

**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 respond to and recover from the COVID-19 global pandemic, consistent with its authority under the EERA to act in case of business necessity.

WHEREAS, on March 4, 2020, the Governor of California proclaimed that a state of emergency exists with regard to a novel coronavirus (COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder; and

WHEREAS, in order to comply with state and county health orders 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 and educational services, with few exceptions, and deliver services through distance modalities for the Spring 2020, Fall 2020 and Spring 2021 semesters, with increased in-person, on-site instruction in the Fall 2021 and Spring 2022 semesters; 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 purposes of implementing preventative measures in compliance with the applicable sheltering in place orders and limiting the spread of COVID-19, 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 31, 2022. 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 and in-person instruction.
- B. A list of Spring 2022 classes/courses which the District cancels.
- C. The corresponding bargaining unit members assigned to each class/course that is transitioned or cancelled, date of cancellation and enrollment.

3. Leaves.

- A. The District shall provide the following: All leaves as required pursuant to Cal/OSHA.
- B. Faculty scheduled to teach sections scheduled as fully in-person, hybrid or HyFlex (as opposed to fully online), and who must quarantine due to COVID-19, or care for a family member who is required to quarantine or isolate due to Covid-19 will coordinate with their Dean to either 1) identify a substitute to cover the in-person instruction for the duration of the required quarantine, or 2) transition to synchronous on-line instruction per CCCC Memorandum FS 21-09 – RE: Attendance Accounting Guidance for Transitions to In-Person Instruction (attached). It is up to the faculty member to determine their ability to continue delivering instruction while in quarantine, or to require a substitute due to the severity of illness or other issues.
- C. Faculty who must quarantine because of an on-campus exposure will not draw from their accrued sick time.

- D. Faculty who need to take sick leave in order to care for a household member who contracts Covid-19 or have a school-age child who cannot attend school due to a Covid-19-related issue and do not have enough accrued sick leave available may participate in a program into which other faculty may donate sick days. The District will establish by January 13, 2022 a process by which faculty can donate to and access donated sick leave in accordance with the above criteria.
- E. Adjunct Faculty whose face-to-face classes get started and are later canceled by the District at some point after census to comply with a SMCH directive or safety protocol will be fully compensated for the canceled course. If a course is suspended—meaning the class will be continued with the same students in the future—the faculty member will be paid the pro-rated amount of the course that was taught up to the time it was suspended.
1. Faculty who will be meeting for face-to-face instruction in order to complete courses that started in Spring 2022, and were suspended, will be compensated on a pro-rated basis for the portion of the course(s) that they will teach in Fall 2022. The faculty member teaching the suspended course will be given the right of first refusal to teach the remainder of the course. If the course is rescheduled for a semester or term later than Fall 2022, the faculty member shall receive compensation for an additional 4 hours at the special rate.
 2. Further, where a faculty member is hired to complete a suspended course that the faculty member began teaching in Spring 2022, the fully completed course will be credited to the Spring 2022 semester, for the purpose of calculating the faculty member's load. This means that the resumed portion of the course shall not count toward the faculty member's 67 % cap on load in the semester of completion. It is expressly understood that this agreement precludes AFT from relying on such assignments to assert that a faculty member was assigned a load greater than a 67%.
 3. The District will inform affected employees of their right to file for workers compensation as provided in SB 1159.
- F. 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 For Transition to Distance Modalities

- A. The District shall support faculty in transitioning their classes and non-instructional assignments to distance modalities by providing support to discuss technological adoption, lesson planning, student contact, assignments, or other questions regarding the development or delivery of distance modalities.
- B. The District will continue to provide tech support to faculty through the District's ITS portal.
- C. The District will provide regular outreach to students, informing them how to access tech support, and that synchronous tech support for students is available between the hours of 9:00 a.m. and 9:00 p.m.
- D. 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. For trainings other than QOTL faculty will be compensated for participating in these trainings at the special hourly rate, if it has been determined by the appropriate administrator that the training is appropriate, applicable and necessary.
- E. The District will compensate faculty for out of district provided trainings recommended by the District at the special hourly rate if it has been determined by the appropriate administrator that the training is appropriate, applicable and necessary.
- F. Pursuant to the current distance education MOU between the parties, faculty are being compensated for participation in 25 hours of QOTL training. Faculty who participate in any other training provided by the District regarding the use of distance modalities, for which faculty are not being separately compensated, may count that time as flex without pre-approval.

- G. District will accept documented training for on-line teaching that a faculty member has taken at another district that the DE Coordinator determines to be equivalent to the 25-hour QOTL Training.
- H. The District shall provide training and equipment consistent with the San Mateo County Health Order to faculty who serve in non-classroom environment and will be required to be on campus (such as, but not limited to, medical professionals and early childhood educators).

5. Spring 2022 Workload and Compensation

- A. Faculty shall receive compensation at the special rate for six hours for each course converted for the first time by that faculty member to a distance modality in the Spring 2022 term. Course refers to each unique course as listed in the course catalogue.

