

ARTICLE VIII-C – POST-TENURE REVIEW

There shall be two alternative processes, as they are hereinafter set forth, for the conduct of post-tenure review under this Agreement.

A. ELIGIBILITY

Members of the bargaining unit who held tenure on September 1, 2004, shall be subject to post-tenure review in accordance with the provisions of this Article VIII-C.

B. ELECTION OF ALTERNATIVE ONE OR ALTERNATIVE TWO

On or before October 14, 2005, each such member of the bargaining unit shall elect to be subject to post-tenure review either in accordance with the requirements of Section C (Alternative One) or in accordance with the requirements of Section D (Alternative Two). Each such member of the bargaining unit shall make such election by giving written notice thereof to his or her Department Chair or, in the case of any librarian, to the Director, Library; each such member of the bargaining unit who is a Department Chair shall make such election by giving written notice thereof to the Vice President. A failure to give such notice shall constitute an election of Alternative Two.

Each such member of the bargaining unit who elects Alternative One shall also, when doing so, make the election described below in Section C(1).

Any member of the bargaining unit who, by illness or an absence on leave, is disabled from giving timely notice of his or her election under this Section B shall be entitled to give notice of his or her election within a reasonable period after his or her disability ceases.

Every election made under this Section B shall be binding from the time at which it is made through and including the academic year 2008-2009, but it shall have no binding effect thereafter.

C. ALTERNATIVE ONE

1. Initial Term

Alternative One shall be in force and of application to members of the bargaining unit who have elected it during an initial term of four years commencing in and for the academic year 2005-2006 and ending at the expiration of the academic year 2008-2009. Twenty-five percent (25%) of those members of the bargaining unit who have elected at each College to be reviewed in accordance with the requirements of Alternative One shall be reviewed in accordance with its requirements in each of the four (4) years falling within the initial term.

2. Year of Review: Election

Each member of the bargaining unit who, pursuant to Section B, elects Alternative One shall also, when doing so, identify in rank order (from 1 as the highest to 4 as the lowest) the year in which (from among 2005-2006, 2006-2007, 2007-2008 and 2008-2009) he or she wishes to reviewed pursuant to this Section C.

The Vice President, in consultation with the Chapter President, shall promptly thereafter assign to each such member of the bargaining unit, in the order of his or her seniority, the year in which during the initial term he or she is to be reviewed; provided only that no more than twenty-five percent (25%) of such members of the bargaining unit shall be reviewed in any one of such years.

Any member of the bargaining unit who fails to identify in rank order the year in which he or she wishes to be reviewed shall be assigned at random to be reviewed during one or another of the years falling within the initial term; provided again that no more than twenty-five percent (25%) of the eligible members of the bargaining unit shall be reviewed in any one of such years.

When all such assignments have been made, but in no event later than November 1, 2005, the Vice President shall notify each such member of the bargaining unit of the year (being either 2005-2006, 2006-2007, 2007-2008 or 2008-2009) during which he or she shall have been scheduled to be reviewed pursuant to this Section C.

For the purpose of this subsection 2, the seniority of a member of the bargaining unit shall be measured by the length of his or her service as a full-time member of the faculty or librarian at any State College or as a salaried part-time member of the faculty (without pro-rating the same or otherwise measuring its fractional value) at the Massachusetts College of Art. Whenever any two or more members of the bargaining unit have the same number of years of service, such service shall, for purposes of determining the order of seniority for each of them under this paragraph, be deemed to have commenced on the date, at the time and in the order in which the Board of Trustees of any College or any of its predecessors shall have first voted to appoint such member of the bargaining unit to a position as a full-time member of the faculty or librarian at any College or, if applicable at the Massachusetts College of Art, to a position as a salaried part-time member of the faculty; provided only that if the date, time and order of any such Board's action cannot, in the parties' judgment,

be readily ascertained, the order of seniority of such members shall be determined by a random drawing of their names.

3. Year of Review: Postponement

a. Individual Reviews

At the request of a member of the bargaining unit and for good cause shown (including serious illness or an emotional or other disruption of a serious magnitude), with documentation from a physician or licensed mental health practitioner, the President shall postpone for one year a review otherwise scheduled to be conducted. The period of such disruption shall not be included in the review period of any subsequent post-tenure review.

A member of the bargaining unit who is a candidate for promotion in the year in which he or she is scheduled to be reviewed shall be reviewed in the following year.

