

Section 10.1 Cause

10.1.1 Applicability of Procedures and Sanctions.

The procedures and sanctions established in this chapter are applicable to the resolution and determination of charges against students of the Nevada System of Higher Education for allegedly engaging in conduct prohibited by the Nevada System of Higher Education rules of conduct_or by other applicable stated policies, procedures, rules, regulations or bylaws of the System institutions. Except as expressly provided in Section 10.4.12, the System institutions and professional schools may establish written policies, procedures and sanctions for the discipline of their students that may be used in lieu of the policies, procedures and sanctions of this chapter, including but not limited to the establishment of student conduct councils, subject to the prior review by the institution's general counsel and to the approval of the President of the institution.

10.1.2 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.

10.1.3 Student Defined.

The term, "student" means any person who is or was enrolled in courses, either full-time or part-time, including correspondence study, electronic means, study abroad, or auditing, or courses offered through any institution satellite campuses or auxiliary means. Students are subject to disciplinary action for conduct that occurs during any period under this chapter's authority and jurisdiction as defined above. Students who leave the institution before a conduct matter is resolved may be prohibited from future enrollment until such time as the matter is resolved. Persons who are not officially enrolled for a particular term but who have a continuing relationship with the institution are considered "students". This includes individuals who have applied for admission to the institution or have been notified of their acceptance for admission.

10.1.4 Rules of Conduct.

The term, "rules of conduct" means the rules established in Section 10.2 of this chapter and includes any rules incorporated by reference in that Section.

10.1.5 System.

The term, "System," means the Nevada System of Higher Education.

10.1.6 Charged Student.

The term, "charged student," means the student alleged to have violated the rules of conduct.

(B/R 9/15)

Section 10.2 Cause

10.2.1 Prohibited Conduct.

The following conduct is prohibited:

- (a) Acts of dishonesty, including but not limited to the following:
 - (1) Cheating, plagiarism, fraudulently obtaining grades, falsifying research data or results, assisting others to do the same, or other forms of academic or research dishonesty;
 - (2) Furnishing false information to any institution or System official, faculty member, or office;
 - (3) Alteration, misuse, theft, or using without permission any institutional document or record.

