

Chabot-Las Positas Faculty Association (CLPFA)

FACULTY FOCUS

Volume X, Issue 5 - September, 2009

Summary of Summer Negotiations

By Charlotte Lofft, FA President

The following was achieved in Summer negotiations:

1. The SERP (Supplemental Employee Retirement Plan). Qualified faculty have received a packet on the SERP from HR. You should direct your questions to the appropriate contacts as stated in the packet. This is an excellent SERP opportunity. It is definitely in your best interest to contact STRS or PERS for an assessment of your individual retirement issues. The deadline to submit SERP paperwork is 5 p.m. on September 25, 2009.
2. An agreement to implement the Enhanced Lab Hour Load in Fall of 2010. This fulfills a contractual agreement. It will constitute a cost to the District effective Fall of 2010 and will be reflected in the Load Sheets of affected faculty. We are very pleased to have achieved this gain in these financially difficult times and appreciate the District's willingness to agree.

Interested and eligible faculty need to apply to the FA for this enhanced Lab Load this Fall Semester, and thereafter the FA and the District will determine which courses shall qualify. Some details related to application have been sent out already. If you have questions, you need to contact either Charlotte Lofft, Dave Fouquet or Tom deWit of Chabot College.

3. An agreement to increase the Pay-by the Course multiplier from 17.3 to 17.5, effective this Fall Semester, 2009. This fulfills a contractual agreement and translates to a positive salary impact for all Part-time faculty and for all Full-time faculty who teach overload for extra pay. The formula for Pay-by-the Course is in Contract Article 21F.4. You can find it on the District web site under HR and can hyperlink to the Article from the Table of Contents. The formula is as follows:
 - a. Lecture courses, or the part of the course that consists of lecture hours:
Pay = (Lecture Unit Rating) x (Hourly Lecture Rate) x 17.5 (formerly 17.3) PLUS/OR
 - b. Laboratory courses, or the part of the class assignment that consists of laboratory hours:
Pay = (Weekly Laboratory Hours) x (Hourly Laboratory Rate) x 17.5 (formerly 17.3)

If you want to compute how much this will increase your own Part-time or Overload salary, simply do the calculation above with the old factor of 17.3 and then do it with the new factor of 17.5. Subtract one figure from the other for the difference, which will be your pay increase. This increased factor of 17.5 puts us in line with the State-wide standard and makes us competitive with the Bay Ten community colleges. The FA is very pleased to have achieved this salary gain in these difficult time and we are grateful that the District agreed.

September, 2009

2009-2010 CLPFA Officers

President

Charlotte Lofft
510.723.6873

Vice President

Chabot: **Dave Fouquet**
510.723.6868
LPC: **Jane McCoy**
925.424.1237

Secretary

Tom deWit
510.723.6821

Treasurer

Kevin Ankoviak
925.424.1396

Part Time Representatives

Chabot: **Seth Harwood**
LPC: **Teresa Donat**
925.424.1000 ext 2360

Membership

Chabot: **Shari Jacobsen**
510.723.7696
LPC: **Debbie Fields** 925.424.1113

Grievance Officer

Chabot: **Charlotte Lofft**
510.723.6873
Chabot: **Dave Fouquet**
510.723.6868
Chabot: **Diane Zuliani**
510.723.6838
LPC: **LaVaughn Hart**
925.424.1194



Office Hours: New Contract Language

By: Charlotte Lofft, FA President

This article was published last semester, but it is worth repeating since some faculty have asked about it.

There are some significant changes to the Contract language on Faculty Office hour requirements which might affect some of you this Semester. I have quoted Article 10D.3.a of the Contract and underlined the new language. As you can see, it formally recognizes that faculty who are released from teaching duties will have a proportionate reduction in their office hour duties.

10D.3.a Office Hours.

1. Obligation. Full time unit members whose load is 100% teaching shall have five (5) office hours per week during the academic year. Faculty whose load is distributed between teaching and other duties shall have their office hours obligation reduced proportionally to their teaching assignment at the ratio of one (1) office hour for each three (3) CAH of instruction. For instance, if a full time unit member's load obligation is 60% teaching and 40% release, then the unit member shall have three (3) office hours per week during the academic year.

