

Minutes of the
MEETING OF THE FACULTY SENATE
September 19, 2011

APPROVED

PRESENT: Bruce Bishop, Monika Brannick, Melinda Carrillo, Haydn Davis, Jenny Fererro, Katy French, Marty Furch, Barb Kelber, Greg Larson, Teresa Laughlin, Jackie Martin-Klement, Christina Moore, Linda Morrow, Wendy Nelson, Patrick O'Brien, Lillian Payn, Perry Snyder, Diane Studinka, Fari Towfiq

ABSENT: Lori Graham, Pam McDonough

GUESTS:

CALL TO ORDER: The meeting was called to order by the President, Monika Brannick, at 2:04 p.m., in Room SU-30.

Approval of Minutes:

Motion 1 MSC Snyder, Fererro: Faculty Senate approval of the minutes of August 29, 2011, as amended. The motion carried.

There were no minutes submitted for the September 12, 2011, meeting because it was a Special Senator Orientation meeting.

Public Comments: There were no public comments.

Announcements: Monika Brannick announced that she and Senator Lillian Payn are working on an updated logo for the Faculty Senate.

Agenda Changes: There were no agenda changes.

Committee
Appointments:

Motion 2 MSC O'Brien, Fererro: Faculty Senate approval of the following committee appointments:

Academic Technology Committee
(11-13) Career, Technical, and Extended Education
Emiko Kiyochi (at-large position)

(10-12) Student Services
Teresa Pelkie/Arts, Media, Business & Computer Science (at-large position)

Curriculum Committee
(11-14) Career and Technical Education
Gene Gushansky (at-large position)

Facilities Review Committee
(11-13) Karen Mifflin

(11-13) Ken Swift

Faculty Service Area Review Committee

(11-13) *Counseling*

Rosie Antonecchia

(11-13) *CTEE*

Colleen (Weldele) Bixler/Language and Literature (at-large position)

Instructional Planning Committee

(10-12) *Library*

Byung Kang

Learning Outcomes Council

(11-13) *Career and Technical Education*

Greg Larson/ Mathematics and the Natural and Health Sciences (at-large position)

Matriculation and Transfer Committee

(10-12) *English*

Anthony Smith/Arts, Media, Business & Computer Science (at-large position)

Professional Development Advisory Board

(11-13) *Career, Technical and Extended Education*

Anne-Marie Mobilia/ Social and Behavioral Sciences (at-large position)

Sabbatical Leave Committee

(10-12) *Social and Behavioral Sciences*

Pat Hahn (at-large)

Tenure and Evaluations Review Board

(10-12) *Counseling OR Library/Media Ctr. OR Student Support*

Russ McDonald/Financial Aid

(11-13) *Arts, Media, Business and Computing Systems*

Gil Noble/Business Education

Selection Committee – Interim Dean/Languages and Literature

Selection Committee for the position of One faculty representative from each of the following departments is needed to serve on the selection committee for the Interim Dean/Languages and Literature position.

English - Craig Thompson

ESL – Gary Sosa

Reading - Melinda Carrillo

Speech Communications/Forensics/ASL - Kevin Struxness

World Languages - Chantal Maher

Selection Committee - VP Finance and Administrative Services

Four (4) members to include three (3) instructional faculty members and One (1) Student Services faculty member

Carol Bruton/ Arts, Media, Business & Computer Science

Teresa Laughlin/Social and Behavioral Science

The motion carried.

Motion 3

MSC O'Brien, Furch: Faculty Senate acceptance of the results of the ballot for the following committee appointments:

Campus Police Committee

(10-12)

P.J. DeMaris/Student Services

Instructional Planning Committee

(11-13)

Alan Aquallo/Social and Behavioral Sciences

Haydn Davis/Social and Behavioral Sciences

The motion carried.

Patrick O'Brien informed Senators that when faculty are appointed "at-large" to committees, it indicates that they are not from the division initially sought to fill the position. If after eight business days a faculty member from the division does not express interest, the position opens up to all faculty at-large.

O'Brien reminded all that Senators are still needed to serve on the Human Resources Planning and Finance/Administrative Services Planning Councils.

Motion 4

MSC Fererro, Morrow: Faculty Senate ratification of the following Peer Review Committee appointments:

Takashi Nakajima, Peer Review Chair for David Boyajian

Judy Dolan, Peer Review Chair for Mary Cassoni

Jack Stone, Peer Review Chair for Chris Feddersohn

Anne Hohman, Peer Review Chair for Pam McDonough

(Ryan) Dillon Emerick, Peer Review Chair for Haydn Davis

The motion carried.

Monika Brannick informed Senate members that a Senator is needed to fill the position of Past President on the Faculty Council. She provided a brief outline of the duties and responsibilities of the position. After some discussion, Marty Furch volunteered to serve.

Motion 5

MSC Fererro, Laughlin: Faculty Senate approval of the appointment of Marty Furch to the position of Past President on the Faculty Council. The motion carried.

Emeritus:

Motion 6

MSC Laughlin, O'Brien: Faculty Senate affirmation of the Emeritus Status for Stephen B. McDonald. He has served Palomar College for 27 years. The motion carried.

Curriculum:

The Curriculum Committee is scheduled to meet on Wednesday, September 21.

Student Learning
Outcomes and
Assessment Cycle

Plan 2009-14: Copies of the Palomar College Student [Learning Outcomes and Assessment Cycle Plan](#) were distributed. Marty Furch outlined the recent amendments and a question and answer period followed.

Motion 7 MSC Morrow, Towfiq: Faculty Senate approval of the Palomar College Learning Outcomes and Assessment Cycle Plan 2009-14. The motion carried.

Accreditation Report: Monika Brannick distributed several copies of the Summer 2011 ACCJC Newsletter (http://www.accjc.org/wp-content/uploads/2010/09/Summer-2011-Newsletter_8-1-11.pdf). She outlined several points of interest in the document, including several policies that have been adopted and/or are being reviewed.

Brannick added that Palomar's Accreditation Committee met last week. She reported that a draft of Palomar's mid-term report is now available for review on the Accreditation website. She encouraged everyone to review the document and to send recommendations to Vice President Cuaron or Glynda Knighten.

Policies & Procedures: Monika Brannick put the following Policies & Procedures on the overhead for information:
AP 3750 Use of Copyrighted Material (Exhibit A)
AP3715 Intellectual Property (Exhibit B)
AP 3720 Computer and Network Use (Exhibit C)
BP 4300 Field Trips and Excursions (Exhibit D)
AP 3710 Securing of Copyright (Exhibit E)

Senate members briefly discussed the documents. Brannick reminded Senators that the red language in the documents are recommendations from the Community College League. With no objections or concerns expressed by Senators, these documents will be forwarded to the Task Force.

Senators were also provided copies of a document from the Office of Student Affairs recommending that faculty include wording in their syllabus regarding cheating and disruptive behavior (Exhibits F & G). This will be discussed at next week's meeting.

Brannick noted that the Senate will be reviewing Palomar's policy on Academic Freedom next week.

POD Access Guidelines: This item will be discussed at next week's meeting.

Senators briefly followed up on a discussion held last semester regarding how data is stored on the database, emphasizing again that all data is considered public record and may be accessed utilizing a Public Records Request. It was suggested that it would be helpful to include a statement providing that information in as many locations as possible.

TERB: Barb Kelber reported to Senate members that Article 17 of the current contract requires members of the Tenure & Evaluations Review Board (TERB) to convene an Evaluation Appeals Committee at the beginning of each academic year, though this hasn't been done in the past. Membership on the committee includes 3 faculty members and 2 alternates appointed by the Faculty Senate, 2 administrators appointed by the Superintendent/President, and 2 members of the Palomar Faculty Federation (PFF).

Although it is unlikely that the committee will ever need to meet, its formation is necessary. Kelber indicated that more information will be sent out to Senators this week.

Kelber informed Senators that the process for online evaluations is under way. One of the Accreditation recommendations is that Palomar ensure the quality of our online programs. The Academic Technology Committee is currently doing some of that work with the validation process, and members of TERB are overseeing the portion that relates to evaluations. "Evaluation Kit," the company brought on board last year for online evaluations, is creating a pop-up window that will provide students several opportunities to participate.

