

**BOARD OF REGENTS PROPOSALS FOR AMENDMENTS TO
ITS BARGAINING AGREEMENT WITH THE COUNCIL OF
HIGHER EDUCATION
FIFTH NEGOTIATING SESSION: MARCH 15, 2011**

ARTICLES STILL UNDER NEGOTIATION:

I. DEFINITIONS (Board Proposal)

For the purpose of this agreement:

...

1.18 “Lecturer rank” designates any of a series of ranks, comprising instructor, lecturer and senior lecturer, in which faculty unit members assume undergraduate instructional activities and serve on term contracts.

1:19 “Librarian rank” designates any of a series of ranks comprising, assistant librarian, associate librarian and librarian, in which faculty unit members assume responsibility for library programs or functions supporting instruction or research and serve on term contracts.

1.20 “Professorial rank” designates any of a series of ranks, comprising assistant professor, associate professor and professor, or the corresponding librarian titles, in which faculty unit members assume traditional faculty roles embracing teaching, research and service and may serve on term, tenure track or, at the associate professor and professor ranks, tenure contracts.

Additional COMMENT: The Board also proposes to rearrange the section to present all definitions in alphabetical order.

The first change involves a mere matter of style and form. The second and third changes add definitions that reflect the separation of ranks to differentiate among the teaching staff, the professoriate and the librarians. The Board proposes to create three series of faculty rank. The terms and conditions of employment for faculty unit members assigned to lecturer ranks will reflect their function as instructional staff. The terms and conditions of employment for professorial ranks will remain largely unaltered. The terms and conditions of employment for librarians accommodate technology-driven changes in library functions or operations; relieve them of the uncertainties that are incidental to reviewing their performance under standards created for teaching or research faculty members and under a regime that allots a fixed time to earn tenure or to be terminated; and provide clear acknowledgement of their ongoing roles in academic planning and academic resource support for instruction and research.

I. DEFINITIONS (COHE proposal)

For the purpose of this agreement:

- 1.18 “Working file” shall be defined as any material, document, observation, report, letter, message, note, professional correspondence or other information in any form (digitized or otherwise) collected and stored by any administrator about the performance of a faculty unit member. These working files are separate and distinct from the personnel files described in § 17.1.

This clarifies the material in question for the proposal detailed in § 17.2.

III. XIV. ACADEMIC FREEDOM (COHEproposal)

3.1 14.1 STATEMENT

The parties agree and declare that academic freedom is guaranteed to faculty unit members subject only to accepted standards of professional responsibility including, but not limited to, those herein set forth:

1. The parties to this agreement recognize and accept the importance of academic freedom to teaching and learning. Academic freedom includes the right to study, discuss, investigate, teach and publish. Academic freedom applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of students to freedom in learning. It includes the freedom to perform one's professional duties and to present differing and sometimes controversial points of view, free from reprisal. The faculty unit member is entitled to freedom in research and in the publication of the results, subject to the performing of other assigned academic duties.
2. Faculty unit members are entitled to freedom in the discussion and presentation of their subject and are privileged to introduce various scholarly views. Further, they may provide counsel and recommendation in the administration's determination of class size and matters of classroom space.
3. The concept of freedom is accompanied by an equally demanding concept of responsibility. The faculty unit members are members of a learned profession. When they speak or write as citizens, they must be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As learned people and as educators, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should indicate that they are speaking only for themselves.
4. The parties endorse the “1940 Statement on Academic Freedom and Tenure” as agreed to by the Association of American Colleges (now the Association of American Colleges and Universities) and the American Association of University Professors.

This provision is intended to guarantee those rights which are recognized as flowing from the first amendment to the United States Constitution.

3.2 ROLE OF TENURE (*COHE proposal*)

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

STATEMENT (*COHE proposal, placement unspecified*)

Academic freedom is the freedom to discuss all relevant matters in the classroom, to explore all avenues of scholarship, research, and creative expression, and to speak or write without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties and the functioning of the University. Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that when one is speaking on matters of public interest, one is not speaking for the institution.

IV. SHARED GOVERNANCE (*COHE proposal*)

4.1 STATEMENT

The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among the Board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.

1. The framing and execution of long-range plans, one of the most important aspects of institutional responsibility, should be a central and continuing concern in the academic community.

a. Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university. The channels of communication should be established and maintained by joint endeavor. Distinction should be observed between the institutional system of communication and the system of responsibility for the making of decisions.

b. A second area calling for joint effort in internal operation is that of decisions regarding existing or prospective physical resources. The Board, president, and

faculty should all seek agreement on basic decisions regarding buildings and other facilities to be used in the educational work of the institution.

c. A third area is budgeting. The allocation of resources among competing demands is central in the formal responsibility of the Board, in the administrative authority of the president, and in the educational function of the faculty. Each component should therefore have a voice in the determination of short- and long-range priorities, and each should receive appropriate analyses of past budgetary experience, reports on current budgets and expenditures, and short- and long-range budgetary projections. The function of each component in budgetary matters should be understood by all.

2. Curriculum and Faculty Status

a. The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process. On these matters the power of review or final decision lodged in the Board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty. It is desirable that the faculty should, following such communication, have opportunity for further consideration and further transmittal of its views to the president or Board. Budgets, personnel limitations, the time element, and the policies of other groups, bodies, and agencies having jurisdiction over the Board and the institutions may set limits to realization of faculty advice.

The faculty sets the requirements for the degrees offered in course, determines when the requirements have been met, and authorizes the president and Board to grant the degrees thus achieved.

b. Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments. Likewise, there is the more general competence of experienced faculty personnel committees having a broader charge. The Board and president should, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

(And renumber all succeeding articles accordingly.)

These changes put the Board and COHE on record as seeking to further develop

modern 21st century, nationally-recognized institutions of higher education. The Board, administration and faculty are jointly responsibly for deciding the future of the institutions. These provisions incorporate the faculty's voice into the decision making process. Shared governance produces excellence in innovative educational and service programs as well as cutting-edge research. These principles allow universities to recruit and retain the highest-quality faculty who proudly serve their respective institutions and the people of South Dakota. Shared governance means faculty share in the decision making and not merely share the clerical work and policy implementation. Tenure is the means to fulfill these goals. COHE also proposes to move this section to the fore to highlight its primacy among the agreed principles.

3.2 SPECIFIC MANAGEMENT PREROGATIVES (Board proposal)

These management rights include but are not limited to the following:

1. To utilize personnel, methods, and means in the most appropriate and efficient manner possible.
2. To manage and direct the employees of the Board.
3. To hire, promote, transfer, assign, reassign or retain employees in positions under the jurisdiction of the Board.
4. To establish standards of conduct and performance for unit members, including policies regulating conflicts of interest and conflicts of commitment, together with reasonable work rules of conduct.
5. To establish policies regulating intellectual property, except for matters related to sharing net royalty revenue.
56. To suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause.
67. To determine the sizes and composition of the institutions in its charge and to lay off faculty unit members as provided for under Articles IV, VII and XVI.
78. To interpret the mission of each institution and the methods and means necessary to efficiently fulfill that mission, including the contracting out for or the transfer, alteration, curtailment or discontinuance of any services.

The changes here recognize that the decision about the kind and quality of work expected from public employees are present questions of public policy, since such standards are inextricable from questions involving the kind and quality of services provided to the public. Likewise, whether particular circumstances place public employees in an unacceptable conflict implicates a matter of public policy. Given their

direct implications for public policy, such decisions are not properly the subject of negotiations. Likewise, the preservation and management of property that inures to the public under law presents an inherent matter of public policy that must be reserved for decision by policy makers who are accountable through the political process. The apportionment of royalty revenues, in contrast, presents an economic matter consistent with well established authority that makes compensation a mandatory bargaining topic.

3.4 INCORPORATION BY REFERENCE (Board proposal)

~~It is acknowledged by the parties to this agreement that there are statutes, regulations and Board policies that are, and have been, operative in the administration of the rights, entitlements and responsibilities hereunder, i.e., insurance, travel, judicial or administrative redress, etc. and that such enactments, promulgations and adoptions are subject to change and repeal. To the extent such changes or repeals may occur during the term of this agreement, the results are deemed to be part of this agreement~~

The parties acknowledge that the discretion of the Board or its administrators in matters involving terms and conditions of employment may be limited by statute, regulation or Board policy. The provisions of this agreement are intended to be consistent with such binding limitations. Such extra-contractual requirements may change from time to time through legislative, executive, judicial or Board action, and the parties agree that where such changes prevent the operation of a term or condition of this agreement, the provisions of this agreement shall be deemed to have been overridden.

3.5 GENERAL BENEFITS (Board proposal)

~~Benefits~~ Employee benefits provided by applicable laws, executive orders and regulations will not be denied because of exclusion from this agreement.

Four times within the past year, claims have arisen that seek to use grievance procedures to pursue claims that arise under general tort or contract law or to challenge the constitutionality of policies that are not part of the agreement. The changes here number among several intended to limit grievances to those arising under the agreement. See, also, 7.3(1) and 8.5 (7).

6.1 STATEMENT (Board proposal)

The parties reaffirm that their commitment to the objectives of affirmative action, equal opportunity and nondiscrimination is in accordance with state and federal law. Redress for alleged violations of those laws by either party may be pursued at law or through the procedures recognized under this agreement. Further, the parties recognize that plenary jurisdiction for enforcement of civil rights and antidiscrimination laws is vested solely in the various state and federal agencies and the courts.

In those cases where the grievance rests in whole or in part on allegations that an institutional action involved prohibited discrimination, the grievance ~~shall~~ **will** be pursued using the procedures stipulated in Board Policy No. ~~4:8~~ **1:18**, attached as Appendix N. The local COHE president will receive notice where required under Articles VII or ~~XIV~~ **XV**. Board Policy No. 1:18 has been incorporated into this agreement in order to reduce the likelihood that grievants and parties charged will be subject to multiple hearings and to provide for orderly, consistent mechanisms to achieve a timely resolution to discrimination claims that may involve allegations of conduct by administrators, students, unit or nonunit faculty members or other persons employed or involved in institutional activities.

The changes here correct typographical errors.

VII. CONTRACT DISPUTES (*COHE proposal*)

PART A--FACULTY GRIEVANCE RIGHTS

7.1 PURPOSE

The parties agree that all problems should be resolved, whenever possible, before the filing of a grievance. They encourage open communication between administrators and faculty unit members so that resorting to the formal grievance procedure will not be necessary. The purpose of this article is to promote prompt and efficient procedures for investigating and resolving grievances. The parties also agree that a faculty unit member has a right to continued employment while they pursue internal grievance procedures regarding termination.

7.3 DEFINITIONS (*Board proposal*)

For the purpose of this article:

1. The term "grievance" means an alleged misinterpretation, misapplication or violation of a specific term or provision of this agreement; provided that allegations supporting the claimed grievance assert a specific factual basis for the complaint that, if proven, would establish that an action attributable to the administration deprived the individual employee of a right arising under such term or provision. A faculty unit member may not rely upon mere conclusions, general allegations and speculative statements to establish a factual ground for the claim that a provision has been misinterpreted, misapplied or a violation. Faculty unit members must cite specific facts and circumstances known to them first hand or to another first hand who is willing to testify to their existence or established through official governmental publications or other published documents whose authenticity and reliability cannot reasonably be doubted, together with such factual inferences as may be drawn from such facts. Any other grievances authorized by law, and which do not constitute a grievance under this definition, may be processed in the forum designated for the hearing such grievances. The

term “grievance” does not include claims for damages or other general relief based upon allegations that sound in tort, claims for damages or other contract relief available solely through the judiciary, or claims alleging that provisions of this agreement, or incorporated statutes, rules or policies, violate constitutional or legal restrictions unrelated to terms and conditions of employment.

Four times within the past year, claims have arisen that seek to use grievance procedures to pursue claims that arise under general tort or contract law or to challenge the constitutionality of policies that are not part of the agreement. The changes here number among several intended to limit grievances to those arising under the agreement. See, also, §§ 3.4, 3.5 and 8.5 (7).

7.5 CONFIDENTIALITY (Board Proposal)

The grievance proceedings will be maintained as confidential, subject only to the necessity of the parties to prepare their cases. All meetings and conferences No meeting or hearing conducted pursuant to § 7.7 will be held in setting open to the public and witnesses will be directed not to disclose the substance of any matter disclosed to them in the course of a meeting or hearing. Notwithstanding the foregoing assurances of confidentiality, where a grievant, a grievant’s representative, COHE or a third party causes or acquiesces to publication, whether in the press or otherwise, of information about the grievance or grievance proceedings, the administration or the Board shall have the power, but not the obligation, at its sole discretion to make such disclosures as it deems necessary to assure the public or interested parties of the regularity of proceedings or to correct misstatements of fact or otherwise misleading statements. If the Board elects to issue a written statement to the public, it will provide the local COHE president with a copy of the statement.¹

Recent experience has shown that the Board and the administration must retain the ability to correct disinformation that has been propounded in an effort to create political pressures that circumvent contractual procedures. This language merely empowers administrators to respond to breaches of confidentiality.

The final sentence responds to a COHE request that notice be provided to the local COHE president whenever a press release issues.

7.7 STEPS FOR PROCESSING A GRIEVANCE (Board proposal)

1. ~~Step 1.~~ Step 1: Written Statement of Grievance.

A grievance is initiated by filing a formal written statement of grievance to afford an initial opportunity to review the concerns raised.

A grievant must first present a grievance, identified as such, in writing, personally executed by an individual grievant, or by a duly authorized COHE officer where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement,

¹ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

and informally, in accordance with the prescribed grievance form [Appendix B--Grievance Form--Step 1], at the lowest administrative level having authority to dispose of the grievance and with the COHE chapter president. The grievance must be filed within fifteen (15) working days of the date on which the grievant knew or should have known of the action or condition which occasioned the grievance. The administrator, upon learning of the grievance, will investigate the grievance as deemed appropriate and will respond to the grievant in writing within seven (7) working days; such investigation may include a private meeting with the grievant. Notwithstanding the foregoing, if the office of the president represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed in the first instance at Step 2; in this circumstance, the applicable filing period remains fifteen (15) working days.

2. ~~Step 2:~~ Step 2: Preliminary Review of the Grievance at the Presidential Level.

All grievances submitted for action at the presidential level will be subjected to a preliminary review to determine whether they are subject to dismissal for failure to comply with procedural requirements or for failure to state a grievance or whether they are subject to summary disposition for failure to allege sufficiently well grounded facts to warrant a hearing.

If the grievance is not resolved in Step 1, the grievant may formalize the grievance in accordance with the prescribed grievance form [Appendix C--Grievance Form--Step 2] and file it with the president of the institution and the local president of COHE within seven (7) working days of the Step 1 decision. This form requires the legal name and personal signature of the individual grievant, or of a duly authorized COHE officer where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement, a statement of the specific provision(s) of this agreement alleged to have been violated, the relief requested, and evidence that the grievant attempted an informal adjustment of the grievance, as required in Step 1, and a copy of the written response to the grievance by the administrator who considered the grievance.

Where a submission is untimely or where a faculty unit member fails to satisfy the requirements of § 7.3 (1) ~~assert a specific factual basis for a complaint or fails to identify any specific term or provision of this agreement that would have been misinterpreted, misapplied or violated based upon such facts,~~ the administration will have no obligation to treat the complaint as a grievance hereunder.

To determine whether a grievance should be dismissed on such grounds, the president, or designee, will review the record developed at Step 1, plus any supporting allegations or materials that the unit member may provide.

If the president, or designee, concludes that the submission is untimely, the president, or designee, will notify that the grievance has been deemed withdrawn and no further proceedings will be required at Step 2 or Step 3.

If the president, or designee, concludes that the filing fails to satisfy the requirements of § 7.3 (1) ~~assert a specific factual basis for a complaint or fails to identify any specific term or provision of this agreement that would have been misinterpreted, misapplied or violated based upon such facts~~, the president, or designee, will notify the grievant of the specific deficiencies within five working days after receipt of the Step 2 filing.

The grievant will then have ten working days in which to supplement the materials previously filed.

If no additional materials are filed within the time allotted, the grievance will be deemed to have been withdrawn and no further proceedings will be required at Step 2 or Step 3.

If additional materials are filed, the president, or designee, will have five working days from their receipt to determine whether the new materials cure the defects in the original filing.

For the purposes of determining whether a grievance may be terminated at Step 2, a president or designee may decide to investigate further the allegations raised by the grievant. The decision to investigate further does not waive any defects that would justify termination of untimely or insufficient grievances.

Likewise, the president may reserve resolution of preliminary matters pending further investigation pursuant to Step 3A or hearings pursuant to Step 3B. The decision to reserve such matters does not operate to waive the right to dismiss a grievance on the basis of procedural or substantive defects.

If the president, or designee, concludes that ~~the defect has been cured~~ the grievant has satisfied the preliminary requirements and is entitled to a full investigation or that it is appropriate to reserve determination of preliminary requirements until the matter has been investigated further, president, or designee, will notify the grievant that the grievance will proceed to Step 3, and the time limitations set forth thereunder will begin to run from the time that the president, or designee, transmits such notice.

If the president, or designee, concludes that the defect has not been cured, president, or designee, will notify the grievant of that conclusion and its basis. No further proceedings will be required at Step 2, at Step 3A or Step 3B.

3. **Step 3. ~~General Procedures~~ Investigation and Decision at the Presidential Level.**

With the sole exception of individual grievances brought to challenge termination for cause or pursuant to reductions in force, grievances will be investigated by or on behalf of the president pursuant to the provisions of Step 3A, below.

An optional special procedure exists for faculty unit members terminated for cause or pursuant to reductions in force. They may choose to appear before a faculty hearing panel, whose recommendations will be submitted to the president for review and decision. Procedures involving this optional faculty hearing panel are set forth in Step

3B, below.

Step 3A: General Procedures for the Investigation and Resolution of Grievances.

If, at the time of the notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a standing peer faculty committee, designated and constituted by COHE at the time of the notice, grievant shall so note on the grievance form, or that right shall be waived.

Where a filed grievance complies with the requirements of this Article, or where the president or designee otherwise believes it prudent to do so, the president, or designee, will conduct an investigation, which may include the services of a nonunit investigative panel, for the purpose of arriving at an ultimate decision on the merits.

Grievants may invoke the assistance of a standing peer faculty committee, designated and constituted by COHE. In order to preserve the right for the assistance of a peer faculty committee, grievants must indicate their choice to do so on the Step II Grievance form. Failure to record that choice on the form waives the right.

Based on the investigative results of such investigation, the requirements of the bargaining agreement or Board policy and the recommendations that may be generated by the investigative process employed, the president or designee will shall prepare a proposed decision on the grievance.

In the proposed decision, under circumstances where all, or even a part of, the requested relief is to be denied grievant, the president will shall schedule a conference with the grievant, which will shall be held no sooner than four (4) working days after the president provides notice, pursuant to § 22.9, of the proposed decision shall be delivered to the grievant or his office. At the time of the delivery of the proposed decision, grievant will shall also receive all material and documentation generated by the investigative process employed. Further, the president of the local COHE chapter will be informed of the scheduled conference, as required in § 7.4, and will further be given, at such time, a copy of the proposed decision.

