

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: The Title IX Task Force Proposes Amendments to Align NSHE Policy and Code with Violence Against Women Act and other Federal Requirements.

Meeting Date: September 10-11, 2015

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

The Title IX Task Force, with representation from all institutions, began its review of NSHE policy and Code in February 2015 to propose amendments needed for compliance with the Violence Against Women Act (VAWA), implementing federal regulations and federal guidance. The Task Force has completed its review and has proposed various amendments to Board of Regents' Policy and Code.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The Board is requested to approve the proposed amendments to:

- Title 4, Chapter 8, Section 13--Policy Against Discrimination and Sexual Harassment; Complaint Procedure.
- Title 2, Chapter 6--Rules and Disciplinary Procedures for Faculty Except DRI, and Degree Revocation
- Title 2, Chapter 8--Rules and Disciplinary Procedures for Members of the DRI
- Title 2, Chapter 10--Rules of Conduct and Procedures for Students of the Nevada

In order to have these amendments in effect before the October 1 issuance of the campus Annual Security Reports, the Board of Regents is requested to approve both the Policy and Code amendments at the September 2015 meeting. The Code amendments may be considered for action in accordance with Code Sec. 1.3.3.a (see below).

3. IMPETUS (WHY NOW?):

The Title IX Task Force has completed its work to propose revisions to bring NSHE policy and Code in line with the federal Violence Against Women Act Amendments, implementing regulations that became effective July 1, 2015, and federal guidance.

4. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The Title IX Task Force has prepared proposed revisions to bring NSHE policy in line with the federal Violence Against Women Act Amendments (VAWA), implementing regulations that became effective July 1, 2015 and other federal guidance.
- The changes to federal law and regulation and guidance provided by the DOE, impose new obligations on colleges and universities.
- The proposed amendments to NSHE policy are intended to comply with the VAWA, DOE implementing regulations and DOE guidance to:
 - Add definitions of sexual assault, domestic violence, dating violence, stalking, coercion and consent to policies against sexual harassment.
 - Amend disciplinary procedures to provide prompt, fair and impartial processes.
 - Complainants and respondents must be treated equitably under the investigation and disciplinary process
 - Adopt institutional policies to address and prevent campus sexual violence,

and provide appropriate training to employees and students which must include safe and positive options for bystander intervention.

- Training must include how to investigate and conduct hearings to promote accountability and protect the safety of victims
- Adopt policy to notify victims regarding their rights to seek assistance from law enforcement and campus authorities.
- Provide for confidential and anonymous reporting of sexual harassment and sexual violence, subject to the institution's overarching duty to keep the campus safe.
- Provide for interim and permanent protective measures to stop the misconduct and prevent its reoccurrence.
- Promote the visibility and authority of the Title IX Coordinators.
- In order to have these amendments in effect before the October 1 issuance of the campus Annual Security Reports, the Board of Regents will be asked to approve both the Policy and Code amendments at the September 2015 meeting. The Code amendments may be considered for action in accordance with Code Sec. 1.3.3.a, which provides as follows:

Any regent, Chancellor, president of a System institution or senate may propose amendments to the Nevada System of Higher Education Code by filing proposed amendments with the Secretary of the Board of Regents and requesting consideration by the Board. *At least 30 calendar days before consideration by the Board, proposed amendments shall be circulated to the Chancellor, each System institution president and each senate for review and comment. The Board shall take final action after giving due consideration to the opinions, if any, of the senate representatives and officers of the System.*

- The proposed amendments were circulated to the Chancellor, presidents and faculty senate chairs for review and comment on August 3, 2015.
- The proposed amendments were circulated for review and comment to the following on August 3, 2015:
 - Student Affairs Council
 - Academic Affairs Council
 - Business Affairs Council
 - Human Resources Advisory Committee
 - Student Body Presidents
 - NSHE Cabinet
 - General Counsels
- Earlier drafts of the proposed amendments were circulated to all of the above on June 2, 2015.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None

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

- None

7. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- XAmends Current Board Policy: Title # 2 Chapters # 6,8,10; Title #4 Chapter # 8, Section # 13
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
-

Other: _____

Fiscal Impact: Yes X No ___

See Title 4, Chapter 9, Section d, will the proposal increase any fiscal cost or reduce any revenue to the System in excess of \$25,000 per year? **Explain: Campus Clarity/Law Room training software has been acquired by NSHE for the use of the institutions and System Office. The total cost is \$54,333.34 per year. The System pays \$5,500 and the remaining cost has been allocated to the institutions based on employee and student FTE.*

PROPOSED REVISIONS – Board of Regents CODE,

TITLE 2, CHAPTER 6
RULES AND DISCIPLINARY PROCEDURES FOR FACULTY (*EXCEPT DRI**)
EXCEPT DRI, AND DEGREE REVOCATIONS

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

Section 6.1 Scope of the Chapter

6.1.1 Applicability of Procedures and Sanctions. The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against faculty and for degree revocations of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education Code or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions.

**(DRI--see Title 2, Chapter 8)*

6.1.2 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.

6.1.3 Computation of Time. *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 of 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.*

Section 6.2 Cause

6.2.1 Prohibited Activity - Faculty Only. The following conduct, being incompatible with the purposes of an academic community, is prohibited for all members of the faculty of the System, shall constitute cause for discipline and may lead to the procedures and disciplinary sanctions established in Section 6.3 of the Nevada System of Higher Education Code:

- (a) Failure to perform the duties for which the faculty member is employed.
- (b) Failure to maintain a required level of performance as provided in Section 5.12 of the Nevada System of Higher Education Code.
- (c) Incompetence or inefficiency in performing the duties for which the faculty member is employed.
- (d) Insubordination.
- (e) Falsification of employment applications or documents submitted to the System, its member institutions or its special units, or making other false or fraudulent representations in securing employment.
- (f) Dishonesty.

- (g) Conviction of any criminal act involving moral turpitude.
- (h) Being under the influence of intoxicants, or, without a valid medical excuse, being under the influence of controlled substances as defined in the *Nevada Revised Statutes*, while on duty, due consideration being given to NRS 284.379.
- (i) Unauthorized absence from duty or abuse of leave privileges.
- (j) Personal or professional conduct which shows that the faculty member is unfit to remain in the faculty member's employment position or which has an ascertainable harmful or adverse effect on the efficiency of the faculty member's administrative unit.
- (k) Commission of any of the acts specified in Subsection 2.1.4 of the Nevada System of Higher Education Code;
- (l) The use of, or threat to use, force or violence against any member or guest of the System community, except when lawfully permissible;
- (m) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on the premises of the System;
- (n) The intentional disruption or unauthorized interruption of functions of the System, including but not limited to classes, convocations, lectures, meetings, recruiting interviews and social events, on or off premises of the System;
- (o) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of or on premises occupied by, the System;
- (p) 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 president of any System institution or the president's authorized agent, unless such possession reasonably relates to duly recognized System functions by appropriate members of the faculty, other employees or students;
- (q) Continued occupation of buildings, structures, grounds or premises belonging to, or occupied by, the System after having been ordered to leave by the president of a System institution or the president's designee;
- (r) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the Nevada System of Higher Education;
- (s) Making an accusation which is intentionally false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under this Nevada System of Higher Education Code or under any applicable established grievance procedures in the System;
- (t) The repeated use of obscene or abusive language in a classroom or public meeting of the System where such usage is beyond the bounds of generally accepted good taste and which, if occurring in a class, is not significantly related to the teaching of the subject matter;

