TITLE 2 - Nevada System of Higher Education CODE

CHAPTER 6

RULES AND DISCIPLINARY PROCEDURES FOR FACULTY EXCEPT DRI

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Section 6.1 Scope of the Chapter

6.1.1 **Applicability of Procedures and Sanctions.** The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against faculty of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education Code or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions.
*(DRI--see Title 2, Chapter 8)

Complaints alleging discrimination, including sexual harassment, that do not constitute sexual harassment under Title IX, are subject to the complaint and investigation procedures set forth in Title 4, Chapter 8, Section 14(C) of the NSHE *Handbook*. The hearing procedures and sanctions established in this Chapter 6, exclusive of Section 6.20, are applicable to the resolution and determination of such complaints.

Procedures required for complaints of sexual harassment under Title IX, including allegations of sexual assault, dating violence, domestic violence, and stalking, are set forth in Section 6.20. In the event allegations of misconduct include allegations of Title IX sexual harassment as well as allegations of other misconduct, all the allegations will be handled in accordance with the provisions of Section 6.20.

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

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

(B/R 6/23)

Section 6.2 Cause

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

(a) Failure to perform the duties for which the faculty member is employed.

(b) Failure to maintain a required level of performance as provided in Section 5.12 of the Nevada System of Higher Education Code.

(c) Incompetence or inefficiency in performing the duties for which the faculty member is employed.

(d) Insubordination.

(e) Falsification of employment applications or documents submitted to the System, its member institutions or its special units, or making other false or fraudulent representations in securing employment.

(f) Dishonesty.

(g) Conviction of any criminal act involving moral turpitude.

(h) Being under the influence of intoxicants, or, without a valid medical excuse, being under the influence of controlled substances as defined in the *Nevada Revised Statutes*, while on duty, due consideration being given to NRS 284.379.

(i) Unauthorized absence from duty or abuse of leave privileges.

(j) Personal or professional conduct which shows that the faculty member is unfit to remain in the faculty member's employment position or which has an ascertainable harmful or adverse effect on the efficiency of the faculty member's administrative unit.

(k) Commission of any of the acts specified in Subsection 2.1.4 of the Nevada System of Higher Education Code;

(l) The use of, or threat to use, force or violence against any member or guest of the System community, except when lawfully permissible;

(m) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on the premises of the System;

(n) The intentional disruption or unauthorized interruption of functions of the System, including but not limited to classes, convocations, lectures, meetings, recruiting interviews and social events, on or off premises of the System;

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

(p) Knowing possession on any premises of the System of any firearms, explosives, dangerous chemicals or other instruments of destruction, or other dangerous weapons as defined by the laws of the State of Nevada, without the written authorization of the president of any System institution or the president's authorized agent, unless such possession reasonably relates to duly recognized System functions by appropriate members of the faculty, other employees or students;

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

(r) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the Nevada System of Higher Education;

(s) Making an accusation which is intentionally false or is made with reckless disregard for the truth against any member of the System community by filing a complaint or charges under this Nevada System of Higher Education Code or under any applicable established grievance procedures in the System;

(t) The repeated use of obscene or abusive language in a classroom or public meeting of the System where such usage is beyond the bounds of generally accepted good taste and which, if occurring in a class, is not significantly related to the teaching of the subject matter;

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

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

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

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

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

(z) Any other conduct which violates applicable stated prohibitions, policies, procedures, rules, regulations or bylaws of the Board of Regents or a System institution;

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

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

(cc) Use, possession, manufacturing, or distribution (hereinafter "use") of marijuana, including for medical purposes; 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. Use, possession or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.

(dd) Any act of unlawful discrimination based on race (including hair texture and protected hairstyles such as natural hairstyles, afros, bantu knots, curls, braids, locks and twists), creed, color, gender (including pregnancy related conditions), age, disability whether actual or perceived by others, military status or military obligations, sexual orientation, gender identity or expression, genetic information, religion or national origin or any act of employment or educational retaliation against any person who has made a complaint about such discrimination;

(ee) Non-Title IX "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of a NSHE institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
3. Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking. For the purposes of this definition, "education program or activity" includes locations, events, or circumstances over which an institution exercised substantial

control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution, which may include but is not limited to recognized fraternity, sorority, or student organizations. This definition does not apply to persons outside the United States.

a. For the purposes of this definition, “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation’s Uniform Crime Reporting Program.
b. “Rape” means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
c. “Fondling” means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
d. “Incest” means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
e. “Statutory rape” means sexual intercourse with a person who is under the statutory age of consent (16 years old).
f. “Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.
g. “Domestic violence” means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
h. “Stalking” means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others, or suffer substantial emotional distress.

(ff) Non-Title IX Dating Violence. Dating Violence is an act committed by a person who is or has been in a "dating relationship" with the victim:

1. 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; and
2. For the purpose of this definition:

   Dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting party.

   Dating violence includes, but is not limited to, mental, sexual or physical abuse or the threat of such abuse.

   Dating violence does not include acts covered under the definition of domestic violence.

   For the purpose of complying with the requirements of this Section and 34 CFR 668.41, any incident meeting this definition is considered a crime for the purpose of Clery Act reporting.

(gg) Non-Title IX 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) Non-Title IX 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) Non-Title IX 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.

1. Sexual coercion is:
    a. The use of violence or threats of violence against a person or the person's family or property;
    b. Depriving or hindering a person in the use of any tool, implement, or clothing; or
    c. Attempting to intimidate a person by threats or force,
    d. When committed with the intent to compel a person to do or abstain from doing an act that the person has the right to do or abstain from doing.

