

BOARD OF REGENTS  
BRIEFING PAPER

**Agenda Item Title: Policy on Restricted Access Research**

**BACKGROUND & POLICY CONTEXT OF ISSUE:**

On August 4, 2006, in response to concerns raised about practices at UNLV, the Board of Regents requested that the Presidents of UNLV, UNR, and DRI develop a System policy on classified and proprietary research, particularly with regard to confidentiality of records. The Presidents offer a new policy to clarify when and under what circumstances research records and contracts related to research may be kept confidential. Nevada statutes related to open records were reviewed by legal counsel, and the new policy complies with these requirements. This policy is written to indicate that there are circumstances when both classified and proprietary research (restricted access research) are appropriate and desirable for NSHE institutions and their faculty, but decisions not to disclose information about this research and its results should be narrowly made within the definitions within this policy. This proposed policy places primary responsibility on the President for oversight of restricted access research and confirms the ability of NSHE auditors and legal staff to have appropriate oversight as needed. The Presidents recommend this policy to the Board of Regents for adoption.

**SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

Amend Title 4, Chapter 12, Sections 9 and 10 to require periodic reporting on the status and outcomes of research activities and establish policies related to restricted access research.

Amend Title 4, Chapter 1, Section 4 to establish the procedures under which regents may inspect proprietary research material. This action requires the Regents to choose between alternative procedures for inspection of proprietary research materials.

Establish a new Title 2, Chapter 9, Section 1 to define a) classified research, b) sensitive but not classified research, and c) proprietary research.

**IMPETUS (WHY NOW?):**

This need for a policy on restricted access research and public disclosure came to the Board's attention at its meeting on August 4, 2006. This policy will clarify for NSHE institutions how to respond to requests for information on classified and proprietary research documents.

**BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- This policy supports the legitimacy of both classified and proprietary research to be conducted in NSHE institutions, if the institution chooses to do so.
- At the same time, this policy places responsibility for oversight of all restricted access research on the President (or his designee), with appropriate backup by legal staff and audit.
- Guidelines for the public release and dissemination of results of restricted access research would now have to be published by the institution within the criteria set forth in this policy.
- Periodic reports to the Board through the Research and Economic Development Committee will ensure that regents are aware of institutional research activities.

**POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- This will not change the fact that research proposals and results are not publicly available for classified research and may be delayed for proprietary research.
- This policy gives the President of each institution primary responsibility for ensuring that

only appropriate restricted access research is conducted by the institution.

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

- Do not approve a policy on Restricted Access Research and leave all decisions related to restricted access research up to individual institutions, as is currently the case.
- Establish a policy that does not allow the NSHE institutions to engage in classified or proprietary research.

**COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title # \_\_\_\_\_ Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Amends Current Board Policy: *Title 2, Chapter 9 (new); Title 4, Chapter 1, Section 4; and Title 4, Chapter 12*
- Amends Current Procedures & Guidelines Manual: Chapter # \_\_\_\_\_ Section # \_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes \_\_\_\_\_ No X \_\_\_\_\_
- Explain: \_\_\_\_\_

**POLICY PROPOSAL**  
**TITLE 2, CHAPTER 9 (new)**  
Confidentiality of Certain Records

Additions appear in *boldface italics*; deletions are [~~striken~~ and bracketed]  
Changes to policy proposal made during the 6/07 Board meeting are highlighted in yellow

ESTABLISH A *new* CHAPTER 9 IN TITLE 2 AS FOLLOWS:

**CONFIDENTIALITY OF CERTAIN RECORDS**

**Section 9.1**    **Definitions**

**9.1.1**    *For the purposes of all approved Board policies and procedures, the following are deemed to be restricted access research, and are therefore confidential, such that unauthorized disclosure is **strictly** prohibited:*

(a) *“Classified Research” is research conducted with or on behalf of a government agency, or service provided to or on behalf of a government agency, that will require government-issued security clearances for participation;*