Faculty who converted a course to a distance modality in Spring 2022, who also worked on the course conversion during QOTL training, are entitled to compensation for conversion of that course.

Courses that are separately listed in the course catalogue constitute "unique" courses, entitled to the compensation for conversion, even where those separate courses are scheduled to be taught concurrently by the same instructor. However, course numbers that include decimals belong to course families, and the decimal notation serves the purpose of limiting repeatability of these courses; in this case, each course does not constitute a "unique" course and is not entitled to separate compensation. Faculty will receive conversion pay for one course for each course family.

Where a single course is cross listed in another department, the cross listing does not constitute a "unique" course and is not entitled to separate compensation.

- B. Faculty Facilitators who provide the District-authorized 25-hour Quality Online Teaching and Learning (QOTL) training during Spring 2022 shall be compensated at the Lecture Rate for the time spent delivering training.
- C. The District will not compel any instructional faculty member who was scheduled to teach an online section in the Spring 2022 to teach that section in-person. No faculty—instructional or noninstructional will be given an in-person assignment if they cannot be provided with a working environment

that complies with all applicable Cal/OSHA standards. The District will support all faculty, instructional and non-instructional, who do not yet feel comfortable to return to in-person work by informing them of their rights and ask if they want to engage in an interactive process to explore eligibility/availability of reasonable accommodations for medical conditions of the faculty member or an individual for whose care they are responsible, such as but not limited to, working remotely, alternate worksites, flexible scheduling, and leaves of absence. Faculty will have option to perform non-primary duties (i.e. committees, other meetings) as allowable in alternate modalities.

Faculty may not be compelled to teach in HyFlex modality. Faculty who voluntarily teach in a HyFlex modality in Spring 2022 will receive compensation at the special rate for eight (8) hours per unit for each course taught by that faculty member. Course refers to each unique course as listed in the course catalogue. Faculty who are scheduled to teach HyFlex in the Spring 2022 semester may request not to teach the course.

- D. 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, and instructors have the freedom to determine synchronous or asynchronous delivery, except that the supervising administrator will review to ensure the modification
 - 1. Conforms to the following minimum guidance from the SMCCCD Academic Senate:
 - a. To the extent synchronous online classes are scheduled, the instructor has also implemented adaptations for students with difficulty accessing synchronous instruction, as necessary on a case-by-case basis. For the purposes of this MOU “difficulty accessing synchronous instruction” is not limited to issues related to accessing technology, but also includes difficulties due to logistical challenges, such as increased childcare or other family responsibilities, or the lack of a quiet space to participate. The particular adaptation shall be up to the instructor. Examples of adaptations an instructor might consider include, but are not limited to: flexibility in assignment deadlines, allowing for additional make-up exams, supporting students via phone or email, scheduling multiple synchronous opportunities

that students can select from, and/or being available for quick questions after class via email or phone.

- b. The instructor is not using a “correspondence education” methodology, as described here: <https://www.cccco.edu/-/media/CCCCO-Website/Files/Communications/COVID-19/es-20-15-emergency-guidance-for-correspondence-education.pdf?la=en&hash=8B362149C24F117C8CD7AA3951846E05B2FE3731>;
- c. The instructor is not solely relying on email interaction to deliver instruction; and
- d. The instructor is not using a platform other than Canvas as a primary point of access.

The Parties expressly acknowledge that this level of review is due to the unique and extraordinary conditions created by the Pandemic and shall terminate upon expiration of this MOU.

- 2. Any schedule modification does not create scheduling conflicts with other classes.
- E. 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.D.1.
- F. Faculty will not be expected to engage in more than two high volume or demand professional duties during the Spring 2022 semester. “High volume/high demand” professional duties are any of the following: Committee service, program review, curriculum development (excluding DE addenda) and SLO’s. Faculty evaluations are excluded from the high volume/demand activities. Committees or other professional duties for which the faculty member is already given release time or additional compensation shall not count toward the two-activity expectation. Standing committees of the academic senates will be prioritized over other professional duties. Other professional responsibilities shall not be

assigned until these committees are covered, without the prior approval of the appropriate dean.

- G. 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.
- H. Full-time non-Instructional faculty will be required to work at least three (3) days per week on their respective campus, except as approved by the Dean, and will have the option to work their remaining scheduled days as remote. Adjunct non-instructional faculty can work up to 50% of their assigned days remote if approved by managers based on program needs.
- I. Bargaining unit members may hold office hours in person or virtually, according to the discretion of the faculty member.
- J. 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, or an individual accommodation required by law. 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. The District will keep faculty informed of the District's health and safety protocols, Cal/OSHA standards, California Department of Public Health guidelines and SMCPH new or modified orders.
- K. For classes that will be conducted face to face, the District will provide options for faculty who are, or care for someone, in a high risk category. Face to face classes will only be offered if the District is able to comply with Cal/OSHA and any applicable SMCPH order. The District will provide PPE, sanitizing gel, etc. for all faculty, who are present on campus, consistent with the SMCPH Order. So long as the Order requires face coverings for all individuals in public areas, faculty will be expected to arrive to work wearing a faculty-supplied face mask.
- L. If there is restricted access to campus in conformance with the San Mateo County Orders, 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 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

- M. 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.
- N. The District shall comply with AB 685 and OSHA's Covid-19 Emergency Temporary Standards. The District shall inform faculty how requirements will be enforced, and provide a building map and confirm that the process and procedures established in the District's Recovery Plan relating to the use of all indoor spaces meet all public health requirements relating to COVID-19. Individual faculty will not be responsible for ensuring employees' compliance with District requirements or for the discipline of students who do not comply with District requirements. Faculty members concerned about the safety of their workspace may request an inspection, which will be provided. Any faculty may request an N-95 mask for use at work and it will be provided. 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.