If the unit member's teaching load up to 15 CAH is not divisible by three (3) CAH, then he/she shall serve half of the remaining office hour if the remainder is 1.5 CAH or less. If the remainder is greater than 1.5 CAH, the unit member shall serve the full office hour.

Example:

Teaching load of 10 CAH = 3.5 office hours per week.

Teaching load of 11 CAH = 4 office hours per week.



TB Testing: A Possible Alternative to PPD and/or Chest X-rays

By Charlotte Lofft, FA President

The FA and the District have cooperated in researching an interesting scenario that might provide an alternative to the usual approach to TB testing in selected circumstances. This possible alternative is limited to faculty in very unique circumstances and certainly not for everyone. Here are the particulars:

1. The Ed. Code, and our Contract, requires the District a TB exam upon initial employment to the faculty. Thereafter, faculty who tested negative to the initial skin test (PPD) are required to undergo an exam for TB every four years. If a faculty person tests positive for TB through the usual and customary initial skin test (the PPD), then a follow up chest x-ray has been the standard to rule out for TB.
2. The limitation of the usual initial skin test (PPD) is that in some situations it results in a false-positive reaction. One common cause of this false-positive reaction is if the PPD skin test is being administered to someone who was previously vaccinated against TB or who was previously treated for TB. When someone has a history of inoculation or prior treatment for TB, he/she will probably always test false-positive with the skin test (PPD). That has led to some of you having a chest x-ray every four years.
3. Because of the limitations of this skin test (PPD), the Ed. Code allows an Individual to demonstrate a negative TB diagnosis through an alternative examination (such as verification by a Doctor of Medicine, after a chest exam), that the individual is negative for TB. Such verification would avoid the need for repeated exposure to x-ray radiation, if the chest exam was negative.

If you have a history of always testing false-positive to the PPD and thereafter always needing the chest x-ray, you might qualify for the alternative possibility of having an MD verify, after an exam, that you are free of TB. This could possibly save you the need to have a chest x-ray. If you have further questions regarding TB exams, you should contact the Director of HR.

Rotational Seniority for Overload Assignments

By Charlotte Lofft, FA President

I have been approached by a few faculty who were unaware of the system for Contract or Regular faculty to request overload assignments. (NOTE: Contract faculty are tenure track who don't have tenure yet. Regular faculty are tenured faculty.)

The language below is from the Contract, Article 10D.10d. Please review it and let me know if you have questions. In essence, rotational seniority has to be requested by the unit member at a date certain, which is by the end of the first week of December in any Fall Semester. Once the Contract or Regular faculty person requests it, then the process goes according to the terms of the Contract, quoted below.

I hope this helps clarify the issues. Again, any questions should be directed to me.

"d. With respect to Summer Session, overload, and Inter-session assignments, if rotational seniority is requested by a Contract or Regular unit member, then each eligible unit member shall have the right to choose an assignment, in order of seniority (initially determined by date of hire) until either all the assignments are taken, or all unit members are assigned the desired amount of overload.

- (1) Once the most junior person receives an assignment in any round, the process shall wrap around to the most senior person who has the first right of choice in the next round.
- (2) Each semester the process shall commence where it ended the previous semester (i.e., it does not automatically begin a new round).
- (3) If the unit member fails to request the assignment on time (as indicated in (b) above), then the normal assignment preference may be forfeited for that semester, Summer Session or Inter-session.

- e. Temporary unit members shall be eligible for overload, Summer Session, or Inter-session assignments according to [Article 18B.1.e](#) after Part-time (Adjunct) unit members receive assignments. The above processes of rotational seniority and requesting assignments shall be followed if invoked."

KNOW YOUR RIGHTS

This has been published before, but it is always worth repeating. If you are asked to come to a meeting with administration and you are not sure why, you should be alert to the possibility of discipline and ask ahead of time what the meeting is about.



The US Supreme Court in the Weingarten case has ruled that an employee has the right to have a union representative present during any interview which may result in discipline. Please remember the following guidelines:

1. You must request that a union representative be in attendance at the meeting.
2. You must have a reasonable belief that discipline will result from the meeting.
3. You have the right to know the subject of the meeting and the right to consult with your union representative prior to the meeting.
4. Rather than refuse to attend a meeting if a union representative is requested but denied, go to the meeting and repeatedly insist on your right to representation. If you fail to have representation, don't answer and questions but take lengthy notes.

