

**TITLE 2 - Nevada System of Higher Education CODE**

**CHAPTER 10**

**RULES OF CONDUCT AND PROCEDURES FOR STUDENTS  
OF THE NEVADA SYSTEM OF HIGHER EDUCATION**

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## **Section 10.1 Cause**

### **10.1.1 Applicability of Procedures and Sanctions.**

The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against students of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education rules of conduct\_or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions. Except as expressly provided in Section 10.4.12, the System institutions and professional schools may establish written policies, procedures and sanctions for the discipline of their students that may be used in lieu of the policies, procedures and sanctions of this chapter, including but not limited to the establishment of student conduct councils, subject to the prior review by the institution's general counsel and to the approval of the President of the institution.

### **10.1.2 Proceedings Concurrent.**

Action under the procedures established by this chapter shall go forward regardless of other possible or pending administrative civil or criminal proceedings arising out of the same or other events.

### **10.1.3 Student Defined.**

The term, "student" means any person who is or was enrolled in courses, either full-time or part-time, including correspondence study, electronic means, study abroad, or auditing, or courses offered through any institution satellite campuses or auxiliary means. Students are subject to disciplinary action for conduct that occurs during any period under this chapter's authority and jurisdiction as defined above. Students who leave the institution before a conduct matter is resolved may be prohibited from future enrollment until such time as the matter is resolved. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the institution are considered "students". This includes individuals who have applied for admission to the institution or have been notified of their acceptance for admission.

### **10.1.4 Rules of Conduct.**

The term, "rules of conduct" means the rules established in Section 10.2 of this chapter and includes any rules incorporated by reference in that Section.

### **10.1.5 System.**

The term, "System," means the Nevada System of Higher Education.

### **10.1.6 Charged Student.**

The term, "charged student," means the student alleged to have violated the rules of conduct.

(B/R 9/15)

## **Section 10.2 Cause**

### **10.2.1 Prohibited Conduct.**

The following conduct is prohibited:

- (a) Acts of dishonesty, including but not limited to the following:
  - (1) Cheating, plagiarism, fraudulently obtaining grades, falsifying research data or results, assisting others to do the same, or other forms of academic or research dishonesty;
  - (2) Furnishing false information to any institution or System official, faculty member, or office;
  - (3) Forgery, alteration, misuse, theft, or using without permission, any institutional document or record.
- (b) Disorderly, lewd or indecent conduct, including the disruption, obstruction, or unauthorized interruption of teaching, convocations, recruiting interviews, social events, research, meetings, business and administration, disciplinary proceedings, or other institutional or System activities, including public service functions and outreach activities on or off campus, or other activities when the conduct occurs on institutional premises.
- (c) Physical abuse and/or conduct that threatens or endangers the health or safety of any member or guest of the System community.
- (d) Verbal abuse, intimidation, coercion, or bullying which is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the educational services, activities or opportunities offered by the university.
- (e) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on institutional premises.
- (f) Resisting or obstructing institutional or other public officials in the performance of their duties.
- (g) Failure to comply with the directions of institutional officials acting in accordance with their duties and/or failure to identify oneself to these persons when requested to do so.
- (h) Acts of physical force or disruptive acts which interfere with institutional activities, freedom of movement on the campuses, freedom for students to pursue their studies, freedom of speech, freedom to be heard, and freedom to pursue research of their own choosing.

- (i) Failure of the student to present proper credentials, student identification card, driver's license, or parking registration, to institutional officials upon their request.
- (j) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the System.
- (k) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of, or on premises occupied by the System.
- (l) Knowing possession on any premises of the System of any firearms, explosives, dangerous chemicals or other instruments of destruction, or other dangerous weapons as defined by the laws of the State of Nevada, without the written authorization of the institutional President or the President's authorized agent.
- (m) Continued occupation of buildings, structures, grounds or premises belonging to, or occupied by, the System after having been ordered to leave by the institution's President, the President's designee, or the Chancellor.
- (n) False reporting of any emergency situation, including but not limited to, misuse of campus or System emergency notification equipment. Unauthorized tampering with, and/or accessing of, safety, security, or fire protection equipment or devices. Setting off a fire alarm for reasons other than actual fire or emergency, involvement in setting or causing any unauthorized fire in or on institution property.
- (o) The unauthorized possession, loan, modification, or distribution of keys, pass cards or institutional identification cards. Unauthorized or unlawful entry or access to institutional or System facilities, including buildings and grounds. The reproduction, manufacture or duplication of any key, pass card, institutional or System identification card or unlocking device for use on institution or System facilities or locks without proper authorization.
- (p) Abuse, unauthorized use, or theft of institutional or System computer facilities and resources, including but not limited to:
  - (1) Unauthorized entry into, or transfer of, a file to use, read, or change the contents or for any other purpose; and/or a violation of copyright laws;
  - (2) Use of another individual's identification and/or password;
  - (3) Interfering with the work of another student, faculty member or institution or System official, or with the normal operation of the institution or System Computing System; or,
  - (4) Violating the institution's Standards of Conduct for the Use of Institution's Computers.
- (q) Willfully destroying, damaging, tampering, altering, stealing, misappropriating or using without permission any System, program or file of the System.
- (r) Violation of the institution's policies and regulations governing residence in institution owned or controlled property, and access to and use of all institutional facilities, including responsibility for the conduct of guests.

