

# BOARD OF REGENTS BRIEFING PAPER

## **Agenda Item Title: Evaluation and Merit Review Policy Modifications**

### **BACKGROUND & POLICY CONTEXT OF ISSUE:**

In January 2004, the Board adopted certain Code changes and policies pertaining to evaluations and merit pay review. Those changes permitted grievance and reconsideration of merit pay, but did not explicitly provide for grievance or reconsideration of annual evaluations. Title 4 Board policy changes, however, provided for peer review of annual evaluations and also provided a faculty member with the opportunity to submit a rejoinder. In March 2006, the Board made minor modifications to Title 4, Chapter 3, Section 4(5) to clarify the process for revising an annual evaluation following peer review.

There is a split of opinion among the institutions about whether evaluations should be reviewed by means of a grievance, peer review, reconsideration, or some combination of these processes. In addition, merit pay review and evaluation review may be subject to different processes, possibly leading to different results. As any review procedure results in a recommendation to the President for final action, it is submitted that it is not essential for each institution to have the same review procedure in place as different review procedures may be more effective at different institutions.

Consequently, Code changes are proposed that will permit institutions to adopt bylaws with review procedures (such as peer review, grievance and/or reconsideration) best suited to that institution and which will harmonize, where necessary, the review processes for both merit pay and annual evaluations. These bylaws will, of course, be subject to Board approval. If an institution fails to adopt a policy, then the faculty member will be permitted a grievance and reconsideration process. Professional employees will continue to have the right to also submit a rejoinder to the evaluation.

### **SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

The Board of Regents approve Code changes that permit each institution to adopt review procedures for annual evaluations and merit pay, within certain guidelines, and subject to Board approval.

### **IMPETUS (WHY NOW?):**

Some faculty may feel disenfranchised if a grievance is not permitted, which could lead to further employment disputes. The evaluation process is currently being challenged in at least one lawsuit. In addition, there may be inconsistency in review of evaluations and merit pay under current policy.

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

- A flexible policy will allow each institution to develop a workable review process.
- The policy will require that, where merit pay and annual evaluations are linked, the review process will be the same for evaluations and merit pay.
- The Board will approve any Bylaw procedures.
- Employee complaints will be minimized.

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

Employees at institutions with less elaborate or different review procedures may contend that they are being treated unfairly. It could also be argued that the current policy has worked at most institutions.

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

The Board could choose to define an exact process for review of evaluations and merit pay. For example, the Board could mandate that evaluations and merit pay review at each institution be subject to the same process, whether that is peer review, grievance, reconsideration or some combination.

**COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #\_\_\_\_\_ Chapter #\_\_\_\_\_ Section #\_\_\_\_\_
- X Amends Current Board Policy: Title # 2 Chapter # 5 Section # multiple and creates a new Section 5.16; Also amends Title 4, Chapter 3, Section 4(5).
- Other:\_\_\_\_\_
- Fiscal Impact: Yes\_\_\_\_\_ No\_\_\_\_\_
- Explain:\_\_\_\_\_

## Proposed Code Changes Regarding Evaluations (changes are in bold)

Section 5.2.3 is amended as follows:

5.2.3 Denial of Appointment with Tenure, ~~Salary Increases~~, Promotion or Reappointment. A faculty member who has been denied appointment with tenure, ~~a salary increase~~, promotion, reappointment to employment, or who has received a notice of termination may, within 15 calendar days after notification of such denial or termination, provide a written request to the department chair, supervisor, or dean who rendered the negative decision asking for a statement in writing of the reasons for the denial or notice of termination. The response must be received by the faculty member within 15 calendar days after the appropriate administrator receives the written request for reasons.

Section 5.2.4 is amended as follows:

5.2.4 Reconsideration of Personnel Action Denying Appointment with Tenure, ~~Salary Increases~~, Promotion, or Reappointment. Within 15 calendar days after receipt of the written reasons for denial of appointment with tenure, ~~a salary increase~~, promotion, reappointment to employment, or for the issuance of a notice of termination, a faculty member may request reconsideration. The request shall be submitted in writing to the faculty member's department chair, supervisor, or dean who rendered the negative decision together with the reasons, arguments and documentation supporting the request for reconsideration. The request for reconsideration shall be promptly directed through regular administrative channels with recommendations for or against reconsideration of the decision. Final action shall be taken within a reasonable time by the president after receipt of the recommendations, except that if the president, after reconsideration, decides to recommend appointment with tenure should be granted, the final decision must be made by the Board of Regents

