

**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 issued a Shelter in Place Order; and

WHEREAS, on March 19, 2020, the State of California issued 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 Summer 2020 and, with very few exceptions, for the Fall 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 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 December 31, 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 has canceled in Summer and Fall 2020, within five business days of census.
- C. The corresponding bargaining unit members assigned to each class/course that is transitioned 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. 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.

Faculty who will be meeting for face-to-face instruction in order to complete courses that started in Fall 2020, and were suspended, will be compensated on a pro-rated basis for the portion of the course(s) that they will teach in Spring 2021. 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 spring 2021, the faculty member shall receive compensation for an additional 4 hours at the special rate.

Further, where a faculty member is hired to complete a suspended course that the faculty member began teaching in Fall 2020, the fully completed course will be credited to the Fall 2020 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%.

- 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 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 students with tech support.
- 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. Faculty will be compensated for participating in these trainings according to the MOU on Distance Education.
- E. 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.
- F. The District will continue to provide mental health support for faculty through the District's existing EAP program.

- 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. Summer 2020 and Fall 2020 Workload and Compensation

- A.** Faculty shall receive compensation at the special rate for six hours for each course converted to a distance modality in the Fall 2020 term, and three hours for each course converted to a distance modality in Summer 2020. Where a faculty member receives compensation to convert a course in Summer 2020, they shall only receive three additional hours of compensation at the special rate if they teach the same course in Fall 2020. Course refers to each unique course as listed in the course catalogue.
- B.** Faculty Facilitators who provide the District-authorized 25-hour Quality Online Teaching and Learning (QOTL) training during Summer 2020 shall be compensated at the Lecture Rate for the time spent delivering training retroactive to the beginning of Summer 2020.
- C.** To the fullest extent possible, Summer 2020 and Fall 2020 classes and non-classroom based educational services (i.e. counseling and library services) will continue and be delivered through a distance modality.
- 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 child care 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 Fall 2020 semester. "High

volume/high demand" professional duties are any of the following: Committee service, program review, curriculum development (excluding DE addenda) and SLO's. 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. Tenure review committees and 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.

In recognition of the unique professional demands for counselors resulting from the pandemic, the counselor workweek (Article 7.6) shall be temporarily adjusted as follows:

Counselors' full-time workweek currently includes a minimum of (30) hours per week that they must be present on campus--twenty-five (25) of which are for scheduled professional duties and five (5) of which are for performing other professional duties.

For the Fall 2020 semester only, full-time counselors' scheduled time for counseling appointments (i.e. "professional duties" under the contract) shall be reduced to twenty-one (21) while their on-campus "other professional duties" under the contract are increased to nine (9). Nothing in this adjustment precludes a counselor from requesting a different balancing of their on-campus hours, so long as professional duties do not fall below twenty-one (21) weekly hours, and on-campus hours do not fall below thirty (30).

- H. Bargaining unit members shall conduct office hours through distance modalities.
- I. 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. The District will keep faculty informed of the District's health and safety protocols and SMCPH new or modified orders.

- J.** 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 the SMCPH Order. The District will provide PPE, sanitizing gel, thermometers, 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.
- K.** 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 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.
- L.** 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. This includes ergonomic equipment (chairs, monitor, keyboard) for faculty to work at home, as well as special equipment that may be necessary for certain courses.
- M.** Faculty shall receive reimbursements for incurred expenses for conferences not attended or cancelled.
- N.** The district will reimburse faculty for preapproved expenses incurred as result of teaching online (e.g. costs for USPS expenses, printing, internet, paper). Preapproval is required if the expenses are more than \$100. 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.
- O.** 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.

P. Health and safety protocols on campus will be enforced with a focus on education.

Q. When setting class sizes for on-line classes in Fall 2020, the District shall adhere to the District Academic Senate "Fall 2020 Considerations for Class Size Maximums," dated June 11, 2020, including engaging in the faculty/dean conversations referenced in the Senate's document, except that these conversations shall occur no later than two weeks after this MOU is executed

Any faculty member who believes they should have a lower class size than determined by the dean may appeal to the VP for Instruction. The VPI must respond within 5 days of the appeal.

Faculty will also get additional weekly compensation for Summer 2020 and Fall 2020 classes that meet either of the following criteria:

- the class exceeds 45 students at census; or

- the class exceeds 40 students at last day to withdraw pursuant to the 2020-21 academic calendar.

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.
- R.** 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 2020, faculty will be compensated on a pro-rated basis for the portion of the course(s) that were suspended and are rescheduled for Summer or Fall 2020.
 2. For Fall 2020 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 Fall 2020 courses that are suspended, the faculty member who taught the Fall 2020 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 Spring 2021 semester as set forth in Article 3.B.4.

6. Faculty evaluations:

A. Tenured and Part-Time Faculty.

1. Evaluations for tenured and part-time faculty will be delayed until the Spring 2021 semester.

2. 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 on their regular schedule, modified as follows:

For instructors:

Evaluators should give feedback on the use of teaching methodologies and technology, but the feedback on distance education technologies should not negatively impact the evaluatee's final rating.

For counselors:

Faculty who temporarily transition face-to-face service delivery to a distance modality will not be evaluated on their use of the distance technology (Zoom).

Evaluators should give feedback on the use of counseling methodology and technology, such as DegreeWorks, assist.org, etc., but the feedback on Zoom technology should not negatively impact the evaluatee's final rating.

Observed counseling sessions will only be conducted via Zoom due to the constraints of phone calls. For any counseling sessions that require observation, (with student permission) the observer will be added into a Zoom call.

For librarians:

Faculty who temporarily transition face-to-face service delivery to a distance modality will not be evaluated on their use of the distance technology.

Evaluators should give feedback on the use of reference and library instruction methodologies, but the feedback on the technology should not negatively impact the evaluatee's final rating.

Library instruction sessions - the observer will be added into a zoom call

Reference sessions- Zoom or other web conferencing tools, text chat and email can all be observed. For Zoom calls, (with student permission) the observer will be added into a zoom call. For text chat, a copy of the reference transcript will be shared only with the evaluators (with student written permission) and deleted upon completion of the evaluation.

7. The effects on working conditions of any further emergency action taken by the District shall be negotiated upon request by the AFT.
8. Faculty teaching on the middle college or dual enrollment are subject to District's policy and the terms of this MOU.
9. This MOU is valid through December 31, 2020. If the need for this MOU as it relates to COVID-19 extends beyond December 31, 2020, the parties will review and extend this agreement with or without revisions.

10. 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.

11. 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.

12. 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:

Ray Rivera
7/22/2020

For the District:

D. Matthews

July 20, 2020