

# MEMORANDUM

**TO:** Scott Abbott, Esq.  
**FROM:** Ann Morgan, Esq.  
Leslie Bryan Hart, Esq.  
Kelly Peters, Esq.  
**DATE:** February 4, 2022  
**RE:** Nevada System of Higher Education  
Investigation of Claims Asserted by Chancellor Melody Rose

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## **I. EXECUTIVE SUMMARY**

In October 2021, the Board of Regents of the Nevada System of Higher Education (“NSHE” or “the System”) requested that we conduct a third party investigation to determine whether certain allegations of a sex-based hostile work environment made by Chancellor Dr. Melody Rose against Chair Cathy McAdoo and Vice Chair Patrick Carter in a complaint dated October 4, 2021 (the “Complaint”), could be substantiated.<sup>1</sup> The Complaint also described conduct that the Chancellor alleged breached or interfered with her employment agreement and violated the NSHE Handbook and Policies and other Federal and State laws.

Chancellor Rose subsequently submitted two addenda to the Complaint on November 21, 2021 (“Addendum 1”), and January 15, 2022 (“Addendum 2”). In Addendum 1, the Chancellor described various acts of perceived retaliation directed toward her and others, including Chief General Counsel Joe Reynolds (“General Counsel Reynolds”), by Regents Byron Brooks, Jason Geddes, Joseph Arrascada, and Laura Perkins. Through Addendum 2, the Chancellor provided an account of alleged interference, disparagement, and abuse from Regents Brooks and Boylan, including a “demeaning” experience with Regent Brooks that, because he was armed, left the Chancellor feeling physically unsafe.

We also reviewed but have not yet investigated two other complaints: one submitted to General Counsel Reynolds on October 26, 2021, by Truckee Meadows Community College (“TMCC”) President Dr. Karin Hilgersom, who alleged a sex-based hostile work environment claim against certain Regents and former Chancellor Thom Reilly, and one submitted to outside counsel in or around November 15, 2021, by Vice Chair Carter, who alleged he had been subjected to “misstatements of fact, insubordination, bullying, and harassing behavior” by General Counsel Reynolds.

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<sup>1</sup> We refer to Regents McAdoo and Carter throughout this Memorandum as “Chair McAdoo” and “Vice Chair Carter” or the “Officers” because they held those positions when the Chancellor filed her Complaint.

Through the course of our investigation, we interviewed Chancellor Rose on two occasions. We also interviewed eighteen other current and former Regents and NSHE employees from both the Reno and Las Vegas offices.<sup>2</sup> The interviews were primarily focused on determining whether Chancellor Rose’s specific allegations could be substantiated, although we also discussed whether there was a “disregard for female employees” or “pervasive sexist culture” within NSHE, as alleged by the Chancellor.

We observed and found noteworthy that the Chancellor sincerely believes all of the statements in her Complaint. However, our investigation did not substantiate her claims of a sex-based hostile work environment. We found no direct evidence of a hostile workplace, as defined in Federal case law interpreting Title VII of the Civil Rights Act of 1964, and the indirect or circumstantial evidence that we considered was, in our view, insufficient to establish a *prima facie* case thereunder. Many of the Chancellor’s comments in the Complaint were based on information relayed to her by others, the meaning or intent of which could have been inadvertently modified by others or interpreted by the Chancellor without the benefit of context, background, or an understanding as to another’s intent. And, in fact, in large part, the hearsay reported in the Complaint either could not be corroborated or appeared to have alternative meaning or intent.

Nor did our investigation corroborate Chancellor Rose’s claims of unlawful retaliation, as alleged in Addendum 1, or substantiate her claims that various Federal and State laws had been violated. We were likewise unable to corroborate the claims that Chair McAdoo and Vice Chair Carter (or other Regents) failed to adhere to the Board of Regents’ Handbook or follow its Policies and Procedures regarding communications, reporting structures, agenda items, the performance evaluation process, and the Chancellor’s role and authority, or that any Regent breached, or interfered with, the Chancellor’s employment agreement. That is, in general, we found insufficient facts to support the material allegations of any of these claims, although we found examples of conduct that lacked collegiality, particularly as it related to communication style. We also found that the Ethical Code of Conduct for Regents in the Board of Regents Handbook (“Ethical Code of Conduct”) was likely violated in several instances.

Instead, we observed that the matters raised by the Chancellor in the Complaint are likely attributable to the following factors: (1) a change in board leadership from Regent Mark Doubrava, whose hands-off leadership style differed from that of Chair McAdoo and Vice Chair Carter; (2) the misalignment of expectations and views held by Chancellor Rose, various Regents, and/or institution presidents about their respective roles within NSHE, which expectations were likely influenced by the Chancellor’s prior experiences, which prior experiences appear to have been different than the customs and norms of the System; (3) the communication and reporting structure between the Chair and Vice Chair and the Chancellor, which may have been exacerbated by the infrequency of in-person meetings due to the global pandemic; and (4) the possibility that political differences, including with respect to COVID-19 policies for campus communities, may have contributed to the formation of factions among the Regents, which may have, in turn, negatively influenced communications between certain Regents and the Chancellor. That is, these factions, which we observed in the System office, too, may have initially resulted in objectively unfriendly displays toward the Chancellor and may have compounded over time such that, as of late, the Chancellor subjectively perceives any exchange that is not supportive of her viewpoints to be

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<sup>2</sup> One additional individual we intended to interview declined our request for an interview.

hostile. We found that this situation likely created a more challenging work environment than the Chancellor expected and may have caused her to conclude that the negative climate from which she seeks relief was based on her sex. We found insufficient evidence to substantiate an actionable sex-based hostile work environment claim, although our investigation revealed that some of the circumstances about which the Chancellor complained are reflective of an inappropriate professional environment.

## **II. DISCUSSION**

Dr. Melody Rose was one of four final candidates for Chancellor of the Nevada System of Higher Education from an initial pool of forty applicants. During the June 17, 2020, Special Meeting of the Board of Regents (“Special Board Meeting”), the ad hoc Chancellor Search Committee recommended Dr. Rose for appointment as Chancellor and she was unanimously approved by the Board, including Chair McAdoo and Vice Chair Carter, on June 18, 2020. Chancellor Rose started in the role on September 1, 2020.

The primary focus of our investigation was to determine whether the allegations contained in the Chancellor’s 21-page single spaced Complaint, which the Chancellor indicated she drafted, could be substantiated. The Complaint alleged “persistent hostility, abuse of power, consistent undermining, and multiple violations of Board of Regents (BOR) Handbook and policy, as well as my own contract” primarily in the summer and fall of 2021.

The Complaint’s extremely detailed and dense chronology of the Chancellor’s then-thirteen months in the role made the interview process very time consuming. In an effort to complete a comprehensive review of the allegations in the Complaint, we spent approximately sixty-five hours conducting in-person and virtual interviews with eighteen witnesses, in addition to the approximately eight hours spent in two in-person meetings with the Chancellor. Indeed, while most of the interviews were concluded within two to four hours, a few interviews lasted up to six or eight hours. Also, a handful of the interviews were spread over two sessions, including the interviews of Chair McAdoo and Interim Chief of Staff Keri Nikolajewski. We also received written comments on the Complaint from a Regent who was not interviewed.

We reviewed written materials, as well, such as documents referenced, expressly or by implication, in the Complaint. Those documents included, among others, the NSHE Procedures & Guidelines Manual, the NSHE Handbook, NSHE Organizational Charts, the agendas for, and minutes from, the June 17 and June 18, 2020, Special Board Meeting and the LinkedIn profile of Melody Rose, Ph.D, considered by the Chancellor Search Committee, the document entitled “Contract Summary of Terms for Chancellor Candidates,” publicly-available records regarding the salary histories of Chancellors, University of Nevada, Reno (“UNR”) Presidents, and University of Nevada, Las Vegas (“UNLV”) Presidents, the Chancellor’s employment agreement, the May 6, 2021, “NSHE Drafting Plans for COVID-19 Vaccine Requirement” Press Release, the June 18, 2021, “Juneteenth and NSHE’s Commitment to Inclusion, Diversity, and Equity” Press Release, the proposed Communications Plan and Decision Tree, the September 15, 2021, “NSHE Employee Vaccination Rate Grows to 75 Percent” Press Release and Vice Chair Carter’s e-mail response to same, the August 1, 2021, Legal Opinion on Mandating COVID-19 Vaccine for NSHE Students, and the August 4, 2021 Legal Opinion on the Western Nevada College (“WNC”) Foundation – Regent Carol Del Carlo Party/Invitation. We also reviewed documents that were

discussed during various interviews, such as an Attorney-Client Privileged Memorandum submitted by General Counsel Reynolds, the 2020 and 2021 Climate Studies requested by the Chancellor, the September 29, 2021, letter approving Regent Brooks's request for authorization to carry a concealed firearm at the System office in Las Vegas and emails regarding same, the "Questions for Annual Chancellor Evaluation" sent on behalf of Chair McAdoo in October, 2021, notes taken by a member of the Chancellor's cabinet during cabinet meetings, and emails regarding agenda items for Quarterly Board Meetings ("Board Meetings") and Special Board Meetings, the Sierra Nevada University ("SNU") transaction (the "SNU Transaction"), the Community Reception for Dr. DeRionne Pollard, and the Chief of Staff search. We also observed, either virtually or through recorded media, two Board of Regents meetings.

