

## **ARTICLE 24: PROFESSIONAL STANDARDS**

### **Professional Standards Committee**

The Professional Standards Committee (PSC) shall be composed of four (4) members, two (2) appointed by UPM and two (2) appointed by the District. The PSC shall negotiate professional standards, forms and other items as defined/described by the terms of this agreement, and make a recommendation to UPM and the District for their approval.

In matters not otherwise covered by the CBA, the PSC may initiate discussions of allegations that a unit member has failed to perform their professional obligations in accordance with the language of the “AAUP Statement on Professional Ethics” cited below.

- (a) The purpose of the discussion shall be to determine the validity of the allegation/s and if possible resolve the allegation/s in a non-punitive manner.
- (b) Within five (5) working days the Committee shall notify the unit member/s of the allegation/s.
- (c) The UPM/AFT representatives on the PSC shall represent the unit member/s. The UPM/AFT representatives have an obligation to meet and discuss the allegation/s with the unit member/s.
- (d) The members of the PSC shall keep confidential all matters relating to the allegation/s and discussions thereof.

### **AAUP Statement**

1. Professors, guided by a deep conviction of the worth and dignity of the advancement of knowledge, recognize the special responsibilities placed upon them. Their primary responsibility to their subject is to seek and to state the truth as they see it. To this end professors devote their energies to developing and improving their scholarly competence. They accept the obligation to exercise critical self-discipline and judgment in using, extending, and transmitting knowledge. They practice intellectual honesty. Although professors may follow subsidiary interests, those interests must never seriously hamper or compromise their freedom of inquiry.
2. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.
3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates. In the exchange of criticism and ideas professors show due respect for the opinions of others. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues. Professors accept their share of faculty responsibilities for the governance of their institution.
4. As members of an academic institution, professors seek above all to be effective teachers and scholars. Although professors observe the stated regulations of the institution, provided the regulations do not contravene academic freedom, they maintain their right to criticize and seek revision. Professors give due regard to their paramount responsibilities within their institution in determining the amount and character of work done outside it. When considering the interruption or termination of their service, professors recognize the effect of their decision upon the program of the institution and give due notice of their intentions.

5. As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

## **24.0 Disciplinary Procedures**

A unit member shall be subject to disciplinary actions as provided for within this Article and only in the manner provided for in this Article, except as authorized by California Education Code sections 87666 to 87683 and 87732 to 87737.

- (a) **Right to Grieve Disciplinary Action.** A unit member may make use of his/her contractual rights to grieve a disciplinary action. With the exception of 90-day Notice, suspension or dismissal, disciplinary action shall be subject to the provisions of the grievance procedure.
- (b) **Cause for Disciplinary Action.** No disciplinary action shall take place except for just and sufficient cause.
- (c) **90-Day Notice/Suspension/Dismissal Procedures.** 90-Day Notice, suspension or dismissal shall be in accordance with the Education Code provisions. Where the unit member elects to have an arbitrator hear the matter of suspension or dismissal pursuant to Education Code 87674, the District, unit member and unit member's representatives shall mutually agree on the arbitrator within five (5) workdays of the receipt of the demand. If agreement is not reached, selection of the arbitrator shall be made in accordance with the selection procedures of the American Arbitration Association.
- (d) **Legal Right to Litigation.** A unit member may make use of his/her legal rights to litigation over a disciplinary action if he/she has not entered into binding arbitration.
- (e) **Confidentiality.** A unit member shall have all information relating to his/her disciplinary action(s) and penalties maintained in absolute confidentiality.
- (f) **Notification of Provisions.** Following notification, violations of contract provisions are not excused due to unit member ignorance.

**24.1.1 Initial Notification Period/Process.** Any disciplinary actions or penalties authorized by Article 24 of the MCCD/UPM Collective Bargaining Agreement shall be initiated within thirty (30) working days of the date that the assigned MCCD management supervisor knew, or reasonably should have known, of a specific violation. Any disciplinary action taken in accordance with the provisions of Article 24 must begin with the notification of the unit member and UPM (by certified mail) of the proposed disciplinary actions and/or penalties. Failure to properly notify the unit member within the 30-day period specified herein shall result in a waiver of the authorization to penalize and/or discipline the unit member for the specific violation.

