

**SOUTH DAKOTA BOARD OF REGENTS**

**Planning and Resource Development**

**AGENDA ITEM: 5 - D**

**DATE: March 30 – April 1, 2016**

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**SUBJECT: BOR Policy 4:1 & 4:49 - Multi-Year Contracts Policy**

At the January 29, 2016 Board of Regents teleconference meeting, the Board directed Dr. Rush to modify BOR Policy 4.1 that prohibits multi-year contracts for NFE employees, and to develop a new policy allowing multi-year contracts for NCAA Division I Head Coaches, NCAA Division I Athletic Directors and University Presidents. In addition to the new policy, BOR Policy 4:1 (Attachment I) needs to be modified to include text that states that non-faculty exempt contracts may not be more than one year in length, unless otherwise specified in BOR Policy 4:49 (Attachment II).

Market expectations for NCAA Division I athletics have continued to evolve, and multiple year contracts for head coaches and athletic directors are commonplace. In order to remain competitive from an employee recruitment perspective, it is imperative that the institutions can offer longer term contracts for these positions. In addition, it is also common in higher education to offer multi-year contracts for University Presidents. At present time, no other positions have been identified in the proposed policy as eligible for multiple year contracts. This allows SDBOR to implement the policy for a very limited, and targeted subset of employees so that the Board can understand the long-term implications, and evaluate the budgetary impact before consideration of including other divisions and position types.

Proposed BOR Policy 4:49 does not require that a multi-year contract is offered to any of the positions identified as eligible, but gives the institution and the Board the ability to negotiate a multi-year employment agreement. The proposed policy stipulates that any multi-year contract issued:

1. Must follow the Board approved model contract template;
2. Any termination for convenience payouts must be paid from University non-restricted unappropriated funds;
3. Must be less than four years in length, targeting three year terms;
4. Must include supporting documentation including a summary of the terms and compensation obligations of all current institutional multi-year contracts, market salary comparisons, and all base and supplemental compensation information.

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**RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR**

I move the Board declare an emergency, approve the proposed amendment to BOR Policy 4:1, and approve implementation of BOR Policy 4:49.

# SOUTH DAKOTA BOARD OF REGENTS

## Policy Manual

**SUBJECT:** General Terms & Appointments

**NUMBER:** 4:1

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### 1. Preamble

Unless specified otherwise, this chapter applies to all Board of Regents personnel. No contract may obligate an institution to make payment in any future fiscal year without noting the limitations placed on the campus by the Legislature's appropriations process. Any contract that purports to extend to any future fiscal year must contain a clause that permits the institution to terminate the contract without default or liability of any kind in the event that the Legislature fails to appropriate moneys or expenditure authority needed to perform the contract.

### 2. Types of Employment Classification

A. **Civil Service:** Civil Service Employees (CSA) are employees that are provided for under SDCL 3-6A-13, which applies to all positions in the executive branch of state government. All Civil Service employees are subject to Bureau of Human Resources Rules and Regulations as well as applicable BOR policies. Activities within the Civil Service System are also governed by SDCL § 3-6 and the Joint Powers Agreement between the Civil Service Commission and the South Dakota Board of Regents.

#### B. Non-faculty Exempt:

1. Administrative and/or Professional: Administrative or professional employees are exempt from the State Civil Service System by virtue of their administrative and professional functions. Academic administrators may have both administrative and faculty assignments. Questions involving the administrative duties of academic administrators will be resolved under those policies and procedures that apply generally to administrators. Questions involving the faculty assignments of academic administrators will be resolved pursuant to those policies that apply to non-unit faculty members.

2. **Student Employees:** Student employees, including teaching and research fellows, are exempt from the Civil Service System. Student employees are considered temporary employees and not eligible for benefits.