Kelber also distributed copies of the Palomar College Part-Time Faculty Evaluation Report (Exhibit H). She provided a brief report on the recommended changes, and Senators made several suggestions for amendments to the document.

These items will be brought back next week for further discussion and/or action.

Other:

Fari Towfiq distributed the following information on Palomar's Post Retirement Benefits Fund:

Post Retirement Benefits Fund (Fund 69)

During the 1997-98 fiscal year the District established the Post Retirement Benefits Fund (Fund 69) to receive amounts set aside for medical and dental insurance premiums to be paid on behalf of the employees who have retired from the District and are eligible under provisions of the benefit plan. On June 30, 2007 this fund had a balance of \$14.6 million. Since then payments from the fund have exceeded the revenue coming into the fund and the balance has been reduced to \$12.7 million and if no action is taken by the District, the balance will be reduced further during the 201-12 Fiscal Year. This balance is far short of the \$78.5 million that has been identified as the fund's total liability by the actuary who completed a study during 2010.

The Accreditation Standards state the following: 'The institution clearly identifies and plans for payment of liabilities and future obligations.' During the last visit the review team clearly indicated that the District must address the liability associated with the retiree medical costs.

In addition the ratings agencies will assess the District's ability to accommodate the long term liability associated with the cost for retirees' medical plans. If it is deemed that the District is not in a good position to pay the costs associated with retirees, it could impact the bond rating and result in additional costs to the District. This would in turn reduce the number of projects that could be funded from Proposition M.

For 2010-11 an amount equal to \$5,114 for each academic employee and \$4,276 for each classified employee who was enrolled in a medical plan with the District was deposited into Fund 69. The latest study indicates the District should be placing \$5,065 for each employee for 2011-12. Doing this would increase the transfer to the Fund by \$340,000.

It is recommended that for 2011-12, the District transfer \$5,065 per active employee into the Post Retirement Benefits Fund.

The expenses charged to the Post Retirement Benefits Fund have consisted of the composite rate for each eligible retiree. This has probably resulted in a larger charge to this fund than should have occurred. For example, most of the retirees who are eligible to continue coverage past age 65 are also eligible for Medicare and the premium for Medicare is substantially less than the non-Medicare premium. Also retirees seldom have more than one other dependent and the composite rate assumes the number in the family that is average for the total population of active and retired employees.

It is recommended that the charges to Fund 69 be more closely aligned with the actual costs for retirees covered from that fund.

The total liability for the Post Retirement Benefits is \$78.5 million. While the District has approximately \$12.7 million in the Fund, none of the \$12.7 million can be officially counted toward the liability unless it is placed in an irrevocable trust. A one-time deposit into Fund 69 and a deposit into the League's Fund for retiree benefits would help address these issues.

It is recommended that \$2 million for 2011-12 be deposited in the Post Retirement Benefits Fund (Fund 69).

It is recommended for 2012-13 that any excess ending balance in Fund 11 on June 30, 2012, excluding the Designated accounts, up to \$2 million be deposited in the Post Retirement Benefits Fund with the understanding that this deposit will not cause the projected ending balance for 2012-13 to go below \$5 million.

It is recommended that the process in the previous recommendation be repeated in each fiscal year after 2012-13.

It is further recommended that \$1 million be deposited in the trust fund set up by the League from the Post Retirement Benefits Fund (Fund 69).

ADJOURNMENT: The meeting was adjourned at 3:28 p.m.

Respectfully Submitted,

Melinda Carrillo, Secretary

EXHIBIT A

AP 3750 USE OF COPYRIGHTED MATERIAL

References:

Education Code Sections 32360 and 67302;
U. S. Code Title 17, Copyright Act of 1976

Note: The example highlights key criteria for the procedure(s), but is not exhaustive. A number of associations provide excellent resources related to use of copyrighted materials. Please see the following websites for information that expands on the general checklists in this procedure, which may be used to develop and refine local practice. The booklets, "Questions and Answers on Copyright for the Campus Community" and "Guidelines for Campus Copying" are available on the first three websites and are excellent resources.

1. The Association of American Publishers, www.publishers.org, click on "conferences and publications".
2. National Association of College Stores, www.nacs.org, click on "industry information" Software and Information Industry Association, www.siaa.net, click on "bookstore"
3. Copyright Clearance Center, www.copyright.com.
4. American Libraries Association, www.ala.org, click on "Washington Office" or "issues and advocacy"

Employees and students shall not reproduce copyrighted materials without prior permission of the copyright owner, except as allowed by the "fair use" doctrine.

Fair Use

Reference:

Copyright Act, Section 107

The "fair use" doctrine permits limited use of copyrighted materials in certain situations, including teaching and scholarship. In some instances, copyright may be required for works that fall within "fair use."

Note: The following is excerpted from the legislative history of the 1976 Copyright Act, which established congressionally endorsed guidelines related to classroom copying for educational use.

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

- A. A chapter from a book
- B. An article from a periodical or newspaper
- C. A short story, short essay or short poem, whether or not from a collective work
- D. A chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion, provided that:

- A. The copying meets the tests of brevity and spontaneity as defined below; and
- B. Meets the cumulative effect test as defined below; and
- C. Each copy includes a notice of copyright

Definitions:

Brevity:

- i. Poetry: (a) A complete poem if less than 250 words and if printed on not more than two pages or (b) from a longer poem, an excerpt of not more than 250 words.
- ii. Prose: (a) Either a complete article, story or essay of less than 2,500 words, or (b) an excerpt from any prose work of not more than 1,000 words or 10% of the work, whichever is less, but in any event a minimum of 500 words. (Each of the numerical limits stated in "i" and "ii" above may be expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.)
- iii. Illustration: One chart, graph, diagram, drawing, cartoon or picture per book or per periodical issue.
- iv. "Special" works: Certain works in poetry, prose, or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience fall short of 2,500 words in their entirety. Paragraph "i" above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than 10% of the words found in the text thereof may be reproduced.

Spontaneity:

- i. The copying is at the instance and inspiration of the individual teacher; and
- ii. The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect:

- i. The copying of the material is for only one course in the school in which the copies are made.
- ii. Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.
- iii. There shall not be more than nine instances of such multiple copying for one course during one class term. (The limitations stated in "ii" and "iii" above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.)

III. Prohibitions

Notwithstanding any of the above, the following shall be prohibited:

- A. Copying shall not be used to create or to replace or substitute for anthologies, compilations, or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or are reproduced and used separately.
- B. There shall be no copying of or from works intended to be "consumable" in the course of study or teaching. These include workbooks, exercises, standardized tests and test booklets and answer sheets and like consumable material.
- C. Copying shall not:
 - i. substitute for the purchase of books, publisher's reprints or periodicals

- ii. be directed by higher authority
 - iii. be repeated with respect to the same item by the same teacher from term to term.
- D. No charge shall be made to the student beyond the actual cost of the photocopying.

Compilations

References:

Basic Books, Inc. v. Kinko's Graphics Corp. (S.D.N.Y. 1991) 758 F.Supp. 1522; and Princeton University Press v. Michigan Document Services, Inc. (6th Cir. 1996) F.3d 1381.

Permission from the copyright owner should be obtained when using excerpts of copyrighted work to create anthologies or "coursepacks," even if the excerpts fall under the definitions in the "fair use" doctrine.

Online Courses

References:

The TEACH (Technology, Education and Copyright Harmonization) Act, U.S. Code 17, Copyright Act, Sections 110(2) and 112

The Teach Act provides instructors greater flexibility to use third party copyrighted works in online courses. An individual assessment will be required to determine whether a given use is protected under the Act. The following criteria are generally required:

- The online instruction is mediated by an instructor.
- The transmission of the material is limited to receipt by students enrolled in the course.
- Technical safeguards are used to prevent retention of the transmission for longer than the class session.
- The performance is either of a non-dramatic work or a "reasonable and limited portion" of any other work that is comparable to that displayed in a live classroom session.
- The work is not a textbook, course pack, or other material typically purchased or acquired by students for their independent use and retention, including commercial works that are sold or licensed for the purposes of digital distance education.
- The District does not know, or have reason to know, that the copy of the work was not lawfully made or acquired.
- The District notifies students that the works may be subject to copyright protection and that they may not violate the legal rights of the copyright holder.

Obtaining Permission to Use Copyrighted Material

Insert local procedures that describe the process faculty and others shall use to obtain permission to use copyrighted material.

