(To replace XVII in the 2017-2020 CBA)

ARTICLE XVII

GRIEVANCE PROCEDURES

A. OBJECTIVES

It is the declared objective of the Faculty Federation and the Trustees to encourage the prompt and equitable resolution of complaints by individuals represented by the Faculty Federation. These grievance procedures are designed to encourage the satisfactory adjustment of complaints.

B. DEFINITIONS

1. “Grievance” shall mean a complaint by a member of the bargaining unit that there has been as to that individual a violation, misinterpretation, or inequitable application of any of the provisions of this Agreement. A Grievance may affect more than one campus at the University of Massachusetts Dartmouth. A decision to deny a salary increase, a contract renewal, a promotion, or tenure shall be insufficient grounds for stating a Grievance unless a specific violation of the contract is specified also.

2. “Grievant” shall mean
   a. the member or members of the bargaining unit that initiates the Grievance, or
   b. the Faculty Federation under paragraph G below.

3. “Respondent” shall mean the party or parties that the Grievant asserts were responsible for the misconduct alleged in the Grievance.

4. “Grievance Officer” shall mean one or more members of the bargaining unit that are appointed by the Faculty Federation to oversee the operation of the Grievance process. Service as a Grievance Officer shall be considered University Service.

5. “Hearing Committee” shall be a committee comprising up to six members of the Faculty Federation. Each member of the Hearing Committee shall be appointed by the Federation for a renewable two-year term. The members of the Hearing Committee shall designate one member to serve as Chair of the Hearing Committee on a renewable one-year term. A quorum for the Hearing Committee shall be defined as three members. Service on the Hearing Committee shall be considered University Service.

6. “Grievance Hearing” shall be a formal, fact-determining inquiry to determine
what happened and whether it constitutes a violation of the Federation Agreement.

a. The Hearing Committee, upon receipt of the Grievance from the Grievance Officer, shall review the Grievance complaint that was filed. If the Hearing Committee determines by a unanimous vote of a least a quorum of its membership that the Grievance does not contain allegations that would constitute a violation of the Federation Agreement, the Hearing Committee may terminate the Grievance in favor of the Respondent without a formal hearing.

b. If a potential violation of the contract is disclosed, the Grievance Officer, working with the parties and the members of the Hearing Committee, will schedule a formal hearing as soon as is practical.

c. The Grievant and Respondent are expected to attend the hearing. The Hearing Committee may construe the absence of a party as evidence against that party’s position in the Grievance.

d. All unit members are entitled to have another unit member attend the hearing as their advocate or advisor.

e. The Administration shall have the right to designate a representative to attend every Grievance Hearing as an observer.

f. During the hearing, the Hearing Committee may ask questions of either party presenting before the Committee. Each party will be allowed to ask questions of the other following the rules established by the Hearing Committee. The Hearing Committee may hear such additional witnesses as appropriate and shall receive relevant documents from the parties.

g. There shall be no formal rules of procedure or evidence; instead, the Hearing Committee shall operate to ensure that fundamental fairness is achieved.

h. After the hearing, the Hearing Committee shall prepare a written decision that will determine if a violation of the Federation Agreement was found. This decision shall be promptly delivered to the Grievance Officers who shall transmit a copy of it to the Grievant, Respondent, Faculty Federation President, and Provost.

C. GENERAL PROCEDURES

1. The Faculty Federation is available to assist every member of the bargaining unit with the grievance process. The Grievance Officers will be available to answer questions about the grievance process and will attempt to resolve Grievances that are filed so that they can be settled without the need for a formal hearing.
2. A Grievance can be started by a Grievant who is adversely affected by an issue that may constitute violation of this agreement. To start the Grievance, the Grievant shall file a written complaint on the form required by the Faculty Federation at the Faculty Federation Office. This complaint shall specify the specific facts or conditions that underlie the Grievance, the specific provision of the Federation Agreement that is alleged to have been violated, an explanation of why the facts constitute a violation of the Federation Agreement, and the Respondent who is alleged to be responsible for the problem. The Federation Office shall provide a copy of the Grievance to the Respondent and the Provost as soon as is practicable.