- (b) Disorderly, lewd, or indecent conduct, including but not limited to:
 - (1) Intentionally or recklessly disturbing the peace of any person or group of persons;
 - (2) Intentionally or recklessly using obscene language or gestures;
 - (3) Intentionally or recklessly using profane or abusive language;
 - (4) Intentionally or recklessly using obscene or indecent gestures;
 - (5) Intentionally or recklessly using obscene or indecent language;
 - (6) Intentionally or recklessly using obscene or indecent conduct;
 - (7) Intentionally or recklessly using obscene or indecent conduct;
 - (8) Intentionally or recklessly using obscene or indecent conduct;
 - (9) Intentionally or recklessly using obscene or indecent conduct;
 - (10) Intentionally or recklessly using obscene or indecent conduct;
 - (11) Intentionally or recklessly using obscene or indecent conduct;
 - (12) Intentionally or recklessly using obscene or indecent conduct;
 - (13) Intentionally or recklessly using obscene or indecent conduct;
 - (14) Intentionally or recklessly using obscene or indecent conduct;
 - (15) Intentionally or recklessly using obscene or indecent conduct;
 - (16) Intentionally or recklessly using obscene or indecent conduct;
 - (17) Intentionally or recklessly using obscene or indecent conduct;
 - (18) Intentionally or recklessly using obscene or indecent conduct;
 - (19) Intentionally or recklessly using obscene or indecent conduct;
 - (20) Intentionally or recklessly using obscene or indecent conduct;
 - (21) Intentionally or recklessly using obscene or indecent conduct;
 - (22) Intentionally or recklessly using obscene or indecent conduct;
 - (23) Intentionally or recklessly using obscene or indecent conduct;
 - (24) Intentionally or recklessly using obscene or indecent conduct;
 - (25) Intentionally or recklessly using obscene or indecent conduct;
 - (26) Intentionally or recklessly using obscene or indecent conduct;
 - (27) Intentionally or recklessly using obscene or indecent conduct;
 - (28) Intentionally or recklessly using obscene or indecent conduct;
 - (29) Intentionally or recklessly using obscene or indecent conduct;
 - (30) Intentionally or recklessly using obscene or indecent conduct;
 - (31) Intentionally or recklessly using obscene or indecent conduct;
 - (32) Intentionally or recklessly using obscene or indecent conduct;
 - (33) Intentionally or recklessly using obscene or indecent conduct;
 - (34) Intentionally or recklessly using obscene or indecent conduct;
 - (35) Intentionally or recklessly using obscene or indecent conduct;
 - (36) Intentionally or recklessly using obscene or indecent conduct;
 - (37) Intentionally or recklessly using obscene or indecent conduct;
 - (38) Intentionally or recklessly using obscene or indecent conduct;
 - (39) Intentionally or recklessly using obscene or indecent conduct;
 - (40) Intentionally or recklessly using obscene or indecent conduct;
 - (41) Intentionally or recklessly using obscene or indecent conduct;
 - (42) Intentionally or recklessly using obscene or indecent conduct;
 - (43) Intentionally or recklessly using obscene or indecent conduct;
 - (44) Intentionally or recklessly using obscene or indecent conduct;
 - (45) Intentionally or recklessly using obscene or indecent conduct;
 - (46) Intentionally or recklessly using obscene or indecent conduct;
 - (47) Intentionally or recklessly using obscene or indecent conduct;
 - (48) Intentionally or recklessly using obscene or indecent conduct;
 - (49) Intentionally or recklessly using obscene or indecent conduct;
 - (50) Intentionally or recklessly using obscene or indecent conduct;
 - (51) Intentionally or recklessly using obscene or indecent conduct;
 - (52) Intentionally or recklessly using obscene or indecent conduct;
 - (53) Intentionally or recklessly using obscene or indecent conduct;
 - (54) Intentionally or recklessly using obscene or indecent conduct;
 - (55) Intentionally or recklessly using obscene or indecent conduct;
 - (56) Intentionally or recklessly using obscene or indecent conduct;
 - (57) Intentionally or recklessly using obscene or indecent conduct;
 - (58) Intentionally or recklessly using obscene or indecent conduct;
 - (59) Intentionally or recklessly using obscene or indecent conduct;
 - (60) Intentionally or recklessly using obscene or indecent conduct;
 - (61) Intentionally or recklessly using obscene or indecent conduct;
 - (62) Intentionally or recklessly using obscene or indecent conduct;
 - (63) Intentionally or recklessly using obscene or indecent conduct;
 - (64) Intentionally or recklessly using obscene or indecent conduct;
 - (65) Intentionally or recklessly using obscene or indecent conduct;
 - (66) Intentionally or recklessly using obscene or indecent conduct;
 - (67) Intentionally or recklessly using obscene or indecent conduct;
 - (68) Intentionally or recklessly using obscene or indecent conduct;
 - (69) Intentionally or recklessly using obscene or indecent conduct;
 - (70) Intentionally or recklessly using obscene or indecent conduct;
 - (71) Intentionally or recklessly using obscene or indecent conduct;
 - (72) Intentionally or recklessly using obscene or indecent conduct;
 - (73) Intentionally or recklessly using obscene or indecent conduct;
 - (74) Intentionally or recklessly using obscene or indecent conduct;
 - (75) Intentionally or recklessly using obscene or indecent conduct;
 - (76) Intentionally or recklessly using obscene or indecent conduct;
 - (77) Intentionally or recklessly using obscene or indecent conduct;
 - (78) Intentionally or recklessly using obscene or indecent conduct;
 - (79) Intentionally or recklessly using obscene or indecent conduct;
 - (80) Intentionally or recklessly using obscene or indecent conduct;
 - (81) Intentionally or recklessly using obscene or indecent conduct;
 - (82) Intentionally or recklessly using obscene or indecent conduct;
 - (83) Intentionally or recklessly using obscene or indecent conduct;
 - (84) Intentionally or recklessly using obscene or indecent conduct;
 - (85) Intentionally or recklessly using obscene or indecent conduct;
 - (86) Intentionally or recklessly using obscene or indecent conduct;
 - (87) Intentionally or recklessly using obscene or indecent conduct;
 - (88) Intentionally or recklessly using obscene or indecent conduct;
 - (89) Intentionally or recklessly using obscene or indecent conduct;
 - (90) Intentionally or recklessly using obscene or indecent conduct;
 - (91) Intentionally or recklessly using obscene or indecent conduct;
 - (92) Intentionally or recklessly using obscene or indecent conduct;
 - (93) Intentionally or recklessly using obscene or indecent conduct;
 - (94) Intentionally or recklessly using obscene or indecent conduct;
 - (95) Intentionally or recklessly using obscene or indecent conduct;
 - (96) Intentionally or recklessly using obscene or indecent conduct;
 - (97) Intentionally or recklessly using obscene or indecent conduct;
 - (98) Intentionally or recklessly using obscene or indecent conduct;
 - (99) Intentionally or recklessly using obscene or indecent conduct;
 - (100) Intentionally or recklessly using obscene or indecent conduct;