    In the context of sexual misconduct, coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on

sexual orientation, gender identity, or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.

(jj) Title IX Sexual Harassment.

1. "Sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:
    a. An employee of a NSHE institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct;
    b. Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity; or
    c. Sexual assault, as defined by the Clery Act, 34 C.F.R. § 668.46(a), as amended by the Violence Against Women Act of 1994, including but not limited to dating violence, domestic violence, and stalking. For the purposes of this definition, "education program or activity" includes locations, events, or circumstances over which an institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution, which may include but is not limited to recognized fraternity, sorority, or student organizations. This definition does not apply to persons outside the United States.
        i. For the purposes of this definition, "sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program.
        ii. "Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
        iii. "Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
        iv. "Incest" means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

v. "Statutory rape" means sexual intercourse with a person who is under the statutory age of consent (16 years old).

b. "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.

c. "Domestic violence" means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

d. "Stalking" means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

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

6.2.3 **Sexual Harassment.**

(a) The Board of Regents deems Title IX and Non-Title IX sexual harassment of students and employees unacceptable and prohibited. The Board of Regents' policy against sexual harassment is set forth in Title 4, Chapter 8, Section 14.

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

2. Such action shall be deemed to be without prejudice to any person involved or determination of the truth or falsity of the allegations.
3. Any such action shall be taken or maintained in such manner as to afford the least possible disruption to the day-to-day activities of the institution but the ease of reassigning students or employee subordinates in place of instructors or supervisors shall not be a factor in taking such action.

(b) For complaints that do not include Title IX Sexual Harassment allegations, an alleged victim of sexual harassment (complainant) and a person against whom a complaint of alleged sexual harassment is filed (respondent) shall be advised at the beginning of the Title 2, Chapter 6 complaint process that they may select an independent advisor for assistance, support, and advice and it shall become their choice to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time. The institutional affirmative action officer, Title IX coordinator or the administrative officer shall advise the complainant and respondent of this right. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.

In any hearings on a complaint of Non-Title IX sexual harassment, the burden of proof shall be by a preponderance of the evidence (i.e., the evidence establishes that it is more likely than not that the misconduct occurred). In connection with Non-Title IX hearings, the complainant and respondent have equal rights to be interviewed, identify witnesses, provide and receive documentation and witness lists pertaining to the complaint, and to appeal the decision in accordance with Section 6.13. With respect to an institutional disciplinary proceeding alleging Non-Title IX sexual violence, domestic violence, dating violence or stalking offense, the Clery Act (20 U.S.C. § 1092 (f) requires that the complainant and respondent must be informed of the outcome simultaneously. With the approval of the administrative officer only, the complainant or respondent may waive all time limits established in this Chapter, except the time limit stated in Subsections 6.10.2 and 6.11.7.

(c) Interim measures and/or supportive measures, as described in NSHE *Handbook*, Title 4, Chapter 8, Section 14, except administrative leave, may be implemented without a hearing and are not subject to any grievance procedure. Such measures remain in force throughout the disciplinary process and may be made permanent if they are necessary to prevent the recurrence of sexual harassment.

(B/R 6/23)

Section 6.3 Disciplinary Sanctions

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

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

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

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

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

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

6.3.6 **Termination.** Termination of employment for cause. A hearing held under the procedures established in Section 6.11 or 6.20 and other applicable provisions of this chapter shall be required before the employment of an employee may be terminated for cause.

(B/R 6/23)

Section 6.4 Authority of the President

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

6.4.2 **President Has Final Decision-Making Authority**. Determinations and findings made within the System institutions are in the nature of recommendations to the president who shall have the final decision making authority, except as otherwise provided in Section 6.20 below or otherwise provided in the Nevada System of Higher Education Code.

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

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

(B/R 6/23)

Section 6.5 Administrative Leave

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

(a) To protect life, limb or property;

(b) To ensure the maintenance of order; or

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

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

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

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

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

(B/R 6/23)

Section 6.6 Reprimands or Warnings for Conduct Other Than Title IX Sexual Harrassment

Section 6.6 does not apply to Section 6.20, Title IX Sexual Harassment

6.6.1 **Authority of Administrators to Discipline.** Vice presidents, deans, directors and persons in equivalent positions shall have the authority to issue reprimands or warnings (as defined under 6.3.1 and 6.3.2) to faculty members and other professional employees under procedures stated in 6.6 of the NSHE Code. Procedures under 6.6 differ from procedures established in Sections 6.7 to 6.14 of the NSHE Code. Code 6.6 procedures are to be used whenever possible, as an alternative to those in 6.7 to 6.14.

6.6.2 **Right to Notice.** At least fifteen (15) calendar days before issuing a warning or reprimand, a person proposing to issue the warning or reprimand shall notify the person whom it is proposed to so discipline in writing of the charges involved and of the proposed discipline. The notice shall also schedule a meeting between the person charged and the person proposing to issue the warning or reprimand for the purpose of discussing the charges. The notice shall:

(a) Include all materials and documentation to support the charges;

(b) Clearly state that it activates the processes set forth in 6.6 of the NSHE Code, and also state the alternatives available under 6.6.3 to the affected person; and

(c) Advise the affected person of his or her rights according to 6.6.6.

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

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

(a) The right to mediation as outlined in 6.6.4, or through 6.6.8.

(b) The right to accept the reprimand or warning, or within ten (10) calendar days after receiving the notification to respond, in writing to the warning or reprimand and to have that response immediately placed in his or her personnel file.

