

BOARD OF REGENTS
BRIEFING PAPER

Agenda Item Title: Handbook Revision, Title 2, Chapter 5, Section 5.6 – new Section 5.6.2.d- Sharing of Personnel, Payroll and Confidential Information between NSHE Institutions and Units

Meeting Date: September 10-11, 2015

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

Although the Board of Regents is the employer of all NSHE faculty and staff, the lack of policy to allow the sharing of personnel, payroll and other confidential information between institutions and units regarding current and former employees, prevents NSHE institutions from being fully informed when making hiring decisions.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

It is recommended that the Board approve the amendment to add a new Section 5.6.2.d, to allow NSHE institutions and units to share personnel, payroll and other confidential information.

4. IMPETUS (WHY NOW?):

Current policy does not address sharing of personnel, payroll and other confidential information among NSHE institutions and units. Current policy in Section 5.6 limits who has access to personnel and payroll information. Specific policy is needed clarify that institutions may share personnel, payroll and other confidential information when a current or former employee submits an employment application or seeks to work as an independent contractor.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Current Board policy does not address the sharing of personnel, payroll and confidential information regarding current or former employees who apply for positions or work as an independent contractor at other NSHE institutions or units.
- Current policy in Section 5.6 limits who has access to personnel and payroll information.
- The Board of Regents is the employer for all NSHE faculty and staff, but has delegated appointing authority to the presidents.
- There should not be any impediment to sharing information between NSHE institutions and units.
- In the absence of policy that specifically addresses the right to share personnel, payroll and other confidential information, institutions have not been able to share such information.
- Institutions should have access to a current and former employee's personnel, payroll and other confidential information when considering whether to hire the current or former employee.
- The proposed amendment provides a process for requesting the information.
- The proposed amendment allows institutions to consider the information it receives in making the hiring decision.
- If the information received provides cause for denial of employment, the current or former employee must be given the opportunity to respond.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None

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

- Do not allow institutions to share personnel, payroll and confidential information.

8. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____

X Amends Current Board Policy: Title # 2 Chapter # 5, add a new Section # 5.6.2.d

Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____

Other: _____

Fiscal Impact: Yes ___ No X

PROPOSED REVISIONS – Board of Regents CODE
TITLE 2, CHAPTER 5,
SECTION 5.6 Faculty Benefits, adds a new *Section 5.6.2.d*

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

Section 5.6 Faculty Benefits and Personnel/Payroll Files

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 files of NSHE professional staff are confidential. Personnel and payroll 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 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 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 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 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 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 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.

(d) The personnel and payroll files of a current or former employee must be provided to any NSHE institution or unit at which the current or former employee has applied for employment or to work as an independent contractor. In addition, confidential information related to:

- 1. any outcomes of a review, inquiry or investigation of a complaint of discrimination, sexual harassment or other misconduct against;***
- 2. a disciplinary process against; and/or***
- 3. any restrictions or limitations on rehiring***

a current or former NSHE employee shall be provided to any other NSHE institution or unit at which the current or former employee has applied for employment or to work as an independent contractor. If the facts and circumstances of any such confidential information provide cause for denial of an application of employment or denial of an independent contract, the applicant shall be given the opportunity to respond. All confidential information provided to the chief human resources officer (or designee) shall continue to be confidential.

The request must be made by the chief human resources officer (or designee) of the institution at which the individual is applying for employment or to work as an independent contractor, and must be directed to the chief human resources officer (or designee) of the institution or unit at which the applicant is a current or was a former employee.

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. Upon acceptance of an employment offer, information contained in the application materials as stated in 5.6.2 (b) shall become public records.