

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: Handbook Revision: Accessibility for Individuals with Disabilities, Service Animals and Emotional Support Animals

MEETING DATE: ARSA Committee, June 8, 2017

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Existing Board policy prohibits discrimination against individuals with disabilities and includes provisions promoting employment, recruitment, admission, and retention of individuals with disabilities, as well as members of other protected classes (see Title 4, Chapter 8 of the *Handbook*). These policies, however, do not specifically address providing accessibility for individuals with disabilities. At the request of the NSHE Student Affairs Council (SAC), the System Office established a working group to review federal requirements in this area and recommend policy for the consideration of the Board regarding accessibility and other issues impacting individuals with disabilities within NSHE and at its institutions. The NSHE Working Group – co-chaired by Vice Chancellor for Academic and Student Affairs Crystal Abba and former Vice Chancellor for Legal Affairs Brooke Nielsen – included individuals appointed by institutions representing diverse areas, including disability resource centers, e-learning, and information technology.

The NSHE Working Group met multiple times over the past year – starting in January 2016 – to bring forward specific concerns from the individual institutions, review federal requirements, and participate in drafting policy for Board consideration. During the course of the work, the members reviewed an extensive amount of research and documentation, including federal requirements under Section 508 of the Rehabilitation Act and Section 255 of the Communication Act for information and communications technology (including the “Refresh” - a final rule that updates these requirements for federal agencies), policies adopted in other higher education systems, and consent decrees between higher education institutions across the country and the Office for Civil Rights (OCR) of the U.S. Department of Education in response to complaints filed by individuals with disabilities. It is important to note that while federal requirements under Section 508 apply primarily to federal agencies, these standards provide strong guidance to institutions of higher education in adopting policies governing accessibility for individuals with disability that will withstand federal review.

Based on this extensive work, the NSHE Working Group recommends adoption of Board policy in four primary areas: (1) General Board Policy; (2) Information and Communications Technology; (3) Service Animals; and (4) Emotional Support Animals. The recommended policies reflect the standards and requirements under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as well as requirements repeatedly set forth under federal consent decrees involving higher education institutions.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Board policy under Title 4, Chapter 8 of the *Handbook* to adopt the following four new sections:

- Section 14 – General Policy of the Board of Regents on Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973;
- Section 15 – Policy for Information and Communications Technology Accessibility;
- Section 16 – Service Animals; and
- Section 17 – Emotional Support Animals.

(See the attached policy proposals.)

4. IMPETUS (WHY NOW?):

The need for an overarching Board policy to guide and support the institutions regarding their own accessibility policies for individuals with disabilities was identified and suggested by the NSHE Student Affairs Council.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Board policy is needed to provide uniform guidance to all NSHE institutions regarding the adoption or revision of their institutional policies to provide accessibility to individuals with disabilities. Higher education institutions across the country have entered into consent decrees with the U.S. Department of Education in response to complaints filed by individuals with disabilities when these institutions have not provided the necessary accommodations required under federal law. The proposed Board policies are consistent with federal requirements under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, as well as requirements repeatedly set forth under federal consent decrees involving higher education institutions.
- The NSHE Working Group strived to find the appropriate balance between the federal requirements and the need to provide flexibility to the different NSHE institutions that have varying resources available to implement the policies.
- Because the proposed Board policy requires institutions each to adopt their own policy under the Board's overarching guidelines, the institutions will have the flexibility to work with their own faculty, administration, students, and employees to adopt policies that comply with federal requirements but also meet the needs of their institutional communities.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None have been presented.

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

None have been presented.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: ***Title 4, Chapter 8, new Sections 14, 15, 16 and 17***
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes No _____

Explain: Institutions may incur a fiscal impact based on policies adopted to provide accessibility to individuals with disabilities, as required by the proposed policy that is consistent federal requirements in this area, but the potential impact is not known as this time.

POLICY PROPOSAL

TITLE 4, CHAPTER 8, *new* SECTION 14

General Policy of the Board of Regents on Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

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

Section 14. General Policy of the Board of Regents on Compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

1. Policy Statement

The Nevada System of Higher Education (NSHE) is committed to compliance with any and all federal and state laws governing individuals with disabilities, their employment and their access to postsecondary institutions. This includes the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, which state in pertinent part:

- *"No qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of any public entity, or be subject to discrimination by any such entity." (Section 202 of the 1990 Americans with Disabilities Act).*
- *"No otherwise qualified, handicapped individual in the United States shall solely, by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (Section 504 of the 1973 Rehabilitation Act).*

Pursuant to federal and state laws, no qualified individual with a disability shall unlawfully be denied access to or participation in any services, programs, or activities of NSHE or its institutions on the basis of his or her disability. NSHE and its institutions are committed to providing reasonable accommodations to students, employees and visitors with disabilities to afford an opportunity for full participation in educational programs and activities. Accommodations that are unduly burdensome to NSHE or the institution or that fundamentally alter the nature of the service, program, course, or activity are not required.

