

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 10  
RULES OF CONDUCT AND PROCEDURES FOR STUDENTS  
NEVADA SYSTEM OF HIGHER EDUCATION

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

**Section 10.1 Scope of the Chapter**

**10.1.1 Applicability of Procedures and Sanctions.**

The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against students of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education rules of conduct or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions. Except as [~~otherwise~~] ***expressly*** provided in [~~this chapter~~] **Section 10.2.1(y)**, the System institutions and professional schools may establish written policies, procedures and sanctions for the discipline of their students that may be used in lieu of the policies, procedures and sanctions of this chapter, including but not limited to the establishment of student [~~judicial~~] ***conduct*** councils, subject to the prior review by the institution's general counsel and to the approval of the president of the institution.

**10.1.2 Proceedings Concurrent.**

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

**10.1.3 Student Defined.**

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

**10.1.4 Rules of Conduct.**

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

**10.1.5 System.**

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

### **10.1.6 Charged Student.**

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

## **Section 10.2 Cause**

### **10.2.1 Prohibited Conduct.**

The following conduct is prohibited:

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

(j) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the System.

(k) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of, or on premises occupied by the System.

(l) Knowing possession on any premises of the System of any firearms, explosives, dangerous chemicals or other instruments of destruction, or other dangerous weapons as defined by the laws of the State of Nevada, without the written authorization of the institutional president or the president's authorized agent.

(m) Continued occupation of buildings, structures, grounds or premises belonging to, or occupied by, the System after having been ordered to leave by the institution's president, the president's designee, or the chancellor.

(n) False reporting of any emergency situation, including but not limited to, misuse of campus or System emergency notification equipment. Unauthorized tampering with, and/or accessing of, safety, security, or fire protection equipment or devices. Setting off a fire alarm for reasons other than actual fire or emergency, involvement in setting or causing any unauthorized fire in or on institution property.

(o) The unauthorized possession, loan, modification, or distribution of keys, pass cards or institutional identification cards. Unauthorized or unlawful entry or access to institutional or System facilities, including buildings and grounds. The reproduction, manufacture or duplication of any key, pass card, institutional or System identification card or unlocking device for use on institution or System facilities or locks without proper authorization.

(p) Abuse, unauthorized use, or theft of institutional or System computer facilities and resources, including but not limited to:

(1) Unauthorized entry into, or transfer of, a file to use, read, or change the contents or for any other purpose; and/or a violation of copyright laws;

(2) Use of another individual's identification and/or password;

(3) Interfering with the work of another student, faculty member or institution or System official, or with the normal operation of the institution or System Computing System; or,

(4) Violating the institution's Standards of Conduct for the Use of Institution's Computers.

(q) Willfully destroying, damaging, tampering, altering, stealing, misappropriating or using without permission any System, program or file of the System.

(r) Violation of the institution's policies and regulations governing residence in institution owned or controlled property, and access to and use of all institutional facilities, including responsibility for the conduct of guests.

(s) Use, possession, or distribution of alcoholic beverages without authorization (except as expressly permitted by System or Institutional regulations, such as the Alcoholic Beverage Policy), or public intoxication. Alcoholic beverages may not, in any circumstances, be used by, possessed by, or provided to, any person under 21 years of age.

(t) Use, possession, manufacturing or distribution of marijuana, heroin, narcotics, or other controlled substances, use or possession of any illegal and/or unauthorized drugs, prescription drugs, and drug paraphernalia or being under the influence of illegal drugs except as expressly permitted by law.

(u) Contempt of student disciplinary proceedings including impairing or interrupting any proceeding or providing false information to institution or System officials and student hearing board members during the course of the conduct resolution process. Failure to comply with the terms of any sanction imposed in accordance with the rules of conduct.

(v) The repeated use of obscene or abusive language in a classroom or public meeting of the System and which, if occurring in a class, is not significantly related to the teaching of the subject matter.

(w) The use of threats or violence against a faculty member or the faculty member's family in order to secure preferential treatment for grades, loans, employment, or other service or privilege accorded by the System.

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

(y) **Sexual harassment, 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.**

(z) Sexual assault, which is the use of, or threat to use, force or violence of a sexual nature, defined as sexual assault, against any member or guest of the institutional community on institution-owned or institution controlled property or at any institution sponsored program.

(aa) Acts of hazing. Hazing is defined as any method of initiation into or affiliation with the university, college or community college community, a student organization, a sports team, an academic association, or other group engaged in by an individual that intentionally or recklessly endangers another individual.

(bb) Intentionally making an accusation that is false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under the rules of conduct or under any applicable established complaint or grievance procedures in the System.