- (i) Failure of the student to present proper credentials, student identification card, driver's license, or parking registration, to institutional officials upon their request.
- (j) Forgery, alteration, falsification or destruction of System documents or furnishing false information in documents submitted to the System.
- (k) Willful damage, destruction, defacement, theft or misappropriation of equipment or property belonging to, in the possession of, or on premises occupied by the System.
- (l) 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 institutional President or the President's authorized agent.
- (m) Continued occupation of buildings, structures, grounds or premises belonging to, or occupied by, the System after having been ordered to leave by the institution's President, the President's designee, or the Chancellor.
- (n) False reporting of any emergency situation, including but not limited to, misuse of campus or System emergency notification equipment. Unauthorized tampering with, and/or accessing of, safety, security, or fire protection equipment or devices. Setting off a fire alarm for reasons other than actual fire or emergency, involvement in setting or causing any unauthorized fire in or on institution property.
- (o) The unauthorized possession, loan, modification, or distribution of keys, pass cards or institutional identification cards. Unauthorized or unlawful entry or access to institutional or System facilities, including buildings and grounds. The reproduction, manufacture or duplication of any key, pass card, institutional or System identification card or unlocking device for use on institution or System facilities or locks without proper authorization.
- (p) Abuse, unauthorized use, or theft of institutional or System computer facilities and resources, including but not limited to:
 - (1) Unauthorized entry into, or transfer of, a file to use, read, or change the contents or for any other purpose; and/or a violation of copyright laws;
 - (2) Use of another individual's identification and/or password;
 - (3) Interfering with the work of another student, faculty member or institution or System official, or with the normal operation of the institution or System Computing System; or,
 - (4) Violating the institution's Standards of Conduct for the Use of Institution's Computers.
- (q) Willfully destroying, damaging, tampering, altering, stealing, misappropriating or using without permission any System, program or file of the System.
- (r) Violation of the institution's policies and regulations governing residence in institution owned or controlled property, and access to and use of all institutional facilities, including responsibility for the conduct of guests.

