

**Memorandum of Understanding
between
San Mateo Community College Federation of Teachers, AFT Local 1493
and
San Mateo County Community College District**

Effects of District Emergency Action due to Coronavirus Pandemic

This MOU is made by and between the San Mateo Community College District (“District”) and the San Mateo Community College Federation of Teachers, AFT Local 1493 (“AFT”), referred to collectively as the “parties.” The purpose of this Memorandum of Understanding is to address the effects on working conditions resulting from the District’s action to transition educational services to on-line, digital, telephonic, virtual or other distance modalities (hereafter “distance modalities”), consistent with its authority under the EERA to act in case of business necessity.

WHEREAS, on March 16, 2020, the San Mateo County Health Officer issue a Shelter in Place Order; and

WHEREAS, on March 19, 2020, the State of California issue a Shelter in Place Order; and

WHEREAS, the suspension of instruction during the COVID-19 crisis would fail our students, and cause a fiscal crisis for the District; and

WHEREAS, in order to comply with the Shelter in Place order and mitigate the spread of the COVID-19 virus, while continuing to enroll and serve its students, the District made the decision to suspend all in-person instruction for the Spring 2020 semester, and deliver educational services through distance modalities; and

WHEREAS, having been advised by the District of its decision to carry out these emergency measures AFT requested to bargain the effects on working conditions of this decision; and as a result, AFT and the District met and conferred and made the following agreements regarding the effects of this decision that fall within the mandatory scope of representation according to EERA (CA government code 3543.2).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this MOU, and for other good and valuable considerations, the Parties hereby agree as follows for all AFT represented bargaining unit members:

1. Temporary Measure with No Binding Effect.

The Parties acknowledge and agree that the current transition to an online service format is temporary, and for the sole purpose of implementing preventative measures in compliance with the applicable sheltering in place orders, while continuing to provide instruction to the students of the San Mateo Community College District. These measures, and the terms of this agreement, shall apply through May 30, 2020. In the event the District determines that distance education or other emergency measures must continue after this date, the parties will meet and confer at AFT's request to address the effects of these further emergency measures on members' working conditions.

2. Provision of Information.

The District shall provide the AFT with the following information as soon as it becomes available, and shall provide timely updates to the extent it changes:

- A. The list of classes/courses identified for remote instruction,
- B. A list of classes/courses which the District anticipates suspending or cancelling during the COVID-19 emergency crisis, and
- C. The corresponding bargaining unit members assigned to each class/course that is transitioned, suspended or cancelled.

3. Leaves.

- A. The District shall adhere to and provide all leaves required by the Families First Coronavirus Response Act ("FFCRA") and any other applicable laws in addition to any other statutory or contractual leaves to which faculty are entitled.
- B. In addition to the leave provided by FFCRA, the District shall provide the following:
 - 1. Members who meet any of the FFCRA eligibility criteria to receive Emergency Paid Sick Leave ("EPSL") at their regular rate of pay if unable to work or telework shall receive the difference between the EPSL cap and the member's regular rate of pay (if any) during the EPSL period, and shall be continued in full-pay status for the duration of this MOU without deduction from the members' leave banks, so long as the member continues to meet the eligibility criteria for EPSL.

2. Members who meet any of the FFCRA eligibility criteria to receive EPSL at 2/3s of their regular rate shall receive the difference between the EPSL cap and the member's regular rate of pay during the EPSL period.
 3. Members who meet the FFCRA eligibility criteria to receive Emergency Family and Medical Leave (EFMLA) AT 2/3 their regular rate of pay for up to 12 weeks may supplement this leave pay with application of accrued leaves to achieve up to 100% of the member's regular rate of pay.
 4. It is understood that members who are compensated under this section because some or all of their assignment was suspended have given the students enrolled in these classes incompletes so that they may complete the work at a later time, and that these members will provided the delayed instruction at a later time, once the District resumes face-to-face educational services. The parties shall negotiate at a future time appropriate additional compensation for the completion of these suspended educational services. Faculty will be fully compensated for cancelled or suspended classes. For the purposes of this section 100% of salary for full-time faculty does not include compensation for overload, even if overload had been scheduled for Spring 2020.
- C.** Faculty who receive assignments during the period covered by this MOU, and who take off days (i.e. not working either on or off campus) may use available sick leave to cover the absence, regardless of the reason. No doctor's note is necessary.