- (s) Use, possession, or distribution of alcoholic beverages without authorization (except as expressly permitted by System or Institutional regulations, such as the Alcoholic Beverage Policy), or public intoxication. Alcoholic beverages may not, in any circumstances, be used by, possessed by, or provided to, any person under 21 years of age.
- (t) Use, possession, manufacturing or distribution (hereinafter “use”) of marijuana, including for medical purposes; heroin; narcotics; or other controlled substances; use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law. Use, possession or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.
- (u) Contempt of student disciplinary proceedings including impairing or interrupting any proceeding or providing false information to institution or System officials and student hearing board members during the course of the conduct resolution process. Failure to comply with the terms of any sanction imposed in accordance with the rules of conduct.
- (v) The repeated use of obscene or abusive language in a classroom or public meeting of the System and which, if occurring in a class, is not significantly related to the teaching of the subject matter.
- (w) The use of threats or violence against a faculty member or the faculty member’s family in order to secure preferential treatment for grades, loans, employment, or other service or privilege accorded by the System.
- (x) Any act of unlawful discrimination based on race, color, gender (including sexual harassment and pregnancy related conditions), age (40 or older), sexual orientation, disability, whether actual or perceived by others, military status or military obligations, religion or national origin, gender identity or expression, or genetic information, or any act of employment or educational retaliation against any person who has made a complaint about such discrimination.
- (y) Sexual harassment, as defined in the regulations (34 C.F.R. Part 106) implementing Title IX of the Education Amendments Act of 1972, which is conduct on the basis of sex that satisfies one of the following:
  - 1. An employee of a NSHE institution (including but not limited to a student employee) conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;
  - 2. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity; or

3. Sexual assault, as defined in 34 C.F.R. § 668.46(a) (commonly known as the Clery Act), as amended by the Violence Against Women Act, including dating violence, domestic violence, and stalking.
- (z) Sexual assault, which is the use of, or threat to use, force or violence of a sexual nature, defined as sexual assault, against any member or guest of the institutional community on institution-owned or institution controlled property or at any institution sponsored program.
  - (aa) Acts of hazing. Hazing is defined as any method of initiation into or affiliation with the university, college or community college community, a student organization, a sports team, an academic association, or other group engaged in by an individual that intentionally or recklessly endangers another individual.
  - (bb) Intentionally making an accusation that is false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under the rules of conduct or under any applicable established complaint or grievance procedures in the System.
  - (cc) Willful incitement of individuals to commit any of the acts herein prohibited.
  - (dd) Any other conduct that violates applicable stated prohibitions, policies, procedures, rules, or regulations of the institution or Board of Regents.
  - (ee) Any act prohibited by local, state or federal law that occurs on System premises or at a System-sponsored function on or off such premises.
  - (ff) Dating Violence. “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - (gg) Domestic Violence. “Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
  - (hh) Stalking. “Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.

- (ii) **Sexual Violence.** Sexual violence is a severe form of sexual harassment and refers to physical, sexual acts or attempted sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law. A person may be incapable of giving consent due to the use of drugs or alcohol, age, an intellectual or other disability, or other factors, which demonstrate a lack of consent or inability to give consent.

Sexual coercion is:

1. the use of violence or threats of violence against a person or the person's family or property;
2. depriving or hindering a person in the use of any tool, implement or clothing;
3. attempting to intimidate a person by threats or force; or
4. conduct committed with the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing.

In the context of sexual misconduct, coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

### **10.2.2 Institutions May Prohibit Other Conduct.**

An institution may adopt policies which prohibit other conduct not included above which are approved by the President and institution's general counsel.

(B/R 12/20)

## **Section 10.3 Student Conduct Officers or Coordinators.**

### **10.3.1 Appointment of Student Conduct Officer or Coordinator .**

The President of an institution may appoint a student conduct officer or coordinator and alternate student conduct officers or coordinators to serve if the student conduct officer is unable to perform the duties of this Section for any reason.

### **10.3.2 Training of Student Conduct Officer or Coordinator .**

Student conduct officers or coordinators at an institution or professional school must receive training approved by the institution's legal counsel.

(B/R 9/15)

## **Section 10.4 Allegations of Violations of the Rules of Conduct.**

Complaints alleging discrimination, including sexual harassment, that do not constitute sexual harassment under Title IX, are subject to the complaint and investigation procedures set forth in Title 4, Chapter 8, Section 13(C) of the NSHE *Handbook*. The hearing procedures and sanctions established in this Chapter 10 are applicable to the resolution and determination of such complaints.

Procedures required for allegations of sexual harassment under Title IX, including allegations of sexual assault, dating violence, domestic violence, and stalking, are set forth in Section 10.4.12. In the event allegations of misconduct include allegations of Title IX sexual harassment as well as allegations of other misconduct, all the allegations will be handled in accordance with the provisions of Section 10.4.12. The procedures for all other allegations are as follows:

### **10.4.1 Complaints.**

Any member of the institution community may file a complaint against a student for violations of the rules of conduct. The complaint shall be prepared in writing and filed with the President or the student conduct officer. Any complaint should be submitted as soon as possible after the incident takes place.