Disabled Students - Faculty Rights and Responsibilities

By Charlotte Lofft, FA President

(This was written by Ms. Patricia Lim, FA Attorney, and is being paraphrased from Ms. Lim's work.)

This article was published last semester, but since the new academic year is getting started, it is worth repeating.

The FA has been involved in some recent matters related to the rights of students with disabilities and the related rights of faculty to instruct all students in the class and maintain their individual faculty academic freedom in the process. FA attorney, Ms. Patricia Lim, has provided the following guidance on these matters. Please contact me if you have any questions about this topic, and I will approach Ms. Lim for help with your questions. The material below was written by her.

Ms. Lim states:

"Legal Analysis

The Chabot and Las Positas Community Colleges are covered by two separate but complementary federal disability discrimination laws. Because the colleges receive federal monies, they are subject to Section 504 of the Rehabilitation Act of 1973 (Section 504). In 1990, the Americans with Disabilities Act (ADA) was passed. Under Title II of the ADA, the Colleges are defined as "public entities" and therefore, also subject to the ADA. The Office of Civil Rights (OCR) in the Department of Education enforces both laws, and has prepared helpful guidelines to better understand the mandates and limitations of disabled students and faculty rights under both laws.

Both Section 504 and Title II prohibit discrimination on the basis of physical or mental disability. As part of that mandate, these laws also require that disabled individuals are provided (1) access to educational programs and facilities and (2) "academic adjustments" and/or auxiliary aides in higher education. An academic adjustment and/or an auxiliary aide is an accommodation that facilitates access to educational programs and facilities. Examples of "academic adjustments" include: priority registration, reduced course load, extended examination time, substituting one

course for another (if not an essential course for the degree program), and extending the length of time to complete assignments and other academic activities. Examples of auxiliary aides or services include: taped texts, note takers, interpreters, readers, videotext displays, talking calculators, Braille calculators, printers or typewriters, closed caption decoders, and assistive listening devices.

In providing an academic adjustment, the Colleges are not required to lower, substantially modify or waive any essential requirements and/or standards of a course or program. See *Southeastern Community College v. Davis*, 442 U.S. 397, 401-402, 405 (1979)(holding Section 504 does not compel educational institutions to make substantial modifications to their programs to allow disabled persons to participate); *MacGregor v. Louisiana State Univ. Board of Supervisors*, 3 F.3d 850, 860 (5th Cir. 1993)(finding that a disabled law student's request to attend school part-time would force the school to lower its academic standard or compromise the reasonable policy of its academic program and that Section 504 does not require that much); and *Dougherty v. Southern College of Optometry*, 862 F.2d 570, 574-575 (6th Cir. 1988)(waiver of a necessary program requirement is a substantial rather than merely reasonable accommodation).

This is true for instructors as well. The instructor is ultimately responsible for ensuring the "integrity" of the course he or she is teaching. Therefore, the instructor may verify the student's disability as well as the pre-approved academic accommodations. The instructor also has the right, based on the course outline and syllabus, to determine how well the student is learning the required material and to grade accordingly. The Colleges and/or instructor can also require that the disabled student adhere to the College's code of conduct, including attendance policies.

Attendance policies are outlined in the Colleges' Student Handbook titled "Academic Regulations and Student Rights and Responsibilities." Attendance is clearly an essential course and/or program requirement; a student cannot learn and/or participate in the course if he or she is not present. The disabled student's ability to learn and keep up with the rest of the class is dependent not only on his or her attendance but also

Disabled continued

that of any aides in the class. Late arrivals disrupt the class, especially when spaced out over the class period.

Conclusion

Faculty are well within their rights to ask that the disabled student and any aides respect the classroom rules, course outline and syllabus as well as other class members by arriving to class on-time and with a minimal amount of disruption. To "waive" these rules is to lower the standards faculty set for their students and compromise their course performance. Ultimately, a student's attendance problems will impact his or her performance, but the law gives the instructor the right to determine how well the student is learning the required material and to grade him or her accordingly.

