I move to approve the first reading of BOR Policy 4:4 and the proposed revisions to BOR Policy 4:1.

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**SUBJECT**
BOR Non-Faculty Exempt Employment Policy Revisions (First Reading)

**CONTROLLING STATUTE, RULE, OR POLICY**

- BOR Policy 4:1 – General Personnel Policy
- BOR Policy 4:8 – General Non-Faculty (NFE) Grievance Procedure
- BOR Policy 4:33 – Reduction in Force – Non-Faculty Exempt Employees
- BOR Policy 4:44 – Administrators, Professional and Student Employees (NFE) Code of Conduct/Misconduct
- BOR Policy 4:46 – Professional and Administrative Employee (NFE) Compensation Administration

**BACKGROUND / DISCUSSION**

In recent years, the Board has expressed a desire to create BOR policies that are less complex, more user friendly, and easily understood by all stakeholders. To streamline the policy manual, this proposed change would create BOR Policy 4:4 as the single policy related to non-faculty exempt (NFE) employment provisions. This requires a modification to BOR Policy 4:1, and elimination of BOR Policies 4:8, 4:33, 4:44, and 4:46 as the provisions of those policies would now be placed into the new BOR Policy 4:4.

Through the review of the policies, there were a limited number of substantive changes proposed, however, the language has been scaled down to remove unnecessary language. The substantive changes to each policy are outlined below:

**BOR Policy 4:1 – General Personnel Policy**
The provisions of BOR Policy 4:1 pertaining to NFE employees are outlined in Sections C(1) and C(2) of the new policy, and can also be found in Attachment II.

1. More specifically defines which employees receive annual employment contracts.
2. Specifically addresses that contracts may be non-renewed without cause and that non-renewal is not an action which can be grieved.
BOR Policy 4:46 – NFE Compensation Administration
The provisions of BOR Policy 4:46 are outlined in Section 3 of the new policy. Substantive changes are outlined below:

1. Language change to align with new policy revision in BOR Policies 1:5 and 1:6 related to delegation of authority.
2. Added specific language which states that when an NFE employee teaches a course as an overload that the work related to that course instruction needs to be completed outside of the scope of their regular position.

BOR Policy 4:33 – NFE Compensation Administration
Section 4 of the new policy includes the language from BOR Policy 4:33. Substantive changes are outlined below:

1. Updated the definition of a layoff to align with administrative rules.
2. Removed Section 5 relating to benefits as it is process related and the benefits related matters are handled through other state agencies.

BOR Policy 4:44 – Code of Conduct
Section 5 of the new policy includes language from BOR Policy 4:44. Substantive changes include:

1. Elimination of references to the board review and approval of disciplinary actions, this is not current practice and employees are given that opportunity through grievance processes.
2. Disciplinary actions outlined in Section 2 of the current policy include suspension with or without pay, but the policy contradicts itself in Section 3 and states that the institution can only suspend with pay, pending final action of the board. The language requiring the suspension with pay pending final action of the board has been removed in the new policy language.
3. Included a statement that disciplinary action, up to and including termination, could be taken for misconduct.
4. Minor changes to the definitions of misconduct to simplify and make less legalistic.

BOR Policy 4:8 – Grievance Procedures
Section 6 of the attached policy outlines the provisions from BOR Policy 4:8 relating to grievance procedures.

1. Limited the definition of grievance to only actions that directly affect the terms and conditions of employment for the individual employee.
2. Section 4 in the current policy mirrors the administrative procedures act so removed that section and replaced with a reference to the appropriate statute.

IMPACT AND RECOMMENDATIONS
The Board staff recommends approving the first reading of BOR Policy 4:4, and the
proposed revisions to BOR Policy 4:1. When BOR Policy 4:4 is approved by the Board there will be a motion for the board to eliminate BOR Policies 4:8, 4:33, 4:44, and 4:46.