(u) Disorderly, lewd or indecent conduct occurring on System premises or at a System sponsored function on or off such premises;

(v) The use of threats of 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;

(w) Any act of unlawful discrimination based on race, creed, color, [sex] **gender (including pregnancy related conditions), age, [handicap] disability whether actual or perceived by others, military status or military obligations, sexual orientation, gender identity or expression, genetic information, religion** or national origin or any act of employment or educational retaliation against any person who has made a complaint about such discrimination;

(x) **Sexual harassment, defined as unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:**

1. Educational Environment:

- a. **Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo"); or**
- b. **Conduct that is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by the institution ("hostile environment").**

2. Workplace Environment:

- a. **Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity ("quid pro quo"); or**
- b. **Conduct that is sufficiently severe, persistent or pervasive so as to create a work environment that a reasonable person would consider intimidating, hostile or abusive and which may or may not interfere with the employee's job performance("hostile environment").**

~~[Any act of sexual harassment when submission to a request or demand of a sexual nature is either an explicit or implicit term or condition of employment or of academic study or grading, or where verbal or physical conduct of a sexual nature has the effect of creating an intimidating, offensive or hostile work or educational environment]~~

Sexual harassment includes sexual violence, sexual assault, dating violence, domestic violence, stalking and coercion or similar acts in violation of state or federal law.

(y) Acts of academic dishonesty, including but not limited to cheating, plagiarism, falsifying research data or results, or assisting others to do the same;

(z) Willfully destroying, damaging, tampering, altering, stealing, misappropriating, or using without permission any system, program or file of the Nevada System of Higher Education;

(aa) Acts of hazing. Hazing is defined as any method of initiation into or affiliation with the university 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) Any other conduct which violates applicable stated prohibitions, policies, procedures, rules, regulations or bylaws of the Board of Regents or a System institution;

(cc) Any act prohibited by local, state or federal law which occurs on System premises or at a System sponsored function on or off such premises; and

(dd) Willful incitement of persons to commit any of the acts herein prohibited.

(ee) Dating Violence. Dating Violence is an act committed by a person who is or has been in a “dating relationship” with the victim:

The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement. The term does not include a casual relationship or an ordinary association between persons in a business or social context.

(ff) Domestic Violence. Domestic Violence is an act that includes but is not limited to violence which occurs when a person commits one of the following acts against or upon the person’s spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person’s minor child or any other person who has been appointed the custodian or legal guardian for the person’s minor child:

- 1. A battery.***
- 2. An assault.***
- 3. Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.***
- 4. A sexual assault.***
- 5. A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:***
 - a. Stalking.***
 - b. Arson.***
 - c. Trespassing.***
 - d. Larceny.***
 - e. Destruction of private property.***
 - f. Carrying a concealed weapon without a permit.***
 - g. Injuring or killing an animal.***
- 6. A false imprisonment.***

7. ***Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.***

(gg)Stalking. Stalking is defined to be when a person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member. Stalking includes but is not limited to:

- (1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:***
 - a. Fear for the person's safety or the safety of others; or***
 - b. Suffer substantial emotional distress.***
- (2) For the purpose of this definition:***
 - a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens or communicates to or about, a person, or interferes with a person's property.***
 - b. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.***
 - c. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.***

(hh) 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.

Sexual coercion is:

- a. the use of violence or threats of violence against a person or the person's family or property;***
- b. depriving or hindering a person in the use of any tool, implement or clothing;***
or
- c. attempting to intimidate a person by threats or force,***
- d. when 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.

6.2.2 Mental or Physical Incapacity. The inability or incapacity to perform the duties for which the faculty member is employed due to mental or physical reasons may lead to suspension or termination of employment as provided in Subsections 6.3.6(b) and 6.3.7(b) of the Nevada System of Higher Education Code, due consideration being given to the provisions of NRS 284.379.

6.2.3 Sexual Harassment.

(a) The Board of Regents deems the sexual harassment of students and employees to be unacceptable and prohibited. ***The Board of Regents policy against sexual harassment is set forth in Title 4, Chapter 8, Section 13.***

1. Because of the particularly offensive and degrading nature of sexual harassment, the danger of academic or employment retaliation for accusations of sexual harassment and the difficult and tense academic or employment environment which can result while allegations of sexual harassment are investigated or heard, it is the policy of the Board of Regents that, pending the completion of an investigation and/or disciplinary hearing into the allegations of sexual harassment, and only to the extent deemed necessary by the facts of each case, contacts between the complainant(s) and the person accused of sexual harassment shall be kept to a minimum or eliminated altogether by physical separation, assignment to other duties or classes or placement on administrative leave.

2. Such action shall be deemed to be without prejudice to any person involved or determination of the truth or falsity of the allegations.

3. Any such action shall be taken or maintained in such manner as to afford the least possible disruption to the day-to-day activities of the institution but the ease of reassigning students or employee subordinates in place of instructors or supervisors shall not be a factor in taking such action.

(b) An alleged victim of sexual harassment (***complainant***) and a person against whom a complaint of alleged sexual harassment is filed (***respondent***) shall have the opportunity to select an independent advisor for assistance, support and advice. They shall be advised at the beginning of the Title 2, Chapter 6 complaint process that he or she may select an independent advisor and it shall become their choice to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time. The institutional affirmative action officer, ***Title IX Coordinator*** or the administrative officer shall advise the ~~[alleged victim and the individual against whom the complaint of alleged sexual harassment has been filed]~~ ***complainant and respondent*** of this right. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

In any hearings on a complaint of sexual harassment, the burden of proof shall be by a preponderance of the evidence (***i.e., the evidence establishes that it is more likely than not that the misconduct occurred***). In connection with any hearings, the ~~[person filing the complaint and the person against whom the complaint of alleged sexual harassment has been filed]~~ ***complainant and respondent*** have equal rights to be interviewed, identify witnesses, provide and receive documentation and witness lists pertaining to the complaint,

and to appeal the decision in accordance with the Section 6.13. With respect to an institutional disciplinary proceeding alleging **sexual violence, domestic violence, dating violence or stalking offense**, the Clery Act (20 U.S.C. § 1092 (f)) *requires that the [accuser and the accused] complainant and respondent must be informed of the outcome simultaneously. With the approval of the administrative officer only, the complainant or respondent, may waive all time limits established in this chapter, except the time limit stated in Subsection 6.10.2 and 6.11.7.*

(c) Interim measures, as described in NSHE Handbook, Title 4, Chapter 8, Section 13, except administrative leave, may be implemented without a hearing and are not subject to any grievance procedure. Interim measure remain in force throughout the disciplinary process and may be made permanent if they are necessary to prevent the recurrence of sexual harassment.