### **10.4.2 Investigations and Computation of Time.**

The student conduct officer, coordinator or designee may conduct an investigation to determine if the complaint has merit. At any time, the student conduct officer may determine that the best course of action to take is to informally resolve the complaint through mediation, conflict resolution, or an educational conference. Upon completion of the investigation, the student conduct officer or coordinator will deliver a letter to the student. The letter shall state the factual allegations, the charges, the student conduct officer's or coordinator's proposed informal resolution process, if not completed earlier, and a copy of this chapter.

In computing any period of time prescribed by this Chapter, the day of the act, event or default from which a designated period of time begins to run shall not be included. The last day of the time period shall be counted, unless it is a Saturday, Sunday or legal State holiday, in which case the time period runs until the end of the next day which is not a Saturday, Sunday or legal State holiday.

#### **10.4.3 Informal Resolution.**

The charged student shall participate in and work with the student conduct officer or designee for an informal resolution of the complaint. At the conclusion of the successful informal resolution process, a written determination shall be signed by both the student conduct officer or coordinator, and charged student which may include any of the disciplinary sanctions described in this chapter. At any time prior to signing a written determination, the charged student has the right to request a hearing before a hearing board or hearing officer as the means to resolve the complaint.

#### **10.4.4 Failure to Reach Resolution.**

If the student conduct officer and charged student do not reach an informal resolution or if the charged student requests a hearing, then the student conduct officer or coordinator shall notify the charged student in writing that the matter will be addressed through a hearing before a student conduct board or a student conduct hearing officer. A time shall be set for a student conduct hearing to occur within a reasonable time from this notification, yet not more than twenty-five (25) calendar days from the date of the decision to proceed with formal resolution of the complaint. Maximum time limits for scheduling of student conduct hearings may be extended at the discretion of the student conduct officer or coordinator. Notice of the hearing may be given by electronic mail or by first class mail with the U.S. Postal Service with delivery confirmation to the last known address of the student or by personal delivery.

#### **10.4.5 Appointment of Hearing Boards or Hearing Officer.**

The President or designee may establish one or more student conduct hearing boards or appoint individual hearing officers. A board shall be from three to five persons. Every board shall include at least one student and at least one faculty member. All complaints shall be heard by a board unless the charged student and student conduct officer agree that the complaint may be heard by a hearing officer.

#### **10.4.6 Hearings.**

A hearing before a student conduct board or hearing officer shall be conducted under the following rules of procedure:

- (a) In student conduct hearings involving more than one charged student, the student conduct officer or coordinator, in his or her discretion, may permit the student conduct hearing concerning each charged student to be conducted either separately or jointly.
- (b) The charged student has the right to be assisted by an advisor. The advisor serves as a supporter and advisor during the conduct hearing. The charged student and the student conduct officer or coordinator are responsible for presenting his or her own information, introducing witnesses, and answering questions throughout the hearing. When a student selects an advisor, in this process the advisor has no right to speak during the hearing except to the charged student. The advisor

may be an attorney. The student conduct officer or coordinator has sole discretion to allow for a delay in the hearing to allow for the scheduling conflicts of an advisor.

- (c) The charged student and student conduct officer or coordinator shall notify the opposing party of all witnesses and provide copies of all documents and records in writing that the party proposes to introduce as evidence at least five (5) calendar days prior to the hearing. The President shall issue subpoenas to compel the attendance of persons and the presentation of documents at all hearings established under this chapter upon the request of the person charged or of the student conduct officer or coordinator. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.
- (d) The charged student(s) and advisors, if any, along with the student conduct officer shall be allowed to attend the entire portion of the hearing, at which information is received, excluding the time of deliberations. Admission of any other person to the student conduct hearing shall be at the discretion of the student conduct board or hearing officer.
- (e) Witnesses will provide information to, and answer questions from, the student conduct board or hearing officer. The charged student and student conduct officer may suggest questions. These questions will be directed to the chairperson of the conduct board or the hearing officer, who will question the witnesses directly. The chairperson of the conduct board or the hearing officer will decide on the specific course of questioning and/or information sharing throughout the hearing.
- (f) All student conduct boards, hearing officers, or student conduct officers, may accommodate concerns for personal safety, well-being, and/or fears of confrontation, by the complainant, the accused, and witnesses, during the hearing or during the informal resolution process by providing the opportunity for the hearing board or student conduct officer to receive the pertinent information and conduct conversations for the resolution of the case using methods other than requiring both parties to be present in the same room at the same time. Such options include use of a visual screen, participation by videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined by the chairperson of the student conduct hearing board or hearing officer conducting the hearing.
- (g) Either party may present pertinent written statements, records, or other information to the student conduct board or hearing officer. The formal rules of evidence in court shall not apply but irrelevant or unduly repetitious evidence shall be excluded.
- (h) To the extent consistent with the Family Educational Rights and Privacy Act ("FERPA") the hearing, except for deliberations, shall be taped or digitally recorded. Upon request by the student, a written transcript will be provided at the student's expense. Personally identifiable information will be removed. The record shall be the property of the institution, and will be maintained with the student's conduct records by the student conduct officer.

