

**BOARD OF REGENTS
BRIEFING PAPER**

CODE Revision, Policy of the Board of Regents
December 4-5, 2024

BACKGROUND & POLICY CONTEXT OF ISSUE:

The Board of Regents' *Code*, Title 2, Chapter 6, Section 6.13.2 (and the DRI counterparts found in Chapter 8) currently require an appeal of a *for cause* termination of employment to be appealed to the Board of Regents. Taking such appeals of employment terminations to the Board of Regents is a very complex, convoluted, and costly process that is required to be carried out in compliance with Nevada Open Meeting Law. The process currently requires 1) the Board of Regents to review voluminous employment appeal records relating to confidential personnel matters, 2) the appeal to be placed on a duly noticed public agenda, 3) the agenda item be opened in the public meeting where the item is introduced without discussion, 4) the Board must then move into a closed session to hear the confidential facts and circumstances of the appeal, but cannot deliberate and decide the appeal in closed session, 4) then the Board must move back into the public session to decide the appeal, but cannot discuss any of the confidential facts and circumstances that form the basis of any such deliberation or decision. This tenuous process is neither efficient nor effective.

The limited revisions offered in these *Code* amendments propose appeals of such terminations of employment be appealed to the Chancellor in consultation with the Board Chair, rather than the Board of Regents, which brings these policies into alignment with the organizations' supervisory structure. A president's decision in such an appeal is an administrative employment decision that should be scrutinized by the president's direct supervisor, the Chancellor, who "is responsible to the Board for the *administration* of the Nevada System of Higher Education" and whose duties include the direct supervision of presidents. (Board of Regent's Bylaws, Title 1, Art. VII, Sec. 3 & 4).

On 11/14/24, the Chancellor and Chief General Counsel met with the Faculty Senate Chairs to get their input on the proposed revisions. At that meeting, the Faculty Senate Chairs unanimously expressed support for the proposed policy.

Pursuant to *Code* Section 1.3, "[a]t least 30 calendar days before consideration by the Board, proposed amendments shall be circulated to the *Chancellor, each System institution President and each senate for review and comment.*" This policy proposal was circulated to the named stakeholders on November 15, 2024.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Approve the proposed amendments to the Board of Regents *Code*, Title 2, Chapter 6, Section 6.13.2 and Chapter 8, Sections 8.4.6 and 8.6.

IMPETUS (WHY NOW?):

It is important for the System to implement clear and consistent policy regarding employment processes that provide for effective and efficient procedures that align with supervisory structures.

CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:

- Access (Increase access to higher education)
- Success (Improve student success)
- Close Institutional Performance Gaps
- Workforce (Meet workforce needs in Nevada)
- Research (Increase solutions-focused research)
- Coordination, Accountability, and Transparency (Ensure system coordination, accountability, and transparency)
- Not Applicable to NSHE Strategic Plan Goals

INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL

Provides for improved coordination/consistency in policy implementation and effective/efficient process.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- This proposed Handbook amendment improves *Code* by replacing a complex, convoluted, and costly process with an improved process that is more effective and efficient, and better aligns with supervisory structure.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

The elected Board of Regents should be involved in the *Code* termination of employment *for cause* process for all levels of employees and not just those who are appointed by the Board.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Continue with the existing complex, convoluted, and costly process that requires the Board of Regents to review voluminous employment appeal records relating to confidential personnel matters and deciding appeals of terminations of employment *for cause* at public meetings in compliance with Nevada Open Meeting Law.

RECOMMENDATION FROM THE CHANCELLOR’S OFFICE:

For information only.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: Title 2, Chapter 6, Section 6.13.2 and Chapter 8, Sections 8.4.6 & 8.6.
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No _____
Explain: _____

POLICY PROPOSAL - CODE
TITLE 2, CHAPTER 6, SECTION 6.13.2
Decision on Appeal

(Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed])

6.13.2 Decision on Appeal.

- (a) Within five (5) calendar days after receipt, the administrative officer shall direct the appeal, together with any reply the administrative officer deems necessary provided a copy of the reply is sent to the person charged, to:
1. The president for reconsideration when the sanction imposed is suspension or reduction in pay or a lesser sanction.
 2. To the **Chancellor** [~~Board of Regents~~] for action when the sanction imposed is termination.
- (b) **An appeal shall be considered, and a** decision on the appeal shall be made, within a reasonable time after receipt of the appeal by the president or **Chancellor, as applicable** [~~within a reasonable time after the next Board of Regents meeting during which the appeal was considered. For applicable appeals, the appeal shall be placed on the meeting agenda of the Board of Regents as soon as is legally possible under Nevada law after receipt of the appeal~~]. **When an appeal requires Chancellor consideration and decision, the Chancellor's decision shall be made in consultation with the Chair of the Board of Regents.** The president or the **Chancellor** [~~Board of Regents~~], as the case may be, shall give notification of the decision in the same manner as is provided in Subsection 6.12.2 of the Nevada System of Higher Education Code.
- (c) The president or the **Chancellor** [~~Chair of the Board of Regents~~], as the case may be, may request a personal appearance of the person charged if the president or the **Chancellor** [~~Chair of the Board of Regents~~], as the case may be, is of the opinion that justice will be served by such appearance. The appearance of the person charged shall be limited to the issues raised by the appeal as provided in Subsection 6.13.1 of the Nevada System of Higher Education Code. The person charged must be informed that an appearance is not compulsory and a nonappearance will not prejudice the appeal.
- (d) The president or the **Chancellor** [~~Board of Regents~~], as the case may be, may:
1. Dismiss the charge;
 2. Affirm the [~~charge~~] **decision**;
 3. Impose a lesser sanction; or
 4. Order a new hearing.

POLICY PROPOSAL - CODE
TITLE 2, CHAPTER 8, SECTIONS 8.4.6
Stage 5 Appeal and Sanctions

(Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed])

**RULES AND DISCIPLINARY PROCEDURES FOR MEMBERS OF
THE DESERT RESEARCH INSTITUTE (DRI)**

Section 8.4 Formal Discipline

...

8.4.6 Stage 5 Appeal and Sanctions. The employee may appeal for action in writing, within five working days to the president for the following reasons:

1. The procedures under which the person was charged are invalid or were not followed;
2. The person charged did not have adequate opportunity to prepare and present a defense to the charges;
3. The information presented for the review was not substantial enough to justify the decision; or
4. The sanction, except termination, imposed was not in keeping with the seriousness of the conduct or performance.

The employee may appeal for action in writing, within five working days to the **Chancellor** [~~Board of Regents~~] for the sanction of termination. ***When an appeal requires Chancellor consideration and decision, the Chancellor's decision shall be made in consultation with the Chair of the Board of Regents.***

The president or the **Chancellor** [~~Board of Regents~~], as the case may be, may:

1. Dismiss the charge
2. Affirm the [~~charge~~] ***decision***
3. Impose a lesser or greater sanction; or
4. Order a new review.

POLICY PROPOSAL - CODE
TITLE 2, CHAPTER 8, SECTIONS 8.6(i)
Procedures Available when Sexual Harassment is Alleged

(Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed])

**RULES AND DISCIPLINARY PROCEDURES FOR MEMBERS OF
THE DESERT RESEARCH INSTITUTE (DRI)**

Section 8.6 Procedures Available when Sexual Harassment is Alleged

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The following additional procedures apply in proceedings alleging sexual harassment:

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- (i) If the complainant is aggrieved by the recommendation of the faculty senate review committee or by the decision of the president, the complainant has the right to appeal the decision to the president or the **Chancellor** [~~Board of Regents~~] in the same manner as the respondent;

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