At the time of the conference, grievant is entitled to present his or her position on the matter in issue, which may include investigative materials and recommendations of the peer faculty committee, if such was noticed as above provided. In any case, the president will issue a written decision to the grievant and local COHE president within twenty (20) working days after the grievance was advanced to Step 3. The decision will include a statement of the findings and conclusions supporting the decision.

Except as otherwise agreed, all meetings in regard to Step 3 grievances will be held on the campus where the grievance occurs.

~~Optional step 3 procedures for certain grievances involving termination of employment.~~

Step 3B: Special Optional Procedures for the Investigation and Resolution of Grievances Concerning Termination for Cause or Pursuant to Reductions in Force.

The special procedures set out hereunder are available only in three circumstances: where the grievance arises from a dismissal for cause, a termination of a tenure contract or a reduction in force.

If, at the time of notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a faculty hearing panel, grievant will so note on a grievance form or the right will be waived.

Faculty unit members who have been terminated for cause or pursuant to reductions in force may challenge the factual basis for the termination before a faculty hearing panel. Faculty unit members who wish to bring such challenges must indicate that intention on the grievance form filed at Step 2 or the right will be waived.

If the grievant waives the right to a faculty hearing panel, grievance procedures and timeline will be those outlined in § 7.7(3) at Step 3A.

If the grievant elects to have a faculty hearing panel review the matter, the following will apply

- a. Within ten days after filing a notice, the president of the institution will formally appoint the faculty hearing panel comprising those individuals selected pursuant to paragraph (b) below and charge it to conduct a grievance hearing on the record. The grievant and the party responding on behalf of the administrative decision maker will have the right to call and examine witnesses and to introduce evidence. The panel will make written findings and conclusions based upon the record taken as a whole and will forward its recommended disposition of the matter to the president. In reaching its conclusions, the panel should consider that the administration has the burden of proof to prove by a preponderance of evidence the factual basis for its determination as set out in § 7.8(7). The grievant will have the burden of proof on any allegations of fact raised by way of defense. The panel may request legal advice in determining applicable due process standards of proof or admissibility of evidence in the matter before it. The institution will be responsible for necessary arrangements to provide retain competent, disinterested legal advice.
- b. The hearing panel will be made up of three disinterested faculty members who are not members of the grievant's department, one selected by the president of the institution or a designee, one selected by the local COHE president and a third selected by the first two. The president will select one member; the local COHE president will select a second; and the first two members will select a third. If either party disputes whether a nominee is disinterested, the president and the local COHE president will outline the circumstances and evidence supporting their positions in writing, and the dispute will be forwarded to the executive director for resolution. In

the event that the persons designated by the parties cannot agree upon a third member, the lists of candidates and recommendations will be forwarded to the executive director who will select a third member. This process will be completed within seven working days and will extend the deadlines for all subsequent proceedings by seven working days.

- c. The three panel members will select a chairperson. The chair of the faculty hearing panel, in consultation with the grievant and other necessary parties, will fix a date for a hearing, which must be held no later than forty-five (45) days after the filing of the Step 2 grievance.
- d. All testimony will be under oath and transcribed by a court reporter. COHE and the institution will share the cost of preparing three transcripts of the hearing, an official copy for the record to be held by the institution, a copy for COHE and a copy for the grievant.
- e. Within ten working days of the date of hearing, a panel will issue written findings and conclusions and will forward them, a hearing transcript and an advisory recommendation to the president.

Within ten (10) working days after receiving the recommendation from the faculty hearing panel, the president will render his decision in writing to the affected faculty unit member, and the local COHE president and the members of the hearing panel. The decision will include a statement of the president's findings and conclusions in support of the decision if these differ from those of the faculty hearing panel.

Except as otherwise agreed, all meetings in regard to the Step 3 grievance will be held on the campus where the grievance occurs.

4. **Step 4 Opportunity for Informal Resolution of the Grievance by the Executive Director**

If a grievance has not been resolved in Step 3, the grievant may submit the grievance to the Board on the prescribed form [Appendix D--Grievance form--Step 4]. The grievance must be accompanied by copies of Step 1 and Step 2 grievance forms, together with copies of all decisions rendered at Step 1, Step 2 and Step 3A. In the event that a grievance was heard at Step 3B, it must also be accompanied by the recommendations of the faculty hearing panel, the hearing transcript and the decision of the president. The Step 4 form will be filed with the executive director within ten (10) working days following receipt of the Step 3 decision. A copy of the Step 4 form will be sent by the grievant to the president of the institution and the COHE chapter president.

The executive director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means.

5. **Step 5 Procedures for the Resolution or further Investigation and Resolution of Grievances**

- a. If no resolution is achieved within the time herein last provided, the executive director ~~will shall~~ within ten (10) working days determine whether the grievance presents any contested questions of fact or whether the contested matters may properly be determined as matters of law. The executive director may require the grievant and the institution to submit argument and authorities to identify the considerations that weigh in favor of their respective positions on the merits of the grievance, on the necessity of a full hearing or such other relevant matters as the executive director may request. The executive director may refer the controversy to a hearing officer to determine whether the dispute can be settled on legal grounds or whether it requires a hearing. If a matter has been referred to a hearing examiner under this subparagraph (a), the hearing examiner may require the grievant and the institution to submit argument and authorities as provided above. In charging the hearing officer under this paragraph, the executive director may direct the hearing officer to proceed under subparagraph (b) or (c) of this subsection as is appropriate to the hearing examiner's conclusions about the necessity of a hearing.
- b. If a matter presents contested questions of fact, the executive director ~~will shall~~, within the ten ~~working~~ day period allowed for making this determination, refer the formal grievance to a hearing examiner who, within ten (10) ~~working~~ days after his designation and appointment, ~~will shall~~ set the matter down for full hearing to be held no earlier than seven (7) ~~working~~ days and no later than fifteen (15) ~~working~~ days after his notice of appointment has been postmarked to COHE; provided that, where a hearing record was developed pursuant to Step 3B, a full hearing will not be provided, and the hearing will be limited to argument and authorities, unless a party offers proof of new evidence that is both relevant and material and that could not have been acquired at the time of the original hearing through the exercise of reasonable diligence, or unless a party offers proof that the original record was tainted by fraud or misconduct of the other party.

Such hearing ~~will shall~~ be conducted in a confidential setting and all parties to the grievance will make no public statements about the case during the pendency of the proceedings. Both COHE and Board representatives are entitled to be present at the hearing.

All parties to the grievance have the right to obtain witnesses and present evidence. The institution(s) will cooperate with the hearing examiner in securing witnesses and in making available specifically identified and relevant documentary and other evidence requested by the grievant(s); provided that the evidence is in the possession of the administration and that the administration relied upon the evidence when undertaking the challenged action. The institution has no obligation to secure evidence if its disclosure is ~~to the extent not~~ limited by contract or law or if disclosure would subject the institution, witnesses or third parties to annoyance, embarrassment, oppression or undue burden or expense. If disclosure is requested of a third party or witness's information, the third party or witness will be informed prior to the disclosure and will have the opportunity to be heard with

respect to the disclosure Faculty unit members will respond to requests to give testimony under oath, incidental to the processing of any grievance under this article. The parties to the grievance will have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the hearing examiner determines that the interest of justice requires admission of their statement, then the hearing examiner will arrange for a deposition. The hearing examiner may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The hearing examiner will keep a record of the proceedings.

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Additional COMMENT: The Board also proposes to conforming changes in the paragraph designation throughout subsection 5 of section 7.7.

The revisions to the grievance procedures have the overarching purpose of clarifying the relationship among the several stages in the grievance procedure. Step 2 has been provided a caption and an introductory paragraph to underscore that the purpose of this Step is to resolve preliminary matters. Likewise, Step 3 captions and introductory paragraphs have been added, and some provisions re-worded, in order to make clear that only a limited number of grievances involving termination for cause or pursuant to a RIF may be brought before a faculty hearing panel. The provisions for a faculty hearing panel for certain termination cases have been revised, Step 3B, to clarify provisions relating to taking testimony under oath, preparation of transcripts and sharing costs for the transcript. Step 5 (a) merely describe the de facto procedure of the executive director and reorganizes the presentation of the subparagraphs. The changes to the new subparagraph (b) clarify that the time allowed for scheduling hearings is to be measured in working days and how transcripts from Step 3B are to be used and clarify the scope of discovery-like inquiries under the procedures.

7.7 STEPS FOR PROCESSING A GRIEVANCE (COHEproposal)

Optional step 3 procedures for certain grievances involving termination of employment.

The special procedures set out hereunder are available only in three circumstances: where the grievance arises from a dismissal for cause, a termination of a tenure contract or a reduction in force.

If, at the time of notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a faculty hearing panel, grievant will so note on a grievance form or the right will be waived.

If the grievant waives the right to a faculty hearing panel, grievance procedures and timeline will be those outlined in § 7.7(3).

If the grievant elects to have a faculty hearing panel review the matter, the following will apply:

- a. Within ten days after filing a notice, the president of the institution will formally appoint the faculty hearing panel comprising those individuals selected pursuant to paragraph (b) below and charge it to conduct a grievance hearing on the record. The grievant and the party responding on behalf of the administrative decision maker will have the right to call and examine witnesses and to introduce evidence. The panel will make written findings and conclusions based upon the record taken as a whole and will forward its recommended disposition of the matter to the resident. In reaching its conclusions, the panel should consider that the administration has the burden of proof as set out in § 7.8(7). The panel may request legal advice in determining applicable due process standards in the matter before it. The institution will be responsible for necessary arrangements to provide competent, disinterested legal advice.
- b. The hearing panel will be made up of three faculty members, one selected by the president of the institution or a designee, one selected by the local COHE president and a third selected by the first two. In the event that the persons designated by the parties cannot agree upon a third member, the lists of candidates and recommendations will be forwarded to the executive director who will select a third member. This process will be completed within seven working days and will extend the deadlines for all subsequent proceedings by seven working days.
- c. The three panel members will select a chairperson. The chair of the faculty hearing panel, in consultation with the grievant and other necessary parties, will fix a date for a hearing, which must be held no later than forty-five (45) days after the filing of the Step 2 grievance.
- d. Within ten working days of the date of hearing, a panel will issue written findings and conclusions and will forward them, a hearing transcript and an advisory recommendation to the president.

Within ten (10) working days after receiving the recommendation from the faculty hearing panel, the president will render his decision in writing to the affected faculty unit member and the local COHE president. The decision will include a statement of the president's findings and conclusions in support of the decision if these differ from those of the faculty hearing panel. The grievant shall have continued employment until the president has rendered his decision upon receiving the recommendation of the faculty hearing panel. The administration must provide proof that just cause exists to terminate the faculty member by clear and convincing evidence that is explicit and unequivocal.

Except as otherwise agreed, all meetings in regard to the Step 3 grievance will be held on the campus where the grievance occurs.

...

3. Step 3, General Procedures

If, at the time of the notice and filing of the Step 2 grievance form, as above provided, grievant elects to invoke the intervention or assistance of a standing peer faculty committee, designated and constituted by COHE at the time of the notice, grievant shall so note on the grievance form, or that right shall be waived.

The president, or designee, will conduct an investigation, which may include the services of a nonunit investigative panel, for the purpose of arriving at an ultimate decision on the merits. Based on the investigative results of such investigation, and the recommendations that may be generated by the investigative process employed, the president shall prepare a proposed decision on the grievance. In addition to the results of the investigation and recommendations that may be generated, the investigation conducted will culminate in the issuance of a written report of the investigation including but not limited to the following: (1) how the investigation was conducted, (2) any and all names of individuals and times of interviews, and (3) any and all written sources of information read in the course of the investigation. This report will be filed with the COHE President.

...

5. Step 5

a. If no resolution is achieved within the time herein last provided, the executive director shall within ten (10) working days determine whether the grievance presents any contested questions of fact or whether the contested matters may properly be determined as matters of law. If a matter presents contested questions of fact, the executive director shall, within the ten day period allowed for making this determination, refer the formal grievance to a hearing examiner who, within ten (10) days after his designation and appointment, shall set the matter down for full hearing to be held no earlier than seven (7) days and no later than fifteen (15) days after his notice of appointment has been postmarked to COHE.

Such hearing shall be closed unless the faculty member requests an open hearing, in which case it shall be open. If the faculty decides on a closed hearing, it Such hearing shall be conducted in a confidential setting and all parties to the grievance will make no public statements about the case during the pendency of the proceedings. Both COHE and Board representatives are entitled to be present at the hearing.

All parties to the grievance have the right to obtain witnesses and present evidence. The institution(s) will cooperate with the hearing examiner in securing witnesses and in making available specifically identified and relevant documentary and other evidence requested by the grievant(s), to the extent not limited by contract or law. Faculty unit members will respond to requests to give testimony under oath, incidental to the processing of any grievance under this article. The parties to the grievance will have the right to cross-examine witnesses. Where a witness cannot or will not appear, but the hearing examiner determines that the interest of justice requires admission of their statement, then the hearing examiner will arrange for a deposition. The hearing examiner

may grant continuances when requested by either party to enable either party to investigate evidence, or for any other reason deemed appropriate. The hearing examiner will keep a record of the proceedings.

The hearing will not be conducted under strict rules of legal evidence and is not a contested case. Every possible effort will be made to obtain the most reliable evidence.

The hearing examiner will make a recommendation to the Board which will take the form of findings, conclusions and an order of disposition and will be issued within fifteen (15) working days of the hearing or of the expiration of any briefing schedule established by the hearing examiner. A copy of the recommendation will be provided to COHE, the grievant(s) and the president. The recommendation must be based solely on the record, pertinent institutional and Board policies, this agreement and the law of the land. Whenever the recommendation reverses or modifies the Step 3 decision, it must be accompanied by a statement of reasons and referred, along with the record, to the central office of the Board.

b. If the executive director determines that there are no contested facts requiring referral to a hearing examiner, the executive director shall, within the ten day period allowed for making this determination, notify the grievant that a hearing will not be convened. The executive director may then prepare findings and conclusions to assist the Board to determine how to resolve the controversy as a matter of law, or the executive director may call upon the assistance of an outside party to review the submissions and to prepare suitable findings and conclusions for consideration by the Board. A copy of the executive director's draft recommendation will be provided to COHE, the grievant(s) and the president. The recommendation must be based solely upon the record, pertinent institutional and Board policies, this agreement and the law of the land.

c. The Board will make a final decision based upon the recommendation of the hearing examiner or the executive director where a matter is to be resolved as a matter of law. In addition, it may review the record pertinent to the issues and may hear testimony from individuals as it deems appropriate. Such decision will be made at the next regularly scheduled Board meeting following receipt of the recommendation, provided the recommendation is received not less than ten (10) working days prior to the Board meeting. If not received in time, the recommendation will be acted upon at the subsequent meeting. COHE may discuss the grievance with the executive director of the Board prior to a final decision. If the Board rejects or modifies the recommendation of the hearing examiner or the executive director, the Board will provide COHE and the grievant with the reasons for rejecting or modifying the recommendation. Appeals from the decision of the Board will be governed by SDCL § 3-18-15.2, and other laws in such cases made and provided.

d. Notwithstanding any other provision in this agreement, a faculty unit member having received written notice of the Board's decision to terminate such member in Step 5 shall receive a term contract for the term of one (1) academic year, effective the subsequent academic year, except when a faculty unit member is convicted of a felony directly

related to their job tasks and/or responsibilities.

7.8 MISCELLANEOUS PROVISIONS (*Board proposal*)

...

2. If the grievance concerns² nonrenewal, denial of promotion or change in rank, or denial of tenure, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures, unless otherwise provided in this agreement. The burden of proof, in such cases, shall rest rests with the grievant.
...
7. In the case of a grievance concerning a discipline pursuant to Article XV or a termination pursuant to Article XVI, Faculty Unit Member Reduction Procedures, the burden of proof to prove the conduct charged or the factual basis for a reduction in force will rest upon the administration to the extent required by law. In all other cases, the burden of proof will rest upon the grievant. Grievants bear the burden of production. Grievants also bear the burden of persuasion by a preponderance of evidence for affirmative defenses to actions involving discipline, termination or reduction in force and for all claims that an administrative action misinterprets, misapplies or violates a specific right protected under this agreement or Board policy.

The change to subsection 2 merely makes clear that this section applies to disputes involving the denial of a requested change in lecturer rank.

The change in subsection 7 merely states the accepted principle that grievants who raise affirmative defenses to avoid discipline, termination or RIF actions have the burdens of proof and persuasion with respect to such matters and with respect to questions of grievability.

7.8 MISCELLANEOUS PROVISIONS (*COHE proposal*)

...

2. If the grievance concerns nonrenewal, denial of promotion, or denial of tenure, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures, unless otherwise provided in this agreement. The burden of proof, in all such cases, shall rest with the administration grievant. The quantum of proof the administration shall bear is clear and convincing evidence.
...

5. Grievance records will not be maintained in any faculty unit member's institutional

² At the February 12, 2011 bargaining session, the Board representatives withdrew a proposal to insert at this point the phrase, "any decision involving the evaluative judgment of the quality of a faculty unit member's performance."

personnel file or working file.

...

7. In the case of any grievance, including those concerning a discipline pursuant to Article XV or a termination pursuant to Article XVI, Faculty Unit Member Reduction Procedures, the burden of proof will rest upon the administration ~~to the extent required by law.~~ In all other cases, the burden of proof will rest upon the grievant. The quantum of proof the administration shall bear is clear and convincing evidence.

These changes merely acknowledge that the administration possess a substantial range of management tools and the preponderance of information sources on specific personnel decisions, which are almost never available to an individual faculty member. These changes also recognize that faculty are innocent of wrongdoing until proven guilty and have a property right to their employment, except where sufficient cause has been shown. Moreover, it merely states the rights of faculty to employment while they pursue internal grievance procedures and that a president and the Board may not terminate a faculty who chooses to use a faculty hearing panel until such panel has issued its recommendation. This change comports with industry standards for upper-echelon research universities around the country. This proposal also provides a terminated faculty member the time to find another position. Finally, it ensures this section is consonant with the proposal on working files.

8.3 TENURE TRACK CONTRACT (Board proposal)

A tenure track contract is a qualifying appointment offered to a full-time faculty unit member who may be considered for a tenure contract at a later time and ~~will shall~~ be of a definite term, not to exceed one fiscal year. Effective July 1, 2012, eligibility to receive a tenure track contract will be limited to faculty unit members with professorial rank who hold doctoral degrees, or postgraduate degrees, other than a doctorate, recognized by the Board as permitted terminal degrees for the faculty unit members' discipline at the institution, or for whom the Board has granted an exception to degree requirements for admission to professorial rank. A tenure track contract may be renewed by the Board, subject to procedures for nonrenewal of tenure track contracts set forth in § 8.6. If a faculty unit member is offered a tenure track contract, the number of years the faculty unit member has served under term contracts may be credited by the Board toward fulfillment of the period necessary for consideration for promotion or for a tenure contract.

....

This provision limits the grant of tenure track contracts to unit members holding professorial rank.