- (i) Student conduct hearings shall be conducted in private, unless the charged student requests an open hearing. An open hearing must be held consistent with Subsection (f).
- (j) If a charged student, with notice, does not appear at a student conduct hearing, the information in support of the complaint shall be presented, considered, and acted upon even if the charged student is not present. Failure of the student to appear is not evidence that the student was responsible for the charge of misconduct.
- (k) The hearing will proceed according to the institution's schedule and will not be delayed by another process off campus.
- (l) The chairperson of the student conduct board or the hearing officer decides procedural questions.
- (m) The members of the student conduct board or the hearing officer deliberates in closed session after the hearing has concluded, and shall determine whether or not the charged student has violated each Section of the rules of conduct that the student is charged with having violated. This determination is made through consensus when possible, and if not possible, then by a simple majority vote of the board members.
- (n) The student conduct board or hearing officer's determination shall be made on the basis of whether it is more likely than not that the charged student violated the rules of conduct.
- (o) If the charged student is found not to have violated the rules of conduct, then the hearing is concluded. If the charged student is found to have violated the rules of conduct, then the student conduct board or hearing officer will discuss possible sanctions for the student after being informed of the student's disciplinary record with the institution.
- (p) The student conduct board chairperson or the hearing officer will provide the board's decision on the violation and, if appropriate, for sanctions to the student conduct officer or coordinator and to the student. This written decision will be served within seven (7) calendar days of the conclusion of the hearing. The written decision may be served by electronic mail or by first class mail with the U.S. Postal Service with delivery confirmation to the last known address of the student or by personal delivery. Service is complete upon sending of the email or depositing with the U.S. Postal Service.
- (q) With respect to an institutional disciplinary action alleging sexual violence, domestic violence, dating violence or stalking offense, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (f). 34 CFR 668.46 (Clery Act) requires that the complainant and respondent must be informed simultaneously of the outcome.

#### **10.4.7 Appeals.**

A student who is aggrieved by the decision of a student conduct hearing board or hearing officer may appeal to a vice president designated by the President or the President may decide to hear the appeal. The appeal shall be in writing and delivered to the student conduct officer within seven (7) calendar days of the

student's receipt of the decision. The student's appeal must include all written arguments in support of the appeal.

- (a) The only grounds for an appeal are:
  - (1) Deviations from procedures set forth which results in significant prejudice.
  - (2) The decision reached regarding the charged student was not based on a decision that it was more likely than not that the charged student violated the rules of conduct.
  - (3) The sanction(s) imposed were not appropriate for the violation of the rules of conduct which the student was found to have committed.
- (b) The student conduct officer or coordinator shall review the appeal and direct it, along with the recording of the hearing, any written evidence and arguments, and decision to the vice president designated by the President to hear the appeal within fourteen (14) calendar days of receiving the appeal. With the record, the student conduct officer or coordinator shall file written arguments in opposition to the appeal.
- (c) The designated vice president shall review the recording of the hearing and the complaint, and decision, along with any information and evidence that was part of the decision-making of the conduct case, and will decide whether or not the appeal should be upheld. The designated vice president may uphold the decision, may refer the case back to the original board or hearing officer or may order a new hearing before a new board or hearing officer.
- (d) The decision of the vice president shall be in writing and served upon the student and student conduct officer or coordinator within thirty (30) calendar days of the receipt of the decision and record of the hearing by the vice president. The vice president may extend the time limit of this Section by written notice to the parties.
- (e) Any sanction against the student shall not take effect until any appeal is concluded.
- (f) The student conduct officer or coordinator may suspend any time limits contained in this chapter during winter or summer breaks.

#### **10.4.8 Sanctions and Expunging the Record.**

The student conduct officer or designee will be responsible for monitoring the student in successfully carrying out the sanctions imposed as the result of a hearing or the final determination of the informal resolution process. Unless the student conduct officer otherwise states in writing, any final action resulting from a disciplinary hearing or the informal resolution process shall become part of the student's disciplinary record. Other than institutional expulsion or withholding of a degree, disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's disciplinary record. Upon graduation, the student's disciplinary record may be expunged of disciplinary actions other than residence hall expulsion, institution suspension, institution expulsion, or withholding of a degree, upon application to the student conduct officer or coordinator and approval by the President. A student may request that his or her disciplinary record be expunged and any such notation be removed from the student's transcript during the student's semester before

graduation or any time following graduation. The burden demonstrating reasonable cause for considering the expunging of a disciplinary record lies with the student. In considering such requests, the institution may consider the:

- (a) Stated reason for request and circumstances surrounding the request;
- (b) Date and seriousness of the violation;
- (c) Student's behavior and disciplinary record since the violation, including successful completion of any imposed sanctions;
- (d) The impact, if any, on the public that failure to give such notice may cause; and
- (e) Consequences of denying the request.

