**ARTICLE XV. DUE PROCESS.**

**Section 1. Definitions and Terminology.**

A. **District.** Administrator, Dean, district representative, or College Grievance Officer will be referred to as the “District” for purpose of this Article. The term “District” may also refer to the District as an entity.

B. **Expanded Weingarten Rights.** The District’s commitment to provide notice to a Faculty Member of his/her right to a union representative, prior to engaging in a meeting which the District believes reasonably could lead to discipline or letter of reprimand. The form advising the Faculty Member of the Expanded Weingarten Rights will be referred to as the “Weingarten Notice” for purpose of this Article. (See Appendix Z)

C. **Investigatory meetings.** For the purposes of this Article, the term “investigatory meeting” is defined as any formal written communication, face-to-face meeting or oral conversation between the District and a Faculty Member in which the Faculty Member is being asked questions regarding a complaint against the Faculty Member and for which the District reasonably believes that disciplinary action or reprimand would later be imposed. There are three (3) types of investigatory meetings that could lead to disciplinary action or letter of warning or reprimand as follows:

 1. An investigatory meeting relating to any general complaint against a Faculty Member.

 2. An investigatory meeting relating to a Student Grievance.

3. Any investigatory meeting relating to Discrimination or Unlawful Harassment as defined in Title 5 or relating to EEOC/DFEH complaints or lawsuits against the Faculty Member.

D. **Corrective Action**. Oral or face-to-face counseling, written warning, or written reprimand are considered corrective actions.

E. **Discipline.** Suspension, dismissals, reduction in compensation based on a violation of law or District Policy, or pursuant to Section 87732 of the Education Code, will be referred to as “disciplinary action” for purposes of this Article.

**Section 2.**  **Procedures for Expanded Weingarten Rights.**

1. Prior to any investigatory meeting where the District reasonably believes that disciplinary action or a letter of warning or reprimand could later be imposed, the District shall provide a copy of the Weingarten Notice to the Faculty Member and request that the Faculty Member complete it by choosing one of the options and signing it, where appropriate. One signed copy will be given to the Faculty Member, and one copy sent to the Office of the Coast Federation of Educators (if authorized by the Faculty Member). The District may keep a third copy.
2. No discipline shall be imposed on the grounds that the Faculty Member declines to choose one of the options provided on the Weingarten Notice or fails to sign it.
3. In the event the Faculty Member declines to choose an option or sign the Weingarten Notice, the meeting may proceed without the union representative being present.
4. If the Faculty Member does not initially choose to request that a union representative be present at the meeting, the Faculty Member may reverse that decision at any time during the meeting or subsequent meetings, and may request that a union representative be present.
5. Should the Faculty Member request that a union representative be present during the meeting, the meeting may not proceed until a union representative is in attendance.

**Section 3. General Complaints and Findings (other than Discrimination and Harassment Claims).** As part of any investigation under this Article, with the exception of Discrimination and Harassment claim investigations, the following shall apply:

1. The District shall notify the Faculty Member in writing of the specific allegations of a complaint within ten (10) working days after receipt. In the case of oral complaints, the District shall provide the Faculty Member a written summary of the specific allegations. The Faculty Member shall be given an opportunity to respond in writing to the allegations prior to any investigatory meeting, and to comment as he or she deems appropriate. Reasonable efforts will be made to provide at least five (5) working days notice prior to the first investigatory meeting with the Faculty Member and to conclude the investigation in a timely manner.
2. Forms for written complaint(s) against a Faculty Member shall include the words, “I hereby  verify that the claims/allegations and supporting statements made herein are true to the best of my knowledge” just above the complaining party’s signature. If necessary to protect the identity of an individual witness, the District may delete that specific individual witnesses’ name from the copy of the written complaint(s) and/or investigatory finding(s) that will be provided to the Faculty Member and/or union representative (if authorized by the Faculty Member).
3. Formal or informal investigatory meetings, on a matter where the administrator reasonably believes that questioning may lead to disciplinary action being taken or a pre-disciplinary/corrective action being issued will prompt the expanded Weingarten Rights. The administrator will proceed with the meeting only after he/she follows the Expanded Weingarten Rights procedure set forth in Section 2 of this article.