Through the interviews and our review of written materials, we evaluated the details provided by the Chancellor to support her sex-based hostile work environment claim. Those include: (1) allegations related to the Chancellor's compensation; (2) allegations related to the "Old Boys' Club"; (3) allegations related to efforts to marginalize the Chancellor; (4) allegations related to the SNU Transaction; (5) allegations related to decision-making surrounding COVID-19-related policies; (6) allegations relating to the submission of agenda items; (7) allegations relating to attempts to undermine the Chancellor; (8) allegations relating to the Board Officers' hostility toward others; (9) allegations relating to retaliation (Addendum 1); and (10) allegations related to the December 30, 2021, Non-Meeting and January 14, 2022, Special Board Meeting (Addendum 2).

The allegations in the two Addenda are not directed toward Chair McAdoo or Vice Chair Carter, but the Chancellor nonetheless argued they have "passed the baton to others." Accordingly, while the primary purpose of the investigation was to determine whether the allegations in the Complaint could be substantiated, we also considered the conduct of others, including Regents Brooks, Geddes, Arrascada, Perkins, and Boylan. In the interviews that occurred after November 21, 2021 (the date on which we received Addendum 1), we expanded our questioning to include topics from Addendum 1 to determine whether the allegations therein could be substantiated. We also received written comments from one individual on Addendum 1 and reviewed other written materials, including communications related to the November 12, 2021, Special Board Meeting (the preparation of the agenda and the in-person attendance of Deputy General Counsel Nevarez-Goodson, specifically) and the December 2-3, 2021, Board Meeting (in particular, the agenda items and review process). To assess the allegations in Addendum 2, which we received only after we had completed interviews with the Chancellor and fifteen witnesses, we conducted interviews with three additional witnesses – Adam Garcia, Director of University Police Services, Southern Command, Deputy General Counsel Nevarez-Goodson, and Deputy General Counsel Tina Russom – and listened to the audio recording of the January 14, 2022, Special Board Meeting.

Through our investigation, we also attempted to determine how (or if) the conduct about which the Chancellor complained, assuming it is corroborated, is actionable under various Federal and State laws governing conduct in the workplace, amounted to violations of the NSHE Handbook or Policies or breached – or interfered with – the Chancellor's employment agreement, or otherwise prevented the Chancellor from doing her job. In general, the answer to each of these inquiries is "no."

## A. Allegations Related to the Chancellor's Compensation.

The first issue raised by the Chancellor in her Complaint is that she receives a lower salary (\$437,750.00) than her two “new subordinates” – UNLV President Keith Whitfield and UNR President Brian Sandoval, both of whom receive an annual salary of \$500,000.00 – based on her sex. According to the Chancellor, the pay discrepancy is “concerning on its face.” We disagree. Most notably, the Chancellor’s argument that she was offered a lower compensation package because of her sex is inconsistent with publicly-available records, which demonstrate that NSHE Chancellors have historically been paid less than UNLV and UNR Presidents, and that the Board set the salary for the position of Chancellor before she had been appointed and approved.

The pay histories for the Chancellor and President positions are publicly available. Those records demonstrate that over the past ten years the UNR and UNLV Presidents have consistently earned more than the Chancellor, with one exception. Former Chancellor Dan Klaich, who was promoted to Chancellor in July 2009 and separated in June 2016, received a higher salary than former UNR President Marc Johnson for several years until July 2015, when President Johnson’s salary surpassed Chancellor Klaich’s. Former Chancellor Klaich’s salary was also higher than former UNLV Presidents Neal Smatresk and Donald Snyder, although beginning in January 2015, UNLV President Leonard Jessup’s salary was higher than that of Chancellor Klaich. Since 2015 (so, for the past seven years), NSHE has paid UNR and UNLV Presidents more than each of the four Chancellors that served, including Acting Chancellor John White, three of whom were male.

What is more, the Board had set the salary and allowances for the Chancellor position in a publicly available document entitled “Contract Summary of Terms for Chancellor Candidates” before Chancellor Rose had been selected. That is to say that the terms, including salary, which matched the pay that the position’s predecessor, Chancellor Reilly, had received at the end of his tenure,<sup>3</sup> offered to the Chancellor would have been extended to whomever of the final four candidates was selected and, notably, the other three finalists were male. Upon approval of her appointment, the Board offered her the pre-approved package. The Chancellor told us that she did not know at the time she accepted the position how much Chancellor Reilly had been paid, did not request a specific amount in connection with her employment agreement, and did not attempt to negotiate the salary offer. In fact, she indicated that she was “comfortable” with the compensation arrangement when the contract was presented, although she noted her time to review was limited.<sup>4</sup>

The Chancellor explained to us that she did not become dissatisfied with her salary until she learned during the selection process for the UNR and UNLV Presidents in the summer and fall of 2020 that her “direct reports” would receive higher pay.<sup>5</sup> Presidents Whitfield and Sandoval were appointed to their positions by the Board of Regents on July 23, 2020, and September 17,

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<sup>3</sup> The Chancellor was slated to, and does now, receive a \$12,000.00 housing allowance that Chancellor Reilly did not.

<sup>4</sup> With respect to the housing allowance, those amounts are pre-determined in the Board Handbook (Title 4, Chapter 3, Section 30). Indeed, the Chancellor position “shall be granted” a housing allowance of \$12,000 per year and the housing allowance for the University Presidents “shall be set” at \$18,000 per year. Annually, the Chancellor receives \$12,000, and the UNR and UNLV Presidents \$18,000, consistent with the Handbook.

<sup>5</sup> As set forth in Chapter 3 of the NSHE Procedures & Guidelines Manual, the Salary Schedules – i.e., the salary ranges – for Chancellors and University Presidents are identical (\$312,546.00–\$531,454.00), indicating that, while the University Presidents report to the Chancellor, they are not “subordinate” when it comes to pay.

2020, respectively, both after the Chancellor's appointment was approved on June 18, 2020.<sup>6</sup> So, despite her dissatisfaction in July and September 2020, the Chancellor waited over a year to address this point in a formal complaint.

We asked the Chancellor what other measures she took to attempt to remedy the alleged inequity. By her own account, she had not complained to anyone prior to filing the Complaint in October 2021 that she believed her salary was lower than the UNR and UNLV Presidents' because of her sex. However, she recalled raising the general issue of pay discrepancy "gently" to Regent Doubrava and Regent Del Carlo, who at that time served as Board Officers, in December 2020 or January 2021 in a discussion she characterized as "uncomfortable." Neither Regent Doubrava nor Regent Del Carlo had any specific recollection of this conversation. The Chancellor also stated that she mentioned the issue to General Counsel Reynolds, who corroborated that she had expressed general concerns to him. General Counsel Reynolds did not say that the Chancellor had requested that he take any steps to address her concerns, though.

Other than the difference in the salaries themselves, the Chancellor could provide no facts to support that her lower pay, as compared to the UNR and UNLV Presidents, is evidence of a sex-based hostile work environment and would not commit during her interview to the implication in the Complaint that she was paid less because of her sex. Notably, the witnesses we interviewed did not agree that the difference in salaries was attributable to discrimination, and many were aware that Chancellors have historically been paid less than the Presidents of UNLV and UNR.

To the extent the Chancellor intended her pay-related comments in the Complaint to implicate the Equal Pay Act, we found that she would be unable to establish a *prima facie* case of wage discrimination, which is limited to a comparison of the jobs in question and does not involve a comparison of the individuals who hold the jobs. The Chancellor would have to show that NSHE pays different wages to employees of the opposite sex for "substantially equal work." We were not provided with any facts to support that she performs "substantially equal work" as Presidents. On the contrary, several witnesses stated that the positions were not similar at all.

## **B. Allegations Related to the Old Boys' Club.**

Although the bulk of the Chancellor's claims in the Complaint were directed at conduct attributable to Chair McAdoo and Vice Chair Carter, the Complaint also lodged an allegation that there is a system-wide "disregard for female employees" and "pervasive sexist culture" within NSHE. We asked most witnesses that we interviewed whether they shared this belief and received a variety of responses.

Two male witnesses attested to what they perceived as a culture of bias against women within NSHE. One individual claimed to have both heard about NSHE's reputation in this regard and witnessed it, too. He provided examples including the alleged harassment endured by former Regent Lisa Levine by former Chief of Staff Dean Gould, former Desert Research Institute ("DRI") President Kristen Averyt (the institution's first female president) from certain Regents, and by TMCC President Karin Hilgersom from certain Regents and former Chancellor Reilly. Another interviewee cited many of these examples, too, vaguely referencing the purported

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<sup>6</sup> One witness explained that the Chancellor had the opportunity to weigh in on these Presidents' salaries during the search process and chose not to do so.

“struggles” experienced by former TMCC President Maria Sheehan and former WNC President Carol Lucey but was hesitant to define the lack of support for female presidents as proof of an “Old Boys’ Club.” While we reviewed President Hilgersom’s complaint in the course of our investigation, we note that we did not speak to any of these aforementioned female leaders in connection with this investigation.

