

# PROVISIONS REVISED DURING APRIL 8-11, 2011 ROUND OF NEGOTIATIONS

## I. DEFINITIONS (*COHE proposal*)

For the purpose of this agreement:

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

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

Faculty unit members holding librarian rank ~~manage~~ engage in a variety of duties including by not limited to managing 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. Faculty unit members holding librarian rank may be expected to maintain familiarity with evolving professional standards for librarianship and library practice and to conduct research and to formulate recommendations to help align South Dakota university libraries with best practices for academic libraries. In addition, they may engage in publication and presentation that enhance the profession and comport with their positions and assigned responsibilities. Representative duties may include but are not limited to administrative or professional responsibility for a library program or function such as reference and research, information literacy, government documents, serials collections,<sup>1</sup> 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.

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

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.

## **9.2 WORKLOAD (Board proposal)**

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; provided that the equivalent of three credit hours per year may be assigned to service functions.

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.

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

A higher education faculty unit member holding professorial rank who enters into private practice, private paid 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 paid consulting or other paid professional activities on the terms allowed herein is limited to faculty unit members employed full-time and assigned professorial or librarian rank. Such faculty unit members may receive permission to enter into private paid consulting agreements with outside parties, where the contracted services will promote benefit the institution by promoting state and local economic development, or benefit the professional discipline and development of the individual or otherwise; provided that and where the services will not interfere with their the individual faculty unit member's primary employment responsibilities. Prior authorization will be required for each private paid consulting agreement to be performed during a period when the faculty unit member is under contract with the institution or when required under the conflict of interest policy or when the consulting agreement will require the faculty unit member to waive patent or intellectual property rights. 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 private paid

consulting ~~and other professional~~ agreements that present actual or potential conflicts of interest or conflicts of commitment may be granted subject to a conflict management plan.

3. Use of institutional facilities, space, equipment, or support staff for private paid 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 private paid 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 private paid 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 private paid consulting ~~or other paid professional agreement or activity~~.
5. Faculty unit members who wish to arrange private paid 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 private paid 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 private paid consulting or other paid professional service must ensure that such activities do not require commitments that exceed four days in any single month, and must arrange such activities so as not to interfere with regularly scheduled instructional or advising activities or scheduled research activities.
6. Faculty unit members must submit for prior review any proposed private paid 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 private paid 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 private paid 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. In order to document paid consulting leave for purposes of federal effort reporting and to assure avoidance of conflicts of commitment, each ~~Each~~ faculty unit member who has engaged in private paid 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 private paid consulting ~~or other paid professional activities~~ and the days of service provided for each such employer.

#### **12A.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS (Board counterproposal)**

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, which shall be no earlier than September 5, as may be specified under institutional promotion and tenure procedures or, in the absence of such institutional procedures, October 5.

#### **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).

Tenure involves a mutual commitment between the institution and the most expert of its faculty members. Tenure encourages outstanding faculty members to remain at the institution and, by virtue of the rigorous standards that must be met to receive tenure, secures for students and the South Dakota public distinctive counsel to assure that the content and delivery of the curriculum is always consistent with the norms for quality expected in the academy and the marketplace and to assure that design and conduct research, scholarship and creative artistic endeavor expands knowledge and supports the growth of the state's economic, cultural and community resources.

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.<sup>2</sup> A

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<sup>2</sup> Board counterproposal responding to questions COHE raised at the 1/5/11 bargaining session.

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.

#### **15.1 PREAMBLE (Board proposal with COHE counterproposal)**

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 parties acknowledge that the general faculty of the South Dakota system of public higher education has proven itself, over generations, to adhere to the highest standards of academic professionalism and decency. On very rare occasions, individual faculty members have engaged in activities that violate these standards. Such violations, when duly established, will result in defined disciplinary measures.

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.

#### **15.2 ALTERNATIVE MEASURES (Board proposal)**

In the most usual cases, where institutional administrators are concerned that a faculty unit member has not met expectations for competent, productive, effective or ethical performance or has engaged in conduct that might warrant corrective action through disciplinary measures, initial actions may be informal conversations to reinforce administrative expectations. Likewise, ordinarily, disciplinary actions may be applied progressively with resort to coercive or punitive measures coming after less intrusive actions have failed to change the faculty unit member's behavior.

Nothing in this section either precludes or requires such usual and ordinary practices.

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),~~ The 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.

### ***15.3 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.

When the disciplinary action is a discharge and the individual invokes the grievance procedures, the faculty unit member will be placed on interim suspension as provided in § 15.4 during the pendency of grievance before the institution or the Board.