(c) The right to grieve the warning or reprimand unless mediation is selected. If the affected person elects to grieve the warning or reprimand, mediation may not be used.

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

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

6.6.5 **Mediation.** The mediator will call a meeting of both parties to facilitate an informal resolution of the matter. Both parties must participate in good faith in the mediation procedures. The meeting will take place within fifteen (15) calendar days after the appointment of the mediator. The mediator shall conduct the meeting with attention to fairness and due process, and shall seek to preserve the rights of all affected parties. The mediator shall have the right to call witnesses if deemed necessary by the mediator.

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

(a) The right to access all materials and documents relevant to the proposed disciplinary action at least ten (10) calendar days prior to the meeting with the mediator;

(b) The right to have a colleague present, and the right to introduce materials in response to the proposed warning or reprimand; and

(c) The right to appeal any decision to the president.

6.6.7 **Standard of Evidence.** All decisions must be based on evidence which establishes that it is more likely than not that the respondent has violated the rules of conduct.

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

(B/R 6/23)

Section 6.7 Administrative Officer

Section 6.7 does not apply to Section 6.20, Title IX Sexual Harassment

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

It is the intent of the Board that this position shall not be used to create the basis for an on-campus staff attorney appointment that will report directly or indirectly to the institutional president. In order to assure an appropriate separation of responsibilities, the job description of the person appointed as administrative officer must be approved by the executive vice chancellor & chief counsel prior to

appointment. The person appointed to perform the duties of administrative officer shall not represent the System institution nor engage in the practice of law on behalf of the System institution, including, but not limited to, the rendering of legal advice or opinions.

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

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

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

(B/R 6/23)

Section 6.8 Decision to Hold Hearings

Section 6.8 does not apply to Section 6.20, Title IX Sexual Harassment

6.8.1 **Complaints.** Except as may be provided in Section 6.6 or 6.20 of the Nevada System of Higher Education Code, all complaints alleging conduct prohibited by Section 6.2 of the Nevada System of Higher Education Code or by applicable stated prohibitions, policies, procedures, rules, regulations or bylaws of the System institutions shall be filed with the administrative officer. The complaint shall be in writing, shall be signed by the complainant and shall, to the extent reasonably possible, specify the date, time, place, person or persons involved and the circumstances of the alleged prohibited conduct, including the name or names of persons who may have witnessed the alleged prohibited conduct.

6.8.2 **Investigation, Informal Resolution or Recommendation for Hearing.**

(a) The administrative officer shall investigate complaints with the purpose of clarifying the facts and the positions taken by the parties. If the complaint results from findings of a completed investigation under NSHE Handbook Title 4, Chapter 8, Section 14, that investigation shall be used as part of such investigations under this Section. The administrative officer in their discretion, may also supplement the initial investigation with additional investigation. The investigation shall be completed and a charging letter, if any, issued within sixty (60) calendar days after the receipt of the complaint. At a minimum, the charging letter shall contain the information specified in the Code, Subsection 6.8.1, and shall inform the person charged that, although there is no requirement or compulsion to do so, a written reply may be submitted.

(b) The person charged may present a written answer within seven (7) calendar days after receipt of a charging letter.

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

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

(e) A hearing shall be held whenever the president accepts the administrative officer's recommendation to that effect or does not accept a contrary recommendation from the administrative officer. The president shall decide the kind of hearing to be held, as authorized in Subsection 6.8.3 of the Nevada System of Higher Education Code. The president shall make this decision within seven (7) calendar days after receipt of the administrative officer's recommendation. Within the time period set forth in this paragraph, the president shall inform the administrative officer of the president's decision and, if deciding to hold a hearing under Section 6.9 of the Nevada System of Higher Education Code, shall also inform the faculty senate chair of the decision. If the hearing is to be held under Section 6.9 of the Nevada System of Higher Education Code on a charge or charges of sexual harassment under Subsection 6.2.3 of the Nevada System of Higher Education Code, the president shall also inform the president of the appropriate student government within the time period set forth in this paragraph if a student or graduate student is involved in the charge as an alleged victim.

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

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

(a) By a general hearing officer, in an office hearing as provided in Section 6.10 of the Nevada System of Higher Education Code; or

(b) By a special hearing officer and special hearing committee, as provided in Section 6.11 of the Nevada System of Higher Education Code.

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

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

(B/R 6/23)

Section 6.9 Provisions Applicable to Hearings

Section 6.9 does not apply to Section 6.20, Title IX Sexual Harassment

6.9.1 **Applicable Provisions.** The provisions of this section shall be applicable to hearings held pursuant to Sections 6.9 through 6.11 of the Nevada System of Higher Education Code for Non-Title IX Conduct.

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

6.9.3 **Notice.**

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

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

(b) The administrative officer shall be responsible for preparing and delivering notices required by this section. All notices or other documents shall be (1) served by 1st class mail, postage prepaid, and by email, if a current email address is available to the institution; or (2) hand delivered. Notice delivered by mail shall be considered delivered when sent, provided that

three (3) additional calendar days shall be added to the time period set forth for minimum notice. A copy of the applicable disciplinary hearing procedures shall accompany each notice.

6.9.4 Evidence.
Evidence shall be considered if it possesses reasonably probative value, materiality and relevancy as determined by the hearing officer. No evidence other than that received at the hearing shall be considered in the decision. Upon request, the person charged, the person's advisor, if any, and the administrative officer shall have the right to examine, at least five (5) calendar days prior to the hearing during reasonable business hours, any documentary evidence to be presented at the hearing. The parties shall also have the right to present, challenge or rebut evidence and to question or cross-examine witnesses. The findings and recommendation of the Title IX coordinator pursuant to NSHE *Handbook*, Title 4, Chapter 8, Section 14 shall be considered. Formal rules of evidence shall not apply, but irrelevant or unduly repetitious evidence shall be excluded.

