

**BOARD OF REGENTS
BRIEFING PAPER**

Agenda Item Title: Amendments to the Board of Regents Code, Title 2, Chapter 5, Section 5.6.2 Regarding Confidential Personnel Information

Meeting Date: Sept. 6-7, 2012

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

The Code Review Task Force has been working on proposed amendments to the Code, Title 2, and recommends amendments to Chapter 5, Section 5.6.2 to clarify that certain student employee and other personnel records are confidential, and to allow the release of information to certain civil rights agencies in connection with discrimination claims, and to granting and contracting agencies in connection with allegations of research misconduct.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The attached proposal sets forth the proposed amendments. The amendments are summarized as follows:

- Confidential personnel information may be released to state and federal civil rights agencies;
- Personnel records of graduate assistants, resident physicians and dentists, postdoctoral fellows and student employees are made confidential; and
- Records regarding allegations of research misconduct may be released to a granting or contracting agency or other entity in order to comply with state or federal law or regulation, or to comply with a term or condition of a contract or grant.

3. IMPETUS (WHY NOW?):

Section 5.6 of the Code, which makes personnel and payroll records of employees confidential, currently does not address the legal and contractual required release of information in connection with civil rights and research misconduct matters. The policy should be amended to coincide with these requirements. The personnel and payroll records of graduate assistants, student employees, resident physicians and dentists and postdoctoral fellows are considered confidential, and the policy should reflect this fact.

4. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Civil rights agencies, such as Nevada Equal Rights Commission, the federal Equal Employment Opportunity Commission and the U.S. Office of Civil Rights conduct investigations into allegations of discrimination and often request relevant information from personnel files of NSHE employees.
- Relevant information must be released to these agencies, but the current policy does not appear to permit the release of such information.
- The policy should be amended to be consistent with the requirements.
- If there is an allegation of research misconduct against an NSHE employee, state or federal laws or regulations and/or the terms and conditions of a grant or contract may require that the granting or contracting agency or entity receive information about the allegations.

- The current policy regarding the confidentiality of personnel and payroll information does not appear to permit the release of such information.
- The policy should be amended to be consistent with these requirements regarding release of information relating to allegations of research misconduct.
- If the policy is not amended, the release of information either to civil rights agencies or in connection with allegations of research misconduct, as noted above, could result in breach of contract or privacy violation claims from NSHE employees.
- The policy should also be amended to reflect the confidentiality of personnel and payroll records of graduate assistants, student employees, resident assistants and postdoctoral fellows.
- There is no reason to exclude such records from the confidentiality that is afforded to all other personnel and payroll records under Board policy.
- If the policy is not amended, there is a risk of inconsistent interpretation of the policy under the circumstances noted above.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

The policy, as written, may be interpreted consistently with the requirements of state, federal law and regulations, and/or the terms and conditions of grants and contracts. In addition, there is no need to amend the policy because the human resources departments at NSHE institutions already treat the records of graduate assistants, student employees, etc., as confidential.

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

Do not make any amendments to the existing Code provision.

7. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_ Chapter #_ Section #____
- Amends Current Board Policy: Title #2 Chapter #5 Section #5.6.2 and adds a new Sec. 5.6.2(b)
- Amends Current Procedures & Guidelines Manual: Chapter #____ Section #____
- Other:
- Fiscal Impact: Yes _____ No X
- Explain: _____

POLICY PROPOSAL - HANDBOOK
TITLE 2, CHAPTER 5, SECTION 5.6
FACULTY BENEFITS

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

...

- 5.6.2 Personnel and payroll files of Nevada System of Higher Education professional staff are confidential. Personnel and payroll records may only be released pursuant to the written authorization of the professional staff member, [~~or~~] pursuant to a court order directing the release of the records that has been signed by a judge with jurisdiction over the matter, ***or to the U.S. Equal Employment Opportunity Commission, the Nevada Equal Rights Commission, or the U.S. Office of Civil Rights.*** The provisions of Title 2, Chapter 5, Sections 5.6.2 and 5.6.3 apply to letters of appointment, ***graduate assistants, graduate assistant-specials, resident physicians, resident dentists, postdoctoral fellows, and student employees.*** (B/R12/05)
- (a) The professional staff member shall have access to his or her official personnel and payroll files, and the professional staff member may grant access to such files to a representative with a written authorization from the staff member. The following additional personnel shall have access to a professional staff member's personnel and payroll files solely for reasons germane to the performance of their official duties: the staff member's supervisors, which may include a departmental chair, dean, director, vice president, provost, president, and chancellor; institution payroll officers; institution Personnel officers, which may include appointed disciplinary officers; System legal counsel; internal auditors; members of the Board of Regents; faculty senate chair; and confidential institution committees including but not limited to tenure and grievance committees. (B/R 1/04)
- (b) The following information in these personnel files is public information and must be disclosed to the public upon request: the employee's name, title, job description, compensation and perquisites, business address and business telephone numbers, beginning date of employment and ending date of employment, educational background and work history. (B/R 12/06) (B/R 1/02)
- (c) ***Confidential information in a personnel or payroll file that is related to an investigation or disciplinary process concerning allegations of research misconduct may be released to a granting or contracting agency or other entity, in order to comply with any state or federal law or regulation or to comply with a term or condition of the grant of***

contract. In the case of an investigation of an employee for matters related to allegations of research misconduct, the investigative materials obtained or created by the Administrative Officer may be released to a granting or contracting agency or entity, in order to comply with any state or federal law or regulation or to comply with a term or condition of the grant or contract.

- 5.6.3 Any information contained in employment application materials (e.g. letters of interest, curriculum vitae, application, employment and educational records, publications or work samples) submitted for consideration of employment within NSHE are confidential, except the position of Chancellor, during search processes until such time as a candidate accepts employment within NSHE. During search processes, such documents can only be released pursuant to the written authorization of the prospective professional staff member or a court order directing the release of the records that has been signed by a judge with jurisdiction over the matter. Upon acceptance of an employment offer, information contained in the application materials as stated in 5.6.2 (b) shall become public records. (B/R 12/06)