- (s) Use, possession, or distribution of alcoholic beverages without authorization (except as expressly permitted by System or Institutional regulations, such as the Alcoholic Beverage Policy), or public intoxication. Alcoholic beverages may not, in any circumstances, be used by, possessed by, or provided to, any person under 21 years of age.
- (t) 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.
- (u) Contempt of student disciplinary proceedings including impairing or interrupting any proceeding or providing false information to institution or System officials and student hearing board members during the course of the conduct resolution process. Failure to comply with the terms of any sanction imposed in accordance with the rules of conduct.
- (v) The repeated use of obscene or abusive language in a classroom or public meeting of the System and which, if occurring in a class, is not significantly related to the teaching of the subject matter.
- (w) The use of threats or 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.
- (x) Any act of unlawful discrimination based on race, color, gender (including sexual harassment and pregnancy related conditions), age (40 or older), sexual orientation, disability, whether actual or perceived by others, military status or military obligations, religion or national origin, gender identity or expression, or genetic information, or any act of employment or educational retaliation against any person who has made a complaint about such discrimination.
- (y) Sexual harassment, as defined in the regulations (34 C.F.R. Part 106) implementing Title IX of the Education Amendments Act of 1972, which is conduct on the basis of sex that satisfies one of the following:
 1. An employee of a NSHE institution (including but not limited to a student employee) 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 in 34 C.F.R. § 668.46(a) (commonly known as the Clery Act), as amended by the Violence Against Women Act, including dating violence, domestic violence, and stalking.
- (z) Sexual assault, which is the use of, or threat to use, force or violence

e.3.33263g

5d-

- (ii) 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. A person may be incapable of giving consent due to the

10.3.2 Training of Student Conduct Officer or Coordinator .

Student conduct officers or coordinators at an institution or professional school must receive training approved by the institution's legal counsel.

(B/R 9/15)

Section 10.4 Allegations of Violations of the Rules of Conduct.

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 13(C) of the NSHE *Handbook*. The hearing procedures and sanctions established in this Chapter 10 are applicable to the resolution and determination of such complaints.

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 10.4.12. 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 10.4.12. The procedures for all other allegations are as follows:

10.4.1 Complaints.

Any member of the institution community may file a complaint against a student for violations of the rules of conduct. The complaint shall be prepared in writing and filed with the President or the student conduct officer. Any complaint should be submitted as soon as possible after the incident takes place.

10.4.2 Investigations and Computation of Time.

The student conduct officer, coordinator or designee may conduct an investigation to determine if the complaint has merit. At any time, the student conduct officer may determine that the best course of action to take is to informally resolve the complaint through mediation, conflict resolution, or an educational conference. Upon completion of the investigation, the student conduct officer or coordinator will deliver a letter to the student. The letter shall state the factual allegations, the charges, the student conduct officer's or coordinator's proposed informal resolution process, if not completed earlier, and a copy of this chapter.

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.

10.4.3 Informal Resolution.

The charged student shall participate in and work with the student conduct officer or designee for an informal resolution of the complaint. At the conclusion of the successful informal resolution process, a written determination shall be signed by both the student conduct officer or coordinator, and charged student which may include any of the disciplinary sanctions described in this chapter. At any time prior to signing a written determination, the charged student has the right to request a hearing before a hearing board or hearing officer as the means to resolve the complaint.

10.4.4 Failure to Reach Resolution.

If the student conduct officer and charged student do not reach an informal resolution or if the charged student requests a hearing, then the student conduct officer or coordinator shall notify the charged student in writing that the matter will be addressed through a hearing before a student conduct board or a student conduct hearing officer. A time shall be set for a student conduct hearing to occur within a reasonable time from this notification, yet not more than twenty-five (25) calendar days from the date of the decision to proceed with formal resolution of the complaint. Maximum time limits for scheduling of student conduct hearings may be extended at the discretion of the student conduct officer or coordinator. Notice of the hearing may be given by electronic mail or by first class mail with the U.S. Postal Service with delivery confirmation to the last known address of the student or by personal delivery.

10.4.5 Appointment of Hearing Boards or Hearing Officer.

The President or designee may establish one or more student conduct hearing boards or appoint individual hearing officers. A board shall be from three to five persons. Every board shall include at least one student and at least one faculty 10.4.ih one d

l svdi(er)-6 (y)-2 (b)10.5[of]-6.(t)4.3 /P AM10.5 (oi)2(v)-23 ((y)-2 (b)10.5[of]-6.(t)4.3 /P(ar)-5.9 (i)

may be an attorney. The student conduct officer or coordinator has sole discretion to allow for a delay in the hearing to allow for the scheduling conflicts of an advisor.