4. District Supports and Compensation For Transition to Distance Modalities

- A.** The District provided faculty with three full days of training while relieved of their regular duties on Thursday, Friday and Monday March 12, 13 and 16, with compensation at 100% of their regular pay, for the sole purpose of receiving training and engaging in preparation activities for transitioning their classes or other regular duties (i.e. counseling and librarianship assignments) to distance modalities.

Part-time faculty, who are scheduled to teach on Tuesdays and/or Wednesdays, and thus did not benefit from the preparation days above for those classes will be provided with additional compensation in an amount equivalent to 100% of their regular pay received for each class

taught on Tuesday March 10 and/or Wednesday March 11, for the sole purpose of receiving training and engaging in preparation activities for transitioning their classes or other regular duties (i.e. counseling and librarianship assignments) to distance modalities.

- B.** The District shall support faculty in transitioning their classes and non-instructional assignments to distance modalities by providing live support to discuss technological adoption, lesson planning, student contact, assignments, or other questions regarding the development or delivery of distance modalities.
- C.** The District has, and will continue to provide training, materials, and other resources required to prepare and implement such a program, including trainings and information regarding various tools for remote instruction, including use of CANVAS and ZOOM.
- D.** Faculty who participate in any district or college training regarding the use of distance modalities may count that time as FLEX without pre-approval. This includes training taken during the March 27, 2020 FLEX day.
- E.** Faculty shall receive compensation at the special rate for up to ten hours of additional training that the member has already taken, or will take, during the Spring 2020 semester for: a) training to assist the member in transitioning courses to a distance modality in response to the COVID-19 pandemic; and/or b) for time that it took to convert the classes to distance education format.

5. Spring 2020 Workload and Compensation

- A.** To the fullest extent possible, Spring 2020 classes and non-classroom based educational services (i.e. counseling and library services) will continue and be delivered through a distance modality. Faculty whose Spring assignments are resumed will devote the same contractual hours to preparation and delivery as exist under normal operations.
- B.** For distance education/online instruction, instruction will continue to be designed to meet stated learning outcomes. The mode of instruction will be left up to the discretion of the instructor, except that the supervising administrator will review to ensure the modification:

1. Satisfies one of the attendance accounting approved exceptions issued by the State Chancellor on March 13, 2020, and
 2. Any schedule modification does not create scheduling conflicts with other classes.
- C.** Faculty members retain academic freedom and intellectual property rights in modifying their classes for remote instruction, to the same extent as in delivering classroom-based instruction, except that their modifications are subject to review and approval for the limited purposes described in 5.B.1.
- D.** Workload requirements for faculty shall be limited to duties and responsibilities outlined in Appendix D1 A for Instructors, D2 A for Counselors and D3 A for Librarians. Faculty with coordination duties will do their best to continue their coordination and will be provided flexibility to continue performing these duties to the best of their abilities.
- E.** It is understood that the scheduling of counseling and librarian services may deviate from their regular scheduling. All scheduling changes of non-classroom assignments will be mutually agreed between the member and the appropriate supervising administrator. In the absence of mutual agreement, the member's Spring 2020 course or assignment schedule shall remain unchanged.
- F.** Bargaining unit members shall conduct contractual office hours through Zoom or District email, unless reduced or waived with approval of the supervising administrator. Faculty whose regular practice is to conduct office hours telephonically may continue to do so.
- G.** No faculty member will be expected or required to come to campus to the extent such requirement violates the order or recommended protocols of a national, state or local public health official to shelter in place, quarantine or self-isolate. Any employee directed to come to campus will comply with established safety protocols. This MOU does not preclude the District exercising its authority to require employees to provide service as per the California Emergency Services Act and/or in conformance with applicable national, state or local orders.
- H.** In conformance with the San Mateo County March 16, 2020 Shelter in Place Order, faculty who must retrieve items from their offices in order to provide remote instruction (i.e. delivery of instruction would otherwise be

impossible) shall be provided one-time access to their offices to retrieve those items. Access will be arranged in advance so that the District can ensure compliance with social distancing and all other best safety practices.

