

**BOARD OF REGENTS
BRIEFING PAPER**

Agenda Item Title: Proposed Amendments to the Board of Regents Code, Title 2, Chapter 5, Section 5.6.2 Regarding Confidentiality of Personnel, Payroll and Retirement Records

Meeting Date: June 5-6, 2014

1. BACKGROUND & POLICY CONTEXT OF ISSUE:

Vice Chancellor for Legal Affairs Brooke Nielsen recommends that Section 5.6.2 of the Code be amended to clarify that:

- Retirement information and records of NSHE professional staff are confidential;
- Both System *and institution legal counsel* have access personnel, payroll and retirement information of employees.
- The word “also” is added to the second sentence of Section 5.6.2 to indicate that the categories of employees listed are in addition to the general category of “professional employees” who are subject to the policy.

The current language in Section 5.6.2 provides only that “personnel and payroll files” are confidential. The proposed amendment will make it clear that retirement information and records are also confidential. The current language of Section 5.6.2 lists those individuals who have access to confidential information in the course of their official duties but does not specifically refer to institution legal counsel.

2. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

The Board of Regents is requested to approve the attached proposed amendment to Section 5.6.2 of the Code to clarify that: personnel, payroll *and* retirement information and records of NSHE professional staff are confidential; institution legal counsel may have access to such information; and all the categories of employees listed are subject to the policy.

3. IMPETUS (WHY NOW?):

In light of amendments to the Nevada Public Records law in the 2013 Legislative session and a recent Supreme Court decision, greater specificity regarding the confidentiality of the personal employee information is strongly advised. The policy should also clearly allow access to such confidential information to institution legal counsel in the performance of their official duties.

4. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The current language in the Code makes personnel and payroll files of professional employees confidential, but it does not specify that retirement information and records are confidential.
- The concern has been raised that in the absence of a specific reference to retirement information and records in the Code provision, such information may be considered public.
- Under Nevada’s Public Records law, NRS 239.010, all records are deemed to be public “unless otherwise declared by law to be confidential.”
- The Board of Regents’ Code has the force and effect of law.
- Retirement information and records may include such personal matters as

designation of beneficiaries, rollover requests and retirement plan selections.

- Retirement information regarding NSHE employees has long been considered to be private and sensitive information that is confidential personnel information.
- This proposed amendment is especially appropriate in light of the Nevada Supreme Court decision in *PERS v. Reno Newspapers, Inc.*, which narrowly interpreted a state statute making information in state retirement member files confidential.
- The amendment is also important in light of that decision to clarify that personnel, payroll and retirement information and records are confidential wherever that information is maintained within NSHE. Such confidential information is not maintained in a single “file,” but rather can be found in both paper and in electronic form in various offices with responsibility for employee services and supervision (e.g., human resources, administrators, business centers, and benefits managers).
- The proposed amendment will help ensure that the information and records remain confidential.
- Section 5.6.2 should specify that “institution legal counsel” are included in the list of persons who are authorized to have access to personnel, payroll and retirement information and records for “reasons germane to the performance of their official duties.”
- The word “also” is added to the second sentence to clarify that the policy applies to the listed categories of employees and professional employees of NSHE.

5. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- The NHSE Code currently makes “personnel and payroll files” confidential.
- This is sufficient to protect confidential retirement information.
- The language of Section 5.6.2 is sufficiently clear without amendment.

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

- Do not adopt the proposed amendments to Section 5.6.2.

7. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title #_ Chapter #_ Section #____
- Amends Current Board Policy: Title # 2 , Ch. 5 , Sec. 5.6.2.
Current Procedures & Guidelines Manual: Chapter #____ Section #____
Other:
- Fiscal Impact: Yes _____ No X _____
Explain: _

PROPOSED REVISIONS – Board of Regents HANDBOOK
TITLE 2, CODE
Chapter 5, Section 5.6

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

Section 5.6 Faculty Benefits

5.6.1 The Board of Regents, with the consultation of the officers of the System and the senates, may adopt such policies concerning fringe benefits for faculty as are considered appropriate. These may include, but are not limited to, policies concerning annual leave, sick leave, sabbatical leave, consulting services, retirement, insurance, tax-sheltered annuities and grants-in-aid. These policy statements shall be codified as provided by the Board of Regents' Bylaws, and it shall be the responsibility of each president to include such policy statements, or a summary thereof, in the administrative manual or faculty handbook of the member institution or special unit. Failure to include such policy statements or summary in an administrative manual or faculty handbook shall not inure to the benefit of a faculty member.

5.6.2 Personnel, [~~and~~] payroll *and retirement information and records* [~~files~~] of NSHE professional staff are confidential. Personnel, [~~and~~] payroll *and retirement information and records* may only be released pursuant to the written authorization of the professional staff member or pursuant to a court order directing the release of the records that has been signed by a judge with jurisdiction over the matter, or to the U.S. Equal Employment Opportunity Commission, the Nevada Equal Rights Commission, or the U.S. Office of Civil Rights. The provisions of Title 2, Chapter 5, Sections 5.6.2 and 5.6.3 *also* apply to letters of appointment, graduate assistants, graduate assistant-specials, resident physicians, resident dentists, postdoctoral fellows, and student employees.

(a) The professional staff member shall have access to his or her official personnel, [~~and~~] payroll *and retirement information and records* [~~files~~], and the professional staff member may grant access to such files to a representative with a written authorization from the staff member. The following additional personnel shall have access to a professional staff member's personnel, [~~and~~] payroll *and retirement information and records* [~~files~~] solely for reasons germane to the performance of their official duties: the staff member's supervisors, which may include a departmental chair, dean, director, vice-president, provost, president, and chancellor; institution payroll officers; institution personnel officers, which may include appointed disciplinary officers; System *and institution* legal counsel; internal auditors; members of the Board of Regents; faculty senate chair; and confidential institution committees including but not limited to tenure and grievance committees.

(b) The following information in these personnel, *payroll and retirement records* [~~files~~] is public information and must be disclosed to the public upon request: the employee's name, title, job description, compensation and perquisites, business address and business telephone numbers, beginning date of employment and ending date of employment, educational background and work history.

(c) Confidential information in a personnel, [~~or~~] payroll, *or retirement record* [~~file~~] that is related to an investigation or disciplinary process concerning allegations of research misconduct may be released to a granting or contracting agency or other entity, in order to comply with any state or federal law or regulation or to comply with a term or condition of the grant of contract. In the

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

5.6.3 Except as otherwise provided in this section, any information contained in employment application materials (e.g. letters of interest, curriculum vitae, application, employment and educational records, publications or work samples) submitted for consideration of employment within NSHE are confidential, except the position of chancellor, during search processes until such time as a candidate accepts employment within NSHE. During search processes, such documents can only be released pursuant to the written authorization of the prospective professional staff member or a court order directing the release of the records that has been signed by a judge with jurisdiction over the matter. Applications may be shared by NSHE institutions for the purpose of employee recruitment with the permission of the applicant. **Following** ~~Upon~~ acceptance of an employment offer, information contained in the application materials as **identified** ~~stated~~ in 5.6.2 (b) shall **be disclosed to the public upon request** ~~become public records~~.