ATTACHMENTS

Attachment I – Proposed BOR Policy 4:4 - Non-Faculty Exempt Employment Provisions
Attachment II – Proposed Revisions to BOR Policy 4:1
SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Non-Faculty Exempt Employment Provisions

NUMBER: 4:4

A. PURPOSE

To define the process and provisions relating to the appointment, employment, conduct expectations, compensation practices, and grievance procedures for Non-Faculty Exempt (NFE) employees. This policy supersedes all other BOR policies relating to NFE employees.

B. DEFINITIONS

1. Executive Director: The chief executive officer of the SD Board of Regents.

2. Grievance: An alleged misinterpretation, misapplication or violation of a specific term or provision of Board policy, or other agreements, contracts, policies, rules, regulations or statutes that directly affect terms and conditions of employment for the individual employee.

3. Institution: Black Hills State University, Dakota State University, Northern State University, South Dakota School of Mines & Technology, South Dakota State University, South Dakota School for the Blind and the Visually Impaired, State School for the Deaf, University of South Dakota, and the Office of the Executive Director.

4. Internal Equity Adjustment: A salary adjustment to reduce or eliminate an internal pay rate disparity within an Institution or defined Institutional department.

5. Market Equity Adjustment: A salary adjustment to reduce or eliminate an external pay rate disparity using recognized market data and peer groups.

6. Non-Faculty Exempt (NFE): Employees who are exempt from the Civil Service Act by virtue of their administrative and professional functions.

7. Performance Adjustment: A salary adjustment made in recognition of work performance that meets or exceeds performance standards documented through an established review process.

8. President: The chief executive officer of a South Dakota Board of Regents University.

9. Student Employee: 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 unless meeting the requirements under the Affordable Care Act.

10. Superintendent: The chief executive officer of a South Dakota Board of Regents Special School.
11. Working Day: Monday through Friday, except for holidays and other times when the Institution’s administrative offices are closed.

C. POLICY

1. Appointment

All NFE Institutional personnel will be employed upon the approval of the President, Superintendent, or Executive Director. BOR Policies 1:5 and 1:6 outline when Board approval is required for appointment.

1.1. If an Institution wishes to hire a candidate who was previously terminated for cause, or who resigned in lieu of termination, the President or their delegate, and the Office of the Executive Director shall be advised of the circumstances surrounding the termination. The President, Superintendent, or Executive Director will approve or deny the rehire based upon legitimate business and position related reasons.

1.2. If an Institution appoints a candidate who is employed by another Institution, the Institutions shall share position related information with the requesting academic or human resource office, and the appointing authority will consider that legitimate business and position related information in the hiring process prior to appointment.

2. Employment Contracts

2.1. Upon appointment of a benefit-eligible employee, the University or Special School will issue an employment contract, which may be renewed annually at the discretion of the University President or Superintendent.

2.2. NFE employment contracts shall not be more than one year in length, unless otherwise specified in, and issued pursuant to, BOR Policy 4:49.

2.3. During a valid contract term, NFE employees may be reassigned for non-discriminatory purposes without cause to any position, so long as the salary is not decreased during the term of the current contract.

2.4. NFE Employment contracts may be non-renewed without cause by providing written notice of the non-renewal to the NFE employee prior to the expiration of the current contract term.

2.5. An NFE employment contract creates no obligation of the Institution for continued employment beyond the term of the contract and non-renewal of the contract is not an action which can be grieved under BOR or Institutional policy.

2.6. NFE employment contracts may be terminated for cause, or as a part of a reduction in force in conformity with this policy and applicable law.

3. Compensation Administration

3.1. All compensation adjustments that meet the criteria identified in BOR Policy 1:5(5) and 1:6(4) require Board approval.

3.2. Compensation upon Hire or Transfer

3.2.1. Compensation for employees at hire or transfer will be set comparative to the market value of the position as well as the internal equity of the Institution.
3.2.2. Institutional hiring authorities shall consult with human resources on compensation decisions at hire or transfer, and the Institution shall consider the position requirements, institutional priorities and the candidate’s education, experience, skills, and abilities.