- (c) The charged student and student conduct officer or coordinator shall notify the opposing party of all witnesses and provide copies of all documents and records in writing that the party proposes to introduce as evidence at least five (5) calendar days prior to the hearing. 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 student conduct officer or coordinator. Such subpoena authority shall be exercised under the authority conferred by NRS 396.323.
- (d) The charged student(s) and advisors, if any, along with the student conduct officer shall be allowed to attend the entire portion of the hearing, at which information is received, excluding the time of deliberations. Admission of any other person to the student conduct hearing shall be at the discretion of the student conduct board or hearing officer.
- (e) Witnesses will provide information to, and answer questions from, the student conduct board or hearing officer. The charged student and student conduct officer may suggest questions. These questions will be directed to the chairperson of the conduct board or the hearing officer, who will question the witnesses directly. The chairperson of the conduct board or the hearing officer will decide on the specific course of questioning and/or information sharing throughout the hearing.
- (f) All student conduct boards, hearing officers, or student conduct officers, may accommodate concerns for personal safety, well-being, and/or fears of confrontation, by the complainant, the accused, and witnesses, during the hearing or during the informal resolution process by providing the opportunity for the hearing board or student conduct officer to receive the pertinent information and conduct conversations for the resolution of the case using methods other than requiring both parties to be present in the same room at the same time. Such options include use of a visual screen, participation by videophone, closed circuit television, video conferencing, videotape, audio tape, written statement, or other means, where and as determined by the chairperson of the student conduct hearing board or hearing officer conducting the hearing.
- (g) Either party may present pertinent written statements, records, or other information to the student conduct board or hearing officer. The formal rules of evidence in court shall not apply but irrelevant or unduly repetitious evidence shall be excluded.
- (h) To the extent consistent with the Family Educational Rights and Privacy Act ("FERPA") the hearing, except for deliberations, shall be taped or digitally recorded. Upon request by the student, a written transcript will be provided at the student's expense. Personally identifiable information will be removed. The record shall be the property of the institution, and will be maintained with the student's conduct records by the student conduct officer.

student's receipt of the decision. The student's appeal must include all written arguments in support of the appeal.

- (a) The only grounds for an appeal are:
 - (1) Deviations from procedures set forth which results in significant prejudice.
 - (2) The decision reached regarding the charged student was not based on a decision that it was more likely than not that the charged student violated the rules of conduct.
 - (3) The sanction(s) imposed were not appropriate for the violation of the rules of conduct which the student was found to have committed.
- (b) The student conduct officer or coordinator shall review the appeal and direct it, along with the recording of the hearing, any written evidence and arguments, and decision to the vice president designated by the President to hear the appeal within fourteen (14) calendar days of receiving the appeal. With the record, the student conduct officer or coordinator shall file written arguments in opposition to the appeal.
- (c) The designated vice president shall review the recording of the hearing and the complaint, and decision, along with any information and evidence that was part of the decision-making of the conduct case, and will decide whether or not the appeal should be upheld. The designated vice president may uphold the decision, may refer the case back to the original board or hearing officer or may order a new hearing before a new board or hearing officer.
- (d) The decision of the vice president shall be in writing and served upon the student and student conduct officer or coordinator within thirty (30) calendar days of the receipt of the decision and record of the hearing by the vice president. The vice president may extend the time limit of this Section by written notice to the parties.
- (e) Any sanction against the student shall not take effect until any appeal is concluded.
- (f) The student conduct officer or coordinator may suspend any time limits contained in this chapter during winter or summer breaks.

10.4.8 Sanctions and Expunging the Record.

The student conduct officer or designee will be responsible for monitoring the student in successfully carrying out the sanctions imposed as the result of a hearing or the final determination of the informal resolution process. Unless the student conduct officer otherwise states in writing, any final action resulting from a disciplinary hearing or the informal resolution process shall become part of the

graduation or any time following graduation. The burden demonstrating reasonable cause for considering the expunging of a disciplinary record lies with the student. In considering such requests, the institution may consider the:

- (a) Stated reason for request and circumstances surrounding the request;
- (b) Date and seriousness of the violation;
- (c) Student's behavior and disciplinary record since the violation, including successful completion of any imposed sanctions;
- (d) The impact, if any, on the public that failure to give such notice may cause; and
- (e) Consequences of denying the request.

