

TITLE 2 - Nevada System of Higher Education CODE

CHAPTER 8

**RULES AND DISCIPLINARY PROCEDURES FOR MEMBERS OF
THE DESERT RESEARCH INSTITUTE (DRI)**

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Section 8.1 Scope of the Chapter

Desert Research Institute (DRI) expects good standards of conduct and work performance from all employees and these standards will be enforced in a just and systematic way. Employees should have a fair opportunity to remedy problems of conduct or performance. To this end, should an employee fail to meet the DRI's required standards, the following procedure is outlined and is approved by Nevada System of Higher Education (NSHE) Board of Regents for DRI. All matters relating to the disciplinary procedure are strictly confidential to the parties and their representatives involved and a breach of this confidentiality may in itself result in disciplinary action.

The president of DRI shall exercise authority in disciplinary actions in accordance with the procedures established below and with other laws and regulations as applicable. All determinations and recommendations go to the president who shall have the final decision making authority. The president or the president's designee shall make the designation of an administrative officer. The function of the president may be delegated by the president to individual designees who are members of the staff of NSHE and such designees shall exercise these functions in the president's name.

Section 8.2 Informal Discipline (Counseling – Informal Discussion)

Counseling consists of an informal discussion between an employee and his or her supervisor regarding problems with the employee's work performance or conduct. Counseling should consist of a private discussion to define a desired course of action to improve the employee's performance or behavior and identify the supervisor's expectation for the employee. The counseling session is documented in a written memo to the employee that identifies the expected actions, and a copy of the memo should be retained in the supervisor's files and not the employee's personnel file. The employee may be referred to the Employee Assistance Program (EAP) at this time if the issue can best be addressed by the EAP.

Section 8.3 Cause

The objective of this procedure is to ensure consistent and equitable treatment of an employee who is liable to disciplinary action. At every stage in the procedure the employee will be advised of the nature of the complaint and will be provided with all relevant information and the potential scope of the disciplinary action. A supervisor may stop the disciplinary action at any stage with documentation that satisfactory conduct or performance has been achieved.

Disciplinary action should primarily be corrective and provide the employee with the opportunity where necessary to improve conduct and/or job performance to a standard acceptable by DRI. Disciplinary action is appropriate when an employee fails to meet satisfactory standards with regard to the prohibited activity listed in NSHE Code, Subsections 8.3.1, 8.3.2, 8.3.3 and 8.3.4.

8.3.1 Prohibited Activity. The following conduct or performance, being incompatible with the purposes of an academic community, is prohibited for all employees of the DRI, shall constitute cause for discipline and may lead to the procedures and disciplinary sanctions established in this chapter of the NSHE Code.

- (a) Failure to perform the duties for which the employee is employed (lack of funding is not considered a prohibited activity).
- (b) Failure to maintain a required level of performance as indicated by a rating of unsatisfactory.
- (c) Incompetence or inefficiency in performing the duties of the employee's position.
- (d) Insubordination.
- (e) Falsification of employment applications or documents submitted to the DRI, 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* (284.406), while on duty, due consideration being given to NRS 284.379. In compliance with the Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, dispensing, possession or use of controlled substances is prohibited in the work place.
- (i) Unauthorized absence from duty or abuse of leave privileges.
- (j) Personal or professional conduct which shows that the employee is unfit to remain in his or her position or which has an ascertainable harmful or adverse effect on the efficiency of his or her research or administrative unit.

8.3.2 Additional Prohibited Activity. The following conduct, being incompatible with the purposes of DRI, is prohibited for all employees of the DRI. This prohibited conduct shall constitute cause for discipline and may lead to the procedures and disciplinary sanctions established in this chapter of the NSHE Code.

- (a) Commission of any of the acts specified in Subsection 2.1.4 of the NSHE Code.
- (b) The use of, or threat to use, force or violence against any member or guest of the System community, except when lawfully permissible.
- (c) Interference by force, threat or duress with the lawful freedom of movement of persons or vehicles on the premises of the System.
- (d) 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.
- (e) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of or on premises occupied by, the System.
- (f) 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.
- (g) 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.
- (h) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the NSHE.