The grant or denial of a request to expunge a student's disciplinary record shall rest solely within the discretion of the institution, and the enumeration of the foregoing factors shall not in any way imply a duty on the institution to grant such a request by means of a balancing or other test. If a request is not granted, the student at yearly intervals thereafter may request that his or her disciplinary record be expunged. The denial of a request to expunge is not appealable.

#### **10.4.9 Sanctions.**

The following are the disciplinary sanctions that may be imposed on a student found to have violated the rules of conduct. More than one sanction may be imposed.

- (a) Warning. A notice, oral or written, that the student has violated the rules of conduct.
- (b) Reprimand. A written reprimand for violation of specified regulations.
- (c) Restitution. Compensation for loss, damage, theft or misappropriation of property, or injuries sustained in an incident of student misconduct. This may take the form of appropriate service, monetary, or material replacement or a combination of these.
- (d) Probation. Probation consists of a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to have violated any institutional regulation(s) during the probationary period.
- (e) Loss of Privileges. Denial of specified privileges for a designated period of time. This may include denying the student access to any campus, site, or building while permitting the student to enroll in off-campus classes such as internet or correspondence classes.
- (f) Discretionary and Educational Sanctions. Participation in specific educational programs, such as alcohol or other drug educational intervention conferences, assessments, educational activities, including on-line instructional workshops, and work assignments or service to the institution or the community, and other related discretionary assignments.

- (g) Residence Hall Suspension. Separation of the student from the residence halls for a period of time, after which the student is eligible to return. The minimum period of suspension is one semester and the maximum period is two semesters. Conditions for readmission may be specified in the suspension.
- (h) Residence Hall Permanent License Cancellation. Permanent separation of the student from the residence halls.
- (i) Withholding of a Degree. Prior to the awarding of a degree, the institution may withhold a degree from a student.
- (j) Institutional Suspension. Exclusion for a definite period of time from attending classes and from participating in other activities of the System, as set forth in a written notice to the student. The official transcript of the student shall be marked —DISCIPLINARY SUSPENSION EFFECTIVE \_\_\_\_ TO \_\_\_\_\_. The parents or legal guardians of minor students shall be notified of the action.

A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary suspension be removed from the official transcript when two years have elapsed since the expiration of the student's suspension. Such request must be submitted in writing to the President or his designee. If the request is not granted, the student at yearly intervals thereafter may submit a request for removal of the notation.

- (k) Deferred Institutional Suspension. Deferred separation of the student from the institution until the close of the current semester or some other time frame for review of student progress in addressing the conduct matter.
- (l) Institutional Expulsion. Termination of student registration and status for an indefinite period of time. Permission of the President shall be required for readmission. The official transcript of the student shall be marked —DISCIPLINARY EXPULSION EFFECTIVE \_\_\_\_\_. The parents or legal guardians of minor students shall be notified of the action.

A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary expulsion be removed from the official transcript when four years have elapsed since the expiration of the student's expulsion or termination. Such request must be submitted in writing to the President or designee. If the request is not granted, the student at yearly intervals thereafter may submit a request for removal of the notation.

#### **10.4.10 Emergency Removal.**

The President, the student conduct officer, or coordinator may impose an immediate emergency removal (hereafter, "removal") prior to the resolution of a charge of violation of the rules of conduct on the charged student. This removal includes the immediate exclusion from the institution and all of the institution's campuses, sites, locations, and property of a student for an interim period whenever the President determines that this is required to:

- (a) Ensure the safety and well-being of members of the institution's community;
- (b) Protect institution property;
- (c) Prevent the student from posing an ongoing threat of disruption of, or interference with, the normal operations of the institution; or
- (d) Protect any student from discrimination, including sexual harassment or retaliation for the report of discrimination, including sexual harassment.

#### **10.4.11 Conditions of Emergency Removal and Hearing.**

- (a) When an emergency removal is imposed, the charged student shall be denied access to the institution, including classes and all other institutional activities or privileges for which the student might otherwise be eligible, as the President, the student conduct officer, or coordinator may determine to be appropriate. During the time of the removal from the institution, the student may not come onto institutional property for any reason other than meeting with the appropriate official(s) regarding resolution of the emergency removal and the student conduct violation. The student conduct officer or coordinator may permit the student to participate in distance learning classes that do not include entering onto institutional property and provide adequate protections to prevent any of the conditions of (a), (b), (c) or (d), above, from occurring. Any student so removed shall be afforded an opportunity for a hearing on the emergency removal no later than fourteen (14) calendar days following the removal unless the student agrees to delay the hearing to a later time. A hearing officer shall hold the hearing under the hearing procedures of the rules of conduct where those may be applicable. The student conduct hearing officer or coordinator shall make a recommendation to the President. The President's decision upon the hearing officer's recommendation shall be final. The removal does not replace the regular disciplinary process, which shall proceed under this chapter.
- (b) Interim measures as described in NSHE *Handbook*, Title 4, Chapter 8, Section 13(B), except for emergency removal of the student, may be implemented without a hearing and are not subject to any grievance procedure.