8.5 INDIVIDUAL APPOINTMENT CONTRACTS (Board proposal)

Faculty unit members shall receive written notice of appointment signed by the president, or an authorized representative, for each year they are employed by the Board. The faculty member shall have twenty (20) calendar days from receipt of a notice to accept the employment offer, and the employment contract shall not become binding until the notice of appointment is executed by both the faculty member and the appointing authority, and returned by the faculty member to the institution. Each notice of appointment shall contain at least the following elements:

1. Date offered to the faculty unit member;
2. Rank, title, or classification;
3. Employment unit;
4. Beginning and ending dates of the employment contract;
5. Type of contract;
6. Any specific and special conditions and responsibilities of employment beyond the general responsibilities of the appointment;
7. A statement that the contract is subject to the constitution and laws of the state of South Dakota, policies and regulations of the Board, **insofar as these may be govern terms and conditions of employment**, and the provisions of this agreement;
8. Tenure status;
9. Prior service credited for promotion or tenure;-and
10. Salary.

Four times within the past year, claims have arisen that seek to use grievance procedures to pursue claims that arise under general tort or contract law or to challenge the constitutionality of policies that are not part of the agreement. The changes here number among several intended to limit grievances to those arising under the agreement. See, also, §§ 3.4, 3.5 and 7.3 (1).

8.6 NONRENEWAL OF TENURE TRACK CONTRACTS (Board proposal)

Nonrenewal ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision **not to renew a faculty unit member's appointment nonrenew** is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

Prior to the issuance of a **final** written notice of nonrenewal, the **faculty unit member's immediate supervisor institutional administration** will provide the opportunity for a meeting with the faculty unit member to apprise the faculty unit member of the proposed **nonrenewal, together with reasons for the** action. The faculty unit member will be given at least five (5) working days' written notice of such meeting so that both the faculty unit member and the **immediate supervisor administration** may arrange to have present a witness or a representative.

No later than five working days after the personal meeting, the administration will provide the faculty unit member with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.

Deadlines to bring any grievance arising from the decision, under this section, not to renew a tenure track appointment will run from the time that the administration provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.

~~In order to facilitate the relocation of faculty unit members who are not to be rehired, the administration agrees to provide notice of its intent not to rehire any faculty unit members serving under a tenure track contract. The final written notice will state the reasons for the decision and~~ will be given in accordance with the following schedule:

1. ~~A~~ If a faculty unit member ~~who~~ has completed less than two (2) academic years of service under a tenure track contract, ~~the administration will shall~~ provide the faculty unit member ~~receive~~ a final written notice of nonrenewal from the institution before March 15 of the current year of appointment for persons serving under fall-spring appointments, before July 15 for persons serving under spring-summer appointments, or before November 30 for persons serving under summer-fall appointments. As a matter of professional courtesy, the administration will make a reasonable effort to notify faculty unit members by December 15 for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments when the administration is considering the possibility of non-renewal; provided that the lack of such courtesy notice will not prevent the institution from proceeding with an otherwise timely non-renewal. ~~Where the decision not to renew a tenure track contract is based upon concerns with the faculty unit member's performance, this clause may be invoked only if the institution has provided the faculty unit member with a written evaluation of performance by the end of February, as required under § 11.2, unless the failure to complete the evaluation by that time is a function of the action or inaction of the person being evaluated.~~
2. If a faculty unit member has completed more than two (2) but less than four (4) years of service under a tenure track contract, the ~~institution~~ administration ~~will shall~~ provide the faculty unit member with final written notice of nonrenewal before December 15 of the current year of employment. However, if the faculty unit member is currently subject to the provisions of a constructive plan imposed prior to December 15 for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments, the institution ~~will shall~~ provide the faculty unit member final written notice of nonrenewal prior to March 1 for persons serving under fall-spring appointments, by July 1 for persons serving under spring-summer appointments, or before November 1 for persons serving under summer-fall appointments. ~~The faculty unit member so notified may file a request for reconsideration with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request, shall notify the faculty unit~~

~~member, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board.~~

3. If a faculty unit member has completed at least four (4) years of service under a tenure track contract, the institution ~~will~~ **shall** provide the faculty unit member with **final** written notice of nonrenewal before April 1 of the current year of employment for persons serving under fall-spring appointments, by November 15 for persons serving under spring-summer appointments, or before June 30 for persons serving under summer-fall appointments. Such faculty unit member having received **final** written notice of nonrenewal ~~will~~ **shall** receive a term contract for the term of one (1) academic year, effective the subsequent academic year. ~~The faculty unit member may file a request for reconsideration and conference with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request and holding the conference, shall notify the faculty unit member within ten (10) working days of the final institutional recommendation to be forwarded to the Board. The faculty unit member may file with the president a statement which will accompany the institutional recommendation to the Board. The Board will consider the institutional recommendation and any statement at its next regularly scheduled meeting and shall issue its binding decision which will be final at the end of ten (10) days from the date of issuance unless such faculty unit member submits a resignation prior thereto.~~
 4. Faculty unit members employed on tenure track contracts **whose appointments are not renewed** ~~who are nonrenewed~~ may be granted no more than one subsequent term contract. Nothing in this article is intended to modify the rights and limitations contained in § 7.8(2) hereof.
 5. If the administration is late in providing the **final written** notice stipulated in ¶¶ 1 or 2 above, the faculty unit member will be entitled to receive, at the election of the administration, either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the faculty unit member's monthly salary divided by twenty-two (22). If the administration is late in providing the **final written** notice stipulated in ¶3 above, the faculty unit member will be entitled to receive, at the election of the administration, either (1) an additional term contract for the following academic year, or (2) a payment equal to the base salary for the current academic year.
- The years of service required for the above notice provisions will not be affected by any reduction of the tenure track period granted by the Board pursuant to the fourth paragraph of § 13.2.
5. A faculty unit member whose employment on a tenure track contract is subject to a condition that an academic degree be completed by a time certain, but who does not complete the degree as originally agreed, is subject to nonrenewal. If the completion date is earlier than the nonrenewal dates specified in §§ 8.6(1) through 8.6(4), ~~the faculty unit member may be nonrenewed~~ **nonrenewal of the appointment may proceed** as provided

therein. If the completion date is later than the nonrenewal dates specified in §§ 8.6(1) through 8.6(4), the faculty unit member may be given a notice of nonrenewal at any time prior to the beginning of the nine-month appointment, in which case, notwithstanding any other provision herein, the employment ~~will~~ ~~shall~~ end upon completion of such nine-month appointment.

The changes here clarify that nonrenewal is discretionary with the administration, not the immediate supervisor and harmonize that principle throughout the section. Procedural elements are clarified to differentiate between the initial notice of proposed nonrenewal that accompanies the invitation to meet with the administration to discuss the decision and the final written notice of nonrenewal. The final written notice of nonrenewal becomes the reference date for the action for purposes of determining timeliness of the action and for purposes of grievance appeals. Provisions allowing for extra grievance review have been eliminated in order to avoid unnecessary multiplication of procedures. The grievance procedure itself provides opportunities for the informal resolution of meritorious grievances.

8.6 NONRENEWAL OF TENURE TRACK CONTRACTS (COHEproposal)

3. If a faculty unit member has completed at least four (4) years of service under a tenure track contract, the institution shall provide the faculty unit member with written notice of nonrenewal before ~~February~~ ~~April~~ 1 of the current year of employment for persons serving under fall-spring appointments, by ~~September~~ ~~November~~ 15 for persons serving under spring-summer appointments, or before ~~May 1~~ ~~June 30~~ for persons serving under summer-fall appointments. Such faculty unit member having received written notice of nonrenewal shall receive a term contract for the term of one (1) academic year, effective the subsequent academic year. Notwithstanding any other part of this agreement, including section 7.7, in no case shall the Board or a university deny any such faculty member a term contract for one (1) academic year. The faculty unit member may file a request for reconsideration and conference with the president within ten (10) working days of receipt of the notice of nonrenewal. The president, after reviewing the request and holding the conference, shall notify the faculty unit member within ten (10) working days of the final institutional recommendation to be forwarded to the Board. The faculty unit member may file with the president a statement which will accompany the institutional recommendation to the Board. The Board will consider the institutional recommendation and any statement at its next regularly scheduled meeting and shall issue its binding decision which will be final at the end of ten (10) days from the date of issuance unless such faculty unit member submits a resignation prior thereto. In no case shall the Board remove a faculty unit member from the payroll until the grievance procedures outlined here and in §7 have been fully exhausted.

This change merely forwards the date of notification for nonrenewal by sixty days to allow faculty sufficient time to find alternate employment. It also ensures this section remains consonant with the proposal above in § 7.

~~8.9 AGREEMENT TO ASSIGN INTELLECTUAL PROPERTIES WHEN REQUIRED UNDER BOARD POLICY~~ (Board proposal)

~~At the time of hire, each faculty unit member shall execute an agreement to assign to the employing institution intellectual property rights to properties created in the course of their employment in accordance with the policies adopted by the Board and incorporated into the collective bargaining agreement. The obligations undertaken pursuant to the agreement to assign will be continuing and will survive the termination or interruption of employment or transfer within an institution or between institutions. The obligations will comprise an essential condition of employment.~~

~~The agreement will acknowledge the Board's right to change its Intellectual Property Policy at any time in such manners as may be provided under law, including collective bargaining negotiations when required under SDCL ch 3-18, which may consequently alter unit member rights and obligations with respect to properties that may be invented or authored. It will include an undertaking that, if such policy changes require the execution of a new agreement to assign intellectual property rights, the faculty unit member will accept and execute such documents when requested to do so.~~

This complements the conclusion that the intellectual properties policy, except for provisions relating to royalty sharing, involves non-negotiable public policy matters. The Board policy will have independent effect upon unit members, so this provision in the bargaining agreement becomes unnecessary.

8.10 TWELVE MONTH SALARY PAYOUT (Board proposal)

Beginning July 1, 2011, all salary earned by faculty unit members serving on full-time appointments will be scheduled for payout over twelve months irrespective of the length of the appointment. Voluntary deductions from salary, payroll taxes, retirement system contributions and employer benefit payments will be prorated over the full twelve month period. Salary payments to faculty unit members serving on less than full-time contracts will be prorated over the stated term of the appointment.

The majority of unit members at two universities have already elected to receive payments on this schedule. By transitioning all unit members to the same basis, it should be possible to achieve economies in administration of the salary and benefits programs. Additionally, when faculty unit members serving under a nine month appointments terminate their employment in good standing or retire, they will continue to receive wages, e.g., from the end of the spring term through the following August. This will provide them with an additional quarter of credited service under the South Dakota Retirement System rules.

9.1 ~~UNIT MEMBER RESPONSIBILITIES OF FACULTY UNIT MEMBERS HOLDING PROFESSORIAL RANK~~ (Board proposal)

Upon accepting an appointment, a faculty unit member holding professorial rank may be

assigned responsibility in any of three (3) areas: teaching, research and scholarship, service or in other areas of responsibility as specified under item 6 of § 8.5. All faculty unit members holding professorial rank will ~~shall~~ be subject to shared-governance service obligations that are normally incidental to any full-time faculty appointment, including, without limitation, participation in curriculum review, faculty or student qualifications and expectations or academic unit programming or operations. Faculty unit members holding lecturer rank are not subject to the foregoing shared-governance service obligations, although they may be directed to assist the professorate informally in matters involving curricula and course delivery. A representative list of duties within these areas is found in Appendix G Board Policy No. 4:38. In addition, a faculty unit member is expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy. Specific assignments will be made as provided in Article XI.

The changes here differentiate between the professorial and lecturer ranks insofar as relates to shared-governance responsibilities.

9.1.1 RESPONSIBILITIES FOR UNIT MEMBERS HOLDING LIBRARIAN RANK (Board proposal)

Faculty unit members holding librarian rank manage library programs or functions under the direction of a library administrator, provide library services to students, staff or the public and represent the library as consultants to other libraries, faculty, administrators or the public. Representative duties may include administrative or professional responsibility for a library program or function such as reference and research, information literacy, government documents, **serials collections,**³ collection development or original or copy cataloging, and supervision of employees serving in Career Service Act classifications or students. Faculty unit members holding librarian rank may be assigned to explain library resources and their use to students and other patrons, through programs sponsored by the library, as invited speakers in classes, through other outreach activities or in publications. Faculty unit members holding librarian rank may be subject to shared-governance service obligations that are normally incidental to any full-time faculty appointment, including, without limitation, participation in curriculum review, faculty or student qualifications and expectations or academic unit programming or operations.

Faculty unit members holding librarian rank may also be appointed to a lecturer or professorial rank, in which case, they will assume responsibilities for persons assigned to such ranks in addition to those inherent in their library appointments.

The new section describes, generally, the functions to be discharged by faculty unit members holding librarian rank.

9.2 WORKLOAD (Board proposal)

³ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

COHE and the Board recognize the value of workload policies which regulate workload based on credit hours, contact hours, preparation, clinical work, research, service and other factors deemed appropriate by the parties. The standard two-term workload for the professorial ranks will may emphasize either teaching, or research or service responsibilities. The workload for the lecturer ranks will be based solely upon undergraduate instructional responsibilities.

Faculty unit members whose primary responsibilities are instructional will be expected to undertake an effort equivalent to that needed to deliver thirty credit hours of undergraduate instruction per academic year. Faculty unit members holding to professorial rank whose primary responsibilities involve delivery of instruction will be assigned reasonable time to support active research, scholarship or creative artistic activity or active discipline-related professional service; ordinarily such time for faculty unit members for whom teaching is the primary assignment will involve six credit hours of undergraduate instruction, or its equivalent, per academic year. Faculty unit members holding lecturer rank will be expected to deliver thirty credit hours of undergraduate instruction per year.

Faculty unit members whose primary responsibilities are research will be expected to undertake the effort needed to maintain a research program recognized nationally for its excellence. Faculty unit members whose primary responsibilities involve research or professional service will be expected to engage in instructional activities consistent with their primary assignments.

The workload policy for each institution will be in Appendix J to this agreement and is hereby incorporated by reference as are any changes thereto. Such changes will be provided to the COHE chapter presidents within ten (10) days of approval. At minimum, the workload policy for each institution will require all faculty unit members serving full-time, under nine, ten, eleven or twelve month appointments, to be present on campus or at an alternative assigned location a minimum of sixteen hours per week and engaged in institutional business, which may include assigned office hours or other time at which the faculty unit members will be accessible to students or to members of the public.

....

Here, again, the changes differentiate between the professorial and lecturer ranks insofar as relates to instructional workload. They also assure that faculty unit member availability to students and to the public.

9.3 WORKLOAD—LIBRARIANS (Board proposal)

Faculty unit members assigned to positions in the various institutional libraries will shall normally not be required to work on more than five (5) calendar days per work week unless the assignment is mutually agreed to by the administration and the faculty unit member. A faculty unit member will not be required to work more than seven (7) consecutive days, unless mutually agreed to by the administration and the faculty unit member. Faculty unit members assigned to library positions with teaching responsibilities will have their class time and class preparation

time counted into their regular work week. Where faculty unit members holding librarian ranks also hold lecturer or professorial rank, workload expectations for the librarian positions will be adjusted to accommodate teaching or research responsibilities.

All faculty unit members assigned to library positions will enjoy the same rights and must maintain the same professional expertise and responsibility for as exercised by other faculty unit members by this agreement. Librarians are responsible for sufficient and adequate provision of library services to support the mission and goals of each institution. The determination of the adequacy of said services rests with the president of each institution and the librarians' immediate supervisor. Librarian faculty unit members are expected to perform assigned responsibilities in accordance with recognized standards of professional ethics and departmental policy. Any failure of librarian faculty unit members to perform according to said standards will subject said members to discharge for cause or other disciplinary measures in accordance with Article XV of this agreement.

The revisions here reflect more accurately the professional status of faculty unit members holding librarian rank. Issues addressed in the deleted second paragraph should be captured in institutional performance standards or will be addressed in provisions relating to the evaluation of faculty unit members holding library rank.

9.5 9.4 PRIVATE PRACTICE AND CONSULTATION CONSULTING AND OTHER PAID PROFESSIONAL ACTIVITIES (Board proposal)

A higher education faculty unit member holding professorial rank who enters into private practice, private consulting, additional teaching or research, or other activity for which additional compensation is received during the faculty unit member's contract period and during the period of this agreement, and excepting as next provided, will not contract to devote more than four (4) days per month on such activity if said activity requires the faculty unit member's absence from duties. Such consultation and related activity privileges are cumulative to a maximum of six (6) days, with all accumulated time to terminate with the end of the faculty member's contract period. The activity for which the individual is released must be substantially and significantly related to assigned duties. Such activity must promote state and local economic development or must benefit the professional discipline and development of the individual, all as determined by the president under such guidelines and restrictions, as established from time to time by the Board. Release time is subject to the following conditions:

The faculty unit member will:

1. Apply in writing to the president, on established forms, for written approval before engaging in such activity or contracting to do so;
2. Report to the president through administrative channels the activity, duration of the activity, and the number of hours which were devoted to the additional activity;
3. Limit and restrict such activity so that it does not interfere with assigned responsibilities;

4. ~~Reimburse the institution at the institutionally established rate for any institutional space, equipment, personnel, and materials used for such additional activity.~~

The privilege of engaging in private consulting or other paid professional activities on the terms allowed herein is limited to faculty unit members employed full-time and assigned professorial rank. Such faculty unit members may receive permission to enter into consulting contracts with outside parties, where the contracted services will promote state and local economic development or benefit the professional discipline and development of the individual and where the services will not interfere with their primary employment responsibilities. This privilege is subject in all instances to the conditions set forth below. Failure to comply with this policy may subject an employee to disciplinary action including reprimand, suspension, or termination.

1. The first responsibility of faculty unit members is to the institution that employs them, and outside professional commitments may not interfere with the full-time responsibilities to that institution.
2. No outside obligation will result in any conflict of interest or conflict of commitment involving faculty unit member responsibilities to the institution or to its programs, policies, and objectives. Permission will not be granted to enter into consulting and other professional agreements that present actual or potential conflicts of interest or conflicts of commitment.
3. Use of institutional facilities, space, equipment, or support staff for consulting or other paid professional activities may only be permitted where such private use is consistent with bond covenants and where, prior to the contracting to provide outside consulting or other paid professional service, faculty unit members have executed a written financial arrangement to reimburse the institution for direct costs arising from the permitted use, including supplies and salaries, to pay commercially reasonable equipment or facility rental, and to indemnify the institution against losses occasioned by such use.
4. Faculty unit members may not represent themselves as acting in the capacity of institutional employees when conducting consulting or other paid professional activities. The institution bears no responsibility for any actual or implied obligations or liabilities incurred by the faculty unit member resulting from a consulting or other paid professional agreement or activity.
5. Faculty unit members who wish to arrange consulting or other paid professional activities must submit written requests for authorization to their supervisors before contracting to provide such services. Supervisor review of proposed consulting or other paid professional activities will include consideration of any real or apparent conflict of interest and the benefit of the proposed service to the institution. Each faculty member who engages in consulting or other paid professional service must ensure that such activities do not require commitments that exceed four days in any

scheduled instructional or advising activities or scheduled research activities.

6. Faculty unit members must submit for prior review any proposed consulting agreement that requires the faculty unit member to waive patent or other intellectual property rights. Permission to waive rights to scholarly or creative artistic works will be granted except where those rights vest in the Board of Regents on behalf of the institution under the Board Policy No. 4:34, Intellectual Properties. All proposed consulting agreements containing such waivers will be submitted to the Vice President for Research for prior review and approval. No faculty unit member may waive patent rights held by the Board of Regents on behalf of the institution. Where consulting activities involve the development of inventions or potential inventions based upon work first undertaken by the faculty unit member while engaged in research funded in whole or in part by federal agencies, state agencies or the institution, permission to waive patent rights will not be granted. Full disclosure of any invention discovered in the course of such work must be made to the Vice President for Research.
7. When any of an individual's salary is paid from funds for externally sponsored activities, the time allowable for consultation or other paid professional activities must comply with sponsor requirements.
8. Each faculty unit member who has engaged in private consulting or other paid professional activities will report the full number of days, including weekends and holidays, devoted to such private activities. Reports will be filed in writing with the faculty unit member's supervisor at the end of each spring semester, and they will identify both the outside entities that paid for the faculty unit member consulting or other professional activities and the days of service provided for each such employer.