The other individual who agreed that a “disregard for female employees” exists within NSHE cited to the treatment of his female colleague by certain Regents, which he, as a man, has never experienced. But he also indicated that the “real signs” of a “male-driven culture” at NSHE that he had witnessed in the past are fading.

The other individuals with whom we spoke generally denied the existence of a pervasive sexist culture within NSHE, though one witness acknowledged that others, including the Chancellor, so believed. Indeed, two female interviewees were each adamant that her own experience at NSHE exemplified a culture that is supportive and celebratory of the advancement of women, pointing as further proof to strong female Regents and long-serving female presidents.

On balance, while we discovered a difference in opinion as to whether NSHE exhibited a culture of bias against women, we did not find that the Chancellor’s allegations of a sex-based hostile work environment would have held more weight had additional witnesses corroborated the Chancellor’s allegation of system-wide bias. Our conclusion in this regard was influenced not only by the lack of direct evidence to support her claim, but also by the Board’s selection of a female Chancellor, the number of female presidents currently serving at NSHE institutions, and the number of women serving in leadership positions at various NSHE institutions. As explained in detail in Sections II(A), *supra*, and II(C)–(J), *infra*, we found insufficient evidence to substantiate an actionable sex-based hostile work environment claim.

### **C. Allegations Related to Efforts to Marginalize the Chancellor.**

The Complaint also alleged that Chair McAdoo and Vice Chair Carter attempted to marginalize the Chancellor. While we were not able to substantiate that the examples provided in the Complaint established that these two Regents intended to sideline the Chancellor, we agree that the relationship between the Chancellor, Chair and Vice Chair was challenging and at times lacked collegiality. We found insufficient evidence to suggest that any instance of perceived marginalization was based on the Chancellor’s sex.

The Chancellor maintained that Chair McAdoo did not like or trust her from the outset. This conclusion she attributed to an early statement from prior Chair Doubrava that Chair McAdoo, among other Regents, had complained that the Chancellor had not made any effort to connect with her upon her arrival at NSHE,<sup>7</sup> comments in January 2021 from other Regents that Regent McAdoo did not trust the Chancellor, and, according to the Chancellor, that Regent McAdoo admitted she did not trust the Chancellor in an early 2021 Bluejeans meeting. We were unable to corroborate these accounts, and, in fact, Regent McAdoo disagreed that she didn’t like the Chancellor and described a friendly and professional relationship.

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<sup>7</sup> Other witnesses corroborated the oddity that apparently was the Chancellor’s focus in her early days in the Chancellor role on developing relationships with the Governor’s office, rather than the Regents.

The Complaint alleged that Chair McAdoo and Vice Chair Carter decided to run for their leadership positions in early May 2021 on account of ill will toward the Chancellor. One Regent told us that she shared this belief but that she had no proof. We also found no conclusive evidence that Chair McAdoo's and Vice Chair Carter's decisions in that regard were linked to their opinion of the Chancellor or that they "ran on a platform to strip [the Chancellor's] authority." While one witness corroborated that Vice Chair Carter was at that time spreading the narrative that neither Regent Doubrava nor Regent Del Carlo (the prior Chair and Vice Chair) stood up to the Chancellor, Vice Chair Carter adamantly denied that he sought a leadership position to gain power over the Chancellor.

Chancellor Rose told us that she supported Regent Del Carlo for Chair – who, according to the Complaint, was "in the line of succession" as the Vice Chair during Regent Doubrava's term as Chair – and Regent Amy Carvalho for Vice Chair, because she wanted an all-woman leadership team. Our interviews revealed that, while she considered it, Regent Del Carlo ultimately decided not to run for Chair due to personal commitments and Chair McAdoo, who therefore ran unopposed, was elected to the position unanimously. Regent Carvalho, for her part, lost by one vote to Vice Chair Carter.<sup>8</sup>

The Chancellor argued that Chair McAdoo's dislike of her was cemented following her election as Chair. But the Chancellor provided few facts to support that accusation, instead using conclusory terms to describe Chair McAdoo's behavior such as "caustic," "punitive," "snide," "snarky," and "suspicious." Indeed, the Chancellor's allegation that Chair McAdoo never complimented her work was inconsistent with footnote 2 of her Complaint in which she described an email from Chair McAdoo complimenting her work in the state capitol, and several witnesses disagreed in general with these types of characterizations of their meetings. The Chancellor also recalled that Chair McAdoo "attacked" her in response to her retention of contractors Rory Reid and Mike Wixom and that Chair McAdoo refused to assign meaningful Board activities to Regents Del Carlo and Carvalho, whom the Chancellor had supported. Chair McAdoo denied that she "attacked" the Chancellor regarding the contractors but does recall a conversation in which they discussed the Reid and Wixom contracts. We learned with respect to the assignment issue that, in fact, Chair McAdoo assigned Regent Del Carlo the most leadership positions of any Regent (four) and Regent Carvalho to three (tied with only Regent Geddes, the most senior member on the Board). We further cannot conclude based on Chair McAdoo's review of the Chancellor's reimbursement requests that Chair McAdoo disliked or distrusted the Chancellor. Indeed, we learned that, at the conclusion of a two-hour meeting with a cabinet member relating to budget finances, Chair McAdoo asked for help going through the Chancellor's receipts.<sup>9</sup> The cabinet member interpreted this as Chair McAdoo wanting to ensure she understood her role as Chair rather than as an effort to micromanage or humiliate the Chancellor. Chair McAdoo always approved the Chancellor's reimbursement requests, apparently. We also believe that the Chancellor likely misinterpreted Chair McAdoo's reaction to the local media's requests<sup>10</sup> ("very

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<sup>8</sup> We learned that Regent Carter had wanted to run for Chair but stepped aside on the assumption that Regent Del Carlo would run, to avoid any tension in their relationship.

<sup>9</sup> NSHE is not required to pay sales tax, so those amounts on the Chancellor's receipts should have been excluded.

<sup>10</sup> Confusingly, the Chancellor implied that Chair McAdoo treated the Chancellor differently in this interaction than she had male Presidents Sandoval and Whitfield, but by the Chancellor's own account, the Chair called all of the media requests – including those made to the Presidents – "very odd."

odd”) and the presentation at the September Board Meeting (“well . . . that was . . . a lot”), and we did not receive enough information on the agenda for the Special Board Meeting to determine whether the exclusion of strategic planning was malicious.

The Chancellor’s claims of exclusion (with one exception – the SNU Transaction, discussed below) are generally not well supported, either. The Complaint alleged, in conclusory fashion, that “the [C]hairwoman [wa]s working around me and not keeping me informed on matters” but offered two examples of these “disturbing signs” of “leaving [the Chancellor] in the dark about an increasing array of important matters that require [her participation].” First, she complained that Chair McAdoo had asked cabinet members for information about the Chancellor’s spending on consultants. If this occurred, we do not find it improper for the Board Chair to make such requests to the Chief Financial Officer about financial matters as inquiries such as this appear commonplace. Second, the Chancellor implied that she was not notified by the Chair that Regent Brooks’s request to carry a concealed weapon had been approved. This complaint is disingenuous as the Chancellor had discussed the request with the Chair and then referred the request to the Chair, and the Chancellor’s office drafted the approval letter, which was sent to Regent Brooks, with a copy to the Chancellor.

With that said, a number of interviewees described the palpable tension between the Chancellor and the Officers, and other Regents, as well as to the distrust flowing in both directions. We recognize that a challenging relationship exists. What is more, we found somewhat meritorious the Chancellor’s reaction to her placement on the dais at the September Board Meeting (which we learned was the first Board Meeting and the first meeting at DRI for which Chair McAdoo completed the seating chart), although the witnesses we interviewed had mixed opinions. Some shrugged their shoulders, recalling that Chair Doubrava sat the Chancellor with the Presidents during the June Board Meeting (and had moved former Chancellor Reilly away from the Chair to the end of the dais, too); a few thought it a fair complaint but believed the Chancellor could have simply addressed the situation with direct communication; while others insisted Chair McAdoo’s arrangement was “troubling” and demonstrated her distrust of the Chancellor.

The question, though, is whether the above-described negative interactions with Chair McAdoo were due to the Chancellor’s sex. We found insufficient evidence indicating that they could be so attributed, even though, according to the Chancellor, Chair McAdoo shared her suspicion of female professionals with a cabinet member and complained to another cabinet member about the amount of “women’s leadership” talk. While these statements were corroborated by the cabinet members themselves, Chair McAdoo had no recollection of the comment about “suspicion.” She recalled the comment she made that she had grown weary of the “women’s leadership” talk, but that statement does not prove that Chair McAdoo’s treatment of the Chancellor was based on the Chancellor’s sex as it is subject to more than one interpretation. Unfortunately, there is no direct comparator – no former male Chancellor – whose experience with Chair McAdoo we may use as a baseline (though male witnesses with whom she has also interacted as Chair have experienced terseness from her, too). Nonetheless, as far as we can tell, the challenges between Chair McAdoo and the Chancellor stem from factors other than the Chancellor’s sex. Indeed, we learned from multiple witnesses that the Chancellor was vocal in the months leading up to the June Board Meeting (when the incoming Officers were elected) about her support for other candidates. The Chancellor’s choice in this regard was likely poor judgment, given the importance of maintaining a productive and professional relationship with all Regents,

and may have contributed to tensions following Chair McAdoo's election. The support proffered in the Complaint regarding Chair McAdoo's alleged efforts to marginalize the Chancellor, including Chair McAdoo's alleged sentiments about discussing female leadership, which are concerning, are insufficient to conclude that the Chancellor's workplace is characterized by sex-based harassment on the part of Chair McAdoo.