**Section 4**. **Faculty Member's Rights of Response Regarding Corrective Action or Discipline**

1. Letter of Warning or Reprimand - At the conclusion of the investigation and prior to a letter of

warning or reprimand being placed in the personnel file, the complete written complaints/ allegations will be delivered to the Faculty Member and the union representative (if authorized by the Faculty Member) along with a summary of the investigative findings, if any.  The Faculty Member shall have the right to submit a written response to the complaint/allegations/findings within ten (10) working days of receipt.  The District shall consider the Faculty Member's response, if received within ten (10) days, prior to making a final determination that results in placing a letter of warning or reprimand in the personnel file.  This provision does not preclude the faculty member from submitting a written response for placement in his/her file after the deadline has passed.

**B**. **Predisciplinary Notification.** At the conclusion of the investigation, if the District determines that discipline is warranted, prior to any disciplinary action the Faculty Member shall receive written notification through certified mail to their home address that is on file with the District Office of Human Resources. A second copy of this notice shall be sent to the Union if authorized by the Faculty Member. The notification shall include the following:

 1. A statement in ordinary and concise language of the specified acts and omissions upon which the proposed disciplinary action is based.

2. The specific disciplinary action proposed.

3. The cause(s) or reason(s) for the specific disciplinary action proposed.

4. A copy of the charges and materials upon which the proposed disciplinary action is based.

 5. Notice of the Faculty Member's right to a pre-disciplinary (Skelly) hearing, the right to representation, and the person to whom he/she must make that request in writing by a specified date.

**C. Predisciplinary (Skelly) Hearing** Upon receipt of such a request, the Vice Chancellor of Human Resources or District designee shall schedule a pre-disciplinary (Skelly) hearing to be held not less than five (5) days from the notification to the Faculty Member of the intent to discipline, to determine whether to proceed with the discipline.

1. The District official appointee hearing the Faculty Member's perspective must be able to render an unbiased opinion and must have the authority to reverse the decision for discipline.

2. If agreed upon by the administrator conducting the Skelly hearing and the Union representative, the administrator imposing the discipline may also be present to hear the Faculty Member's perspective.

3. At the Skelly hearing the Faculty Member may present in writing or in person, with or without a representative, any information as to why the intended action should not proceed. At the conclusion of that hearing or after the scheduled time the Faculty Member chooses not to appear or present information, the administrator shall recommend a decision to the Vice Chancellor of Human Resources, which shall be carried to the Governing Board for final action.

 **Section 5. Student Grievances**

 **A. General Definitions**

1. **Grievance** – A complaint against a Faculty Member, filed by one or more students, which alleges a grievable action.
2. **Supervisor** – That person charged with the responsibility and authority for job assignment and evaluation of the Faculty Member.

1. **Grievable Action.** For the purposes of this Article, a grievable action is an action that is alleged to be in violation of federal or state law, a violation of an applicable district/ college policy or procedure, or that constitutes arbitrary, capricious, or unequal application of written District policies or procedures. Note: Sexual harassment complaints are handled under a separate complaint process under this Article.
2. **Student** – A person enrolled in any course, lecture series or workshop offered under the auspices of the college, or it may also be a person formerly enrolled who is in the process of pursuing a grievance.
3. **Grievant** – The student who alleges that he or she has been treated unfairly.

1. **Work/Working Day** – For the purposes of the Student Grievance Section of this Article, a work/working day is any day during the Fall or Spring semester in which the college is open for business, excluding weekends and holidays.
2. **Supervisor** – That person charged with the responsibility and authority for job assignment and evaluation of the college employee.