Office of Primary Responsibility: _____

NOTE: The **red ink** signifies **suggested/recommended** language by the Community College League and legal counsel (Liebert Cassidy Whitmore). The information in **blue ink** is additional language to consider including in this procedure.

Date Approved:

(This is a new procedure recommended by the CCLC and the League's legal counsel)

EXHIBIT B

Palomar Community College District Procedure

CCLC No. 3715

General Institution
DRAFT as of 4/16/07

AP 3715 INTELLECTUAL PROPERTY

References:

17 US Code Sections 101 et seq.;
35 US Code Sections 101 et seq.;
37 CFR Sections 1.1 et seq.

The following intellectual property procedure shall be interpreted consistent with other District policies, including, but not limited to, the District's policy on academic freedom and federal and state statutes and regulations. This procedure shall also be interpreted consistent with all collective bargaining agreements.

Definitions

For the purposes of this procedure, the following definitions apply to the following words or phrases:

"Administrative Activity" means the execution of the District's management or administrative functions such as preparing budgets, policies, contracts, personnel management, printing course materials and catalogues, maintenance of computer data, long range planning, and keeping inventories of equipment. Teaching and academic endeavors are not administrative activities.

"Author" or "Creator" means an individual who alone or as part of a group of other creators, invent, author, discover, or otherwise create intellectual property.

"District Resources" means all tangible resources including buildings, equipment, facilities, computers, software, personnel, and funding.

"Course Materials" Materials prepared for use in teaching, fixed or unfixed, in any form, including, but not limited to, digital, print, audio, visual, or any combination thereof. Course materials include, but are not limited to, lectures, lecture notes, and materials, syllabi, study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software.

"Course Syllabus" means a document that includes information about the outline, standards for student evaluation, and additional information which reflects the academic work of the faculty member.

"Digital Encoded Work" means a work (on a bit-sequence) that can be stored on computer-readable media, manipulated by computers, and transmitted through data networks.

"Employee" means an individual employed by the District, and shall include full-time and part-time faculty, classified staff, student employees, appointed personnel, persons with "no salary" appointments, and academic professionals, who develop intellectual property using District resources, unless there is an agreement providing otherwise.

"Intellectual Property" means works, products, processes, tangible research property, copyrightable subject matter, works of art, trade secrets, know how, inventions and other creations the ownership which are recognized and protected from unauthorized exploitation by law. Examples of intellectual property include scholarly, artistic, and instructional materials.

“Student” means an individual who was or is enrolled in a class or program at the District at the time the intellectual property was created.

“Student Employee” means a student who is paid by the District, and may include students participating in a work study program or who receive stipends while they are acting within the scope of their employment at the District at the time the intellectual property was created.

“Substantial Use of District Resources” means use of District resources beyond the normal professional, technology, and technical support generally provided by the District and extended to an individual or individuals for development of a product, project or program. The use of District resources must be important and instrumental to the creation of the intellectual property. The following do not constitute substantial use of the District’s resources: (1) incidental use of District resources and/or (2) extensive use of District resources commonly available to District employees. A substantial use of the District’s resources may be implicated in situations where the creator spends such time and energy in the creation of a work that results in a great reduction of the creator’s teaching activity.

“Work” means an “original work of authorship fixed in a tangible medium” as used in the Copyright Act.

Ownership of Intellectual Property

The ownership rights to a creation at the District shall be determined generally as set forth below, unless ownership is modified by an agreement.

Employee Intellectual Property Rights -- A District employee who is the creator of an academic work in his or her field of expertise owns the copyright in that work. Academic works include textbooks, lecture notes and other course materials, literary works, artistic works, musical works, architectural works and software produced with no more than nominal or incidental use of the District’s resources. Academic works described in this paragraph are owned by the employee even though such works may have been developed within the employee’s scope of employment.

Intellectual property unrelated to an individual’s employment responsibilities at the District, and that is developed on an individual’s own time and without the District’s support or use of District facilities is the exclusive property of the creator and the District has no interest in any such property and holds no claim to any profits resulting from such intellectual property.

District Intellectual Property Rights -- The District owns all other intellectual property, including but not limited to patentable inventions, such as computer software, created by its employees under the following circumstances:

- (1) If intellectual property is created through the District’s administrative activities by an employee working within his or her scope of employment; or
- (2) If intellectual property is created by an employee executing a duty or specific assignment designated by the District; or
- (3) If intellectual property is created through the substantial use of District resources; or
- (4) If intellectual property is commissioned by the District pursuant to a signed contract; or
- (5) If intellectual property is produced within one of the nine categories of works considered works for hire under copyright law pursuant to a written contract, or
- (6) If intellectual property is produced from research specifically supported by state or federal funds or third party sponsorship.

Where circumstances give rise to District intellectual property rights, as described above, the creator of the potential intellectual property will promptly disclose the intellectual property to the District. The District and the creator may enter into a written agreement whereby the creator executes documents assigning intellectual property rights to the District.

The Superintendent/President may waive the District's interests in its intellectual property by executing a written waiver.

Student Intellectual Property Rights -- District students who created a work are owners of and have intellectual property rights in that work. District students own the intellectual property rights in the following works created while they are students at the District: (1) intellectual property created to meet course requirements using college or District resources, and (2) intellectual property created using resources available to the public. Intellectual property works created by students while acting as District employees shall be governed under provisions for employees.

Modification of Ownership Rights

The general provisions for ownership of intellectual property rights set forth in Section II may be modified by the parties as follows:

Sabbatical Works -- Generally, intellectual property created by District employees during a sabbatical is defined as an academic work. However, where a work to be created as part of an approved sabbatical plan requires resources beyond those normally provided to other employees during a sabbatical (substantial use District resources), the parties may enter into an written agreement to define the District and employee's intellectual property rights in the sabbatical work.

Assignment of Rights -- When the conditions outlined in the sections on employee intellectual property rights or student intellectual property are met, ownership will reside with the employee or student responsible for creating the intellectual property. In these circumstances, the creator may pursue intellectual property protection, marketing, and licensing activities without involving the District. If such a decision is made, the creator is entitled to all revenues received.

Any person may agree to assign some or all of his or her intellectual property rights to the District. In the event the creator offers to share or assign intellectual property rights in the creation to the District, the District may support and finance application for intellectual property protection (trademark, patent, or copyright) or it may enter into an agreement for other exploitation of the work, including management, development and commercialization of the property under terms and conditions as may be agreeable to the parties. After evaluating the creator's offer, the District may or may not decide to become involved in a joint investment agreement. A negative response from the District will be communicated in writing to the creator. An affirmative response from the District will be summarized as a offer to enter into a written contract. If the creator accepts the District's proposed contract, any revenues received from commercialization of the intellectual property will be distributed as defined in the contract.

Sponsorship Agreements -- A sponsored work is a work first produced by or through the District in the performance of a written agreement between the District and a sponsor. Sponsored works generally include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise. Ownership of copyrights to sponsored works shall be with the District unless the sponsored agreement states otherwise. Where a sponsorship agreement does not define ownership of the intellectual property, ownership shall be determined under applicable law. Any sponsorship agreement that provides for ownership of the work by one other than the District generally shall provide the District with a nonexclusive, world-wide license to use and reproduce the copyrighted work for education and research purposes.

Collaboration/Partnership Agreements -- The District may participate in projects with persons/organizations that result in the creation of intellectual property. Ownership rights of such intellectual property will be defined by the collaboration/partnership agreement, or shall be determined under applicable law.

Special Commissions -- Intellectual property rights to a work specially ordered or commissioned by the District from a faculty member, professional staff member, other District employee, or other individual or

entity, and identified by the District, as a specially commissioned work at the time the work was commissioned, shall belong to the District. The District, and the employee shall enter into a written agreement for creation of the specially commissioned work.

Use of Substantial District Resources -- In the event the District provides substantial resources to an employee for creation of a work and the work was not created under an agreement (such as a sponsorship agreement, individual agreement, or special commission) the District and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made.

Encoded Works/Software for Administrative Activities -- The District may hire an individual or entity to develop software or other encoded works, to be used in the District's administrative activities. The District shall maintain ownership of the intellectual property rights in such encoded works. Similarly, the District shall have ownership of the intellectual property rights in encoded works created by an employee, even where the work was created out of the employee's own initiative, if the work is related to the employee's job responsibilities. For example, if an employee in the student records office creates a software program, on his own initiative, which will organize student records, such work is related to the employee's job duties and will belong to the District. Where an employee creates a program that does not relate to his or her job duties, and that program was created on the employee's own time, the work belongs to the employee.

