

ARTICLE II - RELATIONSHIP BETWEEN THE BOARD AND THE ASSOCIATION

A. FAIR PRACTICES

1. As sole bargaining agent the Association shall continue its policy of accepting into membership all eligible persons in the unit without regard to age, race, color, creed and religious creed, national origin, sex, marital status, sexual orientation, veteran's status, handicap or membership or non-membership in any political or ideological organization. The Association shall represent equally all members of the bargaining unit without regard to membership or participation in the activities of any employee organization.
2. The Board of Higher Education and the Boards of Trustees agree to continue their policy of non-discrimination against any person on the basis of age, race, color, creed and religious creed, national origin, sex, marital status, sexual orientation, veteran's status, handicap, participation in or association with the activities of any employee organization, or membership or non-membership in any political or ideological organization.
3. The Association agrees to cooperate with the Board of Higher Education in the implementation of the Affirmative Action Program for the State Colleges in effect on the date of execution of this Agreement; provided, however, that nothing herein contained shall be deemed to prohibit the Board of Higher Education from amending such Program from time to time for the purpose of causing it to conform with any applicable state or federal law, any applicable rule or regulation made thereunder, or any applicable order or directive issued by any agency, including any court, having authority therein.
4. The parties to this Agreement are committed to a policy of affirmative action and non-discrimination. One purpose of the policy is to provide for equal access and equal opportunity through the recruitment and hiring of minorities, women, and the handicapped.
5. The parties support a policy of non-discrimination in all personnel actions.
6. At the request of the Chapter President, the President of the College, the Chapter President, the College Affirmative Action Officer, and the Vice President shall meet at least once each semester to confer on the institution's Affirmative Action Program and to discuss any problems therein.
7. The parties mutually condemn any conduct that inflicts sexual harassment upon any member of the College community. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment for this purpose when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or his/her academic status or entitlements, (2) submission to or rejection of such conduct by an individual is used as the

basis for employment decisions or academic decisions that affect such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile or offensive academic or working environment.

8. The parties agree that no provision of this Section A shall be deemed to create, or to confer on any person, any right enforceable under the terms of this Agreement, it being the common and agreed understanding of the parties that the public policies to which they hereby pledge themselves are properly established and enforced through mechanisms other than those pursuant to which the terms of this Agreement have been entered into and pursuant to which they may be enforced.

B. INDIVIDUAL CONTRACTS

All rights, benefits, duties and obligations of members of the bargaining unit as set forth in this Agreement shall, during the term of this Agreement, be expressly incorporated by reference into, and made a part of, any contract of employment that has been or shall hereafter be entered into between a Board of Trustees and any person who is or shall thereafter become a member of the bargaining unit; and no such contract shall be contrary, in whole or in part, to the terms and conditions set forth herein.

C. CONSULTATION

1. General

The Chair of the Council of Presidents and/or such others as he/she may designate shall meet with the Board of Directors of the Massachusetts State College Association at the request of either party once each semester for the purpose of maintaining good relationships through regular communication and for discussion of matters concerning the implementation of this Agreement. Such meeting shall be held within fifteen (15) days of such request having been made in writing to the other party, which request shall state the reason or reasons for which such meeting is to be held.

The Chair of the Council of Presidents and the Board of Directors of the Massachusetts State College Association may meet at other times and for such other purposes as either party may request and as they may mutually agree.

The President of each College and representatives of the Association shall meet at least once each semester at the request of the President of the College or of the Chapter President for the purpose of maintaining and improving relationships. Such meeting shall be held within ten (10) days of such request having been made in writing to the other party, which

request shall state the reason or reasons for which such meeting is to be held.

The President of the College and representatives of the Association may meet at such other times and for such other purposes as they may mutually agree upon.