1. **Division Dean** – The instructional or student service administrator responsible for the discipline in which a specific course is offered.
2. **Time Limitation Period** – Grievances will be permitted only through the end of the sixth week of the semester following the semester or summer session in which the alleged incident occurred.
3. **Campus Advisor -** A current student or employee of the District who accompanies the student grievant in the grievance process and may provide advice to the student grievant at a meeting with the Faculty Member as part of the informal grievance process.
4. **Grievance Officer** - An administrator appointed by the College President to process and resolve Student Grievances.

 **B. Purpose**

For the purpose of this Article, the student grievance procedure is to provide an impartial review process to ensure that the rights of all involved are properly recognized and protected.

 **C.** **Grade Grievances**

All grade grievances will be handled through the student grievance process outlined in the sections below. However, in general and by law, the instructor is solely responsible for the grades he/she assigns. No instructor may be directed to change a grade except in certain narrow circumstances authorized by Education Code Section 76224(a), “When grades are given for any course of instruction taught in a community college, the grade given to each student shall be the grade determined by the instructor of the course and the determination of the student’s grade by the instructor, in the absence of mistake, fraud, bad faith, or incompetency, shall be final.”

For the purposes of this Article, grades may only be reviewed within the following narrow context, subject to ratification by student government organizations:

1. **Mistake:** An unintentional act, omission or error by the instructor or the college.
2. **Fraud:** a deception deliberately practiced in order to secure unfair or unlawful gain. Fraud may exist when a grade is based upon some sort of dishonest activity, for example, selling grades.
3. **Bad Faith:** an intent to deceive or to act in a manner contrary to law and/or a grade assigned because of a student’s protected characteristics as defined in Education Code Section 66270. If, pursuant to the discrimination and harassment complaint procedure, as delineated in Title 5, California Code of Regulations, Section 59300, it is determined that a grade was the result of discrimination or harassment, the grade may be changed as a remedy for the discrimination or harassment.
4. **Incompetence:** a lack of ability, legal qualification, or fitness to discharge a required duty. A student may claim incompetency when he or she has evidence that the instructor has an impaired ability or fitness (due to accident or illness) to adequately judge t the student’s performance.

**Section 6. Student Grievance Process**

1. **Stage One – Informal Problem Resolution**

When a student has a complaint about a Faculty Member, the student should be encouraged to make every effort to meet with the Faculty Member to resolve the complaint. If the student is unable to meet with the Faculty Member, the student is encouraged to use the services of a campus advisor for this meeting or at any point during the informal resolution level or the formal grievance stage of the process. If a satisfactory resolution is not achieved with the Faculty Member, the student may proceed to the Faculty Member’s immediate supervisor to resolve the issue. The immediate supervisor is usually the Division Dean.

The supervisor will discuss the issue with the student(s) and the Faculty Member involved, either individually or collectively, in an effort to resolve the issue. The supervisor mayproceed with any investigatory meeting with the Faculty Member if there is a basis for a legitimate complaint. as mentioned in Section 5A.3 of this article Where the information gathered could lead to disciplinary action or letter of warning or reprimand being issued, the supervisor will proceed in any investigatory meeting with the Faculty Member only after he/she follows the Expanded Weingarten Rights Procedure set forth in Section 2 of this article.

If the complaint cannot be mutually resolved at the informal problem resolution level, then the student may file a formal written grievance by completing the Student Grievance Form and filing it with the College Grievance Officer within the limitations period.

1. **Stage Two – Administrative Review of the Formal Complaint**

Upon receipt of the written and signed Student Grievance Form, the College Grievance Officer shall promptly forward a copy to the person against whom the complaint has been lodged and the Faculty Member's supervisor. Upon receipt of the formal complaint, the College Grievance Officer will screen out false or unfounded allegations and allegations not meeting the criteria set in 5A.3 of this Article. Reasonable attempts will be made to contact the parties concerned, either individually or collectively, in order to resolve the issue. The College Grievance Officer mayproceed with any investigatory meeting with the Faculty Member if there is a basis for a legitimate complaint, as mentioned in Section 5A.3 of this Article.