(b) *“Sensitive but not Classified Research” is research conducted with or on behalf of a government agency, or service provided to or on behalf of a government agency that is treated as confidential by state or federal law or regulation;*

(c) *“Proprietary Research” includes, but is not limited to, trade secrets, confidential business information, and all other intellectual property, inventions and copyrightable works. As used in this section:*

(1) *“Trade secret” means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.*

(2) *“Confidential business information” means any private financial or commercial information relating to the amount or source of any income, profits, losses or expenditures of a person, including data relating to cost, price,*

*or customers. "Confidential business information" does not include the financial terms of a contract or the identity of a contractor, except in extraordinary circumstances where state or federal law or regulation may require the non-disclosure of such information.*

*(3) "Intellectual property" as defined in Title 4, Chapter 12.*

*(4) "Inventions" as defined in Title 4, Chapter 12.*

*(5) "Copyrightable works" as defined in Title 4, Chapter 12.*

**POLICY PROPOSAL**  
**TITLE 4, CHAPTER 1, SECTION 4**  
**Restricted Access Research**

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]  
Changes to policy proposal made during the 6/07 Board meeting are **highlighted in yellow**

Section 4. Production or Inspection of Records and Requests for Information by Regents

1. Unless otherwise prohibited by law, all books, records and documents, *including materials related to restricted access research, that are* in the custody of [a] *an* NSHE institution or unit must be made available to Regents for inspection or copying upon request. Regents should make such a request only for reasons germane to the performance of their duties as Regents. *Requests to inspect such research material must be accompanied by signed non-disclosure and conflict of interest statements. Copying of such research material or information is strictly prohibited. A written notice of a regent request to inspect restricted access research material must be sent by the institution or unit to all Regents, the Chancellor, and the Board Office.* Requests for inspection or copies of books, records or documents must be directed to the Chancellor, Presidents, Vice Chancellors, Vice Presidents, Secretary to the Board or the Director of Internal Audit, as the case may be. Such requests shall also be copied to the Chancellor and, if applicable, the President of the relevant institution. The written response from the institution or unit shall be sent to all Regents, with copies to the Chancellor, the applicable President and the Board office.

OR – in lieu of the above language, the follow alternative may be considered:

1. Unless otherwise prohibited by law, all books, records and documents, *except material related to restricted access research,* that are in the custody of [a] *an* NSHE institution or unit must be made available to Regents for inspection or copying upon request. Regents should make such a request only for reasons germane to the performance of their duties as Regents. Requests for inspection or copies of books, records or documents must be directed to the Chancellor, Presidents, Vice Chancellors, Vice Presidents, Secretary to the Board or the Director of Internal Audit, as the case may be. Such requests shall also be copied to the Chancellor and, if applicable, the President of the relevant institution. The written response from the institution or unit shall be sent to all Regents, with copies to the Chancellor, the applicable President and the Board office. *Regents may request the Chancellor or his or her designee to inspect restricted access research materials on their behalf and provide a summary report to the Board*[~~, which may or may not be confidential~~]. *Requests to inspect restricted access research materials will be accompanied by non-disclosure and conflict of interest statements signed by the Chancellor or his or her designee.*

**NOTE: Board approved the second option presented above noted in dashed-box.**

**POLICY PROPOSAL**  
**TITLE 4, CHAPTER 12**  
**Restricted Access Research**

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]  
Changes to policy proposal made during the 6/07 Board meeting are highlighted in yellow