The grant or denial of a request to expunge a student's disciplinary record shall rest solely within the discretion of the institution, and the enumeration of the foregoing factors shall not in any way imply a duty on the institution to grant such a request by means of a balancing or other test. If a request is not granted, the student at yearly intervals thereafter may request that his or her disciplinary record be expunged. The denial of a request to expunge is not appealable.

10.4.9 Sanctions.

The following are the disciplinary sanctions that may be imposed on a student found to have violated the rules of conduct. More than one sanction may be imposed.

- (a) Warning. A notice, oral or written, that the student has violated the rules of conduct.
- (b) Reprimand. A written reprimand for violation of specified regulations.
- (c) Restitution. Compensation for loss, damage, theft or misappropriation of property, or injuries sustained in an incident of student misconduct.

- (g) Residence Hall Suspension. Separation of the student from the residence halls for a period of time, after which the student is eligible to return. The minimum period of suspension is one semester and the maximum period is two semesters. Conditions for readmission may be specified in the suspension.
- (h) Residence Hall Permanent License Cancellation. Permanent separation of the student from the residence halls.
- (i) Withholding of a Degree. Prior to the awarding of a degree, the institution may withhold a degree from a student.
- (j) Institutional Suspension. Exclusion for a definite period of time from attending classes and from participating in other activities of the System, as set forth in a written notice to the student. The official transcript of the student shall be marked DISCIPLINARY SUSPENSION EFFECTIVE ____TO _____. The parents or legal guardians of minor students shall be notified of the action.

A student who is enrolled in his or her last semester before graduation or is not currently enrolled in the System and who was not registered during the previous semester or who graduated at the end of the previous semester may request that the notation of the disciplinary suspension be removed from the official transcript when two years have elapsed since the expiration of the student's suspension. Such request must be submitted in writing to the President or his designee. If the request is not granted, the student at yearly intervals thereafter may submit a request for removal of the notation.

- (k) Deferred Institutional Suspension. Deferred separation of the student from the institution until the close of the current semester or some other time frame for review of student progress in addressing the conduct matter.
- (l) Ins

10.4.10 Emergency Removal.

The President, the student conduct officer, or coordinator may impose an immediate emergency removal (hereafter, "removal") prior to the resolution of a charge of violation of the rules of conduct on the charged student. This removal includes the immediate exclusion from the institution and all of the institution's campuses, sites, locations, and property of a student for an interim

10.4.12 Procedures Required when Title IX Sexual Harassment is Alleged.

(a) Definitions

1. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
2. "Respondent" means an individual who has been reported by the individual engaging in conduct that could constitute sexual harassment.

“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.

“Incest” means sexual intercourse between persons who are related

8. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the institution with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the institution.
9. "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.
10. "Consent" means an affirmative, clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity.
 - Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent.
 - Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - The existence of a dating relationship or past sexual relations between the participants does not constitute consent to any other sexual act.
 - Affirmative consent must be ongoing throughout the sexual activity and may be withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
 - Consent cannot be given when it is the result of any coercion, intimidation, force, deception, or threat of harm.
 - Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes: impairment due to drugs or alcohol (whether such use is voluntary or involuntary); inability to communicate due to a mental or physical condition; the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 16; or if an individual otherwise cannot consent.
 - The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

- k) Providing an effective escort to ensure safe movement between work area and/or parking lots/other campus locations;
- l) Issuing a no-contact directive(s);
- m) Placement on paid leave (not sick or annual leave);
- n) Placement on administrative leave;
- o) Transfer to a different area/department or shift in order to eliminate or reduce further business/social contact;
- p) Providing information regarding campus transportation options;
- q) Instructions to stop the conduct;
- r) Providing information regarding institution and community services including medical, counseling and Employee Assistance Program;
- s) Reassignment of duties;
- t) Changing the supervisory authority; and
- u) Directing the parties to report any violations of these restrictions.