2. Committee on Employee Relations

The parties agree to establish and maintain a joint Committee on Employee Relations, which shall consist of three representatives of the Association appointed by the President of the Association and three management representatives appointed by the Board of Higher Education acting through the Council of Presidents, one of each of which shall be designated spokesperson. The representatives of the parties may be accompanied by advisors of their choosing at any meeting of the Committee on Employee Relations.

The purposes of this committee shall be 1) to foster good labor-management relations through the implementation of the terms of this Agreement; 2) to seek to resolve, consistent with this Agreement, problems or disputes arising under this Agreement; 3) where appropriate, to seek the resolution of grievances consistent with the terms of this Agreement; and, 4) where appropriate, subject to the provisions of this Section, to enter into mutual agreements to effectuate the terms of this Agreement.

Anything herein contained to the contrary notwithstanding, no person or body referenced in this Section C(2) shall have the authority to alter, amend, extend or revise any term of this Agreement.

The Association and the Board of Higher Education acting through the Council of Presidents shall each designate a spokesperson who shall be the authorized agent of each party in the discharge of its responsibilities under this Section.

Meetings of the Employee Relations Committee will be scheduled monthly, and on the call of either party, through its spokesperson. Special meetings shall be scheduled at mutually agreeable times, but not later than five working days from the date of receipt of the request. Special meeting requests may be made orally or in writing by the spokesperson of either party to the other and shall specify the reasons for which such special meeting is requested.

The spokesperson of the Association shall serve and preside as Chair at the first meeting; thereafter, the role of Chair will alternate between the

spokesperson of the Association and the spokesperson of the Council of Presidents. The Chair will designate an individual to take minutes of the meeting.

The parties agree that their representatives shall have the authority and power to reach agreements, settlements, and other adjustments on their behalf.

Copies of the minutes of each meeting will be reviewed and initialed by the spokespersons of the Association and the Council of Presidents before distribution. It is mutually agreed that such minutes should be signed within five working days after a meeting and that within ten working days after a meeting, copies of the approved minutes will be furnished to each member of the committee.

The Committee shall sponsor and arrange for a contract orientation meeting to be held at a State College no later than October 31, 2005. Each Chapter President and a person appointed by him/her and two persons designated by the President of each College shall attend representing the parties at each College.

D. INFORMATION

1. General

The Board of Higher Education shall make available to the Association, upon the written request of the Board of Directors thereof and within a reasonable time thereafter, such statistics and information related to the collective bargaining unit in its possession as are necessary for the implementation of this Agreement. It is understood that this shall not require the Board of Higher Education to compile information and statistics in the form requested unless already compiled in that form, or to supply any information deemed by the Board of Higher Education to be confidential.

2. Personnel Data

No later than October 31 in each academic year and, again, not later than February 28 in each academic year, each College shall submit to the Chapter President the information depicted on Appendix Q of this Agreement.

Whenever any person has accepted an appointment to a position within the bargaining unit, a copy of the countersigned letter of appointment (as depicted in Appendix N) shall be transmitted to the Treasurer of the Chapter.

3. Concurrent Evaluation Files

The following provisions of this Section D shall be of no application to any person holding an appointment to a part-time position in the bargaining unit.

In addition to the foregoing, but solely in strict compliance with the procedures and limitations that are hereinafter set forth, the Board of Higher Education shall make available to the Association such concurrent evaluation files as are requested in conformity with the following provisions.

1. Whenever any member of the bargaining unit
 - a) has been denied tenure after having been evaluated therefor pursuant to the applicable provisions of Articles VIII and IX of this Agreement, or
 - b) has, as a non-tenured member of the bargaining unit who holds a tenure-track appointment, been issued a terminal contract of employment pursuant to the applicable provisions of Articles VIII and XX of this Agreement,

the Association may request, and the Board of Higher Education shall thereupon make available, the concurrent evaluation files of other members of the bargaining unit.