Section 6.3 Disciplinary Sanctions

The following sanctions are applicable to faculty of the Nevada System of Higher Education for conduct prohibited by Section 6.2 of the Nevada System of Higher Education Code. Depending on the seriousness of the misconduct, these sanctions may be imposed in any order.

6.3.1 Warning. Notice, oral or written, that continuation or repetition of prohibited conduct may be the cause for more severe disciplinary action.

6.3.2 Reprimand. A formal censure or severe reproof administered in writing to a person engaging in prohibited conduct.

6.3.3 Restitution. The requirement to reimburse the legal owners for a loss due to defacement, damage, fraud, theft or misappropriation of property. The failure to make restitution shall be the cause for more severe disciplinary action.

6.3.4 Reduction in Pay. A reduction in pay may be imposed at any time during the term of an employment contract upon compliance with the procedures established in this chapter.

6.3.5 Suspension. Exclusion from assigned duties for one or more workweeks without pay, as set forth in a written notice to the employee. The phrase "workweek" has the meaning ascribed to it in the Fair Labor Standards Act; 29 U.S.C. § 207(a).

6.3.6 Termination. Termination of employment for cause. A hearing held under the procedures established in Section 6.11 and other applicable provisions of this chapter shall be required before the employment of an employee may be terminated for cause.

6.3.7 Revocation of a Degree

(a) The Board and its institutions reserve the right to withdraw academic degrees in the event that a case is brought after graduation for material academic misconduct that impacts the reputation of the institution, including misrepresentation of academic credentials or material falsification in an application, if the act occurred before graduation and during the time the student applied to, or was enrolled at an NSHE institution, but a complaint had not been filed prior to graduation. Institutions who are investigating acts of misconduct prior to a student graduating may postpone the awarding of a degree

pending the outcome of the investigation and imposing of appropriate disciplinary sanctions.

(b) Upon receipt of a complaint that a degree was conferred to a student accused of academic misconduct under Subsection (a), the institution shall commence an investigation under Section 6.8. The purpose of the investigation is for the administrative officer to make a recommendation to the president whether the charges are warranted, and if so, whether the violation is of such severity to warrant revocation of degree.

(c) If the president determines that the charges are warranted and the violation, if proven, is of sufficient severity to warrant revocation of degree, then a special hearing committee and special hearing officer shall be appointed in accordance with Section 6.11.

(d) The charged party shall receive all due process required by this Chapter in the investigation and hearing.

(e) The president may consider alternatives to revocation of degree, depending on the severity of the offense.

(f) After receiving the recommendation of the special hearing officer and special hearing committee, if it is determined that revocation of the degree is warranted, the president may revoke the degree. The charged party shall have an opportunity to appeal to the Board of Regents based on the procedure and grounds for appeal specified in Section 6.13.

(g) On appeal, the Board may take such action as specified in Section 6.13.2(d).

(h) The fact of degree revocation will appear permanently on the student's transcript.

(i) Events of misconduct discovered more than 7 years following graduation from an NSHE institution are not subject to the provisions of this section.

(j) NSHE institutions shall appropriately inform students of the Board's degree revocation policy.

Section 6.4 Authority of the President

6.4.1 Exercise of Authority. The president shall exercise authority in disciplinary actions in accordance with the procedures established in this chapter and other laws and regulations as are applicable.

6.4.2 President Has Final Decision-Making Authority. All determinations and findings made within the System institutions are in the nature of recommendations to the president who shall have the final decision making authority, except as otherwise provided in the Nevada System of Higher Education Code.

6.4.3 Designation of Hearing Officers. The designation of hearing officers and decisions on the challenges of any hearing officer for cause, as provided in this chapter, shall be made by the president or the president's designee.

6.4.4 Delegation of Authority. The functions of the president, as prescribed in this chapter, may be delegated by the president to individual designees who are members of the staff of the System institution and such designees shall exercise these functions in the president's name. All references in the procedures established by this chapter to the president include such designees.

Section 6.5 Administrative Leave

6.5.1 President to Order Administrative Leave. The president of each System institution may order any faculty member to be placed on administrative leave for the interim period pending a disciplinary hearing whenever the president determines that administrative leave is required in order:

- (a) To protect life, limb or property;
- (b) To ensure the maintenance of order; or
- (c) To remove a person from the Nevada System of Higher Education community when an act of sexual harassment has been alleged against such person and the accuser or the accused person cannot be assigned to other duties or classes or placed elsewhere in the System institution apart from each other pending the completion of an investigation and/or disciplinary hearing into the allegation.

6.5.2 Hearing. Any person placed on such administrative leave shall be afforded an opportunity for a hearing with respect to the issue of the leave. The hearing on the administrative leave will be held no later than **ten** 10 [~~college working days~~] **calendar days** of the leave, unless the person placed on leave agrees to delay the hearing to a later time. The hearing shall be held under the hearing procedures established in Section 6.9 of the Nevada System of Higher Education Code, so far as can be made applicable, and by a general hearing officer as established in Section 6.10 of the Nevada System of Higher Education Code. The president's decision upon the hearing officer's recommendation shall be final. The issue shall be limited to whether the continued administrative leave of the individual involved pending the outcome of a disciplinary hearing is warranted.

6.5.3 Expulsion from Premises. Administrative leave under this section will be coupled with a withdrawal of consent by the System for the individual involved to remain on System premises whenever there is reasonable cause to believe that life, limb, property or the maintenance of order are in danger.

6.5.4 Administrative Officer's Duties. The administrative officer, as established in Section 6.7 of the Code, shall be responsible for presenting evidence that the administrative leave, withdrawal of consent to remain on System premises, or both, should be continued.

6.5.5 Administrative Leave With Pay. Administrative leave under this section shall be with pay and other benefits.

Section 6.6 [~~Disciplinary Sanctions~~] Reprimands or Warnings.

6.6.1 Authority of Administrators to Discipline. Vice presidents, deans, directors and persons in equivalent positions shall have the authority to issue reprimands or warnings (as defined under 6.3.1 and 6.3.2) to faculty members and other professional employees under procedures stated in 6.6 of the NSHE Code. Procedures under 6.6 differ from procedures

established in Sections 6.7 to 6.14 of the NSHE Code. Code 6.6 procedures are to be used whenever possible, as an alternative to those in 6.7 to 6.14.