Neither is the alleged marginalization of the Chancellor by Vice Chair Carter, regarding which the Complaint points to hearsay and the details of an on-going disagreement between the Chancellor and the Vice Chair on the concept of shared governance. For instance, according to the Complaint, Regent John Moran told the Chancellor at lunch on August 17, 2021, that Vice Chair Carter called him allegedly on behalf of Chair McAdoo to seek his support for terminating the Chancellor. It appears to us that this exchange may have resulted in some miscommunication. That is, while we were able to confirm that the call took place and that one could have inferred therefrom that Vice Chair Carter was probing Regent Moran's appetite for taking action against the Chancellor, we understand that the overall tenor of the description in the Complaint is overstated and were not able to corroborate that Chair McAdoo was involved in, or had knowledge of, the call.<sup>11</sup> Importantly, while this, too, may have reflected poor judgment by Vice Chair Carter, we have no reason to believe that his behavior was motivated by the Chancellor's sex, although it arguably violated the Ethical Code of Conduct – specifically, Title 4, Chapter 1, Sections 2(3)(d) and (g).

We are not aware of any direct or indirect evidence that Vice Chair Carter's challenge to the Chancellor's understanding of shared governance occurred because the Chancellor is a female, either. The Chancellor detailed their on-going disagreement in the Complaint, and witnesses corroborated that the topic of shared governance arose in several meetings, too. Although it appears that these exchanges were tense, we believe the Chancellor's reaction to Vice Chair Carter's July 28, 2021, email (in which he said to the Chancellor, in private, that he was "troubled" by her application of shared governance) and his July 30, 2021, comments (regarding her view of shared governance) were highly objectionable to her because she had an extensive background in higher education, and that neither was an attempt by Vice Chair Carter to reprimand the Chancellor. In either event, we have no reason to conclude that Vice Chair Carter's treatment of the Chancellor in this regard was as a result of her sex.

Our investigation revealed the existence of tense relationships between those involved. We believe, though, that this unfortunate environment has resulted largely from differences in communication styles, backgrounds and personalities, which have nothing to do with the Chancellor's sex.

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<sup>11</sup> As we have no information leading us to believe that Vice Chair Carter made similar calls to other members of the Board of Regents, we cannot say that a violation of the Open Meeting Law occurred, as suggested in the Complaint.

#### **D. Allegations Related to Press Releases and Other Communications.**

To support her claim that the Officers (and in particular Chair McAdoo), created a sex-based hostile work environment, the Chancellor cites to issues related to official Board of Regents communications. We found that the circumstances that the Chancellor described do not amount to an actionable claim. On the contrary, there is insufficient evidence, in our view, to conclude that any negative feedback received by the Chancellor in this area was on the basis of her sex.

At the outset, there appears to be a difference of opinion as to the respective roles of the Chancellor and the Chair with regard to public communications. The Chancellor believes that the Board of Regents Handbook and her employment agreement “make [her] authority clear in public communications” and that authority is that she “do[es] in fact speak for NSHE, and that when [she is] aligned with mission, values, and precedent, that is [her] job and in fact [her] duty.” Actually, the description of the Chancellor’s responsibility vis-à-vis official communications, as outlined in both the Board of Regents Handbook and the Chancellor’s employment agreement, is not quite that clear. The Chancellor is, instead, “responsible *in collaboration with the Chair of the Board of Regents* for official communication on behalf of the Board of Regents.”

Chancellor Rose said she felt “demeaned” by Chair McAdoo, who allegedly subjected her to a “different set of standards” than was former Chancellor Reilly, her predecessor. But Chancellor Reilly was responsible for official communication on behalf of the Board of Regents in collaboration with different Board leadership, most recently Regent Doubrava. We believe that the Board of Regents Handbook, which instructs the Board Chair to “collaborate” with the Chancellor on official communications, confers discretion in the Board Chair to determine his or her level of involvement. Chair McAdoo clearly had a different style in this regard than did Regent Doubrava, and we found insufficient evidence to suggest that her more engaged approach to collaboration on public communications violated the Handbook, the Chancellor’s contract, or Title VII.

Indeed, the Chancellor maintained that from January 2021 to August 2021 Chair McAdoo had “numerous complaints about the way [the Chancellor’s office] was handling public communications.” But she only provided one example, namely, the May 6, 2021 “NSHE Drafting Plans for COVID-19 Vaccine Requirement” Press Release. In that press release, the Chancellor’s office announced that NSHE was “currently drafting plans to mandate COVID-19 vaccinations for students, with some limited exceptions, who are returning to campus in the fall semester.” This was problematic for some Regents, and even the Chancellor admitted she did not “properly vet” the statement, that it was issued with “stronger language” than she intended, and that, in so doing, she “got in front of” the Board of Regents. She recalled that she had apologized to the Regents and had taken responsibility for her mistake, and she did so again in our discussions.

According to the Chancellor, what set Chair McAdoo apart from several other Regents (who the Chancellor conceded were also upset), was that she was not “satisfied” by the Chancellor’s apology.<sup>12</sup> The Complaint, however, does not describe how Chair McAdoo displayed her alleged dissatisfaction (other than the Chancellor’s belief that Chair McAdoo then decided to run for Chair to “stand up” to the Chancellor). And, we heard from one Regent who stated that

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<sup>12</sup> The Chancellor noted that neither was Regent Brooks.

they, too, were not satisfied with the apology. That is all to say that we found insufficient evidence to suggest that Chair McAdoo's reaction to the May 6, 2021, press release was as a result of the Chancellor's sex, but rather a reaction to a public statement on a highly sensitive and political issue that had not been vetted by the Board or the Office of the General Counsel.

The only other specifically mentioned "hostility" between Chair McAdoo and the Chancellor over public communications concerned Regent Brooks's alleged request to add a "pro-Israel statement" to the agenda for the July Special Board Meeting. The Chancellor recalled that, during the July 12, 2021, weekly officers' meeting, when she suggested folding Board support for the Jewish community into a broader anti-Semitism statement, Chair McAdoo said the Chancellor had "created the problem with Regent Brooks" in the first place by issuing the June 18, 2021, "Juneteenth and NSHE's Commitment to Inclusion, Diversity, and Equity" statement, which recognized the date when freedom was finally announced for enslaved persons. The Chancellor stated that she felt "undermined" by Chair McAdoo's alleged suggestion that the Chancellor had no authority over such messaging. As noted above, the Board of Regents Handbook confers discretion on the Chair to determine his or her level of involvement in official communications.

In any event, we were unable to corroborate the events above as told by the Chancellor. We learned that the discussion of Regent Brooks' request, which did not include the word "Israel," occurred during the June 7, 2021 agenda review meeting. Chair McAdoo apparently mentioned that Regent Brooks had inquired with her as to whether the Board could take a position on "anti-Semitism" and the Chancellor recommended a more general statement on discrimination, given the complex situation with Israel-Palestine relations, instead. This suggestion was well-taken, according to the witness, who also stated that the entire exchange was cordial and there was never any discussion of the Juneteenth statement.

In sum, the claim that the Chancellor's workplace is characterized by sex-based harassment was not substantiated by examples relating to press releases and other communications.

#### **E. Allegations Related to the SNU Transaction.**

The Chancellor's Complaint alleged that the circumstances surrounding the transfer of SNU to UNR, approved by the Board of Regents on July 23, 2021, demonstrated "a shocking series of secret decisions and abuses of power that ultimately undermined" her authority. The crux of the Chancellor's claim is that Chair McAdoo, primarily, but also Vice Chair Carter excluded the Chancellor from all discussions and negotiations until the last minute, such that her cabinet's due diligence process was "hurried and incomplete." The Complaint does not specifically allege that the handling of the SNU Transaction, and the decision to delay bringing the matter to the Chancellor's attention, was a result of sex-based discrimination, and the Chancellor provided no facts during her interviews to support such a claim.

Instead, her allegations fit into her theme that Chair McAdoo and Vice Chair Carter prevented the Chancellor from doing her job, which she asserted included vetting the SNU Transaction. Indeed, Title I, Article V, Section 7 of the Board of Regents Bylaws states that "[a]ll agenda items requiring Board action shall also be accompanied by a recommendation, analysis or comment to the Board from appropriate personnel in the Chancellor's Office." However, neither the Chancellor nor the other cabinet members we interviewed said they failed to fulfill these

responsibilities to the Board, notwithstanding that the time period in which the Chancellor's office had to prepare such recommendations, analyses, or comments on the SNU Transaction was compressed.<sup>13</sup> We learned that the expedited timing was driven by SNU, not the Officers or UNR. Our review revealed that as of July 14th the Chancellor was "comfortable with the 'approval' designation from the Chancellor's Office" and, when asked by NSHE attorney Mike Wixom on July 19th, each of the cabinet members expressed their support for the SNU Transaction, too. We therefore were unable to substantiate the Chancellor's allegation that she was unable to perform her "core job functions" in connection with the SNU Transaction.