Collective Bargaining Agreement -- In the event the provisions of these procedures and the provisions of any operative collective bargaining agreement conflict, the collective bargaining agreement shall take precedence.

Jointly Created Works -- Ownership of jointly created works shall be determined by separately assessing which of the above categories applies to each creator, respectively. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

Work Acquired by Assignment or Will -- The District may acquire copyrights by assignment or will pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with District policies and these procedures.

Materials Implicating Third Party Rights

District employees and students must comply with District policies and state and federal laws, including copyright and privacy laws, in creating works. District employees and students must obtain all required licenses, consents, and releases necessary to avoid infringing the rights of third parties. District employees and students with questions or concerns regarding third party rights should direct all inquiries to [insert office or position].

Intellectual Property Coordinator

The [insert designated position] shall be the District's Intellectual Property Coordinator. The coordinator shall administer this procedure and will implement the District's Intellectual Property Policy. The Intellectual Property Coordinator will also monitor the development and use of the District's intellectual property. Any questions relating to the applicability of the District Intellectual Property or this procedure may be directed and answered by the Intellectual Property Coordinator.

Preservation of Intellectual Property Right

Protection of Rights -- The District shall undertake such efforts, as it deems necessary to preserve its rights in original works for which the District is the sole or joint owner of intellectual property rights. The District may apply for a patent, for trademark registration, for copyright registration, or for other protection available by law on any new work in which it maintains intellectual property rights.

Payment of Costs -- The District may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which it exclusively owns intellectual property rights. If the District has intellectual property rights in a jointly owned work, the District may enter into an agreement with the joint owners concerning payment of such costs.

Commercialization of Intellectual Property

Right of Commercialization -- The District may commercialize its Intellectual Property using its resources or it may enter into agreements with others to commercialize the work as authorized by law.

Distribution of Proceeds -- An employee who creates a work and retains an intellectual property interest in such work in which the District maintains intellectual property rights is entitled to share in royalties, licenses, and any other payments from commercialization of the work in accordance with applicable agreements and applicable laws. All expenses incurred by the District in protecting and promoting the work including costs incurred in seeking patent or copyright protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the District before the creator is entitled to share in the proceeds.

Intellectual Property Account -- The District shall deposit all net proceeds from commercialization of intellectual property in its own general intellectual property account. The [insert authorized position] may use the account to reimburse expenses related to creating or preserving the District's intellectual property rights or for any other purpose authorized by law and District policy including the development of intellectual property.

Notification

The Intellectual Property Coordinator shall provide a copy of these Intellectual Property Procedures to persons upon request. The District shall arrange training on a periodic basis for faculty, staff and/or other persons who are covered by this Intellectual Property Procedure.

***Note:** The following forms are provided as resource samples; local practice may be used instead. Including them in the Administrative Procedure manual is optional. Legal counsel should be consulted for final approval or review of the agreement.*

Form A: Work Made For Hire Agreement Course Materials

This agreement made the [date] day of [month], 20[year], by and between [name of author] ("Author," and if there is more than one author then all of them collectively) and [name of District] ("District").

The Author and the District agree as follows:

1. Title and Copyright Assignment

(a) Author and District intend this to be a contract for services and each considers the products and results of the services to be rendered by Author hereunder (the "Work") to be a work made for hire. Author acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of District.

(b) If for any reason the Work would not be considered a work made for hire under applicable law, Author does hereby sell, assign, and transfer to District, its successors and assigns, the entire right, title and interest in and to the copyright in the Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing throughout the world.

(c) If the Work is one to which the provisions of 17 U.S.C. Section 106A apply, the Author hereby waives and appoints District to assert on the Author's behalf the Author's moral rights or any equivalent rights regarding the form or extent of any alteration to the Work (including, without limitation, removal or destruction) or the making of any derivative works based on the Work, including, without limitation, photographs, drawings or other visual reproductions of the Work, in any medium, for District purposes.

(d) Author agrees to execute all papers and to perform such other proper acts as District may deem necessary to secure for District or its designee the rights herein assigned.

2. Delivery of the Work

(a) The Author will deliver to the District on or before *[date]* the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the District.

(b) If the Author fails to deliver the Work on time, the District will have the right to terminate this agreement and to recover from the Author any sums advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

3. Quoted Material

With the exception of short excerpts from others' works, which constitute *fair use*, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense after consultation with the District and will file them with the District at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

4. Author's Warranty

The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter. The Author will defend, indemnify, and hold harmless the District and/or its licensees against all claims, suits, costs, damages, and expenses that the District and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Work or any infringement or violation by the Work of any copyright or property right; and until such claim or suit has been settled or withdrawn, the District may withhold any sums due the Author under this agreement.

5. Consideration

In consideration for delivery of the Work in accordance with the provisions of this Agreement, District shall pay Author **[amount]**.

6. Revisions

[Choose one paragraph]

The Author shall retain the right to revise the Work *[insert time, such as at one year intervals]* during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within *[Insert length of time, such as 90]* days upon the receipt of a written request from the District. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within *[Insert length of time, such as 90]* days after the District has requested it, or should the Author be deceased, the District may have the revision made and charge the cost against sums due the Author under Section 5 above, if any, and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

or

This paragraph has been deleted because the Author's contribution is not a work expressing academic expertise requiring periodic review and revision.

7. Term and Termination

(a) This agreement shall remain in effect for *[insert length of time, such as three (3)]* years unless terminated earlier in accordance with this Section 7.

(b) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within [Insert length of time, such as sixty] days after receipt of written notice thereof, this agreement shall terminate upon expiration of the [Insert length of time, such as sixty] day period.

(c) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional [Insert length of time, such as three] year term, upon the same terms and conditions as set forth herein.

8. Options/Contracts with Third Parties

Nothing contained in Section 7 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the District in the income resulting from such agreements.

9. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the District concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

10. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of California and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the District shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

[Insert signature lines for author and district designee]

=====

Form B: Contract under which Employee Keeps Copyright of the Work and Gives District a License to Use/Exploit Work

Course Materials

This Agreement made the *[date]* day of *[month]*, 20*[year]*, by and between *[name of author]* ("Author," and if there is more than one author then all of them collectively) and *[name of District]* ("District").

Recitals

The Author will be the sole contributor of copyrightable expression to the educational course materials anticipated to result from this project. The District will be contributing significant kinds and/or amounts of District resources. The Parties recognize that under law, the District is obligated to obtain appropriate consideration for the transfer of state resources. In furtherance of their mutual objectives, the Parties agree to allocate certain of their rights and responsibilities as set forth in this agreement.

The author and the District agree as follows:

1. Rights Granted

[Choose one of the following paragraphs.]

Nonprofit Educational Uses. The Author hereby grants to the District for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, and publish for nonprofit educational purposes the educational course materials entitled: *[name of work]* (hereinafter called "Work").

or

Non-exclusive Commercial License. The Author hereby grants to the District for the full term of this agreement the non-exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: [name of work] (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

or

Exclusive Commercial License. The Author hereby grants to the District for the full term of this agreement the exclusive right to copy, distribute, display, perform, transmit, publish and sell throughout the world the educational course materials entitled: [name of work] (hereinafter called "Work"). This license grant also includes, without limitation, the rights to the Work listed in Paragraph 8 below, with authority to license those rights in all countries and in all languages.

2. Delivery of the Work

(a) The Author will prepare and deliver to the District on or before [date] the completed Work (with all illustrations, charts, graphs, and other material, including syllabi, handouts, reference lists, etc., in the medium mutually agreed upon for the Work) in form and content satisfactory to the District.

(b) If the Author fails to deliver the Work on time, the District will have the right to terminate this agreement and to recover from the Author any sums or other resources advanced in connection with the Work. Upon such termination, the Author may not have the Work published elsewhere until such advances have been repaid.

3. Quoted Material

With the exception of short excerpts from others' works, which constitute *fair use*, the Work will contain no material from other copyrighted works without a written consent of the copyright holder. The Author will obtain such consents at his or her own expense after consultation with the District and will file them with the District at the time the Work is delivered. Any obligations associated with permissions will be the responsibility of the Author.