6.6.2 Right to Notice. *At least fifteen (15) calendar days* [B]before issuing a warning or reprimand, a person proposing to issue the [disciplinary sanction] **warning or reprimand** shall notify the person whom it is proposed to so discipline in writing of the charges involved **and of the proposed discipline**. The notice shall also schedule a meeting between the person charged and the person proposing to issue the [disciplinary sanction]**warning or reprimand** for the purpose of discussing the charges. [At least fifteen (15) working days before issuing a warning or reprimand, the vice president or dean, director or persons in equivalent positions proposing to issue the disciplinary sanction shall notify the affected person in writing of the charges involved and the proposed action.] The notice shall:

1. Include all materials and documentation to support the charges;
2. Clearly state that it activates the processes set forth in 6.6 of the NSHE Code, and also state the alternatives available under 6.6.3 to the affected person; and
3. Advise the affected person of his or her rights according to 6.6.6.

After the person proposing the disciplinary action has sent the notification, ten (10) [working] **calendar** days must elapse before Section 6.6.3 is implemented, during which time no documentation of the proposed action may be placed in the affected person's personnel file.

6.6.3 Choice of Response. The person affected by the proposed disciplinary action shall have:

1. The right to mediation as outlined in 6.6.4, or through 6.6.8.
2. The right to accept the reprimand or warning, or **within ten (10) calendar days after receiving the notification** to respond, in writing to the warning or reprimand and to have that response immediately placed in his or her personnel file.
3. The right to grieve the warning or reprimand unless mediation is selected. If the affected person elects to grieve the warning or reprimand, mediation may not be used.

Choice of mediation shall delay the filing of any warning or reprimand in the affected person's file until after the mediation proceeding is concluded and a final decision rendered:

6.6.4 Use of Mediation. If the person affected by the proposed decision to reprimand or warn chooses to select mediation procedures outlined below, he or she must notify, in writing, the vice president or dean within ten (10) [working] **calendar** days of receiving notification of the intent to reprimand or warn. The mediator will be selected within fifteen (15) [working] **calendar** days following request for mediation using a procedure jointly developed by the campus administration and faculty senate. All materials relevant to the proposed disciplinary sanction shall be delivered to the mediator within five (5) [working] **calendar** days of the appointment of the mediator. All parties may view all materials deposited with the mediator.

6.6.5 Mediation. The mediator will call a meeting of both parties to facilitate an informal resolution of the matter. Both parties must participate in good faith in the mediation procedures. The meeting will take place within fifteen (15) [working] **calendar** days after the appointment of the mediator. The mediator shall conduct the meeting with attention to fairness and due

process, and shall seek to preserve the rights of all affected parties. The mediator shall have the right to call witnesses if deemed necessary by the mediator.

6.6.6 Rights of the Affected Person When Mediation has Been Chosen. The person shall have:

1. The right to access all materials and documents relevant to the proposed disciplinary action at least **ten** (10) ~~[working]~~ **calendar** days prior to the meeting with the mediator;
2. The right to have a colleague present, and the right to introduce materials in response to the proposed warning or reprimand; and
3. The right to appeal any decision to the president.

6.6.7 [Burden] Standard of Evidence [Proof]. ~~[The burden of proof rests with the administrator or the person issuing the charges]~~ **All decisions must be based on evidence which establishes that it is more likely than not that the respondent has violated the rules of conduct.**

6.6.8 Decision. Any agreement reached by the affected person and the administrator through the mediation process shall be placed in the affected person's personnel file. This agreement may not be appealed through any grievance process. If there is not an agreement between the parties, the mediator will submit a written report within fifteen (15) ~~[working]~~ **calendar** days to the immediate supervisor of the administrator bringing the charges. A copy of the mediator's report shall also be given to the administrator bringing the charges and the affected person. The immediate supervisor must make a decision within ten (10) ~~[working]~~ **calendar** days about whether the warning or reprimand will be issued. If the decision is to warn or reprimand the affected person the affected person may appeal to the president. The affected person may file a written appeal with the president within **fifteen** (15) ~~[working]~~ **calendar** days. The written appeal shall contain the reasons, arguments and documentation supporting the appeal. The president shall reach a decision within a reasonable time after receipt of the written appeal. The president may uphold, modify or reverse the disciplinary sanction. The president's decision shall be final and cannot be grieved.

Section 6.7 Administrative Officer

6.7.1 Appointment of Administrative Officer. The president of each System institution shall appoint, on either an ad hoc or a continuing basis, a person who shall have the authority to perform the duties established for the administrative officer in this chapter. The president may assign either a staff member of the System institution, or alternatively, may engage the services of an attorney who has been a member of the State Bar of Nevada at least five years or who is otherwise qualified by professional experience in administrative law. The person so assigned to these duties shall serve in this assignment at the pleasure of the president.

It is the intent of the Board that this position shall not be used to create the basis for an on-campus staff attorney appointment that will report directly or indirectly to the institutional president. In order to assure an appropriate separation of responsibilities, the job description of the person appointed as administrative officer must be approved by the executive vice chancellor & chief counsel prior to appointment. The person appointed to perform the duties of administrative officer shall not represent the System institution nor engage in the practice of law on behalf of the System institution, including, but not limited to, the rendering of legal advice or opinions.

6.7.2 Titles. Although termed the "administrative officer" for the purposes of this chapter, the person selected as administrative officer may use such local, administrative title as the president may determine.

6.7.3 Assistants. All references in this chapter to the administrative officer shall include other persons who are authorized by the president to assist the administrative officer and to act in the administrative officer's name.

6.7.4 Combined Duties. The president may combine the duties of the administrative officer with those of any other person employed by the System institution, but may not combine such administrative officer duties with those performed by hearing officers or hearing committee members under the procedures of this chapter.
(B/R 4/08)

Section 6.8 Decision to Hold Hearings

6.8.1 Complaints. Except as may be provided in Section 6.6 of the Nevada System of Higher Education Code, all complaints alleging conduct prohibited by Section 6.2 of the Nevada System of Higher Education Code or by applicable stated prohibitions, policies, procedures, rules, regulations or bylaws of the System institutions shall be filed with the administrative officer. The complaint shall be in writing, shall be signed by the complainant and shall, to the extent reasonably possible, specify the date, time, place, person or persons involved and the circumstances of the alleged prohibited conduct, including the name or names of persons who may have witnessed the alleged prohibited conduct.

6.8.2 Investigation, Informal Resolution or Recommendation for Hearing.

(a) The administrative officer shall investigate complaints with the purpose of clarifying the facts and the positions taken by the parties. The investigation shall be completed **and a charging letter, if any**, issued within **sixty (60)** calendar days after the receipt of the complaint. **At a minimum, the charging letter shall contain the information specified in the Code, subsection 6.8.1, and shall inform the person charged that, although there is no requirement or compulsion to do so, a written reply may be submitted.**

(b) ~~[The administrative officer shall present a charging letter to t]~~ The person charged ~~[who]~~ may present a written answer within **seven (7)** ~~[college working days]~~ **calendar days** after receipt ~~[thereof]~~ **of a charging letter.** ~~[At a minimum, the charging letter shall contain the information specified in Subsection 6.8.1 of the Nevada System of Higher Education Code. The administrative officer shall inform the person charged in writing that, although the person charged is free to make a written reply, there is no requirement or compulsion to do so.]~~

(c) If deemed appropriate to do so, the administrative officer, with the approval of the president, may informally resolve the complaint by conciliating with the parties, by permitting the complainant to voluntarily drop the complaint or by permitting the person charged to voluntarily accept disciplinary sanctions.

