they can say in class, provided there is some relation to the subject matter of the course.

However, both federal and state laws obligate the District to prevent sexual harassment. Neither the scope of First Amendment protection for instructor speech in the classroom nor the boundary between academic freedom and sexual harassment has been rigidly defined by the courts. If the District is presented with a complaint from a student alleging sexual harassment on the basis of your in-class comments, the District must evaluate the relevance of the comments to the subject matter and teaching methodology of the course, as well as the specific facts at hand.

State law also prohibits you from engaging in certain types of political speech in the classroom. Education Code section 7054 makes it a felony to use District funds, services, supplies or equipment for the support or defeat of any ballot measure or candidate. While you may certainly foster in-class discussion which incorporates competing viewpoints, you cannot co-opt class time for personal advocacy regarding matters prohibited by Section 7054. (The campus Free Speech Area is available for such activity during your nonworking time.)

**7. *Can students record my lectures?***

It depends. Education Code section 78907 prohibits the use of any electronic listening or recording device in any classroom, without the instructor's consent, unless the recording is necessary as a reasonable auxiliary aid or academic adjustment for a disabled student.

**8. *My students undertake class assignments in which they film, photograph or record other individuals. What sort of safeguards should be taken?***

Students should be advised to obtain prior consent by securing signed releases from the affected individuals. With respect to college newspapers, however, Civil Code section 3344 does not require the prior consent where the use of a name, voice, signature, photograph, or likeness is used in connection with any news, public affairs, or sports broadcast or account, or any political campaign.

**9. *How do I deal with instances of cheating?***

If a student has cheated on a particular assignment or exam, you may issue a failing grade to the student for that particular assignment or exam. However, you cannot summarily issue an "F" grade for the entire course for a single instance of cheating, unless an "F" grade for that assignment would affect the student's course grade in such a way (e.g., the assignment was worth a significant percentage of the final grade). You should also refer instances of cheating to the Office of Student Services to initiate formal discipline.

**10. *When is it appropriate to drop a student from my course?***

Students can be dropped from a course if, as of census day, they are no longer participating in the course and no extenuating circumstances (e.g., illness, accident, or other circumstances beyond the student's control) exist. As defined by Section 58004 of Title 5 of the California Code of Regulations, the term "no longer participating" includes, but is not limited to, excessive unexcused absences, but must relate to nonattendance. The fact that a student may be attending your class, but doing poorly on or failing to submit assignments, may have a negative effect on his/her grade, but would not be a sufficient reason for you to drop him/her altogether from the course.

**11. *Can I post or announce student grades in class?***

No. Student records, such as student ID numbers and grades, are protected from public disclosure pursuant to federal and state law, as well as District Board Rules. For more information, LACCD Board Rule 8401.11 discusses under what circumstances information contained in student records may be released.

**12. *One of my students thinks his "D" grade should be an "A." I don't. How are grade grievances handled?***

If a grade issue cannot be resolved informally, a student wishing to proceed with a formal grade grievance should be directed to the campus ombudsperson. A student contesting a course grade may file a student grievance pursuant to LACCD Administrative Regulation E-55 and request a grievance hearing. As a faculty member, you have a duty to participate in this process. You also have a duty to retain any work not returned to the student for a year. Under state law, grades are considered final, unless it can be shown that a grade was a result of a mistake, fraud, bad faith, or incompetence.

- 13. *My students are willing to pay me for private tutoring or instruction in my spare time. Can I take them up on their offer?***

Generally speaking, no. LACCD Board Rule 9700 prohibits District employees from using District facilities to provide private instruction or professional services for compensation. Instructors are also prohibited from offering private instruction or other professional services for compensation (1) to a student who is enrolled at the college to which said instructor is assigned, and (2) during any summer vacation period to a student who was a member of one of the instructor's classes the previous Spring semester.