~~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.

#### ***15.4 INTERIM SUSPENSION (Board proposal)***

Unlike a disciplinary suspension under paragraph 5 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 or during the pendency of a grievance brought to challenge a discharge.

The decision to place a faculty unit member on interim suspension pursuant to this section does not require compliance with the Stage 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 In exceptional circumstances, the administration may withhold pay. Such suspension without pay ordinarily is appropriate, 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.

#### **15.5 NONDISCIPLINARY ACTION** (*Board proposal*)

The procedures set forth in this article will also be used, to the extent practicable, where incapacity prevents a faculty unit member from discharging essential functions.

#### **17.1 STATEMENT** (*COHE proposal*)

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.

Administrators may maintain working files to document faculty unit member performance. Such working files will be separate from the official personnel file. 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.

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#### **18.2 OFFICE SECURITY** (*Board proposal*)

The institution will furnish the faculty unit member a lockable desk or a lockable file. 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.

**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.

**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 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.

**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.

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

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

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ii. Performance ratings will be based upon the annual performance evaluation conducted according to institutional practice.

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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 in each area of professional responsibility, i.e., teaching, scholarship and service, based upon department head comments recorded as part of the annual evaluation of performance. Areas of professional responsibility will be determined with reference to expectations for professorial or librarian ranks as modified by workload. 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. The performance ratings thus assigned in each category will be multiplied by the percent of effort for that category stated as part of the annual evaluation.
- d. The resulting products for each area of responsibility will be added together to derive an overall, weighted performance rating.
- e. Any unit member whose overall, weighted performance rating is less than 1 will be assigned the number 0. Other overall, weighted performance rating values will be employed according to their derived values.
- 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 Associate Librarian	1.04	1.01
Assistant Professor or Assistant Librarian	1.03	1.00
Instructor	1.00	

- vi. The overall, weighted performance rating will be multiplied by the rank-adjusted salary. The product of this operation will equal the individual faculty unit member's performance salary points.
- vii. The individual faculty unit member's performance salary point for the year will be averaged with the individual faculty unit member's performance salary points for the two immediately prior years, and the resulting number will be the weighted performance salary point and will form the basis of the determination of formula-driven performance distribution as provided in this Article. Where individual faculty unit members were not assigned performance salary points for either two the immediately prior years, the assigned performance salary points for the current year will be used for purposes of the formula-driven performance distribution; if a performance salary point was assigned for one of the two immediately preceding years, a weighted performance salary point for the current year will be derived by averaging the current year with that year.
- viii. The individual faculty unit member's weighted performance salary point for each individual unit member within a rating group will be added together to form the grouping's total weighted performance salary points.
- ix. The total weighted performance 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.
- x. The weighted performance salary point for each unit member will be multiplied by the standard performance factor to yield for each individual the formula-driven performance increase.

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At the time that annual appointment notices are issued in those years when the state provides salary policy, 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 those years when the state provides no salary policy, the annual appointment notice may omit details that are irrelevant to the proffered salary, but it will indicate that no salary policy was provided that year.<sup>3</sup> Each year, faculty unit members will be notified of the performance salary point assigned for the year and of the weighted performance salary point for the year.

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<sup>3</sup> The parties reached tentative agreement to this subparagraph at their March 15, 2011 bargaining session.

### **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.
- a. 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 overall performance rating will be multiplied by the salary. The product of this operation will equal the individual faculty unit member's performance salary points.
  - vi. The individual faculty unit member's performance salary point for the year will be averaged with the individual faculty unit member's performance salary points for the two immediately prior years, and the resulting number will be the weighted performance salary point and will form the basis of the determination of formula-driven performance distribution as provided in this Article. Where individual faculty unit members were not assigned performance salary points for either two the immediately prior years, the assigned performance salary points for the current year will be used for purposes of the formula-driven performance distribution; if a performance salary point was assigned for one of the two immediately preceding years, a weighted performance salary point for the current year will be derived by averaging the current year with that year.
  - vii. The individual faculty unit member's weighted performance salary point for each individual unit member within a rating group will be added together to form the grouping's total weighted performance salary points.



viii. The total weighted performance 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.

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

x. 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 state provides salary policy, 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 those years when the state provides no salary policy, the annual appointment notice may omit details that are irrelevant to the proffered salary, but it will indicate that no salary policy was provided that year.<sup>4</sup> Each year, faculty unit members will be notified of the performance salary point assigned for the year and of the weighted performance salary point for the year.
- 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.