(d) Within **five (5) calendar days** ~~[7 college working days of]~~ **after** ~~[the completion of the investigation,]~~ **the administrative officer's receipt of the charged person's written**

answer to the charging letter, or if the charged person did not answer, then within five (5) calendar days of the date the answer was due, and if the complaint cannot be informally resolved, the administrative officer shall make a recommendation to the president as to whether or not the complaint should proceed to a hearing and, if a hearing is recommended, the administrative officer shall recommend the type of hearing which may be held, as specified in Subsection 6.8.3 of the Nevada System of Higher Education Code.

(e) A hearing shall be held whenever the president accepts the administrative officer's recommendation to that effect or does not accept a contrary recommendation from the administrative officer. The president shall decide the kind of hearing to be held, as authorized in Subsection 6.8.3 of the Nevada System of Higher Education Code. The president shall make this decision within **seven (7) calendar days** [~~college-working days~~] after receipt of the administrative officer's recommendation. Within the [~~above-referenced~~] time **period set forth in this paragraph**, the president shall inform the administrative officer of the president's decision and, if deciding to hold a hearing under Section 6.9 of the Nevada System of Higher Education Code, shall also inform the faculty senate chair of the decision. If the hearing is to be held under Section 6.9 of the Nevada System of Higher Education Code on a charge or charges of sexual harassment under Subsection 6.2.2(p) of the Nevada System of Higher Education Code, the president shall also inform the president of the appropriate student government within the [~~above-referenced~~] time period **set forth in this paragraph** if a student or graduate student is involved in the charge as an alleged victim.

(f) If it is determined by the president that the matter should not proceed to a hearing, then unless new evidence, sufficient in the opinion of the president to reopen the case, is subsequently discovered, the complaint shall be dismissed and the disciplinary procedure shall be considered closed. All documents relating to the case shall be deposited with the president's office where they shall be retained for a period of one year, after which time they shall be released to the person charged, if requested by that person, or shall be destroyed unless destroyed sooner pursuant to regulations, policies or procedures established by the System institution.

6.8.3 Types of Hearings. Except as mandated by Subsections 6.3.7(b) and 6.5.2 of the Nevada System of Higher Education Code, based upon the recommendation of the administrative officer and such other considerations as may be pertinent, the president shall decide whether a disciplinary hearing shall be held:

1. By a general hearing officer, in an office hearing as provided in Section 6.10 of the Nevada System of Higher Education Code; or
2. By a special hearing officer and special hearing committee, as provided in Section 6.11 of the Nevada System of Higher Education Code.

6.8.4 Factors to be Considered. In making a recommendation or decision to hold a type of hearing, the administrative officer or the president, respectively, may consider as nonbinding factors the wishes of the person charged, the degree of apparent complexity of the facts or issues and the seriousness of the offense.

6.8.5 Waiver of Hearing. The person charged may waive a hearing and accept a disciplinary sanction recommended by the administrative officer and approved by the president as provided in Subsection 6.8.2 of the Nevada System of Higher Education Code.

Section 6.9 Provisions Applicable to Hearings

6.9.1 Applicable Provisions. The provisions of this section shall be applicable to hearings held pursuant to Sections 6.9 through 6.11 of the Nevada System of Higher Education Code.

6.9.2 Hearing Arrangements. The administrative officer shall make physical and scheduling arrangements for hearings required by Sections 6.9 through 6.11 of the Nevada System of Higher Education Code.

6.9.3 Notice.

(a) The person charged must receive, at least **ten (10) calendar days** [~~college working days~~] before the hearing, written notice from the administrative officer containing:

1. The date, time and place of the hearing;
2. Specification of the misconduct charged by citing the applicable provision of the Nevada System of Higher Education Code or the applicable stated policy, prohibition, procedure, rule, regulation or bylaw of a System institution which has been alleged to have been violated;
3. Specification, to the extent reasonably possible, of the time, place, person or persons involved and the circumstances of the alleged prohibited conduct, including the name or names of persons who may have witnessed the alleged prohibited conduct;
4. Notification that the person charged may be accompanied by an advisor of the charged person's choice, and of the time within which the person charged must inform the administrative officer of the name and address of the advisor, if any, and whether the advisor is an attorney, or else forfeit the right to have an advisor present, as provided in Subsection 6.9.6 of the Nevada System of Higher Education Code; and
5. Such other information as the administrative officer may wish to include.

(b) The administrative officer shall be responsible for preparing and delivering notices required by this section. All notices or other documents shall be (1) served by 1st class mail, postage prepaid, and by email, if a current email address is available to the institution; or (2) hand delivered. Notice delivered by mail shall be considered delivered when sent, provided that **three (3) additional calendar days** [~~college working days~~] shall be added to the time period set forth for minimum notice. A copy of the applicable disciplinary hearing procedures shall accompany each notice.

6.9.4 Evidence.

Evidence shall be [~~admitted~~] **considered** if it possesses reasonably probative value, materiality and relevancy **as determined by the hearing officer**. No evidence other than that received at the hearing shall be considered in the decision. Upon request, the person charged, the person's advisor, if any, and the administrative officer shall have the right to examine, at least **five (5) calendar days** [~~college working days~~] prior to the hearing during reasonable business hours, any documentary evidence to be presented at the hearing. The parties shall also have the right

to present, challenge or rebut evidence and to question or cross-examine witnesses. ***The findings and recommendation of the Title IX Coordinator pursuant to NSHE Handbook, Title 4, Chapter 8, Section 13 shall be considered.*** Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence shall be excluded.

6.9.5 Administrative Officer's Duties.

The administrative officer shall marshal and present the evidence against the person charged.

6.9.6 Advisors, Attorneys.

(a) The person charged may be accompanied by one advisor of the person's choice, who may represent and advise the person and may present the evidence on the person's behalf. The person charged must give written notice of the name and address of the advisor, and whether the advisor is an attorney, to the administrative officer no later than ~~[five college working days]~~ **seven (7) calendar days** before the time set for the hearing. An advisor will not be permitted at the hearing without such notice.

(b) Should a person charged advise that the person will be accompanied by an attorney as advisor, the administrative officer shall advise the vice chancellor for legal affairs so that an attorney will be present at the hearing to represent and advise the administrative officer and to present the evidence on behalf of the administrative officer.

6.9.7 Technical Errors. Technical departures from or errors in following the procedures established in the Nevada System of Higher Education Code or in any applicable stated prohibition, policy, procedure, rule, regulation or bylaw of a System institution under which disciplinary procedures are being invoked shall not be grounds to withhold disciplinary action unless, in the opinion of the president, the technical departures or errors were such as to have prevented a fair and just determination of the charges.