**24.1.2 Warning Letter.** (Form F 24.0.2). A warning letter shall take the form of a letter from the Office of the supervising Vice President/Dean (Student or Enrollment Services) to the unit member indicating the contract violation and the contractual requirement of a letter of censure and possible suspension.

**24.1.3 Provisions Where Warning Letter Applicable.** Add warning letter (as defined above in 24.0.2) to 24.1.1, 24.3.1, 24.4.1, 24.5.1, 24.6.1, 24.8.1, 24.9.1, 24.10.1, 24.12.1, and 24.13.1.

#### **24.1.4 Disciplinary Procedures – Temporary, Part-Time Unit Members.**

Beginning with the date of this agreement (9/29/99) and subject to the other provisions of Article 24, any temporary, part-time unit member who violates 24.1, 24.3, 24.4, 24.5, 24.6, 24.9, 24.11, 24.12 and 24.13 (within a three (3) year period, as provided for in 24.13.2) shall be subject to the following penalties.

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First Instance:** Censure letter placed in employee's personnel file.

**Second Instance:** Loss of ETCUM, RETCUM or other temporary hire status and no future re-hire.

With reference to 24.2 and 24.10, the temporary, part-time unit member who in any instance violates these Articles is subject to loss of ETCUM, RETCUM or other temporary hire status and there is no future re-hire.

**24.1 Smoking.** Smoking by a unit member is prohibited in all District buildings, within ten feet of all buildings, and in District vehicles. Smoking is also prohibited in covered areas adjoining buildings, covered areas in the Physical Education complex, the pool areas and decks, and the covered areas and courtyard of the Science Center.

**24.1.1 Penalties.** Violations of Contractual Smoking Policy shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file

**All subsequent instances:** Suspension without pay for 1 day.

**24.2 Discrimination/Harassment.** A unit member is subject to disciplinary actions for violations of the following contractual and statutorily mandated professional norms: Discrimination and Harassment. For Discrimination and Harassment, a unit member may be subject to progressive discipline as defined in 24.2.6 (c ).

**24.2.1 Definitions.** UPM and the District recognize the necessity of protecting academic freedom in the college environment; however, a finding of discrimination/harassment may obtain where the conduct of a UPM unit member is judged to have violated the following professional norms:

- (a) Submission to the conduct of the unit member is explicitly or implicitly made a term or a condition of an individual's employment, academic status or academic progress.
- (b) Submission to, or rejection of, the conduct of the unit member is used as the basis of employment or academic decisions affecting the individual.
- (c) Submission to, or rejection of, the conduct of the unit member is used as the basis for any decisions affecting the individual regarding the benefits, services, honors, programs, or activities available at or through the District.
- (d) The conduct of a unit member has the purpose of causing a negative impact upon the individual's work or academic performance, or the purpose of creating an intimidating, hostile, or offensive work or educational environment.
- (e) The conduct of a unit member is judged (by an independent arbitrator) to have the reasonable effect of causing a negative impact upon an employee's work or a college student's academic performance, or, where the conduct of a unit member is judged (by an independent arbitrator) to have the reasonable effect of causing an intimidating, hostile, or offensive environment for a fellow employee or for a college student.

**Note: Provisions for arbitrators are delineated in Article 12 of this contract and are to be followed.**

**24.2.2 Actions Which Constitute Sexual Harassment.** Actions which constitute sexual harassment include, but are not limited to:

- (a) **Verbal harassment:** Epithets, derogatory comments, slurs, or derogatory jokes based primarily upon sex, or unwelcome requests for sexual favors or unwelcome sexual advances.
- (b) **Physical harassment:** Impeding or blocking movement, or physically interfering with normal work or movement on the basis of sex.
- (c) **Visual harassment:** Derogatory posters, notices, bulletins, cartoons, or drawings if based primarily upon sex.