- I. The District shall provide reasonable accommodations for remote work as required by State and Federal law and 2009 EEOC guidance for pandemic: https://www.eeoc.gov/facts/pandemic_flu.html.
- J. Faculty shall receive reimbursements for incurred expenses for conferences not attended or cancelled.
- K. The district will reimburse faculty for preapproved expenses incurred as result of teaching online (e.g. costs for USPS expenses.) If members require additional equipment in order to work remotely, they shall inform their immediate supervisor and the District will procure and provide the necessary equipment.
- L. The District shall continue to collaborate, and cooperate fully, with San Mateo County Public Health (“SMCPH”)—the lead agency responsible for conducting interviews/contact investigations for lab-confirmed COVID-19. This collaboration and cooperation includes:
 - a) Upon notice from SMCPH that identified employees had a sustained, worksite exposure to an individual who has tested positive for COVID-19, the District will immediately notify those employees in a manner that provides them with information to consult with their healthcare provider, while protecting the medical privacy of the infected person;
 - b) Upon notice from SMCPH that it requires the District’s assistance in conducting a contact investigation, the District will immediately and fully comply;
 - c) In the event an employee informs the District that the employee received a positive lab-confirmed COVID-19 test, the District will immediately notify and consult with SMCPH.
 - d) Consistent with the methods and practices recommended by SMCPH, the District will clean identified areas of the District’s work sites where the infected individual was present.

6. Faculty evaluations:

A. Tenured and Part-Time Faculty.

1. If the classroom observation component of the evaluation has NOT been completed for an individual instructor, the evaluation process, for this instructor will be postponed to the fall 2020 evaluation cycle.
2. If the classroom observation HAS happened for an individual instructor, the evaluation process for this instructor (including student surveys, portfolios, self-assessments, and Deans' assessments) may be concluded virtually with adjusted deadlines. Note: If an evaluatee has already begun work on a hard copy portfolio, they should make individual arrangements with their evaluator for the delivery of that portfolio. It is up to the evaluatee to determine if the evaluation will proceed as scheduled. If the evaluation is postponed, portions completed will not have to be repeated.
3. Faculty who temporarily transition face-to-face classes to a distance modality will not be evaluated on their use of the distance technology or teaching methodologies. Similarly, to the extent student evaluations are scheduled for Spring 2020, the student evaluations shall be limited to course content.
4. The period of any campus closure shall not count as a break in service for the purposes of obtaining regular status under the Education Code, or eligibility for any benefit, including sabbatical leave or early retirement.

B. Tenure track faculty. Tenure track faculty will continue to be evaluated their regular schedule. However, faculty who temporarily transition face-to-face classes to a distance modality will not be evaluated on their use of the distance technology or teaching methodologies. Similarly, to the extent student evaluations are scheduled for Spring 2020, the student evaluations shall be limited to course content.

7. The effects on working conditions of any further emergency action taken by the District shall be negotiated upon request by the AFT.

8. This MOU is valid through May 30, 2020. If the need for this MOU as it relates to COVID-19 extends beyond May 30, 2020, the parties will review and extend this agreement with or without revisions.

9. Entire Agreement

This MOU constitutes the entire agreement and understanding between the Parties regarding the effects of the District's emergency actions due to the coronavirus pandemic, except to the extent it expressly references and/or incorporates provisions of the CBA between the Parties. There are no other oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement. All prior understandings, terms, or conditions are deemed merged into this Agreement.

10. Modification

This MOU cannot be changed or supplemented orally, and may be modified or superseded only by a written instrument executed by both Parties, or as may be necessary to enable the District to respond to the COVID-19 emergency. Where such emergency action is taken by the District, the District will provide AFT with the opportunity to meet and negotiate the effects as soon as practicable thereafter.

11. Execution

The MOU may be executed in several counterparts, and shall be deemed legally effective at such time as the counterparts thereof, duly executed on behalf of both parties, have been furnished and delivered to the parties or attorneys for the parties to this Agreement.