Where the information gathered could lead to disciplinary action or letter of warning or reprimand being issued, the supervisor will proceed in any investigatory meeting only after he/she follows the Expanded Weingarten Rights Procedure set forth in Section 2 of this article. This does not apply if, in a previous interview involving the same issue, the supervisor had already obtained a completed and signed Weingarten Notice from the Faculty Member.

Within twenty-five (25) working days, the College Grievance Officer shall make a good faith effort to return a written decision to the student who filed the grievance, indicating the resolution with any recommended action, and a copy of this decision shall be given to the Faculty Member.

The College Grievance Officer may recommend any one of the following actions:

1. That no future action is necessary nor will the complaint prejudice in any way the individual’s employment status as a member of the college staff.

2. That there be some type of action or remediation. In such case, the written documentation and recommendation, if any, will be forwarded to the person deemed appropriate for the consideration and/or implementation of the remedy. The District shall not place the Grievance Officer’s documentation or recommendation in the Faculty Member’s personnel file unless disciplinary action is taken or a letter of warning or reprimand is issued.

**C. Stage Three – Appeal of Findings.** When students appeal a finding that favors the Faculty Member, the Faculty Member will be provided timely notice of the appeal and of the Faculty Member’s right to a union representative if follow-up meetings or hearings require the Faculty Member’s participation.

If there is an investigative finding that leads a supervisor to pursue corrective action, the Faculty Member shall be afforded the opportunity to appeal the corrective action to the appropriate Vice President. If the Vice President upholds the recommended corrective action, the Faculty Member may appeal to the President of the College, subsequently, the Vice Chancellor of Human Resources, and ultimately the Chancellor. Section 2 and Section 3 (subsections C and D) will apply. In the event of a recommendation to discipline a Faculty Member, the Faculty Member will have rights as outlined in Section 4.

**Section 7. Nondiscrimination *(See also Article 10 – Academic Relations)****.*

1. The District and the Federation agree there will be no tolerance for unlawful discrimination against any faculty member on the basis of age (40 or older), race, ethnic identity, color, religion, ancestry, national origin, sex, gender, pregnancy, marital status, sexual orientation, physical and mental disabilities, or veteran status. Further, there will be no discrimination on the basis of political activities or affiliations, or membership or non-membership in any faculty organization.
2. Equal Employment Opportunity (EEO). The District and the Federation agree to make a good faith attempt to adhere to EEO principles and guidelines to ensure that hiring practices safeguard equal opportunity for all qualified employees and applicants for District positions without regard to status based on protected characteristics described in Section 7A of this Article. The District and the Federation commit to the pursuit of diversity within the framework of applicable Federal and State laws.
3. Harassment. The District and Federation are committed to creating and maintaining an environment that is free of harassment and agree that no employee shall be subject to any form of verbal, physical, visual or written communications that constitute harassment by managers, co-workers, or others in the workplace based on protected characteristics listed in Section 7A above. It is understood that documentation utilized under the evaluation or discipline process shall not be construed as harassment.

In applying this Section the rights of free speech and association, that do not constitute harassment as defined above**,** should be accommodated consistently with the intent of this Article.

1. Sexual Harassment. The District and the Federation agree that all employees have a right to work in an environment that is free from sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person’s employment or education, unreasonably interferes with a person’s work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. More specifically, there are two types of discrimination/sexual harassment:
2. ***Quid Pro Quo Harassment*** – This for that – occurs when submission to sexual conduct is explicitly or implicitly made a condition of a job, a benefit, or the absence of a job and can also occur when sexual conduct is made a term or condition of a student’s grade or progress.
3. ***Hostile Work or School Environment*** exists when an employee or student can demonstrate that he/she has been subjected to verbal, visual, or physical conduct, based on a protected characteristic listed in section 7A. Further, it must be established that the conduct was both subjectively and objectively unwelcome, and was sufficiently severe or pervasive to alter the condition of the working or educational environment.

The District shall take all appropriate and reasonable measures to prevent sexual harassment and will respond promptly to resolve sexual harassment complaints, in accordance with Board Policy and provisions of Title 5. Faculty Members who are victims or witnesses of sexual harassment are encouraged to report incidences of sexual harassment and to cooperate in investigations of allegations.

