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November 5, 2009

TO: Fred deRafols, chair, Senate Bylaws & Code Committee

CC: NSHE Senate Chairs;  
President Milt Glick

FROM: Elliott Parker, Chair, 2009-10 Faculty Senate

SUBJECT: **Proposals to Amend the NSHE Code**

Attached you will find a memo from Professor Bill Follette, last year's Senate Chair, regarding several suggestions for amending the NSHE Code. I asked him to lead an advisory group consisting of four former chairs of the UNR Senate, and these suggestions need to be reviewed by your committee before bringing them to the Senate for possible endorsement. My intention is to begin writing actual Code language later, once we develop some consensus on what revisions should be made.

The genesis of my request for suggestions and recommendations is the June 2009 report of the Chancellor's Personnel Task Force in response to Senate Bill 433, and this resulted in an amendment to the NSHE Code by the Board of Regents to implement furloughs. But as all senate chairs seem to learn as they do their jobs, the Code has long been filled with inconsistencies that institutions have had to either put up with or work around, and I asked Bill's group of former chairs to consider some of these problems as well.

There are two potentially controversial proposals here for you to examine and consider, along with a number of relatively less controversial issues. First, the advisory group notes that the Code is rigid, outdated, and inconsistent on the definitions of employee categories in general, and professional staff in particular. Second, the advisory group proposes a significant change to the current Code language on financial exigency and curricular review.

### Employment Categories

The Nevada Revised Statutes (NRS) distinguish between hourly classified staff and salaried unclassified staff (also referred to in NRS as professional employees), while references to faculty in NRS generally imply academic or instructional duties. In spite of having considerable latitude in defining our own employment categories, NSHE defines all

professional staff as faculty in the Code: academic faculty are those professional staff responsible for teaching, research, and libraries, and administrative faculty are those in executive, supervisory, or support roles. But the Code also equates administrative faculty with administrators, and then refers to faculty and administrators as if they were separate groups. The Code does not distinguish between executive faculty (such as vice-presidents) and other administrative faculty, even though the former serve at the pleasure of the institution presidents. The Regents Handbook goes so far as to define teaching assistants as administrative faculty, which is obviously incorrect in practice, though the NRS only says that student employees are not generally part of the classified system.

To get around this, UNLV practice is to distinguish between faculty (defined as academic faculty) and professional staff (defined as administrative faculty), even though this is semantically inconsistent with both NRS (since faculty are also professional staff) and Code. DRI defines faculty as all those holding authorized professional positions as defined in the Code, and then separates these into a ‘professor’ track, postdoctoral fellows, a ‘research associate’ track, and ‘professional administrative’ faculty.

Bill’s advisory group suggests that the Regents resolve this confusion by allowing the institutions to define their own employment categories, including whether or not professional employees are by definition faculty. The Code can define professional staff to include faculty and other employees who meet the conditions for salaried employment exempt from hourly expectations of the Fair Labor Standards Act, and then allow the institutions to define the particulars. Alternatively, if the Regents preferred the Code to be more specific, then the Presidents should be consulted in developing a range of categories that better fit best practice.

#### Financial Exigency and Curricular Review

In addition to the proceedings for professional misconduct define in Chapter 6, Code currently defines two conditions in which tenured faculty may be terminated: curricular review and financial exigency. Though the first allows for an institutional review process to recommend whether a department or program should be eliminated, and their faculty terminated, and the second defines a very different emergency process at the Regents’ level in response to a budget crisis, the two sections are intermingled and confused in Code.

Bill’s advisory group recommends that these two processes be clearly separated and better defined in Code, and a third process be created that combines aspects of both. Curricular review, they argue, should be a normal ongoing process in all institutions, and though cost effectiveness should be considered, the process should not be implemented only in response to a budget crisis. As a routine process, it should not allow for shortened notice. Whether such routine curricular review should allow for the termination of tenured faculty is unclear. Financial exigency should remain in Code, they agree, as it gives the Board of Regents emergency powers that might be necessary in a severe crisis, but it is something we all think should be avoided at all costs.

In between these two processes, Bill’s advisory group recommends an intermediate process which they suggest might be called “financial review.” In this process, a Regents’ declaration

is required, but the process remains under control of the institutions. With a consultative role for the senates, presidents may be given temporary powers to deal with a budget crisis, including the power to implement furloughs (which should be better defined), reduce notice requirements, expedite the process of curricular review, and terminate tenured faculty under certain conditions (e.g., those currently allowed under curricular review) with reasonable notice.

With regards to notice, they stress that consideration needs to be given to the practice of other competing institutions and to the job market characteristics. Academic job markets, for example, usually take a full academic year between advertisement and appointment, while other professional job markets may be quicker and not dependent on the calendar.

#### Other Proposals:

Finally, in addition to flagging one or two places where the Code is redundant, this advisory group notes several other issues that should be addressed in revising the Code. These are likely to be less controversial than the two issues above, and include:

1. The Code allows institutions to have a grievance process, and also requires reconsideration prior to some types of grievances. However, the Code appears to unintentionally limit reconsideration of some matters that can be grieved.
2. In Chapter 6, the Code requires the members of special hearing committees to include both faculty and administrators, which is usually taken to mean both academic and administrative faculty, but this is clearly not appropriate in some cases. At UNR, grievance committees are defined in bylaws and senate procedures to include only academic faculty for academic faculty grievances, and only administrative faculty for the less common administrative faculty grievance. The Code should also allow institutions some discretion in writing up rules governing the creation of special hearing committees.
3. The Code is inconsistent in how it specifies the process of applying for tenure. In one section, for example, tenure-track faculty are allowed to apply in any year prior to the end of their probationary period, while two paragraphs above it seems to imply that the President must approve any application before it is even considered. This should be clarified to say that the President must approve any application for tenure, early or otherwise, before it is considered by the Regents.
4. For historical reasons, the Code occasionally refers to the “University of Nevada” when it intends to refer to the Nevada System of Higher Education.
5. Academic freedom may need to be clarified so that it is clear that it applies to untenured faculty as well as tenured, in both their teaching and their research.