3.3. Annual Salary Adjustments

Decisions concerning annual salary policy adjustments will be made in accordance with legislative process and BOR policies. The President, Superintendent or Executive Director determines the Institutional priorities and establish guidelines for salary allocations.

3.3.1. Administrators responsible for making individual salary recommendations will follow approved guidelines:

3.3.1.1. The Legislature will identify the salary pool and the Board will approve a total salary policy pool for which Institutions can distribute based on market, performance or institutional priorities.

3.3.1.2. The President, Superintendent or Executive Director can apply institutional priorities to a specific department or area of concentration so long as it is a portion of the total salary policy pool.

3.3.1.3. Administrator recommendations will be reviewed by the appropriate Vice President and/or President.

3.3.1.4. All annual salary policy for benefit eligible employees must be applied through the HRFIS system, those meeting the criteria for Board approval in BOR Policy 1:5 or 1:6 must be report to the Board for approval at its regularly scheduled meeting in May.

3.4. Other Base Salary Adjustments

3.4.1. Additional Duty Pay: An increase, permanent or temporary, to base salary not exceeding ten percent (10%) may be granted based on a documented additional workload;

3.4.2. Duties and Responsibilities Changes: An increase based upon significant change in the duties, scope and responsibility of a position as documented in an approved position description.

3.4.2.1. The adjustment shall be consistent with previous institutional priority decisions of the Institution and must be made in light of internal equity.

3.4.3. Internal Equity Adjustment: An increase to base salary to reduce or eliminate documented institutional internal salary disparities that are found after an analyses of position duties, individual qualifications, experience, longevity, work performance or institutional priorities.

3.4.4. Market Adjustment: An increase to base salary to reduce or eliminate a documented external salary inequity.

3.5. Instruction of Academic Courses
3.5.1. An NFE employee may be allowed to instruct an undergraduate or graduate course with the appropriate approval process at the Institution.

3.5.2. Compensation for the instructional work should be comparable to the rates provided to temporary faculty for comparable instruction.

3.5.3. If the instructional workload is assigned as an overload, the work related to course instruction should be completed outside of the scope of the employee’s regular position.

4. **Reduction in Force**

4.1. An Institution may lay off or reduce the percent time of an NFE employee during a current contract term for the following reasons:

4.1.1. Legislative action;

4.1.2. Loss of grant, contract or other funding;

4.1.3. Governor’s executive order; or

4.1.4. Reorganization. An Institution may only use this as a means to lay off an employee for such occasions as privatization, the movement of a function to another state agency, the elimination of an organizational function, the consolidation of departments or functions, or a reduction in a program’s activities.

4.2. Layoff Notification

4.2.1. An employee shall be given a minimum of fourteen (14) calendar day’s written notice prior to the effective date of the layoff or reduction in percent time. The notice shall include:

4.2.1.1. The effective date and reason(s) for the layoff;

4.2.1.2. Information concerning the right to appeal;

4.2.1.3. The timeline in which the employee may present reasons in writing why the layoff should not take place;

4.2.1.4. Notice is effective the day of deposit in the mail of a certified notice, the date electronically sent, or the date personally delivered to the employee.

4.2.2. A copy of the layoff notification should be forwarded to the system human resources officer at the time the action is taken.

4.3. Priorities for Layoff

4.3.1. When more than one NFE employee exists in any classification, department, or geographic location designated for a reduction in force, the following criteria will be used to identify the employee(s) who will be laid off or have reduced hours:

4.3.1.1. Performance;

4.3.1.2. Longevity with the Institution and employment status;

4.3.1.3. Special knowledge, skills, abilities and potential of the employee;
4.3.1.4. Type and mixture of funding for position and fund status;
4.3.1.5. Future needs of the department;
4.3.1.6. Geographic location.