- (i) 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 NSHE Code or under any applicable established grievance procedures in the System.
- (j) 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.
- (k) Willful incitement of persons to commit any of the acts herein prohibited.
- (l) Disorderly, lewd or indecent conduct occurring on System premises or at a System sponsored function on or off such premises.
- (m) 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.
- (n) The use of threats of violence against an employee or the employee's family in order to secure preferential treatment for grades, loans, employment or other service or privilege accorded by the System.
- (o) Any act of unlawful discrimination based on race, creed, color, gender (including pregnancy related conditions), age, disability whether actual or perceived by others, military status or military obligation, 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.
- (p) Sexual harassment, defined as unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual or gender bias nature constitute sexual harassment when:
 - 1. Educational Environment:
 - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic status ("quid pro quo"); or
 - b. Conduct that is sufficiently severe, persistent or pervasive so as to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by the institution ("hostile environment").
 - 2. Workplace Environment:
 - a. Submission to or rejection of the conduct is used as a basis for academic or employment decisions or evaluations, or permission to participate in an activity ("quid pro quo"); or
 - b. Conduct that is sufficiently severe, persistent or pervasive so as to create a work environment that a reasonable person would consider intimidating, hostile or abusive, and which may or may not interfere with the employee's job performance ("hostile environment").

Sexual harassment includes sexual violence, sexual assault, dating violence, domestic violence, stalking and coercion or similar acts in violation of state or federal law.

- (q) Acts of academic dishonesty, including but not limited to cheating, plagiarism, falsifying research data or results, or assisting others to do the same.
- (r) Willfully destroying, damaging, tampering, altering, stealing, misappropriating, or using without permission any system, program or file of the NSHE.

(s) 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.

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

(u) 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.

(v) 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.
- (w) 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.
- (x) 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.
- 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 wrongfully 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.

8.3.3 Mental or Physical Incapacity. The inability or incapacity to perform the duties for which the faculty member or employee is employed due to mental or physical reasons may lead to suspension or termination of employment as provided in Subsection 8.4.5 in this Chapter, due consideration being given to the provisions of NRS 284.379.

8.3.4 Sexual Harassment.

- (a) The Board of Regents deems the sexual harassment of students and employees to be unacceptable and prohibited. The Board of Regents policy against sexual harassment is set forth in Title 4, Chapter 8, Section 13.
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) An alleged victim of sexual harassment shall have the opportunity to select an independent advisor for assistance, support and advice. The alleged victim shall be advised at the beginning of the complaint process that he or she may select an independent advisor and it shall become the choice of the alleged victim to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the alleged victim. The institutional affirmative action officer or the administrative officer shall advise the alleged victim of this right. The means and manner by which an independent advisor shall be made available shall be determined by each institution or unit.
- (c) Interim measures as described in NSHE *Handbook*, Title 4, Chapter 8, Section 13, except for administrative leave, may be implemented without a hearing and are not subject to grievance procedures. Interim measures remain in force throughout the disciplinary process and may be made permanent if they are necessary to prevent the reoccurrence of sexual harassment.

(B/R 3/16)

Section 8.4 Formal Discipline

Disciplinary action will normally follow the progressive stages. All decisions shall be based upon a preponderance of the evidence (i.e., evidence which establishes that it is more likely than not that the employee violated the rules of conduct). The president of DRI will determine if a misconduct or failure to perform is serious enough to warrant eliminating one or more stages.

Formal disciplinary procedures normally follows five stages:

- Stage 1 - Formal Verbal Warning
- Stage 2 - Written Warning
- Stage 3 - Final Written Warning
- Stage 4 - Review
- Stage 5 - Appeal and Disciplinary Action

8.4.1 Administrative Leave. In certain cases where serious allegations have been made, including cases of gross misconduct, administrative leave may be imposed pending an investigation. Administrative leave is defined as leave for an interim period pending a disciplinary review whenever the president determines that administrative leave is required in order to 1) protect, life, limb, or property, 2) ensure the maintenance of order, or 3) remove a person from NSHE when an act of sexual harassment has been alleged against such a person and the accuser or the accused person cannot be assigned to other duties apart from each other pending the completion of an investigation and or disciplinary review into the allegation. During administrative leave an employee maintains his or her full salary and benefits but is not permitted on DRI property and has no job responsibilities.