4. Publication of the Work

The Work shall be distributed, transmitted or published by the [District/Author] as soon as circumstances permit after receipt, at its own expense, in such manner as the [District/Author] shall deem appropriate.

5. Copyright Registration

The Author authorizes the District to register copyright in the Work in the Author's name in the United States and elsewhere as the District may elect.

6. Author's Warranty

(a) The Author warrants that he or she is the sole owner of the Work and has full power and authority to make this agreement; that he or she has made a good faith effort to follow the District's Intellectual Property Policy and Procedures and that the Work does not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

(b) To the extent that an act of the Author that results in a claim of copyright infringement was authorized by the District's Intellectual Property Policy and Procedures, in accordance with that Policy and to the extent authorized by the Constitution and laws of the State of California, the District, will defend, indemnify and hold harmless the Author against all claims, suits, costs, damages and expenses that the Author may sustain by reason of such infringement or violation by the Work of any copyright.

(c) In all other cases, the Author will defend, indemnify, and hold harmless the District and/or its licensees against all claims, suits, costs, damages, and expenses that the District and/or its licensees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be

contained in the Work or any infringement or violation by the Work of any copyright or property right; and until such claim or suit has been settled or withdrawn, the District may withhold any sums due the Author under this agreement.

7. Consideration

(a) District will contribute the following resources to the creation of the Work:

[List: Materials, Hardware, Software, Technical Assistance, Other Assistance, Videotaping, Programming, Teaching Load Credit, or Funding.]

[Choose one of the following paragraphs]

(b) The parties shall share in any revenues from the commercialization of the Work as follows: District will first recover its resource contribution in the amount of \$____, then the Parties shall share profits 50% to the District and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The parties shall share in any revenues from the commercialization of the Work as follows: The Parties shall share profits 50% to the District and 50% to all Authors (to be shared evenly among the Authors if more than one.)

or

(b) The Parties do not anticipate commercial exploitation of the Work and so have not addressed District's recovery of its contribution or allocated royalty percentages to either Party.

8. Subsidiary Rights

[Choose the paragraph below that corresponds to the paragraph chosen for Section 1.]

Nonprofit Educational Uses. The District has been granted a limited right to use the Work for nonprofit educational purposes only and therefore does not need subsidiary rights and all such rights are retained by the Author.

or

Non-exclusive Commercial License. The District shall have the right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

or

Exclusive Commercial License. The District shall have the sole right to license, sell, or otherwise dispose of the following rights in the Work: Publication or sale by book clubs; reprint rights; foreign rights; translation rights; publication in anthologies, compilations, digests, condensations; first and second serial rights (in one or more installments); dramatic, motion picture, and television rights; broadcast by radio; recordings; electronic, mechanical, and visual reproduction; computer programs; microprint, microfiche, and microfilm editions; syndication rights; permission rights (quotations, excerpts, illustrations, etc.); any other rights to the Work not specifically enumerated; and otherwise utilize the Work and material based on the Work.

9. Revisions

The Author shall retain the right to revise the Work [at one year intervals] during the term of this agreement in accordance with academic standards. The Author further agrees to update the Work within ninety (90) days upon the receipt of a written request from the District. The provisions of this agreement shall apply to each revision of the Work by the Author as though that revision were the Work being published for the first time under this agreement. In the event that the Author is unable or unwilling to provide a revision within ninety (90) days after the District has requested it, or should the Author be deceased, the District may have the revision made and charge the cost against the Author's royalties and may display, in the revised Work and in advertising, the name of the person or persons who perform the revision.

10. Term and Termination

[Choose this first set of paragraphs if the District was granted an Exclusive Commercial License in Section 1.]

(a) This agreement shall remain in effect for *[insert length of time, such as three (3)]* years unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term[s] agreed upon pursuant to Section 10(d), or upon earlier termination in accordance with Sections 10(b) or

(b) the rights granted in the Work shall revert to the Author, subject to retention by the District of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(c) In the event that either party shall be in default of its material obligations under this agreement and shall fail to remedy such default within *[Insert length of time, such as sixty]* days after receipt of written notice thereof, this agreement shall terminate upon expiration of the *[Insert length of time, such as sixty]* day period.

(d) The Work shall be considered to be "in use" if it is made available by District for distribution or transmission, offered for sale or licensed for distribution, transmission or sale during the term of this agreement. If the District fails to keep the Work in use and the Author makes a written request of the District to terminate this agreement, the District shall notify the Author in writing of the District's decision in the matter within *[Insert length of time, such as sixty]* days after receipt of the written request. If the District elects to keep the Work in use, it shall have *[Insert length of time, such as six]* months thereafter to comply. If the District elects not to keep the Work in use or fails to comply with the *[Insert length of time, such as six]* months deadline (unless the failure is due to circumstances beyond its control), then this agreement shall terminate.

(e) Upon the expiration of the term of this agreement, the parties may agree to renew this agreement for an additional *[insert length of time, such as three (3)]* year term, upon the same terms and conditions as set forth herein.

[Choose this second set of paragraphs if the District has either a Nonprofit Educational Use License or a Non-exclusive Commercial License in Section 1]

(a) This Agreement shall remain in effect for *[insert length of time, such as three (3)]* year(s) unless terminated earlier in accordance with this Section 10. Upon expiration of the term and any renewal term(s) agreed upon pursuant to Section 10(c), or upon earlier termination in accordance with Section 10(b), the rights granted in the Work shall revert to the Author, subject to retention by the District of the non-exclusive, perpetual right and license to use the Work for internal nonprofit educational purposes and to use the structure and organization of the Work as a guide for the creation of a new course.

(b) In the event that either Party shall be in default of its material obligations under this Agreement and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the *[Insert length of time, such as sixty]* day period.

(c) Upon the expiration of the term of this Agreement, the parties may agree to renew this Agreement for an additional [*insert length of time, such as three*] year term, upon the same terms and conditions as set forth herein.

11. Options/Contracts with Third Parties

Nothing contained in Section 10 shall affect any license or other grant of rights, options, or agreements made with third parties prior to the termination date or the rights of the District in the income resulting from such agreements.

12. Amendments

The written provisions contained in this agreement constitute the sole and entire agreement made between the Author and the District concerning this Work, and any amendments to this agreement shall not be valid unless made in writing and signed by both parties.

13. Construction, Binding Effect, and Assignment

This agreement shall be construed and interpreted according to the laws of the State of California and shall be binding upon the parties hereto, their heirs, successors, assigns, and personal representatives; and references to the Author and to the District shall include their heirs, successors, assigns, and personal representatives.

IN WITNESS WHEREOF, the parties have duly executed this agreement as of the date first written above.

[Insert signature lines for author and district designee]

Office of Primary Responsibility: _____

NOTE: The **red ink** signifies legally advised language recommended by the Community College League and legal counsel (Liebert Cassidy Whitmore). The information in **blue ink** is additional language to consider including in this procedure.

Date Approved:

(This is a new procedure recommended by the CCLC and the League's legal counsel)

EXHIBIT C

Palomar Community College District Procedure

CCLC No. 37

General Inst
DRAFT as of 4

AP 3720 COMPUTER AND NETWORK USE

References:

Government Code Section 3543.1(b);
Penal Code Section 502;
17 U.S.C. Sections 101 et seq.;
Cal. Const., Art. 1 Section 1;
Federal Rules of Civil Procedure, Rules 16, 26, 33, 34, 37, and 45

The District Computer and Network systems are the sole property of the District. They may not be used by any person without the proper authorization of the District. The Computer and Network systems are for District instructional and work related purposes only.

This procedure applies to all District students, faculty and staff and to others granted use of District information resources. This procedure refers to all District information resources whether individually controlled or shared, stand-alone or networked. It applies to all computer and computer communication facilities owned, leased, operated, or contracted by the District. This includes personal computers, workstations, mainframes, minicomputers, and associated peripherals, software and information resources, regardless of whether used for administration, research, teaching or other purposes.

Conditions of Use: Individual units within the District may define additional conditions of use for information resources under their control. These statements must be consistent with this overall procedure but may provide additional detail, guidelines and/or restrictions.