The changes here replace provisions relative to private consulting that was first negotiated over thirty years ago with provisions that reflect contemporary practices, policy environments and accountability expectations.

9.5 9.6. OUTSIDE ~~EMPLOYMENT ENDEAVORS FOR PROFIT~~ (Board proposal)

The statutory provisions regarding dual employment are at SDCL §§ 3-8-4 to 3-8-4.3. ~~The Board and the institution will not infringe upon a faculty unit member's privilege to engage in consulting or other employment outside the institution's regular day class schedule during the academic year, so long as the other employment does not adversely affect or conflict with the faculty unit member's performance of his primary responsibilities to the institution. In the event of any question about such conflict, the faculty unit member will have the burden of proving that there is no conflict. Faculty unit members who engage in outside employments or other endeavors for profit that relate to their academic expertise or that emphasize their institutional affiliation will report these outside activities as part of their annual performance evaluation.~~ To the extent permitted under SDCL §§ 3-8-4 to 3-8-4.3, § 9.5 and Board policies regulating

conflicts of interest and commitment, faculty unit members may pursue other outside endeavors for profit.

The changes here proposed assure consistency among this section, the revised provisions on consulting and the Board's policies involving conflicts of interest and commitment.

Additional COMMENT: The Board also proposes to renumber the remaining sections in Article IX.

11.2 PERFORMANCE EVALUATION GUIDELINES (Board proposal)

Performance evaluations will be conducted in accordance with the following guidelines:

1. Performance evaluations have as their primary purpose the assessment of whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded or fell short of the level of performance reasonably expected of faculty unit members of like rank, experience and tenure status and with comparable professional responsibilities and resources.

A secondary purpose, in conjunction with the evaluation of tenure track faculty unit members or faculty unit members at the junior ranks, is to assess progress toward achieving the levels of performance that, under contemporary institutional standards for faculty unit members with comparable professional responsibilities and resources, justify promotion to a more senior rank or award of tenure.

2. All faculty unit members holding full-time nine, ten, eleven or twelve month appointments will be evaluated annually. The annual evaluation of faculty unit members holding tenure track or tenure appointments will cover relevant activities during the calendar year ending with the close of the fall semester. The annual evaluation of faculty unit members holding term appointments, whether at professorial or lecturer rank, will cover relevant activities during the term of the appointment. The evaluation will be conducted by each faculty unit member's department head and will include student opinion surveys as described in § 11.4 if the faculty unit member's duties include teaching. If it is not practical to address fall semester student opinion surveys for the current evaluation, they will be addressed in the subsequent evaluation.

- A. Faculty unit members serving on tenure track appointments will be responsible for proposing three-year plans for their own professional development in the areas of teaching, scholarship and service. Individualized professional development plans must address institutional standards for faculty performance, and they must be designed to permit individuals to progress towards the levels of high performance in all areas of professional activity and extramural recognition for ongoing scholarly accomplishment and leadership that would be expected of persons holding the rank of professor. If such plans necessitate equipment or resources not otherwise available at the university, the plans must indicate how the faculty unit member

intends to secure funding for such resources.

- B. Faculty unit members serving on tenure contracts will be responsible for proposing six-year plans for their own professional development in the areas of teaching, scholarship and service. Individualized professional development plans must address institutional standards for faculty performance, they must assure maintenance of productivity consistent with expectations for tenured faculty, and, for persons below the rank of professor, they must be designed to permit individuals to progress towards the levels of high performance in all areas of professional activity and extramural recognition for ongoing scholarly accomplishment and leadership that would be expected of persons holding the rank of professor. If such plans necessitate equipment or resources not otherwise available at the university, the plans must indicate how the faculty unit member intends to secure funding for such resources.
- C. Faculty unit members serving on term contracts, whether at professorial or lecturer rank, will not prepare professional development plans.
- € D. Individualized professional development plans will be presented to the department head no later than the beginning of the third semester of employment for review and approval. Thereafter, faculty unit members will be responsible for presenting revised plans to the department head no later than the beginning of the final semester on the current three-year or six-year plan. In the event of a material change in institutional standards or programs or individual opportunities, the plans may be reviewed for revision at the request of the faculty unit member or they may be revised at the direction of the department head.
- Đ E. Approval does not constitute an institutional commitment to provide external equipment, resources or support not otherwise available at the institution other than resources or support that are generally available to faculty unit members.
- £ F. Administrators and promotion and tenure committees will shall consider the progress towards meeting the objectives of an approved plan when evaluating faculty unit member performance for purposes of salary increase, renewal, promotion or tenure or like recognition, and they will shall heed evidence that the faculty unit member is effectively pursuing approved objectives, but they will shall exercise independent judgment as to the quality of results achieved by the faculty unit member. Approval of a plan does not limit the review of faculty unit member performance by the department head or any other administrator or faculty committee.
43. As a part of the evaluation process, the faculty unit member and the department head will discuss the faculty unit member's planned activities and professional objectives for the following year. These discussions will include comments about what, consistent with institutional policies for unit members holding professorial or lecturer rank and subject to the concurrence of the dean and vice president, the department head expects the faculty unit member to do with respect to teaching and academic advising; research, scholarship or

creative activity; **and or** service. Correspondence and memoranda between the faculty unit member and the department head relating to workload or assignment **will shall** be attached to the evaluation document and **will shall** be considered as part of the evaluation process. Upon request to the department head, a faculty unit member **will shall** receive in writing the guidelines and performance expectations intended to be used for the performance and evaluation of the faculty unit member.

The new subparagraph C in 2 makes patent the intent that only employees with multi-year expectations of employment be required to prepare professional development plans Subsection 3 accommodates the distinction between professorial and lecture ranks.

11.3 ANNUAL EVALUATION PROCEDURE (Board proposal)

The following procedure will be used for conducting annual performance evaluations, except that, in the case of faculty unit members who submitted applications for promotion or tenure, the process will be limited to the discussions contemplated under §§ 11.1(4) and 11.2(1). **The performance review of faculty unit members who elected to retain professorial rank while serving in library positions will proceed under §§ 1C through 5C below, but consideration will also be given to delivery of instruction, research and service under institutional standards implementing Board Policy No. 4:38 for professorial ranks. Faculty unit members who hold appointments split between professorial and librarian ranks will be evaluated under the procedures that pertain to the rank assigned for their primary employment, and their performance in each role will be evaluated independently based upon that standards that pertain to that role.⁴** The evaluation will be placed in the faculty unit member's personnel file and will address:

The new language provides for coordination evaluation procedures for individuals who serve in library positions at professorial rank and for individuals whose appointments are split between professorial and library ranks.

Professorial Ranks:

1A. Establishment of responsibilities for each faculty unit member. ~~During the preceding year's annual performance appraisal or before the end of the second week of classes in the first academic term of the faculty unit member's current appointment, based on the workload goals of the department, the faculty unit member and department head will discuss what, consistent with institutional policies and subject to the concurrence of the dean and vice president for academic affairs, the department expects the faculty unit member to do with respect to teaching and academic advising; research, scholarship or creative activity; and service.~~

The department head will discuss workload and performance expectations with each faculty unit member holding professorial rank. For new faculty unit members, these conversations

⁴ Counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

will take place during the first two weeks of their first term in service. For continuing faculty unit members, these conversations will take place during the annual evaluation. The discussions should consider the workload goals of the department, the individual's professional development plan (where available) and institutional performance standards for faculty unit members holding like professorial rank. Subject to the concurrence of the dean and the vice president for academic affairs, the department head will establish individualized workload and performance expectations for the faculty unit member.

Such ~~discussion~~ discussions will be repeated whenever a significant change in workload is anticipated. In the event of a disagreement ~~in the percentages~~ about the individualized workload and performance expectations, either the faculty unit member or his department head may consult an institutional peer group established by COHE in an attempt to resolve the differences. COHE will designate the membership of an institutional peer group as soon as practical after the unit membership list is received. The membership will continue until replacements have been named. In the event that such differences are unresolved, the vice president for academic affairs ~~will~~ ~~shall~~ unilaterally assign responsibilities to the faculty unit member.

These changes remove a sentence fragment from a former subheading, a change that is made throughout this section. They also require the use of professional development plans in the annual evaluation process and they reflect differences associated with the type of appointment, professorial or lecturer.

- 2A. ~~Faculty unit member self evaluation. The faculty~~ Faculty unit ~~member~~ members will ~~review his/her factual information listing the faculty unit member's~~ document their accomplishments for the year. Faculty unit members serving under tenure-track or tenure appointments will review their progress for the year towards meeting the objectives set out in their professional development plans. Based on this information, the faculty unit member will complete ~~Part A of the Professional Staff Evaluation Form (Appendix F)~~ a self evaluation on a form prepared by the administration. For faculty unit members serving under fall-spring appointments or spring-summer appointments, the evaluation form and any attached comments and materials ~~will~~ ~~shall~~ be presented to the department head by the end of the January 15, or the first working day thereafter, of each year. For faculty unit members serving under summer-fall appointments, the evaluation form and any attached comments and materials ~~will~~ ~~shall~~ be presented to the department head by the end of January 5, or the first working day thereafter, of each year. At the time the self-evaluation documents are presented, a faculty unit member may request in writing a meeting with the department head to discuss them.

These changes give effect to propose to eliminate a standard evaluation form from the bargaining agreement, and they require the use of professional development plans in the annual evaluation process.

- 3A. Assessment of performance by the department head and indication of progress toward promotion, tenure, contract renewal, or augmentation monies (PIF, Merit, Critical, Discretionary, etc.). Based on observations of the faculty unit member's performance in each of the areas of teaching and academic advising; research, scholarship or creative activity; and or service; and the informal discussion described above, the department head will complete the remainder of the evaluation form (Part B of Appendix F). Observations may include, but do not require, classroom observations.

The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head, which, in the case of faculty unit members with instructional responsibilities, will include student opinion surveys and other evidence of expertise in course design and delivery.

Included in the evaluation must be comments about the faculty unit member's performance in each of the areas of teaching and academic advising; research, scholarship or creative activity; and or service, all as appropriate in light of the faculty unit member's assignments and responsibilities implicit in service at professorial rank. These comments must explain whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like rank, experience and tenure status and with comparable professional responsibilities and resources. The explanation must indicate the consideration given to rank, experience and tenure status, professional responsibilities and resources.

In addition to comments about performance at the faculty unit member's current rank and tenure status, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for promotion to a more senior rank or, for untenured faculty unit members holding professional ranks, award of tenure. Such comments will shall be made, as appropriate, for all faculty unit members who serve on tenure track contracts or who hold rank below that of professor. Comments must address each area of professional responsibility.

Comments about progress towards promotion or tenure will shall not be deemed to give rise to a contractual entitlement to favorable action, nor will shall they be deemed to require unfavorable action, on subsequent applications for promotion or tenure. Such comments will shall not be construed as binding the discretion of department heads, their successors in office, or promotion or tenure committees.

Where appropriate, the evaluation should include recommendations for augmentation monies salary increases and contract renewal.

For faculty unit members serving under fall-spring appointments or spring-summer appointments, the faculty unit member and the department head will meet to discuss the written evaluation by the fifteenth day of February. For faculty unit members serving under summer-fall appointments, the meeting will be completed by the twenty-fifth day of January. The faculty unit member will acknowledge receipt of the evaluation document.

The faculty unit member will have five working days in which to notify the department head that the unit member will submit additional comments or that a peer group will be requested. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

When a faculty unit member requests that the evaluation be sent to a peer group established by COHE for additional signed recommendations to be attached to the evaluation, the evaluation will be forwarded to the peer group within five working days of the meeting at which the evaluation is given to the faculty unit member. The peer review process must be completed by March 25.

The process of determining institutional salary increase recommendations will proceed independently of the peer review process. The institution will make use of the department head's original evaluation for purposes of distributing salary increases; provided that, if, as a result of the peer review report, the institution subsequently determines that the original evaluation should be changed, the institution will be responsible for adjusting the faculty unit member's salary increase.

Again, these changes differentiate between faculty unit members holding professorial and lecturer rank. These changes give effect to a proposal to delete the standard evaluation form from the bargaining agreement; they sharpen the requirement that the department head focus on the documentation faculty unit members cite in their self-evaluations, while authorizing department heads to go outside such matters to identify relevant performance. The department heads will also be required to consider institutional resources, institutional standards and, for tenure-track and tenured faculty unit members the individual's professional development plans.

- 4A. ~~Faculty unit member response to department head's assessment of performance.~~ If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 11.3(3). All additional comments or recommendations must be submitted by March 15.
- 5A. ~~Review and recommendation by the vice president/dean.~~ The vice president/dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal, salary increase augmentation monies, promotion, or tenure, and/or performance. Copies of any comments made by the vice president/dean or vice president will be sent to the faculty unit member five (5) working days before the vice president/dean forwards them to the vice president or the vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 1.

These changes seek to accommodate the possibility that both a dean and a vice president may have occasion to comment upon an evaluation.

Lecturer Ranks:

- 1B. The department head will discuss workload and performance expectations with each faculty unit member holding lecturer rank and appointed to serve full-time during an academic year. The meeting to discuss these matters will be scheduled during the first three weeks of the fall term. The discussions will consider the workload goals of the department and institutional performance standards for faculty unit members holding like lecturer rank. Subject to the concurrence of the dean and the vice president for academic affairs, the department head will establish individualized workload and performance expectations for the faculty unit member. Such discussions will be repeated whenever a significant change in workload is anticipated.
- 2B. Faculty unit members document their accomplishments for the academic year and assess their efforts to achieve standards of performances established under institutional policies for unit members holding lecturer rank. These accomplishments and the faculty unit member self-assessment will be recorded on a form prepared by the administration and submitted to the department head on March 15.
- 3B. The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head, which, in the case of faculty unit members with instructional responsibilities, will include student opinion surveys and other evidence of expertise in course design and delivery.

Included in the evaluation must be comments about the faculty unit member's performance of assigned teaching and academic advising responsibilities. These comments must explain whether, consistent with contemporary standards of the institution, the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like lecturer rank, experience and with comparable resources. The explanation must indicate the consideration given to rank, experience and resources.

In addition to comments about performance at the faculty unit member's current rank, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for change in lecturer rank. Comments about progress towards change in lecturer rank will not be deemed to give rise to a contractual entitlement to favorable action, nor will they be deemed to require unfavorable action, on subsequent applications for change in lecturer rank. Such comments will not be construed as binding the discretion of department heads, their successors in office or senior administrators.

Where appropriate, the evaluation should include recommendations for contract renewal.

The faculty unit member and the department head will meet to discuss the written evaluation by April 15. The faculty unit member will acknowledge receipt of the evaluation document. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

Again, these changes differentiate between faculty unit members holding professorial and lecturer rank. These changes give effect to propose to eliminate a standard evaluation form from the bargaining agreement; they sharpen the requirement that the department head focus on the documentation faculty unit members cite in their self-evaluations, while authorizing department heads to go outside such matters to identify relevant performance. The department heads will also be required to consider institutional resources, institutional standards and, for tenure-track and tenured faculty unit members the individual's professional development plans.

4B. If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 11.3(3). All additional comments or recommendations must be submitted by April 25.

5B. The dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal or change in lecturer rank. Copies of any comments made by the dean or vice president will be sent to the faculty unit member five (5) working days before the dean forwards them to the vice president or vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 5.

These changes seek to accommodate the possibility that both a dean and a vice president may have occasion to comment upon an evaluation.

Librarian ranks:

1C. The annual evaluation will be based on written individual performance goals developed by each faculty unit member holding librarian rank and approved, or modified and approved, by the administration. These performance goals will relate to the responsibilities assigned pursuant to § 9.1.1, above, and support the library program's goals.

1. For purposes of this section, goals describe the outcomes that the unit member plans to achieve during a year. Goals do not describe tasks or methods of completing tasks, they focus upon results obtained. A goal, for

instance, may be to make operational new functionality, to digitize university catalogs from 1900 through 1950, to reduce error cataloging rates or to respond to reference inquiries within two days.

2. Faculty unit members will submit performance goals to their supervisors during their third month after joining the library staff. Goals will be revised and restated during the annual evaluation process.
3. In addition to relevant requirements set forth in Board Policy No. 4:38, faculty unit members assigned to library positions will be accountable for performing assigned responsibilities in accordance with recognized standards of professional ethics, in a manner that reflects a high level of professional knowledge and skill and an accurate understanding of the mission assigned to the library by the institutional president.

2C. Faculty unit members will document their accomplishments for the academic year and assess their efforts to achieve their approved goals. These accomplishments and the faculty unit member self-assessment will be recorded on a form prepared by the administration and submitted to the department head on March 15.

3C. The department head will complete the remainder of the evaluation form, responding to the faculty unit member's self-evaluation, and drawing upon additional information available to the department head. Included in the evaluation must be comments about the faculty unit member's performance of assigned responsibilities and approved goals.

Where circumstances preclude the attainment of particular goals, and the supervisor will take such circumstances into account during evaluation. Without precluding consideration of other, material matters, five criteria will be considered in evaluating the job performance and goal attainment of each librarian:

- Job knowledge, skills, and overall performance
- Customer service
- Teamwork and interpersonal relations
- Initiative and creativity
- Efforts to support and further the mission of the library and institution, and
- Supervisory or managerial skills (when applicable).

Evaluative comments must explain whether the faculty unit member achieved, exceeded, or fell short of the level of performance reasonably expected of faculty unit members of like librarian rank and experience. The explanation must indicate the consideration given to rank and experience.

In addition to comments about performance at the faculty unit member's current rank, the department head must also comment about progress towards achieving the levels of performance that, in keeping with institutional standards, justify a recommendation for change in librarian rank. Comments about progress towards change in librarian rank will not be deemed to give rise to a contractual entitlement to favorable action, nor will they be deemed to require unfavorable action, on subsequent applications for change in librarian rank. Such comments will not be construed as binding the discretion of department heads, their successors in office or senior administrators.

Where appropriate, the evaluation should include recommendations for contract renewal.

The faculty unit member and the department head will meet to discuss the written evaluation by April 15. The faculty unit member will acknowledge receipt of the evaluation document. A copy of the department head's comments will be given to the faculty unit member at the time of the meeting. If the faculty unit member agrees with the evaluation, the faculty unit member will sign the form within five (5) working days of the interview.

These provisions free the evaluation of librarians from the constraints of procedures designed for faculty unit members whose responsibilities center on classroom teaching or research.

4C. If the faculty unit member has any additional comments to make after the meeting with the department head, the faculty unit member may note them in the "faculty unit member's comments" section, provided that notification of this intent is given pursuant to § 11.3(3). All additional comments or recommendations must be submitted by April 25.