Recommendation

In researching this subject-matter, I discovered that many colleges have adopted Faculty Rights Statements. There are many versions available on the internet. I strongly recommend that the Union consider creating a faculty rights statement as well, ideally with the support of all concerned parties.

Finally, the Union should propose negotiations with the District over the impact and effects of the disability laws on faculty. It is problematic for each member of the faculty to have to imagine on their own the nature of their responsibility. Ideally, a negotiated agreement will (1) put the burden on the administration to assure compliance with State and Federal laws, while (2) assuring that faculty have adequate administrative support and assistance to assure that the course objectives can be met for all students. The process might include a provision for a joint union-management meeting, with the instructor, the Disabled Student Services coordinator, and the administration, to avoid problems and/or resolve issues before they escalate."

FA Agency Fee Dues: An Increase May Be In Order

By Charlotte Lofft, FA President

Those of you who attended our FA presentation at Convocation got a brief report about the relative bargain of our FA Agency Fee dues. Here are some statistics from neighboring community colleges that may put this in perspective:

College	PT Dues	FT Dues
CCSF	1.19% Gross	1.19 %Gross
West Valley Mission	\$20/semester	1% of base salary
San Jose Evergreen (Affiliated)	1.3% of gross	1.3% of Gross
Peralta (Affiliated)	\$28.04/ member	\$1.46% of Gross
Foothill /DeAnza Independent	.045% Gross	.6% of Gross
San Mateo (Affiliated)	1.2% of Gross	1.2% of Gross
Contra Costa (Independent)	0.35% of gross.	55% of Lecture Load
Ohlone (Independent)	\$1/ month	0.35% of other earning \$18/month
Chabot Las Positas (Independent)	\$10/Month	\$37/Month (10 months)

The above numbers, with the exception of Ohlone and West Valley Mission's Part-time dues, are all substantially more than ours. Marin is not listed above, but it is also an affiliated union and therefore has some sort of percentage distribution for dues structure which means it is also substantially more than ours. (There is a big advantage to being an independent Faculty Association with respect to Agency Fee Dues in that a regional and/or national entity does not dictate our fee structure and take a big portion of it for themselves.

As stated at the Convocation meeting, our operating costs have escalated and may continue to do so. The legal fees have gone up considerably, and the cost of negotiations is anticipated to be considerable. It is very likely that the FA will be submitting a ballot measure of a dues increase in the near future. We know that this is a difficult time for folks, but we are confident that you will understand our need to have some increased revenue based on a modest dues increase.

There has not been an FA dues increase in this District since 2000, so this bargain has been in place for a long time.

In the intervening years, there have been huge Contract gains for all faculty with considerable emphasis on Part-time faculty who have received the beginnings of Pro-rata pay, Part-time Seniority, access to medical benefits, access to paid office hours, enhanced Leave of Absence provisions, and a more professional approach to faculty evaluations. Full-time faculty have enjoyed the benefits of two additional steps to the Full-time Salary Schedule and targeted enhancements to the Full-time Salary Schedule as well as enhanced evaluation procedures. All faculty have benefited from big Contract gains in working conditions, opportunity for large lecture pay, due process issues related to Personnel Records and Files, gains in Academic Freedom, and many other categories.

All of these gains, with hopefully more to come, have a cost factor in terms of legal advice and other operational expenses. Those costs continue to escalate, and since the FA Executive Board is committed to having a solid reserve in case we need it, we are considering asking the Membership to vote for a modest increase in dues. We will communicate more details in the future. We hope you will consider these issues with an open mind; feel free to contact an E Board member if you have questions.

Thank you.

Assignment of Grades - Faculty Right to Assign Grades Based on Class Attendance

By Charlotte Lofft, FA President

This article is taken from a letter that was distributed to all faculty last May. It is being repeated here because it is important and because some faculty may not have received the letter.

As some of you may know, some concerns have arisen in the past regarding the current and common practice of most vocational tech programs, as well as the practice of faculty in other disciplines, to assign grades based on class attendance.

The FA has looked into this matter and initiated discussions with the administration and determined that the administration AGREES that both the State Education Code, various court cases, and the FA Collective

Bargaining Agreement (the "Contract") guarantee that faculty have the right, under academic freedom, to determine grading, and may assign a failing grade to students who fail to meet specified attendance standards that are determined by faculty—either program-wide or individually.