3. All Grievances shall be filed within a reasonable time of the action which is asserted to be improper. If the Respondent asserts that the time of filing was not reasonable and that the delay caused articulable harm to theRespondent, the Respondent can request that the Hearing Committee dismiss the Grievance on that grounds.

4. All parties are entitled to have a unit member represent them at the Grievance Hearing. The Grievance Officers will attempt to maintain a list of unit members who have agreed to do this service. Unit members who provide representation are entitled to credit for University Service for representing parties in the grievance process.

5. All grievance decisions shall be consistent with the provisions of this Agreement and shall not be deemed to change or otherwise modify the terms and conditions of the Agreement.

6. On the request of the Grievant, Respondent, or Hearing Committee, the Provost shall provide all documents and materials pertaining to the member's Grievance for use at the Grievance Hearing.

7. The University may elect not to address through these grievance procedures any claim alleging a violation of Article II(A) of the Federation Agreement or any other claim of discrimination or retaliation based upon protected characteristics that is the subject of a charge or complaint filed with the MCAD, the EEOC, the OFCCP, the Federal Office of Civil Rights or in state or Federal court. Should a Grievance be started that is covered by this paragraph, the Provost shall inform the Grievance Officers promptly if the University is electing its option to exclude it from the grievance process.

8. A Grievance arising out of personnel actions shall not be filed until the final appropriate academic administrative official on the campus has made his/her decision in writing on the personnel action under consideration. A Grievance filed after this final action may assert that conduct of an earlier decision-maker was contractually deficient provided that the error was not corrected in the regular process of review. Should the Hearing Committee determine that a Respondent that is a member of the unit was responsible for the incorrect
decision, all subsequent review shall be redone based on the corrected decision reflected in the Hearing Committee’s report.

D. INFORMAL RESOLUTION

1. When a Grievance has been filed, a Grievance Officer or other representative of the Federation will attempt to meet with the Respondent, or should the Respondent not have the authority to resolve the dispute, another representative of the University designated by the Provost who does have that authority to attempt a negotiated settlement of the Grievance.

2. The University Administration and the Faculty Federation agree that informal resolution of grievances shall not set a precedent for any other Grievance.

3. Should the Grievance Officer reasonably determine that an informal resolution is not likely to be obtained, the Grievance Officer can terminate the informal resolution procedures and start the Formal Grievance process.

E. FORMAL GRIEVANCE: RESPONDENT IS A MEMBER OF THE UNIT

1. If the Respondent is a member of the bargaining unit as defined in Article I(A) of the Federation Agreement, the grievance hearing shall be binding arbitration as between the Grievant and any Respondent who is a member of the bargaining unit.

2. After the hearing concludes, the Hearing Committee shall decide the Grievance with a written decision that determines whether a violation of the Federation Agreement occurred and, if it did, what the appropriate remedy is. The Hearing Committee shall forward this decision to the Grievance Officer who shall forward it the parties, the President of the Faculty Federation, and the Provost.

3. The decision of the Hearing Committee shall be binding on the parties and not subject to appeal except as specified in this paragraph. The Grievant, Respondent, or Administration may assert that the decision of the Hearing Committee was made in a way that violates the Massachusetts Collective Bargaining Agreements to Arbitrate Law, Mass. Gen. Laws ch. 150c, §§ 10-12. If this occurs, the Provost, in consultation with other appropriate administrative officials as needed, shall determine if the Grievance Hearing complied with the requisites of the Arbitration Act. If the Provost determines that it did, the Grievance decision is final and binding. If the Provost determines that there were procedural irregularities as defined in the Arbitration Act, the Provost shall remand the Grievance back to the Chair of the Hearing Committee and President of the Federation with a written specification of how the Hearing Committee’s procedures violated the Arbitration Act. The Executive Committee of the Federation in consultation with the Chair of the Hearing
Committee shall either accept the Provost’s determination and require the scheduling of a new hearing by the Hearing Committee to be in compliance with the Arbitration Act or shall inform the Provost in writing why the decision was appropriate under the Arbitration Act. Thereafter, if the University still wishes to assert that the decision of the Hearing Committee was inappropriate under the Arbitration Act, it shall do so by seeking an appropriate judicial remedy.