**24.2.3 Parameters: Sexual Harassment Charges.** A unit member may not be subjected to sexual harassment charges within the MCCD except as provided for within the UPM-MCCD contract.

**24.2.4 Actions Which Constitute Other Forms of Discrimination/Harassment.** Actions which constitute other forms of discrimination/harassment include, but are not limited to:

- (a) **Verbal harassment:** Epithets, derogatory comments, slurs, or derogatory jokes based primarily upon race, religion, national origin, handicap, medical condition, marital status, sexual preference or age.
- (b) **Physical harassment:** Assault, impeding or blocking movement, or physically interfering with normal work or movement primarily on the basis of race, religion, national origin, handicap, medical condition, marital status, sexual preference or age.
- (c) **Visual harassment:** Derogatory posters, notices, bulletins, cartoons, or drawings if based primarily upon race, religion, national origin, handicap, medical condition, marital status, sexual preference or age.

**24.2.5 Parameters: Other Forms of Discrimination/Harassment Charges.** A unit member may not be subjected to non-sexual discrimination/harassment charges within the MCCD except as provided for within the UPM-MCCD contract.

**24.2.6 Penalties.** Violations of discrimination/harassment contractual constraints shall be penalized as follows:

- (a) **Instances not involving academic freedom.**

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for four (4) days.

**All subsequent instances:** Suspension without pay for ten (10) days.

- (b) **Instances involving academic freedom.** (Academic freedom shall be here construed in a manner consistent with the various AAUP statements and decisions defining the meaning of academic freedom).

**All instances involving academic freedom:** Letters of complainants placed in unit member's personnel file if said letters meet the requirements of ARTICLE 7, Sections 7.8 through 7.8.8.

- (c) **Progressive Discipline.** This Agreement incorporates the doctrine of progressive or corrective discipline, which the District shall apply. Disciplinary actions are designed to be progressive and corrective, and relate fairly to the offense. The District shall consider any mitigating circumstances when deciding on the appropriate discipline. Ordinarily, a first offense results in no more than a letter of censure or warning

placed in an employee's personnel file. Ordinarily, a second offense results in no more than a suspension according to the suggested penalties set forth in Article 24.2.6 (a) above. Ordinarily, additional infractions are punished according to the schedule of penalties set forth in Article 24 for the most appropriate violation. The District may depart from this sequence of progressive or corrective disciplinary penalties when it establishes that the misconduct is so serious that different or more serious discipline is warranted, or because it establishes that the scheduled corrective measures could not reasonably be expected to have the effect of correcting the conduct of the employee. In the event of any departure from the progressive or corrective disciplinary sequence of penalties set forth in this Agreement, all other provisions of Article 24 and this Agreement still apply.

**DEFINITION: VIOLATION OF CONTRACTUAL PROFESSIONAL NORMS.**

**24.3** UPM unit members are subject to disciplinary actions for violations of the following contractual and organizationally necessary procedural requirements:

**A.** **Failure to File Class Rosters.** Failure to file class rosters required for the collection of revenue by their due date. These rosters are to be submitted in the manner of final grades described in 24.3B.2;

**B.** **Failure to file final grades by their due date.**

1. "Failure to file final grades" shall mean:

(a) sent by regular U.S. Mail; or if received after 2:00 p.m. of the due date cited in the MCCD/UPM academic calendar; or if sent by U.S. Express Mail or commercial express service within the continental United States, no proof of express mailing showing a date at least 3 calendar days prior to the due date

(b) sent to the wrong address

(c) submitted with a missing scanner sheet

(d) scanner sheet unsigned

(e) scanner sheet is folded or mutilated by the instructor prior to being submitted in person or prior to deposit in the drop slot or prior to mailing

(f) entries not made with a #2 or softer pencil

(g) entries made within the "grade bubble" so as to be unreadable by machine (i.e., not completely penciling in the "grade bubble", penciling in above or below the "grade bubble", or penciling in too lightly)