6.9.8 Closed Hearings. The hearing shall be closed unless the person charged requests an open hearing. Only the person charged and one advisor, the administrative officer, and one advisor, the person or persons conducting the hearing, a person designated to record a hearing, as may be provided in this chapter, and witnesses while such witnesses are presenting evidence may be present for a closed hearing. ***When a hearing is held on charge under Subsection 6.2.1 (w) or (x) of the Nevada System of Higher Education Code, the hearing shall be closed unless the complainant requests an open hearing.*** ~~[When a hearing is held on a charge made under Subsection 6.2.1(w) or (x) of the Nevada System of Higher Education Code, the institution's affirmative action officer may also be present for a closed hearing.]~~ When a hearing is held on a charge made under Subsection 6.2.1 **(w) or (x)** of the Nevada System of Higher Education Code, the institution's affirmative action **or Title IX** officer may also be present for a closed hearing, and any person who alleges to be the victim of an act of sexual harassment may have a non-attorney supporter present for a closed hearing during the person's testimony only.

6.9.9 Consolidated Hearings.

(a) When more than one person is charged with prohibited conduct arising out of a single occurrence, or out of multiple occurrences, a single hearing may be held for all of the persons so charged. Such persons may request that their cases be consolidated with others or separated from others. The administrative officer shall make determinations regarding consolidation. All such determinations shall be subject to

revision by the general hearing officer, institutional hearing committee or special hearing officer, as the case may be. In the event of such revision, all cases affected shall be rescheduled for hearing.

(b) The separation of one or more cases from a group of cases previously set for a consolidated hearing shall not be considered to affect the consolidation of the remaining cases in the group.

6.9.10 Absence of the Person Charged. If the person charged does not appear, either personally or through an advisor, at a hearing without satisfactory explanation for the absence having been made at the earliest opportunity, or should the person charged leave the hearing before its conclusion, the hearing shall proceed without the person charged and the general hearing officer, institutional hearing committee or the special hearing officer and special hearing committee, as the case may be, shall make findings of fact, recommendations or a report, as the case may be, on the available evidence. The fact that an administrative hearing or a civil or criminal trial for the person charged is pending shall not be considered a satisfactory explanation for absence unless the actual hearing or trial date conflicts with a date for a hearing held under this chapter, or unless it is physically impossible for the person charged, through no fault of that person, to attend a hearing held under this chapter.

6.9.11 Subpoena. 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 administrative officer. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.

6.9.12 Waiver or Extension of Time.

(a) Matters preliminary to hearings shall be decided, hearings conducted and cases determined under these procedures as quickly as is reasonably feasible, consistent with reasonable notice.

(b) With the approval of the administrative officer only, a person charged may waive all time limits established in this chapter, except the time limits stated in Subsections 6.10.2 and 6.11.7 of the Nevada System of Higher Education Code.

(c) Extension of time for hearings shall be authorized by general hearing officers, institutional hearing committee chairs or special hearing officers only upon good and compelling reasons. The possibility or pendency of administrative, civil or criminal proceedings against the person charged is not such a good and compelling reason for extension of time unless the hearing or trial of such is scheduled for the same date as a hearing to be held under this chapter, or unless it is physically impossible for the person charged, through no fault of that person, to attend a hearing to be held under this chapter.

6.9.13 Repetition of Hearing. A hearing may not be held more than once on the basis of any specific complaint after a hearing process has been completed except as may be provided in this chapter.

6.9.14 Standard of Proof. *The standard of proof is a preponderance of the evidence in all hearings and any appeals (i.e., the evidence establishes that it is more likely than not that the misconduct occurred).*

Section 6.10 General Hearing Officer

6.10.1 Appointment. The president shall designate one or more general hearing officers who shall serve for terms as determined by the president.

6.10.2 Office Hearings by a General Hearing Officer. Office hearings by a general hearing officer shall be informal in nature and subject to such procedures as the president may determine. A hearing shall be held and a recommendation made to the president as soon as is reasonably possible, but no later than ~~[6 months]~~ **one hundred eighty (180) calendar days** after the filing of the complaint with the administrative officer. ***Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the general hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration or cancellation of a proposed settlement agreement. The sexual harassment complainant must also agree to such extension.***

6.10.3 Findings and Recommendations. Findings of fact and recommendations of the general hearing officer shall be made in writing to the president within a reasonable time after the close of the hearing with copies to the person charged and to the administrative officer. The full range of sanctions established by Section 6.3 of the Nevada System of Higher Education Code is available, except as may be limited therein.

Section 6.11 Special Hearing Officer and Special Hearing Committee

6.11.1 Appointment of Special Hearing Officer.

(a) Within five **(5) calendar days** ~~[college working days]~~ after making a decision to hold a hearing before a special hearing officer and a special hearing committee, the president shall select a special hearing officer and, within the ~~[above-referenced]~~ time period **set forth in this paragraph**, shall inform the person charged and the administrative officer of the identity of the special hearing officer.

(b) Special hearing officers shall be attorneys who have been members of the State Bar of Nevada for at least five years or who are otherwise qualified by professional experience in presiding at judicial or quasi-judicial adversary proceedings. They will not hold any employment or other contractual relationship with any System institution during the period of their service.

(c) A Special Hearing Officer may be challenged for cause as set forth in Section 6.11.6, but no peremptory challenge shall be allowed.

6.11.2 Duties of the Special Hearing Officer. The function of the special hearing officer shall be that of presiding officer of a special hearing committee during a hearing with the following authority:

(a) To make all rulings on matters relating to the conduct of the hearing, including the ~~[admission]~~ **consideration** of evidence;

(b) To maintain order, and the special hearing officer may exclude anyone who refuses to be orderly;

- (c) To recognize witnesses for the purpose of giving testimony during which the special hearing officer may also question witnesses;
- (d) To make such rulings on procedure deemed appropriate so long as not inconsistent with the applicable procedures established in this chapter;
- (e) To act as general advisor to the special hearing committee, but shall have no voting authority;
- (f) To prepare, at the conclusion of the hearing, a written report which shall contain, as to the person charged, the following:
 1. Findings of fact as determined by the special hearing officer together with a determination that the person charged did or did not commit the act or acts charged.
 2. A finding that the act or acts did or did not constitute one or more of the causes for discipline or suspension or termination for cause established in this Code or other applicable stated prohibition, policy, procedure, rule, regulation or bylaw of a System institution.
 3. Such further information as the special hearing officer may consider appropriate. The special hearing officer's report shall be prepared and submitted to the president, with copies to each member of the special hearing committee, the person charged and the administrative officer, within a reasonable time after the conclusion of the hearing.