We turn next to the alleged impropriety of the initial request to place the SNU Transaction on the July 23 Special Board Meeting agenda. The Chancellor – and at least one witness – alleged that it was improper for UNR to go directly to the Chair Elect about this proposed agenda item. We disagree. Our investigation revealed that all agenda items for Special Board Meetings "must be pre-approved by the Board Chair." It is the practice, accordingly, for an institution seeking approval for an item to be placed on an agenda for a Special Board Meeting to first request permission from the Chair to submit an item and, then, if approved by the Chair based on the criteria for special accommodation, submit the agenda item with sufficient documentation to permit the Board to undertake a thorough review of the matter in connection with the Special Board Meeting. Our investigation concluded that this process was followed. UNR contacted the Chair Elect (who would preside over the Special Board Meeting in question) directly because it needed a commitment from her that the item could appear on the July Special Board Meeting agenda. The Chair Elect pre-approved that request for submission, and UNR subsequently submitted "the full Board packet for the Sierra Nevada University Transfer agenda item" on July 14. Notably, UNR sent this July 14 submission directly to the Chancellor.

The gravamen of the Chancellor's Complaint in this regard is that that she was "completely cut out" of the "asset acquisition conversations" by Chair McAdoo. As we understand, though, Chair McAdoo was merely informed of the anticipated transaction and was not actually included in discussions about the terms of the deal, either. We were able to corroborate that Chair McAdoo initially declined to disclose to the Chancellor her knowledge of this transaction, however. While perhaps the Chancellor should have been advised earlier in the process that discussions with SNU were ongoing, there is insufficient evidence upon which we can conclude that this exclusion was for the purpose of interfering with the Chancellor's job. Rather, Chair McAdoo told us that she had committed to maintain the confidentiality of this information and declined to discuss it with the Chancellor on that basis.<sup>14</sup>

Moreover, the timeline acknowledged by the Chancellor does not support her allegation that she was excluded from the process until the end. According to the Chancellor, Chair McAdoo

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<sup>13</sup> In addition, only two cabinet members agreed with the Chancellor's characterization of their reactions to the news of the SNU Transaction as feeling "undermined." The others said they were not "furious," either.

<sup>14</sup> The Chancellor indirectly accused former Regent Rick Trachok of violating a cooling off period for elected officials. We did not examine this issue and express no opinion as to whether Mr. Trachok's representation of SNU during the SNU Transaction violated the Board Policy Statement in Title 4, Chapter 1, Section 3 of the Board of Regents Handbook, which states that "a Regent may not apply for or accept a . . . contract or business relationship with an institution, unit or foundation of the NSHE for a period of 1 year after termination of the Regent's service on the Board." We further express no opinion on the Chancellor's allegation that UNR's announcement of the SNU Transaction violated the Gift Policy and ran afoul of Communications Protocols, as those claims are not connected to her larger theme that the Officers interfered with her ability to perform her job.

knew of the SNU Transaction by June 23, 2021, and Vice Chair Carter knew by June 29, 2021. By her own account, though, the Chancellor learned of the transaction on June 7, 2021, when President Sandoval told her about the possibility of UNR being gifted SNU. In other words, even the Chancellor's timeline does not support her allegation that she did not find out about the SNU Transaction until the last minute.

#### **F. Allegations Relating to the Chancellor's Annual Performance Review.**

We were unable to substantiate the allegation in the Complaint that Chair McAdoo's initiation of the Chancellor's annual performance review process evidenced a sex-based hostile work environment, or even that Chair McAdoo's intention to perform the review herself was improper.

The Chancellor contended that Chair McAdoo wanted to conduct the review as a "pretext" for creating cause for the Chancellor's dismissal – the Chair's "ultimate intent," according to the Complaint. Rather than offer concrete facts to support her claim in this regard, the Chancellor referred to several instances of hearsay. These include that (1) Vice Chair Carter had called Regent Moran allegedly at Chair McAdoo's direction to seek his support in terminating the Chancellor; (2) an institution president told General Counsel Reynolds that Chair McAdoo had allegedly attempted to reach the Governor to seek his support in terminating the Chancellor; and (3) a Senior System Administration staffer had allegedly shared with a cabinet member direct knowledge of same. Our investigation was unable to corroborate that Chair McAdoo urged Vice Chair Carter to call Regent Moran, although we did find that Vice Chair Carter called Regent Moran to probe his possible interest in terminating the Chancellor. We found no evidence that Chair McAdoo solicited the Governor's support for the Chancellor's termination. We found, however, that the Chancellor believed these inaccurate statements and that they likely influenced her view of subsequent action by the Chair and Vice Chair, such as, for example, Chair McAdoo's failure to share with the Chancellor during the September 27th officers meeting that she was planning to conduct the evaluation, and the timing for doing so, which was to occur during the Chancellor's scheduled vacation.<sup>15</sup>

Chancellor Rose argued that Chair McAdoo was not authorized to conduct her review. The Chancellor believed that it only made "sense" for Regent Doubrava, who served as Board Chair during most of her first year as Chancellor, to do so. To bolster her position that Regent Doubrava was the rightful evaluator, she explained that others impliedly shared her view. Regent Doubrava himself told the Chancellor in mid-September that he would be finalizing her review for FY 2021, the Complaint provided. Regent Del Carlo was "distressed" when she learned that Chair McAdoo's office had reached out to schedule appointments related to the Chancellor's review. And two cabinet members "expressed concern" about similar appointments, allegedly questioning Chair McAdoo's motives and voicing trepidation about being part of a "faulty process." We were unable to corroborate the comments that the Chancellor imputed to these individuals.

Moreover, Title 1, Article VII, Section 3 of the Bylaws of the Board of Regents states that the "Chancellor shall be evaluated annually in writing by the Chair of the Board." The Bylaws do

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<sup>15</sup> One witness explained that Chair McAdoo scheduled the evaluation appointments for early October so that the Chancellor's evaluation would be able to be placed on the December Board Meeting agenda (which the Chancellor had requested), not to "sabotage" the Chancellor's time away, as she alleged.

not designate that the review should be conducted by the Chair of the Board “during the review period” What is more, despite the Chancellor’s position that Chair McAdoo’s decision to conduct the evaluation was a “complete subversion” of the Board of Regents Handbook, she acknowledged in her interview that the Bylaws assign “the Chair” that responsibility. And, indeed, Chair McAdoo apparently believed, based on the Bylaws, that it was her responsibility to oversee the evaluation process and that her intention was to fulfill that duty. Several other witnesses confirmed that Chair McAdoo wanted to perform the evaluation “by the book,” with one interviewee who worked closely with the Chair explaining that Chair McAdoo “meticulously” followed the Board Policy in preparing the interview questions. We reviewed those questions and saw nothing which seemed unreasonable or unrelated to a performance evaluation.

General Counsel Reynolds confirmed the Chancellor’s description in the Complaint that Chair McAdoo had threatened him, recalling an in-person meeting with her on September 29, 2021, after he had told her that the evaluation should be completed by former Chair Doubrava, where she was “furious,” “raised her voice,” and, through tears, told him that if he valued his professional career and reputation, he would not give that opinion. For her part, Chair McAdoo admitted the conversation was tense, but denied any implication that she threatened his job. If true, this conduct is troubling and implicates the Ethical Code of Conduct, including Sections 1(h) and 3(g). That said, it does not support the Chancellor’s claim of a sex-based hostile work environment.

All told, we were unable to substantiate the Chancellor’s claim that the evaluation process was intended to reveal cause for her termination or that Chair McAdoo’s intention to perform the evaluation created a sex-based hostile work environment or violated the Board of Regents Handbook.

#### **G. Allegations Related to Decision-Making Surrounding COVID-19-Related Policies.**

The Chancellor alleged that, beginning July 26, 2021, during the weekly officers meeting and ending August 20, 2021, when the Board of Health voted to require student COVID-19 vaccines, the decision-making by Chair McAdoo related to COVID-19 policies was “erratic, hostile and secretive.” It was erratic, according to the Complaint, in that Chair McAdoo agreed with the Chancellor in mid-July that a system-wide campus-level mask mandate required Board input and then reversed that position, saying the Board had no place to decide on masks, or anything COVID-related, a few weeks later on July 26th. The Chancellor expressed concern that Board leadership’s failure to act on a mask mandate created risk for the Board and sacrificed the health and well-being of campus communities. Governor Sisolak, though, issued a statewide mask mandate the next day, on July 27, 2021, which went into effect on July 30th, rendering any potential negative consequences of the Officers’ indecision moot.