1. Faculty Members accused of discrimination or sexual harassment will be promptly notified when a complaint has been made, and will be informed of his/her Expanded Weingarten Right to union representation during the investigative interview. The Faculty Member will be provided information in writing, outlining the allegations. Reasonable efforts will be made to provide at least five (5) working days notice prior to the first investigatory meeting with the Faculty Member. Immediately following the investigative interview, the Faculty Member will be given the full text of the written complaint, if the complaint was submitted in writing.

Investigative reports of discrimination and sexual harassment are confidential documents that will not be provided to the Faculty Member. However, if based on the findings of an investigator, the District decides to pursue pre-disciplinary/corrective action – a letter of warning or reprimand being placed in the Faculty Member’s personnel file – at the Faculty Member’s request, the District will provide a detailed summary of the investigative findings, as prepared by the investigator.

In the event suspension is recommended, based on the investigative report, the Faculty Member will be entitled to receive a copy with witness names, identifying comments, or information protected by privacy rights redacted from the report.

In the event termination/dismissal is recommended based on the findings contained in the investigative report, the Faculty Member will be entitled to the full text of the report.

Grievances processed under this Section will be handled with all possible confidentiality.

1. The District and the Federation agree to comply with the Americans with Disabilities Act (ADA). The District agrees to engage in a good faith, interactive process, to consider requests from Faculty Members to make reasonable accommodation on a case-by-case basis for those employees that are covered under the ADA. The District and the Federation shall meet to discuss concerns expressed by an employee regarding the implementation of the ADA.
2. The District and the Federation agree that retaliation against a Faculty Member or other employee of the District, based on complaints of discrimination or cooperation with investigations or lawsuits, is a violation of Policy and will not be tolerated.
3. The District and the Federation recognize that avenues outside of this Agreement exist for the legal determination of issues which deal with discrimination. Therefore, the exercising of rights under this Section are subject to the grievance procedure in this Agreement only through the completion of Level III.

**APPENDIX Z - Weingarten Notice**

**Administrator’s statement of the issue:**

**ADVISORY:** **In this meeting, the District believes that there is a possibility that you may be asked questions which could result in disciplinary action(s) taken against you, or a written reprimand being issued. The District and CFE have negotiated that you have the following rights, also known as Expanded Weingarten Rights:**

1. You have the right to request union representation before or during this meeting. You cannot be punished for

making this request.
2. If you make the request for union representation, the District must choose from among the options as follows:

a. Grant the request and delay questioning until the union representative arrives and has a chance to

 consult privately with you; or

b. Grant the request and reschedule the meeting when a union representative may be present; or
 c. Deny the request and end the interview immediately, or
 d. Offer you the option to waive your rights and have the interview without union representation.

3. If the District denies the request for union representation and continues to ask you questions, you have the right to

refuse to answer. The District may not discipline you for such a refusal.

**\*The Faculty Member requests ONE of the following actions (Check and sign where appropriate):**

\_\_\_\_\_\_ I wish to have a union representative attend this meeting.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Faculty Member’s Signature Date

\_\_\_\_\_ I wish to WAIVE my right to have a union representative attend this meeting and the meeting may proceed without any union representation.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Faculty Member’s Signature Date

\*NOTICE: THE ADMINISTRATOR WILL NOT ADVISE THE FACULTY MEMBER REGARDING HOW TO COMPLETE THIS FORM. IF THE FACULTY MEMBER FAILS TO COMPLETE AND SIGN THE ABOVE SECTION, THIS MEETING MAY CONTINUE WITHOUT UNION REPRESENTATION.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Note by Administrator: Faculty Member failed to select an option or sign this document.

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Administrator’s Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Faculty Member authorizes a copy of this Notice to be sent to Coast Federation of Educators: \_\_\_yes \_\_\_no**

**Additionally, the Faculty Member has received a copy of this Notice and acknowledges same by signing on this date:**

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Faculty Member’s Signature Date

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Administrator’s Signature Date