F. FORMAL GRIEVANCE: RESPONDENT IS NOT A MEMBER OF THE UNIT

1. If the Respondent in a Grievance is not a member of the unit under Article I(A), the grievance process will be controlled by this paragraph. This type of grievance shall not be binding arbitration; instead, it will a mechanism for the Faculty Federation to make a recommendation to the Administration concerning the appropriate resolution of a dispute under the Federation contract.

2. The recommendation made under this process shall be sent to the Respondent, the Respondent’s direct supervisor, and the Provost.

3. The Supervisor and Provost shall promptly review the report and recommendations of the Hearing Committee. They may meet with the Grievant and his or her Faculty Federation representative, if any, the Respondent, and other relevant parties to discuss the Hearing Committee’s report and recommendation or to obtain additional information. The Provost shall act within five school days when classes are in session or within seven calendar days when classes are not in session.

4. After review, the Provost shall decide to adopt or reject the Hearing Committee’s report. If the report is adopted, the Grievance concludes, and the recommendations of the Hearing Committee shall be implemented as soon as is practical. If the report is rejected, in whole or part, the Provost shall send a written statement specifically explaining why the report was rejected to the Grievant, Chair of the Hearing Committee, and President of the Faculty Federation.

5. If the Grievance is not satisfactorily resolved by the Provost, the Grievant or the Faculty Federation may appeal the Provost’s decision to the Chancellor within ten school days (fourteen calendar days when classes are not in session) after the Provost’s decision was rendered or should have been rendered. The appeal shall be in writing and shall state specifically the act or condition and the grounds on which the Grievance is based and why the disposition of the Grievance specified by the Provost is unsatisfactory. The Chancellor may meet with the Grievant, Respondent, an appropriate Faculty Federation representative, and the relevant members of
the Administration to confer on the appeal. The decision of the Chancellor shall be communicated in writing to the Grievant, Respondent, and Chair of the Hearing Committee, and to any Faculty Federation representative who participated in review of the Grievance under this paragraph. The Chancellor shall act not later than ten school days (fourteen calendar days when classes are not in session) after the written appeal has been made to the Chancellor.

6. Within thirty calendar days of the Chancellor's decision, or the date the decision should have been rendered if the Chancellor fails to render a decision, the Faculty Federation only may appeal the decision of the Chancellor to the American Arbitration Association for binding arbitration.

   a. The proceeding may be initiated by filing a demand for arbitration with the American Arbitration Association. The Federation shall send copies of its demand to the Chancellor and the President of the University of Massachusetts. A single arbitrator will be selected pursuant to the voluntary labor arbitration rules of the American arbitration Association. Where acceptable to both parties to this agreement, the American Arbitration Association's procedures for expedited arbitration will be utilized. A hearing will be convened and concluded as soon as practicable. The arbitrator shall issue a decision not later than thirty days from the date of the closing of the hearings. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted.

   b. The decision of the arbitrator shall be final and binding on both parties and the grievant and all will abide by it. Neither party waives its entitlement to appeal an arbitrator's award pursuant to Mass. Gen. Laws ch. 150c, §§ 10-12.

   c. The arbitrator's fees and expenses will be shared equally by the parties.

   d. The arbitrator shall limit the decision to the application and interpretation of the provisions of this Agreement and shall have no authority to alter or amend the Agreement.

7. Time Limits

   a. Failure at any step of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved party to proceed to the next step. Failure at any step of this procedure to appeal a grievance within the specified time limits shall be deemed to be acceptance of the decision rendered at that step.

   b. The time limits specified in the grievance procedure may be extended in a specific instance by mutual written agreement.
G. FACULTY FEDERATION GRIEVANCES

The Faculty Federation has the right to initiate or appeal a Grievance involving an alleged violation of this Agreement.