(h) corrections made with "white-out"

(i) a grade entry is omitted

(j) a multiple grade entry is made

(k) an inappropriate grade is made (for example, a "W" at the end of a semester or an "IP" for an unauthorized class)

(l) an "I" or "IP" is awarded without the proper accompanying form

2. Final grades must be submitted in one of the following three manners:

(a) In person at the Office of Admissions and Records on either campus by the unit member or his/her designated non-student representative by 2:00 p.m. of the due date. The District will issue a receipt for all acceptable

documents received in this manner. Issuance of a receipt means the instructor of record will not be liable for discipline under Article 24.3B, but may still be subject to Article 24.3C.

(b) In the Human Resources door mail slot by 2:00 p.m. of the due date or the mail slot to the right of the door to the EOPS Office, Administrative Service Tutoring Center, Room #140 on the Indian Valley campus. The District shall make an effort to contact the unit member by telephone, or mail if necessary, at an address or phone number provided by the unit member, for the purpose of correction or clarification. If the final grades are submitted and do not include any of 24.3B.1(a) through (l), or if corrected by mail or phone, the District will issue a receipt to the unit member.

(c) By 2:00 p.m. of the due date, by U.S Express Mail, to an address specified by the District; or by commercial express or messenger service to the Director of Admissions and Records at an address specified by the District. Documents submitted in this manner must be in a District provided envelope, available only through the Office of Admissions and Records. The District shall make an effort to contact the unit member by telephone, or mail if necessary, at an address or phone number provided by the unit member, for the purpose of correction or clarification. If the final grades are submitted and do not include any of 24.3B.1.(a) through (l), or if corrected by mail or phone, the District will issue a receipt to the unit member.

3. Positive attendance rosters must be submitted in the same manner as final grades (see 24.3B.2.).

(a) Instructors must provide actual number of hours of daily attendance, and totals thereof, by student for positive attendance rosters of lecture classes. For lab classes, at least totals by student must be provided, documented by auditable sign-in sheets (or computer log-on records). The sign-in sheets or computer records should be turned in to the Office of Admissions and Records with the other positive attendance information. If they are not, they must be maintained for four years.

(b) Credit positive attendance rosters are due with final grades if the course ended within the academic semester.

(c) Intersession and non-credit positive attendance rosters are due no later than five (5) working days after the last class meeting ("working days" here means days on which the Office of Admissions and Records is open for business).

C. **Failure to Respond to Written Request for Academic Information in Timely Manner.** Failure to respond within ten (10) working days from the date of receipt of a written request for academic information required for student records from the District registrar.

D. **Failure to Return District Equipment/Materials in Timely Manner.** Failure to return District equipment and materials within 5 calendar days of the date of a request for such a return. The request must be by mail, certified return receipt requested. The five days must be within the 175 assigned days for that individual, or within the contract period plus 30 days for temporary employees.

**24.3.1 Penalties.** Violations of each separate contractual requirement prescribed above shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**All subsequent instances:** Suspension without pay for 2 days.

**24.3.2 Request to PAC for Extension of Due Date.** In the case of extreme emergency, such as, but not limited to, accident, illness or death in the immediate family, the unit member or his/her designee may request an extension of the due dates specified in 24.3. If a written request accompanied by supporting documentation

indicating inability to perform the required action by the due date is submitted to the Professional Affairs Committee (PAC), the PAC will decide on the request for an extension. The request can be made before or after the due date. In the event that a majority decision cannot be made by the committee, the decision will be made by the Vice President of Academic Affairs. Applicants who are denied an extension may appeal via the provisions of the Grievance Article of this contract.

**24.3.3.1 Timeline for Imposition of Penalties.** Failure to submit some or all of the required documents or materials, as specified in 24.3A through D. will not result in sanctions under Article 24 until the beginning of the next academic semester (or quarter, for non-credit) after the one in which the violation occurred.