2. Definitions

For purposes of this policy and Sections 15 (Information and Communications Technology), 16 (Service Animals) and 17 (Emotional Support Animals) of this Chapter the following definitions apply:

- a. ***Disability:** An individual has a qualifying disability if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment pursuant to Section 4(b)(iii) below.*
- b. ***Qualified Individual with a Disability:***
 - i. *With respect to NSHE programs and services, means an individual who meets the academic and technical standards requisite for admission or participation in the NSHE program or activity.*
 - ii. *With respect to employment, means an individual who with or without reasonable accommodation can perform the essential functions of the job.*

- c. ***Reasonable Accommodation:*** *An adjustment or modification that allows the qualified individual with a disability access to employment and/or participation in the various programs and services of NSHE and its member institutions. A reasonable accommodation shall not fundamentally alter the curriculum of any program, fundamentally alter the nature of any activity or service provided, or fundamentally alter the essential functions of any job, nor shall it impose an undue burden, on NSHE, any NSHE institution, or any program or activity thereof.*
- d. ***Undue Burden:*** *An undue burden results when a proposed course of action would result in significant difficulty, hardship, or financial or administrative burden.*
- e. ***Fundamental Alteration:*** *A change to a service, program, or activity that fundamentally alters the nature of the service, program, or activity, which includes academic courses or technology.*
- f. ***Timely:*** *Access in a reasonably sufficient time for the individual with the disability to have an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as individuals without disabilities.*

3. *Institutional Requirements*

- a. ***Policies and Procedures*** – *Each institution shall develop policies and procedures to ensure compliance with Board of Regents policy and applicable federal and state laws referenced herein, including access to information and communications technology.*
- b. ***Responsibility for Compliance*** – *Each president shall designate a person or persons responsible for ensuring compliance with and implementation of this policy and institutional policies and procedures throughout the institution, its departments and its units. Each president's designee(s) shall have authority to ensure and enforce compliance with Board and institutional policies and procedures. The president or his or her designee(s) may create a committee with broad representation from across the institution to assist the designee with compliance and training.*
- c. ***Training*** – *The president's designee(s) shall provide training for all employees on accessibility policies and procedures.*

4. *Rights and Responsibilities*

- a. ***Every qualified individual with a disability has the right to:***
 - i. *Access to employment, educational programs, services, activities, and facilities available through NSHE institutions.*
 - ii. *Reasonable accommodations and/or auxiliary aids as determined on a case-by-case basis.*
 - iii. *Confidentiality regarding disability information (including the right to choose to whom the disclosure of disability is made) as may be required by law.*
 - iv. *Receive information in accessible formats appropriate to the individual's disability.*

- b. Every qualified individual with a disability has the responsibility to:*
- i. Meet institutional qualifications with or without accommodation, including essential employment functions, technical, academic, and institutional standards and codes of conduct.*
 - ii. Self-identify as an individual with a disability and request accommodations through the institutional designee (e.g. disability resource center, human resources, etc.) in a timely manner.*
 - iii. Provide documentation from a professional with appropriate credentials for diagnosing that disability verifying the nature of the disability, functional limitations, and the rationale for specific accommodations being requested.*
 - iv. Follow specific institutional policies and procedures for obtaining reasonable accommodations and/or auxiliary aids.*
- c. The NSHE and its institutions have the right and responsibility to:*
- i. Comply with Board of Regents policy and any other applicable federal and state laws governing individuals with disabilities including, but not limited to, policies regarding equal employment opportunity, Section 504 of the Rehabilitation Act of 1973, and Section 202 of the Americans with Disabilities Act.*
 - ii. Inform the campus community, including applicants for employment and admission, of services available for disabled individuals.*
 - iii. Maintain institutional academic standards.*
 - iv. Require qualifying disability documentation in order to verify eligibility for disability accommodations and/or auxiliary aids.*
 - v. Select from reasonable accommodations, adjustments, and/or auxiliary aids in consultation with the individual.*
 - vi. Deny requests for accommodations and/or auxiliary aids when disability documentation does not identify a specific disability or fails to verify the need for the requested services.*
 - vii. Deny requests for accommodations, adjustment, and/or auxiliary aids that are not reasonable as set forth herein or pose a direct threat to the health and safety of others.*

POLICY PROPOSAL
TITLE 4, CHAPTER 8, *new* SECTION 15
Policy for Information and Communications Technology Accessibility

Effective Date: September 1, 2017

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

Section 15. Policy for Information and Communications Technology (ICT) Accessibility

1. Policy Statement

The Nevada System of Higher Education is committed to providing information and communications technology that has been developed, procured or utilized to be accessible to all, and in particular, to individuals with disabilities, including those who use assistive technologies.