5C. The dean or vice president will review the completed evaluation and may revise any ratings suggested by the department head. The dean or vice president will make appropriate comments to the president about performance, contract renewal or change in librarian rank. Copies of any comments made by the dean or vice president will be sent to the faculty unit member five (5) working days before the dean forwards them to the vice president or vice president forwards them to the president. The faculty unit member may submit a response within the five working days which will be attached to the evaluation before it is forwarded to the vice president or to the president. This process must be finished before May 5.

These changes seek to accommodate the possibility that both a dean and a vice president may have occasion to comment upon an evaluation.

11.6 FILING OF EVALUATION DOCUMENTS (Board proposal)

The statistical profile and narrative summary of the student opinion surveys required by § ~~11.3~~ 11.4(4) will be attached and made a part of the performance evaluation prepared in accordance with the procedures set forth in § 11.2. The results of any investigation conducted by the department head, as well as the faculty unit member's response, must be attached.

The completed evaluation and any plan developed to correct deficiencies will be placed in the faculty unit member's personnel file.

This change corrects an internal reference.

11.7 INFORMAL EVALUATION (COHE proposal)

In addition to the formal evaluations provided for under this article, the respective institutional agreement management committees may provide for informal evaluations that serve to encourage and support faculty unit member experimentation with new instructional techniques. The respective institutional agreement management committees may provide rules regarding working files, subject to the provisions of § 17.2.

This change merely makes this section consonant with the proposal below in § 17.2.

XII. RANK AND PROMOTION (Board proposal)

The division of ranks into professorial, librarian and lecturer ranks will take effect on July 1, 2012, subject to the following exceptions.

Faculty unit members serving under term contracts but having previously been assigned professorial rank may elect to continue to serve with such ranks in lieu of lecturer ranks, although in all other respects they will be subject to the terms and conditions of employment for lecturer ranks.

Faculty unit members assigned to libraries who hold tenure appointments may elect to continue to serve on tenure appointments with professorial rank. Those who do so will remain subject to all requirements relating to qualifications for promotion and other performance expectations that govern the tenured professorial ranks. In all other respects, such faculty unit members will be subject to the terms and conditions of employment for librarian ranks.

Faculty unit members assigned to libraries who hold tenure track appointments may elect to continue to serve on tenure track appointments with professorial rank and will remain subject to all requirements relating to qualifications for promotion and tenure applicable faculty unit members holding professorial rank and serving under tenure track appointments. In all other respects, such faculty unit members will be subject to the terms and conditions of employment for librarian ranks.

Faculty unit members entitled to elect whether to retain rank, to remain on tenure track or to remain on tenure appointments will notify their department heads of their elections no

later than August 30, 2012, or they will be assigned to lecturer or librarian ranks as appropriate.

All persons who report for work on or after July 1, 2012, in positions assigned to lecturer or librarian ranks will be subject to the terms and conditions of employment for those ranks.

These provisions establish parameters to accommodate some of the settled expectations of current faculty unit members whose positions would otherwise be assigned to the lecturer or library ranks. NOTE: Persons whose rank or tenure status has been grandfathered will be subject to other changes in terms and conditions of employment.

**12A.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT
PROFESSORIAL RANK AND PROMOTION (Board proposal)**

The rank qualifications which are set forth below are minimums for employment and promotions. All references to teaching or research experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will shall be recognized on a pro-rata basis. For purposes of this article, one year of full-time successful service with the Agricultural Cooperative Extension Service is equivalent to one year of successful college teaching or research experience.

INSTRUCTOR: (Nontenurable)

1. Earned master's degree; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

ASSISTANT PROFESSOR: (Nontenurable)

For faculty unit members who report for service on or before June 30, 2012, the minimum rank qualifications for the rank of assistant professor are:

1. Earned master's degree, plus thirty (30) additional semester hours of graduate credit in fields related to assigned responsibilities, and three (3) years of successful full-time college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution; and
3. Evidence of scholarship consistent with institutional standards implementing Appendix G Board Policy No. 4:38 for professorial ranks.

ASSISTANT PROFESSOR: (Nontenurable)

For faculty unit members who report for service on or after July 1, 2012, the minimum rank qualifications for the rank of assistant professor are:

1. Completion of all requirements for a doctoral degree except for the successful defense of the dissertation; provided that a person assigned the rank of assistant professor under this subsection pending completion of the dissertation, is not eligible for a tenure track appointment, may be offered a term contract at that rank for no more than two successive years, and may not be reappointed at that rank if the doctoral degree has not been granted by the end of the second academic year;
2. Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution; and
3. Evidence of scholarship consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks.

ASSOCIATE PROFESSOR: (Tenurable)

1. Earned doctorate and six (6) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and six (6) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience); and
3. Evidence of external recognition for scholarly accomplishment consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks; and
4. The award of Tenure.

PROFESSOR: (Tenurable)

1. Earned doctorate and ten (10) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
2. A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and ten (10) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience); and
3. Evidence of external recognition for ongoing scholarly accomplishment and leadership

consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks.

These changes eliminate the rank of instructor from the professorial ranks, and they create a prospective limit on assignment of the rank of assistant professor to persons who lack a terminal degree. The change here coordinates with the change in § 8.3 that limits tenure track appointments to persons holding doctorate degrees of their equivalent. It also inserts grammatical corrections.

12A.2 MINIMUM PROMOTION ELIGIBILITY CRITERIA (Board proposal)

In addition to the minimum rank qualifications for employment and promotion stated in § 12A.1, the minimum eligibility criteria for promotion in professorial rank will be:

Instructor to Assistant Professor:

Three (3) years in rank, including at least two (2) at the institution; high level of performance in the areas of responsibilities commensurate with promotion to the rank of assistant professor.

Assistant Professor to Associate Professor:

There are no time in rank or length of service requirements for promotion to the rank of associate professor; this rank is assigned upon the grant of tenure.

Associate Professor to Professor:

Five (5) years in rank at the institution; tenure; high level of performance in the areas of responsibilities commensurate with promotion to the rank of professor.

All references to years in rank herein are to full-time academic year appointments or to their equivalents. Faculty unit members become eligible to apply for promotion during the year in which their length of service will meet the stated requirements. Faculty unit members serving in library positions on tenure or tenure track appointments who, on or before August 30, 2012, elect to retain professorial rank, will accrue years of service under the standard rules. Faculty unit members whose appointment is split between professorial and librarian ranks will accrue years of service in proportion to the percent of their appointment assigned to professorial duties.⁵

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for promotion; provided that prior service credit may not be requested in conjunction with an application for promotion. The grant of prior service credit for purposes of promotion will not thereby reduce the tenure track service requirements stated in § 13.1.

⁵ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

These changes reflect the elimination of the rank of instructor from the professorial ranks. They amend internal references to conform to the revised Article XII, and provide for application of accrual rules to for individuals whose appointments are split between professorial and library ranks.

12A.3 EXCEPTIONS (Board proposal)

Upon the recommendation of the institutional president, the Board may grant exceptions to the minimum rank qualifications (§ 12A.1) or the promotion eligibility criteria relating to the minimum number of years in rank in the institution (§12A.2), or both. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications or promotion eligibility criteria ~~will~~ ~~shall~~ be reviewed under the procedures set out in § 12A.5. For new faculty and for promotions, the Board will consider only those faculty unit members who, in the judgment of the Board, have demonstrated that their level of performance ~~and~~ for professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

These changes amend internal references to conform to the revised Article XII and make one grammatical emendation.

12A.4 PROMOTION AND TENURE COMMITTEE FORMULATION (Board proposal)

The institutional promotion and tenure committee will consist of elected members of the faculty unit and members of the administration. The composition of the committee will be: fifty percent (50%) ~~tenure track and~~⁶ tenured faculty unit members; fifty percent (50%) administrators. Each president will determine the total number of members for the institutional promotion and tenure committee at each institution.

The faculty unit representatives on the institutional promotion and tenure committee will be elected by the faculty unit as soon as practicable after the commencement of school activities in the fall. Membership terms will be for three (3) years.

Vacancies will be filled according to procedures established for the original appointment. Election procedures will be determined by COHE and the election will be conducted under its auspices. ~~Only tenured faculty unit members will be eligible for election to the institutional promotion and tenure committee.~~ Election procedures must provide all ~~tenured~~ faculty unit members with equal opportunities to nominate candidates for committee membership, to be nominated for committee membership to elect committee members, and provide all tenure track

⁶ Provisions subject to tentative agreements have been highlighted in ~~turquoise~~. Where an entire proposal is subject to tentative agreement, the proposal has been moved to the appropriate section, below. Where only part of a proposal has been subject to tentative agreement, the portions to which tentative agreement has been given are highlighted.

and tenured faculty unit members with equal opportunities to be nominated for committee membership. Alternates should be selected in the same manner.

The parties recognize that the integrity of the promotion and tenure review process requires not only that it be fair, but also that it be regarded as fair. Therefore, individual committee members are encouraged to recuse themselves whenever they feel that their ability to make a disinterested judgment might be called into question by a candidate or by other members of the university community.

Faculty unit members, who themselves are to be considered for promotion or tenure, are not eligible for membership on the promotion and tenure committee during the academic year in which their promotion or tenure is being considered. If such a faculty unit member is denied promotion or tenure, the individual's term on the committee will be deemed to have expired. Faculty unit members who have been denied promotion may serve on the promotion and tenure committee if elected in an election held no sooner than one academic year following the year in which the denial occurred.

Administrators will be appointed by the president.

At USD and SDSU there will be, in addition to the institutional promotion and tenure committees, college or school promotion and tenure committees. At all institutions, departments or other appropriate administrative units **that have sufficient numbers of tenured faculty to form a committee**⁷ may petition the president for the creation of a promotion and tenure committee for the respective department or unit. If approved, the president will determine the membership consistent with the ratio and constituency heretofore established for the institutional promotion and tenure committee. ~~Tenure track and tenured~~ **Tenured** faculty unit members will be elected to college or school, department or other appropriate administrative unit promotion and tenure committees using the same procedures used to elect ~~tenure track and~~ tenured faculty unit members to the institutional promotion and tenure committee. Faculty unit members within the appropriate unit will participate in the election procedures.

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or appropriate unit. Administrators will consider the recommendations of their departmental or unit promotion and tenure committee in formulating their recommendations to the next level of the process.

These changes operate to limit faculty unit membership on promotion and tenure committees to tenured faculty unit members.

12.4 PROMOTION AND TENURE COMMITTEE FORMULATION (COHEproposal)

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or appropriate unit. Administrators will consider the recommendations of their departmental or unit promotion and tenure

⁷ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

committee in formulating their recommendations to the next level of the process. Any and all instructions, training, or contract interpretations provided to any university, college or departmental promotion and tenure committee by any administrator shall take place with the local COHE president or his designee in attendance. In such cases, the local COHE president or his designee shall be allowed to present alternate interpretations of the contract to such promotion and tenure committees.

This change seeks to strengthen the promotion and tenure process by merely providing additional information to the promotion and tenure committee so that they can make fully-informed decisions about the procedures for their recommendations.

12A.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS (Board proposal)

Faculty unit members who wish to be considered apply for promotion will notify submit a written application to their immediate supervisor in writing no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, October 5. Such notification will allow the promotion and tenure committees, instituted under § 12A.4, access to the faculty unit member's personnel file and individualized professional development plans. It is the responsibility of the faculty unit member to prepare, assemble and submit no later than October 5 all favorable documentation which is appropriate and upon which the faculty unit member relies to establish. The application will include documentation to establish performance commensurate with the award of the professorial rank sought as required under Appendix O, or, for faculty unit members not assigned the rank of Associate Professor when first awarded a tenure track contract, to establish performance commensurate with the award of tenure as required under Appendix P. The review of eligibility for promotion will consider only performance in the unit member's professorial role; hence, faculty unit members with library duties who are entitled to retain professorial rank or whose appointment is split between professorial and librarian ranks will be responsible for producing documentation that their instructional, research and service activities meet institutional standards implementing Board Policy No. 4:38 for professorial ranks.⁸ Each institution may stipulate certain desired elements or format for the documentation, which will ~~shall~~ be made available to faculty unit members in written form. This documentation must accompany the request to the immediate supervisor for consideration. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head (and of the departmental promotion and tenure committee, if any) will be forwarded by the department head to the administrator responsible for the process at the college/ or school level or at the institutional level, whichever is applicable, no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, November 5.

⁸ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

If the institution has college or school promotion and tenure committees, the recommendations of the appropriate administrator (and of the college or school promotion and tenure committees) will be forwarded by that administrator, with the supporting documentation, to the president or designee no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, December 1 for consideration by the institutional promotion and tenure committee.

The institutional promotion and tenure committee will review all materials and may consult with applicable college, school, or departmental promotion and tenure committees, and in addition, may consult with the faculty unit member or other individuals as it deems appropriate. After such consultation, the institutional promotion and tenure committee will add its recommendation and forward all information to the president no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, January 20 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential; except that, subsequent to the Board's final determination, the president will have the written recommendations of administrators with supervisory responsibility for the faculty unit member placed in the faculty unit member's personnel file, together with any additional materials that they may have secured to assist in formulating their opinions.

If an outside recommendation is sought, the administrator or committee requesting the recommendation will shall provide the outside party a copy of the institutional standards used in the promotion review.

The president will make the institutional recommendation to the Board by April 15. At the request of the faculty unit member, the recommendation of the institutional promotion and tenure committee will accompany the institutional recommendation to the Board.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for promotion, of whether the president will recommend promotion to the Board. Such notice will indicate the institutional promotion and tenure committee's recommendation. If the president intends to recommend that promotion be denied, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will shall be substantive in nature and will shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information available to him/ or her. ~~The faculty unit member may file a written request for reconsideration within ten (10) working days of receipt of the president's reasons for denial of promotion. The request shall specify the grounds and considerations that the faculty unit member believes warrant a different result. The president, after reviewing the request, shall notify the faculty unit member in writing, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board and of its basis. The rights right to obtain reasons and to request reconsideration will not expand the rights and limitations under § 7.8.~~

Deadlines to bring any grievance arising from the denial of promotion will run from the time that the president notifies the faculty unit member of the intended recommendation to the

Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, setting forth the reasons for the denial.

The entire process, including Board action, will be completed by June 1.

These changes permit institutions to establish local P&T timelines; provided that faculty unit members receive notification of the institutional decision on April 1. Thereafter, the negotiated deadlines, which broadly coordinate opportunities for review with the usual and customary Board meeting dates will apply. The provisions establishing a pre-grievance informal reconsideration process have been removed in order to avoid unnecessary multiplication of procedures. The grievance procedure itself provides opportunities for the informal resolution of meritorious grievances. The date upon which reasons for denial of promotion have been provided becomes the reference date for purposes of determining timeliness of the action and for purposes of grievance appeals. The changes also confirm that promotion applications submitted by librarians with grandfathered professorial rank or with split ranks will be evaluated under professorial performance standards.

12.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS (COHEproposal)

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for promotion, of whether the president will recommend promotion to the Board. Such notice will indicate the institutional promotion and tenure committee's recommendation. If the president intends to recommend that promotion be denied, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given shall be substantive in nature and shall transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information available to him/her. The faculty unit member may file a written request for reconsideration within ten (10) working days of receipt of the president's reasons for denial of promotion. The request shall specify the grounds and considerations that the faculty unit member believes warrant a different result. The president, after reviewing the request, shall notify the faculty unit member in writing, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board and of its basis. If a faculty unit member decides to grieve this process, the grievance timeline described in § 7.7 begins upon notification of this final institutional recommendation. The rights to obtain reasons and to request reconsideration shall not expand the rights and limitations under § 7.8.

In light of a recent case, this change merely makes clear that, in cases of an appeal to the president to reconsider his initial recommendation, the grievance clock begins upon the final notification to the faculty member at the end of the appeals process.

12B.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT LECTURER RANK (Board proposal)

The rank qualifications which are set forth below are minimums for employment. All references to teaching experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis. For purposes of this article, one year of full-time successful service with the Agricultural Cooperative Extension Service is equivalent to one year of successful college teaching or research experience.

INSTRUCTOR:

1. Earned master's degree; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

LECTURER:

Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution.

SENIOR LECTURER:

Earned doctorate or a postgraduate degree, other than a doctorate, recognized by the Board as a permitted terminal degree for the faculty unit members' discipline at the institution and six (6) years of successful teaching at the university level.

12B.2 MINIMUM ELIGIBILITY CRITERIA FOR A CHANGE IN LECTURER RANK (Board proposal)

In addition to the minimum rank qualifications for employment and promotion stated in § 12B.1, the minimum eligibility criteria for change in rank will be:

Instructor to Lecturer:

Three (3) years in rank at the institution; performance of assigned responsibilities commensurate with expectations for lecturers.

Lecturer to Senior Lecturer:

Five (5) years in rank at the institution; performance of assigned responsibilities commensurate with expectations for senior lecturers.

All references to years in rank herein are to full-time academic year appointments or to their equivalents. Faculty unit members become eligible to apply for change in rank during the year in which their length of service will meet the stated requirements.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for change in rank; provided that prior service credit may not be requested in conjunction with an application for change in rank.

12B.3 EXCEPTIONS (*Board proposal*)

Upon the recommendation of the institutional president, the Board may grant exceptions to the minimum rank qualifications (§ 12B.1) or the change in rank eligibility criteria relating to the minimum number of years in rank in the institution (§ 12B.2), or both. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications or change in rank eligibility criteria will be reviewed under the procedures set out in § 12B.4. For new faculty and for promotions, the Board will consider only those faculty unit members who, in the judgment of the Board, have demonstrated that their level of performance or professional qualifications are notably excellent and sufficient to offset the lack of a required degree or years in rank.

12B.4 PROCEDURES TO REQUEST A CHANGE IN RANK (*Board proposal*)

Faculty unit members who wish to apply for change in rank will submit a written application to their immediate supervisor no later than such date as may be specified under institutional change in rank procedures or, in the absence of such institutional procedures, October 5. The application will include documentation to establish performance commensurate with the award of the lecture rank sought. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head will be submitted to the dean or vice president, as the case may be, at such time as may be stipulated under institutional policy.

If the request for change in rank is granted, it will become effective with the next annual appointment notice.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for change in rank, of whether the president will accept the recommendation for change in rank. If the president intends to reject a recommended change in rank, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the department head, dean or vice president by including the opinions of the president from the information available to him or her. The right to obtain reasons will not expand the rights and limitations under § 7.8.

Deadlines to bring any grievance arising from the denial of promotion will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, of setting forth the reasons for the denial.

The entire process, including Board action, will be completed by June 1.

These provisions broadly parallel the traditional standards and procedures for assigning professorial rank, while modifying those provisions to accommodate the more limited roles, responsibilities and entitlements of faculty unit members holding lecturer rank.

***12C.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT
LIBRARIAN RANK (Board proposal)***

The provisions of this section

The rank qualifications which are set forth below are minimums for employment. All references to teaching experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis.

ASSISTANT LIBRARIAN:

1. Master's degree in library or information science from a program accredited by the American Library Association; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

ASSOCIATE LIBRARIAN:

1. Master, Specialist or Doctoral degrees in addition to the master degree in library or information science; and
2. Ten years of experience as a professional librarian or five years in rank as an Assistant Librarian at the institution.

LIBRARIAN:

1. Master, specialist or doctoral degrees in addition to the master degree in library or information science; and
2. Fifteen years of experience as a professional librarian or five years in rank as an associate librarian at the institution.