Academic Year 2005-2006

The conduct of post-tenure review is, by the provisions of Article XXI, §E, made contingent upon the enactment into law of an appropriation of the moneys needed to fund certain provisions of the Agreement. In the event that that enactment does not, in the parties' judgment, occur soon enough to conduct post-tenure reviews during the academic year 2005-2006, then all of the reviews scheduled to be conducted during such year shall, with the reviews scheduled to be conducted during the academic year 2006-2007, be conducted during the latter such year. Notwithstanding the foregoing, every base-rate salary increase payable by reason of a post-tenure review that has been postponed from the academic year 2005-2006 to the academic year 2006-2007 shall have effect as of July 1, 2005.

4. Period of Review

The post-tenure review of each member of the bargaining unit under this Section C shall address itself to his or her performance during the period encompassing the preceding four (4) academic years unless such member of the bargaining unit elects to have a longer period reviewed.

5. Materials for the Review

The following materials shall be submitted for and considered in the post-tenure review of each member of the bargaining unit under this Section C.

- b. all the materials that are described in Section D(1) or Section D(3) of Article VIII of the Agreement and that pertain to the period of the review; and

a statement in which the member of the bargaining unit addresses, with reference to the criteria depicted in Section A(1), in the case of faculty, or Section A(3), in the case of librarians, of Article VIII of the Agreement, his or her academic and professional activities, including his or her continuing scholarship, during the period of the review.

All such materials shall be submitted to the Vice President by September 30 of the review year, except only that in the case of reviews scheduled to be conducted during academic year 2005-2006, all such materials shall be submitted to the Vice President within forty-five (45) days following the later of the date on which the unit member is informed that his or her review will take place during such year and the date on which, following the enactment of an appropriation as required by Article XXI, §E, the parties give notice of their decision to conduct post-tenure reviews during academic year 2005-2006.

6. Conduct of the Review

During the fall semester of the review year, the Department Chair of each member of the bargaining unit being reviewed under this Section C shall conduct a classroom visit in the manner described in Section D of Article VIII of the Agreement. The record of such visit shall be included with the materials submitted in accordance with subsection 5.

If a Department Chair does not hold tenure or is being reviewed under this Article VIII-C, a tenured member of the department, elected by and from among the tenured members of the department, shall serve in the chair's stead for all purposes under this Article. If a tenured member other than the Chair is not available for the purposes of this paragraph, a tenured member of a cognate department shall be elected by the tenured members of the affected department (or by the tenure-track members of that department if there are no tenured members other than the Chair).

The Vice President shall conduct and complete the review by April 1st of the review year. In doing so, he or she may consult with the Chair of the unit member's department or, in the case of librarians, with the Director of the Library. The Vice President shall record his or her determination that the unit member's work is "not acceptable," "meritorious" or "exemplary" and shall set forth clear and convincing reasons for it. A copy thereof shall be transmitted to the Chapter President. Within ten (10) days following receipt of the Vice President's decision, the unit member shall

have the right to submit a response for inclusion with the review material and, within ten (10) days thereafter, shall have the right, in company with an Association representative, if the unit member so chooses, to discuss the Vice President's assessment. Within five (5) days following such meeting, the Vice President, who shall not have the authority to reduce a rating but may increase one, shall communicate his or her final assessment to the unit member in writing. A copy thereof shall be transmitted to the Chapter President.

Within five (5) days following his or her receipt of the Vice President's final assessment, the unit member may elect, by a written notice, to appeal the Vice President's assessment to the President. At the request of the unit member made with such notice, the President, within ten (10) days thereafter, shall convene a meeting with the unit member, in company (at the unit member's request) with an Association representative, to discuss the Vice President's assessment. Within five (5) days following such meeting (or within five days following the written notice of appeal if no such meeting has been requested), the President, who shall not have the authority to reduce a rating, shall communicate his or her final decision to the unit member in writing. A copy thereof shall be transmitted to the Chapter President.

7. Effect of Ratings

A rating of "exemplary" shall yield a base-rate salary increase of 6%; a rating of "meritorious" shall yield a base-rate salary increase of 3%; a rating of "not acceptable" shall yield no base-rate increase. Each base-rate increase shall be based on the unit member's salary as it was on the preceding October 1 and shall have effect on the preceding July 1.

Each College shall annually expend in the form of base-rate increases under these provisions not less than 0.5% of the unit payroll as it is on April 1 of the year during which the reviews are being conducted. If the conduct of post-tenure review during the academic year 2005-2006 is postponed in the manner described above at subsection 3(b), each College shall, during the academic year 2006-2007, expend not less than the following:

for post-tenure reviews that were otherwise scheduled to be conducted during the academic year 2005-2006, an amount equal to 0.5% of the unit payroll as it was on April 1, 2006; and

for post-tenure reviews that were otherwise scheduled to be conducted during the academic year 2006-2007, an amount equal to 0.5% of the unit payroll as it was on April 1, 2007.