6.11.3 Appointment of the Special Hearing Committee.

- (a) A faculty-hearing panel, composed of at least 15 faculty members, shall be selected by the faculty senate of each System institution. Both academic faculty and administrators shall be eligible to serve. The members of the faculty-hearing panel shall serve one-year terms and upon agreeing to serve shall commit themselves in writing to serve on a special hearing committee when needed. System institution administrators are obligated by the provisions of this subsection to grant special hearing committee members administrative leave or other assistance necessary to enable them to fulfill their responsibilities as members of special hearing committees. This might require providing teaching assistance from classes or other administrative relief from assigned duties.
- (b) Except as provided in subparagraph (c) below, within five **(5) calendar days** [~~college working days~~] after receipt from the president of notice of the president's decision to hold a hearing under Section 6.11 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of nine persons from among the faculty hearing panel, the selection to be made by lot, to serve on a special hearing committee and the faculty senate chair, within the [~~above-referenced~~] time period **set forth in this paragraph**, shall inform the person charged and the administrative officer of the names of the persons selected.
- (c) If a hearing is to be held on a charge or charges of sexual harassment under Subsection 6.2.2(p) of the Nevada System of Higher Education Code and if a student or

graduate student is involved in the charge as an alleged victim, within five **(5) calendar days** ~~[college working days]~~ after receipt of notice of the president's decision to hold a hearing under Section 6.8.3 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of eight persons from among the faculty hearing panel, the selection to be made by lot, and the appropriate student government president shall nominate three students, to serve on a special hearing committee and the faculty senate chair and the appropriate student government president, within the ~~[above-referenced]~~ time period **set forth in this paragraph**, shall inform the person charged and the administrative officer of the names of the persons selected or nominated.

6.11.4 Duties of the Special Hearing Committee. The function of the special hearing committee shall be:

(a) Together with the special hearing officer, to hear evidence presented at a hearing held under this chapter during which the committee members may also question witnesses; and

(b) To make recommendations, after reviewing the report of the special hearing officer, to the president at the conclusion of a hearing for dismissal of charges or imposition of a sanction or sanctions. Such recommendations shall be in writing and shall be made by the committee within a reasonable time after reviewing the special hearing officer's report with copies sent to the person charged and the administrative officer. The full range of sanctions established by Section 6.3 of the Nevada System of Higher Education Code is available.

6.11.5 Hearings to be Recorded. A tape recording will be made of the hearing and kept in the president's office for at least one year before being destroyed, unless the matter is brought before the courts during which time the recording will be kept until the matter is decided in the courts. Except as provided herein or for purposes of appeal, a tape recording of a closed hearing shall be confidential. The person charged, on request of and at the charged person's expense may have or, under supervision may make, a copy of such recording. No tape recording by the person charged or by other persons at the hearing will be permitted. The person charged may, at the charged person's expense, provide for a certified court reporter. A copy of the court reporter's transcript shall also be made available to the president upon the president's request and at the System institution's expense.

6.11.6 Challenges.

(a) Within seven **(7) calendar days** ~~[college working days]~~ after the faculty senate chair, and the appropriate student government president under Subsection 6.11.3(c) of the Nevada System of Higher Education Code, has informed the person charged and the administrative officer of the identities of the persons selected from the faculty hearing panel or nominated by the student government president, the administrative officer and the person charged or the adviser of the person charged shall meet in person or by telephone to exercise, in alternate order, the peremptory challenges provided in subparagraph (c) of this subsection. The person charged or the adviser shall exercise the first peremptory challenge. Peremptory challenges not exercised at this time shall be waived. At this time, the person charged or the adviser shall also submit written challenges for cause, as provided in subparagraph (b) of this subsection. No challenge for cause may be exercised after this date.

(b) The person charged may challenge the special hearing officer or the members of the special hearing committee for cause for the following reasons:

1. The person challenged was a participant in the event out of which the alleged prohibited conduct arose; or
2. The person challenged bears a relationship to some party to the proceedings which may prejudice the charged person's ability to obtain a fair and impartial hearing and decision.

Within the time period set forth in paragraph (a) of this section, [7] the person charged shall submit a written statement setting forth the allegations underlying the challenge to the administrative officer. The administrative officer shall send the written challenge to the president the same day it is received, with a copy to the person challenged. Within seven (7) calendar days [college working days] after receipt of the written challenge, the president or the president's designee shall determine whether the facts present grounds for disqualification. The decision of the president shall be final. A hearing shall not be held until the challenge is decided by the president. The special hearing officer or special hearing committee members may be disqualified on their own motions.

(c) The administrative officer and the person charged each shall have the right to challenge:

1. In the case of a hearing to be held to hear a charge of sexual harassment under Subsection 6.2.2(p) of the Nevada System of Higher Education Code in which a student or graduate student is an alleged victim, no more than two members of the faculty hearing panel selected by lot and no more than one student government nominee without cause;
2. In all other cases, no more than two members of the faculty hearing panel selected by lot without cause.

(d) In cases of consolidated hearings, the persons charged shall be limited to a total of the number of challenges without cause appropriate under either subparagraph (c)(1) or (c)(2) above.

(e) Replacements for disqualified special hearing officers shall be made by the president within [~~three~~] **five (5) calendar days** [~~college working days~~] after the president's decision on a challenge for cause. Replacements for disqualified special hearing committee members shall be made by lot from the faculty hearing panel or shall be nominated by the appropriate student government president as the case may be within [~~three~~] **five (5) calendar days** [~~college working days~~] after the president's decision on a challenge for cause. No further challenges for cause of either a special hearing officer or members of a special hearing committee shall be permitted.

(f) The special hearing committee shall consist of five members. In the event a member is unable to serve due to unavoidable reasons, the administrative officer may choose to have the vacancy filled by the procedure stated in subparagraph (e) of this subsection or proceed to a hearing with the remainder of the special hearing committee, provided that the special hearing committee shall consist of no fewer than three members.

6.11.7 Hearing and Recommendation. A hearing shall be held and a recommendation made to the president no later than ~~[six months]~~ **180 calendar days** after the filing of the complaint with the administrative officer. ***Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the special hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration of or cancellation of a proposed settlement agreement. The complainant of sexual harassment must also agree to such extension.***

For the sake of convenience, the time limits for procedures specified throughout this section are summarized as follows:

(a) The complaint is filed.

(b) Within **sixty (60) calendar days** after receipt of the complaint, the administrative officer completes the investigation (**see Section 6.8.2(a)**). During that time period, the administrative officer shall issue a charging letter to the person charged who then has seven **(7) calendar days** ~~[college working days]~~ after receipt of the charging letter to respond to it, if desired (**see Section 6.8.2(b)**).

(c) Within ~~[seven]~~**five (5) calendar days** ~~[college working days]~~ after ~~[the completion of the investigation]~~ **receipt of any written response from the person charged or within five (5) calendar days after completion of the investigation**, the administrative officer makes a recommendation to the president on whether to hold a hearing or not (**see Section 6.8.2(d)**).

(d) Within seven **(7) calendar days** ~~[college working days]~~ after receipt of the administrative officer's recommendation, the president makes a decision on whether to hold a hearing or not and informs the administrative officer and faculty senate chair of the decision (**see Section 6.8.2(e)**).

(e) Within five **(5) calendar days** ~~[college working days]~~ after notification of the president's decision, the president shall choose a special hearing officer and the faculty senate chair shall choose nine names from the faculty hearing panel and each shall forward the names to the person charged and the administrative officer (**see Section 6.11.1(a)**).