All institution administrators, academic and administrative faculty, and staff are responsible for carrying out the supportive measures and remedies.

Supportive measures and remedies may include restraining orders, or similar lawful orders issued by the institution, criminal, civil or tribal courts. Supportive measures and remedies will be confidential to the extent that such confidentiality will not impair the effectiveness of such measures or remedies.

Remedies may also include review and revision of institution sexual misconduct policies, increased monitoring, supervision or security at locations where incidents have been reported; and increased and/or targeted education and prevention efforts.

Any supportive measures or remedies shall be monitored by the Title IX Coordinator throughout the entire process to assess whether the supportive measures or remedies meet the goals of preventing ongoing harassment or discrimination, protecting the safety of the parties, and preventing retaliatory conduct.

In responding to allegations of sexual harassment, an institution shall not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment.

(c) Response to a Formal Complaint.

1. In response to a formal complaint, an institution must investigate the allegations contained therein and follow a complaint process that complies with Subsection (e). With or without a formal complaint, an institution must comply with Subsection (b).
2. Nothing in this Subsection precludes an institution from removing a respondent from the institution's education program or activity on an

5. Ensure that the Title IX Coordinator, investigator, hearing officer, or any person designated by an institution to facilitate an informal resolution process, does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
6. Ensure that the Title IX Coordinator, investigator, hearing officer, or any person designated by an institution to facilitate an informal resolution process receive training on the definition of sexual harassment in Subsection (a), 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;
7. Ensure, coordination with the NSHE Chief General Counsel, that hearing officers receive 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 Subsection 4 of Subsection (g);
8. Ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in Subsection 4 of Subsection (g);
9. Ensure that any materials used to train Title IX Coordinators, investigators, hearing officers, and any person who facilitates an informal resolution process, do not rely on sex stereotypes;
10. Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the complaint process;
11. Establish a reasonably prompt time frame for conclusion of the complaint process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the institution offers informal resolution processes, and a process that allows for the temporary delay of the complaint process or the limited

2. If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to Subsection 1 of Subsection (e), the institution must provide notice of the additional allegations to the parties whose identities are known.
3. Dismissal of formal complaint.
 - (i) If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in Subsection (a) of this Section 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 institution must 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 the Board of Regents' *Handbook*, NSHE Code, or institution's code of conduct.
 - (ii) The institution may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - (A) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - (B) The respondent is no longer enrolled or employed by the institution; or
 - (C) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
 - (iii) Upon a dismissal required or permitted pursuant to Subsections i and ii of Subsection 1 of Subsection (e), the institution must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- (f) Investigation of a Formal Complaint. The institution investigating a formal complaint must:
 1. 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);

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
3. Avoid restricting the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
4. 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;
5. 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;
6. 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 tha-6.6 (i) (s)8.8 (our)2.7 (r

2. At the live hearing, the

6. If a party or witness does not submit to cross-examination at the live hearing, the hearing officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer(s) cannot draw an

- (v) 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
 - (vi) Provide the written decision simultaneously to all parties.
 - 3. 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.
- (j) Informal Resolution.
- 1. 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:
 - (i) 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;
 - (ii) Obtains the parties' voluntary, informed written consent to the informal resolution process; and
 - (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
 - 2. Institutions must provide the parties with a written notice explaining that at any time prior to agreeing to a resolution, any party has the

(m) Retaliation.

1. Retaliation Prohibited. No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose

10.4.14 Withdrawal of Student from Institution During Ongoing Investigations, Hearings, and Appeals.

In the event a student against whom disciplinary proceedings have been commenced pursuant to this Chapter 10 of the Nevada System of Higher Education Code withdraws from the institution prior to the completion of any investigation, hearing or appeal commenced before receipt of the withdrawal, then:

- a. The withdrawal shall be effective immediately. Unless otherwise mandated by law, the person submitting the withdrawal 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 readmission, denial of an application of employment or denial of work as an independent contractor.

(B/R 12/20)