12C.2 MINIMUM ELIGIBILITY CRITERIA FOR A CHANGE IN LIBRARIAN

RANK (Board proposal)

In addition to the minimum rank qualifications for employment and promotion stated in § 12B.1, the minimum eligibility criteria for change in rank will be:

Assistant Librarian to Associate Librarian:

Five (5) years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for associate librarians.

Associate Librarian to Librarian:

Five (5) years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for librarians.

All references to years in rank herein are to full-time, twelve month appointments or to their equivalents. Faculty unit members become eligible to apply for change in rank during the year in which their length of service will meet the stated requirements.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for change in rank; provided that prior service credit may not be requested in conjunction with an application for change in rank.

12C.3 PROCEDURES TO REQUEST A CHANGE IN RANK (Board proposal)

Faculty unit members who wish to apply for change in rank will submit a written application to their immediate supervisor no later than such date as may be specified under institutional change in rank procedures or, in the absence of such institutional procedures, October 5. The application will include documentation to establish performance commensurate with the award of the lecture rank sought. Each institution may stipulate certain desired elements or format for the documentation, which will be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head will be submitted to the dean or vice president, as the case may be, at such time as may be stipulated under institutional policy.

If the request for change in rank is granted, it will become effective with the next annual appointment notice.

The faculty unit member will be notified no later than April 1 of the year in which the faculty unit member is being considered for change in rank, of whether the president will accept the

recommendation for change in rank. If the president intends to reject a recommended change in rank, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request provide reasons in writing for the decision. The reasons given will be substantive in nature and will transcend the mere fact of the recommendations by the department head, dean or vice president by including the opinions of the president from the information available to him or her.

The entire process, including Board action, will be completed by June 1.

These provisions also broadly parallel the traditional standards and procedures for assigning professorial rank, while modifying those provisions to accommodate the distinctive roles, responsibilities and entitlements of faculty unit members holding librarian rank.

13.1 TENURE APPOINTMENT (Board proposal)

A tenure contract may be extended to a faculty unit member in accordance with the provisions of this article. It entitles a faculty unit member to reemployment from year to year until such time as the faculty unit member resigns, or retires, is discharged for cause (Article XV, Code of Conduct--Discipline--Just Cause), or is terminated pursuant to a reduction of personnel (Article XVI, Faculty Unit Member Reduction Procedures). A tenure contract may be granted for less than a full-time appointment, in which case the holder will have an expectation of continued part-time employment at the percentage of time stipulated without any expectation of continued employment at full-time or at any greater percentage of time. The grant of tenure to a person whose appointment is split between professorial and librarian ranks shall be deemed be a tenure contract for less than a full-time appointment.⁹ A tenure contract granted by an institution will be valid at that institution and at the discretion of other institutions, may be transferable to other institutions within the system.

The change here confirms that tenure granted to persons whose appointments are split between professorial and library ranks will operate in the same fashion as such grants to others holding less than full-time positions.

13.2 MINIMUM TENURE ELIGIBILITY REQUIREMENTS (Board proposal)

Faculty unit members holding the rank of Assistant Professor or higher may apply for tenure during their sixth year of tenure track service. Tenure track service shall be based upon full-time academic year appointments or their equivalents. Part-time experience may be recognized on a pro-rata basis. Faculty unit members serving in library positions on tenure or tenure track appointments who, on or before August 30, 2012, elect to retain professorial rank, will accrue years of service under the standard rules. Faculty unit members whose appointment is split between professorial and librarian ranks shall accrue years of service in proportion to the percent of their appointment assigned to professorial duties.¹⁰

⁹ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

¹⁰ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

...

The new language merely provides for application of accrual rules to for librarians whose professorial ranks has been grandfathered and for individuals whose appointments are split between professorial and library ranks.

13.3 PROCEDURES FOR TENURE RECOMMENDATIONS (Board proposal)

Tenure review is separate from promotion review.

Faculty unit members who wish to ~~be considered~~ apply for tenure will ~~notify~~ submit a written application to their immediate supervisor no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, October 5 of the sixth year of tenure track service. Such notification will allow the promotion and tenure committees, instituted under § 12A.4, access to the faculty unit member's personnel file and individualized professional development plans. ~~It is the responsibility of the faculty unit member to prepare, assemble and submit no later than October 5 all favorable documentation which is appropriate and upon which the faculty unit member relies to establish.~~ The application will include documentation to establish that the unit member has developed, maintained and implemented well defined plans for professional development in the areas of teaching, scholarship and service that demonstrate promise, as required under Appendix P, that the unit member ~~will~~ ~~shall~~ in due course meet institutional performance standards in teaching, scholarship and service for persons who hold the rank of professor. The review of eligibility for tenure will consider only performance in the unit member's professorial role; hence, faculty unit members with library duties who are entitled to retain professorial rank or whose appointment is split between professorial and librarian ranks will be responsible for producing documentation that their instructional, research and service activities meet institutional standards implementing Board Policy No. 4:38 for professorial ranks.¹¹ Each institution may stipulate certain desired elements or format for the documentation, which ~~will~~ ~~shall~~ be made available to faculty unit members in written form. The immediate supervisor, and any other supervisors, including the president, who review the file in order to make independent recommendations, may supplement the material assembled by the faculty with information obtained from other sources, and they may base their recommendations upon such additional information, provided that such additional information is included in the file together with the materials assembled by the faculty unit member. This documentation and the recommendations of the department head (and of the departmental promotion and tenure committee, if any) will be forwarded by the department head to the administrator responsible for the process at the college/ or school level or at the institutional level, whichever is applicable, no later than such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, November 5.

Successful applicants will receive a tenure contract the following year. Unsuccessful applicants and faculty unit members who complete their sixth year of tenure track service without applying for tenure will be offered a single term contract for the appointment year following that in which

¹¹ Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

tenure is denied. This term contract is not subject to renewal, and the faculty unit member will be ineligible for reappointment after it expires.

An institutional recommendation to grant tenure to a faculty unit member will be based upon an assessment of the candidate's past contributions and promise of future contributions to the goals and missions of the institution. The performance record of a faculty unit member considered for tenure will be based in part upon the performance evaluations conducted by the administration during all years of service credited toward tenure qualification.

If the institution has college or school promotion and tenure committees, the recommendations of the appropriate administrator (and of the college or school promotion and tenure committees) will be forwarded by that administrator, with the supporting documentation, to the president or designee no later than **such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures,** December 1 for consideration by the institutional promotion and tenure committee.

The institutional promotion and tenure committee will review all materials and may consult with applicable college, school, or departmental promotion and tenure committees. In addition, the institutional promotion and tenure committee may consult with the faculty member or other individuals as it deems appropriate. After such consultation, the institutional promotion and tenure committee will submit its recommendations as to whether or not each faculty unit member under consideration should be granted tenure. Those recommendations will be submitted to the president no later than **such date as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures,** January 20 of each academic year. The working papers and files of the promotion and tenure committee(s) will remain confidential; except that, subsequent to the Board's final determination, the president will have the written recommendation of administrators with supervisory responsibility for the faculty unit member placed in the faculty unit member's personnel file, together with any additional materials that they may have secured to assist in formulating their opinions.

If an outside recommendation is sought, the administrator or committee requesting the recommendation **will shall** provide the outside party a copy of the institutional standards used in the promotion review.

The president will make the institutional recommendation to the Board by April 15. At the request of the faculty unit member, the recommendation of the institutional promotion and tenure committee will accompany the institutional recommendation to the Board.

The faculty unit member will be notified, not later than April 1 of the year in which the faculty unit member is being considered for tenure, of what the president will recommend to the Board regarding the faculty unit member's tenure status. Such notice will indicate the institutional tenure committee's recommendation. If the president intends to recommend that tenure be denied, the president will, upon receipt prior to April 15 of a written request, within fifteen (15) working days of the request, provide reasons in writing for the decision. The reasons given **will shall** be substantive in nature and **will shall** transcend the mere fact of the recommendations by the committees by including the opinions of the president from the information then available to

him/ or her. ~~The faculty unit member may file a written request for reconsideration within ten (10) days of receipt of the president's reason for denial of tenure. The president, after reviewing the request, shall notify the faculty unit member in writing, within ten (10) working days, of the final institutional recommendation to be forwarded to the Board and of its basis. The rights right to obtain reasons and to request reconsideration will not expand the rights and limitations under § 7.8.~~

Deadlines to bring any grievance arising from the denial of tenure will run from the time that the president notifies the faculty unit member of the intended recommendation to the Board; provided that where a faculty unit member requests a statement of reasons, the deadlines will run from the time that the president provides notice, pursuant to § 22.9, setting forth the reasons for the denial.

The entire process, including Board Action, will be completed by June 1.

Faculty unit members who hold tenure at the time of execution of this agreement have tenure under this agreement.

13.4 EXCEPTIONS (Board proposal)

Upon request of the president, the Board may approve exceptions to the minimum rank qualifications in accordance with § 12A.1 or to the length of service eligibility criteria state in § 13.2. When time and circumstances reasonably permit, requests for exceptions to the minimum rank qualifications ~~will shall~~ be reviewed under the procedures set out in § 12A.3.

These changes allow institutions discretion to establish local calendars for the tenure review process; they update internal references; and they correct grammatical lapses. These changes permit institutions to establish local P&T timelines; provided that faculty unit members receive notification of the institutional decision on April 1. Thereafter, the negotiated deadlines, which broadly coordinate opportunities for review with the usual and customary Board meeting dates will apply. The provisions of § 13.3 that establish a pre-grievance informal reconsideration process have been removed in order to avoid unnecessary multiplication of procedures. The grievance procedure itself provides opportunities for the informal resolution of meritorious grievances. The date upon which reasons for denial of promotion have been provided becomes the reference date for purposes of determining timeliness of the action and for purposes of grievance appeals. The changes in § 13.3 also confirm that tenure applications submitted by librarians with grandfathered professorial rank or with split ranks will be evaluated under professorial performance standards.

15.1 PREAMBLE (Board proposal)

~~The credibility and effectiveness of faculty and institutions are derived from the high standards of conduct and integrity demonstrated by those who generate, refine, and transmit knowledge. To protect and maintain the status of the profession, criteria and procedures for just cause~~

~~actions are needed to provide for the rare occasions when established standards of conduct are violated. Just cause requires quick and efficient action when the standards and reputation of institutions and their faculties are jeopardized; it also requires meticulous due process to protect the rights of individuals and to guard against arbitrary and heedless actions. The burden of proof for any just cause action rests with the administration; any action is subject to the due process requirements specified in Articles VI and XI of this agreement.~~

The Board, through its institutional administrators, is responsible for maintaining a competent, productive, effective and ethical workforce and to assure observance of obligations and rights established by law, rule or policy and implicated in university operations. This authority extends to supervision of faculty unit member conduct. The Board and its administrators possess the inherent power to discipline faculty unit members who fail to adhere to expectations for competent, productive, effective and ethical teaching, research or service, who violate laws, rules or policies implicated in university operations, or who engage in misconduct, neglect of duty, insubordination or otherwise unacceptable conduct. This article assures that the exercise of the power to discipline comports with the requirements of due process.

The preamble was confusing and rife with dubious assertions. It served no substantive purpose. The revision describes the origin of the power to discipline, its purpose and the object of the article.

15.2 ALTERNATIVE MEASURES (Board proposal)

~~With full recognition for the foregoing, the~~ Subject to the reserved authority required by *Worzella v. Board of Regents of Education*, 77 S.D. 447, 93 N.W.2d 411 (S.D. 1958), Board has delegated to institutional administrators provisional authority to ~~may~~ discipline faculty unit members for ~~performance deficiencies or~~ failure to adhere to expectations for competent, productive, effective and ethical teaching, research or service, violation laws, rules or policies implicated in university operations, or misconduct, neglect of duty, insubordination or otherwise unacceptable conduct, ~~as defined~~ including such conduct identified in Appendix E Board Policy No. 4:14 (2) Code of Professional Conduct. ~~The authority delegated to institutional administrators must be exercised consistently with Board policy. The delegated authority includes the power to determine the discipline to be imposed and its effective date.~~

Taking into consideration the ~~nature of the performance deficiencies or unacceptable conduct~~ circumstances that warrant discipline, past service, scholarly achievements or other mitigating or aggravating circumstances, ~~any performance deficiencies, whether or not identified in evaluations conducted pursuant to Article XI, or unacceptable conduct, as herein referenced and attached, may result in~~ discipline may include any of the following alternative actions:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty unit member;
3. Required ~~counseling~~ training related to the conduct that occasioned discipline, such as, by way of illustration and without limitation, training in anger management or training in compliance with antidiscrimination obligations; ~~or~~

4. Required treatment for current substance abuse at the cost of the faculty unit member;
- 4 5. Temporary suspension Suspension from duties with, or without, loss of pay commensurate therewith;
- 5 6. Reassignment;
- 6 7. Demotion;
- 7 8. Discharge.

These revisions attempt to articulate differences in the circumstances that may trigger disciplinary action, and permit disciplinary measures in addition to those specifically enumerated.

15.2 ALTERNATIVE MEASURES (COHE proposal)

With full recognition for the foregoing, the Board may discipline faculty unit members for performance deficiencies or unacceptable conduct, as defined in Appendix E. Taking into consideration the nature of the performance deficiencies or unacceptable conduct, past service, scholarly achievements or other mitigating circumstances, any performance deficiencies, whether or not identified in evaluations conducted pursuant to Article XI, or unacceptable conduct, as herein referenced and attached, may result in any of the following alternative actions, which shall be followed in a progressive order in accordance with the following stages:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty unit member;
3. Required counseling or treatment at the cost of the faculty unit member;
4. Temporary suspension from duties with, or without, loss of pay commensurate therewith;
5. Reassignment;
6. Demotion;
7. Discharge.

1. Informal Discussion;
2. Oral and Written Warning on Annual Evaluation;
3. Written Warning in Personnel File;
4. Suspension;
5. Termination.

An optional disciplinary measure may include required counseling or treatment at the cost of the faculty unit member.

It shall be understood that discipline has occurred when any of the above enumerated is taken by administration against a faculty member with the exception of informal discussion, stage 1. Any discipline which fails to assert a specific factual basis for a complaint or fails to identify any specific term or provision of this agreement that would have been misinterpreted, misapplied or violated based upon such facts shall be subject to grievance procedures.

15.3 INTERIM SUSPENSION (Board proposal)

Unlike a disciplinary suspension under paragraph 4 of § 15.2, an interim suspension from duties during the pendency of an active review of allegations of conduct warranting discipline is not deemed to be a discipline under this article.

The decision to place a faculty unit member on interim suspension pursuant to this section does not require compliance with the State One notice procedures set forth in § 15.4, but an informal pre-suspension process will ordinarily be provided. Absent the need for quick action or manifest impracticality, a faculty unit member will be informed, either orally or in writing, of the basis for the suspension, given an explanation of the evidence supporting the action and afforded an opportunity to respond before being placed on interim suspension.

In circumstances that require quick action or where the pre-suspension process is impractical, and where independent third-party findings confirm reasonable grounds for the allegations against the faculty unit member, the administration may place a faculty unit member on interim suspension before providing the requisite information, explanation and opportunity to respond.

The administration may withhold pay where the circumstances that trigger the interim suspension implicate public trust in ways that would preclude the unit member's continued discharge of assigned responsibilities.

These revisions differentiate between interim suspensions and disciplinary suspensions and call for informal notice and opportunity to respond in most circumstances.

15.3 PROCEDURES (COHE proposal)

Except in the case of all warnings under subparagraph 1 and 2 above, If the administration determines that probable just cause for discipline exists, the faculty unit member will be furnished written notice of the allegation supporting the determination and the administration's intended disciplinary action. At the same time, the COHE chapter president will be notified that the administration intends to discipline the faculty unit member. The matter will be discussed with the faculty member at a personal conference which will be held at a time not sooner than ten (10) working days, nor later than fifteen (15) working days from the date of the transmission of the written notice, unless otherwise agreed by the faculty unit member and the administration. The faculty unit member may bring to this meeting a representative chosen by the faculty unit member. At the close of the personal conference, or within five working days thereafter, the administration will notify the faculty unit member of the disciplinary action it will pursue. Any grievance appeal under this section will begin at Step 2. The grievance conference required at Step 2 must be held by the president, or in the absence of the president, the acting president, and may not be designated to any other person.

The administration may suspend a faculty unit member with pay, pending notification of the discipline to be imposed, if the character of the charges and the nature of the conduct warrant such action. Suspension may be without pay where the nature of the misconduct involves injury to or gross interference with others or otherwise compromises the public's confidence in the ability of faculty unit member to discharge the responsibilities of his or her position.

In all cases every instance of discipline by the administration the burden to prove the charges will rest with the administration by the standard of clear and convincing evidence.

Informal Discussion

Without exception, informal discussion shall be the initial step. A meeting shall be called by the department head with the faculty member no later than one month after the problem has come to the attention of the department head. The department head shall indicate verbally the particular rule that has been broken, the desired solution, and the possibility of future disciplinary action. The annual evaluation shall contain no record of any such informal discussion.

Step 1: Oral Warning

In cases of misconduct which may not be serious as a single incident, the department head shall discuss the issue with the employee. At this time, the department head must indicate that such discussion constitutes an oral warning and must document the discussion on the annual evaluation.

Step 2: Written Warning

In the event of a repeated pattern of misconduct a written warning may be issued. The written warning shall:

- Document the incident of misconduct and the reasons the department head considers the infraction serious;
- Clearly indicate what the faculty member must do to avoid future misconduct;
- Indicate that future misconduct may result in suspension or termination.

Step 3: Suspension

Step 4: Termination

Documentation

Disciplinary documents will be removed from any personnel file in 12 months if no further disciplinary actions occur during that time. Once a file is cleared of disciplinary actions, the progressive discipline process shall begin anew for any future incident.

These changes merely incorporate appropriate and ethical management prerogatives to adequately notify faculty of charges against them and that warnings like all other disciplinary actions shall result from probable cause. The advantage of a policy of progressive discipline recognizes the stratification of offenses from mild to serious. This affords the administration a paper trail in the event misconduct rises to the level of grounds for termination.

15.4 PROCEDURES (Board proposal)

~~Except in the case of all warnings under subparagraph 1 and 2 above, if~~

1. The following procedures apply to all disciplinary measures other than warnings and warnings filed in the personnel file.

The disciplinary procedure comprises two stages. The first, informal stage is designed to provide an initial check against mistaken decisions, by creating an opportunity to determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. At the first stage, the faculty unit member will receive oral or written notice of the allegations, an explanation of the evidence, and an opportunity to respond. At the close of the first stage informal hearing the administration may impose the selected discipline. The second stage assures clear and actual notice of the reasons for termination in sufficient detail to enable presentation of evidence relating to them; notice of both the names of those who have made allegations against the faculty unit member and the specific nature and factual basis for the charges; a reasonable time and opportunity to present testimony on any disputed issue of material fact; and a hearing before an impartial decision-maker.

