

## Recommendations From the Ad Hoc Advisory Committee for Code Review

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Members:

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Background: At the request of Elliott Parker, chair of the University of Nevada, Reno faculty senate, four previous faculty senate chairs reviewed the NSHE code to identify a limited number of major issues that could be reconsidered by the UNR senate and those of other NSHE institutions in order to make recommendations to the Board of Regents for change to system code. The impetuses for this review were:

1. the fact that recent financial conditions have highlighted some elements of the code that limited our ability to respond thoughtfully and responsibly;
2. earlier examination of code language identified several areas where language was confusing or were not sensible given the realities of the functioning of the NSHE institutions;
3. a recent report by a Board appointed committee to review efficiency and effectiveness (NSHE Personnel Task Force Report dated June 4, 2009) identified areas of code that were problematic and likely to be addressed by the Board;
4. the recent Board of Regents action authorizing furloughs in the absence of financial exigency indicating that the Board would invent ad hoc solutions to inadequacies in the current code (i.e., the creation of section 5.7.7);
5. a recognition that current financial conditions are likely to continue to present challenges for each institution to meet its academic and financial responsibilities; and
6. a recognition that there may be an increasing number of areas where delegating responsibility and authority for the individual NSHE institutions may better allow the institutions to meet their self-described, board approved missions.

Approach: The ad hoc advisory committee was asked to examine code for deficiencies that seemed significant and the highest priorities for review. The nominations would then be presented to Chair Parker who would seek advice from the UNR bylaws and code committee and other NSHE senate chairs. Suggestions might then be made to the Board of Regents after that vetting process. The advisory committee was not asked to suggest specific language where issues were identified, but rather to identify the sections of code or issues that were considered problematic and suggest general solutions. If it were possible to prioritize the possible changes, the committee was requested to do so.

## Summary of Recommendations

The committee suggests six areas that are deserving of immediate attention.

1. Remove curricular review from code as any kind of vehicle that might be used to meet short-term financial challenges. Curricular review is a careful, ongoing process that guides the evolution of the campus. While program creation and closures already require Board approval, the intermingling of curricular review and financial exigency should be corrected.
2. A new category of review should be created to address emerging financial crises. The request to initiate such a process should come from the president following consultation with the faculty senate. Board approval to invoke such a process should be required, institutional bylaws should govern the processes, and the process should be time-limited. Any actions resulting in the loss of tenured positions should require Board approval.
3. The three-category personnel classification system as described in code is no longer adequate or flexible enough to meet the needs of the different NSHE institutions. Campuses should be allowed to evolve an employment taxonomy consistent with the mission needs.
4. Code should be clarified to permit any process that can lead to a grievance being filed should always permit a reconsideration first.
5. Hearing committees for any Chapter 6 hearing should, at the request of the person at risk, be composed of personnel from the same general personnel category. For example, academic faculty should have hearing committees composed of academic faculty. (Note: The president indicated he would prefer some kind of opportunity of meet with someone about whom a chapter 6 proceeding might commence in order to see if an informal discussion might obviate the need for such a hearing. If language could be created to address that request without biasing the process, it could be useful).
6. Academic freedom extends to anyone involved in direct instruction or research regardless of title.

### More Detailed Discussion of Problematic Code Sections

Sections 1.1 and 1.4 provide definitions and governance instructions for NSHE. Since the Board established this taxonomy for personnel, much has changed in the system institutions such that the vision of how personnel ought to be categorized no longer meets the needs of those institutions. Institutional missions have evolved and created environments that require different personnel classifications within and among NSHE institutions. In particular, at the universities the roles of various employees include professional administrators, academic faculty, lecturers, rank 0 faculty, clinical faculty, professional and technical staff, postdoctoral fellows, research faculty, research support personnel, and classified staff. Some of these categories are typically funded by the state, while others are typically supported by other sources, such as federal grants. In some instances voting blocks could

emerge that might disrupt effective governance. For example, some research faculty or administrative faculty work for an academic faculty member and might effectively over-represent the supervisor's viewpoint in faculty votes on curricular issues. Because voting rights do not necessarily map onto interests or expertise, and because current governance structures may not optimally lead to the best representation, the code should be amended to allow individual NSHE institutions to redefine personnel titles and methods of representation. Section 1.4.5 allows for such considerations according to institutional bylaws while Section 1.4.7 seems to allow for the consideration of additional governance structure. This is a complex issue where code language should be permissive rather than prescriptive about how each institution can best function with respect to position classifications.

Recommendation. NRS permits NSHE to adopt whatever personnel classification it finds most useful. It is suggested that code delegate as much latitude as feasible to each campus to define titles, voting rights, and governance structures. The NSHE Personnel Task Force Report specifically recommends reconsidering the personnel classification scheme used by NSHE. It would be preferable for revisions to originate following discussions within each campus community.