- 14. *If I suspect that child abuse is occurring to one of my students, to whom I do report this?***

Immediately contact the Sheriff's Department, or the Los Angeles County Department of Child and Family Services Child Abuse Hotline at (800) 540-4000. District employees are considered "mandated reporters" under the Child Abuse Neglect and Reporting Act ("CANRA"). As a mandated reporter, you must report known or suspected abuse of children (i.e., under 18 years of age) who you encounter within the course and scope of your employment. For more information, view the CANRA presentation in the "Faculty and Staff Resources" section at [www.laccd.edu](http://www.laccd.edu).

### **COMMUNICATIONS**

- 15. *Are my District e-mails considered private?***

No. Employees have no expectation of privacy in their District e-mails, which should only be used for the conduct of District related business. (LACCD Administrative Regulation B-27.) Furthermore, your District e-mails—subject to limited exceptions and privileges-- are public records; as such, any member of the public can request copies of them. Compose your e-mails with the knowledge that they could later be reprinted in the newspaper or used in court.

Limit your use of the "send all" or "reply all" function, by limiting your communications to those who have a legitimate need to know. For example, when communicating by e-mail with students in a class, do not allow the recipients of your message to see each other's e-mail addresses. (Student e-mail addresses are also personally identifiable student information which must be kept confidential.)

- 16. *What is defamation?***

Defamation is either written (i.e., libel) or spoken (i.e., slander), and involves a false statement of fact which exposes the subject to hatred, contempt, ridicule, and/or causes him/her to be shunned or avoided. For example, a defamatory statement may be an accusation that a person has committed a crime or has an infectious disease. While statements of pure opinion are not necessarily defamatory, those couched in false facts may be.

You can also commit defamation by repeating a defamatory statement, even though you were not the originator of the statement. Exercise professionalism and discretion in your communications, keeping in mind how your statements may be construed.

### **EMPLOYMENT ISSUES**

- 17. *I will be serving on a selection, tenure review, and/or peer review committee. What are some general pitfalls to avoid?***

You should not pose questions that are discriminatory and wholly unrelated to job performance (e.g., inquiring into an individual's marriage status, pregnancy, disability, race, national origin, gender, sexual identity, or other protected classification). Do not suggest that the college is hoping to elicit a certain engineered result with respect to the composition of its hires.

You should also avoid making promises or statements during the process which suggest that a hiring or granting of tenure is a foregone conclusion.

- 18. *I was asked to provide a reference for a former District employee. What can I say, or not say, to a prospective employer who asks about a former employee?***

You can make, without malice and based on credible evidence, statements regarding the job performance or qualifications of the applicant, if you are asked by a prospective employer. You can also answer whether or not you would rehire that employee. (Civil Code section 47(d).) However, you are also entitled to decline to comment on an employee.

Avoid making not only defamatory statements, but statements which may be misleading or omit material facts. For example, stating in glowing terms that a former employee completed all assigned tasks, but neglecting to mention that he also deliberately stabbed a coworker in the chest with a pencil, would likely be construed as a misrepresentation.

- 19. *Where can I report instances of fraud within the District?***

Contact the District's Internal Audit Department at (213) 891-2342.

### **CONTRACTS**

- 20. *How do I go about getting a contract signed? For example, I would like the college to enter into a cooperative arrangement with another institution.***

Only certain employees have the authority to sign or negotiate contracts. You should work with the appropriate Vice President. Under LACCD Administrative Regulation B-19, at the college level, only the President or Vice President of Administrative Services have signing authority at the college. However, other contracts may only be signed by certain people from the District Office.

- 21. *If I can't sign contracts, can I sign memoranda of understanding or agreements?***

No. Any sort of document by which the college agrees with another party to do something could be a contract. "Memoranda of understanding" or "agreements" are merely synonyms for "contracts." Regardless of how it is labeled, each contract must go through appropriate campus processes and ultimately needs approval by the Board of Trustees.

If you sign a contract without having appropriate authority, you may be held personally liable to the District for any money the District has to pay as a result. (LACCD Board Rule 7100.10.)