4.4. Benefits
4.4.1. Any accrued and vested leave will be paid in accordance with South Dakota administrative rules and statues.

5. Code of Conduct

Employees are expected to maintain an effective, orderly, safe and efficient work environment.

5.1. Professional Conduct/Misconduct Defined
5.1.1. Disciplinary action, up to and including termination, may be taken, upon notice and a right to respond, for conduct within or outside the scope of employment. Disciplinary action may be taken for just cause, including, but not limited to the reasons listed below:
5.1.1.1. The employee has violated any Board of Regents or institutional policy;
5.1.1.2. The employee violated a confidentiality agreement, non-disclosure agreement, policy, regulation, or law;
5.1.1.3. The employee disrupts the efficiency or morale of the department;
5.1.1.4. The employee is careless or negligent with the money or other property of the state or property belonging to any person receiving services from the state or has stolen or attempted to steal money or property of the state or property belonging to any person receiving services from the state;
5.1.1.5. The employee has failed to maintain a satisfactory attendance record based on the established working hours or has had unreported or unauthorized absences;
5.1.1.6. The employee has made a false or misleading statement or intentionally omitted relevant information during the application and selection process;
5.1.1.7. The employee has intentionally falsified a state record or document;
5.1.1.8. The employee has violated statutes or standard work rules established for the safe, efficient, or effective operation of the campus;
5.1.1.9. A failure to correct deficiencies in performance;
5.1.1.10. A breach of recognized published standards of professional ethics for the employee’s profession;
5.1.1.11. Conviction of any felony or the conviction of a misdemeanor involving immoral actions;
5.1.1.12. The unlawful or unauthorized manufacture, distribution, dispensing, possession or use of alcohol or controlled substances while on duty or while on premises owned and controlled by the Board of Regents or used
by the Board of Regents for educational, research, service or other official functions.

5.1.1.13. Insubordination.

5.1.1.14. The use of alcohol, marijuana, or other controlled substances, which significantly impairs performance of duties.

5.1.1.15. Theft of state owned or controlled property.

5.1.1.16. Intentionally and wrongfully counseling, inciting, or participating in a prohibited student or employee activity.

5.1.1.17. Any substantial or irremediable impairment of the ability of a staff employee to perform assigned duties.

5.2. Termination of Faculty Appointment

If an NFE employee holds faculty rank, and/or tenure, then the appropriate faculty termination procedures shall be applied.

6. Grievance Procedures

The grievance procedure provides a just and equitable method for resolution of grievances that affect the terms and conditions of employment.


6.1.1. Grievance procedures are available to NFE employees.

6.1.2. No offer of settlement of a grievance by either party shall be admissible as evidence in later grievance proceedings or elsewhere.

6.1.3. No settlement of a grievance shall constitute a binding precedent in the settlement of similar grievances.

6.1.4. If the grievant fails to act within the time limits provided herein, the administration will have no obligation to process the grievance and it will be deemed withdrawn.

6.1.4.1. The parties to any grievance may, by mutual written agreement, waive the time limits provided herein.

6.1.5. If the administration fails to act in time, the grievant may proceed to the next review level by filing the grievance with the appropriate official and within the timeframe required under Section 6.2 and any subsequently issued decision on the matter at the bypassed level will be void.

6.1.6. The Board, administration, or supervisors shall not retaliate against any non-faculty exempt employee for filing or participating in a grievance.

6.1.7. Employees who voluntarily terminate their employment shall have their grievances under this policy immediately withdrawn and shall not benefit by any later settlement of an individual or group grievance.

6.1.8. Grievance records shall not be maintained in the individual's personnel files, but shall be maintained in a separate file.
6.1.9. Required written notice may be sent via the Postal Service, delivered by hand, or sent through electronic mail.

6.1.9.1. Notice will be effective on the date postmarked by the Postal Service, on the date delivered by hand or on the date sent electronically, 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.