2. Scope of Policy

- a. This policy applies to Information and Communications Technology (ICT) that is developed, procured, or utilized by NSHE and its institutions for NSHE programs, services, instructional materials, or activities. ICT includes, but is not limited to, computer hardware and software, operating systems, computer or web-based information and applications, cellular and mobile apps, enterprise applications, learning management systems, telecommunication products, information kiosks and transaction machines, World Wide Web sites (including web pages, web applications, and web content), multimedia, and office equipment.*
- b. With respect to this policy, “accessible” means that individuals with disabilities are able to independently acquire the same information, engage in the same interactions, and enjoy the same benefits and services within the same timeframe as their nondisabled peers, with substantially equivalent ease of use. If an ICT cannot be made accessible due to technical infeasibility or undue financial or administrative burden, “equally effective alternate access” must be provided in a timely manner. “Equally effective alternate access” means an alternative format, medium, or other aid that timely and accurately communicates the same content as does the original format or medium, and which is appropriate to an individual's disability. To provide equally effective alternate access, alternatives are not required to produce the identical result or level of achievement for individuals with and without disabilities, but must provide appropriate auxiliary aids and services as necessary to afford individuals with disabilities an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement, in the most integrated setting appropriate to their needs.*
- c. NSHE and its institutions are not required to take any action that results in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burden pursuant to this policy, but must nevertheless ensure, to the maximum extent possible, that qualified students with disabilities receive the benefits or services provided by NSHE and its institutions.*

Each president or the president's designee who has budgetary authority may approve exceptions to this policy based on a determination that the action would result in a fundamental alteration or undue burden.

- d. Except as otherwise provided herein, this policy does not apply to ICT utilized and intended solely for internal institutional operations, except to the extent accessibility is required for an individual with a disability.*

3. Institutional Policies and Procedures

Each institution shall develop policies and procedures to ensure compliance with Board of Regents policy and any and all applicable federal and state laws governing access by an individual with a disability to ICT at postsecondary institutions. Institutional procedures must include, but are not limited to:

- a. Procedures for identifying, reporting and addressing in a timely manner ICT that is not accessible to an individual with a disability. These procedures must include the timeline required pursuant to subsection 5.a. of this section;*
- b. A procedure through which individuals with a disability identify themselves, as required under Section 15 (4)(b)(ii);*
- c. When an accessible ICT is not available, a procedure for an accommodation to be provided so that individuals with disabilities are able to receive equally effective communication of curricular materials (e.g. course materials, textbooks, workbooks, articles, compilations, presentations, collaborative assignments, videos, and images or graphical materials) converted to alternate format or made accessible in a timely manner. The individual with the disability must request the accommodation and participate in the procedures developed by the institution to identify what will be equally effective communication. An institution must document the rationale for why an accommodation requested by an individual is not granted;*
- d. A procedure under which a president or the president's designee who has budgetary authority may approve an exception to this policy pursuant to 2.c. above based on a determination that the action would result in a fundamental alteration or undue burden. Any exceptions approved by the president or the president's designee must only be made after considering all resources available for use in the funding and operation of the service, program, or activity. If the president or his designee approves such an exception, the president or his designee must provide a written statement of the reasons for reaching that conclusion, including the cost of meeting the requirement, the available funding and other resources, and the institution's plan for providing equally effective alternate access.*

4. Procurement of ICT from Third-Parties

Each institution shall adopt policies and procedures governing procurement, including acquisition, use or adoption, of ICT from third parties (e.g. vendors). The institutional policies and procedures must require that:

- a. The third party commits either to providing a product that meets the requirements set forth in Board policy governing accessibility for individuals with disabilities or details how the third party will support the institution in providing equally effective alternate access for non-conforming products until the product is fully conformant as demonstrated in the third party's accessibility documentation; and***
- b. The institution requests, obtains, reviews and evaluates each third party's most recent accessibility testing results.***