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<sup>4</sup> The parties reached tentative agreement to this subparagraph at their March 15, 2011 bargaining session.

### **19.5 OVERLOAD, SUMMER TERM AND SELF-SUPPORT (Board counterproposal)**

Faculty unit members may not be assigned overload, summer term or self-support courses that would interfere with completion of other assigned responsibilities. For purposes of this section, summer term and self-support classes include only courses assigned in addition to a faculty unit member's base course load. 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 overload or summer term assignments will be compensated at the rate of 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. Faculty unit members who accept self-support assignments will be compensated at the rate of eight 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.

If a course exceeds or falls short of three credit hours, the compensation will be adjusted pro rata. When a course fails to meet the specified minimum enrollment, the contract may be voided by the administration, or the faculty unit member may ~~request an opportunity~~ elect to teach the course at reduced compensation. The administration of each university will determine the minimum enrollment needed, consistently with sound fiscal practices, to justify offering a class. Faculty unit members will be advised of the minimum enrollments specified by the university administration at the time that the contract is offered. Where a course has not achieved minimum enrollment by one week prior to the first scheduled class meeting, the administration will contact the faculty unit member to discuss whether the faculty unit member would be willing to teach the course at reduced compensation.

When the university administration determines that it will schedule a course for the summer term or as a self-support offering, it will advise faculty unit members in the relevant department of the employment opportunity.

### ***19.7 HIGHER EDUCATION SALARY COMMITTEE (Board Proposal)***

A joint COHE/BOR standing committee shall be formed for the purpose of identifying warranted salary adjustments among faculty unit members. Such committee shall be formed and shall operate under the following guidelines:

1. The committee shall consist of four (4) members; two (2) appointed by COHE and two (2) appointed by the Board;
2. Expenses of members shall be the responsibility of the appointing parties;
3. The committee, in consultation with local administrations and local COHE organizations, will investigate roles that market data and other appropriate factors might play in the determination of salary increases for individual faculty unit members;
4. By October 1 of each year the committee will recommend to the executive director of the Board and the COHE UniServ director a model or models for the distribution of salary dollars.

Committees consisting of two (2) faculty unit members appointed by the local chapter of COHE and two (2) administrators appointed by the president will be continued on each campus to review current policies and practices regarding summer sessions, continuing education and extension and make recommendations to their respective presidents, specifically noting any recommendations not unanimously agreed upon by the members of the committee. The student association on each campus may appoint a student observer to be present at committee meetings. Plans and policies so developed shall be shared with corresponding committees at other institutions in an effort to develop uniformity with respect to policies on summer session and continuing education.

Modifications of locally agreed policies on any campus may be proposed by the president or local COHE chapter by November 1 to be resolved by the processes described above.

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

### ***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.

From time to time the parties may establish such special system-wide committees as they deem

convenient. Such committees shall operate under the following guidelines:

1. The committee will consist of at least four (4) members, with one half the membership appointed by COHE and one half appointed by the Board;
2. Expenses of each member will be the responsibility of the appointing party;
3. The constitution of such committees and their charges will be subject to the agreement of the Executive Director of the Board and to the statewide President of COHE; and
4. Committee reports will be submitted to the Executive Director of the Board and to the statewide President of COHE.

Under the 2011-2014 agreement, two committees will be established:

Given the existence of documentation that some highly effective faculty unit members have salaries that are less than sixty-five percent (65%) of the Oklahoma Survey Average Salary for persons of like rank and tenure status, the parties agree to establish a system-wide committee will review the operation of the salary distribution system in order to assess the factors the yielded that result and the feasibility of corrective measures.

Given reports that faculty unit members perceive themselves to have few effective options short of adversarial grievance procedures to express concerns about supervisor competence, judgment or fairness, the parties agree to establish a system-wide committee to review the feasibility and effectiveness of alternative measures to allow faculty unit members to bring concerns to the attention of senior administrators.

## **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;
5. In connection with disciplinary or grievance proceedings, the administration's initial notice will be by first class mail to the faculty unit member's home address, and may be accompanied by simultaneous delivery by electronic mail to the faculty unit members' official university electronic mail account.
6. In any case in which a faculty unit member, administrator, COHE, the Board or an attorney representing such person, official or entity uses electronic mail, telefacsimile or other electronic communications systems to send or to respond to a notice, the sender will be deemed thereby to have consented to the use of electronic mail to deliver any subsequent, related correspondence, including notices, to the electronic mail address, telefacsimile number or other electronic address used by the sender.

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 (whether by electronic mail, telefacsimile or other electronic communications system), 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.~~