6.9.5 Administrative Officer's Duties.
The administrative officer shall marshal and present the evidence against the person charged.

6.9.6 Advisors, Attorneys.

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

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

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

6.9.8 Closed Hearings. The hearing shall be closed unless the person charged requests an open hearing. Only the person charged and one advisor, the administrative officer and one advisor, the person or persons conducting the hearing, a person designated to record a hearing, as may be provided in this chapter, and witnesses while such witnesses are presenting evidence may be present for a closed hearing. When a hearing is held on a charge under Subsection 6.2.1 (dd) through (ii) of the Nevada System of Higher Education Code, the hearing shall be closed unless the victim requests an open hearing. When a hearing is held on a charge made under Subsection 6.2.1 (dd) through (ii) of the

Nevada System of Higher Education Code, the institution's affirmative action or Title IX coordinator may also be present for a closed hearing, and any person who alleges to be the victim of an act of sexual harassment may have a non-attorney supporter present for a closed hearing during the person's testimony only.

6.9.9 Consolidated Hearings.

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

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

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

6.9.11 Subpoena. The president shall issue subpoenas to compel the attendance of persons and the presentation of documents at all hearings established under this chapter upon the request of the person charged or of the administrative officer. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.

6.9.12 Waiver or Extension of Time.

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

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

(c) Extension of time for hearings shall be authorized by general hearing officers, institutional hearing committee chairs or special hearing officers only upon good and compelling reasons. The possibility or pendency of administrative, civil or criminal proceedings against the person charged is not such a good and compelling reason for extension of time unless the

hearing or trial of such is scheduled for the same date as a hearing to be held under this chapter, or unless it is physically impossible for the person charged, through no fault of that person, to attend a hearing to be held under this chapter.

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

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

(B/R 6/23)

Section 6.10 General Hearing Officer

Section 6.10 does not apply to Section 6.20, Title IX Sexual Harassment

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

6.10.2 **Office Hearings by a General Hearing Officer.** Office hearings by a general hearing officer shall be informal in nature and subject to such procedures as the president may determine. A hearing shall be held and a recommendation made to the president as soon as is reasonably possible, but no later than one hundred eighty (180) calendar days after the filing of the complaint with the administrative officer. Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the general hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration or cancellation of a proposed settlement agreement. When a hearing is held on a charge made under Subsection 6.2.1 (dd) through (ii) of the Nevada System of Higher Education Code, the time cannot be extended unless the victim consents, or if the victim is not participating in the proceedings, best efforts have been made to obtain the consent of the victim.

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

(B/R 6/23)

Section 6.11 Special Hearing Officer and Special Hearing Committee

Section 6.11 does not apply to Section 6.20, Title IX Sexual Harassment

6.11.1 Appointment of Special Hearing Officer.

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

(b) Special hearing officers shall be attorneys who have been members of the State Bar of Nevada for at least five (5) years or who are otherwise qualified by professional experience in presiding at judicial or quasi-judicial adversary proceedings. They will not hold any employment or other contractual relationship with any System institution during the period of their service.

(c) A special hearing officer may be challenged for cause as set forth in Section 6.11.6, but no peremptory challenge shall be allowed.

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

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

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

(c) To recognize witnesses for the purpose of giving testimony during which the special hearing officer may also question witnesses;

(d) To make such rulings on procedure deemed appropriate so long as not inconsistent with the applicable procedures established in this chapter;

(e) To act as general advisor to the special hearing committee, but shall have no voting authority;

(f) To prepare, at the conclusion of the hearing, a written report which shall contain, as to the person charged, the following:

1. Findings of fact as determined by the special hearing officer together with a determination that the person charged did or did not commit the act or acts charged.
2. A finding that the act or acts did or did not constitute one or more of the causes for discipline or suspension or termination for cause established in this Code or other applicable stated prohibition, policy, procedure, rule, regulation or bylaw of a System institution.
3. Such further information as the special hearing officer may consider appropriate.

The special hearing officer's report shall be prepared and submitted to the president, with copies to each member of the special hearing committee, the person charged and the administrative officer, within a reasonable time after the conclusion of the hearing.

6.11.3 Appointment of the Special Hearing Committee.

(a) A faculty-hearing panel, composed of at least 15 faculty members, shall be selected by the Faculty Senate of each System institution. Both academic faculty and administrators shall be eligible to serve. The members of the faculty-hearing panel shall serve one-year terms and upon agreeing to

serve shall commit themselves in writing to serve on a special hearing committee when needed. System institution administrators are obligated by the provisions of this subsection to grant special hearing committee members administrative leave or other assistance necessary to enable them to fulfill their responsibilities as members of special hearing committees. This might require providing teaching assistance from classes or other administrative relief from assigned duties.

(b) Except as provided in subparagraph (c) below, within five (5) calendar days after receipt from the president of notice of the president's decision to hold a hearing under Section 6.11 of the Nevada System of Higher Education Code, the faculty senate chair shall select the names of nine persons from among the faculty hearing panel, the selection to be made by lot, to serve on a special hearing committee and the faculty senate chair, within the time period set forth in this paragraph, shall inform the person charged and the administrative officer of the names of the persons selected.