The decision-making related to COVID-19 policies, according to the Chancellor’s Complaint, was allegedly hostile and secretive with respect to the student vaccine issue. In the Student Vaccine Legal Opinion, issued August 1, 2021, the Office of General Counsel concluded that while the Board of Regents had authority to encourage and promote the COVID-19 vaccine, the legal authority to mandate a COVID-19 vaccine for NSHE students falls within the jurisdiction of the State Board of Health. On August 3, 2021, a cabinet member and Chair McAdoo spoke by phone regarding a request that the Board of Regents make a comment about the Student Vaccine

Legal Opinion. During that call, according to the Complaint, Chair McAdoo suggested that the Chancellor and the Governor were colluding. We were able to corroborate that Chair McAdoo made this comment. However, we were not able to corroborate the further allegation that Chair McAdoo implied to this cabinet member that the Chancellor instigated the negative press the Board of Regents had been receiving.

On August 4, 2021, the COVID Task Force provided a recommendation regarding mandatory student vaccines, which the Chancellor supposedly shared with the Officers by email. The Complaint alleged that Chair McAdoo did not respond to the Chancellor's email on the Task Force's recommendation and, instead, made several calls to another cabinet member regarding direction she had received from God vis-à-vis the vaccine mandate and her opinion that the Chancellor was pursuing another plan and, in so doing, being obstructionist. Chair McAdoo allegedly asked this cabinet member to keep these conversations confidential and not disclose them to the Chancellor. We were able to corroborate this account.

Communications made by the Chair to the Chancellor's direct reports are characterized in the Complaint as violations of the Board of Regents Handbook and the Chancellor's employment agreement. We disagree. That is, we were unable to find support for the general proposition that Regents are prohibited from directly contacting System employees or members of the Chancellor's cabinet. On the contrary, several witnesses told us that they regularly interact with Regents without the Chancellor's involvement.

That being said, we agree that, in expressing her suspicion to a cabinet member that the Chancellor was colluding with the Governor, making similar statements to another cabinet member and asking that cabinet member to keep information from the Chancellor, Chair McAdoo may have violated the Ethical Code of Conduct. These provisions include Title 4, Chapter 1, Sections 2(1)(h) ("Treating all employees . . . of the NSHE with respect") and 2(3)(d) ("Going directly to the Chancellor if a problem arises concerning the Chancellor's office or staff").

The Chancellor alleged that the decision-making related to COVID-19 policies was also allegedly hostile with respect to employee vaccines. This arose first in the August 6th weekly officers meeting. According to the Complaint, Chair McAdoo instructed General Counsel Reynolds to draft an employee mandate policy by August 20th for action at a Special Board Meeting to be held on August 27th. The Chair allegedly then dismissed the Chancellor's concerns regarding the difficulty in writing a sound health policy and providing campus stakeholders with a meaningful opportunity to comment on such a tight schedule. We were able to corroborate this account, which in the Chancellor's view was harassing, defamatory, disorienting, distressing, and distracting. In that vein, we similarly found that the treatment may have constituted a violation of the Ethical Code of Conduct, Title 4, Chapter 1, Section 2(3)(g) ("Endeavoring to maintain an environment in which the Chancellor and the Chancellor's staff may discharge their duties throughout the System and the state on a thoroughly professional basis."), in particular. However, the expedited request for a robust policy was made of General Counsel Reynolds, not the Chancellor.

Finally, the Chancellor alleged that, in or around August 19, 2021, Chair McAdoo accused the Chancellor of withholding information and resisting her direction regarding an employee vaccine requirement. While we were able to corroborate this account, we also found noteworthy

the failure in the Complaint to account for another key contributing factor to the tension in August 2021: that Chair McAdoo was simultaneously grappling with an unprecedented health crisis's impact on campus communities and the diverging opinions of the various Regents on a highly sensitive and political matter.

Despite these potential violations of the Ethical Code of Conduct, we found insufficient evidence that the Chair's decision-making and/or blame-shifting relating to COVID-19 policies was influenced in any part by the sex of the Chancellor.

#### **H. Allegations Relating to Agenda Items.**

One of the Chancellor's responsibilities, as outlined in both the Board of Regents Handbook and her employment agreement, is to prepare, in collaboration with the Chair, the agendas for all meetings of the Board of Regents. On that basis, in addition to the SNU Transaction addressed above, the Chancellor alleged that NSHE institutions had improperly requested permission directly from the Chair to add two agenda items (a traffic issue submitted by Nevada State College ("NSC") and a lease approval requested by UNR) to the agendas for the Special Board Meetings on July 23 and September 30, 2021, respectively. We found no impropriety here, much less any sex-based hostility.

We learned through our investigation that all requests for items to be placed on the agenda for Special Board Meetings "must be pre-approved by the Board Chair." The institutions, in other words, have to request permission from the Chair to submit an item, and then the Chair evaluates whether the item meets the criteria for special accommodation. If pre-approved by the Chair, then the requestor submits the materials related to the proposed agenda item. We reviewed the underlying requests for pre-approval and found that this process was followed with respect to both the NSC and UNR agenda requests. Because the proper procedure was followed, there is no basis upon which to conclude that the Chancellor was not permitted to perform her role relative to the agendas, or that she was subjected to a sex-based hostile work environment in this regard.

#### **I. Allegations Relating to Attempts to Undermine the Chancellor.**

The Chancellor alleged that efforts to undermine her in front of her subordinates was also proof of a sex-based hostile work environment. We were not able to substantiate this claim.

The incidents that underlie the Chancellor's allegations include both those she witnessed and those she heard about later. For example, the Chancellor described Chair McAdoo's August 15, 2021, insistence that the Chancellor convene an "emergency" cabinet meeting to discuss the misprint in the Carson City newspaper. The Chancellor viewed this experience as "horrifying" and described that she "was effectively scolded in front of my subordinates." The witnesses we spoke to were also troubled by this meeting, which was apparently not an emergency at all, some more than others. While they did not blame the Chancellor for convening the cabinet meeting unnecessarily, we understand that it was inappropriate and unnecessary to have done so and see that the Chair's perseverance in making it happen was an overreach. That said, Chair McAdoo, as we understand it, had countervailing considerations and therefore we did not find that the "emergency" cabinet meeting supports her claim of a hostile work environment based on her sex.

With respect to Vice Chair Carter, the Complaint alleged that his August 31, 2021, email called into question the Chancellor's management of the legal department. We reviewed the communication and did not find Vice Chair Carter's request to add the Chancellor's management of NSHE attorneys to the weekly officers' meeting agenda problematic on its face. However, we agree that his September 7th follow up ("I hope you've devoted an equal amount of time to that of solving the overall legal management problems inside system administration.") was inappropriate. We cannot conclude, though, that his attitude was influenced by the Chancellor's sex.

We have already addressed the interactions with Chair McAdoo that were subsequently relayed to the Chancellor, including the August 3rd call to a cabinet member regarding the Chancellor's purported collusion with the Governor, and her August 4th call to another cabinet member that she requested be kept from the Chancellor. We question whether this conduct was appropriate and can understand that the Chancellor would view each instance as a separate attempt to undermine her.

The other examples alleged in the Complaint relating to Vice Chair Carter are all based on hearsay. These included that an institution president told the Chancellor that a System employee was publicly undermining her. Also, apparently, the Chancellor learned from Regent Moran that Vice Chair Carter had impliedly attempted to solicit his support for the Chancellor's termination, two presidents expressed concerns to the Chancellor regarding the Vice Chair's view of lines of authority, a staff member overheard Vice Chair Carter inviting a System employee to listen to his view of NSHE relations over wine, and Regent Del Carlo shared with the Chancellor that Vice Chair Carter had said the Chancellor's office "needs to be reigned in." We did not attempt to corroborate each of these instances of hearsay, although if true, suggest that some unprofessional behavior may have occurred.

We are convinced that the Chancellor sincerely believed that her ability to succeed was negatively influenced by these circumstances, but we conclude that the alleged efforts to undermine the Chancellor do not support her sex-based hostile work environment claim.

#### **J. Allegations Relating to the Board Officers' Hostility Toward Others.**

The Chancellor noted throughout her Complaint that other NSHE employees, both male and female, often in connection with incidents she did not personally witness, were undermined or disrespected by the Officers, presumably to demonstrate that their hostility toward her extended to those that generally supported her. We found that these incidents do not constitute sufficient evidence of the Chancellor's sex-based hostile work environment claim. Notably, none of the individuals whom she alleged was also subjected to inappropriate conduct ever submitted a written grievance alleging a hostile work environment. In fact, we learned that the Chancellor's attempt to build her case, in part, on the experiences of other employees was unwelcome in many instances.

For example, neither of the two events that the Chancellor described as "effort[s] to undermine [the Chancellor's] rightful role" – the WNC Fundraiser at Regent Del Carlo's residence and the Welcome Reception for President Pollard – actually established that the Chair and Vice Chair were hostile to the Chancellor.

As for the WNC Fundraiser, the Chancellor faults Vice Chair Carter for his “secret effort to undermine another” Regent for, essentially, asking General Counsel Reynolds to evaluate the ethics of a Regent hosting an event that financially benefitted one institution. The witnesses we interviewed all conceded that this circumstance – that is, a Regent hosting an event to benefit one institution – had likely not previously arisen. We, therefore, do not agree that confidentially seeking an opinion regarding the matter indicated a lack of respect for Regent Del Carlo.