A rating of “not acceptable” shall not suspend a unit member’s eligibility for promotion, nor shall it bar a unit member from review under this Alternative One following (but subject to any then-applicable collective bargaining agreement) the academic year 2008-2009.

8. Professional Development Plan

A unit member who receives a rating of “not acceptable” shall thereupon have the right to make the following election:

- a) to accept the rating and take no further action; or
- b) to engage in a professional development plan in the manner described below.

Following completion of a professional development plan, a further review will be conducted in accordance with the provisions of subsections 4, 5 and 6 above, and the unit member will then be eligible, with effect on the then-preceding July 1, to be reviewed again for the base-rate pay increases described at subsection 7 above.

If a unit member elects a professional development plan, it will be put in place and implemented in the following fashion:

- a) The Vice President shall prescribe the plan of professional development by May 15th of the review year after consultation with the Department Chair or Director, Library, as may be appropriate, and with the unit member. The unit member shall have the right to bring an Association representative to any meeting with the Vice President when the plan of professional development is being discussed.
- b) The plan of professional development shall prescribe the action that should be undertaken to improve the unit member’s performance and the criteria that will be used to determine whether the unit member’s performance remains not acceptable. The College shall bear any costs associated with the completion of the plan of professional development, including the cost of workload reductions necessary to complete the plan. The plan of professional development under this Article is different and separate from the plan described in Article XIV of this Agreement.
- c) The content of the plan of professional development may be appealed to the President. The unit member shall have the right to meet with the President to discuss the appeal and to bring an Association representative to such meeting. The President shall decide on the content of the plan within seven (7) days following his or her meeting with the unit member.

- d) At the conclusion of the period of professional development, and by May 31st of the development year (or sooner if a request is made under paragraph (h)), the unit member's performance shall be evaluated by the Vice President.
- e) If the Vice President rates the unit member's work not acceptable, the unit member may elect to participate in an extended/revised plan of professional development for a period not to exceed an additional academic year. Implementation of the plan shall be governed by the preceding paragraphs (a), (b) and (c).
- f) After completion of the second plan of professional development (or sooner if a request is made), the unit member shall again be evaluated in accordance with the preceding paragraph (d).
- g) If the Vice President rates the unit member's work not acceptable after the second professional development plan, the process may repeat itself in accordance with the preceding paragraphs (e) and (f).
- h) During the period when a unit member is engaged in a plan of professional development, the unit member shall be entitled to be re-evaluated upon his/her request by the Vice President in order to try to improve his/her rating. A re-evaluation shall be done in accordance with the procedure described in the preceding paragraph (d) within thirty (30) days of the request.

9. Grievances

No decision made under Alternative One, whether a decision concerning a rating, the content of a professional development plan or any other, shall be subject to the grievance procedures of Article XI of the Agreement; and grievances may be filed and pursued under Article XI only concerning adherence (i) to the procedures for review set out in this Section C and (ii) to the requirement that each College expend not less than 0.5% of the unit payroll under this Section C.

10. Report of Expenditures

On or before May 31 of each academic year, the President shall report to the Chapter President (i) the unit payroll as it was at the College on the preceding April 1, and (ii) the amount awarded to each member of the bargaining unit at the College during such academic year pursuant to the preceding subsection 7.

D. ALTERNATIVE TWO

1. Effect and Application

Alternative Two shall be in force and of application to members of the bargaining unit who have elected it in accordance with the sequence described in Section 2 below.

For the purpose of this Section D, the phrase “review period” shall have the meaning it has in Article VIII, and the phrase “review year” shall have the meaning that the phrase “evaluation period” has in Article VIII.

2. Frequency of Review

c. General Rule

A post-tenure review under this Section D shall be conducted during every seventh year (the review year) of a unit member’s employment in the bargaining unit measured from and including the evaluation period (as defined in Article VIII) of either the unit member’s original tenure evaluation or last promotion evaluation or from and including the review year of the unit member’s last post-tenure review, whichever of the foregoing is the later.

Transitional Rule

Initial post-tenure review for those for whom tenure took effect or who were last evaluated for promotion before September 1, 1995, was determined by lot, randomly assigning twenty percent (20%) of such unit members to each of the five academic years that began with the academic year 2001–2002 and will end with the academic year 2005–2006. The lottery was conducted pursuant to the parties’ 2001-2003 agreement, and unit members were notified immediately after the lottery of the year of their post-tenure review. (Neither this nor any other provision of Section D is of any application to members of the bargaining unit who have elected Alternative One for academic year 2005-2006 or thereafter during the initial term.)