1.1 f Uses the term curricular review. This term is used ambiguously and inappropriately in code.

Recommendation. Curricular review is a legitimate ongoing task of each NSHE institution. It is typically an evolutionary process where program expansion or contraction is examined in a thoughtful review of how to direct university resources to meet the institution's mission statement and strategic plan. Changes resulting from this process are generally incremental. Typically programs contract or expand based on utilization by students or other university constituencies balanced against opportunity costs that might be incurred if resources were not redirected. The term curricular review should be largely removed from code except when, in the very unusual circumstance the local curricular review process would recommend the elimination of a program that would result in a tenured faculty member losing his or her position. In that case, such a decision should require approval by the Board of Regents.

1.1 f By appropriately placing curricular review at the institutional stewardship level, there remains a need for establishing a process for meeting acute financial challenges that might force immediate financial considerations to direct limited resources in a way that could close programs, eliminate tenured or tenure track faculty positions, lead to furloughs, or affect notice periods. This process, herein referred to as "financial review" would have the following characteristics:

- The process should be difficult to invoke.
- The process should be initiated by the president after consultation with the faculty senate. Details of the process should be established in institutional bylaws or the institution's administrative manual. In either case, the process must be ratified by the faculty.
- The president should seek approval from the Board of Regents to initiate the process. One implication of this statement is that if the president can meet the financial challenges placed on it within normal procedures and bylaws, the Board should not impose this process on an institution.

- Decisions made at the institutional level shall be respected to the degree allowed by the authorizing statutes for NSHE. This means that the Board of Regents would have to have a compelling reason to resolve a financial dilemma in a manner different from that proposed by an institution.
- This process cannot reduce the notice period below some specified period of time that reasonably allows personnel to seek positions elsewhere according to commonly understood job application cycles. Severely shortened notice requires the declaration of financial exigency.
- Any decision that may result in furloughs or the termination of a tenured faculty member should be proposed after consultation with faculty as established in bylaws or the administrative manual, approved by the president and ratified by the Board of Regents.
- Any person affected by this process will be placed in another suitable position within the institution if possible.
- Any position eliminated cannot be replaced within two years without first offering it to the affected person.
- The period of time that an institution shall be allowed to use the procedures defined in financial review shall be limited to the next budget cycle unless explicitly requested by the president and extended by a vote of the Regents..

1.1.p Could be interpreted to limit academic freedom to tenured faculty. This issue is addressed more appropriately in 2.2.

Recommendation: This language should be changed to cover anyone functioning in the role of a faculty member regardless of his or her academic title.

3.2.3 b & c. These sections seem redundant.

Recommendation: None. This is one of many examples of code sections that are flawed and would be highlighted for change if an entire rewrite were within the scope of this task. It is not, and this problem is not fundamentally important.

3.4.4 Is one of a few places where the "University of Nevada" and what is now NSHE are used interchangeably.

Recommendation: None. Though there are some circumstances where this lack of distinction could be used to disadvantage UNR, this does not seem to be a sufficiently critical issue to require remediating language at the moment.

5.2.2 Hiring with tenure. The faculty senate is supposed to be informed of hires with tenure at either rank III or IV. We are not aware this practice being followed.

Recommendation: This may only be a local issue. We are not sure the language is clear here or if there needs to be a change to the UAM or senate bylaws. Additional research is needed.

5.4.2 This section is one place where notice is discussed and may be impacted by the creation of financial review.

Recommendation: To be determined. For academic faculty we've discussed a calendar year. However, I would want to be sure that whatever language we use gives academic faculty the opportunity to apply in a job cycle. One should always give as much notice as possible, but the question is what is the minimum notice permissible before having to invoke financial exigency?

5.4.6 & 5.4.7 Curricular review as a vehicle for termination or furlough.

Recommendation. A distinction between ongoing curricular review and the process that has been confounded with financial exigency needs to be made as stated earlier. Curricular review should not be a means to furlough and almost never to terminate a tenured faculty member. Financial review should be invented and its invocation and expiration defined (see above).

5.9.1 NNRs for nontenured academic faculty and administrative faculty.

Recommendation. In financial review, if adopted, as much notice as possible should be given and a minimum specified. This requires a frank discussion of the interests of the individual and the potential need to reassign personnel if there were a significant likelihood that degraded performance could negatively impact the functioning of the institution. Reassignment does not entail decreased salary or benefits.

Chapter 6.11 Composition of the special hearing committee is not properly constituted.

Recommendation: Upon the request of the person charged, the special hearing committee shall be composed of peers from the same personnel category as that person. That is, an academic faculty member may request that the special hearing committee be composed solely of academic faculty. Similarly, if the charged person were an administrative faculty member, the charged party could request that the special hearing committee be composed of administrative faculty. The same challenge procedures should be in effect.