**C. Faculty:**

1. **Non-Unit:** Non-Unit Faculty are employees that are in faculty related positions who are exempt from the State Civil Service System and exempt from the bargaining unit (COHE) and perform research, instruction, and other faculty duties. Departments that are exempted from the COHE collective bargaining unit are Medical School, Law School, Institute of Atmospheric Sciences, and 2010 Research Initiative. All non-unit employees are subject to the BOR as well as institutional policies, procedures, rules and regulations.
2. **Unit:** Unit Faculty are employees that are in faculty related position who are exempt from the State Civil Service System and perform research, instruction, and other faculty duties. These employees are members of the Council of Higher Education (COHE) which have a collective bargaining agreement (CBA) and are the recognized union representatives. All unit employees are subject to the collective bargaining agreement and those rules, regulations, policies, and procedures not governed by COHE.

**3. Institutional Appointment**

All institutional personnel will be employed upon the recommendation of the president or superintendent of the institution and upon the approval of the Board of Regents. Before a campus appoints a candidate who has been employed by a Board of Regents institution AND who has been either terminated or allowed to resign in lieu of being terminated, the institutional executive officer and the board office shall be advised of the circumstances surrounding the separation. If a candidate is currently employed by an institution and applies for another position in the system, the employee's institutional human resource office or academic affairs office, as appropriate, will share job-related information with the requesting academic or human resource office in the system.

- A. All non-faculty exempt personnel will be employed upon the recommendation of the president or superintendent of the institution and approval of the Board of Regents. Upon Board approval, institutions shall issue contracts to its benefit eligible non-faculty exempt staff. Non-faculty exempt contracts may not be more than one year in length, [unless otherwise specified in BOR Policy 4:49](#). Benefit eligible non-faculty exempt employees may be reassigned without cause to positions considered equivalent or lower in stature during their contract period, so long as the employee's salary is not decreased during the term of the then-current contract. An employee's contract may be terminated in accordance with BOR Policies.

- B. Faculty members shall receive written appointment notice, signed by the President, Superintendent, or Executive Director, for each year they are employed by the Board. Unless otherwise agreed or established, the faculty member shall have twenty calendar days to accept the employment offer, and the employment contract shall not become binding until the notice is executed by both the faculty member and the appointing authority and approved by the Board of Regents. The provisions of this Policy Manual, the institutional Policy Manual, the appointment notice, and applicable law become part of the terms and conditions of every appointment contract. Any understanding, promise, term, condition or representation not thereby contained or included in the contract is of no effect.

#### 4. Faculty Appointment and Contract Evaluation

##### A. Types of Appointment --Higher Education Institutions

An appointment extended to a member of the faculty at a higher education institution will be of one of the following types: term, tenure-track, or tenure. The University of South Dakota School of Medicine may also appoint to its academic faculty certain individuals who are retired, self-employed or employed by third parties. Individuals who receive such appointments shall not be employees of the School of Medicine, and they will not be eligible for tenure, though the School of Medicine may assign them academic rank or grant them promotions in keeping with its published standards for appointment and promotion, and subject to approval by the Board. An appointment extended to a member of the research faculty at a higher education institution will be of one of the following types: a fixed term, probationary, or continuing; provided that in rare and exceptional circumstances, the Board may grant a tenure appointment to a research faculty member. (See BOR Policy 4.11 Rank and Promotion for a detailed listing of all faculty related positions).

1. **Term Appointments:** A term contract may be either part-time or full-time and will be of a definite term, not to exceed one year, unless the extended contract is approved by the Board. A term contract will terminate automatically at the end of the term unless the Board expressly renews the contract.

The Board recognizes that faculty members who have received several consecutive full-time contracts will come subjectively to expect continued employment on the same basis. Under Board policy, in the absence of an award of tenure, such unilateral expectations, however natural they may be, can never become constitutionally protected property interests. Nevertheless, once a decision has been made not to reissue a subsequent term contract to such faculty Members, professional courtesy requires that they be accorded an opportunity to

assure themselves that the rationale and factual basis for the decision have been reviewed formally by superior authorities and have been found satisfactory.