2. No such request shall be made unless there is then properly pending at Step 3 or Step 4 of the Grievance Procedures contained in Article XI of this Agreement a grievance alleging that the grievant, being a member of the bargaining unit described in the provisions of the foregoing paragraph 1(a) or (b), has been denied tenure or has been granted a terminal contract of employment, as the case may be, either arbitrarily or capriciously; and no such request shall be made unless it is made by the President of the Association as a part of the written notice by which the Association, in accordance with the applicable provisions of Article XI, elects to submit the grievance for resolution at Step 3 or Step 4 of the Grievance Procedures.
3. Such request shall be made in writing and shall set forth a full and complete statement of the reasons therefor, which statement shall include the following:
 - a) the names of those members of the bargaining unit whose evaluation files are requested; and
 - b) the reasons for which it is claimed that such evaluation files are materially relevant to the grievance in respect of which they are sought.

4. Within ten (10) days following its receipt of any such request timely made, the Board of Higher Education, acting by the President to whom such request has been made, shall give not less than forty-eight (48) hours' notice to the Association of the time, date and place at which the Board of Higher Education will make such files available to it; provided, however, that the time and date so fixed shall be not more than ten (10) days following the giving of such notice; and provided further that no such files shall be made available to the Association save in the manner prescribed by the following paragraph 5.
5. Upon the date, time and place fixed by the above-described notice, a representative of the Association and of the Board of Higher Education, acting by such President, shall meet and proceed as follows:
 - a) they shall first review the request made by the President of the Association and shall determine

whether the procedures for making such a request have been strictly complied with;
and

whether the evaluation files requested are concurrent evaluation files;

- b) if they determine that such procedures have not been strictly complied with or that any such evaluation file is not a concurrent evaluation file, they shall dismiss such request, and such dismissal shall constitute a final and binding denial thereof;
- c) if they determine that such procedures have been strictly complied with and that the evaluation files requested are concurrent evaluation files, they shall then examine the content of each such file. Such examination shall take place in camera;
- d) the representative of the Association and the representative of the Board of Higher Education shall determine whether the content of any such file or files is materially relevant, in whole or in part, to the grievance in respect of which such files have been sought:
 - if they determine that the content of any such file or files is materially relevant, in whole or in part, to such grievance, they shall provide a certified copy of so much of the same as is agreed by them to be materially relevant to the President of the Association;

if they determine that the content of any such file or files is not materially relevant to such grievance, they shall notify the President of the Association of their determination.

Whenever the representative of the Association and the representative of the Board of Higher Education shall have determined that a concurrent evaluation file is, in whole or in part, not materially relevant to the grievance in respect of which it is sought, such determination shall constitute a final and binding denial of so much of the request of the President of the Association as pertains thereto.

- e) Whenever the representatives of the Association and the representative of the Board of Higher Education shall have failed to agree whether a concurrent evaluation file requested by the President of the Association is materially relevant, in whole or in part, to the grievance in respect of which it is sought, they shall promptly so notify the President by which the Board of Higher Education is then acting and the President of the Association.
 - f) In the event the representative of the Association or the representative of the Board of Higher Education shall have failed or refused to attend the meeting required to be held pursuant to this Section 5, then, unless those representatives shall have otherwise agreed in writing, the representative who does attend such meeting shall have full authority to make any and every determination required or permitted to be made pursuant to this Section, and his/her determination shall be final and binding.
6. If at the time a grievance is presented at a hearing before an arbitrator in conformity with the applicable provisions of Article XI, there remains unresolved a dispute between the parties whether the content, or any part thereof, of a concurrent evaluation file is materially relevant to such grievance, a certified copy of the content of such file, or so much of it as is in dispute, shall be presented to the arbitrator, and the arbitrator shall examine the same in camera for the purpose of determining whether it is materially relevant to the grievance then before him/her; provided, however, that the representative of each party shall be entitled to be present during such examination and to present arguments to the arbitrator concerning whether the content of such file is materially relevant to such grievance. The arbitrator may withhold his/her decision in that regard until such time as he/she thinks it appropriate, provided only that he/she shall render his/her decision prior to the close of the hearing. The decision of the arbitrator shall be final and binding on the parties.
7. Whenever a certified copy of the whole or any part of a concurrent evaluation file shall have been made available to the President of the Association pursuant to the provisions of paragraph 5, 6 or 8 hereof, the same shall be used solely as evidence, or for the