(c) If a hearing is to be held on a charge or charges of sexual harassment under Subsection 6.2.3 of the Nevada System of Higher Education Code and if a student or graduate student is involved in the charge as an alleged victim, within five (5) calendar days after receipt of notice of the president's decision to hold a hearing under Section 6.8.3 of the Nevada System of Higher Education Code, the Faculty Senate chair shall select the names of eight persons from among the faculty hearing panel, the selection to be made by lot, and the appropriate student government president shall nominate three students, to serve on a special hearing committee and the Faculty Senate chair and the appropriate student government president, within the time period set forth in this paragraph, shall inform the person charged and the administrative officer of the names of the persons selected or nominated.

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

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

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

6.11.5 Hearings to be Recorded. A recording will be made of the hearing and kept in the president's office for at least three (3) years before being destroyed, unless the matter is brought before the courts during which time the recording will be kept until the matter is decided in the courts. Except as provided herein or for purposes of appeal, a recording of a closed hearing shall be confidential. The person charged, on request of and at the charged person's expense may have a copy of such recording. No recording by the person charged or by other persons at the hearing will be permitted. The institution shall, at its expense, provide for a certified court reporter or certified videographer, who shall provide a transcript. A copy of

the transcript and/or video shall also be made available to the person charged upon their written request and at the System institution's expense.

6.11.6 Challenges.

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

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

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

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

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

1. In the case of a hearing to be held to hear a charge of sexual harassment under Subsection 6.2.3 of the Nevada System of Higher Education Code in which a student or graduate student is an alleged victim, no more than two members of the faculty hearing panel selected by lot and no more than one student government nominee without cause;
2. In all other cases, no more than two members of the faculty hearing panel selected by lot without cause.

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

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

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

6.11.7 **Hearing and Recommendation.** A hearing shall be held and a recommendation made to the president no later than one hundred eighty (180) calendar days after the filing of the complaint with the administrative officer. Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the special hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration of or cancellation of a proposed settlement agreement. When a hearing is held on a charge made under Subsection 6.2.1 (dd) through (ii) of the Nevada System of Higher Education Code, the time cannot be extended without the consent of the victim.

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

(a) The complaint is filed.

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

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

(d) Within seven (7) calendar days after receipt of the administrative officer's recommendation, the president makes a decision on whether to hold a hearing or not and informs the administrative officer and Faculty Senate chair of the decision (see Section 6.8.2(e)).

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

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

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

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

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

(j) Within one hundred eighty (180) calendar days after the filing of the complaint with the administrative officer, the hearing shall be held and a recommendation made to the president for action. Upon agreement of the administrative officer and the person charged, an additional ninety (90) calendar day extension shall be granted by the special hearing officer if the person charged has the right under the Older Workers Benefits Protection Act to a time period for consideration or cancellation of a proposed settlement agreement. When a hearing is held on a charge made under Subsection 6.2.1 (dd) through (ii) of the Nevada system of Higher Education Code, the time cannot be extended unless the victim consents, or if the victim is not participating in the proceedings, best efforts have been made to obtain the consent of the victim.

(B/R 6/23)

Section 6.12 President's Decision

Section 6.12 does not apply to Section 6.20, Title IX Sexual Harassment

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

(a) Dismiss the charge;

(b) Affirm the recommended sanction;

(c) Impose a lesser sanction than recommended;

(d) Impose a greater sanction than recommended; or

(e) Order a new hearing.

6.12.2 Decision and Notification. The president shall reach a written decision within a reasonable time after receipt of findings of fact and recommendations from the general hearing officer or institutional hearing committee or after receipt of reports and recommendations from the special hearing officer and the special hearing committee. The president shall notify the person charged and the administrative officer of the decision. If the action taken is reduction in pay, suspension, or

termination, the person charged shall either be notified by personal delivery of the decision or shall be notified by U.S. Mail, hand-delivery or by e-mail to the person's NSHE or institution e-mail address. The decision is deemed received upon hand-delivery, or as of the day it is mailed or e-mailed. If there is no appeal, the president's decision is final.

(B/R 6/23)

Section 6.13 Appeals

Section 6.13 does not apply to Section 6.20, Title IX Sexual Harassment

6.13.1 Requirements for Appeals.

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

(b) The appeal must include facts that reasonably establish one or more of the following grounds for appeal, which are the only grounds for appeal:

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

6.13.2 Decision on Appeal.

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

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

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

(c) The president or the Chair of the Board of Regents, as the case may be, may request a personal appearance of the person charged if the president or the Chair of the Board of Regents, as the case may be, is of the opinion that justice will be served by such appearance. The appearance of the person charged shall be limited to the issues raised by the appeal as

provided in Subsection 6.13.1 of the Nevada System of Higher Education Code. The person charged must be informed that an appearance is not compulsory and a nonappearance will not prejudice the appeal.

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

1. Dismiss the charge;
2. Affirm the charge;
3. Impose a lesser sanction; or
4. Order a new hearing.

(B/R 6/23)

Section 6.14 Records

Section 6.14 does not apply to Section 6.20, Title IX Sexual Harassment

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

(B/R 6/23)

Section 6.15 Dismissed Charges

Section 6.15 does not apply to Section 6.20, Title IX Sexual Harassment

Whenever charges against a person are dismissed, all documents relating to the case will be deposited with the institution's provost or the chief academic officer where they shall be retained for a period of 7 years from the date of the dismissal, at which time they will be handled in accordance with the record retention schedule.