**24.4 Use of District Equipment Off Campus.** MCCD equipment may be used off the work site by permanent/probationary and temporary unit members only for official college business and only with the prior approval of their immediate supervisor or his/her designee.

**24.4.1 Penalties.** Violations of restrictions on the use of District equipment and supplies, shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**All subsequent instances:** Suspension without pay for 2 days.

## **24.5 Violations of ARTICLE 5, Section 5.1**

**DEFINITION: Failure to File Required Absence Report Within Three (3) Working Days Upon Returning to Service in the District.**

**24.5.1 Penalties.** Violations shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**Third instance:** Suspension without pay for 3 days.

**Fourth instance:** Suspension without pay for 5 days.

**All subsequent instances:** Suspension without pay for 10 days.

## **24.6 Violations of ARTICLE 5, Sections 5.2.8 & 5.4.3**

**DEFINITION: Failure to Provide Contractually Required Notice for Absence and Personal Necessity Leave.**

**24.6.1 Penalties.** Violation shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**All subsequent instances:** Suspension without pay for 1 day.

## **24.7      Violations of ARTICLE 5, Sections 5.6.1 through 5.6.1.3 and 5.6.9**

**DEFINITION:** Failure to Perform Contractually Required Assignments on a Sabbatical Leave or to Complete an Alternative Assignment Acceptable to the Sabbatical Leave Committee and the Governing Board.

### **24.7.1      Penalties.** Violations shall be penalized as follows:

**All instances:** A unit member who fails to complete all or any portion of his/her approved sabbatical leave proposal shall promptly begin repayment of the unearned salary he/she received while on sabbatical (cf. ART. 24.7.2). In addition, a unit member found in violation of this contractual requirement shall not be eligible again for a sabbatical leave until repayment in full is received by the District. His/her eligibility for a sabbatical leave shall begin on the date the repayment is complete. The administrator on the Sabbatical Leave Committee shall report violations of this section of the contract to the Superintendent/President.

### **24.7.2      Procedure for Determining Repayment of Unearned Sabbatical Compensation.**

**All instances:** A unit member who fails to complete all or any portion of his/her approved sabbatical leave proposal shall submit for review by the Sabbatical Leave Committee a written report identifying the elements of the proposal successfully completed. The committee shall determine the prorated/percentage of unearned salary the unit member is required to repay to the District as provided in 24.7.1 (above). A reasonable repayment schedule, including but not limited to the use of sick leave days, shall be arranged by the parties or their representative.

## **24.8      Violations of ARTICLE 5, Section 5.6.10**

**DEFINITION:** Failure to File Required Sabbatical Report Within One (1) Semester of His/Her Return to Service in the District.

### **24.8.1      Penalties.** Ten (10) days after receipt of the warning letter indicating an apparent violation of Article V, the following penalties may apply:

**Warning Letter** (as defined in 24.0.2) shall be issued.

**First Notice:** Censure letter indicating subsequent penalties placed in employee's personnel file.

**Second Notice:** If sabbatical report has not been submitted within ten (10) calendar days following the placement of the censure letter in personnel file, the employee shall be suspended without pay for one (1) day.

**Third Notice:** If sabbatical report has not been submitted within twenty (20) calendar days following the placement of the censure letter in personnel file, the employee shall be suspended without pay for three (3) days.

**Fourth Notice:** If sabbatical report has not been submitted within thirty (30) calendar days following the placement of the censure letter in personnel file, the employee shall be suspended without pay for ten (10) days.



## **24.9 Violations of ARTICLE 7, Evaluation Processes**

**DEFINITION: Failure to Complete the Required Evaluation Procedures in Accordance With the Dates Specified in Article 7.**

### **24.9.1 Penalties.** Violations shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**Third instance:** Suspension without pay for 3 days.

