

Wis. Stat. s. 36.12 and RPD 14-6 Student Appeal Rights **Implementation Guidance**

This document is intended solely as guidance and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. This guidance does not establish or affect legal rights or obligations and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Board of Regents. Any decisions made by the Board of Regents in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.

1. Guidance Statement

This guidance clarifies when student complainants may appeal a final decision to the Board of Regents of the Universities of Wisconsin (UW) System (Board) pursuant to Wis. Stat. s. 36.12(2)(b), and provides guidance to UW institutions to ensure alignment between institution-level procedures and applicable administrative rules, Board bylaws and Board policies, UW System Administrative policies.

Pursuant to Wis. Stat. s. 36.12(1) and Regent Policy 14-6, no student may be denied admission to, or participation in or the benefits of, or be discriminated against in any service, program, course or facility of the UW System or its institutions on the basis of race, color, creed, religion, age, sex, sexual orientation, gender identity or expression, national origin, ancestry, disability, pregnancy, marital or parental status, or any other category protected by law, including physical condition or developmental disability as defined in Wis. Stat. s. 51.01(5).

Consistent with longstanding Board interpretation and institutional practice, student complainant appeal rights to the Board pursuant to Wis. Stat. s. 36.12(2)(b) are established and limited by Board-adopted rules, policies and procedures¹, and are not universal for all discrimination-related matters. Pursuant to Wis. Stat. s. 36.12(2)(b) appeal rights to the Board exist only in those circumstances expressly provided, or that are not limited or precluded, by administrative rule, Board bylaw or Board policy, or by UW System Administrative policy or UW institution policy implementing such administrative rule, Board bylaw or Board policy.

2. Scope

This guidance applies to all UW institutions and student complainants.

3. Related Policies and Authorities

- Wis. Stat. ss. 36.09, 36.11, 36.12, 36.115, 36.15, 36.17, 36.19, 36.35
- Wis. Admin. Code Chapters UWS 2, 4, 6, 9, 11, 13, 14, 16, 17, 18, 20, 21 and 22
- Bylaws of the Board of Regents of the University of Wisconsin System
- Regent Policy Document 14-2, *Sexual Violence and Sexual Harassment*
- Regent Policy Document 14-6, *Discrimination, Harassment and Retaliation*
- Regent Policy Document 14-10, *Nondiscrimination on the Basis of Disability*
- Regent Policy Document 20-21, *University Personnel Systems*
- UW System Administrative Policy 1233, *Grievance Procedures*
- UW System Administrative Policy 1237, *Student Employment*

4. Definitions

For purposes of this guidance:

"Board" means the Board of Regents of the University of Wisconsin System.

"Final Decision" means a decision that determines the substantial rights of the parties involved and concludes a UW institution's proceeding.

"Student complainant" means a student who alleges discrimination.

"Discrimination" has the meaning set forth in Wis. Stat. s. 36.12(1) and Regent Policy 14-6.

"Protected status" means a student's race, color, creed, religion, age, sex, sexual orientation, gender identity or expression, national origin, ancestry, disability, pregnancy, marital or parental status, or any other category protected by law, including physical condition or developmental disability as defined in Wis. Stat. s. 51.01(5).

"Student" means any person who is registered for study at a UW institution for the academic period in which the alleged discrimination occurred.

"Title IX misconduct" has the meaning provided in Regent Policy 14-2, and pursuant to Wis. Admin. Code chs. UWS 4 subch. III, UWS 11 subch. III, and UWS 17 subch. III.

"UW institution" means any university or an organizational equivalent designated by the Board.

5. Guidance Statement

A. Scope of Student Complainant Appeal Rights to the Board

A student complainant may appeal a chancellor's or dean's final decision to the Board pursuant to Wis. Stat. s. 36.12(2)(b) when:

- i. The allegation is of discrimination by a UW institution program, service, facility, academic requirement, or administrative action;
- ii. The alleged discrimination is not governed by the student nonacademic disciplinary process pursuant to Wis. Admin. Code ch. UWS 17 (with the exception of Title IX misconduct);
- iii. The alleged discrimination is not governed by any administrative code, Board bylaw or policy, or UW System Administrative policy or UW institution policy², including for employee discipline (with the exception of Title IX misconduct); and
- iv. No administrative rule, Board bylaw or policy, or UW System Administrative Policy or UW institution policy³ limits or precludes appeal rights for the alleged discrimination.

B. Matters Generally Appealable to the Board by Student Complainants

Examples of matters generally subject to appeal include, but are not limited to, complaints regarding UW institutions related to:

- i. Admissions or program participation policies or processes;
- ii. A policy or procedure covering access to facilities or services;
- iii. Academic or curricular programming decisions;
- iv. Institutional disability accommodation processes;
- v. Institution-wide policies or practices alleged to have a discriminatory effect.