(B/R 6/23)

Section 6.16 Classified Employees and Research Technologists

Section 6.16 does not apply to Section 6.20, Title IX Sexual Harassment

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

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

(B/R 6/23)

Section 6.17 Lie Detector Tests

Section 6.17 does not apply to Section 6.20, Title IX Sexual Harassment

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

(B/R 6/23)

Section 6.18 Applicability to Others

Section 6.18 does not apply to Section 6.20, Title IX Sexual Harassment

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

(B/R 6/23)

Section 6.19 Resignations During Ongoing Investigations, Hearings, and Appeals

Section 6.19 does not apply to Section 6.20, Title IX Sexual Harassment

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

(a) The provisions of NSHE Code Subsection 5.15.1 Resignations/Leave shall not apply. The resignation need not be accepted by the appointing authority (or designee), and shall be effective immediately. Unless otherwise mandated by law, the person submitting the resignation shall not be permitted to revoke the resignation under any circumstances.

(b) The pending investigation, hearing, or appeal under this chapter shall immediately cease.

(c) In cases involving unlawful discrimination or harassment, the Title IX coordinator shall take appropriate action, which may include completing the investigation to the extent reasonably practicable, in order to prevent the reoccurrence of and to remedy the effects of the alleged misconduct.

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

(B/R 6/23)

Section 6.20 Procedures Required When Title IX Sexual Harassment is Alleged

As stated in Section 6.1.1, procedures required for allegations of sexual harassment under Title IX, including allegations of sexual assault, dating violence, domestic violence, and stalking, are set forth in Section 6.20. In the event allegations of misconduct include allegations of Title IX sexual harassment as well as allegations of other misconduct, all the allegations will be handled in accordance with the provisions of Section 6.20.

6.20.1 Definitions.

(a) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(b) "Respondent" means an individual who has been reported be the individual engaging in conduct that could constitute sexual harassment.

(c) "Reporting Party" means any person who reports sexual harassment or conduct that could constitute sexual harassment, whether or not the person reporting is the person alleged to be the victim.

(d) "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment.

(e) "Institution" means any and all of NSHE's eight (8) institutions, including the College of Southern Nevada; the Desert Research Institute; Great Basin College; Nevada State University; Truckee Meadows Community College; the University of Nevada, Las Vegas; the University of Nevada, Reno; and Western Nevada College, and NSHE's System Administration offices.

6.20.2 Response to Sexual Harassment. The institution shall investigate complaints of Title IX sexual harassment in accordance with Board of Regents *Handbook* Title 4, Chapter 8, Section 14 (D).

6.20.3 Response to a Formal Complaint.

(a) In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with *Handbook* Title 4, Chapter 8, Section 14 D. 6. With or without a formal complaint, an institution must comply with *Handbook* Title 4, Chapter 8, Section 14 D. 3.

(b) Nothing in this Subsection precludes an institution from removing a respondent from the institution's education program or activity on an emergency basis, provided that the institution undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal, pursuant to the general hearing process of Code Section 6.10. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

(c) An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a complaint process involves more than one complainant or more than one respondent, references in this Section to the singular "party," "complainant," or "respondent" include the plural, as applicable. The Title IX Hearing Officer shall make decisions regarding consolidation.

6.20.4 Complaint Procedures. The Complaint Procedures are set forth in Board of Regents *Handbook* Title 4, Chapter 8, Section 14 D (6) and are incorporated here as though fully set forth and shall be followed.

6.20.5 Dismissal of Formal Complaint.

(a) If the conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in Code Section 6.2.1(jj) even if proved, did not occur in the institution's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator shall dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. Such a dismissal does not preclude action under another provision of Code Chapter 6.

(b) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

(c) A complainant notifies the Title IX Coordinator or Title IX Investigator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

(d) The respondent is no longer employed by the institution; or

(e) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(f) Upon a dismissal required or permitted pursuant to 6.20.5 (a) and (b) the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

6.20.6 Investigation of a Formal Complaint.

(a) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties, provided that the institution cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the institution obtains that party's voluntary, written consent to do so for a complaint process under this Section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the institution must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).

(b) The Title IX Office shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

(c) The Title IX Office will avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

(d) The Title IX Office will provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or complaint proceeding. However, an institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties.

(e) The Title IX Office shall provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

(f) The Title IX Office shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;

(g) Prior to completion of the investigative report, the Title IX Office shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The Title IX Office must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(h) The Title IX Office shall create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing (if a hearing is required under this Section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Each party's written response, if any, shall be submitted to the investigator at least three (3) days prior to the Title IX live hearing.

6.20.7 Title IX Live Hearing.

(a) The hearing procedures are set forth in Board of Regents' *Handbook* Title 4, Chapter 8, Section 14 D. (9) and are incorporated here as though fully set forth and shall be followed.

(b) Following the completion of the investigation under subsection 6.20.6 above and the receipt by the Title IX Investigator of the written responses of the parties to the investigative report, if any, the institution shall hold a Title IX live hearing.

(c) The Title IX live hearing must be presided over by a hearing officer, who throughout Section 6.20 will be identified as the Title IX Hearing Officer. The Title IX Hearing Officer cannot be the same person as the Title IX Coordinator or the Title IX investigator(s). The Title IX Hearing Officer will be appointed by the President or designee and in consultation with the NSHE Chief General Counsel. The President or designee's appointment of the Title IX hearing officer shall be made in writing and a copy of which shall be provided to the parties within three (3) days of the appointment accompanied with a statement informing them of their right to challenge the hearing officer within seven (7) calendar days based on conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent at the time the party knew or should have known of such conflict of interest or bias.