**All subsequent instances:** Suspension without pay for 4 days.

## **24.10 Violations of ARTICLE 7, Section 7.6**

**DEFINITION: Failure to Perform Contractually Required Service as an Evaluator.**

### **24.10.1 Penalties.** Violations shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 1 day.

**Third instance:** Suspension without pay for 3 days.

**All subsequent instances:** Suspension without pay for 4 days.

## **24.11 Violations of ARTICLE 8, Section 8.3.7**

**DEFINITION: Failure to Meet the Terms of the Individual Unit Member's Contract with the Workload Committee.**

### **24.11.1 Penalties.** Violations shall be penalized as follows:

**Any instance:** A unit member shall be suspended for 15 days without pay and shall immediately begin repayment of the salary received while on stipend, reassigned time or overload assignment, or he/she shall complete the contractual agreement within ninety (90) working days. In addition, a unit member found guilty of this contractual infraction shall not be eligible again for stipends, reassigned time or overload assignments until said contractual agreement has been met. The Administrator(s) on the Workload Committee shall report violations of this section of the contract to the Superintendent/President.

## **24.12 Violations of ARTICLE 8, Sections 8.2.1, 8.2.2, 8.4, 8.5.1, 8.5.1.1 & 8.5.2**

**DEFINITION: Failure to Meet Contractually Required Classes and/or Hold Contractually Required Office Hours.**

**24.12.1 Penalties.** Violations shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 2 days.

**Third instance:** Suspension without pay for 3 days.

**All subsequent instances:** Suspension without pay for 4 days.

**Prorated Salary Reduction.** In addition to the penalties cited above, failure to provide contractually required services shall result in a prorated reduction of salary for any unauthorized absence (as provided for in ART.5.2.12 of the C.B.A.).

**24.13 Violations of ARTICLE 9, Sections 9.8 through 9.20**

**DEFINITION: Failure to Perform Contractually Required Flex-Time Assignments.**

**24.13.1 Penalties.** Violations shall be penalized as follows:

**Warning Letter** (as defined in 24.0.2) shall be issued on each instance.

**First instance:** Censure letter placed in employee's personnel file.

**Second instance:** Suspension without pay for 4 days

**All subsequent instances:** Suspension without pay for 10 days.

**Prorated Salary Reduction.** In addition to the penalties cited above, failure to provide contractually required services shall result in a prorated reduction of salary for any unauthorized absence (as provided for in ART.5.2.12 of the C.B.A.).

**24.13.2 Statute of Limitations.** For all violations stated in Article 24 (except sections 24.2, 24.7, 24.10) the following stipulation shall apply: All violations shall be cumulative, except whenever three (3) calendar years follow the date of the last "instance"/violation; in that case, the next violation shall constitute the "first instance" as defined in any particular section.

**24.14 Student Complaints**

**DEFINITIONS:**

**Student Complaint:** A specific allegation by the complainant that a unit member has engaged in behavior towards a student or students that violates State law or Federal law regarding unsafe assignments, harassment or unlawful discrimination.

**Complainant:** Any student who is officially enrolled in the class of the unit member, or who is otherwise subject to the academic authority of a unit member and who files a student complaint.

**Time Limit:** Student complaints must be filed no later than one (1) year following the occurrence, or within one (1) year of the date on which the complainant knew or should have known of the facts underlying the complaint.

<b>Unit Member:</b>	Any Educational Instructor, Counselor, Librarian, School Nurse or other “Educational” unit member represented by the United Professors of Marin.
<b>United Professors Of Marin:</b>	The exclusive collective bargaining representative for the educational unit (herein referred to as UPM).
<b>Authorized Representative:</b>	The person or persons designated by the unit member to accompany/advise represent them in the Student Complaint Process, including UPM/AFT, the exclusive bargaining representative, and excluding any other non-exclusive labor representative as defined by the EERA.
<b>Working Day:</b>	Any day of the academic year (including intersessions) during which College offices are open for business.
<b>MCCD-UPM Collective Bargaining Agreement/CBA:</b>	The current labor agreement between the United Professors of Marin and the Marin Community College District.
<b>Notices:</b>	All written notices required by the student complaint process shall be mailed by <i>Certified/Return Receipt Requested</i> to the parties’ last known address. Time limits begin on the postal date stamped on the receipt.
<b>Copies:</b>	The District shall, upon request, provide unit member(s) and UPM/AFT, a copy of all investigative materials related to the Student Complaint Process, as provided for in <i>Faculty Rights</i> , numbers 5. & 6. below.