Legal Process: This procedure exists within the framework of the District Board Policy and state and federal laws. A user of District information resources who is found to have violated any of these policies will be subject to disciplinary action up to and including but not limited to loss of information resources privileges; disciplinary suspension or termination from employment or expulsion; and/or civil or criminal legal action.

Copyrights and Licenses: Computer users must respect copyrights and licenses to software and other on-line information.

Copying - Software protected by copyright may not be copied except as expressly permitted by the owner of the copyright or otherwise permitted by copyright law. Protected software may not be copied into, from, or by any District facility or system, except pursuant to a valid license or as otherwise permitted by copyright law.

Number of Simultaneous Users - The number and distribution of copies must be handled in such a way that the number of simultaneous users in a department does not exceed the number of original copies purchased by that department, unless otherwise stipulated in the purchase contract.

Copyrights - In addition to software, all other copyrighted information (text, images, icons, programs, etc.) retrieved from computer or network resources must be used in conformance with applicable copyright and other law. Copied material must be properly attributed. Plagiarism of computer information is prohibited in the same way that plagiarism of any other protected work is prohibited.

Integrity of Information Resources: Computer users must respect the integrity of computer-based information resources.

Modification or Removal of Equipment - Computer users must not attempt to modify or remove computer equipment, software, or peripherals that are owned by others without proper authorization.

Unauthorized Use - Computer users must not interfere with others access and use of the District computers. This includes but is not limited to: the sending of chain letters or excessive messages, either locally or off-campus; printing excess copies of documents, files, data, or programs, running grossly inefficient programs when efficient alternatives are known by the user to be available; unauthorized modification of system facilities, operating systems, or disk partitions; attempting to crash or tie up a District computer or network; and damaging or vandalizing District computing facilities, equipment, software or computer files.

Unauthorized Programs - Computer users must not intentionally develop or use programs which disrupt other computer users or which access private or restricted portions of the system, or which damage the software or hardware components of the system. Computer users must ensure that they do not use programs or utilities that interfere with other computer users or that modify normally protected or restricted portions of the system or user accounts. The use of any unauthorized or destructive program will result in disciplinary action as provided in this procedure, and may further lead to civil or criminal legal proceedings.

Unauthorized Access: Computer users must not seek to gain unauthorized access to information resources and must not assist any other persons to gain unauthorized access.

Abuse of Computing Privileges - Users of District information resources must not access computers, computer software, computer data or information, or networks without proper authorization, or intentionally enable others to do so, regardless of whether the computer, software, data, information, or network in question is owned by the District. For example, abuse of the networks to which the District belongs or the computers at other sites connected to those networks will be treated as an abuse of District computing privileges.

Reporting Problems - Any defects discovered in system accounting or system security must be reported promptly to the appropriate system administrator so that steps can be taken to investigate and solve the problem.

Password Protection - A computer user who has been authorized to use a password-protected account may be subject to both civil and criminal liability if the user discloses the password or otherwise makes the account available to others without permission of the system administrator.

Usage: Computer users must respect the rights of other computer users. Attempts to circumvent these mechanisms in order to gain unauthorized access to the system or to another person's information are a violation of District procedure and may violate applicable law.

Unlawful Messages - Users may not use electronic communication facilities to send defamatory, fraudulent, harassing, obscene, threatening, or other messages that violate applicable federal, state or other law or District policy, or which constitute the unauthorized release of confidential information.

Commercial Usage - Electronic communication facilities may not be used to transmit commercial or personal advertisements, solicitations or promotions (see Commercial Use, below). Some public discussion groups have been designated for selling items by [insert names of groups, if any] and may

be used appropriately, according to the stated purpose of the group(s).

Information Belonging to Others - Users must not intentionally seek or provide information on, obtain copies of, or modify data files, programs, or passwords belonging to other users, without the permission of those other users.

Rights of Individuals - Users must not release any individual's (student, faculty, and staff) personal information to anyone without proper authorization.

User identification - Users shall not send communications or messages anonymously or without accurately identifying the originating account or station.

Political, Personal and Commercial Use - The District is a non-profit, tax-exempt organization and, as such, is subject to specific federal, state and local laws regarding sources of income, political activities, use of property and similar matters.

Political Use - District information resources must not be used for partisan political activities where prohibited by state, federal, or other applicable laws.

Personal Use - District information resources should not be used for personal activities not related to appropriate District functions, except in a purely incidental manner.

Commercial Use - District information resources should not be used for commercial purposes. Users also are reminded that the ".cc" and ".edu" domains on the Internet have rules restricting or prohibiting commercial use, and users may not conduct activities not appropriate within those domains.

Nondiscrimination: All users have the right to be free from any conduct connected with the use of the District's network and computer resources which discriminates against any person on the basis of the categories listed in Board Policy 3410 titled Nondiscrimination. No user shall use the District network and computer resources to transmit any message, create any communication of any kind, or store information which violates any District procedure regarding discrimination or harassment, or which is defamatory or obscene, or which constitutes the unauthorized release of confidential information.

Disclosure

No Expectation of Privacy - The District reserves the right to monitor all use of the District network and computer to assure compliance with these policies. Users should be aware that they have no expectation of privacy in the use of the District network and computer resources. The District will exercise this right only for legitimate District purposes, including but not limited to ensuring compliance with this procedure and the integrity and security of the system.

Possibility of Disclosure - Users must be aware of the possibility of unintended disclosure of communications.

Retrieval - It is possible for information entered on or transmitted via computer and communications systems to be retrieved, even if a user has deleted such information.

Public Records - The California Public Records Act (Government Code Sections 6250 et seq.) includes computer transmissions in the definition of "public record" and nonexempt communications made on the District network and computer must be disclosed if requested by a member of the public.

Litigation - Computer transmissions and electronically stored information may be discoverable in litigation.

Dissemination and User Acknowledgment

All users shall be provided copies of these procedures and be directed to familiarize themselves with them.

A "pop-up" screen addressing the e-mail portions of these procedures shall be installed on all e-mail systems. The "pop-up" screen shall appear prior to accessing the e-mail network. Users shall sign and date the acknowledgment and waiver included in this procedure stating that they have read and understand this procedure, and will comply with it. This acknowledgment and waiver shall be in the form as follows:

Computer and Network Use Agreement (Sample Language)

I have received and read a copy of the District Computer and Network Use Procedures and this Agreement dated, _____, and recognize and understand the guidelines. I agree to abide by the standards set in the Procedures for the duration of my employment and/or enrollment. I am aware that violations of this Computer and Network Usage Procedure may subject me to disciplinary action, including but not limited to revocation of my network account up to and including prosecution for violation of State and/or Federal law.

❖ **From current Palomar College Procedure 512.1 titled Computer Software**

In order to certify the District's right-to-use software installed on District-owned computers, it is required that copies of all software licenses be on file in the Information Services Office. When installing software on a District-owned computer, the person completing the installation is responsible for the following:

- A. Installing the software according to the instructions provided by the software author/distributor.
- B. Filling out a Palomar College Software Registration Form.
- C. Forwarding the Palomar College Software Registration Form, the Software License Agreement received with the software, and a copy of the software purchase order to the Palomar College Information Services Office.

Information Services staff will make an archival copy of the Software Registration Form and Software License Agreement and return the originals to the department.

If a software audit is performed, either by District staff, law enforcement officers or regulatory agencies, the archival records will be used to prove ownership of specific software products. If an archival record does not exist for a specific copy of software, and the department is unable to provide proof of purchase, the software will be deleted from the computer's storage media and all backup copies will be destroyed.

Before a District-initiated software audit is conducted, or new software is installed, individuals will be given a one-week notice so that data files can be screened and sensitive data protected or removed.

Appointments will be made with District staff members prior to an audit or installation process to ensure that the integrity of sensitive data is maintained.

❖ **From current Palomar College Procedure 512.2 titled District Procedures and Guidelines for Telecommunications Access and Use**

Access Approval

Access to and use of the Palomar Community College District telecommunications equipment, facilities and networks must be authorized by the appropriate computer laboratory director, supervisor or administrator. Students using computer classroom or laboratory facilities will be expected to adhere to the guidelines for student conduct published in the Student Conduct Code. Commercial use of telecommunications equipment or facilities except for the development of course-related materials by faculty or staff is not permitted. Commercial product advertising must be approved in advance by the governing board. Use of District property including telecommunications resources for political activities

as defined by California Education Code Section E.C 7054 is prohibited (See Definitions). The District retains the right to withdraw permission to use the telecommunications resources in the event that established procedures are not followed. While district technicians may monitor transmissions for purposes of network administration, they shall not monitor transmissions for content except when legally required to do so or when specific written permission to do so is granted by the Superintendent/President.