**INTELLECTUAL PROPERTY**  
**AND RESTRICTED ACCESS RESEARCH**

Section 1. Preamble

1. The [~~University and Community College System of~~] Nevada *System of Higher Education* is dedicated to teaching, research, and the extension of knowledge to the public. The personnel at its institutions recognize as two of their major objectives the production of new knowledge and the dissemination of both old and new knowledge. A byproduct of these objectives is the development of new and useful products and processes and the publication of scholarly works. Such activities (1) contribute to the professional development of the individuals involved, (2) enhance the reputation of the institutions concerned, (3) provide additional educational opportunities for participating students, and (4) promote the general welfare of the public at large. (B/R 6/03)
2. Inventions and copyrightable works often come about because of activities of [~~UCCSN~~] *NSHE* personnel who have been aided wholly or in part through the use of funds and/or facilities of the [~~University and Community College System of Nevada~~] *System*. It becomes significant, therefore, to ensure the utilization of such inventions for the public good and to expedite their development and marketing. The rights and privileges, as well as the incentive, of the inventor or author/creator must be preserved so that the abilities of the inventor or author/creator and those of other personnel of the [~~UCCSN~~] *NSHE* may be further encouraged and stimulated. (B/R 6/03)
3. The Board of Regents acknowledges that faculty, staff, and students who are employees of the Board regularly prepare for publication, usually through individual effort and initiative, articles, pamphlets, books, and other scholarly works that may be subject to copyright and that may generate income. Publication may also result from work supported either partially or completely by the institution. With the advent of innovative techniques and procedures, the variety and number of materials that might be created in a higher education community have increased significantly, causing the ownership of such copyrightable works to become increasingly complex. (B/R 6/03)
4. The foregoing considered, the Board of Regents of the [~~University and Community College System of~~] Nevada *System of Higher Education* does hereby establish the following policy with respect to inventions, [~~or~~] intellectual property, *and restricted access research* [~~resulting~~] from [~~the work of its~~] *which NSHE* faculties, staff and students *are contributing participants*.

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**Section 9. Periodic Reporting**

*Periodically or upon request, each NSHE President or his or her designee shall report to the Research and Economic Development Committee of the Board on the status and outcomes of institutional research endeavors.*

**Section 10. Restricted Access Research**

*The Board of Regents through NSHE institutions is committed to the creation and dissemination of knowledge. Further, the Board recognizes the importance of open intellectual communication within a research group, within an NSHE institution, and within the community at large. Recognizing that NSHE institutions are dedicated to academic freedom and to the public documentation and dissemination of the knowledge that they create, a free and open academic environment is an essential element in fulfilling research and educational missions. Policies or practices that inhibit the free exchange of ideas, by limiting scholarly interchange, can markedly restrain both the advancement of knowledge and its productive use.*

*In meeting this commitment, NSHE faculty may find it important to engage in research in the national interest where restrictions may be imposed on access to, documentation, and dissemination of information. In these cases, the specific research may be characterized as “classified” or “restricted access.” Restrictions on these projects create potential conflicts with the academic values of NSHE institutions.*

*This policy does not attempt to anticipate all possible concerns about restricted access research. In some cases, decisions will need to be made about specific research projects to which the application of particular policy guidelines are not clear. In choosing to accept or decline such projects, an institution must weigh the potential of a project for generating and disseminating new knowledge for the benefit of society, against the project's potential for adversely affecting the climate for research conducted in a free and open environment. While this policy sets no explicit limits on the extent of classified research permitted by an NSHE institution, it is not the intent of the policy to encourage an institution to engage in classified research as a primary ongoing activity.*

- 1. Restricted access research includes proprietary, sensitive but not classified, and classified research, unless otherwise provided.*
- 2. The President shall develop policies and procedures for all restricted access research that include provisions for **[strict]** oversight of research projects by the President or his or her designee, appropriate project controls, and guidelines for the release and dissemination of project results, including preliminary results. These procedures must be reviewed by the Chancellor and published by the institution. Copies of the policies and procedures must be lodged with the Secretary of the Board upon adoption by the institution, and whenever modified thereafter.*

3. *The President or his or her designee may enter into contracts with confidentiality clauses where such clauses protect from public disclosure only that information defined as restricted access by Board policy and in accordance with the guidelines of the Board and institution for accountability and dissemination of research results.*
4. *NSHE auditors and legal staff shall have access to materials related to restricted access research, excluding classified research, as is appropriate and germane to the performance of their jobs.*
5. *The President or his or her designee must have the appropriate security clearance for the oversight of classified research.*