5. Web Content Accessibility and Time Frames

a. Except as otherwise provided in this section, each institution must establish a reasonable timeline based on the institution's resources for its web pages, web applications, web content and websites to conform at a minimum with World Wide Web Consortium's (W3C's) Web Content Accessibility Guidelines (WCAG) 2.0 Level AA. The procedures must require the institution to demonstrate progress in achieving conformance with these Guidelines.

b. Exceptions include but are not limited to:

- i. Archived (i.e., content no longer in use but subject to records retention schedules) web pages and websites, unless specifically requested to be made accessible by an individual with a disability. If such a request is made, NSHE or the institution must provide either access that complies at a minimum with WCAG 2.0 Level AA or equally effective alternate access for the individual with a disability;***
- ii. Web pages and websites designed solely to conduct research or created for developmental or test-site purposes, unless specifically requested to be made accessible by an individual with a disability who has authorization to access those web pages or websites. If such a request is made, NSHE or the institution must provide either access that complies at a minimum with WCAG 2.0 Level AA or equally effective alternate access for the individual with a disability;***
- iii. Electronic documents posted to institution or NSHE websites and subdomains or within their web applications that meet all of the following requirements:***
 - (a) The documents are of interest to a specific and limited audience (e.g., researchers in a particular academic discipline);***
 - (b) The set of documents requiring remediation to conform at a minimum with WCAG 2.0 AA is voluminous (i.e., the total page count of the electronic documents that reside on a single web page exceeds 100 pages), or cannot be made accessible due to technical infeasibility; and***

POLICY PROPOSAL
TITLE 4, CHAPTER 8, *new* SECTION 16
Service Animals

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

Section 16. Service Animals

1. *Policy Statement*

The Nevada System of Higher Education is committed to reasonably accommodating individuals with disabilities who require the assistance of service animals. However, NSHE is also mindful of the health and safety concerns of the campus community. Thus, NSHE and its institutions must balance the need of the individual with the disability with the potential impact of the service animal on others within the campus community.

2. *Service Animal*

A “service animal” is a dog trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, medical, psychiatric, intellectual, or other mental disability and meets the definition of “service animal” under the Americans with Disabilities Act (“ADA”) regulations at 28 CFR 35.104. Under particular circumstances set forth in the ADA regulations at 28 CFR 35.136(i), a miniature horse may qualify as a service animal. The work or tasks performed must be directly related to the individual’s disability.

3. *Institutional Policies and Procedures*

Each institution shall develop policies and procedures governing the presence of service animals in compliance with applicable law, including the Americans with Disabilities Act.

4. *Damage*

Owners of service animals are solely responsible for any damage to individuals or property caused by their animal.

POLICY PROPOSAL
TITLE 4, CHAPTER 8, *new* SECTION 17
Emotional Support Animals

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

Section 17. Emotional Support Animals

1. Policy Statement

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals within housing associated with educational institutions. The Nevada System of Higher Education is committed to reasonably accommodating individuals with disabilities who require the assistance of an emotional support animal in institutional housing.

2. Emotional Support Animal:

An “emotional support animal” (“ESA”) is an animal that provides comfort to an individual with a disability upon the recommendation of a healthcare or mental health professional. An emotional support animal does not assist an individual with a disability with activities of daily living but rather its role is to live with an individual and alleviate the symptoms of an individual’s disability.

3. Institutional Housing

Emotional support animals may reside in institutional housing only with express written approval of the institution through the institutional policies and procedures established pursuant to subsection 4 of this policy.

4. Institutional Policies and Procedures

Each institution shall develop policies and procedures to implement this policy and govern the presence of emotional support animals in institutional housing, and other approved areas, if any. Such policies and procedures must include, but are not limited to:

- a. The process under which individuals may request approval to have an emotional support animal in institutional housing, or other approved areas, if any. This process must include a means of verifying that a disability exists and that the need for the presence of the emotional support animal is genuine based on the professional opinion of a physical or mental health care licensed provider or therapist.*
- b. The responsibility of individuals with emotional support animals, including but not limited to:
 - i. Care and supervision of the animal;*
 - ii. Health and safety of others, including ensuring that others are not threatened by an emotional support animal and that such animals authorized to live in institutional housing do not interfere with others’ enjoyment of the residential space; and*
 - iii. Other reasonable conditions or restrictions, if necessary to ensure the health, safety and reasonable enjoyment of others.**

c. The circumstances under which an emotional support animal may be removed.

d. Any restrictions on where the emotional support animal may be present in institutional housing, or other approved areas, if any.

5. Damage

Owners of emotional support animals are solely responsible for any damage to individuals or property caused by their animal.