8.4.2 Stage 1 Formal Verbal Warning. An employee will receive a formal verbal warning if the employee fails to respond to earlier informal discipline. At a private meeting with the employee, the supervisor will advise the employee that he or she is being given a formal verbal warning, a record of which will be put in the employee's personnel file. The warning shall include all documents and records to support the disciplinary action

The employee will also be told the improvement required and when the conduct or performance will be reviewed which in no case will be less than 20 working days. This warning will be confirmed in writing and a copy of the warning will be placed in the employee's personnel file. The employee may write a written response to this warning if he or she does not agree, which will also be placed in the employee's personnel file. All written material through stage 3, including the employee responses will be placed in the employee's personnel file.

The employee may request mediation within five working days of a verbal warning. The president will select the mediator and the meeting(s) and final resolution will be completed and reported in 10 working days. If both the employee and supervisor accept the mediator's recommendations the subsequent stages will be terminated. If either one does not accept the recommendations the procedure will continue. The mediation process will run concurrent with 20 working days for the next review.

8.4.3 Stage 2 Written Warning. If an employee does not sufficiently improve in the described period of time after the formal verbal warning, a written warning will be issued. Disciplinary warnings should specify standards required and/or the extent to which performance or conduct falls short, and as far as possible detail the remedies required to rectify the situation and the likely consequences if the required improvement is not forthcoming. The employee may write a response to this written warning if he or she does not agree. The employee will be told that a first written warning is being given, and that a copy of the warning will be retained in the employee's personnel file. The written warning will specify how the employee must improve and establish a time period which in no case will be less than 20 working days) when the conduct or performance will be reviewed. Depending on the nature and seriousness of the offence involved, a first written warning may be given where no previous verbal warning has been given pursuant to Section 8.4.

8.4.4 Stage 3 Final Written Warning. If, following a first written warning, an employee persists in not improving conduct or performance, the director of Human Resources and the supervisor will meet with the employee to review the increasingly serious nature of the situation, and to advise the employee that a final written warning will be issued. A copy of the warning will be retained in the employee's personnel file. The employee may write a response to this final written warning if he or she does not agree. The employee will be told that a final written warning is being issued which will indicate the improvement required and establish a time period which will in no case be less than 20 working days when the conduct or performance will be reviewed. The employee will be advised that failure to improve his or her conduct or performance may result in disciplinary sanctions up to and including termination. In more serious cases where no verbal or written warnings have previously been given, a final written warning may be issued pursuant to Section 8.4.

If required improvement in conduct or performance is not accomplished within the established time period then an investigation of the factual basis for the final written warning will be conducted to review the documents and records which support the disciplinary action and the actions to date. An administrative officer chosen by the president will conduct the investigation into the action. The employee may object to the choice of the administrative officer if a reasonable basis to believe a bias or conflict exists. The administrative officer shall investigate all material for the purposes of clarifying the facts and positions taken by the employee and the supervisor. The investigation shall be completed within 10 working days of the issuance of the charge to the administrative officer. The administrative officer shall make a written recommendation to the president as to whether a faculty review should occur as provided in stage four or all disciplinary action should be dropped. The president will make the final decision within five working days of receiving the administrative officer's recommendation. No sanctions will be taken against an employee until the case has been investigated and the facts established.

8.4.5 Stage 4 Review. Stage 4 applies after the completion of stage 3, a division executive director or vice president replaces the supervisor (if other than an executive director or vice president) in conducting the disciplinary action.

The president may order any employee to be placed on administrative leave if he or she believes the situation warrants that type of action pursuant to Subsection 8.4.1.

A faculty review will occur unless the employee specifically requests that a review not be conducted. If there is no review the process will move directly to sanctions. The Faculty Senate will form a review committee for the president, composed of at least three members of the faculty who are not employed in the employee's unit, which will review all documents and records and determine what additional information is needed to complete their review. During this review the employee must be able make a statement to the committee and present documents contesting the final written warning. At the chair's discretion the committee may interview witnesses. The chair will be responsible for the confidential records, written and/or taped of all review proceedings and maintain all documents and records. The president will select the chair and the employee or supervisor may challenge any committee member if a reasonable basis to believe a bias or conflict exists. Both the executive director or vice president and employee have the right to review and comment on all material prior to the final report being delivered to the president. A written recommendation of the Faculty Senate Review committee shall be submitted to the president, within 10 working days of receiving its charge. The president shall make the final decision in the matter. The president will provide both the employee and executive director or vice president with a summary of the findings and his or her decision within 10 working days.