(d) All parties should identify and be accompanied by an advisor, who may, but is not required to be an attorney. If a party does not have an advisor present at the Title IX live hearing, the Title IX Hearing Office must provide, without fee or charge to that party, an advisor of the institution's choice, who shall not be an attorney, to conduct cross-examination on behalf of that party. Such advisors need not be provided with specialized training because the essential function of such an advisor provided by the institution is not to "represent" a party but rather to relay the party's cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing.

(e) The Title IX Hearing Officer must make all evidence available to the parties at the Title IX live hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(f) The Title IX live hearing may be conducted with all parties physically present in the same geographic location or, at the Title IX Hearing Officer's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. At the request of either party, the Title IX Hearing Officer must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Title IX Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.

(g) At the live hearing, the Title IX Hearing Officer must permit each party's advisor during cross examination to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the institution provided under subsection (f) above of this Section to otherwise restrict the extent to which advisors may participate in the proceedings.

(h) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Title IX Hearing Officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. For the purposes of this Section, "relevant" means a question or evidence having any tendency to make the existence of any fact that is of consequence to the determination of the

action more or less probable than it would be without the question or evidence. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(i) If a party or witness does not submit to cross-examination at the live hearing, to the extent permitted by law and not otherwise subject to exclusion under this policy, the hearing officer may consider those statements of a person who was not present at the hearing, or a person who was present at the hearing but who was not subject to cross examination if the statement is deemed reliable and relevant by the hearing officer. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, emails, social media postings, and the like. The hearing officer(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

(j) Institutions must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Nothing in this Subsection shall be construed to impair rights under the U.S. Constitution, including but not limited to the Fifth Amendment, or privileges recognized by statute or common law.

20.6.8 Notice.

(a) No less than (10) ten calendar days prior to the hearing, the Title IX Hearing Officer shall provide the parties written notice of the hearing, that:

1. Provides the date, time and place of the hearing;
2. Provides the investigative report that fairly summarizes relevant evidence in an electronic format or a hard copy, for their review and written response;
3. Informs each party that their written response, if any, must be submitted to the Title IX Investigator at least (3) three calendar days prior to the live hearing;
4. Specifies the misconduct charged by citing the applicable provision of the Nevada System of Higher Education Code or the applicable stated policy, prohibition, procedure, rule, regulation or bylaw of a System institution which has been alleged to have been violated, and the disciplinary sanctions that may be imposed as stated in 6.3;
5. Specifies that a party or alleged victim may identify an advisor prior to the commencement of a live hearing. The identified advisor is not required to be an attorney but may be an attorney. The essential function of the identified advisor is to relay the party's cross examination questions that the party wishes to have asked of the other party or witnesses so that the parties never personally question or confront each other during a live hearing. If a party does not have an identified advisor present at the live hearing, the

institution must provide, without fee or charge to that party, an appointed advisor of the institution's choice, who shall not be an attorney, to conduct cross-examination on behalf of that party. Such appointed advisors need not be provided with specialized training because the essential function of such an advisor provided by the institution is not to "represent" a party but rather to relay the party's cross-examination questions that the party wishes to have asked of other parties or witnesses so that parties never personally question or confront each other during a live hearing; While the identified advisor may give counsel to the party neither the identified or appointed advisor may appear in place of the party, or actively participate in the hearing, nor actively speak in the hearing, except for cross-examination.

6. Notifies the person charged that they should inform the Title IX Hearing Officer of the name and contact information of the identified advisor at least (3) three days prior to the hearing.
7. Provides such other information as the Title IX Hearing Officer may wish to include.

(b) The Title IX Hearing Officer shall be responsible for preparing and delivering notices required by this section. All notices or other documents shall be (1) served by 1st class mail, postage prepaid, and by email, if a current email address is available to the institution; or (2) hand delivered. Notice delivered by mail shall be considered delivered when sent, provided that three (3) additional calendar days shall be added to the time period set forth for minimum notice.

A copy of the applicable disciplinary hearing procedures shall accompany each notice.

6.20.9. Determination Regarding Responsibility.

(a) The Title IX Hearing Officer, or hearing officer(s) as appropriate, must issue a written determination regarding responsibility under the preponderance of the evidence standard within fourteen (14) calendar days of the live hearing.

(b) The written determination must include:

(c) Identification of the allegations potentially constituting sexual harassment as defined in Subsection 6.2.1(jj);

(d) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(e) Findings of fact supporting the determination;

(f) Conclusions regarding the application of the institution's Chapter 6 prohibited activities;

(g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the institution imposes on the respondent, and whether remedies designed to restore or preserve equal access to the institution's education program or activity will be provided by the institution to the complainant; and

(h) The institution's procedures and permissible bases for the complainant and respondent to appeal.

(i) The institution must provide the written determination regarding responsibility to the parties simultaneously. The written determination becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

6.20.10 Appeals.

(a) Within five (5) calendar days, any party may file a written appeal from a determination regarding responsibility, and from an institution's dismissal of a formal complaint or any allegations therein, with the Institution's Title IX Office on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or hearing officer(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or
4. Any additional basis offered by an institution.

