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# M E M O R A N D U M

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**DATE:** June 22, 2020

**TO:** All Faculty

**cc:** Provost Academic Council (PAC) 

**FROM:** Debra S. Larson, Provost and Vice President for Academic Affairs

**SUBJECT:** *Legal Hold on Instructional Materials*

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When a lawsuit is filed against the CSU, employees of the CSU may be required to preserve materials that might pertain to the lawsuit. In other words, nothing of potential relevance to the lawsuit may be erased, thrown away, or destroyed.

The CSU is the recipient of multiple class action lawsuits because of the spring 2020 change in instructional modality due to COVID-19. **By way of this memo, you, along with all members of the Chico State faculty, are being notified of the requirement to preserve certain course and student materials.**

The background and details of this preservation requirement are below, but in essence, you need to keep all instructional materials from, not only your spring 2020 courses, but your fall 2019 courses as well. All faculty in the CSU are receiving this notification.

You do not need to take any action at this time except to **preserve the documentation described in Section III below.**

If you have questions, please address them to Academic Personnel ([academicpersonnel@csuchico.edu](mailto:academicpersonnel@csuchico.edu)) and AVP Brian Oppy will respond.

- I. **BACKGROUND:** As of June 5, 2020, two lawsuits have actually been filed with the possibility of four additional lawsuits in the future.

***Miller v. CSU (Putative Class Action)***

United States District Court Case No. 20-cv-03833

***Rifat v. CSU (Putative Class Action)***

United States District Court Case No. 20-cv-4421

***Government Claims for Refunds (Putative Class Actions)***

Los Angeles Superior Court (To Be Filed)

These matters claim that students enrolled at CSU campuses in Spring 2020 are entitled to prorated refunds of tuition, Campus Mandatory Fees, and other campus-based fees after campuses temporarily transitioned to virtual/remote modules of instruction in response to the COVID-19 pandemic. This is a systemwide dispute that impacts all 23 campuses.

The plaintiffs allege that students paid tuition and fees for Spring 2020 for various activities and services that CSU stopped providing or making available those activities and services and, therefore, CSU was required to return and refund some portion of tuition and fees back to the students who paid them. Plaintiffs are also alleging that students paid tuition for Spring 2020 for in-person instruction, that CSU stopped providing in-person instruction and, therefore, CSU was required to return and refund some portion of students' tuition to account for the difference between in-person and virtual/remote instruction.

- II. REQUIREMENT TO PRESERVE INFORMATION:** As a result of the lawsuits, CSU is now under a legal duty to preserve all evidence, whether printed or electronic, that might become relevant to these matters. Due to the critical role that faculty hold, there are several categories of information that are in their possession or under their control that they must continue to maintain and preserve.

The Office of General Counsel has connected with Kathy Sheffield, CFA's Director of Representation, to develop a plan to ensure that student, faculty, and staff information that is private, confidential, or proprietary will stay that way, under a stipulation and protective order that CSU's counsel will enter into with the opposing lawyers. **Faculty should rest assured that nothing will be produced by the CSU to the other side without first being appropriately reviewed by CSU attorneys and that all private or privileged information will be removed before disclosure.**

Please note, we are not asking Faculty to take any action at this time. We are just communicating that faculty should refrain from deleting or purging any of the information described in the list below. This is a very important legal requirement that is imposed by both federal and state law, and a failure to preserve evidence can have very serious consequences for the University.

Also note that at this time, the legal hold is only requesting **preservation** of this information.

- III. LIST OF ITEMS TO PRESERVE:** The following list of items controlled and/or created by faculty has been excerpted from the larger systemwide Legal Hold:

- Communications to and from students regarding (i) changes in modality of instruction or services, (ii) charges imposed for Spring 2020, (iii) refunding Spring 2020 tuition or fees, or (iv) the accessibility or inaccessibility of instruction, programs, or facilities on campus.
- All course materials from Spring 2020, whether contained within or outside the Learning Management System in use at CSU campuses.
- Documents regarding changes in instructional operations, including changes in office hours, methods of communications with students, and changes in modality of instruction as communicated to students.

- Documents reflecting the additional expenses and burdens associated with transitioning to virtual or on-line programming, instruction, or activities taking place during Spring 2020 as a result of the COVID-19 pandemic, including documents relating to training of faculty or staff in providing virtual instruction.
- Class syllabi, student attendance records, other measures of class participation for Fall 2019 and Spring 2020 classes.
- Student evaluations for all courses taking place in Fall 2019 and Spring 2020.
- Surveys of students regarding their experiences in Fall 2019 and Spring 2020.

To follow the legal hold, **all faculty** will need to:

- ✓ Preserve (i.e. do not delete or dispose of) all hard copy documents described above;
- ✓ Preserve all electronic information described above, no matter where or how that electronic data is stored;
- ✓ Preserve any new documents or data generated after receipt of this legal hold, if listed above.

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