To give effect to this professional courtesy, the parties agree that a faculty member on a term contract who has received eight or more consecutive full-time contracts may obtain a review of the decision not to reissue a subsequent contract. The faculty member may challenge the decision through the procedures that govern the termination of employment, including, at the option of the faculty member, a hearing before an faculty hearing panel. The review provided hereunder will not constitute a grievance proceeding or a contested case, but the faculty member will be entitled to receive written responses when such would be required under grievance procedures, including findings and conclusions supporting the determination reached under completion of the review. The institution will not bear a burden of proof, except when required by law in a proper case to show that its decision gave effect to the faculty member's entitlements under the first amendment to the United States Constitution and under state and federal antidiscrimination statutes. The determination reached at step 3 will be final and not subject to appeal to the department of labor.

The right to review created hereunder shall not be interpreted to extend any limitation inherent in, or incidental to, a term contract as defined in this section. In particular, the right of review shall not give rise to an expectation of continued employment beyond the expiration of the term contract; nor may the creation of the right of review be deemed to cloak a term contract with any of the characteristics or privileges of tenure track or tenure contracts.

2. **Fixed Term Track Contract for Research Faculty:** A fixed term contract may be either part-time or full-time and will be of a definite term. Terms exceeding one year, shall be approved by the Board. A fixed term contract will terminate automatically at the end of its term unless the Board expressly renews the contract. A fixed term contract will terminate automatically prior to the end of its stated term if the grant funds used to support the contract lapse and the research faculty member has not secured a new funding source.

The Board recognizes that research faculty members who have received several consecutive full-time annual contracts will come subjectively to expect continued employment on the same basis. Under Board policy, in the absence of an award of a continuing appointment, such unilateral expectations, however natural they may be, can never become constitutionally protected property interests. Nevertheless, once a decision has been made not to reissue a subsequent fixed term contract to such research faculty members, professional courtesy requires that they be accorded an opportunity to assure themselves that the rationale and

factual basis for the decision have been reviewed formally by superior authorities and have been found satisfactory.

To give effect to this professional courtesy, the parties agree that a research faculty member on a fixed term contract who has been employed full-time on the research faculty for eight or more consecutive years may obtain a review of the decision not to reissue a subsequent contract. The research faculty member may obtain a review of the decision through the procedures that parallel those for termination of employment, including, at the option of the faculty member, a hearing before a research faculty hearing panel. The review provided hereunder will not constitute a grievance proceeding or a contested case, but the research faculty member will be entitled to receive written responses when such would be required under grievance procedures, including findings and conclusions supporting the determination reached under completion of the review. The institution will not bear a burden of proof, except when required by law in a proper case to show that its decision gave effect to the faculty member's entitlements under the first amendment to the United States Constitution and under state and federal antidiscrimination statutes. The determination reached at step 3 will be final and not subject to appeal to the department of labor.

The right to review created hereunder shall not be interpreted to extend any limitation inherent in, or incidental to, a fixed term contract as defined in this section. In particular, the right of review shall not give rise to an expectation of continued employment beyond the expiration of the fixed term contract; nor may the creation of the right of review be deemed to cloak a fixed term contract with any of the characteristics or privileges of probationary or continuing appointments.

- 3. Tenure Track Contract:** A tenure track contract is a qualifying appointment offered to a full-time faculty member who may be considered for a tenure contract at a later time and will be of a definite term, not to exceed one year. A tenure track contract is renewable solely at the discretion of the Board, subject to procedures for non-renewal of tenure track contracts set forth in Board Policy 4:10, Tenure. If a faculty member is offered a tenure track contract, the number of years the faculty member has served under term contracts may be credited, at the discretion of the Board, toward fulfillment of the period necessary for consideration for a tenure appointment.
- 4. Probationary Contract for Research Faculty:** A probationary contract is a qualifying appointment offered to a full-time research faculty member who may be considered for a continuing appointment at a later time and will be of a definite term, not to exceed three years. A probationary contract may be renewed for a

second three-year term. A probationary contract is renewable solely at the discretion of the Board, subject to procedures for non-renewal of tenure track and probationary contracts set forth in Board Policy 4:10, Tenure and Continuing Appointments. If a research faculty member is offered a probationary contract, the number of years the research faculty member has served under fixed term contracts may be credited, at the discretion of the Board, toward fulfillment of the period necessary for consideration for a continuing appointment.