#### **10.4.12 Procedures Required when Title IX Sexual Harassment is Alleged.**

##### (a) Definitions

1. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. “Respondent” means an individual who has been reported by the individual engaging in conduct that could constitute sexual harassment.
3. “Reporting Party” means any person who reports sexual harassment or conduct that could constitute sexual harassment, whether or not the person reporting is the person alleged to be the victim.
4. “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - (i) An employee of a NSHE institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct;
  - (ii) Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity; or
  - (iii) Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking.

For the purposes of this definition, “education program or activity” includes locations, events, or circumstances over which an institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution, which may include but is not limited to recognized fraternity, sorority, or student organizations. This definition does not apply to persons outside the United States.

For the purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

“Rape” means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

“Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

“Statutory rape” means sexual intercourse with a person who is under the statutory age of consent (16 years old).

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.

“Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

“Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.

5. “Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment.
6. “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
7. “Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to an institution’s Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the institution, including the President, Vice Presidents, Provost, Vice Provosts, Human Resources Director, and those designated by the President.

8. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the institution with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the institution.
9. "Institution" means any and all of NSHE's eight (8) institutions, including the College of Southern Nevada; the Desert Research Institute; Great Basin College; Nevada State University; Truckee Meadows Community College; the University of Nevada, Las Vegas; the University of Nevada, Reno; and Western Nevada College, and NSHE's System Administration offices.
10. "Consent" means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.
  - Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.
  - Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
  - Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
  - Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.
  - Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes: impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
  - The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

(b) Response to Sexual Harassment.

An institution with actual knowledge of sexual harassment allegations in an education program or activity of the institution, as all defined in Subsection (a), against a person in the United States must respond promptly in a manner that is not deliberately indifferent. An institution is “deliberately indifferent” only if its response to sexual harassment allegations is clearly unreasonable in light of the known circumstances.

An institution’s response must treat complainants and respondents equitably by offering supportive measures as defined in Subsection 6 of Subsection (a) to all parties, and by following a complaint process that complies with Subsection (e) before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in Subsection 6 of Subsection (a) against a respondent.

The institution’s Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined in Subsection 6 of Subsection (a), consider the complainant’s wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. An institution’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

Depending on the specific nature of the problem, supportive measures and remedies may include, but are not limited to:

For Students:

- a) Issuing a no-contact directive(s);
- b) Providing an effective escort to ensure safe movement between classes and activities;
- c) Not sharing classes or extracurricular activities;
- d) Moving to a different residence hall;
- e) Providing written information regarding institution and community services including but not limited to medical, counseling and academic support services, such as tutoring;
- f) Providing extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- g) Restricting to online classes;
- h) Providing information regarding campus transportation options;
- i) Reviewing any disciplinary actions taken against the complainant or the respondent to see if there is a connection between the sexual misconduct and the misconduct that may have resulted in the complainant or the respondent being disciplined;<sup>1</sup> and
- j) Requiring the parties to report any violations of these restrictions.

For Employees:

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<sup>1</sup> For example, if one party was disciplined for skipping a class in which the other party was enrolled, the institution should review the incident to determine if class was skipped to avoid contact with the other party.

- k) Providing an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;
- l) Issuing a no-contact directive(s);
- m) Placement on paid leave (not sick or annual leave);
- n) Placement on administrative leave;
- o) Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;
- p) Providing information regarding campus transportation options;
- q) Instructions to stop the conduct;
- r) Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;
- s) Reassignment of duties;
- t) Changing the supervisory authority; and
- u) Directing the parties to report any violations of these restrictions.

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the supportive measures and remedies.

Supportive measures and remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Supportive measures and remedies will be confidential to the extent that such confidentiality will not impair the effectiveness of such measures or remedies.

Remedies may also include review and revision of institution sexual misconduct policies, increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.

Any supportive measures or remedies shall be monitored by the Title IX Coordinator throughout the entire process to assess whether the supportive measures or remedies meet the goals of preventing ongoing harassment or discrimination, protecting the safety of the parties, and preventing retaliatory conduct.

In responding to allegations of sexual harassment, an institution shall not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

(c) Response to a Formal Complaint.

1. In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with Subsection (e). With or without a formal complaint, an institution must comply with Subsection (b).
2. Nothing in this Subsection precludes an institution from removing a respondent from the institution's education program or activity on an emergency basis, provided that the institution undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This

provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

3. An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a complaint process involves more than one complainant or more than one respondent, references in this Section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.
- (d) General complaint process requirements. Institutions shall:
1. Permit any person to report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator;
  2. Promote impartial investigations and adjudications of formal complaints of sexual harassment;
  3. Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a complaint process that complies with this Section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in Subsection 6 of Subsection (a) against a respondent. Remedies must be designed to restore or preserve equal access to the institution’s education program or activity. Such remedies may include the same individualized services described in Subsection 6 of Subsection (a) as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
  4. Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness;