- O. Faculty will also get additional weekly compensation for Spring 2022 classes that are larger than this cap as follows:
- a) For classes with 46-57 students at census or 41-54 at withdrawal, faculty will receive 1.0 hours.
 - b) For classes with 58-69 students at census or 55-69 at withdrawal, faculty will receive 2.0 hours.
 - c) Classes with 70 or more will follow the large lecture compensation rates set forth in the CBA.
- P. Additional compensation for adjunct faculty teaching face-to-face classes that were previously suspended shall be provided as follows:
1. For courses that started in Spring 2022, faculty will be compensated on a pro-rated basis for the portion of the course(s) that were suspended and are rescheduled for Fall 2022.
 2. For Spring 2022 courses that are suspended, faculty will be compensated on a pro-rated basis for the portion of the course(s) that were suspended, and are subsequently rescheduled, as set forth in Article 3.B.4.
 3. For Spring 2022 courses that are suspended, the faculty member who taught the Spring 2022 portion will have right of first refusal to teach the rescheduled portion, and receive compensation for an additional 4 hours at the special rate, if rescheduled after the Fall 2022 semester as set forth in Article 3.B.4.
- Q. If a part-time faculty's load falls below 40% due to the cancellation of an in person a class or due to state or county health orders (i.e. shelter-in-place) the part-time faculty member will qualify for half the medical stipend reimbursement.
- R. Not teaching in Spring 2022 does not affect a part-timers position in the seniority list.

S. Class Cancellations

1. The District's Colleges will organize classes in as efficient a manner as possible consistent with good instructional practices and the needs of students.
2. Classes that achieve an enrollment of at least 10 students will not be cancelled in the Spring 2022 semester.
3. Classes whose cancellation are likely to disrupt students' educational plans will be carefully reviewed with discipline faculty before cancellation, consistent with Board Policy 6.04. Such classes include sequential courses, single sections required for a major and similar courses necessary for students' ability to complete their programs or majors within their current timeline.

6. Faculty evaluations:

A. Tenured and Part-Time Faculty.

Evaluations for tenured and part-time faculty will re-start in Spring 2022. Faculty who were scheduled for evaluation in the Spring 2020 and whose evaluation was not done then will be evaluated in the Spring 2022 semester. Faculty scheduled for evaluation in the Spring 2021 will be evaluated in the Spring 2023 semester and so on.

7. Health and Safety:

- A. Health and safety protocols on campus will be enforced with a focus on education.
- B. The District is responsible for the implementation and enforcement of the vaccination requirement adopted as Board Policy 2.90. Per BP 2.90, all District employees are required to be vaccinated against COVID-19, unless an exemption has been granted by the District. Vaccinated faculty must provide proof of vaccination. Unvaccinated faculty must be tested for Covid-19 on a weekly basis, free of charge. Testing will be available on each campus and the District will provide testing kits for faculty to do their weekly testing.

- C. N95 masks will be available for faculty upon request. Surgical masks will be available to everyone (employees, students, community members) in all buildings.
 - D. Faculty members concerned about the safety of their workspace may request an inspection, which will be provided. Faculty who work in spaces where ventilation and air circulation are found to be non-compliant with CalOSHA will be provided air purifiers with HEPA filters. The District will, when applicable and appropriate, utilize CDC guidelines as it relates to ventilation.
 - E. The District will maintain a list of confirmed COVID-19 cases of employees and students where an exposure has occurred on District property; the list will be made accessible online. The list will include date(s), time frame (morning, afternoon, evening), campus(es), building(s), incident type, exposure risk level and action(s) taken by the District and it will be updated within 24 hours of the confirmation of an on-site case.
- 8. The effects on working conditions of any further emergency action taken by the District shall be negotiated upon request by the AFT.
 - 9. Faculty teaching on the middle college or dual enrollment are subject to District's policy and the terms of this MOU.
 - 10. This MOU is valid through May 31, 2022. If the need for this MOU as it relates to COVID-19 extends beyond May 31, 2022, the parties will review and may extend this agreement with or without revisions. If either party requests to negotiate an MOU beyond May 31, 2022 negotiations will begin within a week after the initial proposal is submitted.

11. 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 and decisions regarding recovery plans, 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.

12. 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 and implement recovery plans. 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.

13. 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.

For the AFT:

For the District:
