

# SPECIAL SCHOOLS

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Agreement Between the  
**SOUTH DAKOTA BOARD OF REGENTS**  
And the  
**COUNCIL OF HIGHER EDUCATION**  
An Affiliate of South Dakota Education Association  
and the National Education Association



July 1, 2021 – June 30, 2024

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## I. DEFINITIONS

For the purpose of this agreement, unless explicitly defined differently elsewhere in this agreement:

- 1.1. "Academic governance" means all senates, academic councils, or similar entities at system institutions, as presently constituted or subsequently modified and approved by the faculty, recommended to the Board and approved by the Board.
- 1.2. "Adjunct Professor" means a person whose primary employment is outside of the institution but who is given a courtesy appointment with or without a specific teaching/research assignment.
- 1.3. "Administration" or "administrator" means non-bargaining unit personnel employed at the institutions and the executive office of the Board who have supervisory or managerial responsibilities.
- 1.4. "Board" means the South Dakota Board of Regents.
- 1.5. "COHE" means the Council of Higher Education.
- 1.6. "Day" means calendar day, unless otherwise indicated.
- 1.7. "Department" or "division" means the smallest grouping of disciplines which are administratively organized.
- 1.8. Wherever in this agreement reference is made to "department head," the same also includes any supervisor designated by the president to perform the functions that this agreement describes as being discharged by the department head. For an extension program, a faculty unit member's immediate supervisor is the respective program leader.
- 1.9. "Executive director" means the executive director of the Board as established by SDCL 13-49-10, or designee.
- 1.10. "Faculty unit member" means an employee of the Board included in the collective bargaining unit as defined in **Appendix A**.
- 1.11. Gender--any reference to gender is all-inclusive.
- 1.12. Number--the singular includes the plural.
- 1.13. "Peer group" or "peer faculty committee" refers to such groups or committees drawn from the faculty unit membership as may be convened from time to time to review administrative action.
- 1.14. "Policy manual" means the compilation of rules, regulations and policies of the Board.

- 1.15. "Special Schools" or "Institution" or "School" means the South Dakota School for the Blind and the Visually Impaired and the State School for the Deaf.
- 1.16. "Superintendent" means the chief executive officer of either or both of the Special Schools, or designee.
- 1.17. "Will" is a verb having the mandatory sense of "will" or "must." It is a word of certainty, while the word "may" is one allowing discretion.
- 1.18. "Working days" means those days when the offices of the institution or Board are open for business.
- 1.19. "Working file" 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 in order to document the performance of a faculty unit member.



## **II. RECOGNITION**

### ***2.1. RECOGNITION STATEMENT***

The Board recognizes COHE as the exclusive representative of the collective bargaining unit, as determined by the Division of Labor and Management Document No. 12E 1976/77, dated the 11th day of August, 1977, or as may be modified by this agreement, for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, grievance procedures and other conditions of employment. The bargaining unit composition is referenced in **Appendix A**.

### ***2.2. MEMBERSHIP UNIT LISTS***

The executive director will furnish COHE a list of names and residential addresses of bargaining unit members, compiled as of each October 1 and February 15. Lists will be forwarded by the executive director to the UniServ director of COHE on or before the 15th of the following month. The executive director and COHE will discuss any disputes of names included or not included on the list, in order to resolve their status. In the event that the executive director and COHE cannot resolve a dispute regarding membership in the bargaining unit within forty (40) working days, the name(s) in the dispute will be submitted to the Division of Labor and Management for determination of the status of the person(s) in dispute.

### ***2.3. CHANGES IN UNIT MEMBERSHIP***

Each institution will furnish the president of the local COHE chapter a list of changes in the bargaining unit membership at the institution within fifteen (15) working days of the date those changes are approved by the Board.

### ***2.4. EXCLUSIVITY***

The Board agrees not to recognize or negotiate with unit members or with organizations, other than COHE, claiming to represent the faculty unit on matters reserved to COHE by § 2.1.

### **III. MANAGEMENT RIGHTS**

#### **3.1. STATEMENT**

Nothing in this agreement will derogate or remove any power, right or prerogative possessed by the Board or its administrative staff except where such power, right or prerogative is legally and specifically limited by this agreement.

#### **3.2. SPECIFIC MANAGEMENT PREROGATIVES**

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

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

#### **3.3. LIMITATIONS**

The exercise of management rights will not be used for the purpose of undermining COHE or discriminating against any employee.

### **3.4. INCORPORATION BY REFERENCE**

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

### **3.5. GENERAL BENEFITS**

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

## **IV. COHE STATUS**

### **4.1. MEETING FACILITIES**

Upon annual written request to the superintendent, COHE meetings will be permitted at the institution without charge, if appropriate facilities are available, during that school year. If special services are required, a charge may be made for such service.

### **4.2. BULLETIN BOARDS**

COHE may post notices on a shared basis with campus groups on existing bulletin boards customarily used for general notices to the faculty. If prior approval of notices appearing on these bulletin boards is needed, this prior approval must also be obtained for COHE notices.

### **4.3. RESERVED**

### **4.4. CAMPUS NEWSLETTERS**

COHE may place an announcement in the institutional faculty newsletter, when published, stating the date, time, place and agenda of any COHE meeting. The format of the announcement will be determined in accordance with regular editorial policy.

### **4.5. BOARD OF REGENTS MEETINGS**

COHE may request in writing to be placed on the tentative agenda and heard by any committee or the Board at a regularly scheduled meeting, provided that such written request, containing the content to be discussed, is made known to the executive director at least twenty (20) working days prior to the first day of the meeting.

Upon written request of COHE, the executive director will, within ten (10) working days, make available one (1) copy of any public document published by the Board or an institution that is not available on the Board website.

### **4.6. COHE BUSINESS**

Authorized representatives of COHE may transact official business on institutional property provided that this does not interfere with or interrupt normal institutional operations or other institutional personnel in the performance of their duties or conflict with other articles of this agreement. No faculty unit member will engage in COHE activities or the preparation of litigation or grievances against the institution or the Board during the time for performing scheduled teaching or other assigned institutional duties.

#### ***4.7. COHE LEADERSHIP LEAVE***

The statewide officers or alternative designees of COHE or SDEA/NEA may be given time off for the purpose of serving a leadership capacity, subject to the following provisions:

1. That the written request for time off be approved by the member's immediate supervisor. The superintendent may deny such leave if it will significantly detract from the normal operations of the institution. If any such request is denied, the reasons for such denial will be stated in writing.
2. That the written request for time off be submitted to the superintendent no fewer than thirty (30) calendar days prior to the beginning of the semester for which the time off is applicable.
3. That COHE reimburse the unit member's institution for the amount of salary, fringe benefits and other direct costs corresponding to the time off at the conclusion of the academic year.

COHE members granted such leave will receive credit towards salary and fringe benefit increases as if they were not on leave.

#### ***4.8. COHE RESPONSIBILITIES***

COHE will designate the membership of an institutional peer group as soon as practical after the unit membership list is received. The membership will continue until replacements have been named. Where specific peer groups are required under the contract, the institutional COHE president will select the members of the group or committee; provided that no person may be assigned to a group or committee convened to review an administrative action involving the department or division to which the individual is assigned.

Should the Board charge that a member or members of the bargaining unit are engaged in illegal activities as per SDCL ch. 3-18, notification will be sent to the COHE director by registered mail. COHE will immediately, by registered letter, so notify such member or members of the receipt of the Board charge and will advise such member or members that their actions are governed by SDCL ch. 3-18. If it will be objectively established that such Board charges have substance, COHE will notify in writing such member or members of the opinion. Copies of such correspondence will be forwarded to the Board's executive director.

#### ***4.9. ATTENDANCE AT MEETINGS OF THE BOARD OF REGENTS***

The president of COHE may attend each meeting of the Board and speak on faculty issues. The COHE president will not be charged leave without pay, but will arrange compensation time, rearrange classes or pay a substitute, if the preceding options are not possible.

## **V. ACADEMIC GOVERNANCE**

### ***5.1. GENERAL STATEMENT***

Academic governance at each institution will exercise all the rights, powers and prerogatives heretofore possessed, except to the extent that such rights, powers and prerogatives are in conflict with the rights, powers and prerogatives provided to COHE by this agreement.

### ***5.2. CURRICULUM COMMITTEES***

Curriculum committees will be established for the purpose of studying curriculum development at the special schools. The membership of the curriculum committee will include at least three faculty unit members. The committees will be responsible for providing their recommendations to the superintendent regarding curriculum change or development of a curriculum area.

If the administration intends to contract with a faculty unit member for special curriculum work (i.e., special projects that are not within the scope of service on the curriculum committee) it will provide all faculty unit members with an opportunity to apply.

## VI. NONDISCRIMINATION, CIVIL RIGHTS AND AFFIRMATIVE ACTION

### 6.1. STATEMENT

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

In those cases where the grievance rests in whole or in part on allegations that an institutional action involved prohibited discrimination, the grievance will be pursued using the procedures stipulated in Board Policy No. 1:18, attached as **Appendix H**, and not the procedures contained in Article VII or XIII. The local COHE president will receive any notice provided to the grievant as part of the procedures stipulated in Board Policy No. 1:18. Board Policy No. 1:18 has been incorporated into this agreement in order to reduce the likelihood that grievants and parties charged will be subject to multiple hearings and to provide for orderly, consistent mechanisms to achieve a timely resolution to discrimination claims that may involve allegations of conduct by administrators, students, unit or non-unit faculty members or other persons employed or involved in institutional activities.

## **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 grievance procedure will not be necessary. The purpose of this article is to promote prompt and efficient procedures for investigating and resolving grievances.

#### **7.2. GRIEVANCE RIGHTS**

Any individual faculty unit member or group of faculty unit members may at any time request the informal resolution of a grievance. When the grievance is processed by an individual faculty unit member or a group of faculty unit members, they may process the grievance without the involvement of the COHE representative. It is the responsibility of the administration to provide the local COHE president with a copy of any such grievance and to notify its representatives of the times and places of meetings at which they might be present. The institution will provide COHE with a written statement of any resolution.

#### **7.3. DEFINITIONS**

For the purpose of this article:

1. The term "grievance" means an alleged misinterpretation, misapplication or violation of a specific term or provision of this agreement; provided that allegations supporting the claimed grievance assert a specific factual basis for the complaint that, if proven, would establish that an action attributable to the administration deprived the individual employee of a right arising under a specific term or provision of this agreement. A faculty unit member may not rely upon mere conclusions, general allegations and speculative statements to establish a factual ground for the claim that a provision has been misinterpreted, misapplied, or violated. Faculty unit members must cite specific facts and circumstances known to them first hand or to another first hand who is willing to testify to their existence or established through official governmental publications or other published documents whose authenticity and reliability cannot reasonably be doubted, together with such factual inferences as may be drawn from such facts. The term "grievance" does not include claims for damages or other general relief based upon allegations that sound in tort, claims for damages or other contract relief available solely through the judiciary, or claims alleging that provisions of this agreement, or incorporated statutes, rules or policies, violate constitutional or legal restrictions unrelated to terms and conditions of employment.
2. The term "grievant" means a named faculty unit member or a group of named faculty unit members. The term "grievant" may also refer to COHE where the organization brings a grievance to vindicate a right guaranteed to COHE by a specific term or condition of this agreement.



3. "Working days" means those days when the offices of the institution or Board are open for business--Monday through Friday--exclusive of legal holidays. Working days will not be counted under special circumstances where the unit member is unavailable to process his or her grievance by reason of travel or absence necessitated for continuing education, professional conferences or scholarly activities, in special cases of emergency, during holiday or vacation periods when classes are not in session (in the case of 12-month faculty, during annual leave, or during a noncontract period), all excepting where a grievance has already been filed and where an extension of time has not been made the subject of a written agreement.

#### **7.4. REPRESENTATION**

Faculty unit members, in processing grievances, may represent themselves or be represented by someone of their choice. If a faculty unit member chooses to be represented by another person, the faculty unit member must provide the administration with written and personally signed notice that another person, organization or firm has been authorized to serve as the formal representative. No action taken by a representative will be recognized as having any effect under this agreement until such a signed notice has been received by the administration. Beginning at Step 1, COHE and the administration will have the right to have an observer present at all meetings between the parties called for the purpose of discussing grievances. The president of the institutional COHE chapter will be informed in writing at least two (2) working days in advance of any such meeting. No resolution of any individually processed grievance may be inconsistent with the terms of this agreement.

#### **7.5. CONFIDENTIALITY**

To the extent permitted by law, the grievance proceedings will be confidential. No meeting or hearing conducted pursuant to § 7.7 will be open to the public and witnesses will be directed not to disclose the substance of any matter disclosed to them in the course of a meeting or hearing. Notwithstanding the foregoing, where a grievant, a grievant's representative, COHE or a third party causes or acquiesces to publication, whether in the press or otherwise, of information about the grievance or grievance proceedings, the administration or the Board shall have the power, but not the obligation, at its sole discretion to make such disclosures as it deems necessary to assure the public or interested parties of the regularity of proceedings or to correct misstatements of fact or otherwise misleading statements. If the Board elects to issue a written statement to the public, it will provide the local COHE president with a copy of the statement.

#### **7.6. TIME LIMITATIONS**

When any action which is required to be taken within a specified time period is not taken in time, the following will apply:

1. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and the grievance will be time-barred.
2. In the case where the administration fails to act in time, the grievant may proceed to the

next review level and any subsequently issued decision on the matter at the bypassed level will be void.

**7.7. INFORMAL PROCESS FOR OBTAINING REVIEW OF COMPLAINTS ABOUT SALARY OR WORKING CONDITIONS, REGARDLESS OF WHETHER OR NOT THESE MIGHT CONSTITUTE GRIEVANCES**

- 1 If a faculty unit member has a complaint with salary or working conditions, regardless of whether or not the complaint might constitute a grievance under this Article, the complaint should be addressed informally with the unit member's immediate supervisor.
- 2 If, after such discussion, the faculty unit member is not satisfied with the disposition of the complaint, the faculty unit member will have the right to have a local COHE representative assist in further efforts to resolve the complaint informally with the supervisor or any other appropriate administrator.
- 3 If the faculty unit member remains unsatisfied with the handling of the complaint, and if the complaint would state a grievance under this Article, the faculty unit member may file a grievance within the time limitations and in the manner fixed in § 7.8.

**7.8. STEPS FOR PROCESSING A GRIEVANCE**

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

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

A grievant must first present a grievance, identified as such, in writing, personally executed by an individual grievant, or by a duly authorized COHE officer where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement, and informally, in accordance with the prescribed grievance form [**Appendix B--Grievance Form--Step 1**], at the lowest administrative level having authority to dispose of the grievance and with the COHE chapter president. The grievance must be filed using the prescribed grievance form **Appendix B--Grievance Form--Step 1**. The faculty unit member, or each individual unit member where more than one files a grievance, must sign the grievance form. If a faculty unit member chooses to be represented by another person, the faculty unit member must provide the administration with written and personally signed notice that another person, organization or firm has been authorized to serve as the formal representative. No action taken by a representative will be recognized as having any effect under this agreement until such a signed notice has been received by the administration. A duly authorized COHE officer may sign the form where COHE has brought the grievance to vindicate rights guaranteed to COHE under this agreement.

The grievance must be filed within fifteen (15) working days of the date on which the grievant knew or should have known of the action or condition which occasioned the grievance. This deadline is not extended for faculty unit members who follow the informal complaint procedure established in § 7.7.

In order to satisfy the specificity requirements for grievances, faculty unit members must allege specific facts and circumstances that they know firsthand or for which they can provide first-hand witnesses. Alternatively, faculty unit members may rely upon official governmental publications or other credible, published documents to ground their factual allegations. They may also rely upon any factual inferences that may be drawn from such facts.

Faculty unit members will not satisfy the specificity requirements if they cite only mere conclusions, general allegations and speculative statements. Mere conclusions, general allegations and speculative statements cannot establish a factual ground for the claim that a provision has been misinterpreted, misapplied or violated.

The administrator, upon learning of the grievance, will investigate the grievance as deemed appropriate and will respond to the grievant in writing within ten (10) working days; such investigation may include a private meeting with the grievant. Notwithstanding the foregoing, if the office of the superintendent represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed in the first instance at Step 2; in this circumstance, the applicable filing period remains fifteen (15) working days.

## **2. Step 2: Preliminary Review of the Grievance at the Superintendent Level**

All grievances submitted for action at the superintendent level will be subjected to a preliminary review to determine whether they are subject to dismissal for failure to comply with procedural requirements or for failure to state a grievance.

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

Where a submission is untimely or where a faculty unit member fails to satisfy the requirements of § 7.3 (1) (e.g., 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), the superintendent will address such submissions as described below.

For the purposes of determining whether a grievance should be dismissed on such grounds, the superintendent will review the record developed at Step 1, plus any supporting allegations or materials that the unit member may provide. Additionally, the superintendent

may choose to investigate further the allegations, though the superintendent's decision neither waives any defects that would justify dismissal of untimely or insufficient submissions nor extends the time limitations that apply to Step 2.

#### Submission is Untimely

If the superintendent concludes that the submission is untimely, the superintendent will notify the grievant that the grievance is time-barred and no further proceedings will occur at Step 2 or Step 3. The grievant may submit the grievance to Step 4 for the limited purpose and scope of determining whether the submission is untimely.

#### Submission Fails to Satisfy the Requirements of § 7.3 (1)

If the superintendent concludes that the filing fails to satisfy the requirements of § 7.3 (1) (e.g., 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), the superintendent will notify the grievant of the specific deficiencies within five (5) working days after receipt of the Step 2 filing.

The grievant will then have ten (10) working days in which to supplement the materials previously filed.

If the grievant fails to submit any additional materials within the time allotted, the grievance will be time-barred and the grievant irrevocably waives any right to any further proceedings.

If additional materials are filed within the time allotted, the superintendent will have seven (7) working days from their receipt to determine whether the new materials cure the defects in the original filing.

If the superintendent concludes that the defect has been cured, the superintendent will notify the grievant that the grievance will proceed to Step 3, and the time limitations set forth in Step 3 will begin to run from the time that the superintendent transmits such notice.

If the superintendent concludes that the defect has not been cured, the superintendent will notify the grievant of that conclusion and its basis. No further proceedings will occur at Step 2 or Step 3. The grievant may submit the grievance to Step 4 for the limited purpose and scope of determining whether the submission fails to satisfy the requirements of § 7.3 (1) (e.g., 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).

### **3. Step 3: Review of the Grievance at the Superintendent Level**

Where a grievance complies with the requirements of this Article, or where the superintendent otherwise believes it prudent to do so, the superintendent will conduct an investigation 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 superintendent will prepare a proposed decision on the grievance.

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

At the time of the conference, grievant is entitled to present his/ her position on the matter in issue, which may include investigative materials and recommendations of the peer faculty committee, if such was noticed as above provided.

The superintendent will issue a written decision to the grievant and local COHE president within twenty (20) working days after the grievance was filed at Step 3. The decision will include a statement of the findings and conclusions supporting the decision.

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

### **4. Step 4: Opportunity for Informal Resolution by the Executive Director**

If a grievance has not been resolved in Step 3, the grievant may submit the grievance to the Board on the prescribed form [**Appendix D--Grievance Form--Step 4**]. The Step 4 form will be filed with the executive director within ten (10) working days following receipt of the Step 3 decision. A copy of the Step 4 form will be sent by the grievant to the superintendent of the institution and the COHE chapter president.

The executive director will have fifteen (15) working days within which to attempt, at his discretion, a resolution through informal means. If no resolution is achieved within the time provided in Step 4, the grievance will automatically advance to Step 5.

## 5. Step 5:

Within fifteen (15) working days of the grievance being advanced to Step 5, the executive director will determine whether the grievance presents any contested questions of material fact or whether the contested matters may properly be determined as matters of law or policy. Before making this determination, the executive director will afford the grievant and the administration the opportunity to submit their rationale for convening a hearing or for proceeding without a hearing. The executive director may require the grievant and the institution to submit argument and authorities to identify the considerations that weigh in favor of their respective positions on the merits of the grievance, on the necessity of a full hearing, or such other relevant matters as the executive director may request.

### Referral to Hearing Examiner

If the executive director determines that a matter presents contested questions of material fact, the executive director may, within the fifteen (15) day period allowed for making this determination, refer the grievance to a hearing examiner who, within ten (10) days after his designation and appointment, will 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. The executive director may elect to charge a hearing examiner to consider the preliminary question of whether a grievance may be resolved without a hearing and to proceed to convene a hearing only if one is required to resolve disputed issues of material fact.

Such hearing will 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. Grievants will respond to requests to give testimony under oath, incidental to the processing of any grievance under this article, including submission to depositions used to assist a party to prepare for the grievance hearing. For good cause shown, the hearing examiner may direct that other faculty unit members or administrators submit to such pre-hearing depositions. 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 superintendent. 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.

#### No Referral to Hearing Examiner

If the executive director determines that a matter does not present contested questions of material fact or that referral to a hearing examiner is not warranted, the executive director will, within the fifteen (15) working 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 policy, 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 superintendent. The recommendation must be based solely upon the record and reasonable inferences therefrom, pertinent institutional and Board policies, this agreement, and the law of the land.

#### Timing of Board's Action

If the recommendation is received at least ten (10) working days prior to the first day of the next regularly scheduled Board meeting, then the Board will act upon the recommendation at the next regularly scheduled Board meeting following receipt of the recommendation.

If the recommendation is received less than ten (10) working days prior to the first day of the next regularly scheduled Board meeting, then the Board will act upon the recommendation at the subsequent regularly scheduled Board meeting.

The Board will make a final decision based upon the recommendation of the hearing examiner or the executive director. In addition, the Board, in its sole discretion, may review the record pertinent to the issues and hear testimony from individuals as it deems appropriate. COHE may discuss the grievance with the executive director prior to a final decision being made by the Board.

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.

## **7.9. MISCELLANEOUS PROVISIONS**

1. No offer of settlement of a grievance by either party to the grievance will be admissible as evidence in later grievance proceedings or elsewhere. No settlement of a grievance will constitute a binding precedent in the settlement of similar grievances, unless otherwise agreed.
2. If the grievance concerns nonrenewal, the grievance review will be limited to determining whether the decision was the result of failure to follow procedures, unless otherwise provided in this agreement. The burden of proof, in such cases, will rest with the grievant.
3. Neither COHE nor its members nor the Board nor its administrators will retaliate or effect reprisals against any faculty unit member for processing or participating in a grievance.
4. In the event a grievance is filed near the end of an academic year and strict adherence to time limits will result in hardship to any party, the parties will do everything reasonable to allow the grievance to be processed in an expeditious manner.
5. Grievance records will not be maintained in any faculty unit member's institutional personnel file.
6. The parties to the grievance may, in their discretion, waive any of the time limitations provided for herein; provided, however, that such waiver must be in writing and signed by both parties involved at the particular level or step of the grievance machinery. A request for an extension of time to a date certain will not unreasonably be denied.
7. In the case of a grievance concerning a discipline pursuant to Article VIII or a termination pursuant to Article XIV, Faculty Unit Member Reduction Procedures, the burden to prove the conduct charged or the factual basis for a reduction in force will rest upon the administration to the extent required by law. Grievants bear the burden of production. Grievants also bear the burden of persuasion by a preponderance of evidence for affirmative defenses to actions involving discipline, termination or reduction in force and for all claims that an administrative action misinterprets, misapplies or violates a specific right protected under this agreement or Board policy.
8. Parties to the grievance will bear their own expense in a grievance proceeding. The institution or the Board will bear the expense of providing the hearing examiner and all attendant costs thereto.
9. By written notice, a grievant may amend his/her grievance by advancing further allegations to supplement those that formed the original basis for his/her claim that specified terms or provisions had been misinterpreted, misapplied or violated, at any time prior to (i) the time the hearing examiner sets the matter down for hearing if the matter is referred to a hearing examiner, or (ii) the date the executive director notifies the grievant that a hearing will not be convened. The filing of such amendments will not act to extend any time constraints. In particular, grievants may only increase the numbers of terms or provisions allegedly



violated if such additional specifications are filed within the time allowed for filing the original grievance.

## PART B--DECLARATORY RESOLUTIONS

### ***7.10. CONTRACT CONSTRUCTION AND PROCEDURAL STEPS***

In any case where COHE or the administration of an institution disputes the interpretation, application or contract compliance with this agreement, either party may notify the other in the form of a demand for a conference resolution of the disputed issues. Such conference will be scheduled and held within fifteen (15) days of the notice. If the dispute involves primarily one institution, the conference will be held on the campus of the involved institution, unless agreed to otherwise. If no accord or resolution is reached within fifteen (15) days after the conference, or if either party will refuse to attend such a conference, either party may serve upon the other a notice of irreconcilability.

Within ten (10) days of serving a notice of irreconcilability, the party serving the notice may seek the intervention of the executive director by submitting a written request to the executive director, with a copy to the other party, that includes: (i) a copy of the notice of irreconcilability, (ii) some documentation of the date that the notice of irreconcilability was served on the other party, (iii) some documentation of the date the conference occurred or that the other party refused to attend, and (vi) a statement containing the party's position and any supporting materials. The executive director will review the request to determine whether the request for intervention was timely and includes the required materials.

If the executive director determines that the request for intervention is not timely or lacks any required materials, the executive director will notify the party that sought intervention that the request for intervention is time-barred.

If the executive director determines that the request for intervention is timely and contains all of the required materials, the executive director will inform the parties and will provide the party that did not seek intervention with ten (10) business days to submit a statement containing the party's position and any supporting materials. Within twenty (20) business days of receiving the statement and materials from the party that did not seek intervention, the executive director will issue a written decision to both parties.

Nothing provided by this section will preclude individual faculty unit members from processing their individual grievances under Part A.

## **VIII. INDIVIDUAL CONTRACTS**

### **8.1. TYPES OF CONTRACTS**

A contract extended to a faculty unit member at a special school institution will be one of the following: term, probationary, or continuing.

### **8.2. TERM CONTRACTS**

A term contract means a contract providing for employment throughout a semester with a workload of fifty percent or greater of the normal full-time load. A term contract may be for either part-time or full-time employment, will be for a definite term not to exceed one (1) fiscal year, and will terminate automatically at the end of the term. Such contracts are renewable solely at the discretion of the Board. Reasons for the issuance of term contracts may include, but are not limited to, the following: funding by grants or special projects outside the Board's legislative appropriation, temporary replacement of a faculty unit member on educational or other leave of absence, a temporary manpower need created for the interim of a job search, for an unanticipated increased workload, or for a vacancy within a school term where it is more appropriate to fill the position temporarily. If a faculty unit member's contract is changed to a probationary contract, the number of years the faculty unit member has served under term contracts may be credited, at the discretion of the Board, towards fulfillment of the period necessary for consideration for a continuing contract. Term contracts will not be used to avoid the proper application and use of probationary or continuing contracts.

Faculty unit members with term contracts will be evaluated at least once per year and informed of any deficiencies. Evaluations and plans to correct deficiencies will be conducted in accordance with Article XI, Evaluation.

### **8.3. PROBATIONARY CONTRACTS**

A probationary contract may be given to a full-time faculty unit member who is occupying a permanent position and who is in the first or second complete academic year of appointment with the special school. During the period of probationary appointment faculty unit members will be evaluated once each semester and informed of any deficiencies. Evaluations and plans to correct deficiencies will be conducted in accordance with Article XI, Evaluation.

### **8.4. CONTINUING CONTRACTS**

Faculty members employed at the School for the Blind and the Visually Impaired who:

- (i) are in or beyond their third full year of employment at the institution, and
- (ii) have attained their state endorsement in visual impairment (or other endorsement as determined by the superintendent to be appropriate for their assignment in Orientation and Mobility, Low Vision, or Speech/Language Pathology),

will be automatically reappointed for the following year, unless notice of intention not to

renew the contract is received on or before the third Monday of March of any year.

Faculty unit members employed at the School for the Deaf who:

- (i) are in or beyond their third full year of employment at the institution, and
- (ii) have attained the state endorsement in deaf education (or other endorsement as determined by the superintendent to be appropriate for their assignment in Speech/Language Pathology or communication),

will be automatically reappointed for the following year, unless notice of intention not to renew the contract is received on or before the third Monday of March of any year.

When a new faculty member is hired without the required state endorsement for his/her hiring institution, the new faculty member must show passing completion of at least one college credit bearing course that is needed in order to complete that endorsement per semester within the first 3 years of employment.

The School for the Deaf will administer the Sign Language Proficiency Interview (SLPI) every three years to encourage continuous improvement of American Sign Language skills. This report will be used by the faculty unit member to create a personal goal that will show measurable progress. New faculty unit members will be required to take the SLPI within the first 12 months of employment to establish a baseline of skills, unless they have a SLPI rating within the previous three years.

The School for the Deaf provides basic American Sign Language training programs to new employees, and faculty unit members may participate in these programs. The School for the Deaf will also make reasonable efforts to sponsor or provide American Sign Language courses or training when faculty unit member interest justifies making such arrangements.

The Board may approve extension of the three year periods of time allowed for completion of endorsements required under this section by one year. Good cause for granting such an extension will include, without limitation,

1. On the occasion of the birth or adoption of that faculty member's child or adoptive or placement of a foster child with that faculty member; or
2. When the faculty member is a major caregiver for an immediate family member who has an extended serious illness, injury, or debilitating condition; or
3. When the faculty member has an extended serious illness, injury, or debilitating condition; or
4. When a new faculty member comes from out-of-state and is required to complete the SD requirements to be issued a SD teaching certificate; or
5. When extenuating circumstances beyond the control of the new faculty member impede timely completion of required coursework or training, and the new faculty member is making good effort to complete the courses.

The request for extension must be made in writing to the superintendent within one year of the events giving rise to the claim.

A faculty member may use this provision no more than two times.

“Immediate family” is defined in ARSD 55:09:01:01(19) as the employee’s spouse, children, mother, father, mother-in-law, father-in-law, daughter-in-law, son-in-law, brothers, sisters, grandparents, grandchildren, stepbrothers, stepsisters, and stepparents.

Faculty unit members who are in or beyond their third year of employment at the institution will have fifteen (15) working days from the date of notification of nonrenewal in which to schedule a meeting with the superintendent. Prior to the meeting, the superintendent will make available to the faculty unit member for review the faculty unit member's personnel file, advise the faculty unit member in writing of the reasons on which the intention not to renew is based, and afford the faculty unit member an opportunity for an informal conference in a confidential setting of the reasons. The faculty unit member may bring a representative of the member's choosing to the conference. Within five (5) working days of the conference, the superintendent will notify the faculty unit member as to whether the superintendent will rescind the notice of intention to nonrenew or recommend to the Board that the faculty unit member be nonrenewed. Evaluations and plans to correct deficiencies will be conducted in accordance with Article XI, Evaluation.

If the faculty unit member (i) believes (a) the reasons given for nonrenewal are not true, and (b) the real reasons are expressly forbidden by this agreement, or (ii) believes procedural rights have been violated, the faculty unit member may seek review of the superintendent's decision within ten (10) working days by submitting a written appeal to the Board. Any such review will be processed in accordance with Article VII, Contract Disputes, Part A, beginning at Step 4.

### **8.5. INDIVIDUAL APPOINTMENT CONTRACTS**

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

1. Date offered to the faculty unit member;
2. Title or classification;
3. Beginning and ending dates of the contract;
4. Type of contract;
5. Any specific and special conditions and responsibilities of employment beyond the general responsibilities of the appointment;
6. A statement that the contract is subject to the constitution and laws of the state of South Dakota, policies and regulations of the Board, insofar as these may govern terms and

conditions of employment, and the provisions of this agreement;

7. Salary;
8. Tentative teaching assignments which will include, for example, grade level or group level: Early Childhood, Preschool, Primary, Middle School, High School, Vocational, Outreach. Subject areas for assignments which are not in a self-contained classroom will be listed.

#### **8.6. CONTRACT YEAR**

The contract year for the special schools will be set by the Board relative to the following guidelines:

1. The school year for nine (9) month faculty unit members will be based upon the number of student contact hours required under South Dakota Department of Education accreditation standards, subject to allowance for professional training days and weather-related calendar adjustments. New faculty unit members will have no more than two (2) orientation days. In addition, all faculty unit members will have no more than five (5) professional days prior to the beginning of the first day of class, which may include a registration day. At least one (1) professional day or two (2) half-days, prior to the first day of classes, will be devoted exclusively to the teachers' classroom preparation. Except as provided in § 8.6 (7), nine (9) month faculty unit members will not be required to report for work (i) more than seven (7) working days for new faculty unit members or (ii) five (5) working days for returning faculty unit members, prior the first day of classes, or to work more than five (5) working days after the last day of classes.
2. The contract year for ten (10) month faculty unit members will not exceed 200 contact days.
3. No student contact days or working days will be held on legal state holidays, with the exception of Veterans Day and Martin Luther King Day. If Veterans Day or Martin Luther King Day are scheduled contact days, faculty unit members will be provided an alternate day off.
4. If scheduled student contact hours for nine (9) month faculty unit members are less than the number of student contact hours required under South Dakota Department of Education accreditation standards due to inclement weather, or other unforeseen conditions, additional contact days will be agreed to by the parties. If the parties cannot reach agreement, the superintendent will designate the replacement days. These days will be within the contract period or immediately following the end of the contract period if it is unworkable to schedule such within the contract period.
5. If a faculty unit member who is assigned to classroom instruction is requested by the administration and agrees to provide curriculum or staff development consulting services/in- service to local education agencies prior to the start of the regular school year and must miss the time designated for classroom preparation, the faculty unit member will receive comparable release time for such classroom preparation prior to

meeting classes.

6. If a faculty unit member identifies a need that necessitates work outside the contract year and such work is approved by the administration, the work time will be compensated or the work time during the contract year will be reduced on a one-to-one basis.
7. Outreach consultants on nine- or ten-month contracts may be scheduled for duties at any time during the fiscal year, provided that the aggregate numbers of days on duty may not exceed the number of duty days scheduled for unit members serving on standard nine- or ten-month contracts. The administration will consult with faculty unit members before scheduling duties outside the standard nine- or ten-month contract year, and will make reasonable efforts to accommodate faculty unit members' summer activities.

### ***8.7. NONRENEWAL OF PROBATIONARY CONTRACTS***

On or before the first day of May, the administration will notify in writing a faculty unit member who is in the first or second full year of employment at one of the special schools of its intention not to renew the faculty unit member's contract. The faculty unit member, upon written request made within five (5) working days of the notice, will be afforded an informal, private conference with the administration. The faculty unit member will have the right to have a representative present. The conference will not be required if the faculty unit member is not being rehired because of a reduction in staff. The decision of the administration will be final and is not subject to the grievance procedure.

### ***8.8. CONTRACT FULFILLMENT***

Full-time faculty unit members who, after their second year of employment, resign their individual contract for the purpose of receiving employment outside the Regental system without the consent of the Board thereby consent to liquidated damage compensation to the Board for the additional expense caused by said breach of contract. Consent to resignation and avoidance of liquidated damages for breach of an individual contract is given by the Board if written notice is given by the unit member to the institution thirty (30) or more days prior to the date when unit members are scheduled to report to the school.

When a resignation is received less than thirty days prior to the date when unit members are scheduled to report to the school, liquidated damages will accrue and be assessed at the rate of \$80 per day beginning on the 29th day prior to the date when unit members are scheduled to report to the school. Such liquidated damages will accumulate through the date when unit members are scheduled to report to the school, unless a replacement for the unit member is hired earlier, in which case the accumulation of damages will halt on the date that the replacement is hired, not to exceed \$2,400.

### **8.9. TWELVE MONTH SALARY PAYOUT**

Beginning July 1, 2013, and subject to the exceptions provided herein, base salary earned by all faculty unit members serving on full-time appointments will be scheduled for payout over twelve months irrespective of the length of the base appointment. Voluntary deductions from base salary, payroll taxes, retirement system contributions and employee benefit payments will be prorated over the full twelve-month period. Salary payments to faculty unit members serving on less than nine-month full-time contracts will be prorated over the stated term of the appointment.

The payment of base salary over a twelve-month period does not change the period when unit members are under active contract for service, nor does it permit the assignment of additional duties outside the dates of the base appointment, except as otherwise provided in this agreement.

Payments for additional service (e.g., overload or summer session contracts or research grant summer stipends) will be paid as earned, and required payroll taxes and retirement system contributions based on the additional salary will be withheld from such payments.

Unit members who will satisfy the rule of 85 or who otherwise will be or will become eligible for retirement between July 1, 2013 and June 30, 2016, may elect to continue to receive salary payments as earned during that time period, subject to proration of elected benefit premium payments. To exercise this election, such unit members must provide the institutional chief academic officer and the institutional human resources director written notice no later than May 1, 2013, that they will continue to receive salary as earned. If a unit member who makes the election provided under this paragraph accepts a full-time appointment for a term beginning on or after July 1, 2016, payments under the new appointment will be paid out over twelve months. If a unit member who is eligible to make the election provided in this paragraph fails to do so on or before May 1, 2013, the right to make the election shall terminate and the unit member's salary will be paid out over twelve months. Eligible unit members who initially elect to continue to receive base salary as earned, may rescind their election on or before July 1, 2014 or July 1, 2015.

## **IX. UNIT MEMBER RESPONSIBILITIES**

### ***9.1. WORKDAY--CLASSROOM TEACHERS***

Regardless of the timing of preparation periods, the workday for the faculty unit members who are classroom teachers will commence at 7:45 a.m. and end at 3:45 p.m., except for Fridays when the day will end at 3:30 p.m., with a forty-five (45) minute duty-free lunch period, and all classroom teachers must be in the school building during the workday. Faculty unit members must sign out at the front office before leaving the campus during the workday and must sign in upon returning to the campus during the workday.

When attendance is required at IEP meetings or other scheduled meetings during lunch or after school hours, the administration will make a reasonable effort to adjust the faculty unit member's schedule accordingly.

Part-time faculty unit members will work only that portion of the day/week which is equal to their percentages of a full-time unit member. Part-time faculty unit may be required to participate in faculty meetings or scheduled professional activities if such meetings or activities fall during their assigned working hours.

If, in the judgment of the administration, it is necessary that a part-time faculty unit member attend professional activities which are scheduled during other than the faculty unit member's normal working hours, a part-time unit member may be required to attend and will be compensated for the additional working hours.

### ***9.2. WORKDAY--OUTREACH CONSULTANTS***

Outreach consultants will have a flexible schedule to accommodate the needs of school districts, students and their families. Weekly workload hours will remain comparable to those of classroom teachers.

### ***9.3. PROFESSIONAL DEVELOPMENT***

The administration at the special schools bears the responsibility for determining the necessity for and structuring of professional development activities.

Each school will establish a professional development committee comprised of up to three (3) faculty unit members to be selected by the COHE chapter president and up to three (3) administrators to be appointed by the superintendent. The committee will be responsible for providing professional development and onboarding training recommendations to the superintendent and for evaluating the content and format of the professional development activities.

### ***9.4. GENERAL FACULTY MEETINGS***

The administration at the special schools bears the responsibility for determining the necessity for general faculty meetings. Such meetings will culminate no later than 4:00 p.m. Faculty



unit members may make recommendations to the administration concerning the agenda.

### **9.5. *SUBSTITUTES***

It will be the responsibility of the administration to secure substitutes when deemed necessary by the administration. Faculty unit members will not be required to assume responsibilities for students of absent faculty, except in situations of less than one-half day duration, when the administration cannot cover the class. Where regular faculty unit members are utilized as substitutes, such assignment will be made equitably.

### **9.6. *PREPARATION PERIODS--CLASSROOM TEACHERS***

Preparation periods are any periods during the workday when classroom teachers do not have classroom obligations. Preparation periods are intended to allow faculty unit members to prepare their instructional plans and materials, and engage in other work-related non-classroom obligations.

Class preparation time at the School for the Blind and the Visually Impaired will not amount to less than 60 minutes per workday, nor less than 400 minutes per workweek. Part-time faculty unit members' class preparation time will be prorated for those who do not have a full-time teaching assignment. Class preparation time will also be prorated during those weeks when classes meet less than the normal workweek.

The administration will schedule planning times for unit members assigned to provide classroom instruction to facilitate collaborative planning or staff meetings. The administration may require unit members to devote planning time to such collaborative activities.

### **9.7. *WORKDAY CHANGES--CLASSROOM TEACHERS***

Because of student program requirements, established curricula and classroom work which cannot be scheduled during the normal workday, some faculty unit members who are classroom teachers may need to have an irregular workday other than between the hours of 7:45 a.m. through 3:45 p.m., except for Fridays when the day will end at 3:30 p.m. The administration and the local COHE executive committee will meet to discuss changes in the workday prior to implementation. Weekly work hours will remain comparable to those of other faculty unit members. If in the foregoing circumstances no agreement is reached, the superintendent will determine the irregular workday for those faculty unit members to be affected. In such latter event, any such affected faculty unit member who is given an irregular workday may grieve the determination of the superintendent under Article VII, but such grievance will not delay the implementation of the irregular workday.

### **9.8. *OUTSIDE EMPLOYMENT***

The statutory provisions regarding dual employment are at SDCL §§ 3-8-4 to 3-8-4.3. To the extent permitted under SDCL §§ 3-8-4 to 3-8-4.3 and Board policies regulating conflicts of interest and commitment, faculty unit members may pursue other outside endeavors for profit.

**9.9. PROFESSIONAL TRAVEL**

Travel expense incurred by faculty unit members in administratively authorized representation of the institution at federal, state agency, or other professional meetings will be fully reimbursed by the institution in accordance with state travel regulations. The administration will develop uniform procedures by which a faculty unit member may request travel funds for professional activities. Faculty unit members may submit concerns regarding travel procedures to the administration.

**9.10. STUDENT DISCIPLINE**

Student discipline is addressed in Board policy manual and each institution will include the student discipline policy for the institution in the faculty handbook. It is the responsibility of the administration to take appropriate steps to enforce the discipline policy(s) referenced above.

**9.11 PROFESSIONAL DEVELOPMENT OFFSET**

Faculty unit members may offset contract days on a 1:1 basis, with pre approval from the Superintendent, for professional development occurring on non-working days within the contract.

## **X. ASSIGNMENT, REASSIGNMENT AND TRANSFER**

### ***10.1. GENERAL PROVISIONS***

The administration will make every effort to assign the faculty unit members to their teaching assignments as soon as possible. Fair consideration will be given for the faculty unit member's current assignment. The faculty unit member may review the tentative assignment/schedule and discuss it with the administration before such assignment is finalized. Insofar as circumstances will reasonably permit, assignment will be finalized by June 15. In the event that unanticipated circumstances (e.g., changes in enrollment) result in assignments that require less than a full teaching load, faculty unit members may be assigned additional professional responsibilities as needed to provide them with the equivalent of a full-time teaching load.

Criteria for assignment and/or transfer include the following (not in priority order):

1. Area of certification;
2. Relative contribution which the faculty unit member could make to the students;
3. Educational need of special school;
4. Opportunity for professional growth;
5. Degree major and/or minor area of preparation;
6. Length of service at SDSD/SDSBVI;
7. Fair consideration for current assignment;
8. Faculty unit members on temporary contracts and those on probationary contracts issued after the 1990-1991 academic year may not assert the transfer rights outlined under the provisions of Article X.

Intra-institutional transfers are defined as those transfers wherein a faculty unit member within an institution transfers to another department, school or faculty position within the same institution. An applicant from within the same institution will be selected for the position over other applicants provided that the faculty unit member's qualifications as related to the job description are equal to or better than those of any other applicant.

Inter-institutional transfers are defined as those transfers wherein a faculty unit member from one institution under the governance of the Board transfers to another such institution. Inter-institutional applicants will be selected over outside applicants providing that their qualifications as related to the job description are equal to or better than those of any outside applicant.

The accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of such programs. The Board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

## ***10.2. PROCEDURES***

Any assignment of faculty unit members will be made by the superintendent or designated representative.

The administration will meet with teachers, individually or in groups, prior to March 15, to exchange available information and make recommendations about individual student needs, classroom groupings, and number of preparations per grouping, class size and population changes for the following school year.

The administration will post, in the location or locations usually used for faculty notices, vacancies which occur during the academic year and vacancies for the following academic year, as soon as such vacancies are certain. During periods when faculty unit members are not under contract, vacancy notices will be sent to all faculty unit members using their summer contact information.

When changes in assignment are necessary, due to changes in enrollments or programs, faculty unit members in those positions will be notified in writing as soon as possible. Information regarding these positions will be made available to all teachers. The administration will make every effort to reassign faculty unit members according to their area of qualification and expertise.

Tentative assignment schedules will be provided to faculty unit members prior to May 1. Faculty unit members will discuss their schedule assignments with their supervisor before such schedule is finalized. Insofar as circumstances will reasonably permit, assignments will be finalized prior to June 15.

In the event changes in such assignments occur, the faculty unit member will be notified. The faculty unit member may discuss the change in assignment with the administration, if such a request is made in writing within five (5) working days of the notification of change in assignment. If the faculty unit member does not wish to accept the change in assignment, the faculty unit member may terminate the contract by written notice within ten (10) working days of the change in assignment notification. Except by mutual agreement, or except under circumstances that compel a later change, no changes in faculty unit member's assignments will be made later than August 1.

## ***10.3. JOB SHARING***

Job sharing may be proposed by teachers or administrators. The sharing of one teaching position by two teachers may be approved at the sole discretion of the superintendent. Such sharing must be agreed to in writing by both teachers. Teachers who are sharing a position will be granted the same rights and privileges as other part-time teachers. A job sharing plan must include a method for the sharing of information about students that the superintendent finds satisfactory. It is understood that the teachers may be required to spend non-compensated time together sharing this information.

## **XI. EVALUATION**

### ***11.1. GENERAL PROVISIONS***

Faculty unit member evaluation is a joint concern of the faculty and the administration. The purpose of the evaluation will be to:

1. Promote positive communication between faculty and administration;
2. Increase awareness of institutional program objectives and needs;
3. Provide information for decisions on professional training, staff improvement programs and those conditions which promote quality performance; and
4. Provide basic information for personnel decisions such as discipline, contract renewal, salary and pay matters, tenure, and promotion.

The administration is responsible for implementation of the procedure and the evaluation process.

### ***11.2. EVALUATION PROCEDURES AND INSTRUMENTS***

Evaluation procedures and instruments may be reviewed by a committee established for that purpose. The committee will include three faculty unit members selected by COHE and an equal number of administrative representatives and will be convened at the request of either party.

1. The party initiating the review will present documents incorporating recommended changes fifteen (15) days prior to the committee meetings.
2. The committee will study evaluation procedures, instruments and the recommended changes and make appropriate recommendations.
3. Within fifteen (15) days following receipt of the committee's written report, the administration will provide a written response to the committee regarding its recommendations.
4. The administration will finalize, publish and distribute the evaluation procedures and instruments to each faculty unit member for informational purposes at the beginning of each school year; provided that negotiations have been resolved in time to permit such finalization, publication and distribution.

### ***11.3. PERFORMANCE EVALUATION GUIDELINES***

1. Probationary faculty unit members will be formally evaluated during each semester for their first two (2) years of employment at the special schools. Formal evaluation will be completed by November 30 in the fall semester and March 1 in the spring semester.
2. Annual evaluation of continuing contract faculty unit members will be completed by March 1 of each year. The annual evaluation will cover faculty unit member performance during the twelve months preceding the evaluation, and its scope and extent of the annual evaluation may be determined as provided in sections 11.2 and 11.3(3).
3. Faculty evaluation is an ongoing process and may include at least one (1) formal observation of not less than thirty (30) minutes of a class period and may consist of informal observations of assigned responsibilities. The administration will give the faculty unit member at least one-day advance notice that such a formal observation has been scheduled for purposes of the annual evaluation. If a formal observation of instruction in a classroom or of another work assignment is made, a post-observation conference will be scheduled at a mutually agreed-upon time, but no later than fifteen (15) working days after the observation.
4. The evaluator(s) will discuss the formal evaluation document with the faculty unit member. The performance evaluation will be in written form and signed by the evaluator(s), with a copy furnished to the faculty unit member prior to the discussion. The faculty unit member will have ten (10) working days in which to respond in writing. All such responses will be given to the evaluator who in turn will attach the faculty unit member's response(s) to the evaluation instrument.
5. If the evaluation identified deficiencies in the performance of assigned duties, the administration will develop a constructive plan to remedy the faculty unit member's deficiencies. The plan may provide for assistance from the administration.

No plan will be implemented until the immediate supervisor has held a meeting with the faculty unit member to discuss the plan. If the faculty unit member disagrees with any aspect of the plan, the faculty unit member will have the right to respond in writing to the areas of disagreement. All such objections of the faculty unit member will be attached to the plan.

Teachers who receive an unsatisfactory evaluation as a result of the formal classroom observation may request an additional observation to occur within a month of the first observation. If the unit member makes a timely request, any plan that has been implemented will be contingent and subject to review following completion of the additional observation.

## **XII. ACADEMIC FREEDOM AND RESPONSIBILITY**

### ***12.1. STATEMENT***

1. 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:
  - A. The importance of academic freedom to teaching and learning is recognized and accepted. 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 member is entitled to freedom in research and in the publication of the results, subject to the performing of other assigned academic duties.
  - B. Faculty members are entitled to freedom in the classroom in the discussion of their subject. They have the freedom to include the presentation of various scholarly views.
  - C. The concept of freedom should be accompanied by an equally demanding concept of responsibility. The faculty 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 not speaking for the institution.
2. To secure student freedom in learning, faculty members in the classroom and in seminar should encourage free and orderly discussion, inquiry and expression as appropriate to the course content and pedagogical approach. Student performance will be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.
  - A. Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.
  - B. Students are responsible for maintaining standards of academic performance established for each course in which they are enrolled. When participating in classroom discussion, students should remain on topic, should employ academic reasoning and should respect the rights of their classmates to receive instruction and to participate in discussions.



- C. Each institution will establish an academic appeals procedure to permit review of student allegations that an academic evaluation was tainted by prejudiced or capricious consideration of student opinions or conduct unrelated to academic standards. These procedures will prohibit retaliation against persons who initiate appeals or who participate in the review of appeals.

### **XIII. CODE OF CONDUCT--DISCIPLINE--JUST CAUSE**

#### ***13.1. PREAMBLE***

The parties acknowledge that the faculty of the South Dakota special schools has maintained a commitment, over generations, to adhere to the highest standards of academic professionalism and decency; and that the expectations of lawful conduct, academic rigor and service to larger social goods that characterize the historic and accepted ethos of the teaching profession, must continuously be maintained.

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.

#### ***13.2. DISCIPLINARY MEASURES***

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.

The Board has delegated to institutional administrators provisional authority to discipline faculty unit members for 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, including such conduct identified in 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 circumstances that warrant discipline, past service, scholarly achievements or other mitigating or aggravating circumstances, discipline may include any combination of the following actions:

1. Warnings;
2. Warnings to be filed with the personnel file of the faculty unit member;

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

### ***13.3. PROCEDURES***

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 there are reasonable grounds for discipline, the faculty unit member will be furnished written notice of the allegations supporting the determination, an explanation of the evidence relied upon by the administration and the 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 (5) working days thereafter, the administration will notify the faculty unit member whether it will discipline the faculty unit member, and if so, what discipline it will impose and the effective date of the discipline.

***Stage Two: Post-Discipline Hearing Rights***

Faculty unit members who 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.

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 § 13.4 during the pendency of grievance before the institution or the Board.

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 (5) working days from the time that the institution provides notice, pursuant to § 20.9, 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 (5) working days. The peer group recommendations will be forwarded to the department head no later than fifteen (15) 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.

### ***13.4. INTERIM SUSPENSION***

Unlike a disciplinary suspension under paragraph 5 of § 13.2, 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 § 13.4, 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.

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.

### ***13.5. NONDISCIPLINARY ACTION***

The procedures set forth in this article may also be used, to the extent practicable, where incapacity or serious safety concerns prevent a faculty unit member from discharging essential functions.

## **XIV. FACULTY UNIT MEMBER REDUCTION PROCEDURES**

### ***14.1. GENERAL PROVISIONS***

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

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

### ***14.2. FACULTY UNIT MEMBER REDUCTION AND RECALL PROCEDURES***

1. At the special schools, when a reduction in force does not require the elimination of all positions within a program or organizational unit, the following retention priorities will be used in sequence in the identification of faculty unit members assigned to the program or organizational unit who will be terminated, subject to the need to retain personnel with special skills essential to maintain the integrity and quality of a program, and subject to the need to retain personnel whose performance, in the judgment of the superintendent, significantly enhances the educational effectiveness of the school. The retention priorities outlined in this section will govern to the extent that faculty unit members will only be entitled to preference when their performance equals or exceeds that of persons in lower retention categories as documented on the annual performance reviews for the three most recent years, if available:
  - a. Whenever possible, faculty unit member reduction will be accomplished through attrition.
  - b. Among faculty unit members serving under probationary contracts, those employed in permanently funded positions will have retention priority over those employed in temporarily funded positions, and those employed full-time will have retention priority over those employed on a part-time basis.
  - c. A qualified faculty unit member serving under a continuing contract will have retention priority over a faculty unit member serving under a probationary contract.
  - d. Among faculty unit members having equal retention priority, the faculty unit member with greatest seniority who is qualified to fill the staffing needs of the institution will have retention priority over colleagues whose performance ratings are lower. Seniority will be based upon a faculty unit member's total years of full-time equivalent

employment exclusive of periods of unpaid leave, provided that faculty unit members with a break in service of more than four (4) years will not be given credit for service prior to such break.

2. If a faculty unit member who is on continuing contract is terminated under this article, the position may not be filled for a period of two (2) years, unless the terminated faculty unit member has been offered reappointment. The terminated faculty unit member has twenty (20) working days from the receipt of notice to accept an offer of reappointment.
3. Faculty unit members will be recalled in order of greatest seniority, provided the faculty unit member is qualified to perform the duties of the vacant position.
4. The fringe benefits of faculty unit members who return to employment under this section will, to the extent provided by law, be as they were at the time their previous employment terminated, provided the new benefits still exist and they are eligible for them in the new position.
5. Every effort will be made to relocate a terminated faculty unit member in other academic, administrative, or staff positions that are vacant at the special schools, provided the faculty unit member is qualified to perform the duties of the position. Special consideration for relocation will be given to those faculty unit members nearing retirement age. If a relocation is accomplished, the salary and other considerations of employment will be as stated for the position to which the faculty unit member is relocated. In addition, a faculty unit member at the special schools will be considered for inter-institutional transfers in accordance with Article X, Transfer, Assignment and Reassignment.
6. Every reasonable effort will be made to allow an affected unit member to complete the current appointment.
7. The accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The Board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

### ***14.3. FEDERAL FUNDING--SPECIAL CONDITIONS***

A faculty unit member who is terminated in accordance with this article, and whose salary was fully supported by federal funds, will have no priority of employment over faculty unit members in positions supported by state funding sources. However, if the faculty unit member was previously employed in a state funded position, the faculty unit member will be treated in accordance with the guidelines provided in this article, though no credit will be given for service that was fully supported by federal funds.

#### ***14.4. FURTHER PROVISIONS***

A faculty unit member terminated pursuant to the provisions of this article may institute a grievance under Article VII, Contract Disputes, and the burden of proof will rest with the administration to the extent required by law. Any grievance challenging an action taken under this article will begin at Step 2 of the procedures outlined in § 7.8.



## **XV. PERSONNEL FILES**

### ***15.1. STATEMENT***

A single official personnel file will be maintained on each faculty unit member at a central location(s) designated by the superintendent. 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.

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.

Beginning with the effective date of this agreement, items placed in a faculty unit member's personnel file will be signed and dated by the person placing the material in the file. Beginning with the effective date of this agreement, 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 (e.g., 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 two (2) working days. 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, and 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, is unnecessary or is 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 will return within twenty (20) business days, by mail, those materials he prefers to have refiled in his/her personnel file.

## **XVI. WORKING CONDITIONS**

### ***16.1. SAFE WORKING CONDITIONS***

The parties will comply with all applicable state and federal laws relating to safe working conditions.

Whenever a faculty unit member becomes aware of a condition which the faculty unit member feels is a violation of an institutional safety or health rule or regulation, the faculty unit member will report such conditions to an appropriate administrator who will promptly investigate such conditions.

Protective devices and first aid equipment will be provided to faculty unit members who practice in a hazardous institutional environment and the faculty unit member will be responsible for the proper use of such devices.

The parties also recognize that unruly students not only present a discipline problem and hinder the educational process within the classroom, but, on occasion, can threaten the safety and security of the faculty unit member. In the event that a student's behavior results in the faculty member feeling threatened, the faculty unit member may request a functional behavior assessment.

### ***16.2. UNIT MEMBER OFFICES***

The administration at the special schools will provide faculty unit members with either private offices (if available), lockable desks, or a lockable file for the security of private and confidential materials and articles.

### ***16.3. TELEPHONE SERVICE***

Each institution will provide access to telephone service for faculty unit members.

### ***16.4. CLERICAL ASSISTANCE AND INSTRUCTIONAL SUPPLIES***

The parties recognize the desirability of professional clerical assistance and adequate instructional supplies. To the extent that financial resources permit, effort will be made to provide faculty unit members the clerical assistance, including the assistance of available work-study students, and instructional supplies necessary for the fulfillment of their assigned responsibilities.

### ***16.5. FACILITIES AND EQUIPMENT***

The Board will make a reasonable effort to provide each faculty unit member with reasonably adequate facilities and equipment for effective performance.

## **XVII. SALARY PROVISIONS**

### ***17.1. DISTRIBUTION OF SALARY POLICY APPROPRIATIONS***

Allocation priorities are 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.

The Board has an abiding commitment to assist South Dakota children with hearing or vision loss by assuring their access to teaching and learning environments provided directly or supported through outreach services provided by the South Dakota School for the Deaf and the South Dakota School for the Blind and the Visually Impaired. To achieve such objectives, the Board has adopted measures to provide faculty unit members with financial incentives and rewards to achieve high levels of performance and professional preparation. Hence, salary increases will be distributed on the following bases:

1. Before any other distribution is considered, each institution will allocate any sums needed to assure that internal salary structure comports with governing law. The foregoing includes any adjustments deemed necessary by the superintendent to address institutional priorities or internal or external market conditions. On or before April 1<sup>st</sup> of each year, COHE may provide data, recommendations, or other information for the superintendent to consider when making decision(s) on salary distributions pursuant to this section. Allocations will be based upon funds made available to the Special Schools.
2. Remaining monies will be allocated on the basis of faculty unit member performance.
  - a. All faculty unit members will be eligible for a performance increase, except for such individuals for whom a prescriptive plan has been written for the subsequent fiscal year.
  - b. Seventy percent of the funds for performance and IEP development and management will be awarded for classroom instruction. Ratings will be based upon the annual performance evaluation conducted by assigned supervisor according to institutional practice.
  - c. Twenty percent will be awarded for service to the school community. Faculty unit members will provide documentation of activities they wish to have considered. Activities may include such thing as:
    - i. examples of innovative units of instruction or classroom practices, or technology integration,
    - ii. achievement toward meeting institutional priorities/goals identified by the school team for school improvement,
    - iii. contributions to overall school environment through personal effort or contribution to a school project, committee that has a significant positive impact on students and or school,
    - iv. volunteer activity-a significant unpaid contribution of time and effort to a single

activity or an outstanding pattern of volunteer activity.

- d. Ten percent will be distributed based on professional growth and development.
  - e. Within each performance category the total available funds will be prorated among faculty unit members based upon performance ratings. Each rating will be assigned a numerical point value on the following scale:
    - i. Unit members who failed to meet expectations (Rating of 0 points, ineligible for performance increase);
    - ii. Unit members who met expectations (Rating of 1 point);
    - iii. Unit members who performed above expectations (Rating of 2 points).
  - f. For each separate category, the points assigned to all faculty unit members will then be added together. The total dollars available for distribution in each category will be divided by that sum. This will yield a dollar value per point. This amount will then be multiplied by the points assigned to each faculty member in that category to produce a performance increase for that area of professional responsibility.
  - g. Information submitted will be reviewed and rated by the immediate supervisor on the same three-point scale noted above.
  - h. Teacher evaluations and supporting information from the immediate supervisor will be submitted to the superintendent, who will have the final responsibility for salary distribution.
3. Individual faculty unit members will be notified at the time of the issuance of their new contracts of the means used to determine their salary increases. The notification will specify the dollar amounts distributed in recognition of their performance, service to the school community, professional growth and development, and any amounts distributed to correct possible impermissible bias.
  4. The Performance Standards and Procedures used to determine faculty unit member performance ratings are found in **Appendix K**.

### ***17.2. ADDITIONAL INCENTIVE PAYMENTS***

The Board encourages faculty unit members to maintain professional credentials pertinent to the educational specialty areas whose mastery falls within their job responsibilities. In addition to performance pay measures addressed in § 17.1, a supplement is provided to each faculty unit member who acquires and maintains certification of skills needed to work with children with hearing or vision loss and a base increase is provided in recognition of acquisition of a master's degree relevant to the unit member's field of expertise.

1. Each institution will annually allocate \$1,000 to each faculty unit member who maintains a current national certification (CED/CCC/ACVREP). This allocation is not a part of the base

salary.

- a. Faculty unit members who have provided proof of current certification to the superintendent within two (2) weeks of the beginning of a semester or within such additional time as circumstances, in the discretion of the superintendent may warrant, will be paid the certification supplement. Midyear or midterm certification may be recognized by the superintendent on a prorated basis.
  - b. "Certification" as used in this article will mean, at the School for the Deaf, current certification by the Council on Education of the Deaf, (CED-Provisional or CED-Professional), and at the School for the Blind and the Visually Impaired, current certification by the Association for the Certification of Vision Rehabilitation and Education Professionals (ACVREP) for Orientation and Mobility Specialists and Low Vision Specialists. Teachers of children with hearing loss can meet this certification by fulfilling the criteria outlined in the attached Memorandum of Understanding. Teachers of children with vision loss can meet this certification by fulfilling the criteria outlined in the attached Memorandum of Understanding. Clinicians who hold a Certificate of Clinical Competence from the American Speech and Hearing Association in their respective areas (Audiology=CCC-A; Speech=CCC-SP) are also recognized as certified. No faculty unit member will be paid for more than one certification.
  - c. It is the intent of the parties that faculty unit members paid from federal or other restricted fund sources will be paid for certification at the same rate as faculty unit members paid from direct operating funds. It is recognized that this provision will be implemented only if funds are available from the appropriate federal or other restricted fund sources and the institution receives approval for additional spending authority or transfer authority necessary to implement this provision.
  - d. Notification, in writing, of intent to acquire certification will be provided, by the faculty unit member, to the administration no later than April 1.
2. Each faculty unit member will have a salary increase equal to twelve percent (12%) of the prior year's base upon the attainment of a master's degree that is determined by the superintendent to be relevant to the unit member's field of expertise. (This will be added to the salary base at the time of acquiring the first master's degree only and no faculty unit member will receive this salary increase for more than one master's degree.)
    - a. Faculty unit members who wish to claim entitlements under this section must provide the superintendent with written notification no later than April 1 that they have satisfactorily completed or that, prior to the beginning of the next academic year, they will satisfactorily complete requirements for a master's degree relevant to the unit member's field of expertise. The faculty unit member will provide verification of the completion of education requirements to the administration no later than September 1 and an official transcript by October 15. If such verification is not provided, the faculty unit member increase under this section will be cancelled and the faculty unit member's pay will be reduced accordingly. All credits are to be earned from a degree-granting accredited institution, and evidence of credits earned shall be in the form of an official transcript.

### ***17.3. DETERMINATION OF SALARY AT HIRE***

The superintendent will determine salaries offered to newly-hired faculty unit members taking into account degrees, certifications, experience, special skills related to performance of the employment, internal and external market conditions and other job-related factors. After a position is posted, upon the request of the local COHE president, the superintendent and local COHE president will meet to discuss any salary considerations for the position.

### ***17.4. EXTRACURRICULAR COMPENSATION***

The authorized voluntary assumption of faculty unit members of the following extracurricular activity supervision at the special schools will be compensated in accordance with the extracurricular compensation schedule, which is based upon work outside the workday.

The superintendent and the local COHE president will meet to negotiate the extracurricular compensation schedule for the respective institution. Each schedule will be incorporated herein as part of **Appendix I**.

If a special school decides to establish additional compensated extracurricular activities, or if a vacancy cannot be filled for the compensation on the schedule, the superintendent will determine the appropriate compensation for the vacancy and will, prior to the implementation, inform the president of the COHE chapter of the plans and compensation for the extracurricular activity. The vacancy then will first be offered to suitable applicants from the faculty unit before advertising the position to outside applicants. In the event that there are no suitable applicants for the position, the administration may assign the responsibility to a faculty unit member or to an employee outside the bargaining unit.

### ***17.5. SALARY AND FRINGE BENEFIT FUNDING***

Representatives of the Board and COHE will meet prior to the June Board meeting to hold preliminary discussions on salary and fringe benefits for a successor contract. It is the intent of the parties to attempt to reach such agreement as is necessary to cooperate in supporting legislation to fund salaries and fringe benefits.

### ***17.6. SUMMER SCHOOL COMPENSATION***

Teachers employed in an academic summer school program will be paid a prorated share of their base salary, taking into account the length of the school day and the program duration.

**XVIII. RESERVED****XIX. LEAVES*****19.1. SICK LEAVE***

Upon request, a faculty unit member may take sick leave with full compensation, in accordance with SDCL § 3-6C-7 and ARSD 55:09:04:02, for personal illness, pregnancy; the birth or the placement for adoption or foster care of a child, in order to bond with a child within one year of child's birth or placement; exposure to contagious diseases that would endanger the health of fellow employees; required eye and dental care; required medical examination; or inpatient or outpatient treatment in approved centers for alcohol, drug abuse, psychiatric, or counseling care.

The institutions have the right to investigate the use of sick leave. If use of sick leave is found to be for other than the uses listed above, the time off will be charged to leave without pay, and may be cause for disciplinary action.

Full-time faculty unit members who have contracts for the full academic year will accrue 9.334 hours of sick leave per month. Faculty unit members who are employed at least fifty percent (50%), but less than one hundred percent (100%), during the full academic year, will accrue sick leave on a prorated basis of the above. Accumulation of unused accrued sick leave is unlimited.

Advance sick leave may be granted, not to exceed 224 hours. Advance sick leave may be used only after the exhaustion of all regularly accumulated sick and annual leave. Advanced sick leave will be charged against all sick leave credits subsequently earned. Advanced sick leave must be repaid prior to leaving the employment of the institution. Advance sick leave may not be granted during the first year of employment. All advance sick leave must be approved by the superintendent and the executive director.

***19.2. ANNUAL LEAVE***

Annual leave will accrue at the statutory rate pursuant to SDCL ch. 3-6C.

Ten-month faculty unit members will be required to take annual leave on working days during the contract when the ten-month faculty unit member has no assigned responsibility.

For nine-month faculty unit members, working days during the contract when the nine-month faculty unit member has no assigned responsibility will offset annual leave accrual.

***19.3. PROFESSIONAL LEAVE***

Faculty unit members at the special schools may be granted professional leave. The administration will develop a procedure to be included in the faculty handbook by which the faculty unit member may apply for professional leave. The institutional COHE chapter may submit recommendations for this procedure.



#### ***19.4. PERSONAL LEAVE***

Pursuant to SDCL § 3-6C-7 and ARSD 55:09:04:05, faculty unit members are allowed to use up to forty (40) hours of accumulated sick leave during each calendar year for the following purposes:

1. A death in the immediate family
2. The temporary care of members of the immediate family; and
3. A call to state active duty of military reserve or national guard members

“Immediate family” is defined in ARSD 55:09:01:01(19) as the employee’s spouse, children, mother, father, mother-in-law, father-in-law, daughter-in-law, son-in-law, brothers, sisters, grandparents, grandchildren, stepbrothers, stepsisters, and stepparents.

#### ***19.5. MILITARY LEAVE***

Faculty unit members who are called to active duty in the military services are eligible to request a leave without pay during the length of required service.

Faculty unit members who are members of Reserve or National Guard units are authorized up to fifteen (15) working days during a calendar year for required training. The faculty unit member does not lose pay or benefits during the training period.

#### ***19.6. JURY LEAVE***

Faculty unit members who are summoned for jury duty will receive their regular compensation and are authorized to accept the fees ordinarily paid to a juror. No charges will be made against accrued leave.

#### ***19.7. SABBATICAL, FACULTY MEMBER IMPROVEMENT AND CAREER REDIRECTION LEAVES***

Faculty unit members are eligible to apply for sabbatical, faculty member improvement and career redirection leaves pursuant to Board Policy 4:15. However, a faculty unit member must submit the written request, using a form provided by the Board, no later than June 1 of the prior calendar year.

#### **19.8. RESERVED**

**19.9. LEAVE OF ABSENCE WITHOUT PAY**

Leave of absence without pay may be granted by the Board for up to one (1) year for educational, parental or other valid reasons. Extensions may be granted by the Board. If allowed by existing insurance contract(s), the faculty unit member may elect to continue group insurance coverage by notifying the appropriate administrative office at the institution, by complying with the insurance contract(s) requirements, and by arranging to pay monthly premiums consistent with Board Policy 4:15.

Upon return from a leave of absence without pay, faculty unit members will be assigned to their former positions or to comparable positions for which they are qualified. Faculty unit members will retain all accrued benefits during leaves of absence without pay. A leave of absence without pay will not constitute a break in service for purposes of eligibility for the leaves established under § 19.7.

**19.10. UNAUTHORIZED ABSENCE**

A faculty unit member who is absent from assigned professional activities without authorized administrative approval may be subject to the provisions of Article XIII, Code of Conduct--Discipline--Just Cause.

**19.11. ADMINISTRATIVE LEAVE**

Pursuant to ARSD 55:09:04:13, administrative leave will be granted in the following situations, allowing an employee to receive compensation for the hours that the employee would normally have worked with no loss of leave.

1. An office is administratively closed;
2. An employee is a member of a volunteer fire department, reserve law enforcement unit, emergency search and rescue squad, or ambulance service and is called to duty during working hours;
3. An employee may be placed on administrative leave pending an investigation of charges made against an employee upon which disciplinary action could be taken; and
4. For any other purpose that has been requested in writing and approved by the executive director.

The appointing authority will grant administrative leave hours as straight time off at a later date or as cash payment at the regular hourly rate to employees who are required to work when an office is administratively closed. If an office remains open and an employee is not able to reach the worksite, the employee must use annual leave or leave without pay.

Appointing authorities will inform the executive director of all office closings.

***19.12. DONATION OF LEAVE--RECIPIENT AND DONOR REQUIREMENTS***

Under conditions outlined in ARSD 55:09:04:14 through 55:09:04:17, faculty unit members may donate leave or receive donated leave.

***19.13. LEAVE FOR PROFESSIONAL PRESENTATIONS***

Faculty unit members who give professional presentations away from the special school during school time will take leave without pay, unless they elect to use their annual leave for such purposes or unless the presentations are made at the request of the special school.

## **XX. AGREEMENT MANAGEMENT PROVISIONS**

### ***20.1. OPEN COMMUNICATION***

The Superintendent of each school will meet with COHE representatives, at least annually, to maintain open communications between the two parties. The parties may otherwise meet as frequently as deemed necessary by either party.

### ***20.2. RESERVED***

### ***20.3. RESERVED***

### ***20.4. TOTALITY OF AGREEMENT***

All matters on which the parties have reached agreement are set forth in this document. All other understandings, representations, or agreements between the parties have no force or effect.

Any individual contract entered into between the Board and a faculty unit member will be subject to the provisions of this agreement.

Guidelines for intra-institutional rights and responsibilities for a particular institution may be compiled in a handbook. Faculty handbooks are neither intended, nor should they be considered, as conferring any employment rights not provided for in this agreement, and to the extent they may be so arguably interpreted, the same are void and have no force or effect.

## **20.5. PUBLICATION OF AGREEMENT**

The Board and COHE will cooperate in preparing this agreement and its appendices for publication via the Board's website. The Board will prepare the master copy for publication. The text will be approved by the parties.

## **20.6. SEVERABILITY**

If any word, phrase or provision of this agreement or any application thereof to any faculty unit member or the Board is held to be contrary to law by a court of competent jurisdiction, such word, phrase, or provision or application will be deemed valid and subsisting only to the extent permitted by law and all other words, phrases, provisions and applications will be separated and will continue in full force and effect.

## **20.7. WAIVER**

Failure of either party to require performance by the other party of any promise, condition or covenant herein will in no way affect the full right to require such performance at any time thereafter, nor will the waiver by either party of a breach of any promise, condition or covenant hereof be taken or held to be a waiver of the promise, condition or covenant.

## **20.8. MODIFICATION**

This agreement may be modified in writing upon agreement of the parties.

## **20.9. NOTICE**

1. Unless otherwise provided, where notice is required to be given, it will be sufficient:
  - a. In the case of faculty unit members, if sent by first class mail to their last reported residential address, if delivered by electronic mail to the faculty unit members' official institutional electronic mail or if hand delivered directly to the affected faculty unit member;
  - b. In the case of COHE, if sent by first class mail to the institutional COHE president at the last reported residential address, or to the office of the COHE UniServ Director, or hand-delivered to the institutional COHE president or to an employee of the Pierre COHE office;
  - c. In the case of the Board, if sent by 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;
  - d. In the case of the superintendent, if sent by first class mail to the institutional address, or hand-delivered to the superintendent or to a clerical staff member on duty at the superintendent's office;

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

2. Notice will be required only when the words "notice" or "notification" appear in this agreement.
3. 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.
4. Notice will be effective on the date postmarked by the United States Postal Service, on the date delivered by hand or on the date sent electronically (whether by electronic mail, telefacsimile or other electronic communications system); provided that, where disruption of institutional electronic communications systems interferes with delivery of an electronic notice, the effective date of notices sent electronically will be delayed until service has been restored.

## **XXI. LEGISLATIVE ACTION**

### ***21.1. STATEMENT***

Where a provision of this agreement requires legislative action, other than appropriations, for its implementation, COHE and the Board agree to meet to discuss the drafting of such legislation, and its introduction into the legislative process. Where mutual agreement is reached on the proper form of the desired legislation and the proper introduction of such legislation into the process, then the parties will lend their support to the passage of such legislation.

The provisions of § 3.2.8 do not obligate COHE to support legislation enacting merit pay.

## XXII. DUES DEDUCTION

### 22.1. STATEMENT

During the term of this agreement, the Board agrees to deduct COHE membership dues, in an amount established by COHE and communicated in writing to the Board by an authorized official of COHE, from the pay of those faculty unit members in the bargaining unit who individually and voluntarily make such request on the dues deduction authorization form as depicted in **Appendix E** of this agreement.

Deductions will be made monthly. Annual dues will be deducted in twelve (12) equal installments for faculty unit members with twelve (12) month contracts, or whose nine (9) month compensation is paid in twelve (12) installments. Annual dues will be deducted in nine (9) equal installments for faculty unit members with less than twelve (12) month contracts. Twelve (12) month contract faculty unit members requesting dues deduction subsequent to July or less than twelve (12) month contract faculty unit members requesting the dues deduction subsequent to September will have their annual dues deducted in the remaining pay periods on a pro rata basis. The faculty unit member's dues deduction authorization form must reach the business office no later than the tenth day of the month in which the authorized dues deduction is to begin. COHE will give to the Board written notice of any change in its dues at least thirty (30) working days prior to the effective date of any such change. Only one such change may be made per calendar year.

The dues deducted will be remitted by the institution to the local COHE treasurer as soon as possible, but not later than fifteen (15) working days following the end of each pay period.

Accompanying each remittance will be a list of the faculty unit members from whose salaries such deductions were made, and the amounts deducted.

The institutions will not be responsible for making deduction for dues if a faculty unit member's pay within a period, after other mandatory voluntary deductions, is less than the amount authorized. In such event it will be the responsibility of COHE to collect its dues for that pay period directly from the faculty unit member.

The institution's responsibility for deducting dues from a faculty unit member's salary will terminate automatically upon either (1) revocation of the faculty unit member's prior dues deduction authorization, or (2) cessation of the authorized faculty unit member's employment, or (3) the cessation of the authorizing faculty unit member's inclusion in the bargaining unit.

Faculty unit members who wish to cancel their dues deduction authorization will forward a completed dues deduction cancellation form (**Appendix F**) to the institutional payroll section prior to the first of the month in which the faculty unit member wishes a dues deduction authorization to be canceled.



The institution will inform the institutional COHE chapter president of any request for dues deduction cancellation by the fifth working day of the month in which the dues deduction is to be canceled.

COHE will indemnify, defend and hold the Board, its members, officials, agents and representatives harmless against any claim, demand, suit, or any form of liability (monetary or otherwise), including attorneys' fees and costs, arising from any action taken or not taken by the Board, its members, officials, agents or representatives in complying with this article or in reliance upon any notice, letter or written authorization furnished to the Board pursuant hereto. COHE assumes full and sole responsibility for all monies deducted pursuant to this article upon remittance to COHE. COHE will promptly refund to the Board any funds received pursuant to this article which are in excess of the amount of dues which the Board has agreed to deduct.

The Board will not deduct from the pay of any faculty unit member any COHE fines, penalties, or special assessments which are not a part of the amount of annual dues.

The Board's responsibilities under this article will terminate automatically upon the expiration of this agreement.

## **XXIII. EFFECT AND DURATION**

### ***23.1. EFFECT AND DURATION***

This agreement will take effect when signed and ratified by both parties. It will remain in full force and effect through the 30th day of June, 2024, except to the extent that modification is required in order to respond to changes in statute or regulation or to binding court decisions.

Notwithstanding this limitation, the parties may reopen talks concerning §17.1 in the event that the Board fails to provide funds to supplement salary policy for a fiscal year.

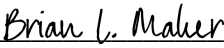
On or before the 15<sup>th</sup> day of February, 2024, either party may notify the other that it wishes to renew or modify this agreement. In this event, the parties will meet no later than the 15<sup>th</sup> day of March, 2024, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June, 2024, the parties may mutually agree to extend the force and effect of this agreement.

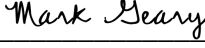
Executed this 19th day of May, 2021.

SOUTH DAKOTA BOARD OF REGENTS

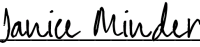
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Executive Director & CEO  
Board of Regents

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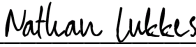
Mark Geary  
President, COHE

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Janice Minder  
System VP for Academic  
Policy and Planning

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Chief Negotiator for SDSD

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Nathan Lukkes  
General Counsel & Chief Negotiator

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