Stage One: Informal Pre-Discipline Hearing

If the administration determines that ~~probable~~ there are reasonable grounds for discipline ~~exists~~, the faculty unit member will be furnished written notice of the ~~allegation~~ allegations supporting the determination, an explanation of the evidence relied upon by the administration and the ~~administration's~~ intended disciplinary action. At the same time, the COHE chapter president will be notified that the administration intends to discipline the faculty unit member. The matter will be discussed with the faculty member at a personal conference which will be held at a time not sooner than ten (10) working days, nor later than fifteen (15) working days from the date of the transmission of the written notice, unless otherwise agreed by the faculty unit member and the administration. The faculty unit member may bring to this meeting a representative chosen by the faculty unit member. At the close of the personal conference, or within five working days thereafter, the administration will notify the faculty unit member ~~of the disciplinary action it will pursue~~ whether it will discipline the faculty unit member, and if so, what discipline it will impose ~~how~~ and the effective date of the discipline.

Stage Two: Post-Discipline Hearing Rights

Faculty unit members who ~~are subject to discipline~~ have been disciplined after completion of Stage One hearings may challenge the action through the grievance procedures established in Article VII of this agreement. Any grievance appeal under this section will begin at Step 2. The grievance conference required at Step 2 must be held by the president, or in the absence of the president, the acting president, and may not be ~~designated~~ delegated to any other person.

~~The administration may suspend a faculty unit member with pay, pending notification of the discipline to be imposed, if the character of the charges and the nature of the conduct warrant such action. Suspension may be without pay where the nature of the misconduct involves injury to or gross interference with others or otherwise compromises the public's confidence in the ability of faculty unit member to discharge the responsibilities of his or her position.~~

In all cases, the burden to prove the conduct charged will rest with the administration. To the extent provided by law, the administration will bear the burdens of production and persuasion to prove conduct warranting discipline. Faculty unit members will bear the burden to prove affirmative defenses, bearing both the burdens of production and persuasion for such defenses and for any claims that an administrative action misinterprets, misapplies or violates a specific right protected under this agreement or Board policy

2. Faculty unit members may respond to warnings filed in the personnel file, and their responses will be attached to such warnings.

A faculty unit member will have five working days from the time that the institution provides notice, pursuant to § 22.9, of its intention to place a warning in the personnel file to notify the department head that the unit member will submit additional comments or that a peer group will be requested.

When a faculty unit member requests that the warning letter be sent to a peer group established by COHE for additional signed recommendations to be attached to the warning letter, the warning letter will be forwarded to the peer group within five working days. The peer group recommendations will be forwarded to the department head no later than fifteen working days after the warning letter has been forwarded to it, and the recommendations will be attached to the warning letter.

Placement of a response or a peer review statement in the personnel file will not relieve the faculty unit member of the obligation to comply with the directive stated in the warning letter.

The revisions here seek to differentiate more clearly between the informal hearing that precedes discipline and access, through the negotiated grievance procedures, to evidentiary hearings before an impartial hearing officer to challenge disciplines that have been imposed. Accommodations have also been proposed to permit faculty unit members to attach responses to the warning letter.

16.1 GENERAL PROVISIONS (Board proposal)

If it becomes necessary to terminate the contractual rights of faculty unit members because of governmental action, significant loss of enrollment, consolidation of departments, or other reorganization, dropping of courses, programs, or activities, or financial exigency, the Board may, notwithstanding any other provision of this agreement, terminate the appointments of faculty unit members in accordance with the provisions of this agreement.

The president of the institution will notify any individual faculty unit member of termination and provide the local president of COHE or the UniServ director of COHE the reasons for the reduction and the faculty unit members to be affected under the proposal, in order for COHE to have the opportunity to respond. Such response will be within ten (10) working days of the president's notice. Upon request of COHE, the president will schedule a meeting to discuss the response. An effort will be made to provide notice of intent to utilize the provisions of this article, as soon as practicable.

~~In addition to the rights afforded a faculty unit member under the provisions of Article VII, Contract Disputes, of this agreement, wherein the burden of proof will rest upon the Board, every faculty unit member whose contract will be significantly modified, terminated, not renewed, lengthened or shortened, shall be afforded, on written notice to the Board to be mailed no later than fifteen (15) days from the administration's notice of intention, an opportunity for an appropriate hearing before the Board in executive session. Such hearing shall be held at the next scheduled monthly meeting of the Board following the running of the fifteen (15) day notice period, or at a specific meeting to be scheduled, noticed and held no earlier than fifteen (15) days following the administration's notice of intended reduction as above provided.~~

The procedural provisions for individual hearings in executive session before the Board are unworkable. In fact, it has not been used since 1989. Since the very first bargaining agreement, executed May 21, 1981, the agreement has stipulated that faculty unit members have recourse through the bargained grievance procedures review of disputes arising from reductions in force. This approach will provide a more serviceable and regular mechanism to review disputes arising from reductions in force.

16.4 FURTHER PROVISIONS (Board proposal)

A faculty unit member terminated pursuant to the provisions of this article may institute a grievance under Article VII, Contract Disputes, and the burden of proof will rest with the administration to the extent required by law. **Any grievance challenging an action taken under this article will begin at Step 2 of the procedures outlined in § 7.7.**

The new language parallels the language of Article XV in providing for initiation of a grievance challenging a reduction in force at the presidential level.

XVII. Personnel Files (COHEproposal)

17.1 STATEMENT (COHEproposal)

A single official personnel file will be maintained on each faculty unit member at a central location(s) designated by the president; provided, however, that there will be two (2) such official files maintained on those faculty unit members with federal appointments by the Extension Service at South Dakota State University. Business records concerning each member of the unit may be maintained in the institutional business or personnel office. ~~If working files are maintained by any administrators, all materials thus generated must be filed in the personnel file at the time of their use in any adverse personnel decisions involving faculty unit members.~~

Items placed in a faculty unit member's personnel file will be signed and dated by the person placing the material in the file and the faculty unit member will be notified at that time. This notification requirement will not apply to documents whose placement in the personnel file is required under this agreement, i.e., the annual appointment notice and annual evaluations, or to documents whose placement is required under state law, e.g., leave documents.

Faculty unit members will have access to their personnel and business record files, exclusive of confidential pre-employment placement credentials, during normal business hours and may request copies, at their own cost, of material contained therein. If the file is not immediately available, it will be made available within one (1) working day. Faculty unit members may not remove their files from the room in which they are housed.

Faculty unit members may enter a statement in their file which they feel clarifies, corrects, or refutes material therein, and such statement will be attached to the applicable documents in the file. Faculty unit members may also place in their file materials relevant to academic qualifications, teaching, research, scholarship and service.

Access to faculty unit members' personnel files will be restricted to the faculty unit members, their authorized agents, or authorized administrators. Members of departmental, school or institutional promotion and tenure committees may also have access to the file when reviewing the credentials of applicants for promotion or tenure.

A log will be maintained which indicates the following:

1. Name of faculty unit member.
2. Date accessed.
3. Name of person accessing file.
4. If taken to another room, date removed and location to which removed.
5. Date returned to room in which file is housed.

The log requirement set forth above does not apply to access or inspection for routine clerical purposes, such as to insert copies of individual appointment notices or to confirm accuracy of data, provided that the file is not taken from the room.

Personnel files may be purged of any material which is obsolete, unfounded, unnecessary or otherwise inappropriate, under the following circumstances and procedures:

1. On written request by the faculty unit member to the administration, with assent by the administration as demonstrated by the return of either all, or a part, of such documents to the faculty unit member. Lacking administrative assent, the faculty unit member may initiate a grievance to remove the material on any of the bases stated above.
2. By action of the administration in purging such files, and forwarding such material to the faculty unit member. On receipt thereof, the faculty unit member shall return, by mail, those materials he prefers to have refiled in his personnel file.

17.2 WORKING FILES (*COHEproposal*)

If any administrator keeps a working file on any faculty unit member, the administrator must maintain a single working file in either digitized or paper form. For each and every material item an administrator retains relevant to the performance of a faculty unit member, the administrator must place such items in the single working file. The administrator must also maintain a log that accompanies the working files, which notes (1) the date each item was received by the administrator and (2) the context of the material and its collection.

The administrator shall notify the faculty unit member of the contents of their working file within twelve months of collecting any such items. Without such timely notification of the contents, the items and the resulting information cannot be used as evidence in any decision or procedure relative to discipline, promotion, tenure, termination, or performance evaluation.

This clean-up language more clearly highlights the possible existence of working files by administrators. It also encourages administrators to employ responsible management techniques by maintaining a single working file with a log and informing faculty about the information collected in a timely fashion.

18.2 OFFICE SECURITY (*Board proposal*)

The institution will furnish the faculty unit member a lockable desk or a lockable file. To the extent feasible, given the physical and financial resources of the institution, the administration will provide faculty unit members with access to secure physical or virtual repositories for student records, research data or similar records for which they responsible under law, regulation or policy. If an office is assigned to a faculty unit member, the institution will provide security for each faculty unit member's office by means of a lockable door. The lockable furniture and office space are provided to permit faculty unit members to control access to confidential student records, course materials and research documents, materials, specimens or equipment by unauthorized students and others who have no

authority to access the locked areas. Ordinarily, administrators will have access to a faculty unit member's office spaces or locked furniture only with the authorization of the faculty unit member. In exceptional circumstances, when the faculty unit member is unavailable and is not expected to return in time to provide necessary assistance or cannot be reached to provide authorization, an administrator may enter the space for some routine administrative purpose, for instance, to obtain a file that would be provided as a matter of course. Administrators may also enter without notice when there are reasonable grounds for suspecting that the entry will turn up evidence that the faculty unit member is guilty of work-related misconduct.

The new language reflects the changes in the manner in which faculty unit members, administrators and students safeguard information and data.

18.3 ~~TELEPHONE SERVICE~~ INFORMATION TECHNOLOGY SYSTEMS (Board proposal)

Each institution will provide access to ~~telephone service~~ information technology systems for all faculty unit members under ~~the general guidelines that institutions at which needs are demonstrated will provide improved service and privacy of conversations with consideration given to budgetary constraints and departmental priorities~~ substantially similar conditions to those available to full-time instructional or research faculty unit members holding professorial rank.

Once again, the new language seeks to keep the agreement abreast of evolving technologies.

18.7 EDUCATIONAL MATERIALS (Board proposal)

~~Higher education~~ Except for courses designated by the administration to be taught in a consistent or sequential fashion using a specified set of texts, programs or other instructional resources, faculty unit members holding professorial rank may select the materials and texts for the courses for which they are professionally responsible, provided that these are consistent with the course descriptions ~~and not in conflict with the continuity of the curriculum~~. Every reasonable effort will be made to provide adequate equipment and materials required for each approved course of study.

The professionalization of many disciplines, together with enhanced effectiveness of technology-based instruction and the concomitant investments in instructional hardware, software and training expanded the demands for uniformity in the selection and use of instructional materials for certain ranges of institutional curricula. The new language makes clear that no faculty unit member may undercut the academic consensus about optimum instructional approaches where these necessitate the coordinated, consistent use of a single set of resources for course delivery.

XIX. SALARY PROVISIONS

19.1 SALARY PROVISIONS (COHEproposal)

Allocation priorities applicable to all sums appropriated to support salary increases for continuing faculty unit members for all successive fiscal years, plus such additional monies as the Board in its sole discretion may elect to provide, except that in no case shall any faculty unit member's base salary be reduced.

1. Before any other distribution is considered, each institution will allocate any sums needed to assure that internal salary structures comport with governing law.

2. Remaining funds will first be allocated to every faculty unit member as a percent of their base salary equal to the seasonally adjusted Consumer Price Index (CPI-U, US City Average, All Items) for the most recent calendar year. If insufficient funds are appropriated to match the CPI percent, then every faculty unit member will receive the same percent increase to exhaust the appropriated funds. In any year when such CPI indicator falls below zero, this paragraph shall be ignored.

3. Remaining funds will then be allocated to every faculty unit member whose salary falls below eighty-five percent of their Oklahoma salary survey to raise their salary to such level. If insufficient funds are appropriated to bring such faculty unit members to this minimal level, then the funds will be allocated equitably to all such faculty unit members to reach the same percent of their Oklahoma salary survey that would exhaust the funds.

4. 2. Remaining funds will finally be apportioned to faculty unit members who meet or exceed expectations as follows:

A. 20-35% of available monies will be reserved to apportion to all faculty unit members who have met performance expectations a portion of the difference between their individual salaries and the average salaries for persons of like discipline and rank as recorded in the most recent available Oklahoma salary survey.

...

(And succeeding paragraphs renumbered accordingly.)

As the BOR recognizes, the existing salary structure is a legacy of discrete decisions over a long history of hiring individual faculty. As a result of low increases in salary policy in recent budget cycles, the salary formula discriminates against faculty who regularly "meet expectations." Restated, faculty who "meet expectations" (i.e., fully doing their job as expected) regularly receive salary increases less than the inflationary rate and, hence, suffer reduced purchasing power. This change merely introduces a cost of living allowance using a standard indicator. To our knowledge, every state, municipal, county, local and school district employee in South Dakota receives an inflationary adjustment, except the faculty. Every BOR central staff, university administrator, faculty exempt, classified staff, and student employee receives an inflationary adjustment, except the faculty. Hence, unlike the current formula, an

inflationary adjustment allows faculty to remain competitive to the national labor market.

Moreover, the current salary formula harms senior faculty who have contributed the most to the success of their universities. Historically, funds available for faculty have not allowed senior faculty even with the highest possible evaluation rating to maintain a consistent--albeit low--fraction of their target salary. This change merely raises their salary to a minimal fraction of their objective market value.

Surprisingly to us, the BOR has indicated they are not interested in equity for senior faculty and that their agenda in this respect is to rid the system of deadwood; replacing senior faculty with young faculty members where the sap runs strong. In their minds this provides the future strength of the system and it is justified by such arguments as the South Dakota Quality of Life and the low cost of living. This line of thought is incompatible with the emerging realities of a global economy, a new economic paradigm and the current BOR focus on STEM (Science, Technology, Engineering and Math) disciplines in an effort to foster economic development. Let us explain this from a number of perspectives.

While those of us around this table may rate the SD quality of life quite high and by many measures it is indeed high. However, we need to look at the expectations of the faculty that we are trying to hire. Increasingly, open spaces, an outdoor lifestyle and small town living are not attractive to faculty candidates that are increasingly from urban backgrounds and/or different countries of origin. Increasingly, applicants are single without children or a two professional household without children. So, the strength of the K-12 education system is less of a draw, especially to a faculty member that is expected to be nationally competitive in research funding and by necessity will staff his laboratory with post-doctoral research associates. The low density of professional opportunities and a lack of public transportation remain unattractive to dual professional households, especially as transportation costs are expected to rise dramatically in the future. The cost of living in Los Angeles is about 40% higher than in South Dakota. The cost of living in Dallas is 4% less and the cost of living in Lincoln, NE is 2% less. A chemistry professor with 20 years of experience would be expected to earn 31% more in Los Angeles than Brookings, SD, 22.1% more in Dallas and 5.5% more in Lincoln (Source: salarydata.com). These figures do not include benefits. While these numbers could be tweaked and debated, the economics of a senior faculty position does not overwhelmingly favor SD in comparison with California and puts SD at a disadvantage with Dallas. When the amenities are included in the mix, the choice is clearly personal. It is certainly in the best interest of the system to reward senior faculty for the simple fact of retention. As the BOR seeks to develop new programs, it is these senior faculty that will develop these programs. This heavy-lifting will not be accomplished by administrators that lack the current professional knowledge and contacts nor by a junior faculty member working to establish a career.

As the BOR seeks to fill new faculty positions with candidates that will be grant competitive they are increasingly seeking individuals that are near the top of the food

chain and highly trained in both their area of academic expertise but also in the politics of grantsmanship and career development during their postdoctoral appointments. These senior faculty are not naïve in planning their career and want to see evidence of institutional support for faculty members. What they see are senior faculty that are published and grant supported—indeed, and by other external measures have successful careers--but are teaching extremely high course loads, paid far below average and struggling with minimal benefits. These are faculty that have built the programs into which new faculty arrive. The incoming candidates understand that if they accept a position in SD and stay for an extended period of time, their purchasing power will decrease with time. They are also skilled enough in math to realize that if they participate in or build a successful program with a number of faculty members, the salary enhancement will not be sufficient to reward each of them so any promise of reward rings hollow in the cold hard light of mathematics.

The relative stability of South Dakota in the economic downturn has not resulted in increases in the quality or quantity of applicants to faculty positions in SD (Utecht's observation as long term search committee chair and member) especially in the STEM disciplines. This is consistent with the points made above.

Even if we are successful in hiring the quality of candidate needed to be successful in the new academic order, that candidate will choose a path early in their career; is South Dakota a training ground or is South Dakota their professional home? This will set the tone of their interactions with colleagues, as well as grant and publication strategies. As new faculty see senior faculty with diminishing purchasing power and poor benefits, that choice will increasingly be to use South Dakota as a training ground. The BOR has stated that while this is not the most desirable outcome, there is still productivity during the time the faculty members are in South Dakota. COHE's question is "Can South Dakota afford to spend upwards of \$1,000,000 in startup funds for a STEM faculty member who will leave in five years?"

While the above is targeted to STEM faculty, the strength of the faculty in general is important. Faculty choose a career at the university for the intellectual stimulation and that comes from strong engaged faculty in every discipline. These faculty have rejected careers in industry, national labs (Los Alamos, Sandia, Oak Ridge, etc.) and governmental agencies (DOD, NIH, CDC, etc.) to participate in the well rounded experience of the university.

19.1A PROFESSORIAL AND LIBRARIAN RANK SALARY PROVISIONS (Board proposal)

Allocation priorities applicable to all sums appropriated to support salary increases for continuing faculty unit members holding professorial or librarian rank and who will be offered reappointment for all a successive fiscal years year, plus such additional monies as the Board in its sole discretion may elect to provide.

...

2. Remaining funds will be apportioned to faculty unit members who meet or exceed expectations as follows:

...

B. 60-70% of available monies will be allocated on the basis of faculty unit member performance.

...

ii. Performance ratings will be based upon the annual performance evaluation conducted according to institutional practice. For faculty unit members who hold appointments split between professorial and librarian ranks, a composite, prorated average rating will be derived from the composite ratings for each role.¹² Performance ratings will be determined for each year, irrespective of any appropriations for salary increases. If no funding is provided to increase faculty salaries in a given year or series of consecutive years, the ratings for such year or years will be averaged with the rating for the year in which funding is provided to increase faculty salaries, and the resulting average rating will be used to distribute increases pursuant to this section. No distinction will be made based upon the number of years individual unit members have gone without increases, and the newest faculty unit member ratings will be based upon the then current evaluation.

...

v. The unit member's prior year base salary will be multiplied by one of the following rank factors as appropriate to derive a rank-adjusted salary:

Full Professor or Librarian	1.05	1.02
Associate Professor or Librarian	1.04	1.01
Assistant Professor or Librarian	1.03	1.00
Instructor	1.00	

...

G. At the time that annual appointment notices are issued in those years when the Legislature has appropriated funds to increase employee salaries, faculty unit members will receive an explanation of how their individual salary increases were determined. The notification will ~~shall~~ specify the dollar amounts distributed through the market mechanism, any amounts distributed in recognition of their performance, and any amounts distributed to correct possible discrimination. Faculty unit members will also be notified of the CIP Code and average salary that were employed in calculating the market raise. In years in which the Legislature has not appropriated funds to increase employee salaries, the annual appointment notice may omit details that are irrelevant to the proffered salary.

....