5. Ensure that the Title IX Coordinator, investigator, hearing officer, or any person designated by an institution to facilitate an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
6. Ensure that the Title IX Coordinator, investigator, hearing officer, or any person designated by an institution to facilitate an informal resolution process receive training on the definition of sexual harassment in Subsection (a), the scope of the institution's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
7. Ensure, coordination with the NSHE Chief General Counsel, that hearing officers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Subsection 4 of Subsection (g);
8. Ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in Subsection 4 of Subsection (g);
9. Ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process, do not rely on sex stereotypes;
10. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process;
11. Establish a reasonably prompt time frame for conclusion of the complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the institution offers informal resolution processes, and a process that allows for the temporary delay of the complaint process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The institution must establish a reasonably prompt time frame that complies with the procedures outlined in Chapter 284 of the Nevada Administrative Code for classified employees, Chapter 289 of the Nevada Administrative Code for law enforcement, Chapter 6 of the NSHE Code for professional employees, and Chapter 10 of the NSHE Code or applicable code of conduct for students. Institutions may establish different time frames for different types of cases (e.g., sexual assault, domestic violence, dating violence, etc.);

12. Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the institution may implement following any determination of responsibility;
13. State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard, and must apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and must apply the same standard of evidence to all formal complaints of sexual harassment;
14. Include the procedures and permissible bases for the complainant and respondent to appeal a written determination;
15. Describe the range of supportive measures available to complainants and respondents;
16. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; and
17. Require any party to assert that the Title IX Coordinator, investigator(s), or hearing officer(s) has a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent at the time the party knew or should have known of such conflict of interest or bias.

(e) Complaint Procedures.

1. Upon receipt of a formal complaint, an institution must provide the following written notice to the parties who are known:
  - (i) Notice of the institution's complaint process that complies with this Section, including any informal resolution process; and
  - (ii) Notice of the allegations potentially constituting sexual harassment as defined in Subsection (a), including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. "Sufficient details" include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under Subsection (a), and the date and location of the alleged incident, if known. This written notice also must:
    - (A) Include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the complaint process;
    - (B) Inform the parties that they may have an advisor of their choice under Subsection 4 of Subsection (f) who may be, but is not required to be, an attorney, and may inspect and review evidence under Subsection (f); and
    - (C) Consistent with Subsection (l), inform the parties of the prohibition against knowingly making false statements or knowingly submitting false information during the complaint process.

2. If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to Subsection 1 of Subsection (e), the institution must provide notice of the additional allegations to the parties whose identities are known.
3. Dismissal of formal complaint.
  - (i) If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Subsection (a) of this Section even if proved, did not occur in the institution's education program or activity, or did not occur against a person in the United States, then the institution must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of the Board of Regents' *Handbook*, NSHE Code, or institution's code of conduct.
  - (ii) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
    - (A) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
    - (B) The respondent is no longer enrolled or employed by the institution; or
    - (C) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  - (iii) Upon a dismissal required or permitted pursuant to Subsections i and ii of Subsection 1 of Subsection (e), the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- (f) Investigation of a Formal Complaint. The institution investigating a formal complaint must:
  1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties, provided that the institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so for a complaint process under this Section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the institution must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3);

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
  3. Avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
  4. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or complaint proceeding. However, an institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties;
  5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
  6. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
  7. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The institution must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
  8. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required under this Section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Each party's written response, if any, shall be submitted to the investigator at least three (3) days prior to the live hearing.
- (g) Live Hearings.
1. An institution must hold a live hearing over which a hearing officer presides. The hearing officer cannot be the same person as the Title IX Coordinator or the investigator(s).

2. At the live hearing, the hearing officer must permit each party's advisor during cross examination to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the institution under Subsection 4 of Subsection (f) of this Section to otherwise restrict the extent to which advisors may participate in the proceedings.
3. The live hearing may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the institution must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the party or the witness answering questions.
4. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. For the purposes of this Section, "relevant" means a question or evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the question or evidence. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
5. If a party does not have an advisor present at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution's choice, who shall not be an attorney, to conduct cross-examination on behalf of that party. Such advisors need not be provided with specialized training because the essential function of such an advisor provided by the institution is not to "represent" a party but rather to relay the party's cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.

6. If a party or witness does not submit to cross-examination at the live hearing, the hearing officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
  7. Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
  8. Nothing in this Subsection shall be construed to impair rights under the U.S. Constitution, including but not limited to the Fifth Amendment, or privileges recognized by statute or common law.
- (h) Determination Regarding Responsibility.
1. The decision-maker, or hearing officer(s) as appropriate, must issue a written determination regarding responsibility under the preponderance of the evidence standard within 14 calendar days of the live hearing.
  2. The written determination must include:
    - (i) Identification of the allegations potentially constituting sexual harassment as defined in Subsection (a);
    - (ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
    - (iii) Findings of fact supporting the determination;
    - (iv) Conclusions regarding the application of the institution's code of conduct to the facts;
    - (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the institution to the complainant; and
    - (vi) The institution's procedures and permissible bases for the complainant and respondent to appeal.
  3. The institution must provide the written determination regarding responsibility to the parties simultaneously. The written determination becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