## **FACULTY RIGHTS**

- 1. Right to Grieve.** Should the unit member or UPM determine that the terms and conditions of the agreement defined herein have been misinterpreted, misapplied or violated, during the processing or investigation of a student complaint, or that the resolution/remedy proposed by management violates one or more provisions of the MCCD-UPM Collective Bargaining Agreement, the unit member or UPM may, within thirty (30) working days of the receipt of the MCCD’s proposed resolution/remedy file a written grievance under Articles 12.2.1 and/or 12.5 of the CBA.
- 2. Right to Representation.** A unit member has the right to be accompanied, advised and represented by UPM throughout the Student Complaint Process.
- 3. Implementation of Resolution/Remedy.** Unless otherwise required by law, implementation of any proposed recommendations/remedy and/or actions shall be held in abeyance until notification of the disposition of the student’s complaint or, if applicable, the final disposition of the unit member’s grievance as provided herein and under Article 12 of the CBA. In the event that grievance is filed over disciplinary action to be taken against a unit member, all timelines relevant to that discipline shall be tolled until completion of the grievance process. In a circumstance where the District determines it is required by law to implement a remedy or recommendation prior to the completion of the process, the District shall provide to UPM and the unit member, a written explanation for the need for immediate or intermediate remedies. UPM reserves the right to file a written grievance under the provisions of Article 12 of the MCCD-UPM CBA. Unless otherwise required by law, the District shall not implement a proposed resolution/remedy of a student complaint until UPM has received a copy of the complaint and proposed resolution/remedy and has been given an opportunity to file a response within thirty (30) working days.
- 4. Review of Materials Not Relevant to Specific Complaint.** Any materials (confidential or otherwise) not relevant to the specific complaint (i.e. materials in the unit member’s personnel/evaluation/medical/other student complaint files) may only be viewed by the complainant and his/her representative with the express permission of the unit member and UPM.

5. **Notification of Complaint/Time Lines.** Upon receipt of a valid student complaint, the District shall promptly notify the unit member and UPM that a complaint has been filed. In addition, the District shall notify UPM of the name of any unit member who is the subject of a student complaint.
- (a) Within five (5) working days of receipt of a student complaint, the District shall notify the unit member of the source and specific nature of the student complaint and the District's intention to investigate.
  - (b) Once notified by the District, the unit member may designate an authorized representative and notify the District, within five (5) days of receipt of District notification.
  - (c) Within five (5) working days of receipt of authorization, the District shall notify the authorized representative of the source and specific nature of the complaint and the District's intention to investigate.
  - (d) The District shall afford the unit member and/or his/her authorized representative a reasonable opportunity to respond (including the right to identify relevant information).
  - (e) Upon completion of the investigation, the District shall review the investigative report or summary as provided for in Title 5 of the California Code of Regulations with the unit member and his/her authorized representative, if any.
  - (f) Absent the unit member's authorization and to the extent allowed by law, UPM shall be entitled to all relevant materials/documents secured by subpoena, judicial or arbitrator order, or mandated by the EERA.
6. **Notification of District's Intention to Take Disciplinary Action.** The unit member and UPM shall be notified of the District's intention to take disciplinary action in accordance with the provisions of Article 24 of the CBA and shall promptly receive copies of all materials/documents (including the investigative report or summary) utilized by management and the Governing Board as a basis for the proposed disciplinary action.
7. **Files and Records: Development/Retention/Confidentiality/Access.** No materials shall be developed or files and records kept that would violate the law, MCCC policies and procedures, the Education Code or the MCCC-UPM CBA. More specifically, no documentation pertaining to any student complaint process shall be included in any unit member's personnel file or student file at any time, except for those resulting from disciplinary action (i.e. as provided for in Article 24 of the MCCC-UPM CBA). All documents, communications and records pertaining to a student complaint shall be confidential and shall be filed in a separate student complaint file in the Office of Human Resources and Labor Relations. The unit member and UPM shall be permitted to examine and/or obtain copies of materials contained in these files.
8. **Confidentiality.** All information derived from a student complaint is confidential. A student will be informed of the necessity for confidentiality within the student complaint process by the investigator of the complaint. Information shall not be made public nor discussed with anyone other than the participants and their authorized representatives. Any intentional violation of the confidentiality provisions of this agreement by the student complainant or their representative, shall, unless otherwise legally prohibited, result in the immediate termination of the complaint, with prejudice.
9. **Right to Self-Representation.** A unit member has the right to represent him/herself in the Student Complaint Process without intervention by UPM, provided the Student Complaint Process has not been misinterpreted, misapplied, or violated and provided the resolution/remedy proposed by management does not violate any provision of the MCCC-UPM CBA. However, should UPM determine said violation(s) has occurred, UPM reserves the right to file a written grievance under the provisions of Article 12.5 of the MCCC-UPM CBA. Unless otherwise required by law, the District shall not implement a proposed