Because this is such an important issue to faculty, and is part of our Contract, we are writing to ensure that any confusion over this issue is clarified.

To that end:

All faculty are permitted by law to establish standards of attendance and drop students from their classes and assign failing grades for students who do not meet those attendance standards;

Assignment Grade continued:

These standards may be set by a program (such as many of our vocational tech programs), or by individual faculty in academic or other disciplines;

Students should be advised at the beginning of classes of standards of attendance—and that failure to meet those standards will result in being dropped from the class and/or receiving a failing grade; and

Program-wide standards should ordinarily appear in the materials about the program and individual faculty that use attendance standards should also include them in their syllabi.

The FA attorney, Mr. Robert Bezemek, has provided the following information for all faculty. If you are challenged by the District or any of your supervisors for assigning a failing grade, lowering a grade, or dropping a student based on attendance, please contact the FA immediately, and we will assist you in upholding your rights.

Mr. Bezemek pointed out that the law expressly provides that faculty have the right to issue student grades, so long as there is no mistake, fraud, bad faith or incompetency in the process. This right was assured when the legislature adopted section 76224, which provides:

(a) When grades are given for any course of instruction taught in a community college district, the grade given to each student shall be the grade determined by the instructor of the course

and the determination of the student's grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetency, shall be final."

(NOTE: This section of the Ed. Code is referenced in our Contract, Article 9L. A violation would be grievable.)

This protective provision of the Education Code is duplicated in Title 5. (5 Cal. Code of Regs § 55025) As stated above, this Education Code language is in Article 9L of our Contract.

FA is pleased that after inquiry it was determined that the District shares FA's understanding of the law, and has worked cooperatively to confirm our mutual understanding.

As stated above, our Contract does memorialize the relevant section of the Education Code with respect to faculty rights in grading. The FA takes these rights very seriously, and we want to hear from you if you feel these rights are being violated.

Faculty Association

Meeting Schedule

All faculty are encourage to attend any or all of the association meetings

Chabot:

September 22 12:00 - 1:00 Room 804

October 27 12:00 - 1:00 Room 804

Las Positas:

September 30 3:00 - 5:00 Staff Lounge

FA Moves to Reopen 14 Contract Articles: District Responds by Moving to Reopen 24 Articles

The next table represents the Contract Articles that have been listed as re-openers by both the FA and the District. It is noteworthy to mention that the FA, which listed re-openers first, kept the option open to add to it list. The District, in their 24 Article response, stated that they acknowledge the FA "request" to reopen additional articles and "concur when both parties mutually agree on additional articles to reopen". The FA responded in writing and with a supporting email from our attorney, that the District cannot require mutual agreement of the FA's potential request to reopen articles.

Contract Negotiation Articles to Reopen

Article	District Open	FA Open	Both Opened	District Only	FA Only
1: Agreement	X			X	
3: Negotiation Procedures	X			X	
4: FA Rights	X			X	
7: Grievance	X	X	X		
8: Academic Calendar	X			X	
9: Working Conditions	X	X	X		
10 Workload	X	X	X		
11: LOA's	X	X	X		
12: Sabbatical and Banked Leaves	X	X	X		
13: Transfer		X			X
14: Untenured Faculty Eval.	X	X	X		
15: Tenured Faculty Eval.	X	X	X		
16: Personnel Records and Files	X			X	
17: Summer and Intersession	X	X	X		
18: PT Faculty	X	X	X		
19: Pre-Retirement Reduction	X			X	
20: Benefits	X	X	X		
21: Salaries	X	X	X		
25: Duration	X			X	
26: Academic Freedom	X			X	
28: Subs. Abuse	X			X	
29: Enrollment Management	X			X	
32: Staff Development	X	X	X		
33: Post Retirement		X			X
34: RIF	X			X	
35: Non Discrimination	X			X	
36: (New Article) Resignation		X			X
Totals	24	14	12	12	3

Note: FA kept option to open more and District stated in this answer that they acknowledge FA's "request" to reopen additional articles, and District concurs when both parties mutually agree on additional articles to reopen. FA responded in writing that District cannot require mutual agreement of the FA's request to reopen articles.