

South Dakota Council of Higher Education

Proposed Amendments to the COHE/BOR Bargaining Agreement

Released: January 3, 2011

I. DEFINITIONS

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

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

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.

IV. SHARED GOVERNANCE

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.

VII. CONTRACT DISPUTES

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.

7.7 STEPS FOR PROCESSING A GRIEVANCE

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.

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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.

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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

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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.

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

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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.

8.6 NONRENEWAL OF TENURE TRACK CONTRACTS

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.

11.7 INFORMAL EVALUATION

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.

12.4 PROMOTION AND TENURE COMMITTEE FORMULATION

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. 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.

12.5 PROCEDURES FOR PROMOTION RECOMMENDATIONS

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.

15.2 ALTERNATIVE MEASURES

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 PROCEDURES

~~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.

XVII. Personnel Files

17.1 STATEMENT

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

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.

XIX. SALARY PROVISIONS

19.1 SALARY PROVISIONS

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.

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(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.

19.5 OVERLOAD, SUMMER TERM AND SELF-SUPPORT

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.

APPENDIX G

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.