resolution/remedy of a student complaint until UPM has received a copy of the complaint and the proposed resolution/remedy, and has been given an opportunity to file a response within thirty (30) working days. In a circumstance where the District determines it is required by law to implement a remedy or recommendation prior to the completion of the process, the District shall provide to UPM and the unit member, a written explanation for the need for immediate or intermediate remedies.

10. **Recommendations/Actions.** All recommendations, resolutions, remedies and actions taken by the District Governing Board or its Managers shall be consistent with State and Federal law, the MCCD Policies and Procedures, and the MCCD-UPM CBA. In the event of a conflict between the CBA and existing State or Federal law, refer to Article 19 – *Severability* of the current CBA. In the event of a conflict between the CBA and MCCD Policies and Procedures, the CBA shall govern, unless otherwise prohibited by law.
11. **Application of Actions.** All actions taken to remedy Harassment/Discrimination complaints shall be applied according to the definitions provided for in Article 24 of the CBA.
12. The District agrees that Board Policy 5.0021 shall not be used as a rationale, grounds or basis for investigating faculty actions or conduct, or taking any action affecting faculty employment, assignment or perquisites. The District agrees that Board Policy 5.0021 does not/shall not supersede, negate, or extend any provisions of the MCCD/UPM Collective Bargaining Agreements. Should the District need to investigate the actions or conduct of a faculty member or take any action affecting faculty employment, assignment or perquisites the District will follow procedures set forth in the Education Code or in relevant State and Federal Statutes or in the Collective Bargaining Agreement.

#### **Professional Standards/Faculty Rights in Parent Complaint Process**

Unit members assigned to the Children' Center: The PSC shall meet to develop (subject to mutual agreement between UPM and the District) professional standards and faculty rights in reference to a Parent Complaint Process for the Children's Center.

#### **STATEMENT OF COMMITMENT**

**Student Complaint Form(s).** Any form(s) designed for the use of the unit member and/or UPM regarding Student Complaints shall be the subject of negotiations between the District and UPM representatives to the Professional Standards Committee (PSC) and shall include:

Informing the unit member that he/she has the right to disclose the information to UPM for purposes of obtaining representation.

Informing the student who files a complaint against a unit member that a copy of the complaint documents will be provided to the unit member and that the unit member may share such information with his/her authorized representative.

The opportunity for the unit member and/or his/her authorized representative to respond to the complaint, including the right to identify relevant information and witnesses.

District notification to UPM of the name(s) of the unit member(s) against whom the complaint has been filed and of the District's intention to investigate prior to initiating disciplinary action.

Informing the unit member that he/she has the right to review the investigative report or summary as provided for in Title 5 of the California Code of Regulations with his/her authorized representative and a District representative.