Copyright and Plagiarism Issues

The Palomar College community is encouraged to become familiar with the District's policy encouraging the full use of information technology. Anyone approved to use District telecommunications equipment or facilities, however, must agree to adhere to copyright and software licensing laws.¹

In addition, anyone who uses District telecommunications equipment or facilities to retrieve from and/or publish material on the Internet must respect copyright constraints and the guidelines for fair use of such materials. Anyone who uses District telecommunications equipment or facilities agrees to adhere to the Academic Integrity Code of Conduct, Board Policy 305, that prohibits plagiarism, defined as "false representation of another's work as one's own," for any material published on District intranets or the Internet.

The illegal capture, printing, duplicating, and mounting of Web sites or other electronic resources on District computers is expressly forbidden.

Users wishing to publish electronic material on District equipment must follow the District guidelines as detailed in the "Access Approval" section of this document. The user and not the District accepts responsibility for the content and currency of all electronic material.

Laboratory or Classroom Computer Facilities

System administrators such as instructional computer laboratory directors are responsible for setting minimum guidelines applicable to a particular laboratory within the parameters established for use of District information technology resources. These guidelines should be prominently displayed in the laboratory or on the startup screen of individual computers.

User Responsibilities

- The individual user is responsible for maintaining the security of any passwords to accounts that are issued.
- These passwords must be kept confidential by taking care that others do not learn them through carelessness on the part of the authorized user.
- The user must not attempt to mislead a potential reader about the origin of a message.
- The user must not attempt any malicious act which would threaten the integrity of the District telecommunications equipment, programs, or facilities. Attempts to gain unauthorized access to files, data or programs or to introduce a virus on a workstation or a District network are to be construed as malicious acts and may result in disciplinary action.
- The user must respect the privacy of others and the security of the system. The user must obey federal and state laws relating to the communication or receipt of threats, harassment, obscenity, or pornography.

Privacy of Telecommunications Transmissions

District computers and telecommunications equipment are public property, purchased with public funds and provided to public employees and enrolled students for use in conducting the public's business.

They also provide educational opportunities to qualified members of the public. The privacy of student and employee records shall be protected by appropriate security procedures.

District officials may monitor telecommunication transmissions in the normal conduct of college business to insure the accuracy, authenticity, and confidentiality of the data. The District may provide

such information to contracted district auditors to meet legal requirements. Such monitoring will be limited to institutional electronic data interchanges.

Users should be aware that communications including e-mail may become accessible to unauthorized individuals. District technicians may have access to telecommunications transmissions while performing network or other telecommunications maintenance or when troubleshooting network problems. It is the responsibility of District telecommunications staff to report apparent inappropriate or illegal use of District telecommunications resources.

E-MAIL

As the Internet tends to be a public medium, the sender is responsible for the content of any e-mail that the user transmits. The e-mail user, however, must follow the guidelines appropriate to discourse in an academic community.

VIOLATIONS

All suspected violations of the Palomar Community College District Network and Telecommunications User Policy or these procedures shall be reported in writing to the appropriate District administrator.

Definitions

1. District: the officers and other employees of the Palomar Community College District as well as its vendors and consultants.

2. User: any person who uses telecommunications resources owned by, rented by, or leased to the Palomar Community College District.

3. Telecommunication resources: A broad term covering all hardware, software, conduit, cable, lines of transmission, and all related equipment and maintenance support services for telephone, fax, e-mail, Internet, radio, and television owned, rented, leased, and used by the District.

4. Use of District Resources for Political Activities (Section 7054 of the California Education Code):

(a) No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate including but not limited to any candidate for election to the governing board of the district.

(b) Nothing in this section shall prohibit the use of any of the public resources described in subdivision (a) to provide information to the public about the possible effects of any bond issue or other ballot measure if both of the following conditions are met.

(1) The informational activities are otherwise authorized by the Constitution or laws of this state.

(2) The information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(3) A violation of this section shall be a misdemeanor or felony punishable by imprisonment in the county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both, or imprisonment in a state prison for 16 months, or two or three years.

Office of Primary Responsibility: _____

NOTE: The **red ink** signifies legally advised language recommended from the Community College League and legal counsel (Liebert Cassidy Whitmore). The information in **blue ink** is additional language to consider including in this procedure. The language in **black ink** is current Palomar College Procedure 512.1 titled Computer Software with no date and Procedure 512.2 titled District Procedures and Guidelines for Telecommunications Access and Use with no date.

Date Approved:

(Replaces current Palomar College Procedures 512.1 and 512.2)

EXHIBIT D

Palomar Community College District Policy

CCLC No. 43

Instructional Services
DRAFT as of 10/28/07

BP 4300 FIELD TRIPS AND EXCURSIONS

Reference:

Title 5 Section 55220

The Superintendent/President shall establish procedures that regulate the use of District funds for student travel and attendance at conferences and other activities that are performed as a class assignment or co-curricular activity.

The District may pay for expenses of students participating in a field trip or excursion with auxiliary, grant, or categorical program funds if the funds are used consistently with the funding source. The expenses of instructors, chaperons, and other personnel traveling with students may also be paid from District funds.

Students and staff shall at all times adhere to the standards of conduct applicable to conduct on campus.

❖ **From current Palomar College BP 306 titled Field Trips**

The Governing Board recognizes the value of combining classroom instruction with field experiences which are consistent with the provisions of law and authorizes implementation.

❖ **From current Palomar College BP 307 titled Conflicts in Activities**

Students who participate in field trips or other College-sponsored activities such as performance or athletic events or competitions which may conflict with regularly scheduled classes are responsible for any work missed as a result of the absence. Students must notify instructors in advance of impending absences.

Instructors are encouraged to afford sincere students the opportunity to make up missed work without penalty when advance notice has been provided.

No faculty member may require or excuse a student's absence from another instructor's class. Students who miss participating in field trips or other College-sponsored performances or competitions as a result of class conflicts shall not be penalized.

EC 72640, 72641 (Note: These Education Codes no longer exist)

Office of Primary Responsibility: _____

NOTE: This policy is **legally required**. The language in **red ink** is recommended from the Community College League and legal counsel (Liebert Cassidy Whitmore). The information in **blue ink** is additional language to consider including in this policy. The language in **black ink** is current Palomar College Policies 306 titled Field Trips with no date and 307 titled Conflicts in Activities with no date.

Date Adopted:

(Replaces current Palomar College Policies 306 and 307)

EXHIBIT E

Palomar Community College District Procedure

CCLC No. 3710

General Institution
DRAFT as of 4/16/07

AP 3710 SECURING OF COPYRIGHT

References:

Education Code Sections 72207 and 81459;
17 United States Code 201

Note: *Insert local practice. Procedures on this topic must be the subject of consultation though the local decision making process.*

Office of Primary Responsibility: _____

NOTE: The **red ink** signifies **legally advised** language recommended from the Community College League and legal counsel (Liebert Cassidy Whitmore). The information in **blue ink** is additional language to consider including in this procedure.

Date Approved:

(This is a new procedure recommended by the CC League and the League's legal counsel)

EXHIBIT F

ATTENTION:

Do you have something in your syllabus regarding cheating and disruptive behavior? Make your life better by adding a syllabi section regarding consequences of Academic Dishonesty and Code of Conduct violations.

At the **discretion of the instructor**, any of the following steps may be taken when faced with **academic dishonesty**:

- A. Confront and counsel the student(s)
- B. Reassign the paper/exam/assignment
- C. Designate a failing grade for the assignment/paper/project/exam/class
- D. **Referral to the Director of Student Affairs (OSA)** for additional Code of Conduct consequences. Incident report form is found on the webpage and must be submitted with documentation of alleged violations. Students have DUE PROCESS rights.

Code of Conduct violations including incidents of academic dishonesty may result in:

- A. Warning (document in writing and provide to the student)
- B. Removal by the instructor for two class sessions (instructors discretion and submit the Incident Report – refer student to OSA)
- C. Probation
- D. Restitution
- E. Community Service
- F. Suspension (short and long-term)
- G. Expulsion: may only occur under the direction of the Governing Board.