purpose of presenting evidence, in the hearing before the arbitrator concerning the grievance in respect of which such file was sought. The President of the Association shall take all measures reasonably necessary to ensure that the content of such file is maintained in the strictest confidence, and he/she shall not disclose the same except to counsel, nor shall any person to whom he/she properly discloses it disclose the same to any person unless such person is reasonably required to have access thereto for the purposes of presenting evidence at the aforesaid hearing before the arbitrator.

Whenever any document contained in a concurrent evaluation file is admitted as evidence at a hearing before an arbitrator, testimony shall be able to be taken by any party at such hearing concerning the evaluation, including any judgments made and opinions formed in connection therewith, of which such concurrent evaluation file is the record. Every such document so admitted shall become a part of the record in the matter then pending before the arbitrator and shall be able to be used by the parties in the presentation and argument of their case; provided, however, that they shall take reasonable care to protect the strict confidentiality of such document and shall make no disclosure thereof save for the purposes heretofore permitted. Nothing in this paragraph shall prohibit the disclosure of such document to any court of competent jurisdiction when done so pursuant to the prosecution of an appeal or like proceeding arising from or in connection with the decision of any arbitrator.

8. Whenever it shall have been determined, whether pursuant to the foregoing paragraph 5 or 6, that any concurrent evaluation file is materially relevant to the grievance in respect of which it is sought, the Board of Higher Education may thereupon determine which, if any, of the concurrent evaluation files that have not been sought by the President of the Association are materially relevant to such grievance. It shall immediately make available to the President of the Association a certified copy of the content of any such concurrent evaluation file.
9. For the purposes of this Section D, the following words and phrases shall have the meaning hereinafter ascribed to them:
 - a) the phrase “concurrent evaluation file” shall mean all documentary materials compiled or used in the conduct of an evaluation of a member of the bargaining unit where such evaluation
 - a. has been conducted and completed pursuant to the provisions of Article VIII of this Agreement;

- b. has been conducted in respect of a member of the bargaining unit who is a member of the same academic department of which the grievant is also a member; and
- c. has been conducted for the same kind of personnel action and in the same academic year as the evaluation that, in the case of the grievant, gave rise to the personnel action that is the subject of the grievance.

The phrase “concurrent evaluation file” shall not be deemed to be synonymous with the phrase “official personnel file.”

- b) The phrase “materially relevant” shall mean that the content of a concurrent evaluation file bears in a direct and substantial way on the adjudication of the question whether the grievant has been denied tenure or been granted a terminal contract of employment arbitrarily or capriciously.
10. Any matter required to be addressed to the Board of Higher Education under this Section D, or any action to be undertaken by, or on behalf of, the Board of Higher Education under this Section D shall be addressed to, or undertaken by, the President of the College at which the then-pending grievance has arisen, acting on behalf of the Board of Higher Education.
 11. Nothing contained in this Section D shall be deemed to confer on an arbitrator any jurisdiction, not otherwise conferred by the provisions of Article XI of this Agreement, to consider, adjudicate or arbitrate such portion of any grievance as relates to any determination or decision made pursuant to an exercise of academic judgment.

E. FILLING OF VACANCIES

The President of each College shall post for the information of unit members written notice of all vacancies for professional positions at each College. In respect of each such vacancy, such notice shall be posted not later than the date on which such vacancy is advertised elsewhere. Copies of all such notices shall be sent to the Association President and the Chapter President within fifteen (15) days of the posting.

Each notice shall contain a description of the job to be performed, the applicable salary or salary range and the qualifications for the position to be filled.