- (i) Appeals.
  - 1. Within five (5) calendar days, any party may appeal from a determination regarding responsibility, and from an institution's dismissal of a formal complaint or any allegations therein, on the following bases:
    - (i) Procedural irregularity that affected the outcome of the matter;
    - (ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
    - (iii) The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or
    - (iv) Any additional basis offered by an institution.
  - 2. As to all appeals, the institution must:
    - (i) Immediately notify the other party in writing when an appeal is filed;
    - (ii) Ensure that the decision-maker for the appeal is not the same person as the hearing officer(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
    - (iii) Ensure that the decision-maker(s) for the appeal:
      - (A) Does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
      - (B) Receives training on the definition of sexual harassment in Subsection (a), the scope of the institution's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
      - (C) Receives training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Subsection 4 of Subsection (g);
      - (D) Receives training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in Subsection 4 of Subsection (g); and
      - (E) Uses training materials that do not rely on sex stereotypes.
    - (iv) Give all parties an equal opportunity to submit a written statement in support of, or challenging, the outcome within five (5) calendar days of the outcome;

- (v) Issue a written decision within five (5) calendar days of receiving a written statement in support of, or challenging, the outcome describing the result of the appeal and the rationale for the result; and
  - (vi) Provide the written decision simultaneously to all parties.
3. The review on appeal is limited to the record, except in appeals based on newly discovered evidence that could affect the outcome of the matter and that was not reasonably available at the time the determination regarding responsibility or dismissal was made. In such appeals, newly discovered evidence may be considered on appeal notwithstanding its absence from the record.
- (j) Informal Resolution.
1. If a formal complaint of sexual harassment is filed, and at any time prior to reaching a determination regarding responsibility, an institution may offer the parties the option of informal resolution and may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:
    - (i) Provides to the parties a written notice disclosing the allegations; setting forth the requirements of the informal resolution process, including the circumstances under which its agreed upon resolution precludes the parties from resuming a formal complaint arising from the same allegations; and explaining that any statements made or documentation or information provided by a party during the informal resolution process shall not be used or relied upon in a subsequent complaint process or live hearing without the permission of the party who made the statement or provided the documentation or information;
    - (ii) Obtains the parties' voluntary, informed written consent to the informal resolution process; and
    - (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
  2. Institutions must provide the parties with a written notice explaining that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the complaint process with respect to the formal complaint, and withdraw from any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
  3. An institution shall not require the parties to participate in an informal resolution process for any reason, and shall not require waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this Section as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

4. An individual serving as a facilitator of an informal resolution process shall not be the Title IX Coordinator, Title IX investigator, Title IX hearing officer, witness, or other institutional employee that has a duty to disclose allegations of sexual harassment to the institution.
- (k) Recordkeeping.
1. An institution must maintain for a period of at least seven (7) years records of:
    - (i) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Subsection 7 of Subsection (g), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;
    - (ii) Any appeal and the result therefrom;
    - (iii) Any informal resolution and the result therefrom; and
    - (iv) All materials used to train Title IX Coordinators, investigators, hearing officers, decision-makers, and any person who facilitates an informal resolution process. An institution must make these training materials publicly available on its website, or if the institution does not maintain a website the institution must make these materials available upon request for inspection by members of the public;
    - (v) For each response required under Subsections (b) and (c), an institution must create, and maintain for a period of seven (7) years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the institution's education program or activity. If an institution does not provide a party with supportive measures, then the institution must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.
- (l) False Reports. Because discrimination and sexual harassment frequently involve interactions between persons that are not witnessed by others, reports of discrimination or sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting discrimination or sexual harassment under this policy. However, individuals who knowingly make false reports or submit false information during the complaint process may be subject to disciplinary action under the applicable institution and Board of Regents disciplinary procedures. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

(m) Retaliation.

1. Retaliation Prohibited. No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. The institution must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to have engaged in sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the complaint procedures for sex discrimination required to be adopted under Subsection C.
2. Specific circumstances.
  - (i) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under Subsection 1 of Subsection (m).
  - (ii) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a complaint proceeding under this part does not constitute retaliation prohibited under Subsection 1 of this Subsection (m), provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**10.4.13 Board of Regents Policy Against Unlawful Discrimination and Unlawful Harassment.**

The Board of Regents policy against unlawful discrimination and unlawful harassment is set forth in Title 4, Chapter 8, Section 13 of the Board of Regents' *Handbook*.

**10.4.14 Withdrawal of Student from Institution During Ongoing Investigations, Hearings, and Appeals.**

In the event a student against whom disciplinary proceedings have been commenced pursuant to this Chapter 10 of the Nevada System of Higher Education Code withdraws from the institution prior to the completion of any investigation, hearing or appeal commenced before receipt of the withdrawal, then:

- a. The withdrawal shall be effective immediately. Unless otherwise mandated by law, the person submitting the withdrawal shall not be permitted to revoke the resignation under any circumstances.
- b. The pending investigation, hearing, or appeal shall immediately cease.
- c. In cases involving gender discrimination or sexual harassment, the Title IX coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.
- d. The facts and circumstances of the charge(s) may be cause for denial of readmission, denial of an application of employment or denial of work as an independent contractor.

(B/R 12/20)