(cc) Willful incitement of individuals to commit any of the acts herein prohibited.

(dd) Any other conduct that violates applicable stated prohibitions, policies, procedures, rules, or regulations of the institution or Board of Regents.

(ee) Any act prohibited by local, state or federal law that occurs on System premises or at a System-sponsored function on or off such premises.

**(ff) Dating Violence. Dating Violence 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.***

**(gg) 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.***

***(hh) 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.***

***(ii) Sexual Violence. Sexual violence is a severe form of sexual harassment, and refers to physical sexual acts or attempted sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including but not limited to rape, sexual assault, sexual battery, sexual coercion or similar acts in violation of state or federal law.***

***Sexual coercion is:***

- 1) ***the use of violence or threats of violence against a person or the person's family or property;***
- 2) ***depriving or hindering a person in the use of any tool, implement or clothing; or***
- 3) ***attempting to intimidate a person by threats or force,***
- 4) ***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.***

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

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

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

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

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

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

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

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

Procedures unique to allegations of sexual harassment, including allegations of sexual [violation] ***violence***, are in Section 10.4.12. The procedures for all allegations are as follows:

### **10.4.1 Complaints.**

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

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

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

***In computing any period of time prescribed by this Chapter, the day of the act, event or default from which a designated period of time begins to run shall not be included. The last day of the time period shall be counted, unless it is a Saturday, Sunday 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.***

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

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

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

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

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

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

#### **10.4.6 Hearings.**

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

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

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

(c) The charged student and student conduct officer **or coordinator** shall notify the opposing party of all witnesses and provide copies of all documents and records in writing that the party proposes to introduce as evidence at least five **(5) calendar days** [~~college working days~~] prior to the hearing. The president shall issue subpoenas to compel the attendance of persons and the presentation of documents at all hearings established under this chapter upon the request of the person charged or of the [administrative] **student conduct officer or coordinator**. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.

(d) The charged student(s) and advisors, if any, along with the student conduct officer shall be allowed to attend the entire portion of the hearing, at which information is received, excluding the time of deliberations. Admission of any other person to the student conduct hearing shall be at the discretion of the student conduct board or hearing officer.

(e) Witnesses will provide information to, and answer questions from, the student conduct board or hearing officer. The charged student and student conduct officer may suggest questions. These questions will be directed to the chairperson of the conduct board or the hearing officer, who will question the witnesses directly. The chairperson of the conduct board or the hearing officer will decide on the specific course of questioning and/or information sharing throughout the hearing.

(f) All student conduct boards, hearing officers, or student conduct officers, may accommodate concerns for personal safety, well-being, and/or fears of confrontation, by the complainant, the accused, and witnesses, during the hearing or during the informal resolution process by providing the opportunity for the hearing board or student conduct officer to receive the pertinent information and conduct conversations for the resolution of the case using methods other than requiring both parties to be present in the same room at the same time. Such options include use of a visual screen, participation by videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined by the chairperson of the student conduct hearing board or hearing officer conducting the hearing.

(g) Either party may present pertinent written statements, records, or other information to the student conduct board or hearing officer. The formal rules of evidence in court shall not apply but irrelevant or unduly repetitious evidence shall be excluded.

(h) To the extent consistent with the Family Educational Rights and Privacy Act ("FERPA") the hearing, except for deliberations, shall be taped or digitally recorded. Upon request by the student, a written transcript will be provided at the student's expense. Personally identifiable information will be removed. The record shall be the property of the institution, and will be maintained with the student's conduct records by the student conduct officer.

(i) Student conduct hearings shall be conducted in private, unless the charged student requests an open hearing. An open hearing must be held consistent with Subsection (f).

(j) If a charged student, with notice, does not appear at a student conduct hearing, the information in support of the complaint shall be presented, considered, and acted upon even

if the charged student is not present. Failure of the student to appear is not evidence that the student was responsible for the charge of misconduct.

(k) The hearing will proceed according to the institution's schedule and will not be delayed by another process off campus.

(l) The chairperson of the student conduct board or the hearing officer decides procedural questions.

(m) The members of the student conduct board or the hearing officer deliberate[s] in closed session after the hearing has concluded, and shall determine whether or not the charged student has violated each section of the rules of conduct that the student is charged with having violated. This determination is made through consensus when possible, and if not possible, then by a simple majority vote of the board members.