8.4.6 Stage 5 Appeal and Sanctions. The employee may appeal for action in writing, within five working days to the president for the following reasons:

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 information presented for the review was not substantial enough to justify the decision; or
4. The sanction, except termination, imposed was not in keeping with the seriousness of the conduct or performance.

The employee may appeal for action in writing, within five working days to the Board of Regents for the sanction of termination.

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 or greater sanction; or
4. Order a new review.

The possible sanctions are:

1. Restitution. Is 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 a more severe sanction.
2. 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.

3. Suspension. Exclusion from assigned duties for one or more workweeks without pay. The normal workweek for DRI employees is 40 hours. The workweek begins at 12:01 a.m. Sunday and ends 11:59 p.m. on Saturday.
4. Termination. Immediate ending of employment after the appropriate completion of all the stages in this Chapter.

8.4.7 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.

8.4.8 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 9/15)

Section 8.5 Research Technologists

Research technologists of the DRI shall be disciplined and sanctioned only under the procedures established in the *DRI Technologists Manual*, as authorized by the Board of Regents. The causes resulting in disciplinary action will be the same for technologists as for other employees.

(B/R 6/08)

Section 8.6 Procedures Available when Sexual Harassment is Alleged.

The following additional procedures apply in proceedings alleging sexual harassment:

- (a) An alleged victim of sexual harassment (complainant) and the employee charged (respondent) shall each have the opportunity to select an independent advisor for assistance, support and advice. The complainant and respondent shall be advised at the beginning of the complaint process that he or she may select an independent advisor and it shall become the choice of the complainant or respondent to utilize or not utilize the independent advisor. The independent advisor may be brought into the process at any time at the request of the complainant or respondent. The institutional affirmative action officer or Title IX coordinator shall advise the complainant and respondent of this right at the beginning of the process.
- (b) The complainant may choose to not permit the matter to be resolved by the informal resolution process or may terminate the informal resolution process at any time prior to a written determination being signed. If sexual assault is alleged, the informal resolution process may not be used;
- (c) The complainant must be given the opportunity to participate in any pre-hearing procedures;
- (d) In a hearing involving more than one charged employee, the review board may require a charged individual to be absent from any testimony that is not relevant to that charged individual;
- (e) The complainant must receive a list of all witnesses at the same time it is received by the respondent;
- (f) The findings and recommendation of the Title IX coordinator pursuant to NSHE *Handbook*, Title 4, Chapter 8, Section 13 shall be considered;

- (g) The complainant may present witnesses and other evidence at the hearing;
- (h) The complainant shall be served a copy of the recommendation of the faculty senate review committee and of the decision of the president, except for the discipline imposed upon the charged employee unless the discipline directly relates to the complainant.
- (i) If the complainant is aggrieved by the recommendation of the faculty senate review committee or by the decision of the president, the complainant has the right to appeal the decision to the president or the Board of Regents in the same manner as the respondent;
- (j) With respect to an institutional disciplinary proceeding alleging sexual assault, domestic violence, dating violence or stalking offense, the Clery Act (20 U.S.C. § 1092 (f)) requires that the accuser and the accused must be informed simultaneously of the outcome;
- (k) The hearing shall be closed unless the complainant requests an open hearing.

(B/R 9/15)

Section 8.7 Resignations During Ongoing Investigations, Hearing and Appeals.

In the event a person against whom disciplinary proceedings have been commenced pursuant to this Chapter 8 of the Nevada System of Higher Education Code resigns, verbally or 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 Subsection 5.15.1- Resignations, of the Nevada System of Higher Education Code 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 shall immediately cease.
- (c) In cases involving gender discrimination or sexual 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 work as an independent contractor.

(B/R 9/15)