Section 5.7 Grievance Procedures

Section 5.7.1 **No change**

Section 5.7.2 Scope of Grievance Procedures. A grievance is an act or omission to act by the respective administrations of the System institutions, allegedly resulting in an adverse impact on the employment conditions of a faculty member relating to ~~salary~~, promotion, appointment with tenure or other aspects of contractual status, or relating to alleged violations of the Nevada System of Higher Education Code or institutional bylaws. Decisions of the Board of Regents are not subject to review by grievance procedures. Any decision which involves the nonreappointment to or termination of employment of faculty as provided in Subsections 5.4.2, 5.8.2, 5.9.1, 5.9.2, 5.9.3 and 5.9.4 of the Nevada System of Higher Education Code, or the furlough or lay off of faculty for financial exigency or curricular reasons is not subject to review by grievance procedures.

**Section 5.12.3 {NEW} Review of Evaluations. Each institution and the System Office shall adopt, in their respective bylaws, a procedure for review of a faculty member's adverse annual evaluation rating, as provided in Section 5.16 of the NSHE Code. Academic and administrative faculty who disagree with the supervisor's evaluation may submit a written rejoinder, as provided for in Title 4, Ch. 3, Sec. 4(5).**

**Section 5.16 {NEW} Review of Evaluations and/or Denial of Salary Increase.** Each institution and the System Office shall adopt, in their respective bylaws, a procedure for review of a faculty member's adverse annual evaluation rating and a procedure to review denial of a salary increase. In connection with review of merit pay, "denial of a salary increase" means review of the step or level of merit at those institutions that award a standard amount of merit pay based on a certain step or level. The procedure adopted must include at least one of the following review processes:

- a. **Reconsideration pursuant to the Nevada System of Higher Education Code, Section 5.2 (except that the supervisor is not required to state reasons for an adverse annual evaluation under Section 5.2.3 if the reasons for the evaluation are stated in the evaluation);**
- b. **Grievance pursuant to the Nevada System of Higher Education Code, Section 5.7;**
- c. **Peer review pursuant to Title 4, Chapter 3, Section 4(5); or**
- d. **Any other similar review procedure that provides reasonable opportunity to challenge an adverse annual evaluation or denial of a salary increase.**

The result of any review procedure must be in the form of a recommendation to the president for a final decision (or in the case of the System Office, to the Chancellor), except that if the bylaws authorize a grievance, peer review, or other similar review procedure and also authorize reconsideration, then the bylaws may provide that the request for reconsideration terminates at a level below the president (or Chancellor), such as at the provost, executive vice president, academic vice president or dean level. In the event the bylaws provide for more than one review process, the bylaws may also specify an order in which the procedures are initiated.

In addition to the procedure for review adopted in the bylaws, the faculty member also has the right to submit a rejoinder as specified in Title 4, Chapter 3, Section 4(5).

If a merit pay determination is directly tied to the outcome of a faculty member's evaluation review, then the bylaws shall provide that the same process is followed for both the evaluation review and the merit pay determination.

Regardless of the review procedure, the process for the president to adopt or reject the recommendation regarding an annual evaluation shall be the same as that specified for peer evaluations in Title 4, Chapter 3, Section 4(5).

In the event the bylaws fail to specify a procedure for review of an adverse annual evaluation rating or denial of merit, the faculty member will have the right to pursue reconsideration and a grievance, in addition to submitting a written rejoinder.

#### Proposed Board Policy Changes Regarding Evaluations

Title 4, Chapter 3, Section 4(5). Academic and administrative faculty who disagree with the supervisor's evaluation may submit a written rejoinder, **and where authorized by the institution bylaws as provided for in Section 5.16 of the NSHE Code**, request a peer evaluation. The

supervisor's official evaluation and the faculty member's rejoinder **and**/or peer evaluation will be retained in the faculty member's personnel file **along with other recommendations from a review process**. If a peer evaluation, **or any other review process** result in a recommendation that the initial evaluation be changed, that recommendation shall be forwarded to the president or designee of the institution, who, at his or her discretion, may change the faculty member's evaluation by means of an addendum attached to the front of the evaluation stating how the evaluation is being changed and the reasons for the change. If the president or designee does not change the evaluation, the reasons shall also be stated by means of an addendum attached to the front of the evaluation. The president or designee shall sign the addendum and provide a copy to the faculty member.