(n) The student conduct board or hearing officer's determination shall be made on the basis of whether it is more likely than not that the charged student violated the rules of conduct. ~~[An expulsion requires a finding of substantial evidence of wrong doing].~~

(o) If the charged student is found not to have violated the rules of conduct, then the hearing is concluded. If the charged student is found to have violated the rules of conduct, then the student conduct board or hearing officer will discuss possible sanctions for the student after being informed of the student's disciplinary record with the institution.

(p) The student conduct board chairperson or the hearing officer will provide the board's decision on the violation and, if appropriate, for sanctions to the student conduct officer **or coordinator** and to the student. This written decision will be served within seven **(7)** calendar days of the conclusion of the hearing. The written decision may be served by electronic mail or by first class mail with the U.S. Postal Service with delivery confirmation to the last known address of the student or by personal delivery. Service is complete upon sending of the email or depositing with the U.S. Postal Service.

***(q) With respect to an institutional disciplinary action alleging sexual violence, domestic violence, dating violence or stalking offense, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092 (f). 34 CFR 668.46 (Clery Act) requires that the complainant and respondent must be informed simultaneously of the outcome.***

#### **10.4.7 Appeals.**

A student who is aggrieved by the decision of a student conduct hearing board or hearing officer may appeal to a vice president designated by the president or the president may decide to hear the appeal. The appeal shall be in writing and delivered to the student conduct officer within **seven (7)** [44] calendar days of the student's receipt of the decision. The student's appeal must include all written arguments in support of the appeal.

(a) **The only** [G] grounds for an appeal are:

(1) Deviations from procedures set forth which results in significant prejudice.

(2) The decision reached regarding the charged student was not based on a decision that it was more likely than not that the charged student violated the rules of conduct.

(3) The sanction(s) imposed were not appropriate for the violation of the rules of conduct which the student was found to have committed.

(b) The student conduct officer shall review the appeal and direct it, along with the recording of the hearing, any written evidence and arguments, and decision to the vice president designated by the president to hear the appeal within **fourteen (14)** calendar days of receiving the appeal. With the record, the student conduct officer shall file written arguments in opposition to the appeal.

(c) The designated vice president shall review the recording of the hearing and the complaint, and decision, along with any information and evidence that was part of the decision-making of the conduct case, and will decide whether or not the appeal should be upheld. The designated vice president may uphold the decision, may refer the case back to the original board or hearing officer or may order a new hearing before a new board or hearing officer.

(d) The decision of the vice president shall be in writing and served upon the student and student conduct officer within **thirty (30)** calendar days of the receipt of the decision and record of the hearing by the vice president. The vice president may extend the time limit of this section by written notice to the parties.

(e) Any sanction against the student shall not take effect until any appeal is concluded.

(f) The student conduct officer may suspend any time limits contained in this chapter during winter or summer breaks.

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

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

(a) Stated reason for request and circumstances surrounding the request;

(b) Date and seriousness of the violation;

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

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

#### **10.4.9 Sanctions.**

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

- (a) Warning. A notice, oral or written, that the student has violated the rules of conduct.
- (b) Reprimand. A written reprimand for violation of specified regulations.
- (c) Restitution. Compensation for loss, damage, theft or misappropriation of property, or injuries sustained in an incident of student misconduct. This may take the form of appropriate service, monetary, or material replacement or a combination of these.
- (d) Probation. Probation consists of a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to have violated any institutional regulation(s) during the probationary period.
- (e) Loss of Privileges. Denial of specified privileges for a designated period of time. This may include denying the student access to any campus, site, or building while permitting the student to enroll in off-campus classes such as internet or correspondence classes.
- (f) Discretionary and Educational Sanctions. Participation in specific educational programs, such as alcohol or other drug educational intervention conferences, assessments, educational activities, including on-line instructional workshops, and work assignments or service to the institution or the community, and other related discretionary assignments.
- (g) Residence Hall Suspension. Separation of the student from the residence halls for a period of time, after which the student is eligible to return. The minimum period of suspension is one semester and the maximum period is two semesters. Conditions for readmission may be specified in the suspension.
- (h) Residence Hall Permanent License Cancellation. Permanent separation of the student from the residence halls.
- (i) Withholding of a Degree. Prior to the awarding of a degree, the institution may withhold a degree from a student.

(j) Institutional Suspension. Exclusion for a definite period of time from attending classes and from participating in other activities of the System, as set forth in a written notice to the student. The official transcript of the student shall be marked —DISCIPLINARY SUSPENSION EFFECTIVE \_\_\_\_ TO \_\_\_\_\_. The parents or legal guardians of minor students shall be notified of the action.

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

(k) Deferred Institutional Suspension. Deferred separation of the student from the institution until the close of the current semester or some other time frame for review of student progress in addressing the conduct matter.