(f) Within seven **(7) calendar days** ~~[college working days]~~ after the president and the faculty senate chair have forwarded the name of the special hearing officer and the names chosen from the faculty hearing panel, the administrative officer and the person charged or the adviser of the person charged meet to exercise peremptory challenges and to transmit challenges for cause (**see Section 6.11.6(a)**).

(g) The same day that challenges for cause are received by the administrative hearing officer, the administrative hearing officer shall send such challenges to the president (**see Section 6.11.6(b)**).

(h) Within seven **(7) calendar days** ~~[college working days]~~ after receipt of challenges with cause, the president shall make a decision on the challenges (**see Section 6.11.6(b)**).

(i) Within three **(3) calendar days** [~~college working days~~] after the president's decision on challenges for cause, vacancies in the appointments of special hearing officer or members of a special hearing committee shall be filled (**see Section 6.11.6(e)**).

(j) Within [~~six months~~] **one hundred eighty (180) calendar days** after the filing of the complaint with the administrative officer, the hearing shall be held and a recommendation made to the president for action. **Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the special hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration or cancellation of a proposed settlement agreement. The complainant of sexual harassment must also agree to such extension (see Section 6.11.7).**

Section 6.12 President's Decision

6.12.1 Options Available. The president shall review the findings of fact and recommendations of the general hearing officer or the institutional hearing committee or, in cases heard before a special hearing officer and special hearing committee, the report of the special hearing officer and the recommendations of the special hearing committee. The president may:

- (a) Dismiss the charge;
- (b) Affirm the recommended sanction;
- (c) Impose a lesser sanction than recommended;
- (d) Impose a greater sanction than recommended; or
- (e) Order a new hearing.

6.12.2 Decision and Notification. The president shall reach a written decision within a reasonable time after receipt of findings of fact and recommendations from the general hearing officer or institutional hearing committee or after receipt of reports and recommendations from the special hearing officer and the special hearing committee. The president shall notify the person charged and the administrative officer of the decision. If the action taken is reduction in pay, suspension, [~~expulsion~~] or termination, the person charged shall either be notified by personal delivery of the decision or shall be notified by [~~certified or registered mail, return receipt requested~~] **U.S. Mail, hand-delivery or by e-mail to the person's NSHE or institution e-mail address. The decision is deemed received upon hand-delivery, or as of the day it is mailed or e-mailed.** If there is no appeal, the president's decision is final.

Section 6.13 Appeals

6.13.1 Requirements for Appeals.

- (a) Appeals from the decision of the president must be filed by the person charged within [~~40 college working~~] **seven (7) calendar** days of the receipt of the decision. The appeal must be in writing and shall be directed to the administrative officer.

(b) The ~~[facts set forth in the appeal must reasonable establish that]~~ **appeal must include facts that reasonably establish one or more of the following grounds for appeal, which are the only grounds for appeal:**

1. The procedures under which the person was charged are invalid or were not followed;
2. The person charged did not have adequate opportunity to prepare and present a defense to the charges;
3. The evidence presented at the hearing was not substantial enough to justify the decision; ~~[or]~~
4. The sanction imposed was not in keeping with the gravity of the violation.

6.13.2 Decision on Appeal.

(a) Within ~~[seven]~~ **five (5) calendar days** ~~[college working days]~~ after receipt, the administrative officer shall direct the appeal, together with any reply the administrative officer deems necessary provided a copy of the reply is sent to the person charged, to:

1. The president for reconsideration when the sanction imposed is suspension or reduction in pay or a lesser sanction.
2. To the Board of Regents for action when the sanction imposed is ~~[expulsion or]~~ termination.

(b) A decision on the appeal shall be made within a reasonable time after receipt of the appeal by the president or within a reasonable time after the next Board of Regents meeting during which the appeal was considered. For applicable appeals, the appeal shall be placed on the meeting agenda of the Board of Regents as soon as is legally possible under Nevada law after receipt of the appeal. The president or the Board of Regents, as the case may be, shall give notification of the decision in the same manner as is provided in Subsection 6.12.2 of the Nevada System of Higher Education Code.

(c) The president or the Chair of the Board of Regents, as the case may be, may request a personal appearance of the person charged if the president or the Chair of the Board of Regents, as the case may be, is of the opinion that justice will be served by such appearance. The appearance of the person charged shall be limited to the issues raised by the appeal as provided in Subsection 6.13.1 of the Nevada System of Higher Education Code. The person charged must be informed that an appearance is not compulsory and a nonappearance will not prejudice the appeal.

(d) The president or the Board of Regents, as the case may be, may:

1. Dismiss the charge;
2. Affirm the charge;
3. Impose a lesser sanction; or

4. Order a new hearing.

Section 6.14 Records

All reports and decision reached after hearings or appeals held under this chapter are declared to be public records subject to the provisions or exclusions of the public records laws of the *Nevada Revised Statutes* as they may be interpreted by the courts.

Section 6.15 Dismissed Charges

Whenever charges against a person are dismissed, all documents relating to the case will be deposited with the president where they shall be retained for a period of one year, after which time they shall be released to the person who was charged if requested by that person, or shall be destroyed unless destroyed sooner pursuant to regulations, policies or procedures established by the System institution.

Section 6.16 Classified Employees and Research Technologists

(a) Employees of the System who are in the classified service of the State of Nevada shall be disciplined only under the procedures established by the *Nevada Revised Statutes* and the State of Nevada Division of Human Resource Management, *Rules for State Personnel Administration*.

(b) Research technologists of the Desert Research Institute shall be disciplined only under the procedures established in the *DRI Technologists Manual*, as authorized by the Board of Regents.

Section 6.17 Lie Detector Tests

Lie detector tests shall not be required in conjunction with System personnel proceedings nor in relation to System personnel matters.

Section 6.18 Applicability to Others

In the event any person who is not a member of the System community should engage in conduct prohibited by this chapter, the president or the president's designee shall inform that person that the person is not authorized to remain on the premises owned or occupied by the System and shall direct such person to leave the premises. In the event such person fails to leave the premises after being ordered to do so, the president or the president's designee may cause such person to be ejected. Nothing herein shall be so construed as to authorize or prohibit the presence of any such person prior to such violation nor to affect such person's liability for trespass or loitering as prescribed by law.

Section 6.19 Resignations During Ongoing Investigations, Hearings, and Appeals

In the event a person against whom disciplinary proceedings have been commenced pursuant to this Chapter 6 of the Nevada System of Higher Education Code resigns, in writing, from the person's employment prior to the completion of any investigation, hearing or appeal commenced before receipt of the resignation, then:

(a) The provisions of Subsection 5.15.1-Resignations, of the Nevada System of Higher Education Code shall not apply. The resignation need not be accepted by the appointing authority (or designee), and shall be effective immediately. Unless otherwise mandated by law, the person submitting the resignation 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 an application of employment or to work as an independent contractor.