Turning to the Welcome Reception for President Pollard, the Chancellor comes to the defense of Berna Ford, the General Counsel for NSC (“General Counsel Ford”), as both Officers allegedly circumvented the Chancellor and called General Counsel Ford directly to confront her “aggressively” about the allegedly racist undertones of the event. We learned that the Chancellor has never actually spoken to General Counsel Ford and, incidentally, we were not able to corroborate most of the specifics alleged in the Complaint. In fact, our investigation revealed that the only Regent in receipt of the original invitation to the Welcome Reception was Regent Perkins, who received the invite from General Counsel Ford. When Chair McAdoo RSVP’d “yes,” it became clear that Regent Perkins had forwarded the invite to others. So, General Counsel Ford sent a second invitation – on which she noted that the Welcome Reception was a “Black Community Event” – from her NSHE email address to all Regents. Upon receipt of the second invitation, Chair McAdoo called General Counsel Ford seeking clarification. General Counsel Ford did not describe this interaction as “aggressive.” However, the next day, General Counsel Ford phoned Vice Chair Carter, at Acting President Vickie Shield’s request, and he allegedly chastised her for twenty minutes. While Vice Chair Carter denied this version of events, there appears to have been miscommunications and some tone deafness involved.

Nonetheless, not even the Chancellor was able to support her allegation that the WNC Fundraiser and the Welcome Reception evidenced the Officers’ alleged sex-based hostility toward the Chancellor. She alleged that Chair McAdoo’s and Vice Chair Carter’s conduct with respect to these events demonstrated the “micromanaging and inappropriately exclusionary behaviors that are also defamatory, offensive, and undermine [her] rightful role.” But other than that allegation, and her assertion that she was “circumvented” by Chair McAdoo and Vice Chair Carter, the Chancellor did not establish that their concerns surrounding these events support her claim that her workplace is characterized by sex-based harassment.

We also learned through our interviews that several NSHE employees felt disrespected and uncomfortable in their own interactions with Chair McAdoo and Vice Chair Carter, in corroboration of other accounts in the Chancellor’s Complaint. One individual considered lodging a formal complaint about the abuse and another actually did. However, we did not find that these incidents support the Chancellor’s sex-based hostile work environment claim, either.

We have already addressed some examples of the treatment of the Chancellor’s direct reports, including Chair McAdoo’s August 3rd call to a cabinet member regarding the Chancellor’s purported collusion with the Governor, her August 4th call to another cabinet member that she requested be kept from the Chancellor, her August 15th convening of an “emergency” cabinet meeting,<sup>16</sup> and her September 29th threat to General Counsel Reynolds made in connection with

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<sup>16</sup> It was in relation to this incident that a member of the Chancellor’s cabinet sent a grievance by email to the Chancellor, with a copy to the Director of HR and General Counsel Reynolds. However, the communication was

his opinion on the Chancellor's performance evaluation. For the most part – with the exception being that some witnesses merely viewed the August 15 meeting as “unusual,” “unnecessary,” and an “overreaction” – the cabinet members on the receiving end of Chair McAdoo's behavior in these incidences, indeed, felt disrespected. Similar feelings were incited by the referenced alleged “reprimand” that a cabinet member received over email from Vice Chair Carter, who said, of a press release regarding an increase in vaccination rates across NSHE, that “[i]t seems to mislead people into thinking our vaccine rate increased in one week rather than data being cleaned up.”

The Complaint also alleged disparagement of General Counsel Reynolds and the Office of the General Counsel, generally. Indeed, the Chancellor characterized Vice Chair Carter's August 31st email about her management of the legal department as “disparaging” of General Counsel Reynolds' work and alleged further that “abuse toward legal is commonplace at NSHE.” We did not address in detail these allegations, as our investigation's focus was on the claims in the Complaint concerning the Chancellor.<sup>17</sup> Though, again, we were not able to substantiate the Chancellor's claim of a sex-based hostile work environment through these examples of the Officers' interactions with others.

#### **K. Allegations Relating to Retaliation (Addendum 1).**

We were unable to substantiate the allegations in Addendum 1 that “some of the aggressive and undermining behaviors have continued, albeit from different” Regents in retaliation against the Chancellor for filing the Complaint.

In Addendum 1, the Chancellor alleged that Ms. Nikolajewski, Interim Chief of Staff, was directed by Chair McAdoo or Vice Chair Carter to “circumvent” the Chancellor's authority with respect to review of the agenda for the December Board Meeting. Apparently, Ms. Nikolajewski had “refused” the Chancellor's request to wait to conduct the Board Officers' final agenda review until the Officers Pro Tempore were elected. We found Ms. Nikolajewski to be credible in her representation that she was merely trying to perform her agenda-related job duties, and that she received no direction from Chair McAdoo or Vice Chair Carter regarding this issue.

According to the 2021 Board of Regents Calendar for Submission Deadlines and Agenda Review Meetings, the Chief of Staff and the Chancellor were to conduct the Board Officers' final agenda review on Friday, November 12, 2021, for the December Board Meeting and post the agenda five days later, on November 17th. The Special Board Meeting to elect the Officers Pro Tempore was later scheduled for November 12th, too. In conjunction with legal counsel, Ms. Nikolajewski stayed on track for the December Board Meeting by meeting with Chair McAdoo and Vice Chair Carter on November 10 (without the Chancellor). But, upon the Chancellor's insistence, she conducted a second Board Officers' final agenda review on Monday, November 15

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for the stated purpose of expressing feelings regarding the unprofessionalism on the part of leadership and did not attribute the inappropriate conduct to her sex or mention a hostile work environment. The only relief sought was not to be placed in a similar position, again.

<sup>17</sup> We also considered Chair McAdoo's apparent practice of requesting rides from NSHE employee. Every witness we interviewed agreed that this occurred and was wholly inappropriate, although many questioned the necessity of its inclusion in the Complaint. The further widespread opinion on this topic is that Chair McAdoo likely failed to recognize the power differential and, indeed, Chair McAdoo told us herself that she does not identify as someone in a position of influence, even when she served as Chair of the Board of Regents. We believe that Chair McAdoo had no ill-intentions in requesting rides from subordinates.

(two days before the deadline to post the Agenda) with the Chancellor and the Officers Pro Tempore. The Agenda was posted late, as a result. We found no evidence to suggest that Ms. Nikolajewski intended to undermine the Chancellor or was directed to do so by someone else. On the contrary, she accommodated the Chancellor's request to delay the Board Officers' final agenda review.

We also found credible Ms. Nikolajewski's account that she incorrectly assumed the Chancellor would not attend the Special Board Meeting – a meeting that was necessitated by the Complaint – to elect the Officers Pro Tempore, which led to her failure to reserve a seat for the Chancellor on the dais. This mistake, in our view, was just that. We believe the Chancellor's alternative interpretation of Ms. Nikolajewski's oversight as “embarrassing,” “disrespectful,” and “demoralizing” is not well based.

We found the Chancellor's account of Regent Geddes's alleged efforts to undermine the Chancellor in connection with the November 12th Special Board Meeting to be likewise not well based. Indeed, we were not persuaded that Regent Geddes should have told the Chancellor himself that he would be presiding over the November 12th Special Board Meeting as the Chancellor should have known that, as “the member of the Board who has the greatest seniority on the Board,” Regent Geddes would perform the duties of the Chair under Title 1, Article IV, Section 3 of the Board of Regents Bylaws. We also learned that, despite the Chancellor's expressed frustration that Regent Geddes had not worked with the Chancellor on the agenda, Regent Geddes had no input whatsoever on the agenda, and that this agenda was developed in conjunction with outside legal counsel. We found no evidence to support the Chancellor's accusation that Regent Geddes attempted to “isolate” her and “sideline” Deputy General Counsel Nevarez-Goodson, and Regent Geddes has denied doing so. We reviewed the email exchange, and, in fact, Regent Geddes responded to Deputy General Counsel Nevarez-Goodson's insistence that she travel to Las Vegas to attend the Special Board Meeting in person: “Sounds fine to me. I trust your judgment.”

We found credible Regent Geddes's version of events with respect to Deputy General Counsel Nevarez-Goodson's advice to Chair McAdoo and Vice Chair Carter to abstain from voting, too. Regent Geddes conveyed to General Counsel Reynolds and Chair Pro Tempore Del Carlo the week after the Special Board Meeting that he was upset that, as Chair, he had been informed the morning of the Special Board Meeting of such advice, despite having been advised on November 9th that there was no need for abstentions. His frustration had nothing to do with the advice itself but, rather, the about-face without his knowledge. Neither did we find any retaliation or hostility inherent in the voting structure employed by Regent Geddes, about which he had sought legal counsel, nor in his alleged treatment of Deputy General Counsel Nevarez-Goodson.<sup>18</sup>

Addendum 1 also alleged that the Chancellor had been retaliated against by Regents Arrascada, Brooks, and Perkins, in addition to Regent Geddes. According to the Chancellor, Regent Arrascada “took aim” at her trip with the Presidents to Arizona State University during the

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<sup>18</sup> Regent Geddes had understood that Deputy Attorney General Rosalie Bordelove had been appointed to handle open meeting law issues but had asked that he be able to direct all legal questions to her for ease of procedure (a request that drew no objection from Deputy General Counsel Nevarez-Goodson), and had no intention of undermining Deputy General Counsel Nevarez-Goodson in so announcing at the start of the Special Board Meeting.