Contact the Office of Students Affairs: Director Sherry M. Titus stitus@palomar.edu at **744-1150 ext. 2594** with your questions and alleged violations. Put your academic honesty policy as well as the Code of Conduct policy **in writing in your class syllabi!** Be firm, fair, and consistent. **Have a great semester!**

<http://www.palomar.edu/GB/Policies-Proc.htm>

PROCEDURES

BP 5500 STANDARDS OF CONDUCT (PENDING)
GRIEVANCES

AP 5520 STUDENT DISCIPLINE

AP 5530 STUDENT RIGHTS AND

STUDENT GRADE DISPUTE POLICY AND PROCEDURES: *Through the Office of Instruction- NOT THE OFFICE OF STUDENT AFFAIRS*

*Visit our Student Affairs webpage: www.palomar.edu/studentactivities/
For more information. The complete Code of Conduct Policy is listed under policies on the Student Affairs home page.*

EXHIBIT G

BP5500 Standards of Conduct.

- A. Students are expected to avoid any type of dishonesty, including, but not limited to cheating, plagiarism, forgery, fabrication or counterfeiting documents, furnishing false information to the College, alteration or misuse of college documents or records, duplication of assignments, or aiding another in an act of dishonesty.
- B. Disturbance of the peace, which includes, but is not limited to, behavior which contributes to the obstruction or disruption of teaching, athletic events, meetings, or other college activities on or at any District property, including but not limited to, classrooms, library, athletic fields, locker rooms, bookstore, food service facility, student union, game room, any college office, parking lot, or roadway.
- C. Assaults, battery, or any threat of force or violence, either verbal or nonverbal, upon a student, college personnel, or visitor.
- D. Theft of, or damage to, or threat of damage to, property of the District or an employee, student, or visitor to a District facility.
- E. Unauthorized entry into, or unauthorized use of, District facilities, supplies, or equipment.
- F. Violations of District policies and regulations, including, but not limited to, regulations and policies related to parking or driving on campus, computer, telecommunications, campus vehicles, and any and all other District equipment, and policies and regulations related to student organizations and student and visitor symbolic expression.
- G. Unlawful use, possession, sale, or distribution of a “controlled substance” as the term is defined by the California Health and Safety Code Section 11007, and that which is listed in any schedule in Sections 11054, 11056, 11057, or 11058; while on District premises or at any District sponsored activity. Attendance at any College function or event, or activity sponsored by the College while under the influence of a controlled substance.
- H. Disorderly conduct, including, but not limited to, alcoholic intoxication, lewd, indecent, or obscene conduct.
- I. Possession and/or consumption of any alcoholic beverage on any District property or in any District vehicle.
- J. Disruptive behavior, profanity or vulgarity directed at college faculty or staff, including but not limited to cafeteria and bookstore employees, counselors and financial aid staff, campus police employees, other students, or visitors to the college.
- K. Defiance or abuse of College personnel, including but not limited to, faculty, administrators, counselors, librarians, office staff, athletic coaches, advisors for college clubs and organizations, and campus police.
- L. Possession of any type of object that can be reasonably assumed to be a weapon or used as a weapon (as defined by the California Penal Code), on or at any District facility.
- M. Willful or persistent smoking or use of tobacco products on College premises where smoking and use of tobacco products has been prohibited by regulations of the Governing Board of the College.
- N. Misuse of District computers, telephones, or telecommunications devices.

When completing the Incident Report form, use clear and specific language. Describe the behaviors in specific terms/actions that took place. Try not to label or draw conclusions about mental illness. Include the impact the behavior had on the learning environment and how it made you feel. See examples below.

Not very helpful language	Stronger, more useful, detailed language
Disrupted the class, lab, library . . .	Yelled repeatedly. I asked him 3 times to lower his/her voice. (State the specific behaviors that were disruptive and the frequency.)
Threatened me.	He said he was going to break my face and bust the windows in my car. (State what was said or done that made you feel threatened)
Insulted me.	She called me a faggot and a fat witch. (State what she said, quote her/him)
He used vulgar language, profanity.	She said this was a f . . . slum and the materials and equipment were f . . . useless (quote what was said)
I felt unsafe and I worry a lot.	I feel scared and afraid to be on campus. At night I can't sleep and I now constantly worry about getting hurt. I fear for the safety of my children. (Use descriptive language about the effect the student's action has had on your daily routine.)
He looked hostile.	He leaned forward and put his face an inch in front of mine, his face was

	red and his veins were popping out.
This is the kind of crap that makes me want to retire from teaching.	This behavior makes it difficult or impossible for me to continue my teaching. or I cannot continue teaching under these circumstances.
John Smith is an odd duck.	John Smith demonstrates behaviors not common to most students such as . . . OR . . . I am concerned about John Smith.
She/he has an obvious mental disorder, college not the best place for her/him	She speaks out loud, off topic. Often makes noises and stares at other students. Constantly challenges and blames others as the cause for his/her failure.

EXHIBIT H

Revised 5/2011

PALOMAR COLLEGE
Part-Time Faculty Evaluation Report

Part-Time Instructor/Evaluated: _____

Evaluator: _____

Department: _____

After reviewing student evaluations and the classroom visitation report, the Department Chair/Director/Designee will complete the following report. A copy of this signed form must be given to the evaluatee and another copy must be sent to the TERB Office. Evaluatees have 10 business days; beginning on the date the report was signed by the evaluatee, to add a response to their evaluation by sending it to the TERB Office (AA-112). After the 10-day comment period, this report and any evaluatee comments become part of evaluatee's personnel file maintained in the Human Resources Office.

Summary Comments and Recommendations

Comments for each item are highly encouraged. It is appropriate to write positive comments for meaningful feedback and encouragement for each question where it applies. If a "Substandard Performance" or "Unsatisfactory Performance" is checked, **comments are required.**

Definitions of evaluation categories: (based on the Standards of Performance for Faculty)

High Professional Performance - Frequently exceeds accepted standards of professional performance. (Check this box when the professor's professional performance is beyond what is reasonably expected.)

Standard Professional Performance - Regularly meets accepted standards of professional performance. (This is the standard of performance that is expected of all professors when they are hired and they are expected to maintain this level of performance throughout their tenure at Palomar College.)

Substandard Performance - Does not consistently meet accepted standards of professional performance.

Unsatisfactory Performance - Does not meet minimal standards of professional performance.

1. Course objectives and requirements are clearly stated in the class syllabus and communicated to the class.

Yes: _____ No: _____

Comments:

2. ~~The professor establishes~~ instructor communicates the appropriate learning outcomes for each course and consistently assesses for student learning of those outcomes.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Yes: _____ No: _____

Comments:

3. The instructor meets classes as required, teaches according to the Course Outline of Record, and is well prepared.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments:

4. The instructor treats students with respect and tolerance, demonstrates patience and a willingness to help when needed, and encourages student participation and questions.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments:

5. The instructor demonstrates effective communication skills in the classroom or online environment, presenting course material in an interesting and engaging manner.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments:

6. The instructor maintains fair and clearly stated grading policies and provides fair and reasonably prompt evaluation of student work.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments:

7. The instructor demonstrates depth of academic preparation and subject area competency.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments

8. The instructor adheres to department guidelines and is responsive to communications from the department.

High Professional Performance Standard Professional Performance
 Substandard Performance Unsatisfactory Performance

Comments:

9. **Summary Comments (required)**

Overall Recommendation: (Required)

- High Professional Performance
- Standard Professional Performance
- Substandard Performance
- Unsatisfactory Performance

Signatures

Department: _____

Evaluator : _____ Date: _____
(print name): _____

Department Chair: _____ Date: _____
(print name): _____

My signature acknowledges that I have met with my evaluator and reviewed my evaluation. It does not mean that I agree or disagree with the evaluation summary. I am aware that within ten business days after signing this report, I have the right to submit a response to this evaluation to the TERB Office (AA-112). I am also aware that this evaluation and my response, if any, will become part of my personnel file maintained in the Human Resources Office.

Part-Time Faculty Evaluatee: _____ Date: _____
(print name): _____

Administrative Signature

My signature acknowledges that I have reviewed the materials.

Division Dean: _____ Date: _____
(print name): _____