(l) Institutional Expulsion. Termination of student registration and status for an indefinite period of time. Permission of the president shall be required for readmission. The official transcript of the student shall be marked —DISCIPLINARY EXPULSION EFFECTIVE \_\_\_\_\_. The parents or legal guardians of minor students shall be notified of the action.

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

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

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

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

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

(a) When an emergency removal is imposed, the charged student shall be denied access to the institution, including classes and all other institutional activities or privileges for which the student might otherwise be eligible, as the president or the student conduct officer may determine to be appropriate. During the time of the removal from the institution, the student may not come onto institutional property for any reason other than meeting with the appropriate official(s) regarding resolution of the emergency removal and the student conduct violation. The student conduct officer may permit the student to participate in distance learning classes that do not include entering onto institutional property and provide adequate protections to prevent any of the conditions of (a), (b), (c) or (d), above, from occurring. Any student so removed shall be afforded an opportunity for a hearing on the emergency removal no later than **fourteen (14)** calendar days following the removal unless the student agrees to delay the hearing to a later time. A hearing officer shall hold the hearing under the hearing procedures of the rules of conduct where those may be applicable. The student conduct hearing officer shall make a recommendation to the president. The president's decision upon the hearing officer's recommendation shall be final. The removal does not replace the regular disciplinary process, which shall proceed under this chapter.

**(b) Interim measures as described in NSHE Handbook, Title 4, Chapter 8, Section 13, except for emergency removal of the student, may be implemented without a hearing and are not subject to any grievance procedure.**

#### **10.4.12 Procedures Available when Sexual Harassment is Alleged.**

The following additional procedures ~~[are available]~~ **apply** in proceedings alleging sexual harassment:

(a) A ~~[an alleged victim]~~ **complainant and a person against whom a complaint of alleged** ~~[of]~~ sexual harassment **is filed (respondent)** shall have the opportunity to select an independent advisor for assistance, support and advice. The ~~[alleged victim]~~ **complainant and respondent** shall be advised at the beginning of the complaint process that he or she may select an independent advisor and it shall become the choice of the ~~[alleged victim]~~ **complainant or respondent** to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the ~~[alleged victim]~~ **complainant or the respondent**. The institutional affirmative action officer, **Title IX Coordinator** or the student conduct officer shall advise the ~~[alleged victim]~~ **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;

(b) The complainant may choose to not permit the matter to be resolved by the informal resolution process or may terminate the informal resolution process at any time prior to a written determination being signed. If sexual assault is alleged, the informal resolution process may not be used;

~~[(b)]~~ (c) The complainant must agree to the charge being heard by a hearing officer if the student conduct officer and student agree;

(d) The complainant must be given the opportunity to participate in any pre-hearing procedures;

(e) In a hearing involving more than one charged student, the hearing officer or hearing board may require a charged student to be absent from any testimony that is not relevant to that charged student;

(f) The complainant must receive a list of all witnesses at the same time it is received by the student conduct officer and charged student;

(g) The complainant must be permitted an advisor during the hearing who shall have the same duties as the advisor for the charged student;

(h) The complainant may present witnesses and other evidence at the hearing;

**(i) The findings and recommendation of the Title IX Coordinator pursuant to NSHE Handbook, Title 4, Chapter 8, Section 13 shall be considered at the hearing;**

~~(i)~~ The complainant shall be served a copy of the decision of the student conduct hearing board or hearing officer and of the vice president, if an appeal is filed, except for the discipline imposed upon the student unless the discipline directly relates to the complainant.

~~(j)~~ If the complainant is aggrieved by the decision of the student conduct hearing board or hearing officer, the complainant has the right to appeal the decision to the appropriate vice president in the same manner as the student;

~~(k)~~ In a complaint alleging sexual **assault, domestic violence, dating violence or stalking** [violence or non-forcible sex offense], the complete decision of the student conduct hearing board or officer and the decision on appeal shall be given to the complainant. ~~[and may be released to anyone upon request].~~

**10.4.13 Board of Regents Policy on Sexual Harassment. The Board of Regents policy against sexual harassment is set forth in Title 4, Chapter 8, Section 13.**

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

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

- a. The withdrawal shall be effective immediately. Unless otherwise mandated by law, the person submitting the withdrawal shall not be permitted to revoke the resignation under any circumstances.***
- b. The pending investigation, hearing, or appeal shall immediately cease.***
- c. In cases involving gender discrimination or sexual harassment, the Title IX Coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.***

- d. The facts and circumstances of the charge(s) may be cause for denial of readmission, denial of an application of employment or denial of work as an independent contractor.***