- 5. Tenure Appointments for Faculty and Continuing Appointments for Research Faculty:** Tenure and continuing appointments are addressed in Board Policy 4:10, Tenure and Continuing appointments.
- 6. Joint Appointments to the Instructional and Research Faculty:** Upon the specific recommendation of the institutional president, a faculty member may be jointly appointed to the research faculty and the faculty, provided that the instructional load is less than half-time.

#### **B. Appointment Contract Fulfillment**

Full-time faculty and research faculty 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. However, any faculty and research faculty member who so resigns and breaches this contract may request a waiver of the deduction of said liquidated damages, in lump sum, from any pay owed to the faculty and research faculty member by the Board. Upon good cause, the Board will not unreasonably withhold its waiver of said liquidated damages and the deduction thereof from allowances owed. Consent to resignation and breach of an individual contract is given by the Board if written notice is given to the institution thirty (30) or more days prior to the first day of the individual contract.

When deemed by the Board to be appropriate, liquidated damages will accrue and be assessed at the rate of \$50.00 per day beginning on the 29th day prior to the first day of the individual contract, not to exceed \$1,500.00.

**SOURCE:** Current Policy Manual 6.1.1; 5.2.1; 5.2.2; 5.2.3; BOR May 1991; 5.2.4; 5.2.5; 5.2.6; BOR, May 1997; BOR, June 1998; BOR, March 2000; BOR, March 2004; BOR, August 2004; BOR, October 2005; [BOR March 2016](#).

## SOUTH DAKOTA BOARD OF REGENTS

### Policy Manual

**SUBJECT:** Multi-Year Employment Contracts

**NUMBER:** 4:49

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#### **1. Preamble**

This policy allows, but does not require, multi-year employment contracts for the positions identified in this policy. Employment contracts for the positions identified in this policy may be offered for a term of one or more years up to the maximum term allowed by this policy. Employment contracts for a term of one year are governed by Board Policy 4.1.1 (for institutional presidents) or Board Policy 4.1 (for all other employees).

In the event of a termination for convenience by the University, any early termination payout shall be paid from the University's non-restricted unappropriated funds.

#### **2. Multi-Year Employment Contracts for NCAA Division I Head Coaches and Athletic Directors**

The President of an institution may offer to enter into, or renew, a contract for the services of non-faculty exempt NCAA Division I Head Coaches and one NCAA Division I Athletic Director for a term of more than one year, but less than four years, subject to approval by the Board of Regents.

#### **3. Multi-Year Employment Contracts for University Presidents**

The South Dakota Board of Regents may enter into, or renew, a contract, for the services of University Presidents for a term of more than one year, but less than four years.

#### **4. Multi-Year Employment Contract Requirements**

All employment contracts shall define the entire employment relationship between the Board of Regents and the employee, and may incorporate by reference applicable Board of Regents and institutional policies and rules, and applicable law.

- A. All multi-year employment contracts for the services shall follow the Board approved model contract that corresponds to the position type. Should there be any proposed deviations from the Board-approved model contract, such proposed deviations shall be clearly and specifically identified.

B. Multi-year employment contracts submitted for Board approval shall include the following supporting documentation:

- 1) Base salary;
- 2) All supplemental compensation incentives and their monetary value;
- 3) Base salaries and incentive payments of similar positions from peer institutions (for institutional presidents) or conference institutions (for NCAA Division I Head Coaches and NCAA Division I Athletic Directors).
- 4) A summary of all current University multi-year contracts, including remainder of terms and compensation obligations in the event of a termination for convenience by the University.