Notice

On or before November 1, 2005, the Vice President shall give to each member of the bargaining unit who, during academic year 2005-2006, 2006-2007, 2007-2008 or 2008-2009, is scheduled to be reviewed under this Section D (Alternative Two) (and not including, therefore, any member of the bargaining unit who has elected to be reviewed under Section C (Alternative One)) notice of the year in which such review will be conducted.

Exceptions

When measuring the duration of a unit member's employment, continuous leaves of absence (other than sabbatical leaves) of more than a semester's length will not be treated as a period of employment for purposes of computing length of service under this Section, except that the unit member may include in his or her post-tenure review professional work done during such leave.

Any unit member who takes a binding action to resign, whether or not to retire, effective no later than the end of the work year during which he or she is to be reviewed will not be reviewed during that year.

3. Scope of Review

d. Review Period

Each post-tenure review under this Section D will address itself to the unit member's performance during the period since his or her last post-tenure review or original tenure evaluation or last promotion evaluation, whichever most recently occurred. The review period shall commence no earlier than September 1, 1997, until seven-year review periods are established. At the request of the unit member and for good cause shown (including serious illness or an emotional or other disruption of similar magnitude), with documentation from a physician or licensed mental health practitioner, the President shall postpone for one year a review otherwise required to be conducted. The period of such disruption shall not be included in the review period of any subsequent review.

Materials for the Review

Review materials shall consist of:

- i. student evaluations during the review period (if applicable), provided that no comparative/normative numbers (e.g., means, percentiles) shall be included or referenced with regard to student evaluations;
- ii. Appendix B-2, including an updated resume;
- iii. additional reports for alternative responsibilities assigned in accordance with Article XII, §D, or equivalent non-teaching duties, including service as a department chair, the coordination of laboratory experiences, in-service work with groups in the state and/or work in program and curriculum development during the review period;
- iv. all classroom visitations conducted during the review period;

- v. a statement prepared by the unit member not to exceed 750 words describing those things selected by the unit member from Appendix A-1 or A-2 during the review period.

4. Procedures for Review

e. Submission of Materials

By September 30th of his or her review year, the unit member shall submit to the Department Chair or Director, Library, the materials listed in subsection 3(b)(ii) and (v) of this Section D. If the Chair is not tenured or is being reviewed, a tenured member of the department, elected by and from among the tenured members of the department, shall serve in the Chair's stead for this purpose. If the Chair is being reviewed under this Section, he or she shall submit the materials listed in subsection 3(b)(ii) and (v) to the tenured member of the department who has been elected for the purpose by and from among the tenured members of the department, and that tenured member of the department shall initially evaluate the Chair in accordance with the following paragraph (b). If a tenured member other than the Chair is not available for the purposes of this paragraph, a tenured member of a cognate department shall be elected by the tenured members of the affected department (or by the tenure-track members of that department if there are no tenured members other than the Chair.)

Initial Evaluation

By November 30th of the review year, the Chair or Director, Library, shall evaluate the unit member's performance and rate the performance "satisfactory" or "unsatisfactory." For faculty, this evaluation shall include one classroom observation by the Chair conducted in accordance with the procedures in Article VIII, Section D(1)(b). The unit member shall have the right to submit a response for inclusion with the review material. The evaluation by the Chair or Director, Library, is not separately grievable.

The review shall be recorded on Appendix D-3, and it, together with the review material, shall be transmitted to the Academic Vice President by December 15th of the review year.

Evaluation by the Vice President

The Vice President shall review all materials and by January 25th of the review year shall, on Appendix D-3, provide to the unit member a finding that the unit member's work is "satisfactory" or "unsatisfactory." The unit member shall have the right to submit a response for inclusion with the review material and shall be given

the opportunity to meet and discuss the evaluation. The unit member shall have the right to bring an Association representative to any meeting that is held for the purpose of discussing the evaluation.

Statement of Reasons

Any finding that a unit member's work is unsatisfactory shall be supported by a detailed and complete statement of the reasons, which shall be recorded on Appendix D-3.

Grievances

After a finding by the Vice President that a unit member's work is unsatisfactory, the unit member shall have the right to grieve the finding (which shall include any finding of unsatisfactory by the Chair or Director, Library. The grievance shall be filed within the limits of time prescribed in Article XI but shall then be heard within thirty days in accordance with the Procedures for Expedited Labor Arbitration of the American Arbitration Association.

5. Professional Development Plan

f. Need for a Plan

Whenever the Vice President has given a unit member's performance a rating of unsatisfactory, the unit member shall be required to undertake a plan of professional development for a period not to exceed one academic year and may be denied a promotion and/or a bonus, unless the arbitrator reverses the finding of unsatisfactory performance.