C. Matters Generally Not Appealable to the Board by Student Complainants

Student complainants generally **do not have a right to appeal** to the Board, pursuant to Wis. Stat. s. 36.12(2)(b), regarding institutional decisions (**including decisions not to initiate**

² UW System Administrative policies or UW institution policies that implement such administrative rules, Board bylaws or Board policies.

³ Id.

disciplinary proceedings) in the following circumstances, except as expressly provided in the applicable administrative rules, Board bylaw or Board policy, or UW System Administrative and UW Institution policies for Title IX or sexual misconduct complaints.

i. Student Conduct Matters

Student complainants may not appeal to the Board for alleged discrimination involving student misconduct governed by Wis. Admin. Code ch. UWS 17, including decisions not to issue charges.⁴

ii. Faculty Matters

Student complainants may not appeal to the Board for alleged discrimination involving faculty misconduct governed by Wis. Admin. Code chs. UWS 4 or 6, including decisions not to initiate disciplinary proceedings.⁵

iii. Academic Staff Matters

Student complainants may not appeal to the Board for alleged discrimination involving academic staff misconduct governed by Wis. Admin. Code chs. UWS 11 or 13, including decisions not to initiate disciplinary proceedings, including decisions not to initiate disciplinary proceedings.⁶

iv. University Staff Matters

Student complainants may not appeal to the Board for alleged discrimination involving university staff misconduct governed by UW System Administrative Policy 1233 or UW–Madison Policy UW5064, including decisions not to initiate disciplinary proceedings.⁷

⁴ With the exception of where appeal rights are expressly provided for Title IX or sexual misconduct complaints under Wis. Admin. Code ch. UWS 17 subch. III.

⁵ With the exception of where appeal rights are expressly provided for Title IX or sexual misconduct complaints under applicable administrative rules (Wis. Admin. Code ch. UWS 4, subch. III) or in UW institutional policies under RPD 14-2.

⁶ With the exception of where appeal rights are expressly provided for Title IX or sexual misconduct under applicable administrative rules (Wis. Admin. Code ch. UWS 11, subch. III) or in UW institutional policies under RPD 14-2.

⁷ With the exception of where appeal rights are expressly provided in UW institutional policies for Title IX or sexual misconduct under RPD 14-2.

v. Limited Appointees

Student complainants may not appeal to the Board for alleged discrimination involving Student complainants may not appeal decisions involving limited appointee misconduct governed by Wis. Stat. s. 36.17 and Wis. Admin. Code ch. UWS 15, including decisions not to initiate disciplinary proceedings.

vi. Other Employees

Student complainants may not appeal decisions to the Board for alleged discrimination involving at-will and other employee misconduct governed by Wis. Stat. s. 36.19 and Wis. Admin. Code s. UWS 16, RPD 20-21 and the relevant UW System Administrative or UW institutional policies, including decisions not to initiate disciplinary proceedings. This includes but is not limited to student hourly employees, temporary employees, student/graduate assistants, and post-degree trainees.

vii. Affiliated Individuals

Student complainants may not appeal decisions to the Board for alleged discrimination involving affiliated individuals (which includes, but is not limited to, volunteers, vendors, contractors, and research/community collaborators) for misconduct that is governed by relevant contracts, Board bylaws or Board policies, or UW System Administrative policies or UW institution policies⁸

viii. Other UW institution actions

Student complainants may not appeal decisions to the Board for alleged discrimination involving any action by a UW institution where appeals regarding such actions are governed by relevant administrative rules, Board bylaws or policies, or UW System Administrative policies or UW institution policies⁹.

D. Effect of Other Rules and Policies

Where alleged discrimination is subject to an administrative rule, Board bylaw or Board policy, or UW System Administrative Policy or UW institution policy¹⁰ that establishes specific procedures and appeal rights, that more specific authority controls.

⁸ UW System Administrative policies or UW institution policies that implement such administrative rules, Board bylaws or Board policies.

⁹ Id.

¹⁰ Id.

E. Institutional Responsibilities

Each UW institution should:

1. Ensure its student non-discrimination policies accurately reflect the appeal framework described in this guidance;
2. Ensure that UW institutional policies implementing Wis. Stat. s. 36.12 are published on its website and are made freely available to students through the website or other means.
3. Ensure that any final decision issued by a UW institution pursuant to Wis. Stat. s. 36.12 includes relevant appeal rights.
4. Ensure alignment between UW institution-level policies and procedures and applicable administrative rules, Board bylaws and policies, UW System Administrative policies, and this guidance.