6.1.10. Grievances will be filed with the lowest administrative level having the authority to dispose of the grievance. If the office of the President, Executive Director or Vice President represents the lowest administrative level having authority to dispose of the grievance, then the grievance will be filed at Step 2, Step 3 or Step 4 as applicable.

6.1.11. Throughout the grievance process, the grievant shall include copies of the original grievance and all responses and decisions from prior steps, if any.

6.2. Grievance Procedures

6.2.1. Step One – Grievance to Immediate Supervisor

6.2.1.1. An employee may file a grievance in writing with the immediate supervisor within fourteen (14) calendar days of the date on which the grievant knew, or should have known, of the action or condition which occasioned the grievance.

6.2.1.2. The supervisor, upon receipt of the grievance, will investigate and provide a response to the grievant within seven (7) calendar days.

6.2.1.3. If the employee is not satisfied with the response, the employee has seven (7) calendar days to proceed to the next step.

6.2.2. Step Two – Grievance to Vice President

6.2.2.1. The employee may submit, in writing, a grievance of decision of the supervisor to the appropriate Vice President of the institution.

6.2.2.2. A written response shall be delivered to the employee within fourteen (14) calendar days following receipt.

6.2.3. Step 3 – Grievance to President, Superintendent or Executive Director

6.2.3.1. The employee may grieve, in writing, the decision from step two to the President, Superintendent or Executive Director.

6.2.3.2. The President, Superintendent or Executive Director shall investigate the matter, personally or through an appointed designee or panel.

6.2.3.3. A written response shall be delivered to the grievant within fourteen (14) calendar days following receipt.

6.2.3.3.1. A copy of the decision shall be provided to the employee, supervisor, Vice President, and President, Superintendent or
6.2.3.4. If the employee is dissatisfied with the response rendered, the employee has seven (7) calendar days following receipt to proceed to step four.

6.2.4. Step 4 – Grievance to the Board

6.2.4.1. The employee may grieve the decision of the President to the Board.

6.2.4.2. The Executive Director may attempt to achieve an informal resolution of the grievance. If the Executive Director elects not to pursue informal resolution, or if informal resolution cannot be secured, the Executive Director shall select a hearing examiner.

6.2.4.3. The hearing examiner shall hold investigative hearings with all parties involved in the grievance and prepare proposed findings of fact and conclusions of law for the Board’s consideration.

6.2.4.4. The Board’s decision shall be issued to the employee within ten (10) calendar days from the date the grievance is considered by the Board. If the Board fails to respond within the specified time period, or if the employee is not satisfied with the decision, the employee may grieve in accordance with South Dakota Codified Law Chapter 1-26

FORMS / APPENDICES:
None.

SOURCE:
August 2019.
SOUTH DAKOTA BOARD OF REGENTS
Policy Manual

SUBJECT: General Terms & Appointments

NUMBER: 4:1

1. Preamble
A. PURPOSE

To establish the general terms and appointment provisions for Civil Service Act employees and Faculty of the Board of Regents. 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.

B. DEFINITIONS

None.

C. POLICY

1. Types of Employment Classification

A.1. 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.

Non Faculty Exempt: 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.
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.

1.2. Faculty:

1.2.1. 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.

2. 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.

B. 2.1. 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.

C. 2.2. 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.

D. Faculty Appointment and Contract Evaluation

E. 3.1. 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.
**F.3.2.** 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.

**G.3.3.** 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).

**H.3.3.1.** 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.

**I.3.3.1.1.** 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.

**J.3.3.1.2.** 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.

**K.3.3.1.3.** 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.

3.3.2. 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.

3.3.2.1. 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.

3.3.2.2. 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.

3.3.2.3. 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.

**3.3.3. 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.

**3.3.4. 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.

**3.3.5. 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.

**3.3.6. 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.

**3.4. 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.

**3.4.1.** 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.