(b) As to all appeals under Section 6.20:

1. The president shall appoint a decision-maker for the appeal who does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and who is not the same person as the hearing officer who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
2. The institution shall ensure that the decision-maker(s) for the appeal:
3. Receives training on the definition of sexual harassment in Subsection 6.2.1(jj), the scope of the institution's education program or activity, how to conduct an investigation and complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
4. Receives training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in 6.20.7(h);
5. Receives training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in in 6.20.6(h); and

6. Uses training materials that do not rely on sex stereotypes.

(c) The Institution's Title IX office shall immediately notify the other party in writing when an appeal is filed;

(d) The institution must give all parties an equal opportunity to submit a written statement in support of, or challenging, the outcome within five (5) calendar days of the outcome;

(e) The review on appeal is limited to the record, except in appeals based on newly discovered evidence that could affect the outcome of the matter and that was not reasonably available at the time the determination regarding responsibility or dismissal was made. In such appeals, newly discovered evidence may be considered on appeal notwithstanding its absence from the record.

(f) The decisionmaker for the appeal shall issue a written decision within five (5) calendar days of receiving a written statement in support of, or challenging, the outcome describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to all parties. This decision is final.

6.20.11 Informal Resolution.

(a) If a formal complaint of sexual harassment is filed, and at any time prior to reaching a determination regarding responsibility, an institution may offer the parties the option of informal resolution and may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the institution:

1. Provides to the parties a written notice disclosing the allegations; setting forth the requirements of the informal resolution process, including the circumstances under which its agreed upon resolution precludes the parties from resuming a formal complaint arising from the same allegations; and explaining that any statements made or documentation or information provided by a party during the informal resolution process shall not be used or relied upon in a subsequent complaint process or live hearing without the permission of the party who made the statement or provided the documentation or information;
2. Obtains the parties' voluntary, informed written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

(b) Institutions must provide the parties with a written notice explaining that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the complaint process with respect to the formal complaint, and withdraw from any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

(c) An institution shall not require the parties to participate in an informal resolution process for any reason, and shall not require waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this Section as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right.

(d) An individual serving as a facilitator of an informal resolution process shall not be the Title IX Coordinator, Title IX investigator, Title IX hearing officer, witness, or other institutional employee that has a duty to disclose allegations of sexual harassment to the institution.

6.20.12 Recordkeeping.

An institution must maintain for a period of at least seven (7) years records of:

(a) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;

(b) Any appeal and the result therefrom;

(c) Any informal resolution and the result therefrom.

6.20.13 Administrative Leave.

The president of each System institution may order any faculty member to be placed on administrative leave for the interim period pending a Title IX investigation and/or live hearing whenever the president determines that administrative leave is required in order:

(a) To protect life, limb or property;

(b) To ensure the maintenance of order; or

(c) To remove a person from the Nevada System of Higher Education community when an act of Title IX sexual harassment has been alleged against such person and the accuser or the accused person cannot be assigned to other duties or classes or placed elsewhere in the System institution apart from each other pending the completion of an investigation and/or live hearing under Section 6.20.

6.20.14 Hearing. Any person placed on such administrative leave shall be afforded an opportunity for a hearing with respect to the issue of the leave. The hearing on the administrative leave will be held no later than twelve (12) calendar days of the leave, unless the person placed on leave agrees to delay the hearing to a later time. The hearing shall be held under the hearing procedures established in Section 6.9, so far as can be made applicable, and by a general hearing officer as established in Section 6.10. The president's decision upon the hearing officer's recommendation shall be final. The issue shall be limited to whether the administrative leave of the individual involved should continue pending the completion of an investigation and/or live hearing under Section 6.20.

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

6.20.16 Administrative Leave Officer's Duties. The administrative leave officer, as established in Section 6.20.18, shall be responsible for presenting evidence that the administrative leave, withdrawal of consent to remain on System premises, or both, should continue pending the completion of an investigation and/or live hearing under Section 6.20.

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

6.20.18 Administrative Officer.

6.20.18.1 Appointment of Administrative Leave Officer.

(a) The president of each System institution shall appoint, on either an ad hoc or a continuing basis, a person who shall have the authority to perform the duties established for the administrative leave officer in this section 6.20. The president may assign either a staff member of the System institution, or alternatively, may engage the services of an attorney who has been a member of the State Bar of Nevada at least five years or who is otherwise qualified by professional experience in administrative law. The person so assigned to these duties shall serve in this assignment at the pleasure of the president.

(b) It is the intent of the Board that this position shall not be used to create the basis for an on-campus staff attorney appointment that will report directly or indirectly to the institutional president. The person appointed to perform the duties of administrative leave officer shall not represent the System institution nor engage in the practice of law on behalf of the System institution, including, but not limited to, the rendering of legal advice or opinions.

6.20.18.2 Combined Duties. The president may combine the duties of the administrative leave officer with those of any other person employed by the System institution, but may not combine such administrative leave officer duties with those performed by Title IX coordinator, Title IX hearing officers, hearing officers, or hearing committee members under the procedures of this chapter.

6.20.19 Independent Advisor, Attorney.

(a) The person who has been placed on administrative leave may be accompanied by one independent advisor of the person's choice, who may represent and advise the person and may present the evidence on the person's behalf at the hearing held pursuant to Code section 6.20.14. The person who has been placed on administrative leave must give written notice of the name and address of the independent advisor, and whether the independent advisor is an attorney, to the administrative leave officer no later than seven (7) calendar days before the time set for the administrative leave hearing. An independent advisor will not be permitted at the administrative leave hearing without such notice.

(b) Should a person who has been placed on administrative leave advise that the person will be accompanied by an attorney as an independent advisor, the administrative leave officer shall advise the General Counsel for the System institution where the person is employed, or if the

person is employed by the System, shall advise the NSHE Chief General Counsel so that an attorney will be present at the hearing to represent and advise the administrative leave officer and to present the evidence on behalf of the administrative leave officer.

(B/R 6/23)