Three changes are proposed here. First, the distribution of salary increases through these procedures will be limited to faculty unit members holding professorial rank, be

¹² Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

they appointed to tenure, tenure track or term contracts. The weighting among the ranks has been adjusted to reflect the removal of instructors from the distribution pool, but the .01 differential between professorial ranks has been preserved. Second, the disclosure requirements have been revised to reinforce the understanding that in years when no increase monies are available, standard information relating to salary determination may be omitted from the annual appointment notice. Third, language has been added to stipulate that librarian and professorial ranks will continue to be combined for purposes of distribution.

19.1B LECTURER RANK SALARY PROVISIONS (Board proposal)

Allocation priorities applicable to all sums appropriated to support salary increases for faculty unit members holding lecturer rank and who will be offered reappointment for a successive fiscal year.

1. Before any other distribution is considered, each institution will allocate any sums needed to assure that internal salary structures comport with governing law.
2. Remaining funds will be apportioned to faculty unit members who meet or exceed expectations as follows:
 - A. 90% to 100% of available monies will be allocated on the basis of faculty unit member performance.
 - i. All unit members will be compensated in accordance with the quality of their performance as described below. Additionally, the institutions may reserve monies to be distributed to persons who rendered superior performance.
 - ii. Performance ratings will be based upon the annual performance evaluation conducted according to institutional practice.
 - iii. Each university will designate organizational units that will be grouped together for purposes of distribution of the performance increase. These groupings need not coincide with the institutional organizational structure; except that the performance evaluations of all grouped organizational units will have been reviewed by the same reviewer.
 - iv. Performance ratings will be adjusted as follows:
 - a. At each institution, evaluations will be reviewed by a superior administrator, hereafter “the reviewer,” who

will have the duty of rating unit members, based upon department head comments recorded as part of the annual evaluation of performance. A four category rating scale will be employed, and each rating will be assigned a number:

1. Unit members who failed to meet expectations. Assigned number = 0.
2. Unit members who met expectations. Assigned number = 1.
3. Unit members who performed above expectations. Assigned number = 2.
4. Unit members who performed substantially above expectations. Assigned number = 3.

b. The reviewer will have the prerogative of placing unit members in groupings based upon his or her independent review of the department head's performance assessment and of the activities that the unit member reported on the annual evaluation instrument.

c. Any unit member whose performance rating is less than 1 will be assigned the number 0. Performance rating values will be employed according to their derived values.

v. The individual faculty unit member's performance salary points for each individual unit member within a rating group will be added together to form the grouping's total salary points.

vi. The total salary points for each grouping will be divided into the total dollars available for the formula-driven performance distribution for that group, and the result will be expressed as a percentage, the standard performance factor.

vii. The performance salary points for each unit member will be multiplied by the standard performance factor to yield for each individual the formula-driven performance increase.

viii. Each institution may recognize distinguished performance by distributing funds reserved for this purpose from the

performance pool to persons whose performance was so distinguished and of such exceptional quality in the judgment of the university presidents as to be superior and worthy of special institutional recognition. Presidents may elect to dedicate up to 15% of this part of the pool for such purposes. Monies directed to this purpose will reduce the sums available for the formula-driven performance increase.

C. 0% to 10% of available monies may be allocated on the basis of institutional priorities. In selecting individual recipients of institutional priorities increments, presidents will consider individual performance, market conditions and other circumstances bearing upon individual contribution to program success.

D. The Board will have the discretion, but not the obligation, to contribute additional monies beyond salary policy to salary enhancement for lecturer ranks. The Board specifically reserves the discretion to allocate to increase salaries of faculty unit members holding professorial or librarian rank any and all such additional monies as may become available for salary increases.

E. Board representatives will provide to COHE representatives the following data relating to the new fiscal year salary distribution for each individual faculty unit member holding lecturer rank:

name
rank
department
university
prior fiscal year salary
new fiscal year salary
date of hire
date of current rank
performance increase (including the individual performance function and the sum of money available for distribution among the members of the group of employees with which the unit member had been classed)
dollars distributed to address institutional priorities (including which sums, if any, have been distributed on a one-time basis)
dollars distributed to correct for past bias
promotion increments
FTE
percent of full time
length of contract
date of birth
sex

race

The Board will provide these data to the president of the local COHE unit as soon as the Board has approved salary recommendations.

- F. The Board will provide COHE with information about any regression analyses of faculty salaries that it may elect to perform.
- H. At the time that annual appointment notices are issued in those years when the Legislature has appropriated funds to increase employee salaries, faculty unit members will receive an explanation of how their individual salary increases were determined. The notification will specify the dollar amounts distributed in recognition of their performance, to address institutional priorities or to correct possible discrimination. In years in which the Legislature has not appropriated funds to increase employee salaries, the annual appointment notice may omit details that are irrelevant to the proffered salary.
- I. The non-coaching portions of the salary of coaches will be adjusted pursuant to this agreement where their instructional or research duties bring them within the bargaining unit.

Except for summer session contracts extended to persons serving under fall-spring contracts, salary increases will become effective July 1. Summer session contracts will not be adjusted to reflect increases in salary affecting fall-spring contracts.

The new provisions here apply to lecturer ranks the principles and procedures that govern determination of salary increases for professorial ranks. This proposal funds lecturer raises from salary policy, and it provides for distribution of raises based upon performance in teaching or upon institutional priorities.

19.4 PROMOTION OR CHANGE IN RANK INCREMENTS (Board proposal)

A faculty unit member who is to be promoted or granted a change in rank will receive an increment based on the faculty unit member's current fiscal year base salary. If the faculty unit member's next fiscal year contract is for a different percentage of time or number of months than was in effect in the current fiscal year, the current fiscal year base salary will be adjusted to reflect such changes prior to the application of the following schedule of promotion increments:

Professorial Ranks:

~~Instructor to Assistant Professor -- 6%~~

Assistant Professor to Associate Professor -- 8%

Associate Professor to Professor -- 10%

Lecturer Ranks:

Instructor to Lecturer -- 4%

Lecturer to Senior Lecturer – 6%

Librarian Ranks:

Assistant Librarian to Associate Librarian -- 8%

Associate Librarian to Librarian – 10%

Once again, the proposed changes reflect the differentiation of ranks among professorial, librarian and lecturer ranks.

19.5 OVERLOAD, SUMMER TERM AND SELF-SUPPORT (COHEproposal)

Faculty unit members may not be assigned overload, summer term or self-support courses that would interfere with completion of other assigned responsibilities. The administration may only offer contracts for overload or self-support courses to faculty unit members whose primary responsibilities are instructional; such additional instructional responsibilities may only be offered to faculty unit members who already carry a course load equivalent to four three-credit hour undergraduate courses for the semester. Faculty unit members who are not under contract to perform externally funded research may be offered course assignments to teach during the summer session. Faculty unit members who accept such assignments will be compensated at the rate of **eight seven** percent of academic year base salary for each three credit hour course taught; provided that the rate may be increased by up to two percentage points to address exceptional circumstances. When determining whether additional compensation is warranted, the administration will take into account faculty effort required to prepare and to deliver the course, institutional resources provided to conduct the course and institutional opportunities deriving from the course. Among the factors considered in these connections, without limitation, will be current workload, extent of necessary new preparation, projected enrollments, availability of assigned assistants, technological resources and market driven limitations on course costs.

As the BOR recognizes, these courses usually require significant retooling for a different audience and delivery method. Fair compensation would necessitate that ten percent of a faculty's workload should be rewarded by ten percent pay. Of course, this would be straight-time pay for overtime work. (By the way, faculty are the only employees who make less than straight-time pay for overload work.) Eight percent merely returns this overload compensation to its earlier level, which is similar to peer institutions.

19.6 SALARY ADJUSTMENT AFTER RECEIPT OF TERMINAL DEGREE
(Board proposal)

Faculty unit members **holding professorial rank** who, while employed by an institution on a tenure track or tenure contract, earn a terminal degree appropriate for their assigned teaching or research responsibilities will be awarded a salary adjustment. The adjusted salary will not exceed the average salary in the discipline and at the rank among persons who hold appropriate degrees and rank. The adjustment will take effect during the academic year following that in which the degree is awarded. When determining the total salary increase for the year in which the market based salary adjustment will be given effect, the adjustment will be made prior to determination of any other form of salary adjustment for the fiscal year.

The proposed changes reflect the differentiation between professorial and lecturer ranks.

~~20.4 EARLY RETIREMENT PROGRAM~~ *(Board Proposal)*

~~The parties agree to charge a special committee to review the current legislation in order to determine how to reinstitute an early retirement program for faculty unit members. When the necessary legislation is passed, the parties intend that the program shall be available upon the effective date of that legislation, notwithstanding any other term or condition herein.~~

The referenced statute was repealed by SL 2007, ch 110, §§ 1 to 7.

Additional COMMENT: The Board also proposes to renumber the remainder of Article XX.

21.6 SABBATICAL, FACULTY UNIT MEMBER IMPROVEMENT AND CAREER REDIRECTION LEAVES *(Board proposal)*

A faculty unit member **serving on a tenure appointment** may be granted sabbatical leave after six (6) or more consecutive years of full-time employment in the system. A faculty unit member **serving on a tenure track or tenure appointment** may be granted faculty unit member improvement or career redirection leave after three (3) consecutive years of full-time employment in the system. Approval for such leave will be contingent upon the faculty unit member presenting plans for formal study, research, or other experiences which are designed to improve the quality of service of the faculty unit member to the institution, to the Board and to the state of South Dakota.

....

These changes make clear that sabbaticals, improvement and career redirection leaves are available only to persons serving on tenure track or tenured appointments.

22.9 NOTICE *(Board proposal)*

Unless otherwise provided, where notice is required to be given, it will be sufficient:

1. In the case of faculty unit members, if sent by ~~certified first class~~ mail to their last reported residential address, if it is delivered by electronic mail to the faculty unit members' official university electronic mail account or if hand delivered directly to the affected faculty unit member; In the case of COHE, if sent by ~~certified first class~~ mail to the institutional COHE president at the last reported residential address, or to the office of the COHE ~~UniServ Director, 3710 S. West Avenue., Sioux Falls, SD 57105,~~ or hand-delivered to the institutional COHE president or to an employee of the ~~Sioux Falls Pierre~~ COHE office;
3. In the case of the Board, if sent by ~~certified first class~~ mail to Board of Regents, 306 East Capitol Suite 200, Pierre, South Dakota 57501-3159, or hand-delivered to the executive director of the Board or to a clerical staff member on duty at the office of the executive director;
4. In the case of institutional presidents, if sent by ~~certified first class~~ mail to their respective institutional addresses, or hand-delivered to ~~an employee of the president or to a clerical staff member on duty at the respective president's-s president's~~ office;

and in all other cases, if sent by campus or regular mails to the institutional office or regular business address of the person or party. The parties agree that a signed receipt acknowledging hand delivery will be provided upon request.

Notice will be required only when the words "notice" or "notification" appear in this agreement.

~~Where notice is required to be given by a date certain, it~~ Notice will be effective ~~if~~ on the date ~~postmarked by the United States Postal Service, on the date sent electronically or on the date delivered by hand, by midnight of the day prior to the specified date. Where notice is required to be given within a certain time period, it will be effective if postmarked by the United States Postal Service by midnight of the last day of such time period.~~

In connection with disciplinary or grievance proceedings, the administration may agree in writing to accept electronic notices (by telefacsimile or electronic mail) from faculty unit members, or their chosen representatives. Such a writing will designate at least one administrator and at least one administrative assistant to whom notices must be addressed. In such cases, the notices will be deemed to be effective when sent.

The proposed changes facilitate the management of correspondence by eliminating the requirement for the use of certified mails – whose effectiveness can be circumvented deliberately by refusing to collect certified mail from postal authorities. They also allow institutions to use electronic mail addresses to notify faculty members of contract-related matters, just as they do for other purposes. Finally, they permit the administration to agree to accept electronic notices from faculty members in connection with disciplinary or grievance proceedings.

(Board proposal)

APPENDIX C

GRIEVANCE FORM - STEP 2
South Dakota Board of Regents

Institution _____ Date _____

Name _____

Department or division _____

Address to which mailings pertaining to this grievance will be sent:

Provision(s) of agreement violated (for each provision, stipulate division and section):

Statement of grievance: Be specific. (Document a specific factual basis for the complaint that, if proven, would establish that an action attributable to the administration deprived the individual employee of a right arising under such term or provision. A faculty unit member may not rely upon mere conclusions, general allegations and speculative statements to establish a factual ground for the claim that a provision has been misinterpreted, misapplied or a violation. Faculty unit members must cite specific facts and circumstances known to them first hand or to another first hand who is willing to testify to their existence or established through official governmental publications or other published documents whose authenticity and reliability cannot reasonably be doubted, together with such factual inferences as may be drawn from such facts.):

Remedy desired: _____

Evidence of informal adjustment attempted: _____

Attach copies of any documents submitted to the Department Head at Step 1 and of the written response to the grievance at Step 1, together with a short statement of the reasons for believing that the Step 1 response was erroneous. _____

I will be represented in this grievance by:
COHE _____ Legal Counsel* _____ Myself _____

I request the intervention or assistance of a peer faculty committee at Step 3: YES NO

Signature of grievant:
Date of filing:
Received by:
Position title:

* If represented by legal counsel, provide the name, address, telephone and electronic mail address of the attorney.

(Board proposal)

APPENDIX D

GRIEVANCE REVIEW FORM – STEP 3 4
South Dakota Board of Regents

Date: _____ I hereby request that the executive director review the attached decision made in connection with the attached grievance because (specify what mistakes of fact or law undercut the findings of the president at Step 3):

I received the Step 2 decision on (date):

Attach copies of any documents you submitted at Steps 1, 2 or 3A, together with written responses received at those steps. For grievances processed under Step 3B, also attach the recommendations of the faculty hearing panel, the hearing transcript and the decision of the president

I will be represented in this grievance by:
COHE _____ Legal Counsel* _____ Myself _____

Signature of grievant:
Date of filing:
Received by:
Position title:

* If represented by legal counsel, provide the name, address, telephone and electronic mail address of the attorney.

The proposed changes to Appendices C and D require grievants to explain the defects that they believe undercut the decisions reached at lower levels and to include the critical elements in the record with their appeal forms.

APPENDIX G (*COHE*proposal)

Statement Concerning Faculty Expectations

Civility in working with colleagues, staff members, students and others

Universities play a special role in preparing students to lead the complex social organizations through which businesses and professions operate and through which free people govern themselves. Students must be taught, and they must be shown through the example given by institutional employees, that members of stable, effective and prosperous social organizations observe norms of conduct under which all participants treat one another civilly and carry out their respective tasks in a constructive and informed manner. Complex social organizations derive their strength from the cooperation of those who participate in them. By virtue of their special role in preparing future generations of leaders, universities have a particular concern with conduct that destroys the bonds of cooperation and common purpose on which society rests by demeaning members of the community, and such conduct cannot be tolerated in an institution whose very purpose is to shape the skills and conscience of the rising generations.

Faculty members are responsible for discharging their instructional, scholarly and service duties civilly, constructively and in an informed manner. They must treat their colleagues, staff, students and visitors with respect, and they must comport themselves at all times, even when expressing disagreement or when engaging in pedagogical exercises, in ways that will preserve and strengthen the willingness to cooperate and to give or to accept instruction, guidance or assistance. In all cases, the burden to prove the charges shall rest with the administration.

This change merely makes this section consonant with the earlier proposal in § 7.7.

(Board proposal)

**BOARD
APPENDIX R**

The substantive policies governing the ownership, protection and commercialization of intellectual properties discovered, invented, authored or created in the course of employment involve matters of public policy and are not subject to collective bargaining negotiations. These policies are set for in Board Policy No. 4:34. Policies with respect to royalty distribution to faculty unit members are set forth below in section 6 of Board Policy No. 4:34.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Intellectual Property

NUMBER: 4:34

...

6. Intellectual Property Income Distribution Policy

Where the institution retains title to an intellectual property **and income is created that has been commercialized and yields income**, the creator will receive 50 percent of all net revenues realized by the institution from commercialization of the property. Net revenues will equal gross revenues reduced by taxes or other governmental fees, charges or assessments and commercially reasonable direct costs that the institution **incurs may have incurred** to **protect and to** develop the property and to realize the property's commercial value. Where two or more employees contributed to the creation of the property, the creator's share of revenues will be divided among them equally, unless the employees agree upon a different distribution among themselves and notify the institution in writing of their agreement.

These provisions merely clarify the intent of the revenue sharing provision.

(Board proposal)

Appendices E (Performance Deficiencies and Unacceptable Conduct), G (Statement Concerning Faculty Expectations), O (Promotion Standards), P (Tenure Standards), Q (Investigator Financial Disclosure) and R (Conflict of Interest) shall be removed from the agreement to in their entirety, and only the revenue-sharing provisions of Appendix S will remain in the agreement. All references to the appendices will be stricken from the agreement and replaced by references to the pertinent Board policies.

These provisions all declare the standards of performance for public employees and, as such, were improvidently included in the bargaining agreement. Because they involve the determination of matters of public policy, they must remain subject to public control through the political process.

ARTICLES SUBJECT TO TENTATIVE AGREEMENT:

I. DEFINITIONS (Board Proposal)

For the purpose of this agreement:

...

- 1.7 **"Department head."** Wherever in this agreement reference is made to "department head," the same also includes any supervisor designated by the president to perform the functions that this agreement describes as being discharged by the department head. **For an extension program, a faculty unit member's immediate supervisor is the respective program leader.**

~~20.3 — FRINGE BENEFITS COMMITTEE~~ (Board proposal)

~~A committee will be established to conduct an annual review of fringe benefits provided to faculty unit members and make recommendations to the executive director and COHE concerning fringe benefits. The committee will consist of two (2) faculty unit members appointed by COHE and two (2) administrators appointed by the Board. Meetings of this committee will be scheduled by mutual agreement.~~

~~The committee will make its report to COHE and the Board not later than October 15, and May 15 of each subsequent year.~~

If this committee was ever active, it has not been since the time that the Legislature required that all Board of Regents employees participate in the state health plan, in 1988. In effect, faculty unit members are required to participate in state benefit plans; i.e., the Board lacks discretion in such matters, and they cannot be made the subject of negotiations. Hence, the provision should be removed as having lost its utility.

22.3 SYSTEM-WIDE COMMITTEES (Board proposal)

Each system-wide committee provided by this agreement will be constituted by October 1 and will complete its duties prior to April 1. The committees included in this provision will be the **Fringe Benefits Committee**, Salary Committee, System Workload Committee, and any other system wide committee(s) agreed to by the parties.

This merely coordinates § 22.3 with the proposal to strike § 20.3 as anachronistic surplusage.

25.1 EFFECT AND DURATION (Board proposal)

This agreement will take effect when signed and ratified by both parties. It will remain in full force and effect through the 30th day of June ~~2011~~ 2014, except to the extent that modification is required in order to respond to changes in statute or regulation or to binding court decisions. Notwithstanding this limitation, the parties may reopen talks concerning §19.1 in the event that the Board fails to provide funds to supplement salary policy for a fiscal year

On or before the first day of March ~~2011~~ 2014, either party may notify the other that it wishes to renew or modify this agreement. In this event, the parties will meet no later than the 15th day of March ~~2011~~ 2014, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June ~~2011~~ 2014, the parties may mutually agree to extend the force and effect of this agreement.

Three year agreements have proven to be an effective and efficient mechanism to manage the contract.