

PSC Testimony on the Proposed Policy on Acceptable Use of Computer Resources
CUNY Board of Trustees Hearing
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Submitted by
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Good evening Chair Schmidt, Chancellor Goldstein, members of the Board of Trustees, the chancellor, colleagues, and guests.

The PSC has had the opportunity to express its views directly to you on the two proposed policies under consideration: the policy on computer use and procedure on student complaints about faculty conduct in academic settings. As you know, we oppose adoption of both policies in their present form. President Bowen will address the substance of the student complaint procedure which we think has no merit and should be withdrawn from consideration.

We believe the proposed computer use policy does have merit and should be considered for adoption, but only after a more lengthy review and consultation process. Also, there are key parts of the proposed policy that either need to be changed or negotiated directly with the PSC .

In general, we agree with the Board's initiative to promulgate a policy on acceptable use of computer resources. The introductory statements affirming academic freedom, freedom of expression and freedom of inquiry are necessary and important. Also, the statements that the user's privacy interest will have a privileged status in the implementation of this policy and that the policy's intention is "to support the free exchange of ideas among members of the CUNY community and between the CUNY community and other communities" are welcome. These general assurances, however, are undermined by certain provisions and limitations of the proposed computer use policy and the lack of specific Board policies, with the exception of academic freedom, affirming the privacy rights of members of the CUNY community and the open expression and "free exchange" practices sanctioned by the University.

These general assurances, by themselves, do not provide the necessary framework to assure that the academic mission of CUNY will be promoted by the proposed policy. Furthermore, the vague character of these assurances along with the proposed policy's limitations on the ability of the CUNY community to exercise these core values will most likely lead to confusion and many disputes about the policy's application.

Inconsistencies with the contract. Of particular importance to the PSC is that several provisions of the policy are inconsistent with provisions of the Collective Bargaining Agreement between CUNY and the PSC; viz. contractual requirements for notice before conducting classroom observations and due process requirements when engaging in disciplinary actions. Consequently, the policy as proposed violates Article 2 of the Agreement. CUNY must negotiate these aspects of the policy with the PSC and your failure to do so will result in a

grievance being filed if the policy is adopted in its current form.

Possible Taylor Law violations. Also, several provisions of the policy may be applied in a fashion that will interfere with union activity protected under the Taylor Law. Because of the vagueness of phrasing in several provisions (e.g. “partisan political activity”), the long-held right to communicate with union members and the right to conduct normal and accepted union functions may be restricted. Such restrictions on Taylor Law rights will be remedied through the union’s invocation of the Taylor Law’s remedial processes.

Lack of confidentiality will undermine research. Importantly, the proposed policy’s lack of guarantees of confidentiality will interfere with the research interests of the faculty. Because the CUNY community is so complex and the proposed policy is so sweeping and uniform in its application, the policy will have perverse effects on research. The proposed policy has *no waiver* provision and thus applies equally to all situations. Without guarantees of confidentiality, researchers will not be able to use CUNY computer resources for their research because of Federal laws concerning confidentiality of personal information (HIPPA) and confidentiality in human subject research (IRB) and because of the ethical practices of CUNY researchers who guarantee confidentiality to their research subjects (encryption cannot be relied upon for confidentiality). This is particularly true for Faculty doing legitimate research in sensitive areas (e.g. terrorism, child pornography, sexual harassment). At some institutions within CUNY, software licenses require a network connection. Where this is the case and confidentiality is required, researchers will be unable to access university software. The result will be disruptive to the research function which is central to CUNY’s mission.

What will it mean to the University to have researchers having to work offline and have data stored offline? Will it contribute to the breakdown of community and a collective CUNY identity? Will researchers, aware of competitive pressures to develop grants and wary of administrators’ “prying eyes,” go off-line to develop grants? While the answers to these questions cannot be fully known, it is not improbable to think these procedures will make it more difficult to create a collaborative or centralized research environment; both of which are stated CUNY objectives.

Lack of confidentiality will interfere with class-room teaching. The proposed policy will interfere with teaching. The lack of privacy protection for classroom discussion boards and the ability to review those discussion without notice will have a chilling effect on freedom of expression within synchronous and asynchronous electronic extensions of the classroom. An informal survey of English Composition classes at one CUNY college revealed the top four topics students chose to write about were suicide, abortion, eating disorders and sexual abuse. How comfortable will students feel about addressing such issues if they know they are possibly being watched? The use of portfolios for online course evaluation may be more difficult if students think that their portfolios (which may contain controversial material) are subject to unannounced, outside review.

Liability in multi-user contexts. Shifting of liability to the user in multi-user situations. There are many situations in CUNY where computer resources are used by multiple individuals:

students using library computers, adjunct faculty using common computers, or instructional computers used by multiple users. At this point, it is unclear exactly where responsibility resides for misuse of computer resources in such circumstances. The proposed policy refers to “Information Security policies” which may explain who is responsible for what in such circumstances. The problem is this policy has not yet been promulgated.

Vulnerability of Research Foundation users. It is not certain that all CUNY employees engaged in research will be covered under the New York State law indemnifying public employees. The law covers public employees operating within the scope of their employment. In other venues, CUNY maintains that Research Foundation employees are not CUNY employees. Therefore, researchers operating on CUNY Research Foundation grants or other grants may not be indemnified against liability. If such coverage is lacking, then the proposed policy’s categorical assigning liability to the user would leave those employees/users vulnerable.

Some other problem areas include:

- § The proposed policy does not have a statement affirming rights to use computer resources of the university by all instructional staff. Such an affirmation is particularly important for adjunct faculty.
- § The proposed policy is discriminatory toward non-teaching instructional staff with respect to its personal use provisions and with respect to its lack of review provisions when monitoring of an individual is done without notice. It is also discriminatory toward students in not providing a level of review comparable to faculty when monitoring is done without notice.
- § The proposed policy allows for CUNY and its constituent colleges to filter access to internet based on content, provided that content is not the “sole” reason for the filtered access. Content-based restrictions of any sort are unacceptable, because they threaten free speech
- § The vagueness of language also raises concern that 1st Amendment violations will be committed by overzealous administrators.

The proposed policy in its current form should not be adopted because it will not serve the interests nor the mission of the University. It can, however, be fixed. Before this policy is adopted, further consultation needs to be held with stakeholder groups to fully understand the impact of the proposed policy and make appropriate changes. Also, negotiation with the PSC over contractual provisions is mandatory.