November 12th Special Board Meeting. We are not convinced that Regent Arrascada's inquiry is evidence of retaliation in connection to the Complaint, and the Chancellor has failed to demonstrate that it is. Moreover, that Regents Brooks, Geddes, and Perkins requested that the Officers Pro Tempore place "the matter of the Board's Special Counsel" on the agenda for the December Board Meeting is insufficient to prove retaliation, either. Title 1, Article V, Section 7 of the Board of Regents Bylaws states clearly that "[a]n item must appear on the agenda if three or more Regents request its inclusion on the agenda and notify the Chair, the Chancellor, and the Chief of Staff of the request." We reviewed the communication whereby these Regents requested the item's inclusion on the agenda and found the request to align with the process contemplated by the Handbook.

In sum, we found insufficient evidence to substantiate the claims alleged in Addendum 1 that certain Regents are retaliating against the Chancellor.

**L. Allegations Related to the December 30 Non-Meeting and January 14 Special Board Meeting (Addendum 2).**

In her Addendum 2 submitted by email on January 15, 2022, the Chancellor raised several additional issues that had not been addressed in her prior submissions, including an allegation that Regent Brooks engaged in conduct that she perceived as "physically intimidating" during a closed-door meeting held on December 30, 2021. Among other points she raised, the Chancellor suggested that her authority had been challenged, and that because Regent Brooks was carrying a weapon during the meeting, she was concerned about her physical safety. We interviewed three additional witnesses to understand better the matters raised in Addendum 2, with a particular focus on the specific circumstances that caused the Chancellor to be concerned about her physical safety. Because the meeting in which these events occurred was closed to the public as it related to litigation, we could not listen to the recording of the meeting but relied instead on our discussions with various individuals.

According to the Chancellor and others, the meeting was tense from the outset. For example, Regents and NSHE staff did not engage in pleasantries with one another prior to the meeting as would typically occur in such an environment. In addition, the Chancellor and at least one other person present for the closed-door session observed that Regent Brooks, who had been designated to sit next to the Chancellor, moved his seat away from the Chancellor, placing himself across from her. This appeared to one witness to be a possible strategic move to be seated across from the Chancellor and NSHE counsel so that he would be facing them when he argued, which he did shortly after the meeting commenced, that neither the Chancellor nor the NSHE lawyers should remain in the room. Deputy General Counsel Nevarez- Goodson explained in response that the Board and the Chancellor were all a single legal entity and, although Regent Boylan also supported Regent Brooks's challenge to the Chancellor's and counsel's right to be present, ultimately that roadblock was overcome, and the substance of the meeting progressed.

The challenge to the Chancellor's authority to participate in the closed-door session was not legally defensible, but perhaps more problematic was the argumentative style in which this issue was apparently raised. This seemingly aggressive approach caused the Chancellor, whether justified or not, to fear for her safety as she knew Regent Brooks was carrying a weapon. Although she did have a conversation with Director Garcia about her safety concerns, some of the comments

and concerns she attributed to him are disingenuous. For example, Director Garcia did not escort the Chancellor to the bathroom, nor did he not say specifically that he did not trust Regent Brooks. And while Director Garcia does intend to advise that he no longer supports Regent Brooks carrying a concealed weapon in NSHE buildings, the reason for his changed view is not based on anything that occurred in the December 30, 2021, meeting but rather due to the fact that additional security has been established for NSHE meetings and, as such, there is no longer a justification for allowing individuals to arm themselves. Moreover, Director Garcia generally expressed concern for the Chancellor's wellbeing, as she claimed, but he indicated that as a law enforcement officer he is concerned about any perceived threat to the safety of those he is charged to protect. In other words, he made no judgment as to the credibility of the threat she perceived, but rather took steps to alleviate her concerns. Although it is certainly concerning that the Chancellor (or anyone else present at an NSHE meeting) feared for her physical safety, we do not view this interaction as evidence of a sex-based hostile work environment, but rather as a reflection of the apparent negative feelings that exist between those involved.

The Chancellor also identified several other examples of conduct that she described as "humiliating." For example, she alleged that Regent Arrascada challenged her job performance when he suggested that she had failed to take appropriate action to work with the Legislative Commission to ensure that the student vaccine mandate remained in place. The Chancellor objected to this characterization for two reasons. The first is that the Board of Regents had not provided the Chancellor with direction regarding the Board's policy on this point, and second, that the matter was not properly raised during the closed-door litigation meeting. The Chancellor also argued that the Board of Regents' decision to require the Chancellor to return to the Board at the January meeting with a draft of a letter regarding NSHE's support for vaccine mandates demonstrated a lack of trust in her. While the Chancellor's concerns in this regard appear to be sincere, we found insufficient evidence to suggest that the conduct of any particular Regent as described above was as a result of her sex, but rather believe these exchanges reflect the sensitive and highly political environment that surrounds development of COVID-19 policy and the overall distrust that exists between those involved.

The Chancellor also argued that she was subjected to "disparate and hostile treatment" at the January 14, 2022, Special Board Meeting. She asserted that Regent Boylan monopolized the meeting after she delivered her State of the System address with a series of "impertinent" and "racist" comments, and that Regent Brooks challenged her understanding of data and statistics. As support for her position that the treatment directed at her was as a result of her sex, she offered that neither UNR President Sandoval nor NSHE Chief Financial Officer Andrew Clinger were subjected to the "interrogation" that she received. We listened to the recording of this Special Board Meeting and, while certain of the Chancellor's observations are supported by the recording, we could not conclude that the questions directed at her by two Regents were evidence of disparate or hostile treatment based on her sex, particularly when UNR President Sandoval and Mr. Clinger received questions from Regents as well.

In sum, the allegations presented in Addendum 2 demonstrate that a negative dynamic has unfortunately emerged between the Chancellor and certain members of the Board of Regents, but once again, there are insufficient facts upon which we can conclude that the negative interaction between any of them was a result of the Chancellor's sex.

### **III. OUTCOMES SOUGHT BY THE CHANCELLOR**

We learned through our interviews with the Chancellor that she seeks the following relief: (1) permanent removal of Chair McAdoo and Vice Chair Carter as Board Officers; (2) reform of the Chancellor evaluation process; (3) clarification (perhaps in an addendum to the Chancellor's employment agreement) on the roles of the Board (and Board Chair) versus the roles of the Chancellor, and that the Chancellor, not the Board, supervises the Presidents; (4) training and education provided to the Board of Regents on their job, the Handbook, and the roles of senior leadership within NSHE; (5) commitment by the Board to consistent, meaningful Board development and following its own Policies and Guidelines; (6) establishment of a Governance Committee that provides orientation for each new Regent and ongoing development for all Regents, and oversees an annual self-evaluation process for the Board; (7) an increase in the Chancellor's compensation above that of the UNR and UNLV Presidents (her lowest priority point); and (8) a public apology from Chair McAdoo and Vice Chair Carter, in which they acknowledge that they abused their authority and undermined the Chancellor and her staff and interfered with the her ability to do her job.

Based on our conclusion that the Chancellor has not provided sufficient facts to support her claim of a sex-based hostile work environment, we decline to recommend that any of these requests for relief be implemented.<sup>19</sup>

### **IV. CONCLUSION**

In general, our investigation found insufficient evidence to support the Chancellor's claim of a hostile work environment based on her sex. Some concerns articulated in the Complaint were contradicted by demonstrable facts. Other alleged facts, while identified as evidence of discrimination, either lacked corroboration or had insufficient corroboration from which we could conclude that the experiences the Chancellor described were as a result of her sex. The corroborated accounts that the Chancellor relied upon in the Complaint as examples of harassment, in almost every instance, had no connection to her sex and, notably, the Chancellor could not commit, during her interviews, that Chair McAdoo and Vice Carter treated her with hostility because of her sex. Rather, she said that she does not believe her male predecessors would have been similarly treated and that the pattern incidentally appears to align with her sex. We have concluded, in contrast, that the initial disconnect between the Chancellor and the Regents stemmed from a misalignment of the Chancellor's expectations regarding the position and her resistance to norms of the NSHE System and continued as a result of different management and communication styles, personalities and backgrounds, and challenges presented by the COVID-19 pandemic.

Though Title VII does not address poor workplace behavior that is not driven by a protected characteristic, we end this memorandum by acknowledging that certain conduct about which the Chancellor complained may have lacked collegiality, and in some cases violated the

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<sup>19</sup> Our interviews, though, suggested that implementation of measures to address concerns raised by various parties would benefit the System. Because we were not charged with making suggestions for that purpose, we did not consider proposed measures in detail.

Ethical Code of Conduct. While the Chancellor's Complaint and Addenda did not provide a basis for us to conclude that an actionable Title VII claim exists, certainly measures can be implemented that may help to minimize the present acrimony, and allow all involved to focus on the important mission of NSHE, in which all have a critical role.