Establishment of a Plan

The Vice President shall prescribe the plan of professional development by March 31st of the review year after consultation with the Chair or Director, Library, and the unit member. The unit member shall have the right to bring an Association representative to any meeting with the Vice President when the plan of professional development is being discussed.

Content and Implementation of the Plan

The plan of professional development shall prescribe the action that should be undertaken for improvement and the criteria that will be used to determine whether the unit member's performance

remains unsatisfactory. The College shall bear any costs associated with the completion of the plan of professional development, including the cost of workload reductions necessary to complete the plan. The plan of professional development under this Section is different and separate from the plan described in Article XIV of the Agreement.

Appeals

The content of the plan of professional development is not separately grievable, but may be appealed to the President. The unit member shall have the right to meet with the President to discuss the appeal and to bring an Association representative to such meeting. The President shall decide on the content of the plan within a week of the meeting with the unit member.

Supplementary Review

At the conclusion of the period of professional development, and by May 1st of the development year (or sooner if a request is made under paragraph (j)), the unit member's performance shall be evaluated by the Chair or Director, Library, and by the Vice President. The unit member may grieve a finding of unsatisfactory by the Vice President, which shall include any finding of unsatisfactory by the Chair or Director, Library, and any questions about the appropriateness of the completed plan of professional development. Such grievance shall be governed by the requirements of subsection 4(e) of this Section.

Extended or Revised Plan

If the Vice President rates the unit member's work unsatisfactory, and if the finding of unsatisfactory is not reversed by an arbitrator, the unit member shall be required to participate in an extended/revised plan not to exceed an additional academic year and may continue to be denied a promotion and/or a bonus and may also be denied a step increase. Implementation of the plan and challenges to it shall be governed by paragraphs (c) and (d) of this subsection 5.

Further Supplementary Review

After completion of the second plan of professional development (or sooner if a request is made under paragraph (j)), the unit member shall again be evaluated in accordance with the procedure in paragraph (e) of this subsection 5.

Further Rating of Unsatisfactory

If the Vice President rates the unit member's work unsatisfactory after the second professional development plan, and if the finding of unsatisfactory is not reversed by an arbitrator, the unit member may continue to be denied promotions, bonuses, and/or step increases until found satisfactory.

Grievances

Denials of promotions, bonuses, and/or step increases may be grieved by the unit member in accordance with the procedure in subsection 4(e) of this Section D. The arbitrator shall have the authority to reduce or eliminate a penalty.

Requests for Re-evaluation

During the period when a unit member is being denied promotions, bonuses, and/or step increases under this subsection 5, the unit member shall be entitled to be re-evaluated upon his/her request by the Chair or Director, Library, and the Vice President in order to try to improve his/her rating to satisfactory. A re-evaluation shall be done within thirty (30) days of the request, and if rated satisfactory, the unit member shall receive the previously denied bonus on a pro-rated basis, and/or the step increase prospectively, and shall be eligible for promotion with effect on and after the date on which he or she is rated satisfactory. If found unsatisfactory, the unit member shall have the right to grieve the finding in accordance with the procedure in subsection 4(e) of this Section D.

6. Grievances

g. Just Cause

No unit member's performance shall be given a rating of unsatisfactory without just cause, and every aspect of post-tenure review shall meet the standard of just cause.

Remedy

The arbitrator shall have the authority to issue any make-whole remedy for violations of the just cause standard.

E. MISCELLANEOUS

11. Application of Article IX

Nothing in this Article shall limit, or constitute a condition precedent to, the application of any provision of Article IX, Section E, of the Agreement.

12. Use of Record under Article IX

No record of any evaluation conducted or any action taken pursuant to any post-tenure review shall be introduced into the record of, or otherwise used in connection with, any proceeding conducted pursuant to Article IX, Section E, of the Agreement. The following items produced or implemented under this Article shall constitute the record to which the prohibition of this subsection 2 applies:

findings of satisfactory or unsatisfactory, exemplary, meritorious or not acceptable;
classroom observations;
professional development plans;
penalties;
statements submitted pursuant to Section C(5)(b) ; or
statements submitted pursuant to Section D(3)(b)(v).

F. CONTINUING APPLICATION

Subject only to such agreements as the parties may hereafter make, post-tenure reviews under Alternative One and Alternative Two shall continue from and after July 1, 2007, in accordance with the provisions of this Article VIII-C; and, subject as aforesaid, base-rate salary increases shall continue to be granted on and after July 1, 2007 in accordance with the provisions of Section C.